

**HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD
REGULAR MEETING
JANUARY 9, 2020
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) Review of Board Minutes from November 21, 2019 Panel Meeting
 - b) Review of Board Minutes from December 5, 2019 Panel Meeting
 - c) Approval of Board Minutes from December 12, 2019
4. OPEN FORUM
5. APPEALS*
 - a) T18-0302, Spencer v. Eagle Environmental Construction
6. ACTION ITEMS
 - a) Formation of additional ad hoc committees, membership and review of issues identified in May 9, 2019, Board meeting (see attached list on page 3)
7. INFORMATION AND ANNOUNCEMENTS
 - a) Rent Adjustment Program Updates (C. Franklin Minor)
 - b) Legislative Updates (Office of the City Attorney)
8. COMMITTEE REPORTS AND SCHEDULING
 - a) Report from Ad Hoc Committee – Deferred Maintenance v. Capital Improvement of Dry Rot
9. ADJOURNMENT

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

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

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

會場有適合輪椅出入設施。需要殘障輔助設施, 手語, 西班牙語, 粵語或國語翻譯服務, 請在會議前五個工作天電郵 sshannon@oaklandca.gov 或致電 (510) 238-3715 或 711 California relay service.

請避免塗搽香氛產品。參加者可能對化學成分敏感。

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

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

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

Formation of additional ad hoc committees, membership and review of issues identified in May 9, 2019, Board meeting:

- Information about the Building Code and intersection with the Regulations; (e.g. window bars-there is a code that applies to this.)
- Should dry rot be treated differently from other deferred maintenance items?
- Clarification of deferred maintenance v. items that benefit tenants?
- Ambiguous terms in the regulations and in the Ordinance;
- How is the value of the Decreased Housing Services determined?
- What constitutes a burden of proof regarding expenses for capital improvements?
- Effects of AB 1482 on Rent Adjustment Program Ordinance
- Denial of subtenant/roommate constitutes a decreased housing service?

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

**PANEL MEETING
November 21, 2019
7:00 p.m.
City Hall, Hearing Room #1
One Frank H. Ogawa Plaza, Oakland, CA**

MINUTES

1. CALL TO ORDER

The HRRRB Panel was called to order at 7:05 p.m. by Panel Chair, Ed Lai.

2. ROLL CALL

MEMBER	STATUS	PRESENT	ABSENT	EXCUSED
Corean Todd	Tenant	X		
Ed Lai	Homeowner	X		
Benjamin Scott	Owner	X		

Staff Present

Ubaldo Fernandez	Deputy City Attorney, Office of the City Attorney
Oliver Luby	Deputy City Attorney, Office of the City Attorney
Linda M. Moroz	Hearing Officer, Rent Adjustment Program

3. OPEN FORUM

No speakers.

4. NEW BUSINESS

i. Appeal Hearing in cases:

- a. T18-0438, Martinez v. Carino, et al.
- b. T18-0493, Peoples v. Ma Properties

a. **T18-0438, Martinez v. Carino, et al.**

Appearances:	Myrna Carino	Owner Appellant
	Alexis Douglas	Owner's Representative
	Xavier Johnson	Tenants' Representative
	Abigail Romero	Interpreter for the tenants

The owner appealed the Hearing Decision which granted the tenant petition and ordered rent reduction for past and on-going decreased housing services relating to wall holes and broken heater. The owner argued that the reduction for past decreased housing services should have been cut off as of the date of the hearing in March of 2019 and the restitution for on-going decreased housing services should have been cut off when both items were fixed and passed the final inspection on April 10, 2019, which was after the date of the hearing. The owner also argued that the restitution due to broken heater should start on March 8, 2019, when the Notice of Violation was issued, and not in August 20, 2018, when the tenant petition was filed.

Board Discussion

After arguments made by the parties' representatives, Board questions to the owner and Board discussion, C. Todd made a motion to remand back to the Hearing Officer to recalculate the restitution award. After further discussion of the Board, C. Todd withdrew the motion. After further discussion and consultation with the City Attorney, the Board decided to address the issues on appeal in two parts as follows:

Part 1. E. Lai moved to remand the Hearing Decision back to the Hearing Officer to recalculate the amount to end the restitution period for the past decreased housing services to the hearing date of March 18, 2019. B. Scott seconded.

The Board panel voted as follows:

Aye: C. Todd, E. Lai, B. Scott

Nay: 0

Abstain: 0

The Motion passed by consensus.

Part 2. As to the start date of restitution for the heater, being August 20, 2018, E. Lai moved to uphold the Hearing Decision based on substantial evidence. B. Scott seconded.

The Board panel voted as follows:

Aye: C. Todd, E. Lai, B. Scott

Nay: 0

Abstain: 0

The Motion passed by consensus.

b. T18-0493, Peoples v. Ma Properties

Appearances:	Jeffery Dang	Representative for Owner Appellant
	Jesse Peoples	Tenant Appellee

The owner appealed the Hearing Decision which granted the tenant petition, alleging that the owner was denied sufficient opportunity to participate in the hearing and present evidence. The owner explained that he did not appear for the hearing because he received a dismissal of the tenant petition. The tenant filed two petitions and dismissed one. The owner received a dismissal of one tenant petition, understood this case was dismissed, and that is why he did not appear for the hearing. The owner never received a notification of the second petition so he did not know there was another case pending.

Board Discussion

After arguments made by the owner's representative and tenant, questions to both parties and Board discussion, E. Lai moved to affirm the Hearing Decision based on substantial evidence. C. Todd seconded. Before the vote was taken, the Board discussed the denial of due process to the owner if the Hearing Decision is affirmed.

The Board panel voted as follows:

Aye: C. Todd

Nay: E. Lai, B. Scott

Abstain: 0

The Motion failed.

The Board further discussed the denial of due process to the owner and found that it was reasonable for the owner to assume the case was dismissed after receiving the dismissal of the tenant petition. B. Scott moved to remand the case back to the Hearing Officer to schedule new hearing on the merits and to allow the parties to submit evidence. E. Lai seconded.

The Board panel voted as follows:

Aye: B. Scott, E. Lai

Nay: C. Todd

Abstain: 0

The Motion passed.

5. ADJOURNMENT

The meeting was adjourned at 8:24 p.m.

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

**BOARD PANEL MEETING
December 5, 2019
7:00 p.m.
City Hall, Hearing Room #1
One Frank H. Ogawa Plaza, Oakland, CA**

MINUTES

1. CALL TO ORDER

The HRRRB Panel was called to order at 7:11 p.m. by Panel Chair, Ed Lai

2. ROLL CALL

MEMBER	STATUS	PRESENT	ABSENT	EXCUSED
Ed Lai	Homeowner	X		
Benjamin Scott	Landlord Alt.	X		
Hannah Flanery	Tenant Alt.	X		

Staff Present

Ubaldo Fernandez	Deputy City Attorney, Office of the City Attorney
Oliver Luby	Deputy City Attorney, Office of the City Attorney
Barbara Kong-Brown	Senior Hearing Officer, Rent Adjustment Program
Kelly Rush	Program Analyst 1, Rent Adjustment Program

3. OPEN FORUM

No Speakers

4. NEW BUSINESS

i. Appeal Hearing in cases:

- a. T19-0148, Holman v. Eastshore Properties
- b. T18-0310, Alkebsi v. Noori
- c. T18-0495, Gonzalez v. Zhang

a. T19-0148, Holman v. Eastshore Properties

Appearances	Tasha Holman	Tenant Appellant
	Donna Rivera	Representative, Eastshore Properties

The owner appealed from a hearing decision which stated that The Rent Adjustment Program lacks jurisdiction to consider the tenant's claim of loss of quiet enjoyment, due to noise from the opening and closing of three garage doors. This case is governed by Larson v. City and County of San Francisco, 192 Cal. App.4th 1263 (2011).

Grounds for Appeal

The tenant appealed the hearing decision on the grounds that

- The noise from the opening and closing of three garage doors in the building which has occurred daily for over a year, during the hours between 10:00 p.m. to 8:00 a.m., has caused a harmful impact to the tenant's health and welfare.

Specifically, the tenant contended that the three garage doors cause annoying undesirable sounds, resulting in physical, mental and emotional stress, gradual hair loss and continuous broken sleep, due to the hours and excessive use of the garage doors. This noise did not exist prior to the renovation of the subject property and is a violation of (1) California Health and Safety Code, Division 28, Chapter 1, Part 46000 (f) and (g); and (2) the City of Oakland Code of Ordinances, 8.18, Nuisance, 8.18.01, Excessive and annoying noises prohibited.

The owner representative contended that the owner did all they could to minimize the noise from the opening and closing of the garages, including removal of the motor from the wood across the ceiling to eliminate vibration, monitoring of noise decibels, and communication with other tenants to minimize the noise when opening and closing the garage doors.

Appeal Decision

After questions to the parties and Board discussion, E. Lai moved to affirm the hearing decision based on substantial evidence. B. Scott seconded.

The Board panel voted as follows:

Aye: H. Flanery, E. Lai, B. Scott

Nay:

Abstain: 0

The motion was approved by consensus.

b. T18-0310, Alkebsi v. Noori

Appearances

No appearance by owner appellant.

The owner requested a postponement of the Appeal Hearing on December 5, 2019, at 4:00 p.m., which was scheduled for the same day.

Staff reported that the Rent Ordinance Regulation 8.22.110(A)(1) states that a postponement of the hearing may be made for good cause shown and in the interests of justice. The regulation sets forth the "Good Cause" requirement for postponement of a hearing. The Notice of Hearing was sent on November 7, 2019. Section 8.22.110(A) states that a postponement request shall be made at the earliest date possible after receipt of the notice of hearing with supporting documentation attached.

A request made on the same day as the scheduled appeal hearing is not made at the earliest date possible. This does not constitute good cause. Furthermore, the owner's request did not state a reason for the postponement.

The owner stated that both parties agreed to the postponement. Although the regulations provide for postponement if the parties agree the tenant and her representative stated that they did not agree to any postponement of the appeal hearing.

Therefore, the request for postponement was denied and the Appeal Hearing regarding the Hearing Decision took place as scheduled.

Appeal Decision

E. Lai moved to dismiss the owner appeal subject to a showing of good cause. H. Flanery seconded.

The Board panel voted as follows:

Aye: H. Flanery, E. Lai, B. Scott

Nay:

Abstain: 0

c. T198-0495, Gonzalez v. Zhang

The tenant filed a voluntary dismissal of this appeal.

5. ADJOURNMENT

The meeting was adjourned at 7:40 p.m.

**HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD
REGULAR MEETING
DECEMBER 12, 2019
7:00 P.M.
CITY HALL, HEARING ROOM #1
ONE FRANK H. OGAWA PLAZA
OAKLAND, CA**

MINUTES

1. CALL TO ORDER

The HRRRB meeting was called to order at 7:11 p.m. by Chair, J. Warner

2. ROLL CALL

MEMBER	STATUS	PRESENT	ABSENT	EXCUSED
T. HALL	Tenant			X
R. AUGUSTE	Tenant	X		
H. FLANERY	Tenant Alt.			X
C. TODD	Tenant Alt.			X
R. STONE	Homeowner			X
J. WARNER	Homeowner	X		
A. GRAHAM	Homeowner	X		
E. LAI	Homeowner Alt.			X
J. MA POWERS	Homeowner Alt.			X
K. FRIEDMAN	Landlord			X
T. WILLIAMS	Landlord	X		
B. SCOTT	Landlord Alt.			X
K. SIMS	Landlord Alt.			X

Staff Present

Kent Qian
Oliver Luby
Barbara Kong-Brown

Deputy City Attorney
Deputy City Attorney
Senior Hearing Officer
Rent Adjustment Program

3. CONSENT ITEMS

- a) Review of Board Minutes from November 7, 2019
Panel Meeting
- b) Approval of Board Minutes from November 14, 2019
Regular Meeting

One correction provided for bate stamp page 9, "show" should be "slow."

R. Auguste moved to approve Board minutes from November 14, 2019, with the one correction above. A. Graham seconded.

The Board voted as follows:

Aye: R. Auguste, A. Graham, J. Warner, T. Williams

Nay: None

Abstain: None

The motion was approved by consensus.

4. OPEN FORUM

Speaker: James Vann, commented and circulated a letter re November 14, 2019, Board meeting, and signed up to speak on items 6 and 8. He declined to speak on item 6 and withdrew his request to speak on item 8

5. APPEALS

a) L18-0161, Jackman v. Tenants

Appearances: Bill Jackson, owner appellant
Rosa Jackson, owner appellant
No appearance by tenants

The owners appealed the Hearing Decision that denied an exemption from the Rent Adjustment Ordinance on the basis of substantial rehabilitation after a moratorium was imposed. The moratorium provided that an owner could petition for relief from the moratorium on the grounds of good cause.

The owners contended that they relied on information provided by RAP staff, and were told not to file for the exemption until work was completed. They did the renovation, including upgrade of the electrical wiring, but the cost was denied. There was a 6-month delay from P.G. & E. for approval of the electrical work but the bulk of the renovation was done by the end of the year.

Regarding costs, the owner contended that they expended \$139,000, which is more than 50% of the cost of new construction. Costs for the laundry room and storage room, which were denied, were justified on advice of a rental agent.

After the owners' presentation, questions to the owners and Board discussion, R, Auguste moved to affirm the Hearing Decision. T. Williams seconded the motion.

The Board voted as follows:

Aye: R. Auguste, A. Graham, J. Warner, T. Williams

Nay: None

Abstain: None

The motion was approved by consensus.

b). E18-0012 to E18-0017, Homes East Bay 4 LLC v. Tenants

This case has been postponed.

6. ACTION ITEMS

a) Formation of additional ad hoc committees, membership and review of issues identified in May 9, 2019, Board meeting (see attached list on page 3)

No requests for additional ad hoc committees

Speaker: Mr. Vann declined to speak on this item.

7. INFORMATION AND ANNOUNCEMENTS

b) Rent Adjustment Program Updates (C. Franklin Minor)-Tabled to next Board meeting

b) Legislative Updates (K. Qian)

K. Qian reported on the following:

- The Efficiency Ordinance has not been officially scheduled before City Council. J. Warner requested a copy of the Efficiency Ordinance when ready and if so, that the Efficiency Ordinance be added to the next Board meeting agenda
- Replacement Units for Condominium Conversion Ordinance-Will extend replacement housing requirements. Current conversion requirement when owner applies to convert the rental unit to condos applies to 5 or more units. The proposed ordinance will extend notice requirements and extend rights to 2 or more units. Replacement units cannot be constructed until after application for condo conversion and must be permanent rentals. The C.E.D. committee will consider this item in January 2020

8. COMMITTEE REPORTS AND SCHEDULING

c) Report from Ad Hoc Committee – Deferred Maintenance v.

Capital Improvement of Dry Rot

T. Williams, on behalf of the ad hoc committee, reported the following:

Goals:

- Improve communication to landlords, tenants, and hearing officers on what dry rot is and is not.
- Formalize a way to identify dry rot consistently.
- Determine if we as a body are addressing dry rot appropriately as it as it applies to capital improvement and deferred maintenance

Concerns:

- Individuals identifying dry rot (as it applies to capital improvement and deferred maintenance) may not be correct in their determination.
- Dry rot is considered a condition that develops over time. For this reason, when dry rot is found the repairs are not considered timely and the cause is deemed to be from deferred maintenance. Deferred maintenance precludes anyone from a capital improvement increase.
- Are there instances where the above logic doesn't hold true?
- Dry rot can occur in 7 days. This is not deferred maintenance.
- Should the presence of dry rot routinely mean that there is deferred maintenance?
- Currently the existence of dry rot removes a property from capital improvement consideration and classifies the situation as "normal routine maintenance". Should this be % base or remain all or nothing?
- What is the working definition of deferred maintenance?
- 3rd party verification.
- Dry rot not visible.
- Tenant has the burden of proof.
- What is the ultimate recommendation of the committee?
 - Ordinance change?
 - Tenant information re burden of proof?
 - Understanding of owner responsibilities?

T. Williams will provide a handout regarding the ad hoc committee report at the next regular Board meeting. The Board discussed options of obtaining information from outside experts and staff interviews. T. Williams will report back at the next regular Board meeting.

9. ADJOURNMENT

The HRRRB meeting was adjourned at 8:18 p.m. by Board Chair, J. Warner

CHRONOLOGICAL CASE REPORT

Case No.: T18-0302

Case Name: Spencer v. Eagle Environmental Construction

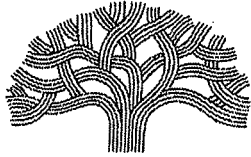
Property Address: 1052 63rd Street, Oakland, CA

Parties: Patsy Spencer (Tenant)
Ronald Batiste (Owner Representative)
Benson Wan (City of Oakland Employee)
*February 13, 2019 only

TENANT APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	June 5, 2018
Owner Response filed	December 3, 2018
Hearing Decision issued	April 18, 2019
Amended Hearing Decision issued	May 23, 2019
Tenant Appeal filed	June 6, 2019

T18-0302 MS AC



CITY OF OAKLAND

**CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM**

P.O. Box 70243
Oakland, CA 94612-0243
(510) 238-3721

For date stamp
CITY OF OAKLAND
REGISTRATION PROGRAM

2018 JUN -5 AM 11:12

TENANT PETITION

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

Please print legibly

Your Name Patsy Spencer	Rental Address (with zip code) 1052 63rd St. Oak, CA 94608	Telephone: /
Your Representative's Name	Mailing Address (with zip code)	E-mail:
Property Owner(s) name(s) Philip Wilson/ * Ronald Batiste Eagle Environmental Construction	Mailing Address (with zip code) 1485 Bayshore Blvd # 374 San Francisco, CA. 93125	Telephone: Manager
Property Manager or Management Co. (if applicable) Wilton Watson (415) 715-1450	Mailing Address (with zip code) 1485 Bayshore Blvd # 374 SAN FRANCISCO, CA. 9	Email:
		Telephone: (415) 715-1450
		Email:

Number of units on the property: 2

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

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

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

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

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

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

Date you moved into the Unit: 5/2009 Initial Rent: \$ 850 /month

When did the owner first provide you with the RAP NOTICE, a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program? Date: NEVER. If never provided, enter "Never."

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

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

Date you received the notice (mo/day/year)	Date increase goes into effect (mo/day/year)	Monthly rent increase		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
		\$	\$	<input 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 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 checked="" type="checkbox"/> No
		\$	\$	<input 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 checked="" 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:

T15-0074 Spencer vs. Wilson

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.

Patsy Spencer
Tenant's Signature

May 24, 18
Date

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

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

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

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

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

Tenant's Signature

May 24, 18
Date

VI. IMPORTANT INFORMATION:

Time to File

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

File Review

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

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

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

To the City of Oakland Rent Adjustment program
I hope all is well

I am still dealing with mold in my bedroom walls, window ceils, carpet and closet the owners and Management are telling its because I have to many clothes in my closet and my Dressers are pushed to close to the wall and window?

There were samples taken on wed May 9th and the results were concluded with being said it is mold in my bedroom

I had contacted the city Building Inspector Mr. Wang he came out and inspected my apartment on _____ and took pictures

I didnt here anything from the owners to take care offis this issue for at least 7month

my back Door was broken, rusted hinges and couldnt close it was ajar and anyone

could come and break into my unit but I

hired someone to come over to fix the back door and the Front door because I couldnt

wait any longer for the owners to repair it.

I still see and here caught rats + mice and

had to call vector control and they came out November 22, 18, found it is two different kind of

rats + mice, vents around apt. yard + grass is growing out of control, and they have only

Just started in Jan to cut the grass and that's it

The mold on the other had has gotten worse
I have to and had to go back and Fourth to
the doctor and was diagnosed with Asthma
and my Grand son had developed pneumonia
I have never had asthma it is terrible what
I'm going through I mean they just don't
care but they expect to be paid rent on time
I just don't understand this.

The owners are telling me that they will be sending
people here to wash the walls which is going to
do anything but have the mold come back again
and I don't think it's fair to have to keep going
through this constantly moving furniture over
and over why can't they tackle this problem
go into the walls and stop this completely

I mean after all the company is called
Eagle Environmental and construction?
I have given Mr. Ronald Batiste the owner
my only copy of my hearing Decision and he
knows about this problem.

I would really appreciate if you the City of
Oakland Rent Adjustment program could please
help me and my Grand children

I am now sleeping in my Den with the

bandaids on this problem and its going to go away, knowing that the mold will come back.

I plead with you to tackle this First hand Matter respectfully, properly and expeditiously.

Thank You
Patsy Spencer

May 18, 18

ps I have inadequate hot running in the kitchen that needs attendence.

MR. Ronald Batiste

I am writing to you to let you know no one has shown up to come and wash the walls on 5-28-18 I waited here all day and has taken off work to be here at home to let the workers in to do the work but no one has come to my home or left any message. your office didn't call me to tell me no one was going to show up.

Thank you
Patsy Spencer

Mr. Batista

I hope all is well I am writing
you to let you know on 5-24-18
I was ask to be home to let workers
in my home to do work but no one
has shown up?

Thank you
Tetsy Spencer
510 393-0137



CITY OF OAKLAND

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

Department of Planning and Building

www.oaklandnet.com

COPY

(510) 238-6400
FAX: (510) 238-2959
TDD: (510) 238-3254

2015 JUN -5 PM 12:49

RECEIVED
CITY OF OAKLAND
RENT ARBITRATION PROGRAM

NOTICE OF VIOLATION

January 13, 2015

Certified and Regular mail

To: WILSON PHILIP
2535 GRANDE VISTA AVE
OAKLAND, CA 94601

Code Enforcement Case No.: 1404468
Property: 1054 63RD ST
Parcel Number: 016-1446-016-00
Re-inspection Date: February 13, 2015

The Code Enforcement Division inspected your property on **January 2, 2015** and confirmed that the violations of the Oakland Municipal Code (OMC) marked below are present. Photographs of the violations and a brochure explaining how to correct them are enclosed.

Photo	Description of Violation	Location	OMC Section
	Property Maintenance		
X	Non-operable/unregistered camper on driveway. Remove non-operable/unregistered camper.	Driveway on right side of property.	8.24.020 F2
	Building Maintenance (Code)		
	1052 63 rd St		
X	Electrical outlet is burnt and electrical wiring in unit may be faulty. Repair electrical outlet and repair unit wiring. Obtain permits and approvals as necessary.	Bathroom, throughout unit, kitchen oven.	15.08.260C
X	Cracked bathroom sink, toilet tank does not stop running. Repair or replace bathroom sink and repair toilet tank.	Bathroom.	15.08.050

NOV filed w/TT petition

At this point no fees or other charges have been assessed for these violations. To stop further code enforcement action, you are advised to correct the above violations and either mail or fax the enclosed Owner Certification form with photographs or contact Inspector **Benjamin Lai**, who is assigned to your case, before the re-inspection date shown above. Your inspector is available by phone at 510-238-6148 and by email at **BLai@oaklandnet.com**.

If you do not return the Owner Certification form or notify your inspector why you cannot comply and if the re-inspection verifies that all violations have not been corrected, you may be charged for inspection and administrative costs, which can total \$2,045.00. The City may also abate the violations and charge you for the contracting and administrative costs, which can also total over \$1,000.00. In addition, Priority Lien fees in the amount of \$1,194.00 may be assessed if fees are not paid within 30 days from the date of the invoice. Charges may be collected by recording liens on your property and adding the charges to your property taxes or by filing in Small Claims or Superior Court. Furthermore, this Notice of Violation may be recorded on your property.

You have a right to appeal this Notice of Violation. You must complete the enclosed Appeal form and return it with supporting documentation in the enclosed envelope. If the Code Enforcement Division does not receive your written Appeal within 30 days of the date of this notice, you will waive your right for administrative review.

Sincerely,

Benjamin Lai
Combination Building Inspector
Department of Planning and Building

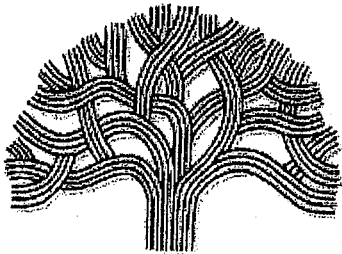
Encl: Blight Brochure
Violation Appeal Form

cc:

Surface mold present on N/A. See enclosed brochure for remediation guidelines. (Description required, e.g. bedroom walls)

City of Oakland

Update Results



CITY OF OAKLAND

Record Detail with Comments

Record ID: **1702765**

Description: **Lower unit - black mold growing throughout the house on walls due to leaking from the upper unit.**

PN: 016 144601600

Address: 1052 63RD ST

Unit #:

Date Opened: 6/21/2017

Record Status: Violation Verified

Record Status Date: 8/10/2017

Job Value: \$0.00

Requestor:

Patsy Spencer

Business Name:

License #:

Comment Date	Commenter	Comment
5/2017 9:45:39 AM	BLAI	09-05-17 Spoke with complainant [REDACTED] and she explained that there are more issues that inspector Wan may not have been noted. Informed her will review with inspector Wan and will contact her to schedule inspection to include additional items.
14/2017 8:20:36 PM	BWAN	9-14-2017, NOV has submitted and re-inspection scheduled: 11-2-2017.
20/2017 8:17:10 AM	EANDERSON	Ownership verified through County Assessor, NOV mailed reg & cert with appeal form and brochures on 9/15/17 .cert #7017145087732761 Re-inspection Deadline: 11/2/17
1/4/2017 1:28:04 PM	BLAI	10-04-17 Property owner's contact information: [REDACTED]
1/8/2017 12:18:33	BWAN	11-8-2017, met property owner [REDACTED] in the office. He told me he will start repair work on 12/4/2017, and e-mail me the update when the work is complete.

For real-time, direct access to information
via the Internet, 24 hours a day -
<https://aca.accela.com/oakland>

Your License Key Will Expire In 4 Days.

000026

2/17/2015 12:00:47 PM BLAI
 3/16/2015 11:16:34 AM KCHENG
 3/30/2015 12:10:08 PM BLAI
 4/30/2015 8:21:12 AM BLAI
 5/26/2015 9:59:59 AM BLAI

02-17-15 Tenant's alternate phone # 925-239-5429.

CERT MAIL RETURNED AS "UNCALIMED / FINAL NOTICE"

03-30-15 Called property owner P [REDACTED] 415-412-1122 with no answer and voice mail full and unable to leave a v message. Called tenant Patsy Spencer with no answer and also unable to leave message. Monitor case.

04-30-15 Called tenant P [REDACTED] but person answered said it was the wrong number. Called prop owner P [REDACTED] (510) 457-1111 but the phone number is no longer in service. Will discuss with supervisor on statu case.

05-26-15 Unable to contact tenant (phone number is no longer working) and unable to contact property owner (phone number is no longer in service). Per ELabayog, try to contact in 30 days then suspend case.

For real-time, direct access to information
 via the Internet, 24 hours a day -
<https://aca.accela.com/oakland>

Your License Key Will Expire In 4 Days.



CITY OF OAKLAND

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

Planning and Building Department

Bureau of Building

Building Permits, Inspections and Code Enforcement Services

inspectioncounter@oaklandnet.com

(510) 238-6402

FAX:(510) 238-2959

TDD:(510) 238-3254

NOTICE OF VIOLATION

December 26, 2018

Certified and Regular mail

To: 1054 63RD STREET, LLC
1048 62ND ST,
OAKLAND CA 94608-2322

Code Enforcement Case No.: 1702765

Property: 1054 63RD ST, OAKLAND 94608

Parcel Number: 016- -1446-016-00

Re-inspection Date/Correction Due Date: February 4, 2019

Code Enforcement Services inspected your property on **December 4, 2018** and confirmed:

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

At this point, no fees or other charges have been assessed for these violations. To stop further code enforcement action, you are advised to correct the above violations and contact Inspector **Benson Wan**, who is assigned to your case, before the re-inspection date shown above to schedule an inspection. Your inspector is available by phone at 510-238-6195 and by email at bwan@oaklandnet.com.

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

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

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

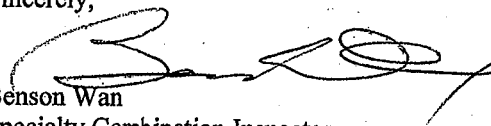
You have a right to appeal this Notice of Violation. You must complete the enclosed appeal form and return it with supporting documentation in the enclosed envelope. If Code Enforcement Services does not receive your written Appeal within the appeal deadline dated: **February 4, 2019** you will waive your right for administrative review. *Note: Incomplete appeals including, but not limited to an oral notification of your intention to appeal, a written appeal postmarked but not received by us within the time prescribed or a written appeal received by us without a filing fee are not acceptable and will be rejected.*

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

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

Investor-Owned Residential Property OMC 8.58	Foreclosed and Defaulted OMC 8.54
<p>Administrative/Civil penalties will be Assessed for failure to abate (OMC Sections 8.24.020, 1.08.60, 1.12). Penalties may be assessed for up to 21 days at \$1,000 a day. You will be notified separately if penalties have accrued.</p> <p>Nuisance Abatement Lien (Notice of Violation) A Nuisance Abatement Lien may be filed with the Alameda County Clerk-Recorder for recordation on the property title which shall have the force, effect and priority of a Judgment Lien. The Nuisance Abatement Lien may be foreclosed by an action brought by the City of Oakland for a money judgment.</p> <p>(Priority Lien) (OMC 8.58.430) A Constructive notice of the pendency of a collection action for an Assessment to all other interested parties shall be established on the date a lien is recorded by the Alameda County Clerk-Recorder</p>	<p>Civil penalties will be Assessed for failure to abate (OMC Sections 8.24.020.1.08.601.12). Penalties may be assessed for up to 21 days at \$1,000 a day. You will be notified separately if penalties have accrued.</p> <p>(Priority Lien) (OMC 8.54.430) A Constructive notice of the pendency of a collection action for an Assessment to all other interested parties shall be established on the date a lien is recorded by the Alameda County Clerk-Recorder</p>

Sincerely,


Benson Wan
Specialty Combination Inspector
Planning and Building Department

Enclosures as applicable:

- | | | |
|---|--|--|
| <input type="checkbox"/> Blight brochure | <input type="checkbox"/> Residential Code Enforcement brochure | <input type="checkbox"/> Vehicular Food Vending brochure |
| <input type="checkbox"/> Property Owner Certification | <input type="checkbox"/> Mold and Moisture brochure | <input type="checkbox"/> Pushcart Food Vending brochure |
| <input type="checkbox"/> Lead Paint brochure | <input type="checkbox"/> Undocumented Dwelling Units brochure | <input type="checkbox"/> Smoke Alarms brochure |
| <input type="checkbox"/> Photographs | <input type="checkbox"/> Stop Work brochure | <input type="checkbox"/> Condominium Conversion brochure |

cc:

Administrative Hearing Fees

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

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

Property Address:

Complaint #:

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

Description of Violation	Required Action	OMC Section

Building Maintenance (Housing)

Description of Violation	Required Action	OMC Section
Kitchen sink (facet) has water slow/low pressure issue. Repair or replace.	Repair/Replace.	15.08.050 15.08.230.C
Mold/mildew on wall, below the window in bedroom and living may cause by water damage.	Cleaning.	15.08.050
Evidence of water damage from ceiling causing bubble ceiling in Kitchen and bathroom.	Repair damaged ceiling & wall, patch and paint.	15.08.050 15.08.230 O

Zoning

Description of Violation	Required Action	OMC Section



CITY OF OAKLAND

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

Planning and Building Department
Bureau of Building
Building Permits, Inspections and Code Enforcement Services
(510) 238-6402
inspectioncounter@oaklandnet.com

Instructions

1. Review the property address and owner information shown at the left and make any necessary corrections.
2. If applicable, before the Re-inspection date shown at the left, complete and return this signed form with dated photographs of your property to verify the violations were removed or not present.

E-mail: inspectioncounter@oaklandnet.com
 Facsimile: 510/238-2959
 Mail to: City of Oakland
 Bureau of Building
 250 Frank H. Ogawa Plaza Suite 2340
 Oakland, CA 94612-2031
 (Envelope enclosed - no postage required)

PROPERTY OWNER CERTIFICATION

CORRECTED OR REMOVED VIOLATIONS

Date: December 26, 2018

Property: 1054 63RD ST, OAKLAND 94608

Parcel no. 016- -1446-016-00

Case no.: 1702765

Owner: 1054 63RD STREET LLC

Courtesy Notice date:

Re-inspection date: February 4, 2019

Return to: Benson Wan-250 Frank H. Ogawa Plaza, #2340

I certify that I have corrected the following violation(s) identified in the Notice of Violation I received from the City of Oakland.

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

I have corrected the following violations identified in the Notice of Violation I received from the City of Oakland:

Print Name _____

Date _____

Property Owner Signature _____

(_____) _____
Day time telephone

_____ E-mail

Description of Property Maintenance Violations

Property Address: 1052 63rd St.

Complaint #: 1702765

Property Maintenance- OMC 8.24.020

Abandoned building or structure (OMC 8.24.020 A)

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

Attractive Nuisance (OMC 8.24.020 B)

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

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

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

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

- Property which is not kept clean and sanitary and free from all accumulations of offensive matter or odor including, but not limited to, overgrown or dead or decayed trees, weeds or other vegetation, rank growth, dead organic matter, rubbish, junk, garbage animal intestinal waste and urine, and toxic or otherwise hazardous liquids and substances and material - Combustible and noncombustible waste materials, residue from the burning of wood, coal, coke, and other combustible material; paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, hay, straw, tin cans, metal mineral matter, glass, crockery, and dust; animal feed and the products of and residue from animal quarters. OMC 8.24.020 (1)
- Property which constitutes a fire hazard or a condition considered dangerous to the public health, safety and general welfare. OMC 8.24.020(2)
- Property which is likely to or does harbor rats or other vectors, vermin, feral pet, or other non-domesticated animal nuisances OMC 8.24.020 (3)
- Property which substantially detracts from the aesthetic and economic values of neighboring properties including, but not limited to, personal property and wares and foodstuffs, premises garbage and refuse receptacles, and commercial and industrial business activities which are inadequately buffered from any street, sidewalk, or other publicly trafficked area or such buffering which is inadequately maintained. OMC 8.24.020 (4) and OPC Chapter 17.110
Violation Location: Front Side Rear/Backyard
- Landscaping which is inadequately maintained or which is not installed as required by city codes or any permit issued in accordance with such codes. OMC 8.24.020 (5) Violation Location: Front Side Rear/Backyard
- Matter including but not limited to smoke, odors, dust, dirt, debris, fumes, and sprays which is permitted to be transported by wind or otherwise upon any street, course, alley, sidewalk, yard, park, or other public or private property and which is determined to be a violation of federal, state, regional, or local air quality regulations. OMC 8.24.020 (6)
Violation Location: Front Side Rear/Backyard
- Property including, but not limited to building facade, window, doorway, driveway, walkway, fence, wall, landscaped planter or area, sidewalk, curb, and gutter, and edge of street pavement on which dirt, litter, vegetation, garbage refuse, debris, flyers, or circulars have accumulated. OMC 8.24.020 (7) Violation Location: Front Side Rear/Backyard
- Property on which a swimming pool, pond, stream, or other body of water which is abandoned, unattended, unfiltered, or not otherwise maintained, resulting in the water becoming polluted. OMC 8.24.020 (8)

000032

Property Maintenance (cont'd)

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

Property which creates a dangerous condition (OMC 8.24.020 E)

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

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

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

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

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

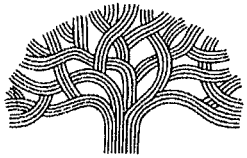
- The use of any trailer, camper, recreational vehicle or motor vehicle for living or sleeping quarters in any place in the city, outside of a lawfully operated mobile home park or travel trailer park OMC 8.24.020 (2)
- Guests occupying a trailer, camper, or recreational vehicle upon a residential premise exceeding 72 hours. OMC 8.24.020 (2a)
- Trailer, camper, or recreational vehicles shall not discharge any waste or sewage into the city's sewage system except through the residential discharge connection of the residential premises on which it is parked. OMC 8.24.020 (2b)

Permit Requirement OMC 8.24.020 (H)

- Any use of property which does not have all required permits pursuant to city codes or where such permits have expired or been revoked.

General Conditions (OMC 8.24.020 I)

- Any condition which is detrimental to the public health, safety or general welfare or which constitutes a public nuisance. OMC 8.24.020 (1)
- Any condition of deterioration or disrepair which substantially impacts on the aesthetic or economic value of neighboring properties OMC 8.24.020 (2)



CITY OF OAKLAND

**CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM**

P.O. Box 70243
Oakland, CA 94612-0243
(510) 238-3721

For date stamp.

CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM

2018 DEC 3 PM 4:32

**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 T18- 0302

Your Name RONALD BATISTE 1054 63RD ST, LLC MANAGING MEMBER	Complete Address (with zip code) BLD. 1485 BAYSHORE SUITE 374 SAN FRANCISCO, CA 94124	Telephone: / / Email:
Your Representative's Name (if any) RONALD BATISTE EAGLE ENVIRONMENTAL CONSTRUCTION (ECC) (PROPERTY MANAGER)	Complete Address (with zip code) BLD. 1485 BAYSHORE SUITE 374 SAN FRANCISCO, CA 94124	Telephone: / / Email:
Tenant(s) Name(s) PATSY SPENCER	Complete Address (with zip code) 1052 63RD ST. OAKLAND, CA 94608	
Property Address (If the property has more than one address, list all addresses) 1052 & 1054 63RD STREET, LLC		Total number of units on property 2

Have you paid for your Oakland Business License? Yes No Lic. Number: 00191503
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: 016-1446-016
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: 7/28/2016

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

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

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

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

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

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

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

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

The tenant moved into the rental unit on ^{5/2009} (PRIOR TO OWNERSHIP)

The tenant's initial rent including all services provided was: \$ 850.00 / 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? SEPTEMBER 1, 2017 (PER AGREEMENT # TIS-0074)

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>	
9-1-2017	10-2017	\$ <u>450.50</u>	\$ <u>850.00</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No

III. EXEMPTION

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

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

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

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

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

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

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

The unit is an accommodation in a **hospital, convent, monastery, extended care facility, convalescent home, non-profit home for aged, or dormitory** owned and operated by an educational institution.

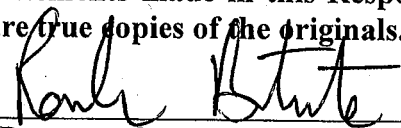
The unit is located in a building with three or fewer units. The owner occupies one of the units continuously as his or her principal residence and has done so for at least one year.

IV. DECREASED HOUSING SERVICES

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

V. VERIFICATION

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



Property Owner's Signature

11-30-18
Date

IMPORTANT INFORMATION:

Time to File

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

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

File Review

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

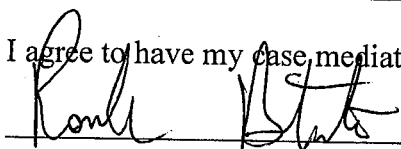
Mediation Program

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

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

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

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



Property Owner's Signature

11-30-18

Date

1054 - 63rd St, Oakland
Downstairs

Repairs Completed

Report submitted by: RG McFadden

1. Had a fire in bathroom:
New junction box and gfi plug installed in bathroom.
2. Bathroom outlet not working: Outlet is working.
3. Refrigerator not working: Installed new refrigerator.
4. Stove does not work properly: Stove is working properly.
5. Kitchen outlets not working: Outlets are working. *ND*
6. Water damage in kitchen ceiling: Water over flowed in the upper unit 2+years ago.
Sheetrock is structurally sound. Scheduling appointment to have the walls painted. *ND*
7. Flood damage in bathroom: No Damage
8. Low pressure hot water heater: Hot water is available in unit. *To Be Inspected NO*
9. Toilet loose in bathroom:
Demo floor and installed new underlayment, subfloor, vanity and sink.
10. Lights in bedroom not working:
Installed light fixture in bedroom, hallway and porch.
11. Hole in closet: Patched hole using sheetrock and compound.
12. Floor in bedroom uneven: Natural settlement.
13. Toilet in bathroom is flushing: Installed new flap.

Patsy Spencer tenant in the subject unit verify that the subject repairs was
completed. *Patsy Spencer* Dated *8-29-16*

1052 - 63rd St, Oakland

Upstairs

Repairs Completed

Report submitted by: RG McFadden

1. Lights in living room not working: Installed new light fixture in living room and hallway.
2. Door in living room frame crack: Tenant reinforced door frame and reset strike plate.
3. Kitchen oven does not work: Installed new oven.
4. Porch light and doorbell not working: Installed new porch light and doorbell.
5. Light in daughter room not working: Installed switch plate and new light fixture.
6. Freezer not working: Food items in freezer repositioned to allow circulation.
7. Bathroom toilet loose: Installed toilet wax ring, and secure to floor.
8. Low water pressure: Hot water is available in the unit. RMF OK.
9. Rail to stairs loose: Rail fastened to wall.
10. Outside faucet leaking: Installed new faucet.
11. Junk Furniture need to be removed: Furniture and debris removed and lawn landscaped.
12. Bath tub rocks back in forward: Tub is secure and level on floor. *NEED TO REMOVE TILE AND
FASTEN TO WALL*
13. Bathroom window lock broken: Purchased new lock and installed.
14. Garbage disposal not working: Installed new garbage disposal.

I NIC EVANS tenant in the subject unit verify that the subject repairs was completed. RMF dated 08.29.2010

000040

1052 - 63rd St, Oakland

Downstairs

Repairs Completed

Report submitted by: RG McFadden

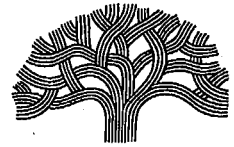
1. Had a fire in bathroom: New junction box and gfi plug installed in bathroom.
2. Bathroom outlet not working: Outlet replaced.
3. Refrigerator not working: Installed new refrigerator.
4. Stove does not work properly: Stove is working properly.
5. Kitchen outlets not working: Outlets replaced.
6. Water damage in kitchen ceiling: Walls repaired and kitchen painted.*
7. Flood damage in bathroom: No Damage
8. Low water pressure: Installed bathtub valve and water line from garage to main house.*
9. Toilet loose in bathroom: Demo floor and installed new underlayment, subfloor, vanity and sink.
10. Lights in bedroom not working: Installed light fixture in bedroom, hallway and porch.
11. Hole in closet: Patched hole using sheetrock and compound.
12. Floor in bedroom uneven: Natural settlement.
13. Toilet in bathroom is flushing: Installed a new flush valve.
14. Window pane broken in bedroom: Glass repaired by A&M Glass Lic#881445 - (510) 677-4239.*
15. Bathroom wall damage above the bathtub: Cutout sheetrock, bleached vertical framing members, replaced (2) wall headers, installed sheetrock and painted bathroom.*
16. Replaced showerhead in bathroom.*
17. Replaced kitchen light fixture.*

Patsy Spence tenant in the subject unit verify that the subject repairs was
completed. 10/19/16 Dated 10-17-16

Witness: [Signature]

000041

CITY OF OAKLAND



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

Housing and Community Development Department
Rent Adjustment Program

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

HEARING DECISION

CASE NUMBER: T18-0302, Spencer v. Eagle Environmental Construction

PROPERTY ADDRESS: 1052 63rd Street, Oakland, CA

DATES OF HEARING: November 20, 2018, December 10, 2018, January 10, 2019; January 11, 2019; February 13, 2019

DATE OF DECISION: April 15, 2019

APPEARANCES: Patsy Spencer, Tenant
Honey Spencer, Witness for Tenant
Ronald Batiste, Owner Representative
Wilton Watson, Witness for owner
Roger McFadden, Witness for owner
Earl Watson, Witness for owner
Benson Wan, City of Oakland Employee (February 13, 2019 only)

SUMMARY OF DECISION

The tenant's petition is granted in part. The legal rent for the tenant's unit is detailed in the Order below.

CONTENTIONS OF THE PARTIES

Tenant Patsy Spencer filed a petition on June 5, 2018, in which she claimed that there is a current health, safety, fire or building code violation in her unit, or there are serious problems with the conditions in her unit because the owner failed to do requested repairs and maintenance, and that she is experiencing decreased housing services. She further claimed that she has never received the *Notice to Tenants of the Residential Rent Adjustment Program (RAP Notice)*.

The tenant's claims of decreased services arise from two documents she filed with her petition. A letter, dated May 18, 2018, to the City of Oakland Rent Adjustment Program and a copy of a January 13, 2015, *Notice of Violation* from the City of Oakland's Department of Planning and Building. These claims include mold in her bedroom, window sills, carpet and closet; broken back door including rusted hinges; broken front door; rodents; yard and grass growing out of control; lack of adequate hot water in the

kitchen; non-operable camper on driveway; electrical outlet burnt and wiring faulty; cracked bathroom sink; and toilet tank running.¹

On December 3, 2018, the owner filed a late response to the tenant petition denying the claim of decreased housing services and claiming that the *RAP Notice* was first served on the tenant in September of 2017. The owner also claimed that the tenant was not current on her rent.

THE ISSUES

1. Was there good cause for the late filed owner response?
2. Was the tenant current on her rent or lawfully withholding rent at the time the petition was filed?
3. Does the owner's failure to pay the Rent Program Service fee until December 10, 2018, effect its ability to testify?
4. What documents are admissible into evidence?
5. When, if ever, was the *RAP Notice* first served on the tenant?
6. How does the prior case between the tenant and the prior owner impact this case?
7. Can the tenant bring forth claims that she or her family have been made ill by the owner's actions?
8. Can the tenant raise claims of decreased services that were not raised in her *Tenant Petition*?
9. Have the tenant's housing services been decreased, and if so, by what percentage of the total housing services that are provided by the owner?
10. What if any restitution is owed between the parties and how does that impact the rent?

EVIDENCE

Owner Response: At the Hearing on November 20, 2018, Ronald Batiste testified that the owner of the subject property is 1054 63rd Street, LLC and that he is the managing member of that LLC. *Eagle Environmental Construction* is the property manager of the property and performed work on the subject unit. The legal address for the LLC is 1485 Bayshore Blvd, #374, San Francisco, CA, 94124. Prior to the date of the Hearing, he had never received any documents from the *RAP* regarding the tenant's claim.

Official Notice is taken of the file in this case in which there is a proof of service showing that on August 10, 2018, the *Landlord Notification of Tenant Petition* and blank owner response form was sent to three separate individuals: Philip Wilson, Ronald Batiste and Wilton Watson, all at the same address on Bayshore Blvd, but with a different zip code. The zip code of the mailing was to 93125, not 94124.

Batiste further testified that Philip Wilson, who used to own the property, is a partner of 1054 63rd Street, LLC, but is not the managing partner nor a majority shareholder. The LLC, purchased the property from Wilson in July of 2016. Wilton Watson (one of the

¹ The last four items were from the *Notice of Violation*.

parties named on the proof of service) testified that he did not receive any of the documents related to the subject case.

Batiste further testified that he knew about the proceedings because he was informed about them by Benson Wan, a City of Oakland employee from the Department of Planning and Building who performed an inspection on the property. Wan informed Batiste about this Hearing approximately two months earlier (in September of 2018). Since then Batiste has called analyst Margaret Sullivan of the RAP and left her several messages but had not heard back from her.

A proof of service in the file shows that on November 20, 2018, Batiste was hand served with a copy of the *Tenant Petition* and the tenant's list of decreased services, the *Landlord Notification Letter*, and a blank *Owner Response Form*. On December 3, 2018, a *Property Owner Response* was filed by the owner.

At the Hearing on December 10, 2018, Batiste at first testified that he had paid the Rent Program Service fee (*RAP fee*) on December 3, 2018. He was asked for proof of payment, which had not been previously provided (despite the fact that the *Owner Response* form requests proof of payment) and a break was taken so that he could go to the Business Tax division for proof of payment. After the break, Batiste returned with proof of payment of the *RAP fee* paid that day. Batiste testified he did not understand that the *RAP fee* was different than the Oakland Business license. All fees for the RAP were paid on December 10, 2018, after the Hearing in this case began.

Property History: Official Notice is taken of a prior case, T15-0074, *Spencer v. Wilson*. This case involved the same property and the same tenant. At the time of that case, the property was owned by Philip Wilson. At the time of the purchase Batiste did not know about the prior case between the parties. The tenant informed him of the case after the LLC purchased the property and provided him a copy of the Hearing Decision.

Documents: Prior to the Hearing held on December 10, 2018, the tenant communicated with the RAP that she had produced certain documents to the RAP on October 20, 2018, that were not in her file. This communication was by email with Margaret Sullivan, the analyst on the case. At the Hearing on December 10, 2018, Ms. Spencer reiterated her claim that certain documents were missing from her file. These documents included receipts of rent payments, receipts of payments she made in lieu of rent, and photographs. Because of the claim of missing documents, Ms. Spencer was given an opportunity to produce additional records regarding rent payments and receipts in subsequent Hearings and was asked to go to her bank to get duplicate receipts of all money orders she had taken out.

At the Hearing on January 10, 2019, the tenant provided Exhibit 6, which she testified are copies of the only money order receipts she was able to find at home after the prior Hearing, and that this was not a complete group of receipts because she had given some of the originals to the RAP. She also produced *Wells Fargo* checking account statements showing withdrawals for the purposes of taking out money orders. She testified she only

took out money orders in order to pay rent. She testified that *Wells Fargo* did not have the ability to get her copies of the money orders because too much time had passed.

Prior Case: The *Order* in case T15-0074, stated the following:

- “1. The tenant’s base rent is \$850 a month.
2. Due to ongoing decreases in housing services, the tenant’s rent is reduced by 47% (15% for the plumbing, 17% for the electrical system, 3% for the oven, 3% for the refrigerator, 7% for the abandoned trailer and 2% for the toilet.) The tenant’s current legal rent is therefore \$450.50 a month.
3. Due to past decreased services, the tenant is owed restitution in the amount of \$10,208.50. This overpayment is adjusted by a rent decrease for the next 24 months in the amount of \$425.35 a month.
4. The tenant’s rent for the months of October 2015 through September of 2017 is \$25.15 per month. Her rent reverts to \$450.50 a month in September of 2017 (if the repairs are not made).
5. If the owners wish to, he can repay the restitution owed to the tenant at any time. If he does so, the monthly decrease for restitution ends at the time the tenant is provided restitution.
6. If the owner fixes the plumbing so that the tenant has hot running water in the kitchen and bathroom (equal to the supply of cold running water as of the date of the inspection), the owner can increase the tenant’s rent by \$127.50 a month. If the owner fixes the electric supply, including repairing the outlet in the bathroom and the electric wiring throughout the unit if necessary, the owner can increase the tenant’s rent by \$144.50 a month. If the owner fixes the oven so that it works properly, the owner can increase the rent by \$25.50 per month. If the owner fixes the refrigerator so that it is no longer leaking, the owner can increase the rent by \$25.50 a month. If the owner removes the abandoned trailer, the owner can increase the rent by \$59.50 a month. If the owner fixes the toilet, the owner can increase the rent by 2% or \$17.00 a month. **In order to increase the rent after repairs the owner must provide the necessary notice pursuant to Civil Code § 827.”**

The RAP Notice: During the Hearing, both parties testified that the owner did not serve the *RAP Notice* on the tenant. Additionally, Ms. Spencer testified that she was not served the *RAP Notice* by the prior owner.

Wilton Watson, an employee of *Eagle Environmental*, testified that on September 2, 2016, he gave the tenant the lease to sign which consisted of twenty pages.² He did not

² Exhibit 37. All Exhibits referred to in this Hearing Decision were admitted into evidence without objection except Exhibits 1, 2, 4, 15, 18, 19, 22-24, 26, and 28-30. If an Exhibit is mentioned herein and there was an objection, the objection is referenced in the footnote.

know the contents of the lease document or what information it contained. He wrote a document on that date that states: "Tenant refused to sign rental agreement receipt on September 2, 2016 at 5:40 p.m. Tenant kept rental agreement and stated she would call Ronald early next week."³ The owner submitted the lease into evidence. The lease contains a copy of the *RAP Notice*. The tenant acknowledged having received the lease, although she did not know it contained the *RAP Notice*. The tenant testified she refused to sign the lease because it contained some terms with which she was unhappy.

On cross-examination Watson acknowledged that he did not know that the *RAP Notice* was in the lease documents.

Rent Payments: The tenant testified as follows: she has been paying rent of \$850 a month in rent since September of 2017 and that prior to that she paid rent of \$450 a month. While at first she testified that she paid rent in every month, she later testified that at times she withheld rent because of problems with mold or other conditions and she would mail multiple checks at the same time to the owner. For all months in 2018, she has paid rent of \$850 monthly, even if sometimes the rent was paid late. She never deducted the restitution as set forth in the prior case as she did not understand that Hearing Decision.

The owner representative testified that the owner did not reimburse Ms. Spencer for the restitution order stated in the prior Hearing Decision. When the LLC purchased the property he did not know about the prior case between the parties. After receiving rent payments from the tenant of \$450 a month, he had his attorney write to the tenant stating that the rent was \$850. The tenant then sent him a copy of the Hearing Decision in the prior case. He did not notice that the tenant was only supposed to be paying rent of \$25 a month at the time he purchased the property and accepted the rent payments of \$450 a month.

The owner representative further testified that since the LLC has owned the property, he has not received regular monthly rent from the tenant. Instead he gets occasional rent payments, often with multiple payments sent in one envelope.

At the Hearing on December 10, 2018, Batiste testified that he received no rent payments from the tenant between September 2017 and October of 2018. He also testified that he received a letter from her in May 2018 stating that she was deducting \$300 from her rent because of repairs she had done to her door.⁴ According to his original records, he did not receive a rent payment from her for the month of May. He further testified that he keeps all records of all rents received on *Quickbooks*, as he did for this tenant. He also owns other property, and the same is done for the other properties as well.

³ Exhibit 37, page 21

⁴ While the letter was undated, the attached receipt is dated May 15, 2018.

Because of the dispute between the tenant and the owner about the rent payments made and received, the parties were asked to produce further evidence regarding rent payments to the Hearing on January 10, 2019.

At the Hearing on January 10, 2019, the tenant produced a group of money orders made payable to Ronald Batiste for rent payments.⁵ She additionally produced *Wells Fargo* bank statements showing additional payments. The tenant's *Wells Fargo* bank statements generally line up with the other proof of payments she provided. Occasionally, she testified she would be charged for a money order, so a withdrawal from *Wells Fargo* for \$455, would line up with a \$450 payment to the owner for rent.

With respect to the rent from middle of October 2018- middle of November of 2018, the tenant testified that the *Wells Fargo* statement did not show any withdrawals for money orders in that month. She testified that she most likely paid for the money order in cash in that month but she did pay rent in that month.⁶ On cross-examination, the tenant testified that she mailed cash to the owner for rent in the month of November of 2018. Batiste denied receiving any cash payment from the tenant.

At the Hearing on January 10, 2019, Batiste produced a *Quickbooks* report for payments by Ms. Spencer.⁷ This document represents his understanding of all checks and money orders received by Ms. Spencer for rent since the owner took possession. The date column represents the date the checks were received, while the memo column states that check date of the checks received.

At the Hearing on January 11, 2019, Batiste produced a new *Quickbooks* report for payments by Ms. Spencer.⁸ He testified that upon review of the money orders produced by Spencer at the previously Hearing, he discovered that four of the checks, that he previously denied receiving, were actually received by his office on April 27, 2018. These included a money order dated September 1, 2017, a money order dated December 12, 2017, a money order dated January 4, 2018, and a money order dated February 2, 2018. He further testified that Ms. Spencer normally sends her checks in a bunch, often holding checks for many months, as was shown by the receipt of these 4 checks in April of 2018.⁹ He does not believe that there are other checks from Ms. Spencer.

The tenant testified that until January of 2018, she mailed her checks monthly. Then, because of conditions she began withholding rent, and then mailed a group of money

⁵ Exhibit 6. The tenant testified that this was not the full set of copies of money order receipts showing rent payments, but that the other receipts had been lost in the documents she submitted to the RAP in October of 2018.

⁶ The tenant was informed at the Hearing to request proof of the money order purchased from Wells Fargo and bring it to the following Hearing.

⁷ Exhibit 15. The tenant objected to the admission of this document on the grounds that not all her money orders are shown on the Exhibit. The objection was overruled.

⁸ Exhibit 23. The tenant objected to the admission of this document on the grounds that the owner was not telling the truth about all the rent payments she had made. The objection was overruled.

⁹ A review of the two spreadsheets shows that there are 6 new entries on Exhibit 23 as compared to Exhibit 15, not four as stated by Batiste.

orders to the owner all at once in October of 2018.¹⁰ She mailed all money orders to Ronald Batiste. She informed Batiste that she was withholding rent by sending him letters telling him about the problems in her unit.¹¹

The owner representative testified that during the period of time he received no rent from the tenant from September of 2017 through August of 2018, he did not serve the tenant with any *3 Day Notices* nor did he file an *Unlawful Detainer* action.

Batiste testified that he mailed a rent increase notice to Ms. Spencer, stating that the rent would return to the prior rent of \$850 a month, on September 7, 2017. This letter states in pertinent part:

“Please be informed that your rent is increased to \$850.00 per month as of October 1, 2017. Please make checks and cashier’s checks payable to our company: 1054 63rd Street, LLC.”¹²

Batiste testified this letter was not sent with a RAP Notice. It was sent to the tenant in response to the prior Hearing Decision and after he believed that all work had been done in response to the prior decision. This was a restoration of the prior rent.

On cross-examination the owner showed the tenant a copy of the personal money order dated August 4, 2018, for \$850, made payable to Ronald Batiste.¹³ On the back of the check, was the writing “not for the purpose intended” and was signed by Ms. Spencer. Spencer testified the check was redeposited into her account in August to cover expenses she had to clean her walls because of the ongoing condition of mold.¹⁴ She further testified that this was the only time she ever did this.

Batiste testified that after receipt of the tenant’s group of money orders he went to Wells Fargo to determine whether all the checks had been negotiated. That is how he was informed that the August 2018 check had been redeposited into Ms. Spencer’s account. According to Wells Fargo, none of the other checks were redeposited into her account, however, they informed him that three of the money orders made out to him had never been negotiated (Exhibit 6, numbers 5, 11, 12).

At the Hearing on February 13, 2019, Batiste testified that only one of these three checks were unaccounted for, and that was the check dated October 4, 2017. The parties stipulated that they would work together to determine if this money order had been

¹⁰ The tenant’s testimony was very inconsistent at first. She testified she mailed each check monthly; then she testified she mailed all the checks together in one large envelope. Then she testified that she withheld rent for conditions, then she testified she never withheld rent. (Tape recording January 10, 2019, through 16.) Ultimately, she testified as listed above that certain checks were mailed monthly and other checks were mailed in one envelope.

¹¹ The tenant claimed that these letters had previously been submitted to the RAP but were lost by the RAP.

¹² Exhibit 2. The tenant objected to the admission of this document claiming she never received this letter. Her objection was overruled.

¹³ Exhibit 22. The tenant objected to the admission of this document claiming that she wanted to go “check” that it was accurate after testifying that the signature on the back was hers. Her objection was overruled.

¹⁴ Note that this testimony was in direct contradiction to the testimony she had previously given that all money orders made payable to Batiste were sent to him for rent.

negotiated, and that if it was not, the tenant would agree to stop payment on the check and have it redeposited into the owner's account.¹⁵

On cross-examination the tenant further testified that she sent the October 4, 2017, June 22, 2018 and the July 2, 2018 money orders to the owner for payment of rent.¹⁶

The *Amended Notice of Supplemental Hearing* setting the Hearing for January 30, 2019 (Which was continued to February 11, 2019), set forth certain documents the parties were asked to produce. In addition to a variety of other documents, the tenant was asked to produce evidence of all rent payments made since November of 2018.

The parties agreed that in January of 2019, the owner received two personal money orders made payable to Ronald Batiste of \$400 each.¹⁷ The tenant testified that these were rent payments for December 2018 and January of 2019 rent. The tenant testified that she only paid rent of \$400 in each of those months because she hired someone to clean the walls in her unit for \$450. She did not produce any receipt for these payments, although she testified that she mailed the receipt to the owner.

As of the date of the Hearing on February 13, 2019, the tenant had not yet paid February 2019 rent.¹⁸

The following documentary evidence was produced regarding alleged rent payments made and received between April 1, 2018 and the present¹⁹:

Rent Date	Amount	Evidence	Notes
Possible April rent payment	\$450	Exh. 13	Shown as a bank originated debit of \$451.16 on May 3, 2018; tenant testified that this was a money order paid to the owner for rent for \$450 ²⁰ . On Exhibit 23, owner acknowledges receipt of a \$450 May 1, 2018, money order.

¹⁵ Recording February 13, 2019, Track 7, 39:25-41:04.

¹⁶ Exhibits 6, check numbers 5, 11 and 12.

¹⁷ Exhibit 40. The copies provided to the Hearing officer were duplicate copies of the same check. However, the owner testified that he did receive two separate checks in January of 2019.

¹⁸ She testified she is continuing to withhold rent because the owner has not completed the repairs.

¹⁹ See discussion below regarding the analysis being limited to 90 days prior to the tenant filing her petition.

²⁰ On the owner's *Quickbooks* account document (Exhibit 23) it acknowledges receipt of a May 1, 2018, check for \$450.

May 17, 2018	\$100	Exh. 6, check 10 and Exh. 5, pp 1-2	Tenant claims that she also paid \$300 to repair her doors. Her receipt was provided to the owner. The owner acknowledged receipt of this payment.
June 22, 2018	\$850	Exh. 6, check 11	
July 2, 2018	\$850	Exh. 6, check 12	
August 4, 2018	\$850	Exh. 6, check 13, Exh. 22	While this money order was originally made out to the owner, the tenant testified that it was redeposited into her account because she had expenses related to repairs in her home that month.
September 7, 2018	\$850	Exh. 6, check 14, Exh. 1, page 2	Owner acknowledges receipt of two different checks of \$850 each dated 9/7/18. See entry below.
September 7, 2018	\$850	Exh. 1, p. 2	
October 3, 2018	\$850	Exh. 6, check 15, Exh. 1, p. 2	Owner acknowledges receipt
November 2018	No evidence of rent payment		Tenant claimed she mailed cash
December 2018	Tenant paid \$400 in January of 2019 for rent in December	Exhibit 40	Owner acknowledges receipt in January
January 2019	\$400	Exhibit 40	Owner acknowledges receipt
February 2019	No payment made by last date of Hearing		

Decreased Housing Services

Mold throughout the unit: The tenant testified that she has had an ongoing problem with mold in her unit for years. She complained to Mr. Wilson when he was the owner, and with the new owner on multiple occasions beginning in 2016 and into 2017. She told Mr. Batiste, Mr. McFadden and Roger Wilton (all who work for *Eagle Environmental*) all about the conditions. There is mold in the kitchen, living room, dining room, and the bedroom and bedroom closet. She produced evidence from the City of Oakland showing that on June 21, 2017, she complained of "black mold growing throughout the house on walls due to leaking from the upper unit."²¹ An inspection was done on the unit in August of 2017 and a *Notice of Violation* was issued on September 14, 2017.²² (See below for discussion of the *NOV*.)

The tenant testified at some point in May of 2018, work was done on her unit to deal with the mold. The work involved spraying the walls and taking mold samples. They did a "wonderful job." However, the mold grew back quickly and is in multiple places throughout her unit.

The tenant produced letters she wrote to the owner in May of 2018 about these conditions.²³ In one letter, she wrote that:

"I hope all is well I am writing to you about the results of the samples that were taken from my bedroom on Wed. 9th by a gentleman that Mr. Wilton brought to my home. I asked Mr. Watson how long will the results will take he said about a week or so. Mr. Watson called me on May 16, 18. I asked about the results it was concluded that samples taken from my bedroom was mold. Mr. Wilton wanted to set up a time to send people to come over to wash the walls down but I have a problem with this. I have paid people to come by and clean the walls, windows, ceil(ings) and I have cleaned them myself as well but the mold keeps coming back. I know this is a serious matter because I have developed and have been diagnosed with asthma and my grandson has caught pneumonia being and sleeping in my bedroom due to the mold. In order for this problem to go away this has to be tackled at hand and get rid of the mold. I don't think you can slap a bandaid.....

P.s. My dressers are full of mold so now I have to get rid of them and I don't know what I'd going to do. I am on a fixed income. My clothes in the closet I had to discard half of my clothes full of mold as well."

The tenant also produced prior letters she wrote to the owner. She produced a letter written on November 4, 2016, which states that: "The repairs that was done on 10/12/16 was not completed. I had my grandson at in my arms and I was distracted. I didn't notice on the repair list that you have not completed the mold in my bedroom on the

²¹ Exhibit 38, p. 2

²² Exhibit 38, pp 5-9

²³ See Exhibit 18. The owner objected that some of the contents of these letters are not true. This objection was overruled.

walls and window ceils (sp) and also in the carpet. Please take care of this problem as possible.”²⁴

An additional letter, dated February 2, 2018, was produced stating:

“I’m writing to you and wondering what is going with the repairs that you are supposed to complete in my bedroom. The walls, windows ceils (sp), closet and carpet it’s really affecting my health. I had a Dr. appt. today and my Dr. has told me that I have asthma and now I am on inhalers. This is very scary situation for me and yet you still refuse to come to my apartment and complete the repairs and take care of this problem. Please take care of this problem as quickly as possible.”²⁵

The tenant also produced a letter she wrote to the owner dated April 15, 2018. The letter states:

“I am righting (sp) to you in reference to the mold and mildew in my bedroom, living room & kitchen area. Its making me sick and I would appreciate it (if you) would take care of this problem as soon as possible. I don’t understand why can’t you take care of this problem-this is ridiculous.”²⁶

The tenant testified that she believes that the mold comes from moisture in the walls, in part related to a fire that occurred in the upstairs unit before she moved in. There have also been a series of leaks from the upstairs unit during her tenancy.

Because of the continued problem in her unit the tenant contacted the City of Oakland again. A new *Notice of Violation* was issued on December 20, 2018.²⁷ (See Benson Wan’s testimony below).

The tenant further testified that episodically there would be bubble pockets coming from the light fixtures on her ceiling. This happens when it rains. She informed the owner about this by contacting Roger McFadden. Water would leak out of the bubble, and then it would dry again. She believes that water entry is coming from the upstairs unit.

Earl Watson testified that he works for *Eagle Environmental*. The first time he visited Ms. Spencer’s unit was in May of 2018, in response to a complaint about mold. He tested the unit and discovered that there was mold in various places. When asked the cause of the mold, Watson testified that mold can come from humidity, water, and condensation. He does not know of any leak that is causing it. When pointed to the *Notice of Violation*²⁸ he denied that there was any leak when he went to the unit in May

²⁴ Exhibit 19, page 1. The owner objected to the admission of these documents claiming he did not receive these letters. The objection was overruled.

²⁵ Exhibit 32

²⁶ Exhibit 33

²⁷ Exhibit 17

²⁸ Exhibit 20, which is the same as Exhibit 38, pp 5-10.

of 2018. According to Watson, the mold in her unit is not hazardous and the findings relate to minor instances of mold.²⁹

The mold samples, from May of 2018, were done in 5 locations. The flooring came out positive for chaetomium and cladosporium and light for penicillium/aspergillus; the utility room showed traces of chaetomium and heavy scopulariopsis; the closet showed heavy cladosporium; the bedroom wall showed heavy cladosporium and the baseboard in the bedroom showed heavy cladosporium and trace sings of penicillium/aspergillus.³⁰

When asked what the cause of the mold in her unit was, Watson testified:

“From my knowledge, and from what I saw, its water. The backdoor is completely rusted, the baseboards are destroyed because of heavy water.”

The Hearing Officer than asked: “So where is that water coming from?” Watson replied:

“I couldn’t tell you.” (Tape Recording, January 11, 2019 from 4:25:24-4:26:03).

Watson acknowledged that the backdoor in her unit was completely rusted when he was present in May of 2018, showing obvious signs of moisture in the unit.

To remediate the mold in May/June of 2018, he used concrobium, which is a liquid that is sprayed directly onto the area. He sprayed the carpet, the walls, the baseboards, the closet, and throughout the unit, wherever he was pointed to mold. On the day that the work was done to remediate, he met with City Inspector Benson Wan. At the time he left the unit, the walls were clean as was the rest of the unit.³¹ He did not expect the mold to come back, because this treatment cures mold.

Watson further testified that in June of 2018, after he remediated, he believed all mold was destroyed. He went to all the areas on the analytical report showing mold. He does not believe it is possible for mold to grow back in the same area where he applied it. While it could grow in other areas, there would have to be high humidity and high moisture.

Between June of 2018 and December 13, 2018, he did not attempt to go to the unit to see if the mold had returned and he did not know of any complaints of mold. He was told to return to the unit in December, in response to a new complaint of mold. He tried to get in on December 13, 2018, after a *24 hour Notice to Enter* had been placed, but no one came to the door, despite the fact that he heard people in the home.

²⁹ Watson testified that the findings from the report showing “heavy” signs of mold, relate to “heavy” mold that appeared in small areas that he tested.

³⁰ Exhibit 36. The owner had not submitted this document but had it present at the Hearing. He was asked to provide a copy, which he did.

³¹ Watson had photographs showing the house before the work was done but no copies were provided and they had not been submitted to the RAP prior to the Hearing. The owner was asked to produce the documents for the following Hearing (See *Amended Notice of Supplemental Hearing* setting the Hearing for January 30, 2019, which was then continued to February 11, 2019). The documents were not produced.

McFadden also testified that since the remediation was done in May of 2018, they did not hear from the tenant complaining of mold again.

On cross-examination Watson admitted that the moisture in the tenant's unit, which causes the mold, is coming from somewhere. He noticed that her windows are moist in both the summer and the winter, even when the sun is shining. He acknowledged that he could do a humidity test to determine where the moisture was coming from, but that test has not been done. He could also test to see if there were problems with the windows.

Watson was asked why these tests were not done and he said that the mold problem in the tenant's unit was not "serious."

At the Hearing on January 11, 2019, the tenant agreed to provide access to the owner on Thursday January 17, 2019.

At the Hearing on February 13, 2019, Earl Watson testified that he went to the unit on January 18, 2019, to respond to a work order based on the most recent *Notice of Violation*. At this visit he found "an unbelievable amount of mold"³² in the unit, including in areas that he had treated the previous spring. He believes it is mildew and not mold. To him, the difference between mold and mildew is that mold can be dangerous, but mildew is not. He did testing of these areas.³³

He remediated the mold in the bedroom by removing all mold and mildew, by spraying a microbial liquid and scrubbed it with towels and hot water. He used a heat gun to make sure it was dry. He did not remove the sheet rock or dry wall. He did not do any treatment in the closet in this visit, although he did earlier in 2018 when he was there the last time. He did not see the mold in the closet in January of 2019, because it was not shown to him.

On this same day in January of 2019, Watson saw other *Eagle* workers on the premises fixing a leak from the upstairs unit entering the tenant's unit. The leak was coming from the upstairs bathroom, which is what he believes caused the water damage in the kitchen ceiling and the damage to the tenant's bathroom ceiling. He understood it was a minor leak but did not see it himself.

Watson further testified that he went into the living room and dining area and treated the area starting from the baseboards, the window sills, the glass and the walls. He moved the furniture and cleaned around it. Behind the couch he saw dirt, rather than mold or mildew. Watson was shown the photographs taken by Benson Wan on February 8, 2019, showing staining on the walls behind the couch area. (Exhibit 38, page 19). Watson denied that these marks were present when he was there in January of 2019. Watson denied that the leak from the upstairs bathroom could have been the cause of the mold.

³² Track 7, T18-0302, February 13, 2019, Hearing Audio at 17-17:10.

³³ There was no testimony as to whether or not the test results had been received.

Watson then returned to the unit on January 30, 2019, to paint the bedroom.

Watson further testified as follows:

“The mold is coming back absolutely too fast to be just a natural occurrence. In all of my years in doing remediation, this is one that has me scratching my head because I can’t understand why it comes back so fast. One of the reports it came back within a month, and I’ve never seen that before. And then on another report it was a few weeks...so...when I went upstairs to check the other unit, there was nothing, no mold, no problem with it.” (Tape recording track 7 at 15:20 to 16:00)

When asked if he knows why this is occurring, he responded:

“It is very hard to say, and again, I would have to have tests taken on the air and the humidity and also we do a test where we suck the air in and count how many particles of mold in the air.... That’s about it, that’s all we could do right now.” (Track 7, 16:00 to 16:40.)

Watson then testified that these tests have not been performed because it’s not needed.

On cross-examination Watson testified that Ms. Spencer did tell him there were problems in the closet in her bedroom when he was there on January 30, 2019, but that he was just leaving so he did not check into it. He further testified that the closet is a part of the bedroom. He also testified that when he went to the unit in 2018, he only remediated the mold in the bedroom and the room off the kitchen, and did no work in the living room or dining room. The visits in January of 2019 was the first he did any work in the living room and dining room.

Rodents: The tenant testified that she has had an ongoing problem with rodents in her unit. She complained to the owner’s employees in 2016, when they visited her property to do repairs in the bathroom. Additionally, she produced a letter dated October 2017 written to the owner which states: “I have spent my money on traps it seems every day catching up to 3 mice at a time in a day. Please take care of this matter quickly.”³⁴ The tenant further testified that she continued to complain about mice to the owner’s employees on multiple occasions throughout the time that the work was being done on her unit. This matter is made worse by the fact that the tenants upstairs leave trash in the yard and against the wall of her unit on a regular basis (about which she has complained multiple times.)

The tenant further testified that she continues to have problems with rodents and in December of 2018, saw four rodents in her unit in one week. *Vector Control* came to her unit in November of 2017 and found two different kinds of rodents but she does not

³⁴ Exhibit 19, page 2. The owner objected to the admission of this document on the grounds that he did not receive it. His objection was overruled.

have the report.³⁵ The rodent problem is exacerbated by the fact that the owner rarely, if ever, cleans the yard.

The owner denies knowing anything about a rodent problem in this unit at any point other than one of his workers (McFadden) noticing droppings in the backyard area when the property was first purchased in 2016. After seeing the droppings the area was cleaned and left "spick and span." He has never known of any other problems with rodents. They have never hired pest control and never received a report from *Vector Control*.

Earl Watson testified that when he did the mold remediation work in May and June of 2018, he saw no signs of rodents in the unit. He has been in the business of home repair for over 20 years, and would have notified the owner of rodents if he saw any signs.

The tenant further testified that in January of 2019, the owner hired *Terminix* to come to the property to treat for rodents. Many rodents were found on the premises.

The owner produced a receipt from *Terminix* showing that on January 23, 2019, an inspection was done of the premises. The inspection found that there was mice activity in the apartment, kitchen and bedroom and that there were mice hole openings on the lower left side of the refrigerator; that the screens were damaged; that there were large hole openings for rodents to enter; and that there were rat droppings in the water heater room. Service was recommended to "provide and monitor 4 exterior bait stations, to do work to keep the rodents out of the unit and to provide rat glue boards in the kitchen and water heater shed."³⁶ Batiste testified that *Terminix* will come back every two weeks to check on the status of the traps.

Broken Doors: The tenant testified that the back door to her unit was broken and did not shut properly and was completely rusted. She notified the owner about this long before filing her petition. This was an ongoing problem for more than 6 months. This problem was listed on the *Notice of Violation* from September of 2017, which found that the "door lock not working properly."³⁷ She sent a letter to the owner in May of 2018, informing them that since no action was taken, she hired someone to repair the back door and front door herself. It cost her \$300, which she deducted from her rent.³⁸ This matter was resolved when the tenant had it repaired herself in May of 2018.

The owner acknowledged receipt of the tenant's rent deduction from May of 2018. He credited her payment of \$300 on the *Quickbooks* account for her rent payments.

Earl Watson testified that when he saw the property in May of 2018, the back-door hinges were completely rusted. Also, on the visit in May of 2018, McFadden testified

³⁵ The tenant was given an opportunity to produce the *Vector Control* report but did not.

³⁶ Exhibit 43, p. 4

³⁷ Exhibit 38, p. 7

³⁸ See Exhibit 5, pages 1-2

that the back door was repaired and readjusted so that it shut properly and installed baseboards in the bedroom and utility room.

The tenant did not testify with specificity what was wrong with the front door; just that she had it repaired.

Water Flow in Kitchen: The tenant testified that since the prior Hearing Decision, she continues to have a problem with the water flow in her kitchen. While there was a repair to this problem at some point in 2016, it immediately reverted to a low flow trickle as was present at the time of the prior Decision. This problem was listed on the newest *Notice of Violation* from December of 2018, but not on the *NOV* from September of 2017.³⁹

The owner testified that in 2016, after receipt of the Hearing Decision in the prior case, a series of repairs were done on the unit, including repair of the water flow in the kitchen.

The owner representative produced a document entitled "Repairs Completed" dated August 29, 2016. The document is signed by Ms. Spencer, on a line that says I, Patsy Spencer, tenant in the subject unit, verify that the subject repairs was completed." The document lists the following items:

1. a new junction box and gfi plug was installed in the bathroom;
2. that the bathroom outlet was working;
3. that a new refrigerator was installed;
4. the stove is working properly;
5. that the kitchen outlets are working;
6. that with respect to water damage in the kitchen ceiling that "sheetrock is structurally sound" and that the company was scheduling an appointment to have the walls painted;
7. that the flood damage in the bathroom was repaired;
8. With respect to the low pressure for the hot water, the words "to be determined" are listed next to the words, "hot water is available in unit."⁴⁰
9. that the bathroom floor was demolished and they installed new underlayment, subfloor, vanity and sink;
10. that a new light fixture was installed in the bedroom, hallway and porch;
11. that the hole in the closet was patched using sheetrock and compound;
12. that the settlement on the bedroom floor was a result of "natural settlement"; and,
13. the toilet in the bathroom was flushing properly.⁴¹

³⁹ See Exhibit 37

⁴⁰ Exhibit 3, page 1.

⁴¹ Note that on the document the word "no" appears in handwriting next to items 5, 6 and 8. This document was provided into evidence by the owner. The owner's copy of the document, which was reviewed at the Hearing, does not have these words written next to it. The tenant testified that she did not write these words. These words were ignored and are not considered part of the evidence.

Roger McFadden testified that he is the employee of *Eagle Environmental* who presided over the repairs in August of 2016, and he created Exhibit 3.

Ms. Spencer testified that while she signed this document at the time it was presented to her, some of these repairs were not made. She signed the document because she had a crying grandson who had pneumonia with her at the time; there were toxins in the air from mold; and she did not feel well at the time. She testified that items 1-5, 7, 9 and 10 were complete at the time she signed the document (except for the handle on the stove); but that the damage to the kitchen ceiling was not repaired and there was still an ongoing water leak through the kitchen light; that the low pressure in the kitchen sink was ongoing and that the holes in her bedroom floor and closet were not repaired.

McFadden further testified that after this event he hired a plumber to come back to the unit to fix the lack of hot water. Work was done on the supply line on September 21, 2016, and the water was running fine. On October 16, 2016, he prepared a second "repairs completed" document and with respect to the low water pressure he wrote: "Installed bathtub valve and water line from garage to main house."⁴² At the time, the water was flowing properly.

He did not hear from the tenant again to complain about low water pressure and was not present at the property between 2016 and 2018. Neither were any other employees from *Eagle Environmental*.

On cross-examination, McFadden denied hearing from the plumber that Ms. Spencer called to complain about the water pressure after this repair was made.

The tenant produced a letter dated November 12, 2016, written to the owner which states:

"...I'm also writing to let you know about some things in my unit that have not been properly repaired. The hot water is still not coming out properly or not coming out equal to the flow of the cold water; there is still little pressure coming out of the kitchen..."⁴³

Batiste admits receiving this document.

Back and side yard: The tenant testified that the grass in the backyard and side yard is not cut regularly, and grows out of control. She believes this is related to the rodent problem.

Batiste was unable to testify when the grass was last cut on the property.

Earl Watson further testified that the last time the grass was cut at the unit was "before the rains started" but he was unable to state when that was. The last time he tried to cut the grass, he couldn't do it because there were cars blocking access to the yards.

⁴² Exhibit 28

⁴³ Exhibit 34

Non-operable camper on driveway: This was an issue in the prior case. The tenant testified that this was removed soon after the prior Hearing Decision was issued.

Electrical outlet burnt and wiring faulty: This was an issue in the prior case. The tenant testified that these repairs were made when the new owner did repairs in 2016.

Cracked bathroom sink: This was an issue in the prior case. The tenant testified that this matter was repaired soon after the prior Hearing Decision was issued.

Oven: This was an issue in the prior case. The tenant testified that the oven was repaired soon after the new owner took over the property.

Toilet tank running: This was an issue in the prior case. The tenant testified that this matter was resolved in 2016.

Electrical Outlet: This was an issue in the prior case. The tenant testified that this was repaired in 2016.

Other claims: At the Hearing the tenant attempted to raise other issues that were not on her original list of decreased services or the *Notice of Violation* she filed with her petition (or that arose from the prior case). On November 20, 2018, after the Hearing began, the tenant filed a document entitled "Continuing Repairs." The tenant also tried to raise claims regarding the lack of smoke detectors; about the carpet; that her windows don't lock; about a theft on her property; and to the condition of the yard as it relates to the upstairs tenants. Additionally, at the Hearing on January 11, 2019, the tenant sought to raise issues relating to only having one water meter on the premises. Only those claims that were already under consideration from the lists provided with her initial petition were considered at the Hearing. The tenant also sought to raise claims about her personal property being ruined by mold, and that both she and her grandson had been made sick from the mold. She was directed to only testify about those problems listed on her original *petition* and the documents filed at the time and not to raise claims about personal property or her personal health. (See below.) Documents that she sought to have entered into the record relating to these other issues were not admitted.

Photographs: the tenant produced photographs of her unit that were admitted into evidence as Exhibits 4 and Exhibits 21. The tenant testified that the photographs in Exhibit 4 were taken of her apartment over a period of time and were printed in December of 2018. She does not remember exactly when they were taken but believes it was in December of 2018. The photographs in Exhibit 21, were provided to the RAP by the tenant when she filed her petition in June of 2018. Some of the photographs in Exhibit 21 were duplicates of photos taken in Exhibit 4.⁴⁴

⁴⁴ Since there are duplicate photographs in both packets, and Exhibit 21 was provided when the tenant filed her petition in June of 2018, it is obvious that at least the duplicate photographs were not taken in December of 2018 but were taken at least in June of 2018, if not earlier.

From Exhibit 4 the photographs show⁴⁵:

Photographs 1-3: Broken window frame and wall in her living room

Photograph 4-6: Ants in her refrigerator

Photographs 7 -13: Mice in her unit

Photograph 14, 16: Back door to her unit not working properly

Photograph 15, 17, 33: Junk in backyard

Photographs 18- 32, 34-37: mold throughout her unit, furniture and the carpet as well as rust from water damage.

The owner testified that the photographs in Exhibit 4 were older photographs taken prior to the work they did in 2018.

The tenant testified that the pictures taken in Exhibit 21 were taken in approximately May or June of 2018 (they were printed on June 5, 2018).

Exhibit 21 photographs show:

Photographs 1-8: Mold throughout unit

Photographs 9-13: Rodents in the unit

Photographs 14, 17 and 18: Exterior trash in yard

Photographs 15-16: Back door broken

On cross examination the tenant testified she has no way of knowing the exact date she took the various photographs. With respect to Exhibits 4 and 21, she testified she took the photographs in 2018.

Benson Wan: Benson Wan testified that he is a combination inspector with the City of Oakland's Code Enforcement Division. He produced his records from his visits to the property, which were entered into evidence as Exhibit 38. He first visited the unit on August 10, 2017, in response to a June 21, 2017, complaint. The complaint he received was "lower unit- black mold growing throughout the house on walls due to leaking from the upper unit."⁴⁶ At the time he first visited he saw mildew in the front room on the right.⁴⁷ There was evidence of water damage on the ceiling in the bedroom and kitchen

⁴⁵ The owner objected to the admission of these photographs because the date taken was not shown on the documents. The owner's objection was overruled. The issue of the date goes to the weight of the evidence, not the admissibility.

⁴⁶ Exhibit 38, page 2

⁴⁷ Wan testified that according to City of Oakland policy he is not allowed to refer to what he sees in a unit as mold because testing was not done to confirm the presence of mold. He has to relate any finding on an NOV to a code violation, but there is no code violation for mold.

from old water spots and bubbles that he assumes were left from prior leaks. He did not see any evidence of a current leak.

He issued a *Notice of Violation* dated September 24, 2017. The *Notice of Violation* stated:

“Windows in disrepair. Paint/Repair. Obtain permits, inspections and approvals.”

“Evidence of water damage from ceiling causing bubble ceiling. Repair damaged ceiling & wall, patch and paint.”

“Door lock not working properly. Repair or replace.”

The *Notice of Violation* was issued to the owner 1054 63rd Street, LLC, at the address 1048 62nd Street in Oakland.⁴⁸

Wan further testified that even though he did see mildew stains on the front window and in the bedroom, he did not identify that specifically on the *NOV* (just that the windows were in disrepair.) The broken door lock referred to the back door. The tenant showed him the problem and he agreed that there was something wrong with the door.

With respect to this *NOV*, Wan did not know if the *NOV* had been abated. He was told by the tenant that she repaired the back door herself. His records don't show that it was ever abated. Wan did not perform the re-inspection set on the *NOV* for November 2, 2017, but cannot remember why it did not happen.

Wan further testified that the owner's address is gathered from a database he has access to from the County Assessor's office. He further testified that he spoke to the old owner, Philip Wilson, about this property several times and that on November 8, 2017, he met with Wilson who told him that he would start repair work on December 4, 2017. Wilson continued to represent himself as the owner to Mr. Wan through this period and did not tell him there was a new owner. Wilson further informed him that he was having trouble accessing the unit by getting agreement from the tenant.

Wan further stated that after Wilson informed him that he couldn't get into the unit, he called the tenant who informed him that Wilson was not giving her adequate notice. During this period Wan was speaking to both Wilson and the tenant episodically. Wilson told him work was being done on the unit and the tenant continued to complain that the work was not completed.

In November of 2018, he received a new complaint from the tenant about continued problems in her unit. She told him that most of the items had not been completed from the prior *NOV*.

⁴⁸ Official Notice is taken that this address is the address of the prior owner Philip Wilson, who remains a minority owner of the new LLC.

He returned to the unit on November 28, 2018 and December 4, 2018.⁴⁹ There was mildew on the walls in the bedroom and living room. From what he saw at this visit, it did not appear that work had been done to eradicate the mold/mildew problem after the prior *NOV*. He did see that the owner had painted the ceiling after the prior *NOV* but the continued signs of water damage were evident to him on the December 4, 2018, visit.

He issued a new *NOV*, also to the same address as the prior *NOV*, dated December 26, 2018, which found that there was low pressure in the kitchen faucet; that there was mold/mildew on the walls below the window in the bedroom and living area that “may be caused by water damage”; and that there was evidence of water damage from the ceiling causing a bubble ceiling in the kitchen and bedroom.^{50, 51} There was staining from the mold and mildew around the windows and there was a lot of moisture on the windows. Wan later testified that the mildew was just on the window sills.

Wan took photographs of the problems in the unit on December 4, 2018. The photographs show moisture on the windows, mildew staining around the windows, mildew stains on the walls, signs of water damage on the kitchen and bedroom ceiling, and low water pressure.⁵² He could not tell if there were new leaks.

After the new *NOV* was issued, he heard from Ronald Batiste, who said he was the owner representative.

Wan further testified that the water damage could be either from the second level unit, from the roof, or from moisture in the unit from the windows.

Wan testified that he returned to the unit in February of 2019 and that the owner had remediated many of the problems he had seen in December. There was still signs of mildew behind the sofa in the living room. Otherwise, most of the *NOV* listed items had been abated. The kitchen faucet was working properly, the ceilings had been repaired, and much of the mold/mildew had been abated. However, he thinks the owner had just painted over the mold when they should have taken off the original mold and depending on the severity, replaced the dry wall with new dry wall and then patch and paint.

On cross-examination by Ms. Spencer, Wan testified that he did see mold and mildew in the bedroom closet on the re-inspection date of February 8, 2019. Wan produced photographs of the February 8, 2019, re-inspection which show signs of staining in the

⁴⁹ He went twice because Ms. Spencer called back after the first visit to say that she had forgotten to show him the low water pressure.

⁵⁰ Exhibit 38, p. 12

⁵¹ According to the records provided by Wan, this *NOV* was also sent to the owner at the old address for Philip Wilson and was returned to the City. (See Exhibit 38, p. 3). However, it appears that somehow Batiste and Wan connected about this *NOV* based on both the testimony and the records.

⁵² Wan's testimony was confusing because at one point he testified that in December of 2018 the kitchen ceiling had been repaired. His recollection was refreshed by the *NOV* dated December 26, 2018, which states that there was a problem with the kitchen ceiling in December of 2018. He then remembered that the repair to the kitchen ceiling was done later.

closet.⁵³ Wan told the owner's maintenance worker (Mr. Watson) that the owner needs to fix the closet mold problem as well as the mildew behind the sofa.

Wan further testified that the old *Notice of Violation* from 2015 for this unit was never abated.⁵⁴

On cross-examination by Batiste, Wan testified that on one occasion Batiste had complained to him about getting access to Ms. Spencer's unit. Wan also testified that Batiste is more responsive to the problems in the unit than the prior owner, Mr. Wilson was and that he does "pretty good work". Additionally, on one occasion Wan had trouble getting into the unit to inspect. Wan did not see any problem with Ms. Spencer's housekeeping on his visits to the unit. He was also shown Exhibit 42, a photograph from April of 2018 of Ms. Spencer's closet. Wan testified he did not know what causes the staining or mold present in the closet.

He also testified that he received an email from the owner in February of 2019, stating that the owner had believed the work was completed. This email also included the signed letter from the tenant saying that repairs had been made in the unit in January 30, 2019.⁵⁵

Additional Owner Testimony Regarding Conditions: The owner representative testified that prior to purchasing the property in July of 2016, he had not been inside the building. Wilson, the prior owner, had told him that there were conditions in the unit that needed repairs, but did not specify what those were. Since *Eagle Environmental* is a general contractor, he did not feel that whatever the issues were could not be resolved. At the time of purchase, he did not have access to the Hearing Decision and did not receive a copy until Ms. Spencer gave him a copy some months later.

The first time an inspection was done on the building was on July 27, 2016.⁵⁶ The inspection was done by Mr. Batiste and Wilton Watson, an employee of *Eagle Environmental*. Watson acted as a scribe and took down notes of what was being shown by the tenant.⁵⁷ Batiste testified that on that day the kitchen faucet had a slow stream of water; that the bathroom outlets were not working; that the stove and refrigerator were not working properly; and that there was water damage to the kitchen ceiling drywall which was not mold. Ms. Spencer did not point out any mold at any point in the unit, nor did he see any. Watson testified that on that day he did see water damage to the kitchen ceiling where he noticed staining. He did not see any mold in the unit in 2016, nor did Ms. Spencer complain about mold in the unit that day.

⁵³ Exhibit 38, p. 19

⁵⁴ See Exhibit 38, p. 20 and Exhibit 16

⁵⁵ Exhibit 43

⁵⁶ Exhibit 27 is the Notice to Enter for that date.

⁵⁷ Exhibit 26. The tenant objected to the admission of this document as not "thorough." Her objection was overruled.

In response to the inspection, work was scheduled to be performed and in October of 2016, Roger McFadden was sent to the premises to perform certain work. The work done is described above in the section on water flow in the kitchen.

McFadden testified that in July and August of 2016, he was in charge of overseeing the work done on the tenant's unit. With respect to the kitchen ceiling, he noticed that there was a leak associated with the upstairs unit, and he sent a worker to the upstairs unit to seal the upstairs bathroom. He believed that the sheetrock was structurally sound because he pushed up on the sheetrock and there was no give. The ceiling and walls were not painted on that day. He also had the bathroom floor demolished and installed new underlayment, subfloor, vanity and sink; and did other work as listed on the Exhibit.

After the work was done in August of 2016, Batiste followed up by sending McFadden back to the unit. At this point, Batiste had already received the Hearing Decision in the prior case and there was work left over from the prior visit in August of 2016. A new "Repairs Completed" list was created, similar to the one from August of 2016, in which new work was listed with an asterisk.⁵⁸ The new work included:

"6. Water damage in kitchen ceiling: Walls repaired and kitchen painted."

"8. Low water pressure: Installed bathtub valve and water line from garage to main house."

"14. Window pane broken in bedroom: Glass repaired by A&M Glass..."

"15. Bathroom wall damage above the bathtub: Cutout sheetrock; bleached vertical framing members, replaced (2) wall headers, installed sheetrock and painted bathroom."

"16. Replaced showerhead in bathroom."

"17. Replaced kitchen light fixture."

Batiste further testified that after the work was done in 2016, the owner did not hear from Ms. Spencer about conditions for a long time. (While Ms. Spencer produced documents of letters sent to the owner, Batiste denied receiving them.⁵⁹) In May of 2018, he received a letter regarding mold in her unit. Between 2016 and May of 2018, he does not recall being told of mold in her unit. The first time he heard of a problem with the unit was when he received the *Notice of Violation* dated September 14, 2017. Batiste testified that he did not receive this notice until sometime in 2018, though he did not know the date.⁶⁰

⁵⁸ Exhibit 28. The tenant objected to the admission of this document because not everything was completed. Her objection was overruled.

⁵⁹ For example, he denied receiving Exhibit 19, pages 1-2.

⁶⁰ At this point in the Hearing, the Hearing Officer was under the mistaken belief that Exhibit 20 was from May of 2017 (based on the date at the bottom of page 2.) It became clear later in the testimony, when Mr. Wan testified, that this *Notice* was issued in September of 2017, regarding an inspection that occurred in August of 2017. See Exhibit 38, Exhibit from Benson Wan.

After learning about the second *Notice of Violation*, he had trouble gaining access to the unit.⁶¹ Ms. Spencer was either unavailable or they would post a notice and she would not be present. Batiste testified that on December 3, 2018, he posted a notice to do an inspection on December 6, 2018.⁶² When he arrived to post the notice, Ms. Spencer was present and they spoke. She informed him that she would not allow him access but would allow him in on December 13, 2018. (Ms. Spencer denies this conversation occurred.) He then posted a notice to enter for December 13, 2018.⁶³ When the crew went on that date, she was not present to allow them access. As a matter of principle they don't enter the property if the tenant is not present.

On cross-examination Batiste acknowledged that he knew that there was mold testing done in the unit and that the mold test was positive. He further testified that he would be happy to repair the mold if he had access to the property.

On cross-examination Batiste denied ever having receiving notice of issues with rodents in the unit. He denies having received the letter in October of 2017 (Exhibit 19, page 2).

On cross-examination Batiste testified that his employees cleaned her unit of mold in May of 2018. Upon testing they found *cladosporium*, which is not toxic.⁶⁴ Batiste also denied ever getting letters from the tenant regarding mold. But he testified he has repeatedly tried to gain access to the unit to make repairs, and the tenant does not allow him in.

The owner denied receiving multiple letters from the tenant, including (but not limited to) Exhibit 19, page 3; and Exhibit 32.

On cross examination the owner did acknowledge receipt of Exhibit 33, which is a letter in which the tenant complained of mold in April of 2018. He testified that in response to that letter they did testing and remediation in the unit to get rid of the mold.

Further on cross-examination, the owner denied knowing anything about the problem with rodents in her unit.

On cross-examination by the tenant, the owner denied knowing of ongoing problems with mold since they remediated the property in May and June of 2018. He continued to offer the opportunity to come to the unit to repair any problems, if the tenant allowed him access. At the end of the Hearing on January 11, 2019, the parties agreed that an inspection would be done the following week.

⁶¹ It was evident that Mr. Batiste learned about the second *NOV* before the date it was issued, because Wan and Batiste testified that they spoke, and Batiste testified that he learned about the Hearing from Mr. Wan.

⁶² Exhibit 30, page 1. The tenant objected to this document on the grounds that she never received the document.

⁶³ Exhibit 30 page 2. The tenant objected to this document on the grounds that the

⁶⁴ The owner did not produce a copy of the *Micro Analytical Laboratories Report* from the May 16, 2018 testing of the tenant's unit but had it at the Hearing. The Hearing Officer asked for a copy and the owner produced it.

The owner produced a document dated January 30, 2019, signed by Ms. Spencer that notes that the repairs were made to the kitchen sink, mold and mildew on wall, and that the water damage to the ceiling in the kitchen and bedroom had been repaired.⁶⁵

Additional Tenant testimony regarding conditions: At the last day of Hearing, the tenant testified that employees of *Eagle* came to her unit in January or February of 2019 to do repairs. They sent someone to the upstairs unit to repair the bathroom, where a leak was found. The water in her kitchen faucet was fixed. Some work was done on the mold problem, but it has not been completed. There is still an ongoing problem with mold in her bedroom closet, and on the walls in the living room and dining room.

The tenant testified on cross-examination that in December of 2018 she spoke to Mr. Batiste on the phone about scheduling the necessary repairs to her unit. She denies talking to him in person in December of 2018 at her home or seeing any notices to enter posted on her home.⁶⁶

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Was there good cause for the late filed owner response?

The Rent Adjustment Ordinance requires an owner to file a response to a tenant petition within 35 days after service of a notice by the Rent Adjustment Program (RAP) that a tenant petition was filed.⁶⁷ “If a tenant files a petition and if the owner wishes to contest the petition, the owner must respond . . .”⁶⁸

The file in this case shows that the *Tenant Petition* and accompanying documents were served on the owner on August 10, 2018, but the zip code for the three named owners was not the correct zip code. Batiste testified that he did not receive the *Tenant Petition* until he came to the Hearing on November 10, 2018.

The *Property Owner Response* was filed on December 3, 2018.

The owner representative was credible in his testimony that the *Tenant Petition* was not received. While a properly addressed document is presumed to be received, in this case, the document was not properly addressed. Therefore, the owner had good cause for the late filed *Owner Response* and was allowed to testify and fully participate in the Hearing.

Was the tenant current on her rent or lawfully withholding rent at the time the petition was filed?

The owner claimed on its response that the tenant was not current on her rent. In order to file a petition, a tenant must be current on his or her rent or lawfully withholding

⁶⁵ The tenant testified that she signed this document even though the closet was not repaired because she was trying to work with the parties.

⁶⁶ See Exhibit 30

⁶⁷ O.M.C. § 8.22.090(B)

⁶⁸ O.M.C. § 8.22.070(C)(2)

rent.⁶⁹ The owner has the burden of proof to establish that the tenant was not current on his rent. The tenant filed her Petition on June 5, 2018.

The tenant provided evidence that she paid partial rent in April and May and full rent in June of 2018 (See discussion below on rental amounts). While these checks were mailed late in the month, there is a long history of the tenant mailing checks late in the month with no evidence of complaint from the owner about these late payments. Additionally, the tenant testified that at times she has withheld rent for conditions. In May of 2018 for example, the tenant paid only partial rent because of the problems with necessary repairs in her unit. A tenant may exercise the option not to pay rent when a unit's condition is in breach of the implied warranty of habitability.⁷⁰ The statutory authority for rent withholding is Code of Civil Procedure § 1174.2. It provides that a substantial breach of the implied warranty of habitability may be raised as a defense to an unlawful detainer action. To confer standing to file a Rent Adjustment petition, a tenant must show that he or she might prevail in court in a claim for a habitability breach, that is, the tenant must present a prima facie case that he or she is withholding the rent legally.

While the tenant did not claim that she was "lawfully withholding rent" on her petition she nonetheless has established that there were conditions in her unit at the time she filed her petition that rise to the level of habitability problems. The low water pressure, the mold throughout the unit and the multiple issues raised by the *Notices of Violation* are all evidence of habitability problems.

Due to these circumstances, Ms. Spencer was lawfully withholding rent at the time her petition was filed. Therefore, her petition was lawfully filed.

Does the owner's failure to pay the Rent Program Service fee until December 10, 2018, affect the owner's ability to testify?

The Rent Adjustment Program Regulations state that:

"An Owner's petition or response to a petition is not considered filed until the following has been submitted:

- a. Evidence that the Owner has paid his or her City of Oakland Business License Tax;
- b. Evidence that the Owner has paid his or her Rent Program Service Fee...." Regulations § 8.22.090 (C).

In this case when the owner filed its response, it had not paid the required RAP fees. These were not paid until December 10, 2018.

⁶⁹ O.M.C § 8.22.090 (A)(4)(b)

⁷⁰ O.M.C. & Regulations, § 8.22.090

The question then is what happens when an owner does not provide the requisite proof with the filed Petition. The language of the Regulations is clear: “the petition is not considered filed.”

Nonetheless, in this case, once the owner produced proof of payment of the RAP fees at the Hearing on December 10, 2018, the owner’s response was filed. Since the owner was not served with the tenant petition until November 20, 2018 (on the first day of Hearing), the owner response was considered filed by the time proof of payment of the RAP fee was received. Since that happened within 35 days of the receipt of the petition, the owner’s response was timely and the owner was allowed to provide testimony and fully participate at the Hearing.

What documents are admissible?

The general rule at a Rent Adjustment proceeding is that all documents that are admitted into evidence must be submitted to the RAP program 14 days prior to the date of the Hearing. However, Hearing Officers have the authority to adjust this rule based on good cause.

Because the tenant alleged that she had produced documents to the RAP that had been lost, the tenant was allowed to bring certain evidence to the Hearings that had not been produced prior to the Hearing.

However, only relevant evidence is admissible. The tenant sought to produce some documentation related to new claims and claims related to her health and her grandson’s health. These documents were not admitted because they were not relevant. (See below.)

When, if ever, was the form notice to tenants of the Rent Adjustment Program (*RAP Notice*) first served on the tenant?

The Rent Adjustment Ordinance requires an owner to serve the *RAP Notice* at the start of a tenancy⁷¹ and together with any notice of rent increase.⁷²

While at first both parties testified that the *RAP Notice* had not been served, it became evident during the Hearing that the tenant was provided with a lease in 2016 that contained the *RAP Notice*. The fact that the owner did not know that the *RAP Notice* was included in the lease is not the point. The tenant received the lease documents and the documents were left with her to review and sign. Therefore, the tenant has been served with the *RAP Notice* as of September of 2016.

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⁷¹ O.M.C. § 8.22.060(A)

⁷² O.M.C. § 8.22.070(H)(1)(A)

How does the prior case between the tenant and the prior owner impact this case?

The prior case between the tenant and her prior owner was finalized with a Hearing Decision issued in that case in September of 2015. No one appealed that Decision.

That decision included a determination that the tenant was owed restitution of \$10,208.50. The tenant testified that she did not understand the Decision and that she paid rent of \$450 a month during the two years covered by the restitution order (during which the rent was supposed to be \$25.15 per month.) While the prior owner was not present to testify, the current owner testified that when he received rent in the months after he purchased the property in 2016, he was paid \$450 a month and accepted this rent amount even after knowledge of the Hearing Decision.⁷³

At this Hearing, the tenant sought to be compensated for the failure to take the restitution ordered in the prior case. During the Hearing, the Hearing Officer initially informed the parties that this claim would be evaluated. However, this statement was made prior to the knowledge that the RAP Notice had been served on the tenant in 2016.

Once a RAP Notice is served, a tenant has 90 days to bring forth a claim regarding a contested rent increase. While this claim is not about a rent increase, but about a failure to follow a prior Hearing Decision, it is not proper to reopen a prior Hearing, and determine the proper rent payments, where the tenant did not claim that any rent increase had been given improperly, and when her petition was filed almost three years after the prior Hearing Decision was issued. If the tenant has any remedy regarding the failure to take credit from the prior Hearing Decision, the remedy must be had by seeking a Citation Order or Compliance Hearing under the prior case using the procedures set forth in O.M.C. § 8.22.150.⁷⁴

Despite the ruling that the tenant's claim for untaken restitution cannot be considered, it is still required to determine the proper rent considering the prior decision.

In that case, a determination was made that the base rent was \$850 a month, and that the tenant's rent was reduced to \$450.50 a month due to conditions. The conditions were failure to provide hot water (a 15% reduction); fire danger related to the electrical system (a 17% reduction); 3% for the lack of a working oven; 3% for the leaking refrigerator; 7% for the abandoned trailer; and 2% for the broken toilet.

The tenant testified that except for the hot water, all these claims were repaired in 2016. Further, with respect to the hot water, the tenant signed a document in October of 2016, indicated that the hot water had been repaired. While she later denied that it was repaired, her signature on Exhibit 28, which states that she verifies that the repairs were completed, is binding. After the repairs were made, the tenant was provided a rent

⁷³ He too denied understanding the Hearing Decision. It is hard to believe that a business person like Mr. Batiste would not understand the language of the decision setting rent at \$25 a month.

⁷⁴ Note that the Hearing Officer is not making a determination as to whether such a claim would be timely, as since no such claim has been made, it would be improper to determine the timeliness issue.

increase notice in September of 2017, stating that the rent was being increased to \$850 a month.⁷⁵

While this document was not served with a *RAP Notice*, a restoration of a prior base rent is not a rent increase, and therefore, does not require a *RAP Notice*. It is simply a restoration of the base rent after reductions due to the prior Hearing Decision.

Therefore, effective October 1, 2017, the rent returned to \$850 a month, even with the prior Hearing Decision.⁷⁶

Can the tenant bring forth claims that she has been made ill by the owner's actions in a RAP proceeding?

The tenant sought to testify about the physical injuries she and her grandson suffered at the hands of the owner as well as the loss of her property due to its actions. However, the authority of the RAP is limited to adjusting rents. The RAP has no authority to compensate a tenant for damages.⁷⁷ Should the tenant wish to pursue a claim for damages based on the owner's negligence, she needs to file a claim in a Court of competent jurisdiction.

Can the tenant raise claims of decreased services that were not raised in her Tenant Petition?

Additionally, the tenant sought to bring forth claims that were not filed with her initial petition. A RAP Hearing is based on the petition and response documents. To allow the tenant to bring forth claims not filed with her initial petition would violate due process. The tenant was directed to testify only about those claims filed with her initial petition (and to confirm that the prior repairs were completed related to the prior case). All other evidence was not permitted.

Have the tenant's housing services been decreased, and if so, by what percentage of the total housing services that are provided by the owner?

Under the Oakland Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent⁷⁸ and may be corrected by a rent adjustment.⁷⁹ However, in order to justify a decrease in rent, a decrease in housing services must be

⁷⁵ Exhibit 2. Note that while the tenant denied receiving this notice, it is not credible to believe that she did not receive it because she did start paying rent of \$850 a month soon thereafter.

⁷⁶ As noted, this analysis, does not include the question of the underpayment associated with the failure of the tenant to deduct for the restitution owed to her.

⁷⁷ See *McHugh v. Santa Monica Rent Control Bd.* (1989) 49 Cal.3d 348, 336 ("The Board's legitimate regulatory authority, and hence its incidental remedial authority, is circumscribed. It may not, and does not, hear and adjudicate all manner of disputes between landlords and tenants. Its authority is derived from the local police powers and extends only so far as necessary to set and regulate rents.")

⁷⁸ O.M.C. § 8.22.070(F)

⁷⁹ O.M.C. § 8.22.110(E)

the loss of a service that seriously affects the habitability of a unit or one that was provided at the beginning of the tenancy that is no longer being provided.

In a decreased housing services case a tenant must establish that she has given the owner notice of the problems and the opportunity to fix the problems before she is entitled to relief. Additionally, there is a time limit for claiming decreased housing services. Once the tenant is served with a *RAP Notice*, a tenant petition must be filed within 90 days after the decrease in service begins. However, if it is a continuing problem, the tenant can file at any time, but is only entitled to restitution beginning 90 days before the petition is filed and for the period of time the owner knew or should have known about the condition.⁸⁰

Since the tenant was served with the *RAP Notice* in 2016, her claims begin 90 days before her petition was filed, or March 7, 2018.

Mold throughout the unit: The tenant has established an ongoing problem with mold beginning before March 2018 through the time of the last Hearing in February of 2019. While some repairs were done in May of 2018, these repairs were not thorough, did not solve the problem and the mold returned. In fact, the owner's agent, who remediated the mold in May of 2018, testified that there were signs of heavy water in the unit when he visited in May of 2018 and testified that when he returned in January of 2019 there were unbelievable amounts of mold.

While it is unclear the exact source of the water, there was evidence of ongoing leaks in the kitchen and bathroom ceiling that came from the upstairs unit, as well as evidence that despite the attempted remediation, mold or mildew returned in places where the owner's representative had previously testified it was not possible for it to resurface.

Furthermore, there is ample evidence that the tenant has complained of this problem. She has letters written to the current owner of the problem with mold going back to 2016 (Exhibit 19) and then again beginning in early 2018 (Exhibit 32 and 33). Plus, the 2017 *Notice of Violation* should have put the owner on notice of the mold with the reference to evidence of water damage and windows in disrepair.

While the owner denies receipt of some of the tenant's letters regarding conditions, and the record shows that the *NOV* from September of 2017, was at first sent to the old owner's address, the prior owner, Mr. Wilson, remains a minority owner of the new LLC and continued to represent himself as the owner to Benson Wan from the City of Oakland after the September 2017 *NOV* was issued. Therefore, notice to Mr. Wilson was notice to the current owner. Furthermore, Batiste acknowledged receipt of the September 2017 *NOV*.

Even though Mr. Watson denied that the leak from the upstairs unit could be the cause of the mold, it is evident from the abundant testimony that there is an influx of moisture

⁸⁰ O.M.C. § 8.22.090(A)(3)(b)

in the tenant's unit. The tenant's testimony that water has entered the unit through the light fixture in the kitchen on multiple occasions as well as the signs of water leakage in various places throughout the unit, could certainly lead to mold growth throughout the unit.

After receiving the May 2018 mold report showing mold growth throughout the tenant's unit, a reasonable owner would have returned to the unit to check on the status after the remediation occurred. That was not done. Further, the owner's employee suggested additional testing that could be done to determine the source of the water, and this testing has not occurred because of the belief that the problems in the tenant's unit are not "serious."

While there was some concern expressed that the tenant has not made the unit available for the necessary work, the owner has not established the refusal of the tenant to cooperate. The tenant allowed the owner into the unit on multiple occasions in 2016, 2018 and 2019 after her complaints.

Furthermore, the owner still has not completely repaired the problem. The owner's attempt to argue that somehow the failure to remediate the mold in her closet is because the tenant did not complain specifically about mold in her closet is absurd. The closet is in the tenant's bedroom, and the tenant regularly complained about mold in her bedroom. Further, the list of decreased services filed with the tenant petition specifically mentions the closet and the *NOV* from December of 2018 refers to mold in her bedroom. And when the work was done in May of 2018, work was done in the closet. The failure of the owner to remedy the ongoing problem of mold in the closet amounts to an attempt to blatantly disregard the tenant's right to a home free of mold.⁸¹

Still further, Benson Wan, a City of Oakland specialty inspector, determined that the owner had not completely the remediation in the front room because there remained mold/mildew behind the couch. While Watson disagreed that this was a finding of mold, Mr. Wan's testimony is unbiased, while Mr. Watson's is not.

The tenant is entitled to an ongoing rent decrease of 10% of the rent for these conditions until the mold in her closet and the mold behind her couch is remediated. She is also entitled to restitution of overpaid rent for the mold beginning March 7, 2018. See chart and discussion in restitution section below. The tenant is awarded a 20% decrease for the period of time beginning March 7, 2018 through the remediation in January of 2019, and a 10% decrease since that remediation.

Rodents: The tenant has established that there was an ongoing problem with rodents in her unit for many years. As noted above, she is limited to restitution beginning on March 7, 2018 for these conditions. She notified the owner about these problems through her letters, as well as through her claims with *Vector Control*. While the owner denied receipt of the letter regarding rodents from October of 2017, this denial was not

⁸¹ As is the owner's argument that somehow the closet is moldy because it is full of clothing. The purpose of a closet is to store clothing.

believable. Additionally, even if the letter was not received, McFadden admitted seeing signs of rodents on the premises when he was there in 2016. A reasonable owner would hire an exterminator when such signs were present. The fact that Watson did not see signs of rodents when he visited the unit in May and June of 2018 does not change this conclusion in light of the fact that in January of 2019, the owner's exterminator validated the presence of rodents throughout the unit.

The owner has now hired *Terminix* to do regular maintenance regarding rodents. The tenant is entitled to restitution of overpaid rent for these conditions of 15% from March of 2018 through the date *Terminix* was hired in January of 2019.

Broken Doors: The tenant established that the back and front doors were damaged. This was determined by both her testimony and by the testimony of Watson, who testified that the back door hinges were completely rusted when he saw the unit in May of 2018.

The tenant repaired these problems herself in May of 2018. She is entitled to restitution of 3% of the rent for these conditions from March 7, 2018 through the end of May of 2018.

Water Flow in Kitchen: While this matter was raised in the prior decision, it has already been determined that it was repaired in 2016, and the owner was entitled to increase the rent after the repair was made.

Nonetheless, the problem returned and as previously, the water was barely coming out. The tenant complained about this problem to the owner in a letter in 2016, the owner should have returned. However, no action was taken again until January of 2019. Therefore, the tenant is entitled to restitution of overpaid rent of 15% for this condition from March 7, 2018 through January of 2019.

Back and side yard: The tenant has established an ongoing pattern of the failure of the owner to adequately care for the yard. There is no reasonable clean-up of the area, and the grass is not maintained adequately.

The tenant is entitled to a 2% continued rent decrease for this condition, until the owner provides once monthly yard service. The tenant is also entitled to restitution for any rent overpayments for this condition from March of 2018 through April of 2019.

Non-operable camper on driveway: This matter was resolved after the prior Hearing Decision and any further claim is untimely.

Electrical outlet burnt and wiring faulty: This matter was resolved after the prior Hearing Decision and any further claim is untimely.

Cracked bathroom sink: This matter was resolved after the prior Hearing Decision and any further claim is untimely.

Oven: This matter was resolved after the prior Hearing Decision and any further claim is untimely.

Toilet tank running: This matter was resolved after the prior Hearing Decision and any further claim is untimely.

What if any restitution is owed between the parties and how does that impact the rent?

As noted above, before consideration of rent underpayments and decreases in services for the conditions, the tenant's base rent is \$850 a month.

An analysis of the restitution issue starts with a determination of whether or not the tenant had paid rent in the months leading up to filing her petition and whether she has underpaid rent based on the base rent. Since the owner established that since 2017 he has never posted a *3 Day Notice* or an *Unlawful Detainer* action against the tenant, Batiste's testimony that the tenant had barely paid rent at all is not credible.⁸² This is further made evident by the fact that Batiste's testimony about the rent payments changed throughout the proceedings. In the first Hearing, Batiste testified that he had only received the rent payments he supplied in Exhibit 1. This testimony was followed up by a *Quickbooks* spreadsheet (Exhibit 15) that documented the money orders from Exhibit 1 that allegedly established every single payment received by the owner for rent from the tenant since the purchase in 2016. But after receipt on the tenant's money orders (Exhibit 6), the owner researched the checks and determined that an additional 6 checks had been received and deposited by him (although he testified that he found only four more checks, another sign of lack of credibility). (See Exhibit 23.) When this testimony was given (on January 11, 2019), Batiste testified that there were three money orders outstanding from Wells Fargo (that Ms. Spencer had claimed were evidence of rent payments) that he never received and that Wells Fargo told him had never been cashed. Yet on the last day of Hearing, Batiste clearly stated that there was only one money order that was still left unaccounted for. Based on all these facts and testimony Batiste lacks credibility about what rent was received from the tenant.⁸³

On the other hand, the tenant's testimony as to particular rent payments is also not credible. It is not credible to believe that the tenant mailed cash to the owner in November of 2018. After establishing that for years she has taken out money orders to pay her rent, it is highly questionable that the tenant would send \$850 in cash in the mail. Further, the tenant's testimony that she paid rent in every month for that same month was also not accurate. The tenant has a habit of holding on to her rent checks and mailing them in groups, as she sees fit. While these periods of time relate to her claims

⁸² Although Batiste did establish that the tenant would pay rent in bundles. She would withhold rent for several months and then mail a series of checks to him all at once. While the tenant would testify that she paid rent every month, the tenant does not deny this practice of sending multiple checks at once.

⁸³ This lack of credibility was further impacted by Batiste's acknowledgement that he had received a letter from the tenant in May of 2018, about paying someone to do work on her doors, where she enclosed a receipt for \$300. At the Hearing on December 10, 2018, Batiste denied that he also received a check for that month's rent. In Exhibit 22, Batiste acknowledges receipt of the \$100 check paid for the same month.

of habitability problems in the unit, the tenant is expected to pay rent monthly going forward.

As noted above, because the tenant's claim for decreased services only goes back 90 days from the date she filed her petition, this analysis as to rent payments made is starting in April of 2018, the first month 90 days prior to the date her petition was filed. Whether or not there is underpaid rent before that date is not relevant to this case.

The evidence shows that the tenant paid rent as follows:

Month Paid For	Amount	Proof/Comments
April 2018	\$450	The owner's Exhibit 23 shows a payment received on June 9, 2018, with a check dated May 1, 2018. The tenant's records show a Bank Originated Debit of \$451.16 on May 3, 2018. Since the tenant was in the habit of paying rent late, and she paid again in May of 2018, it is assumed that this was for April's rent.
May 2018	\$400	This comes from a combined check of \$100 (Exhibit 6, check #10) and a construction work credit of \$300 for work on the doors. (Exhibit 5, pp 1-2)
June 2018	\$850	Exhibit 6, p. 11
July 2018	\$850	Exhibit 6, p. 12
August 2018	\$0	See Exhibit 22. The tenant testified that this money was put back into her account to recompense her for expenses related to washing her walls from the mold. She had no evidence of any receipt. Note however that the tenant paid rent twice in September of 2018.
September 2018	\$850	Exh. 1, page 2
September 2018	\$850	Exh. 1, page 1, Exh. 6, #14
October 2018	\$850	Exh. 1, p. 2, Exh. 6, #15

November 2018	0	The tenant testified she mailed cash
December 2018	\$400	Exh. 41
January 2019	\$400	By parties testimony
Total:	\$5,900	

There are 10 months between April 2018 and January of 2019. Prior to a consideration of the rent decrease for the conditions, which is analyzed below, the tenant owed rent of \$850 a month in those months, for a total owed of \$8,500. The tenant paid a total of \$5,900 during this period. The restitution analysis below includes an underpayment of this amount for this period.

The tenant is entitled to an ongoing rent decrease of 10% for the mold in her unit and a 2% for the failure to maintain the yard, for a total ongoing rent decrease of 12% or \$102. Therefore, the tenant's current legal rent, before consideration of restitution is \$748 a month, effective February 1, 2019.

Additionally, according to the spreadsheet below, the tenant is entitled to a credit of \$4,938.50 for the decreased services she has experienced since March of 2018 through January 31, 2019. This credit is offset by the rent underpayment of \$2,600. The tenant is therefore owed restitution of a total of \$2,338.50.

VALUE OF LOST SERVICES							
Service Lost	From	To	Rent	% Rent Decrease	Decrease /month	No. Months	Overpaid
Mold	7-Mar-18	31-Jan-19	\$850	20%	\$ 170.00	11	\$ 1,870.00
Rodents	7-Mar-18	31-Jan-19	\$850	15%	\$ 127.50	11	\$ 1,402.50
Doors	7-Mar-18	20-May-18	\$850	3%	\$ 25.50	3	\$ 76.50
Water flow	7-Mar-18	18-Jan-19	\$850	15%	\$ 127.50	11	\$ 1,402.50
Back and side yard	7-Mar-18	31-Jan-19	\$ 850.00	2%	\$ 17.00	11	\$ 187.00
TOTAL LOST SERVICES							\$ 4,938.50
UNDERPAID RENT							
	From	To	Rent paid	Total Base Rent	Difference		Sub-total
	1-Apr-18	31-Jan-19	\$5,900	\$8,500	\$ (2,600.00)		\$(2,600.00)
TOTAL UNDERPAID RENT							\$(2,600.00)
RESTITUTION							
MONTHLY RENT							\$850
TOTAL TO BE REPAID TO TENANT							\$ 2,338.50
TOTAL AS PERCENT OF MONTHLY RENT							275%
AMORTIZED OVER				12	MO. BY REG. IS		\$ 194.88

An overpayment of this size is adjusted over a period of 12 months.⁸⁴ The tenant is entitled to reduce the rent by \$194.88 a month, once this Hearing Decision is final. The Decision becomes final twenty days after the date it is served on the parties, unless any party appeals the Decision.

However, should the owner eradicate the mold in her closet and behind the sofa, the owner can increase the rent by 10% (\$85), and two months after the owner starts to provide monthly yard service, the owner can increase the rent by 2% (\$17.00). **In order to increase the rent after repairs the owner must provide the necessary notice pursuant to Civil Code § 827.**

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

Finally, it is not known what rent payments the tenant may have made in February, March or April of 2019. The tenant's rent due in each of those months, based on the conditions, was \$748. The parties should adjust any rent overpayments for these months between themselves.

ORDER

1. Petition T18-0302 is granted in part.
2. The tenant's base rent is \$850 a month before consideration of restitution, rent underpayments and decreased services.
3. Due to ongoing conditions, the tenant is entitled to a 12% rent decrease. The tenant's current legal rent, effective May 1, 2019, before consideration of restitution, is \$748 a month.
4. Due to past decreased services and rent underpayments, the tenant is owed restitution of \$2,338.50 through January of 2019. This overpayment is adjusted by a rent decrease for 12 months in the amount of \$194.88 a month.
5. The tenant is entitled to reduce the rent per the restitution order after the Hearing Decision becomes final.
6. It is unknown whether or not the tenant has paid any rent in February, March or April of 2019. The tenant's rent in those months should have been \$748 a month for a total of \$2,244. The parties are expected to adjust any rent overpayments and underpayments for these three months amongst themselves.
7. If the owner wishes to, it can repay the restitution owed to the tenant at any time. If it does so, the monthly decrease for restitution ends at the time the tenant is provided restitution.

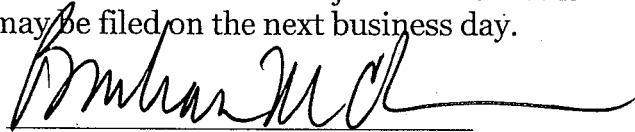
⁸⁴ Regulations, Section 8.22.110(F)

8. If the owner eradicates the mold in the tenant's bathroom closet and behind the sofa, it can increase the rent by 10% (\$85 a month); and two months after the owner starts providing monthly yard service, the owner can increase the rent by 2% (\$17 a month). **In order to increase the rent after repairs the owner must provide the necessary notice pursuant to Civil Code § 827.**

9. Pursuant to the stipulation by the parties, they are to meet and confer as to the October 4, 2017, Money Order made out to Mr. Batiste. If Wells Fargo confirms that this check has not been cashed, Ms. Spencer will ask to have the money redeposited into her account and return the money to the owner.

10. **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 15, 2019



Barbara M. Cohen
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE
Case Number T18-0302

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

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

Documents Included

Hearing Decision

Owner

Philip Wilson, Eagle Environmental Construction
1485 Bayshore Blvd. #374
San Francisco, CA 94124

Owner

Ronald Batiste, Eagle Environmental Construction
1485 Bayshore Blvd #374
San Francisco, CA 94124

Owner

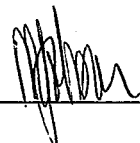
Wilton Watson
1485 Bayshore Blvd. #374
San Francisco, CA 94124

Tenant

Patsy Spencer
1052 63rd Street
Oakland, CA 94608

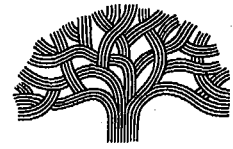
I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first 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 **April 18, 2019** in Oakland, CA.



Nia Johnson

Oakland Rent Adjustment Program



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

Housing and Community Development Department
Rent Adjustment Program

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

AMENDED HEARING DECISION

CASE NUMBER: T18-0302, Spencer v. Eagle Environmental
Construction

PROPERTY ADDRESS: 1052 63rd Street, Oakland, CA

DATES OF HEARING: November 20, 2018, December 10, 2018, January 10,
2019; January 11, 2019; February 13, 2019

DATE OF DECISION: May 17, 2019

APPEARANCES: Patsy Spencer, Tenant
Honey Spencer, Witness for Tenant
Ronald Batiste, Owner Representative
Wilton Watson, Witness for owner
Roger McFadden, Witness for owner
Earl Watson, Witness for owner
Benson Wan, City of Oakland Employee (February
13, 2019 only)

REASON FOR AMENDED DECISION

On May 1, 2018, a Hearing Decision was mailed to the parties with an incorrect proof of service. This Amended Hearing Decision sets forth the same facts and law as the prior Hearing Decision, but sets a new appeal period because of the prior error in mailing. Additionally, a new paragraph is added to the last section of **Findings of Fact and Conclusions of Law** section regarding the May 2019 rent due.

SUMMARY OF DECISION

The tenant's petition is granted in part. The legal rent for the tenant's unit is detailed in the Order below.

CONTENTIONS OF THE PARTIES

Tenant Patsy Spencer filed a petition on June 5, 2018, in which she claimed that there is a current health, safety, fire or building code violation in her unit, or there are serious problems with the conditions in her unit because the owner failed to do requested repairs and maintenance, and that she is experiencing decreased housing services. She

further claimed that she has never received the *Notice to Tenants of the Residential Rent Adjustment Program (RAP Notice.)*

The tenant's claims of decreased services arise from two documents she filed with her petition. A letter, dated May 18, 2018, to the City of Oakland Rent Adjustment Program and a copy of a January 13, 2015, *Notice of Violation* from the City of Oakland's Department of Planning and Building. These claims include mold in her bedroom, window sills, carpet and closet; broken back door including rusted hinges; broken front door; rodents; yard and grass growing out of control; lack of adequate hot water in the kitchen; non-operable camper on driveway; electrical outlet burnt and wiring faulty; cracked bathroom sink; and toilet tank running.¹

On December 3, 2018, the owner filed a late response to the tenant petition denying the claim of decreased housing services and claiming that the *RAP Notice* was first served on the tenant in September of 2017. The owner also claimed that the tenant was not current on her rent.

THE ISSUES

1. Was there good cause for the late filed owner response?
2. Was the tenant current on her rent or lawfully withholding rent at the time the petition was filed?
3. Does the owner's failure to pay the Rent Program Service fee until December 10, 2018, effect its ability to testify?
4. What documents are admissible into evidence?
5. When, if ever, was the *RAP Notice* first served on the tenant?
6. How does the prior case between the tenant and the prior owner impact this case?
7. Can the tenant bring forth claims that she or her family have been made ill by the owner's actions?
8. Can the tenant raise claims of decreased services that were not raised in her *Tenant Petition*?
9. Have the tenant's housing services been decreased, and if so, by what percentage of the total housing services that are provided by the owner?
10. What if any restitution is owed between the parties and how does that impact the rent?

EVIDENCE

Owner Response: At the Hearing on November 20, 2018, Ronald Batiste testified that the owner of the subject property is 1054 63rd Street, LLC and that he is the managing member of that LLC. *Eagle Environmental Construction* is the property manager of the property and performed work on the subject unit. The legal address for the LLC is 1485 Bayshore Blvd, #374, San Francisco, CA, 94124. Prior to the date of the Hearing, he had never received any documents from the *RAP* regarding the tenant's claim.

¹ The last four items were from the *Notice of Violation*.

Official Notice is taken of the file in this case in which there is a proof of service showing that on August 10, 2018, the *Landlord Notification of Tenant Petition* and blank owner response form was sent to three separate individuals: Philip Wilson, Ronald Batiste and Wilton Watson, all at the same address on Bayshore Blvd, but with a different zip code. The zip code of the mailing was to 93125, not 94124.

Batiste further testified that Philip Wilson, who used to own the property, is a partner of 1054 63rd Street, LLC, but is not the managing partner nor a majority shareholder. The LLC, purchased the property from Wilson in July of 2016. Wilton Watson (one of the parties named on the proof of service) testified that he did not receive any of the documents related to the subject case.

Batiste further testified that he knew about the proceedings because he was informed about them by Benson Wan, a City of Oakland employee from the Department of Planning and Building who performed an inspection on the property. Wan informed Batiste about this Hearing approximately two months earlier (in September of 2018). Since then Batiste has called analyst Margaret Sullivan of the RAP and left her several messages but had not heard back from her.

A proof of service in the file shows that on November 20, 2018, Batiste was hand served with a copy of the *Tenant Petition* and the tenant's list of decreased services, the *Landlord Notification Letter*, and a blank *Owner Response Form*. On December 3, 2018, a *Property Owner Response* was filed by the owner.

At the Hearing on December 10, 2018, Batiste at first testified that he had paid the Rent Program Service fee (*RAP fee*) on December 3, 2018. He was asked for proof of payment, which had not been previously provided (despite the fact that the *Owner Response* form requests proof of payment) and a break was taken so that he could go to the Business Tax division for proof of payment. After the break, Batiste returned with proof of payment of the *RAP fee* paid that day. Batiste testified he did not understand that the *RAP fee* was different than the Oakland Business license. All fees for the RAP were paid on December 10, 2018, after the Hearing in this case began.

Property History: Official Notice is taken of a prior case, T15-0074, *Spencer v. Wilson*. This case involved the same property and the same tenant. At the time of that case, the property was owned by Philip Wilson. At the time of the purchase Batiste did not know about the prior case between the parties. The tenant informed him of the case after the LLC purchased the property and provided him a copy of the Hearing Decision.

Documents: Prior to the Hearing held on December 10, 2018, the tenant communicated with the RAP that she had produced certain documents to the RAP on October 20, 2018, that were not in her file. This communication was by email with Margaret Sullivan, the analyst on the case. At the Hearing on December 10, 2018, Ms. Spencer reiterated her claim that certain documents were missing from her file. These documents included receipts of rent payments, receipts of payments she made in lieu of rent, and photographs. Because of the claim of missing documents, Ms. Spencer was given an

opportunity to produce additional records regarding rent payments and receipts in subsequent Hearings and was asked to go to her bank to get duplicate receipts of all money orders she had taken out.

At the Hearing on January 10, 2019, the tenant provided Exhibit 6, which she testified are copies of the only money order receipts she was able to find at home after the prior Hearing, and that this was not a complete group of receipts because she had given some of the originals to the RAP. She also produced *Wells Fargo* checking account statements showing withdrawals for the purposes of taking out money orders. She testified she only took out money orders in order to pay rent. She testified that *Wells Fargo* did not have the ability to get her copies of the money orders because too much time had passed.

Prior Case: The *Order* in case T15-0074, stated the following:

- “1. The tenant’s base rent is \$850 a month.
2. Due to ongoing decreases in housing services, the tenant’s rent is reduced by 47% (15% for the plumbing, 17% for the electrical system, 3% for the oven, 3% for the refrigerator, 7% for the abandoned trailer and 2% for the toilet.) The tenant’s current legal rent is therefore \$450.50 a month.
3. Due to past decreased services, the tenant is owed restitution in the amount of \$10,208.50. This overpayment is adjusted by a rent decrease for the next 24 months in the amount of \$425.35 a month.
4. The tenant’s rent for the months of October 2015 through September of 2017 is \$25.15 per month. Her rent reverts to \$450.50 a month in September of 2017 (if the repairs are not made).
5. If the owners wish to, he can repay the restitution owed to the tenant at any time. If he does so, the monthly decrease for restitution ends at the time the tenant is provided restitution.
6. If the owner fixes the plumbing so that the tenant has hot running water in the kitchen and bathroom (equal to the supply of cold running water as of the date of the inspection), the owner can increase the tenant’s rent by \$127.50 a month. If the owner fixes the electric supply, including repairing the outlet in the bathroom and the electric wiring throughout the unit if necessary, the owner can increase the tenant’s rent by \$144.50 a month. If the owner fixes the oven so that it works properly, the owner can increase the rent by \$25.50 per month. If the owner fixes the refrigerator so that it is no longer leaking, the owner can increase the rent by \$25.50 a month. If the owner removes the abandoned trailer, the owner can increase the rent by \$59.50 a month. If the owner fixes the toilet, the owner can increase the rent by 2% or \$17.00 a month. **In order to increase the rent after repairs the owner must provide the necessary notice pursuant to Civil Code § 827.”**

The RAP Notice: During the Hearing, both parties testified that the owner did not serve the *RAP Notice* on the tenant. Additionally, Ms. Spencer testified that she was not served the *RAP Notice* by the prior owner.

Wilton Watson, an employee of *Eagle Environmental*, testified that on September 2, 2016, he gave the tenant the lease to sign which consisted of twenty pages.² He did not know the contents of the lease document or what information it contained. He wrote a document on that date that states: "Tenant refused to sign rental agreement receipt on September 2, 2016 at 5:40 p.m. Tenant kept rental agreement and stated she would call Ronald early next week."³ The owner submitted the lease into evidence. The lease contains a copy of the *RAP Notice*. The tenant acknowledged having received the lease, although she did not know it contained the *RAP Notice*. The tenant testified she refused to sign the lease because it contained some terms with which she was unhappy.

On cross-examination Watson acknowledged that he did not know that the *RAP Notice* was in the lease documents.

Rent Payments: The tenant testified as follows: she has been paying rent of \$850 a month in rent since September of 2017 and that prior to that she paid rent of \$450 a month. While at first she testified that she paid rent in every month, she later testified that at times she withheld rent because of problems with mold or other conditions and she would mail multiple checks at the same time to the owner. For all months in 2018, she has paid rent of \$850 monthly, even if sometimes the rent was paid late. She never deducted the restitution as set forth in the prior case as she did not understand that Hearing Decision.

The owner representative testified that the owner did not reimburse Ms. Spencer for the restitution order stated in the prior Hearing Decision. When the LLC purchased the property he did not know about the prior case between the parties. After receiving rent payments from the tenant of \$450 a month, he had his attorney write to the tenant stating that the rent was \$850. The tenant then sent him a copy of the Hearing Decision in the prior case. He did not notice that the tenant was only supposed to be paying rent of \$25 a month at the time he purchased the property and accepted the rent payments of \$450 a month.

The owner representative further testified that since the LLC has owned the property, he has not received regular monthly rent from the tenant. Instead he gets occasional rent payments, often with multiple payments sent in one envelope.

At the Hearing on December 10, 2018, Batiste testified that he received no rent payments from the tenant between September 2017 and October of 2018. He also testified that he received a letter from her in May 2018 stating that she was deducting

² Exhibit 37. All Exhibits referred to in this Hearing Decision were admitted into evidence without objection except Exhibits 1, 2, 4, 15, 18, 19, 22-24, 26, and 28-30. If an Exhibit is mentioned herein and there was an objection, the objection is referenced in the footnote.

³ Exhibit 37, page 21

\$300 from her rent because of repairs she had done to her door.⁴ According to his original records, he did not receive a rent payment from her for the month of May. He further testified that he keeps all records of all rents received on *Quickbooks*, as he did for this tenant. He also owns other property, and the same is done for the other properties as well.

Because of the dispute between the tenant and the owner about the rent payments made and received, the parties were asked to produce further evidence regarding rent payments to the Hearing on January 10, 2019.

At the Hearing on January 10, 2019, the tenant produced a group of money orders made payable to Ronald Batiste for rent payments.⁵ She additionally produced *Wells Fargo* bank statements showing additional payments. The tenant's *Wells Fargo* bank statements generally line up with the other proof of payments she provided. Occasionally, she testified she would be charged for a money order, so a withdrawal from *Wells Fargo* for \$455, would line up with a \$450 payment to the owner for rent.

With respect to the rent from middle of October 2018- middle of November of 2018, the tenant testified that the *Wells Fargo* statement did not show any withdrawals for money orders in that month. She testified that she most likely paid for the money order in cash in that month but she did pay rent in that month.⁶ On cross-examination, the tenant testified that she mailed cash to the owner for rent in the month of November of 2018. Batiste denied receiving any cash payment from the tenant.

At the Hearing on January 10, 2019, Batiste produced a *Quickbooks* report for payments by Ms. Spencer.⁷ This document represents his understanding of all checks and money orders received by Ms. Spencer for rent since the owner took possession. The date column represents the date the checks were received, while the memo column states that check date of the checks received.

At the Hearing on January 11, 2019, Batiste produced a new *Quickbooks* report for payments by Ms. Spencer.⁸ He testified that upon review of the money orders produced by Spencer at the previously Hearing, he discovered that four of the checks, that he previously denied receiving, were actually received by his office on April 27, 2018. These included a money order dated September 1, 2017, a money order dated December 12, 2017, a money order dated January 4, 2018, and a money order dated February 2, 2018. He further testified that Ms. Spencer normally sends her checks in a bunch, often

⁴ While the letter was undated, the attached receipt is dated May 15, 2018.

⁵ Exhibit 6. The tenant testified that this was not the full set of copies of money order receipts showing rent payments, but that the other receipts had been lost in the documents she submitted to the RAP in October of 2018.

⁶ The tenant was informed at the Hearing to request proof of the money order purchased from Wells Fargo and bring it to the following Hearing.

⁷ Exhibit 15. The tenant objected to the admission of this document on the grounds that not all her money orders are shown on the Exhibit. The objection was overruled.

⁸ Exhibit 23. The tenant objected to the admission of this document on the grounds that the owner was not telling the truth about all the rent payments she had made. The objection was overruled.

holding checks for many months, as was shown by the receipt of these 4 checks in April of 2018.⁹ He does not believe that there are other checks from Ms. Spencer.

The tenant testified that until January of 2018, she mailed her checks monthly. Then, because of conditions she began withholding rent, and then mailed a group of money orders to the owner all at once in October of 2018.¹⁰ She mailed all money orders to Ronald Batiste. She informed Batiste that she was withholding rent by sending him letters telling him about the problems in her unit.¹¹

The owner representative testified that during the period of time he received no rent from the tenant from September of 2017 through August of 2018, he did not serve the tenant with any 3 Day Notices nor did he file an *Unlawful Detainer* action.

Batiste testified that he mailed a rent increase notice to Ms. Spencer, stating that the rent would return to the prior rent of \$850 a month, on September 7, 2017. This letter states in pertinent part:

“Please be informed that your rent is increased to \$850.00 per month as of October 1, 2017. Please make checks and cashier’s checks payable to our company: 1054 63rd Street, LLC.”¹²

Batiste testified this letter was not sent with a RAP Notice. It was sent to the tenant in response to the prior Hearing Decision and after he believed that all work had been done in response to the prior decision. This was a restoration of the prior rent.

On cross-examination the owner showed the tenant a copy of the personal money order dated August 4, 2018, for \$850, made payable to Ronald Batiste.¹³ On the back of the check, was the writing “not for the purpose intended” and was signed by Ms. Spencer. Spencer testified the check was redeposited into her account in August to cover expenses she had to clean her walls because of the ongoing condition of mold.¹⁴ She further testified that this was the only time she ever did this.

Batiste testified that after receipt of the tenant’s group of money orders he went to Wells Fargo to determine whether all the checks had been negotiated. That is how he was informed that the August 2018 check had been redeposited into Ms. Spencer’s account. According to Wells Fargo, none of the other checks were redeposited into her account,

⁹ A review of the two spreadsheets shows that there are 6 new entries on Exhibit 23 as compared to Exhibit 15, not four as stated by Batiste.

¹⁰ The tenant’s testimony was very inconsistent at first. She testified she mailed each check monthly; then she testified she mailed all the checks together in one large envelope. Then she testified that she withheld rent for conditions, then she testified she never withheld rent. (Tape recording January 10, 2019, through 16.) Ultimately, she testified as listed above that certain checks were mailed monthly and other checks were mailed in one envelope.

¹¹ The tenant claimed that these letters had previously been submitted to the RAP but were lost by the RAP.

¹² Exhibit 2. The tenant objected to the admission of this document claiming she never received this letter. Her objection was overruled.

¹³ Exhibit 22. The tenant objected to the admission of this document claiming that she wanted to go “check” that it was accurate after testifying that the signature on the back was hers. Her objection was overruled.

¹⁴ Note that this testimony was in direct contradiction to the testimony she had previously given that all money orders made payable to Batiste were sent to him for rent.

however, they informed him that three of the money orders made out to him had never been negotiated (Exhibit 6, numbers 5, 11, 12).

At the Hearing on February 13, 2019, Batiste testified that only one of these three checks were unaccounted for, and that was the check dated October 4, 2017. The parties stipulated that they would work together to determine if this money order had been negotiated, and that if it was not, the tenant would agree to stop payment on the check and have it redeposited into the owner's account.¹⁵

On cross-examination the tenant further testified that she sent the October 4, 2017, June 22, 2018 and the July 2, 2018 money orders to the owner for payment of rent.¹⁶

The *Amended Notice of Supplemental Hearing* setting the Hearing for January 30, 2019 (Which was continued to February 11, 2019), set forth certain documents the parties were asked to produce. In addition to a variety of other documents, the tenant was asked to produce evidence of all rent payments made since November of 2018.

The parties agreed that in January of 2019, the owner received two personal money orders made payable to Ronald Batiste of \$400 each.¹⁷ The tenant testified that these were rent payments for December 2018 and January of 2019 rent. The tenant testified that she only paid rent of \$400 in each of those months because she hired someone to clean the walls in her unit for \$450. She did not produce any receipt for these payments, although she testified that she mailed the receipt to the owner.

As of the date of the Hearing on February 13, 2019, the tenant had not yet paid February 2019 rent.¹⁸

The following documentary evidence was produced regarding alleged rent payments made and received between April 1, 2018 and the present¹⁹:

Rent Date	Amount	Evidence	Notes
Possible April rent payment	\$450	Exh. 13	Shown as a bank originated debit of \$451.16 on May 3, 2018; tenant testified that this was a money order paid to the owner for rent for \$450 ²⁰ . On Exhibit 23,

¹⁵ Recording February 13, 2019, Track 7, 39:25-41:04.

¹⁶ Exhibits 6, check numbers 5, 11 and 12.

¹⁷ Exhibit 40. The copies provided to the Hearing officer were duplicate copies of the same check. However, the owner testified that he did receive two separate checks in January of 2019.

¹⁸ She testified she is continuing to withhold rent because the owner has not completed the repairs.

¹⁹ See discussion below regarding the analysis being limited to 90 days prior to the tenant filing her petition.

²⁰ On the owner's *Quickbooks* account document (Exhibit 23) it acknowledges receipt of a May 1, 2018, check for \$450.

			owner acknowledges receipt of a \$450 May 1, 2018, money order.
May 17, 2018	\$100	Exh. 6, check 10 and Exh. 5, pp 1-2	Tenant claims that she also paid \$300 to repair her doors. Her receipt was provided to the owner. The owner acknowledged receipt of this payment.
June 22, 2018	\$850	Exh. 6, check 11	
July 2, 2018	\$850	Exh. 6, check 12	
August 4, 2018	\$850	Exh. 6, check 13, Exh. 22	While this money order was originally made out to the owner, the tenant testified that it was redeposited into her account because she had expenses related to repairs in her home that month.
September 7, 2018	\$850	Exh. 6, check 14, Exh. 1, page 2	Owner acknowledges receipt of two different checks of \$850 each dated 9/7/18. See entry below.
September 7, 2018	\$850	Exh. 1, p. 2	
October 3, 2018	\$850	Exh. 6, check 15, Exh. 1, p. 2	Owner acknowledges receipt
November 2018	No evidence of rent payment		Tenant claimed she mailed cash
December 2018	Tenant paid \$400 in January of 2019 for rent in December	Exhibit 40	Owner acknowledges receipt in January
January 2019	\$400	Exhibit 40	Owner acknowledges receipt

February 2019	No payment made by last date of Hearing		
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Decreased Housing Services

Mold throughout the unit: The tenant testified that she has had an ongoing problem with mold in her unit for years. She complained to Mr. Wilson when he was the owner, and with the new owner on multiple occasions beginning in 2016 and into 2017. She told Mr. Batiste, Mr. McFadden and Roger Wilton (all who work for *Eagle Environmental*) all about the conditions. There is mold in the kitchen, living room, dining room, and the bedroom and bedroom closet. She produced evidence from the City of Oakland showing that on June 21, 2017, she complained of “black mold growing throughout the house on walls due to leaking from the upper unit.”²¹ An inspection was done on the unit in August of 2017 and a *Notice of Violation* was issued on September 14, 2017.²² (See below for discussion of the *NOV*.)

The tenant testified at some point in May of 2018, work was done on her unit to deal with the mold. The work involved spraying the walls and taking mold samples. They did a “wonderful job.” However, the mold grew back quickly and is in multiple places throughout her unit.

The tenant produced letters she wrote to the owner in May of 2018 about these conditions.²³ In one letter, she wrote that:

“I hope all is well I am writing to you about the results of the samples that were taken from my bedroom on Wed. 9th by a gentleman that Mr. Wilton brought to my home. I asked Mr. Watson how long will the results will take he said about a week or so. Mr. Watson called me on May 16, 18. I asked about the results it was concluded that samples taken from my bedroom was mold. Mr. Wilton wanted to set up a time to send people to come over to wash the walls down but I have a problem with this. I have paid people to come by and clean the walls, windows, ceil(ings) and I have cleaned them myself as well but the mold keeps coming back. I know this is a serious matter because I have developed and have been diagnosed with asthma and my grandson has caught pneumonia being and sleeping in my bedroom due to the mold. In order for this problem to go away this has to be tackled at hand and get rid of the mold. I don’t think you can slap a bandaid.....

P.s. My dressers are full of mold so now I have to get rid of them and I don’t know what I’d going to do. I am on a fixed income. My clothes in the closet I had to discard half of my clothes full of mold as well.”

²¹ Exhibit 38, p. 2

²² Exhibit 38, pp 5-9

²³ See Exhibit 18. The owner objected that some of the contents of these letters are not true. This objection was overruled.

The tenant also produced prior letters she wrote to the owner. She produced a letter written on November 4, 2016, which states that: "The repairs that was done on 10/12/16 was not completed. I had my grandson at in my arms and I was distracted. I didn't notice on the repair list that you have not completed the mold in my bedroom on the walls and window ceils (sp) and also in the carpet. Please take care of this problem as possible."²⁴

An additional letter, dated February 2, 2018, was produced stating:

"I'm writing to you and wondering what is going with the repairs that you are supposed to complete in my bedroom. The walls, windows ceils (sp), closet and carpet it's really affecting my health. I had a Dr. appt. today and my Dr. has told me that I have asthma and now I am on inhalers. This is very scary situation for me and yet you still refuse to come to my apartment and complete the repairs and take care of this problem. Please take care of this problem as quickly as possible."²⁵

The tenant also produced a letter she wrote to the owner dated April 15, 2018. The letter states:

"I am righting (sp) to you in reference to the mold and mildew in my bedroom, living room & kitchen area. Its making me sick and I would appreciate it (if you) would take care of this problem as soon as possible. I don't understand why can't you take care of this problem-this is ridiculous."²⁶

The tenant testified that she believes that the mold comes from moisture in the walls, in part related to a fire that occurred in the upstairs unit before she moved in. There have also been a series of leaks from the upstairs unit during her tenancy.

Because of the continued problem in her unit the tenant contacted the City of Oakland again. A new *Notice of Violation* was issued on December 20, 2018.²⁷ (See Benson Wan's testimony below).

The tenant further testified that episodically there would be bubble pockets coming from the light fixtures on her ceiling. This happens when it rains. She informed the owner about this by contacting Roger McFadden. Water would leak out of the bubble, and then it would dry again. She believes that water entry is coming from the upstairs unit.

Earl Watson testified that he works for *Eagle Environmental*. The first time he visited Ms. Spencer's unit was in May of 2018, in response to a complaint about mold. He tested the unit and discovered that there was mold in various places. When asked the cause of the mold, Watson testified that mold can come from humidity, water, and condensation. He does not know of any leak that is causing it. When pointed to the

²⁴ Exhibit 19, page 1. The owner objected to the admission of these documents claiming he did not receive these letters. The objection was overruled.

²⁵ Exhibit 32

²⁶ Exhibit 33

²⁷ Exhibit 17

*Notice of Violation*²⁸ he denied that there was any leak when he went to the unit in May of 2018. According to Watson, the mold in her unit is not hazardous and the findings relate to minor instances of mold.²⁹

The mold samples, from May of 2018, were done in 5 locations. The flooring came out positive for chaetomium and cladosporium and light for penicillium/aspergillus; the utility room showed traces of chaetomium and heavy scopulariopsis; the closet showed heavy cladosporium; the bedroom wall showed heavy cladosporium and the baseboard in the bedroom showed heavy cladosporium and trace sings of penicillium/aspergillus.³⁰

When asked what the cause of the mold in her unit was, Watson testified:

“From my knowledge, and from what I saw, its water. The backdoor is completely rusted, the baseboards are destroyed because of heavy water.”

The Hearing Officer than asked: “So where is that water coming from?” Watson replied:

“I couldn’t tell you.” (Tape Recording, January 11, 2019 from 4:25:24-4:26:03).

Watson acknowledged that the backdoor in her unit was completely rusted when he was present in May of 2018, showing obvious signs of moisture in the unit.

To remediate the mold in May/June of 2018, he used concrobium, which is a liquid that is sprayed directly onto the area. He sprayed the carpet, the walls, the baseboards, the closet, and throughout the unit, wherever he was pointed to mold. On the day that the work was done to remediate, he met with City Inspector Benson Wan. At the time he left the unit, the walls were clean as was the rest of the unit.³¹ He did not expect the mold to come back, because this treatment cures mold.

Watson further testified that in June of 2018, after he remediated, he believed all mold was destroyed. He went to all the areas on the analytical report showing mold. He does not believe it is possible for mold to grow back in the same area where he applied it. While it could grow in other areas, there would have to be high humidity and high moisture.

Between June of 2018 and December 13, 2018, he did not attempt to go to the unit to see if the mold had returned and he did not know of any complaints of mold. He was told to return to the unit in December, in response to a new complaint of mold. He tried

²⁸ Exhibit 20, which is the same as Exhibit 38, pp 5-10.

²⁹ Watson testified that the findings from the report showing “heavy” signs of mold, relate to “heavy” mold that appeared in small areas that he tested.

³⁰ Exhibit 36. The owner had not submitted this document but had it present at the Hearing. He was asked to provide a copy, which he did.

³¹ Watson had photographs showing the house before the work was done but no copies were provided and they had not been submitted to the RAP prior to the Hearing. The owner was asked to produce the documents for the following Hearing (See *Amended Notice of Supplemental Hearing* setting the Hearing for January 30, 2019, which was then continued to February 11, 2019). The documents were not produced.

to get in on December 13, 2018, after a *24 hour Notice to Enter* had been placed, but no one came to the door, despite the fact that he heard people in the home.

McFadden also testified that since the remediation was done in May of 2018, they did not hear from the tenant complaining of mold again.

On cross-examination Watson admitted that the moisture in the tenant's unit, which causes the mold, is coming from somewhere. He noticed that her windows are moist in both the summer and the winter, even when the sun is shining. He acknowledged that he could do a humidity test to determine where the moisture was coming from, but that test has not been done. He could also test to see if there were problems with the windows.

Watson was asked why these tests were not done and he said that the mold problem in the tenant's unit was not "serious."

At the Hearing on January 11, 2019, the tenant agreed to provide access to the owner on Thursday January 17, 2019.

At the Hearing on February 13, 2019, Earl Watson testified that he went to the unit on January 18, 2019, to respond to a work order based on the most recent *Notice of Violation*. At this visit he found "an unbelievable amount of mold"³² in the unit, including in areas that he had treated the previous spring. He believes it is mildew and not mold. To him, the difference between mold and mildew is that mold can be dangerous, but mildew is not. He did testing of these areas.³³

He remediated the mold in the bedroom by removing all mold and mildew, by spraying a microbial liquid and scrubbed it with towels and hot water. He used a heat gun to make sure it was dry. He did not remove the sheet rock or dry wall. He did not do any treatment in the closet in this visit, although he did earlier in 2018 when he was there the last time. He did not see the mold in the closet in January of 2019, because it was not shown to him.

On this same day in January of 2019, Watson saw other *Eagle* workers on the premises fixing a leak from the upstairs unit entering the tenant's unit. The leak was coming from the upstairs bathroom, which is what he believes caused the water damage in the kitchen ceiling and the damage to the tenant's bathroom ceiling. He understood it was a minor leak but did not see it himself.

Watson further testified that he went into the living room and dining area and treated the area starting from the baseboards, the window sills, the glass and the walls. He moved the furniture and cleaned around it. Behind the couch he saw dirt, rather than mold or mildew. Watson was shown the photographs taken by Benson Wan on February 8, 2019, showing staining on the walls behind the couch area. (Exhibit 38, page 19). Watson denied that these marks were present when he was there in January of 2019.

³² Track 7, T18-0302, February 13, 2019, Hearing Audio at 17-17:10.

³³ There was no testimony as to whether or not the test results had been received.

Watson denied that the leak from the upstairs bathroom could have been the cause of the mold.

Watson then returned to the unit on January 30, 2019, to paint the bedroom.

Watson further testified as follows:

“The mold is coming back absolutely too fast to be just a natural occurrence. In all of my years in doing remediation, this is one that has me scratching my head because I can’t understand why it comes back so fast. One of the reports it came back within a month, and I’ve never seen that before. And then on another report it was a few weeks...so...when I went upstairs to check the other unit, there was nothing, no mold, no problem with it.” (Tape recording track 7 at 15:20 to 16:00)

When asked if he knows why this is occurring, he responded:

“It is very hard to say, and again, I would have to have tests taken on the air and the humidity and also we do a test where we suck the air in and count how many particles of mold in the air.... That’s about it, that’s all we could do right now.” (Track 7, 16:00 to 16:40.)

Watson then testified that these tests have not been performed because it’s not needed.

On cross-examination Watson testified that Ms. Spencer did tell him there were problems in the closet in her bedroom when he was there on January 30, 2019, but that he was just leaving so he did not check into it. He further testified that the closet is a part of the bedroom. He also testified that when he went to the unit in 2018, he only remediated the mold in the bedroom and the room off the kitchen, and did no work in the living room or dining room. The visits in January of 2019 was the first he did any work in the living room and dining room.

Rodents: The tenant testified that she has had an ongoing problem with rodents in her unit. She complained to the owner’s employees in 2016, when they visited her property to do repairs in the bathroom. Additionally, she produced a letter dated October 2017 written to the owner which states: “I have spent my money on traps it seems every day catching up to 3 mice at a time in a day. Please take care of this matter quickly.”³⁴ The tenant further testified that she continued to complain about mice to the owner’s employees on multiple occasions throughout the time that the work was being done on her unit. This matter is made worse by the fact that the tenants upstairs leave trash in the yard and against the wall of her unit on a regular basis (about which she has complained multiple times.)

The tenant further testified that she continues to have problems with rodents and in December of 2018, saw four rodents in her unit in one week. *Vector Control* came to her unit in November of 2017 and found two different kinds of rodents but she does not

³⁴ Exhibit 19, page 2. The owner objected to the admission of this document on the grounds that he did not receive it. His objection was overruled.

have the report.³⁵ The rodent problem is exacerbated by the fact that the owner rarely, if ever, cleans the yard.

The owner denies knowing anything about a rodent problem in this unit at any point other than one of his workers (McFadden) noticing droppings in the backyard area when the property was first purchased in 2016. After seeing the droppings the area was cleaned and left "spick and span." He has never known of any other problems with rodents. They have never hired pest control and never received a report from *Vector Control*.

Earl Watson testified that when he did the mold remediation work in May and June of 2018, he saw no signs of rodents in the unit. He has been in the business of home repair for over 20 years, and would have notified the owner of rodents if he saw any signs.

The tenant further testified that in January of 2019, the owner hired *Terminix* to come to the property to treat for rodents. Many rodents were found on the premises.

The owner produced a receipt from *Terminix* showing that on January 23, 2019, an inspection was done of the premises. The inspection found that there was mice activity in the apartment, kitchen and bedroom and that there were mice hole openings on the lower left side of the refrigerator; that the screens were damaged; that there were large hole openings for rodents to enter; and that there were rat droppings in the water heater room. Service was recommended to "provide and monitor 4 exterior bait stations, to do work to keep the rodents out of the unit and to provide rat glue boards in the kitchen and water heater shed."³⁶ Batiste testified that *Terminix* will come back every two weeks to check on the status of the traps.

Broken Doors: The tenant testified that the back door to her unit was broken and did not shut properly and was completely rusted. She notified the owner about this long before filing her petition. This was an ongoing problem for more than 6 months. This problem was listed on the *Notice of Violation* from September of 2017, which found that the "door lock not working properly."³⁷ She sent a letter to the owner in May of 2018, informing them that since no action was taken, she hired someone to repair the back door and front door herself. It cost her \$300, which she deducted from her rent.³⁸ This matter was resolved when the tenant had it repaired herself in May of 2018.

The owner acknowledged receipt of the tenant's rent deduction from May of 2018. He credited her payment of \$300 on the *Quickbooks* account for her rent payments.

Earl Watson testified that when he saw the property in May of 2018, the back-door hinges were completely rusted. Also, on the visit in May of 2018, McFadden testified

³⁵ The tenant was given an opportunity to produce the *Vector Control* report but did not.

³⁶ Exhibit 43, p. 4

³⁷ Exhibit 38, p. 7

³⁸ See Exhibit 5, pages 1-2

that the back door was repaired and readjusted so that it shut properly and installed baseboards in the bedroom and utility room.

The tenant did not testify with specificity what was wrong with the front door; just that she had it repaired.

Water Flow in Kitchen: The tenant testified that since the prior Hearing Decision, she continues to have a problem with the water flow in her kitchen. While there was a repair to this problem at some point in 2016, it immediately reverted to a low flow trickle as was present at the time of the prior Decision. This problem was listed on the newest *Notice of Violation* from December of 2018, but not on the *NOV* from September of 2017.³⁹

The owner testified that in 2016, after receipt of the Hearing Decision in the prior case, a series of repairs were done on the unit, including repair of the water flow in the kitchen.

The owner representative produced a document entitled "Repairs Completed" dated August 29, 2016. The document is signed by Ms. Spencer, on a line that says I, Patsy Spencer, tenant in the subject unit, verify that the subject repairs was completed." The document lists the following items:

1. a new junction box and gfi plug was installed in the bathroom;
2. that the bathroom outlet was working;
3. that a new refrigerator was installed;
4. the stove is working properly;
5. that the kitchen outlets are working;
6. that with respect to water damage in the kitchen ceiling that "sheetrock is structurally sound" and that the company was scheduling an appointment to have the walls painted;
7. that the flood damage in the bathroom was repaired;
8. With respect to the low pressure for the hot water, the words "to be determined" are listed next to the words, "hot water is available in unit."⁴⁰
9. that the bathroom floor was demolished and they installed new underlayment, subfloor, vanity and sink;
10. that a new light fixture was installed in the bedroom, hallway and porch;
11. that the hole in the closet was patched using sheetrock and compound;
12. that the settlement on the bedroom floor was a result of "natural settlement"; and,
13. the toilet in the bathroom was flushing properly.⁴¹

³⁹ See Exhibit 37

⁴⁰ Exhibit 3, page 1.

⁴¹ Note that on the document the word "no" appears in handwriting next to items 5, 6 and 8. This document was provided into evidence by the owner. The owner's copy of the document, which was reviewed at the Hearing, does not have these words written next to it. The tenant testified that she did not write these words. These words were ignored and are not considered part of the evidence.

Roger McFadden testified that he is the employee of *Eagle Environmental* who presided over the repairs in August of 2016, and he created Exhibit 3.

Ms. Spencer testified that while she signed this document at the time it was presented to her, some of these repairs were not made. She signed the document because she had a crying grandson who had pneumonia with her at the time; there were toxins in the air from mold; and she did not feel well at the time. She testified that items 1-5, 7, 9 and 10 were complete at the time she signed the document (except for the handle on the stove); but that the damage to the kitchen ceiling was not repaired and there was still an ongoing water leak through the kitchen light; that the low pressure in the kitchen sink was ongoing and that the holes in her bedroom floor and closet were not repaired.

McFadden further testified that after this event he hired a plumber to come back to the unit to fix the lack of hot water. Work was done on the supply line on September 21, 2016, and the water was running fine. On October 16, 2016, he prepared a second "repairs completed" document and with respect to the low water pressure he wrote: "Installed bathtub valve and water line from garage to main house."⁴² At the time, the water was flowing properly.

He did not hear from the tenant again to complain about low water pressure and was not present at the property between 2016 and 2018. Neither were any other employees from *Eagle Environmental*.

On cross-examination, McFadden denied hearing from the plumber that Ms. Spencer called to complain about the water pressure after this repair was made.

The tenant produced a letter dated November 12, 2016, written to the owner which states:

"...I'm also writing to let you know about some things in my unit that have not been properly repaired. The hot water is still not coming out properly or not coming out equal to the flow of the cold water; there is still little pressure coming out of the kitchen..."⁴³

Batiste admits receiving this document.

Back and side yard: The tenant testified that the grass in the backyard and side yard is not cut regularly, and grows out of control. She believes this is related to the rodent problem.

Batiste was unable to testify when the grass was last cut on the property.

Earl Watson further testified that the last time the grass was cut at the unit was "before the rains started" but he was unable to state when that was. The last time he tried to cut the grass, he couldn't do it because there were cars blocking access to the yards.

⁴² Exhibit 28

⁴³ Exhibit 34

Non-operable camper on driveway: This was an issue in the prior case. The tenant testified that this was removed soon after the prior Hearing Decision was issued.

Electrical outlet burnt and wiring faulty: This was an issue in the prior case. The tenant testified that these repairs were made when the new owner did repairs in 2016.

Cracked bathroom sink: This was an issue in the prior case. The tenant testified that this matter was repaired soon after the prior Hearing Decision was issued.

Oven: This was an issue in the prior case. The tenant testified that the oven was repaired soon after the new owner took over the property.

Toilet tank running: This was an issue in the prior case. The tenant testified that this matter was resolved in 2016.

Electrical Outlet: This was an issue in the prior case. The tenant testified that this was repaired in 2016.

Other claims: At the Hearing the tenant attempted to raise other issues that were not on her original list of decreased services or the *Notice of Violation* she filed with her petition (or that arose from the prior case). On November 20, 2018, after the Hearing began, the tenant filed a document entitled "Continuing Repairs." The tenant also tried to raise claims regarding the lack of smoke detectors; about the carpet; that her windows don't lock; about a theft on her property; and to the condition of the yard as it relates to the upstairs tenants. Additionally, at the Hearing on January 11, 2019, the tenant sought to raise issues relating to only having one water meter on the premises. Only those claims that were already under consideration from the lists provided with her initial petition were considered at the Hearing. The tenant also sought to raise claims about her personal property being ruined by mold, and that both she and her grandson had been made sick from the mold. She was directed to only testify about those problems listed on her original *petition* and the documents filed at the time and not to raise claims about personal property or her personal health. (See below.) Documents that she sought to have entered into the record relating to these other issues were not admitted.

Photographs: the tenant produced photographs of her unit that were admitted into evidence as Exhibits 4 and Exhibits 21. The tenant testified that the photographs in Exhibit 4 were taken of her apartment over a period of time and were printed in December of 2018. She does not remember exactly when they were taken but believes it was in December of 2018. The photographs in Exhibit 21, were provided to the RAP by the tenant when she filed her petition in June of 2018. Some of the photographs in Exhibit 21 were duplicates of photos taken in Exhibit 4.⁴⁴

⁴⁴ Since there are duplicate photographs in both packets, and Exhibit 21 was provided when the tenant filed her petition in June of 2018, it is obvious that at least the duplicate photographs were not taken in December of 2018 but were taken at least in June of 2018, if not earlier.

From Exhibit 4 the photographs show⁴⁵:

Photographs 1-3: Broken window frame and wall in her living room

Photograph 4-6: Ants in her refrigerator

Photographs 7 -13: Mice in her unit

Photograph 14, 16: Back door to her unit not working properly

Photograph 15, 17, 33: Junk in backyard

Photographs 18- 32, 34-37: mold throughout her unit, furniture and the carpet as well as rust from water damage.

The owner testified that the photographs in Exhibit 4 were older photographs taken prior to the work they did in 2018.

The tenant testified that the pictures taken in Exhibit 21 were taken in approximately May or June of 2018 (they were printed on June 5, 2018).

Exhibit 21 photographs show:

Photographs 1-8: Mold throughout unit

Photographs 9-13: Rodents in the unit

Photographs 14, 17 and 18: Exterior trash in yard

Photographs 15-16: Back door broken

On cross examination the tenant testified she has no way of knowing the exact date she took the various photographs. With respect to Exhibits 4 and 21, she testified she took the photographs in 2018.

Benson Wan: Benson Wan testified that he is a combination inspector with the City of Oakland's Code Enforcement Division. He produced his records from his visits to the property, which were entered into evidence as Exhibit 38. He first visited the unit on August 10, 2017, in response to a June 21, 2017, complaint. The complaint he received was "lower unit- black mold growing throughout the house on walls due to leaking from the upper unit."⁴⁶ At the time he first visited he saw mildew in the front room on the right.⁴⁷ There was evidence of water damage on the ceiling in the bedroom and kitchen

⁴⁵ The owner objected to the admission of these photographs because the date taken was not shown on the documents. The owner's objection was overruled. The issue of the date goes to the weight of the evidence, not the admissibility.

⁴⁶ Exhibit 38, page 2

⁴⁷ Wan testified that according to City of Oakland policy he is not allowed to refer to what he sees in a unit as mold because testing was not done to confirm the presence of mold. He has to relate any finding on an NOV to a code violation, but there is no code violation for mold.

from old water spots and bubbles that he assumes were left from prior leaks. He did not see any evidence of a current leak.

He issued a *Notice of Violation* dated September 24, 2017. The *Notice of Violation* stated:

“Windows in disrepair. Paint/Repair. Obtain permits, inspections and approvals.”

“Evidence of water damage from ceiling causing bubble ceiling. Repair damaged ceiling & wall, patch and paint.”

“Door lock not working properly. Repair or replace.”

The *Notice of Violation* was issued to the owner 1054 63rd Street, LLC, at the address 1048 62nd Street in Oakland.⁴⁸

Wan further testified that even though he did see mildew stains on the front window and in the bedroom, he did not identify that specifically on the *NOV* (just that the windows were in disrepair.) The broken door lock referred to the back door. The tenant showed him the problem and he agreed that there was something wrong with the door.

With respect to this *NOV*, Wan did not know if the *NOV* had been abated. He was told by the tenant that she repaired the back door herself. His records don't show that it was ever abated. Wan did not perform the re-inspection set on the *NOV* for November 2, 2017, but cannot remember why it did not happen.

Wan further testified that the owner's address is gathered from a database he has access to from the County Assessor's office. He further testified that he spoke to the old owner, Philip Wilson, about this property several times and that on November 8, 2017, he met with Wilson who told him that he would start repair work on December 4, 2017. Wilson continued to represent himself as the owner to Mr. Wan through this period and did not tell him there was a new owner. Wilson further informed him that he was having trouble accessing the unit by getting agreement from the tenant.

Wan further stated that after Wilson informed him that he couldn't get into the unit, he called the tenant who informed him that Wilson was not giving her adequate notice. During this period Wan was speaking to both Wilson and the tenant episodically. Wilson told him work was being done on the unit and the tenant continued to complain that the work was not completed.

In November of 2018, he received a new complaint from the tenant about continued problems in her unit. She told him that most of the items had not been completed from the prior *NOV*.

⁴⁸ Official Notice is taken that this address is the address of the prior owner Philip Wilson, who remains a minority owner of the new LLC.

He returned to the unit on November 28, 2018 and December 4, 2018.⁴⁹ There was mildew on the walls in the bedroom and living room. From what he saw at this visit, it did not appear that work had been done to eradicate the mold/mildew problem after the prior *NOV*. He did see that the owner had painted the ceiling after the prior *NOV* but the continued signs of water damage were evident to him on the December 4, 2018, visit.

He issued a new *NOV*, also to the same address as the prior *NOV*, dated December 26, 2018, which found that there was low pressure in the kitchen faucet; that there was mold/mildew on the walls below the window in the bedroom and living area that "may be caused by water damage"; and that there was evidence of water damage from the ceiling causing a bubble ceiling in the kitchen and bedroom.^{50, 51} There was staining from the mold and mildew around the windows and there was a lot of moisture on the windows. Wan later testified that the mildew was just on the window sills.

Wan took photographs of the problems in the unit on December 4, 2018. The photographs show moisture on the windows, mildew staining around the windows, mildew stains on the walls, signs of water damage on the kitchen and bedroom ceiling, and low water pressure.⁵² He could not tell if there were new leaks.

After the new *NOV* was issued, he heard from Ronald Batiste, who said he was the owner representative.

Wan further testified that the water damage could be either from the second level unit, from the roof, or from moisture in the unit from the windows.

Wan testified that he returned to the unit in February of 2019 and that the owner had remediated many of the problems he had seen in December. There were still signs of mildew behind the sofa in the living room. Otherwise, most of the *NOV* listed items had been abated. The kitchen faucet was working properly, the ceilings had been repaired, and much of the mold/mildew had been abated. However, he thinks the owner had just painted over the mold when they should have taken off the original mold and depending on the severity, replaced the dry wall with new dry wall and then patch and paint.

On cross-examination by Ms. Spencer, Wan testified that he did see mold and mildew in the bedroom closet on the re-inspection date of February 8, 2019. Wan produced photographs of the February 8, 2019, re-inspection which show signs of staining in the

⁴⁹ He went twice because Ms. Spencer called back after the first visit to say that she had forgotten to show him the low water pressure.

⁵⁰ Exhibit 38, p. 12

⁵¹ According to the records provided by Wan, this *NOV* was also sent to the owner at the old address for Philip Wilson and was returned to the City. (See Exhibit 38, p. 3). However, it appears that somehow Batiste and Wan connected about this *NOV* based on both the testimony and the records.

⁵² Wan's testimony was confusing because at one point he testified that in December of 2018 the kitchen ceiling had been repaired. His recollection was refreshed by the *NOV* dated December 26, 2018, which states that there was a problem with the kitchen ceiling in December of 2018. He then remembered that the repair to the kitchen ceiling was done later.

closet.⁵³ Wan told the owner's maintenance worker (Mr. Watson) that the owner needs to fix the closet mold problem as well as the mildew behind the sofa.

Wan further testified that the old *Notice of Violation* from 2015 for this unit was never abated.⁵⁴

On cross-examination by Batiste, Wan testified that on one occasion Batiste had complained to him about getting access to Ms. Spencer's unit. Wan also testified that Batiste is more responsive to the problems in the unit than the prior owner, Mr. Wilson was and that he does "pretty good work". Additionally, on one occasion Wan had trouble getting into the unit to inspect. Wan did not see any problem with Ms. Spencer's housekeeping on his visits to the unit. He was also shown Exhibit 42, a photograph from April of 2018 of Ms. Spencer's closet. Wan testified he did not know what causes the staining or mold present in the closet.

He also testified that he received an email from the owner in February of 2019, stating that the owner had believed the work was completed. This email also included the signed letter from the tenant saying that repairs had been made in the unit in January 30, 2019.⁵⁵

Additional Owner Testimony Regarding Conditions: The owner representative testified that prior to purchasing the property in July of 2016, he had not been inside the building. Wilson, the prior owner, had told him that there were conditions in the unit that needed repairs, but did not specify what those were. Since *Eagle Environmental* is a general contractor, he did not feel that whatever the issues were could not be resolved. At the time of purchase, he did not have access to the Hearing Decision and did not receive a copy until Ms. Spencer gave him a copy some months later.

The first time an inspection was done on the building was on July 27, 2016.⁵⁶ The inspection was done by Mr. Batiste and Wilton Watson, an employee of *Eagle Environmental*. Watson acted as a scribe and took down notes of what was being shown by the tenant.⁵⁷ Batiste testified that on that day the kitchen faucet had a slow stream of water; that the bathroom outlets were not working; that the stove and refrigerator were not working properly; and that there was water damage to the kitchen ceiling drywall which was not mold. Ms. Spencer did not point out any mold at any point in the unit, nor did he see any. Watson testified that on that day he did see water damage to the kitchen ceiling where he noticed staining. He did not see any mold in the unit in 2016, nor did Ms. Spencer complain about mold in the unit that day.

⁵³ Exhibit 38, p. 19

⁵⁴ See Exhibit 38, p. 20 and Exhibit 16

⁵⁵ Exhibit 43

⁵⁶ Exhibit 27 is the Notice to Enter for that date.

⁵⁷ Exhibit 26. The tenant objected to the admission of this document as not "thorough." Her objection was overruled.

In response to the inspection, work was scheduled to be performed and in October of 2016, Roger McFadden was sent to the premises to perform certain work. The work done is described above in the section on water flow in the kitchen.

McFadden testified that in July and August of 2016, he was in charge of overseeing the work done on the tenant's unit. With respect to the kitchen ceiling, he noticed that there was a leak associated with the upstairs unit, and he sent a worker to the upstairs unit to seal the upstairs bathroom. He believed that the sheetrock was structurally sound because he pushed up on the sheetrock and there was no give. The ceiling and walls were not painted on that day. He also had the bathroom floor demolished and installed new underlayment, subfloor, vanity and sink; and did other work as listed on the Exhibit.

After the work was done in August of 2016, Batiste followed up by sending McFadden back to the unit. At this point, Batiste had already received the Hearing Decision in the prior case and there was work left over from the prior visit in August of 2016. A new "Repairs Completed" list was created, similar to the one from August of 2016, in which new work was listed with an asterisk.⁵⁸ The new work included:

"6. Water damage in kitchen ceiling: Walls repaired and kitchen painted."

"8. Low water pressure: Installed bathtub valve and water line from garage to main house."

"14. Window pane broken in bedroom: Glass repaired by A&M Glass...."

"15. Bathroom wall damage above the bathtub: Cutout sheetrock; bleached vertical framing members, replaced (2) wall headers, installed sheetrock and painted bathroom."

"16. Replaced showerhead in bathroom."

"17. Replaced kitchen light fixture."

Batiste further testified that after the work was done in 2016, the owner did not hear from Ms. Spencer about conditions for a long time. (While Ms. Spencer produced documents of letters sent to the owner, Batiste denied receiving them.⁵⁹) In May of 2018, he received a letter regarding mold in her unit. Between 2016 and May of 2018, he does not recall being told of mold in her unit. The first time he heard of a problem with the unit was when he received the *Notice of Violation* dated September 14, 2017. Batiste testified that he did not receive this notice until sometime in 2018, though he did not know the date.⁶⁰

⁵⁸ Exhibit 28. The tenant objected to the admission of this document because not everything was completed. Her objection was overruled.

⁵⁹ For example, he denied receiving Exhibit 19, pages 1-2.

⁶⁰ At this point in the Hearing, the Hearing Officer was under the mistaken belief that Exhibit 20 was from May of 2017 (based on the date at the bottom of page 2.) It became clear later in the testimony, when Mr. Wan testified, that this *Notice* was issued in September of 2017, regarding an inspection that occurred in August of 2017. See Exhibit 38, Exhibit from Benson Wan.

After learning about the second *Notice of Violation*, he had trouble gaining access to the unit.⁶¹ Ms. Spencer was either unavailable or they would post a notice and she would not be present. Batiste testified that on December 3, 2018, he posted a notice to do an inspection on December 6, 2018.⁶² When he arrived to post the notice, Ms. Spencer was present and they spoke. She informed him that she would not allow him access but would allow him in on December 13, 2018. (Ms. Spencer denies this conversation occurred.) He then posted a notice to enter for December 13, 2018.⁶³ When the crew went on that date, she was not present to allow them access. As a matter of principle they don't enter the property if the tenant is not present.

On cross-examination Batiste acknowledged that he knew that there was mold testing done in the unit and that the mold test was positive. He further testified that he would be happy to repair the mold if he had access to the property.

On cross-examination Batiste denied ever having receiving notice of issues with rodents in the unit. He denies having received the letter in October of 2017 (Exhibit 19, page 2).

On cross-examination Batiste testified that his employees cleaned her unit of mold in May of 2018. Upon testing they found *cladosporium*, which is not toxic.⁶⁴ Batiste also denied ever getting letters from the tenant regarding mold. But he testified he has repeatedly tried to gain access to the unit to make repairs, and the tenant does not allow him in.

The owner denied receiving multiple letters from the tenant, including (but not limited to) Exhibit 19, page 3; and Exhibit 32.

On cross examination the owner did acknowledge receipt of Exhibit 33, which is a letter in which the tenant complained of mold in April of 2018. He testified that in response to that letter they did testing and remediation in the unit to get rid of the mold.

Further on cross-examination, the owner denied knowing anything about the problem with rodents in her unit.

On cross-examination by the tenant, the owner denied knowing of ongoing problems with mold since they remediated the property in May and June of 2018. He continued to offer the opportunity to come to the unit to repair any problems, if the tenant allowed him access. At the end of the Hearing on January 11, 2019, the parties agreed that an inspection would be done the following week.

⁶¹ It was evident that Mr. Batiste learned about the second *NOV* before the date it was issued, because Wan and Batiste testified that they spoke, and Batiste testified that he learned about the Hearing from Mr. Wan.

⁶² Exhibit 30, page 1. The tenant objected to this document on the grounds that she never received the document.

⁶³ Exhibit 30 page 2. The tenant objected to this document on the grounds that the

⁶⁴ The owner did not produce a copy of the *Micro Analytical Laboratories Report* from the May 16, 2018 testing of the tenant's unit but had it at the Hearing. The Hearing Officer asked for a copy and the owner produced it.

The owner produced a document dated January 30, 2019, signed by Ms. Spencer that notes that the repairs were made to the kitchen sink, mold and mildew on wall, and that the water damage to the ceiling in the kitchen and bedroom had been repaired.⁶⁵

Additional Tenant testimony regarding conditions: At the last day of Hearing, the tenant testified that employees of *Eagle* came to her unit in January or February of 2019 to do repairs. They sent someone to the upstairs unit to repair the bathroom, where a leak was found. The water in her kitchen faucet was fixed. Some work was done on the mold problem, but it has not been completed. There is still an ongoing problem with mold in her bedroom closet, and on the walls in the living room and dining room.

The tenant testified on cross-examination that in December of 2018 she spoke to Mr. Batiste on the phone about scheduling the necessary repairs to her unit. She denies talking to him in person in December of 2018 at her home or seeing any notices to enter posted on her home.⁶⁶

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Was there good cause for the late filed owner response?

The Rent Adjustment Ordinance requires an owner to file a response to a tenant petition within 35 days after service of a notice by the Rent Adjustment Program (RAP) that a tenant petition was filed.⁶⁷ “If a tenant files a petition and if the owner wishes to contest the petition, the owner must respond . . .”⁶⁸

The file in this case shows that the *Tenant Petition* and accompanying documents were served on the owner on August 10, 2018, but the zip code for the three named owners was not the correct zip code. Batiste testified that he did not receive the *Tenant Petition* until he came to the Hearing on November 10, 2018.

The *Property Owner Response* was filed on December 3, 2018.

The owner representative was credible in his testimony that the *Tenant Petition* was not received. While a properly addressed document is presumed to be received, in this case, the document was not properly addressed. Therefore, the owner had good cause for the late filed *Owner Response* and was allowed to testify and fully participate in the Hearing.

Was the tenant current on her rent or lawfully withholding rent at the time the petition was filed?

The owner claimed on its response that the tenant was not current on her rent. In order to file a petition, a tenant must be current on his or her rent or lawfully withholding

⁶⁵ The tenant testified that she signed this document even though the closet was not repaired because she was trying to work with the parties.

⁶⁶ See Exhibit 30

⁶⁷ O.M.C. § 8.22.090(B)

⁶⁸ O.M.C. § 8.22.070(C)(2)

rent.⁶⁹ The owner has the burden of proof to establish that the tenant was not current on his rent. The tenant filed her Petition on June 5, 2018.

The tenant provided evidence that she paid partial rent in April and May and full rent in June of 2018 (See discussion below on rental amounts). While these checks were mailed late in the month, there is a long history of the tenant mailing checks late in the month with no evidence of complaint from the owner about these late payments. Additionally, the tenant testified that at times she has withheld rent for conditions. In May of 2018 for example, the tenant paid only partial rent because of the problems with necessary repairs in her unit. A tenant may exercise the option not to pay rent when a unit's condition is in breach of the implied warranty of habitability.⁷⁰ The statutory authority for rent withholding is Code of Civil Procedure § 1174.2. It provides that a substantial breach of the implied warranty of habitability may be raised as a defense to an unlawful detainer action. To confer standing to file a Rent Adjustment petition, a tenant must show that he or she might prevail in court in a claim for a habitability breach, that is, the tenant must present a prima facie case that he or she is withholding the rent legally.

While the tenant did not claim that she was "lawfully withholding rent" on her petition she nonetheless has established that there were conditions in her unit at the time she filed her petition that rise to the level of habitability problems. The low water pressure, the mold throughout the unit and the multiple issues raised by the *Notices of Violation* are all evidence of habitability problems.

Due to these circumstances, Ms. Spencer was lawfully withholding rent at the time her petition was filed. Therefore, her petition was lawfully filed.

Does the owner's failure to pay the Rent Program Service fee until December 10, 2018, affect the owner's ability to testify?

The Rent Adjustment Program Regulations state that:

"An Owner's petition or response to a petition is not considered filed until the following has been submitted:

- a. Evidence that the Owner has paid his or her City of Oakland Business License Tax;
- b. Evidence that the Owner has paid his or her Rent Program Service Fee..." Regulations § 8.22.090 (C).

In this case when the owner filed its response, it had not paid the required RAP fees. These were not paid until December 10, 2018.

⁶⁹ O.M.C § 8.22.090 (A)(4)(b)

⁷⁰ O.M.C. & Regulations, § 8.22.090

The question then is what happens when an owner does not provide the requisite proof with the filed Petition. The language of the Regulations is clear: "the petition is not considered filed."

Nonetheless, in this case, once the owner produced proof of payment of the RAP fees at the Hearing on December 10, 2018, the owner's response was filed. Since the owner was not served with the tenant petition until November 20, 2018 (on the first day of Hearing), the owner response was considered filed by the time proof of payment of the RAP fee was received. Since that happened within 35 days of the receipt of the petition, the owner's response was timely and the owner was allowed to provide testimony and fully participate at the Hearing.

What documents are admissible?

The general rule at a Rent Adjustment proceeding is that all documents that are admitted into evidence must be submitted to the RAP program 14 days prior to the date of the Hearing. However, Hearing Officers have the authority to adjust this rule based on good cause.

Because the tenant alleged that she had produced documents to the RAP that had been lost, the tenant was allowed to bring certain evidence to the Hearings that had not been produced prior to the Hearing.

However, only relevant evidence is admissible. The tenant sought to produce some documentation related to new claims and claims related to her health and her grandson's health. These documents were not admitted because they were not relevant. (See below.)

When, if ever, was the form notice to tenants of the Rent Adjustment Program (RAP Notice) first served on the tenant?

The Rent Adjustment Ordinance requires an owner to serve the *RAP Notice* at the start of a tenancy⁷¹ and together with any notice of rent increase.⁷²

While at first both parties testified that the *RAP Notice* had not been served, it became evident during the Hearing that the tenant was provided with a lease in 2016 that contained the *RAP Notice*. The fact that the owner did not know that the *RAP Notice* was included in the lease is not the point. The tenant received the lease documents and the documents were left with her to review and sign. Therefore, the tenant has been served with the *RAP Notice* as of September of 2016.

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⁷¹ O.M.C. § 8.22.060(A)

⁷² O.M.C. § 8.22.070(H)(1)(A)

How does the prior case between the tenant and the prior owner impact this case?

The prior case between the tenant and her prior owner was finalized with a Hearing Decision was issued in that case in September of 2015. No one appealed that Decision.

That decision included a determination that the tenant was owed restitution of \$10,208.50. The tenant testified that she did not understand the Decision and that she paid rent of \$450 a month during the two years covered by the restitution order (during which the rent was supposed to be \$25.15 per month.) While the prior owner was not present to testify, the current owner testified that when he received rent in the months after he purchased the property in 2016, he was paid \$450 a month and accepted this rent amount even after knowledge of the Hearing Decision.⁷³

At this Hearing, the tenant sought to be compensated for the failure to take the restitution ordered in the prior case. During the Hearing, the Hearing Officer initially informed the parties that this claim would be evaluated. However, this statement was made prior to the knowledge that the RAP Notice had been served on the tenant in 2016.

Once a RAP Notice is served, a tenant has 90 days to bring forth a claim regarding a contested rent increase. While this claim is not about a rent increase, but about a failure to follow a prior Hearing Decision, it is not proper to reopen a prior Hearing, and determine the proper rent payments, where the tenant did not claim that any rent increase had been given improperly, and when her petition was filed almost three years after the prior Hearing Decision was issued. If the tenant has any remedy regarding the failure to take credit from the prior Hearing Decision, the remedy must be had by seeking a Citation Order or Compliance Hearing under the prior case using the procedures set forth in O.M.C. § 8.22.150.⁷⁴

Despite the ruling that the tenant's claim for untaken restitution cannot be considered, it is still required to determine the proper rent considering the prior decision.

In that case, a determination was made that the base rent was \$850 a month, and that the tenant's rent was reduced to \$450.50 a month due to conditions. The conditions were failure to provide hot water (a 15% reduction); fire danger related to the electrical system (a 17% reduction); 3% for the lack of a working oven; 3% for the leaking refrigerator; 7% for the abandoned trailer; and 2% for the broken toilet.

The tenant testified that except for the hot water, all these claims were repaired in 2016. Further, with respect to the hot water, the tenant signed a document in October of 2016, indicated that the hot water had been repaired. While she later denied that it was repaired, her signature on Exhibit 28, which states that she verifies that the repairs were completed, is binding. After the repairs were made, the tenant was provided a rent

⁷³ He too denied understanding the Hearing Decision. It is hard to believe that a business person like Mr. Batiste would not understand the language of the decision setting rent at \$25 a month.

⁷⁴ Note that the Hearing Officer is not making a determination as to whether such a claim would be timely, as since no such claim has been made, it would be improper to determine the timeliness issue.

increase notice in September of 2017, stating that the rent was being increased to \$850 a month.⁷⁵

While this document was not served with a *RAP Notice*, a restoration of a prior base rent is not a rent increase, and therefore, does not require a *RAP Notice*. It is simply a restoration of the base rent after reductions due to the prior Hearing Decision.

Therefore, effective October 1, 2017, the rent returned to \$850 a month, even with the prior Hearing Decision.⁷⁶

Can the tenant bring forth claims that she has been made ill by the owner's actions in a RAP proceeding?

The tenant sought to testify about the physical injuries she and her grandson suffered at the hands of the owner as well as the loss of her property due to its actions. However, the authority of the RAP is limited to adjusting rents. The RAP has no authority to compensate a tenant for damages.⁷⁷ Should the tenant wish to pursue a claim for damages based on the owner's negligence, she needs to file a claim in a Court of competent jurisdiction.

Can the tenant raise claims of decreased services that were not raised in her Tenant Petition?

Additionally, the tenant sought to bring forth claims that were not filed with her initial petition. A RAP Hearing is based on the petition and response documents. To allow the tenant to bring forth claims not filed with her initial petition would violate due process. The tenant was directed to testify only about those claims filed with her initial petition (and to confirm that the prior repairs were completed related to the prior case). All other evidence was not permitted.

Have the tenant's housing services been decreased, and if so, by what percentage of the total housing services that are provided by the owner?

Under the Oakland Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent⁷⁸ and may be corrected by a rent adjustment.⁷⁹ However, in order to justify a decrease in rent, a decrease in housing services must be

⁷⁵ Exhibit 2. Note that while the tenant denied receiving this notice, it is not credible to believe that she did not receive it because she did start paying rent of \$850 a month soon thereafter.

⁷⁶ As noted, this analysis, does not include the question of the underpayment associated with the failure of the tenant to deduct for the restitution owed to her.

⁷⁷ See *McHugh v. Santa Monica Rent Control Bd.* (1989) 49 Cal.3d 348, 336 ("The Board's legitimate regulatory authority, and hence its incidental remedial authority, is circumscribed. It may not, and does not, hear and adjudicate all manner of disputes between landlords and tenants. Its authority is derived from the local police powers and extends only so far as necessary to set and regulate rents.")

⁷⁸ O.M.C. § 8.22.070(F)

⁷⁹ O.M.C. § 8.22.110(E)

the loss of a service that seriously affects the habitability of a unit or one that was provided at the beginning of the tenancy that is no longer being provided.

In a decreased housing services case a tenant must establish that she has given the owner notice of the problems and the opportunity to fix the problems before she is entitled to relief. Additionally, there is a time limit for claiming decreased housing services. Once the tenant is served with a *RAP Notice*, a tenant petition must be filed within 90 days after the decrease in service begins. However, if it is a continuing problem, the tenant can file at any time, but is only entitled to restitution beginning 90 days before the petition is filed and for the period of time the owner knew or should have known about the condition.⁸⁰

Since the tenant was served with the *RAP Notice* in 2016, her claims begin 90 days before her petition was filed, or March 7, 2018.

Mold throughout the unit: The tenant has established an ongoing problem with mold beginning before March 2018 through the time of the last Hearing in February of 2019. While some repairs were done in May of 2018, these repairs were not thorough, did not solve the problem and the mold returned. In fact, the owner's agent, who remediated the mold in May of 2018, testified that there were signs of heavy water in the unit when he visited in May of 2018 and testified that when he returned in January of 2019 there were unbelievable amounts of mold.

While it is unclear the exact source of the water, there was evidence of ongoing leaks in the kitchen and bathroom ceiling that came from the upstairs unit, as well as evidence that despite the attempted remediation, mold or mildew returned in places where the owner's representative had previously testified it was not possible for it to resurface.

Furthermore, there is ample evidence that the tenant has complained of this problem. She has letters written to the current owner of the problem with mold going back to 2016 (Exhibit 19) and then again beginning in early 2018 (Exhibit 32 and 33). Plus, the 2017 *Notice of Violation* should have put the owner on notice of the mold with the reference to evidence of water damage and windows in disrepair.

While the owner denies receipt of some of the tenant's letters regarding conditions, and the record shows that the *NOV* from September of 2017, was at first sent to the old owner's address, the prior owner, Mr. Wilson, remains a minority owner of the new LLC and continued to represent himself as the owner to Benson Wan from the City of Oakland after the September 2017 *NOV* was issued. Therefore, notice to Mr. Wilson was notice to the current owner. Furthermore, Batiste acknowledged receipt of the September 2017 *NOV*.

Even though Mr. Watson denied that the leak from the upstairs unit could be the cause of the mold, it is evident from the abundant testimony that there is an influx of moisture

⁸⁰ O.M.C. § 8.22.090(A)(3)(b)

in the tenant's unit. The tenant's testimony that water has entered the unit through the light fixture in the kitchen on multiple occasions as well as the signs of water leakage in various places throughout the unit, could certainly lead to mold growth throughout the unit.

After receiving the May 2018 mold report showing mold growth throughout the tenant's unit, a reasonable owner would have returned to the unit to check on the status after the remediation occurred. That was not done. Further, the owner's employee suggested additional testing that could be done to determine the source of the water, and this testing has not occurred because of the belief that the problems in the tenant's unit are not "serious."

While there was some concern expressed that the tenant has not made the unit available for the necessary work, the owner has not established the refusal of the tenant to cooperate. The tenant allowed the owner into the unit on multiple occasions in 2016, 2018 and 2019 after her complaints.

Furthermore, the owner still has not completely repaired the problem. The owner's attempt to argue that somehow the failure to remediate the mold in her closet is because the tenant did not complain specifically about mold in her closet is absurd. The closet is in the tenant's bedroom, and the tenant regularly complained about mold in her bedroom. Further, the list of decreased services filed with the tenant petition specifically mentions the closet and the *NOV* from December of 2018 refers to mold in her bedroom. And when the work was done in May of 2018, work was done in the closet. The failure of the owner to remedy the ongoing problem of mold in the closet amounts to an attempt to blatantly disregard the tenant's right to a home free of mold.⁸¹

Still further, Benson Wan, a City of Oakland specialty inspector, determined that the owner had not completely the remediation in the front room because there remained mold/mildew behind the couch. While Watson disagreed that this was a finding of mold, Mr. Wan's testimony is unbiased, while Mr. Watson's is not.

The tenant is entitled to an ongoing rent decrease of 10% of the rent for these conditions until the mold in her closet and the mold behind her couch is remediated. She is also entitled to restitution of overpaid rent for the mold beginning March 7, 2018. See chart and discussion in restitution section below. The tenant is awarded a 20% decrease for the period of time beginning March 7, 2018 through the remediation in January of 2019, and a 10% decrease since that remediation.

Rodents: The tenant has established that there was an ongoing problem with rodents in her unit for many years. As noted above, she is limited to restitution beginning on March 7, 2018 for these conditions. She notified the owner about these problems through her letters, as well as through her claims with *Vector Control*. While the owner denied receipt of the letter regarding rodents from October of 2017, this denial was not

⁸¹ As is the owner's argument that somehow the closet is moldy because it is full of clothing. The purpose of a closet is to store clothing.

believable. Additionally, even if the letter was not received, McFadden admitted seeing signs of rodents on the premises when he was there in 2016. A reasonable owner would hire an exterminator when such signs were present. The fact that Watson did not see signs of rodents when he visited the unit in May and June of 2018 does not change this conclusion in light of the fact that in January of 2019, the owner's exterminator validated the presence of rodents throughout the unit.

The owner has now hired *Terminix* to do regular maintenance regarding rodents. The tenant is entitled to restitution of overpaid rent for these conditions of 15% from March of 2018 through the date *Terminix* was hired in January of 2019.

Broken Doors: The tenant established that the back and front doors were damaged. This was determined by both her testimony and by the testimony of Watson, who testified that the back door hinges were completely rusted when he saw the unit in May of 2018.

The tenant repaired these problems herself in May of 2018. She is entitled to restitution of 3% of the rent for these conditions from March 7, 2018 through the end of May of 2018.

Water Flow in Kitchen: While this matter was raised in the prior decision, it has already been determined that it was repaired in 2016, and the owner was entitled to increase the rent after the repair was made.

Nonetheless, the problem returned and as previously, the water was barely coming out. The tenant complained about this problem to the owner in a letter in 2016, the owner should have returned. However, no action was taken again until January of 2019. Therefore, the tenant is entitled to restitution of overpaid rent of 15% for this condition from March 7, 2018 through January of 2019.

Back and side yard: The tenant has established an ongoing pattern of the failure of the owner to adequately care for the yard. There is no reasonable clean-up of the area, and the grass is not maintained adequately.

The tenant is entitled to a 2% continued rent decrease for this condition, until the owner provides once monthly yard service. The tenant is also entitled to restitution for any rent overpayments for this condition from March of 2018 through April of 2019.

Non-operable camper on driveway: This matter was resolved after the prior Hearing Decision and any further claim is untimely.

Electrical outlet burnt and wiring faulty: This matter was resolved after the prior Hearing Decision and any further claim is untimely.

Cracked bathroom sink: This matter was resolved after the prior Hearing Decision and any further claim is untimely.

Oven: This matter was resolved after the prior Hearing Decision and any further claim is untimely.

Toilet tank running: This matter was resolved after the prior Hearing Decision and any further claim is untimely.

What if any restitution is owed between the parties and how does that impact the rent?

As noted above, before consideration of rent underpayments and decreases in services for the conditions, the tenant's base rent is \$850 a month.

An analysis of the restitution issue starts with a determination of whether or not the tenant had paid rent in the months leading up to filing her petition and whether she has underpaid rent based on the base rent. Since the owner established that since 2017 he has never posted a *3 Day Notice* or an *Unlawful Detainer* action against the tenant, Batiste's testimony that the tenant had barely paid rent at all is not credible.⁸² This is further made evident by the fact that Batiste's testimony about the rent payments changed throughout the proceedings. In the first Hearing, Batiste testified that he had only received the rent payments he supplied in Exhibit 1. This testimony was followed up by a *Quickbooks* spreadsheet (Exhibit 15) that documented the money orders from Exhibit 1 that allegedly established every single payment received by the owner for rent from the tenant since the purchase in 2016. But after receipt on the tenant's money orders (Exhibit 6), the owner researched the checks and determined that an additional 6 checks had been received and deposited by him (although he testified that he found only four more checks, another sign of lack of credibility). (See Exhibit 23.) When this testimony was given (on January 11, 2019), Batiste testified that there were three money orders outstanding from Wells Fargo (that Ms. Spencer had claimed were evidence of rent payments) that he never received and that Wells Fargo told him had never been cashed. Yet on the last day of Hearing, Batiste clearly stated that there was only one money order that was still left unaccounted for. Based on all these facts and testimony Batiste lacks credibility about what rent was received from the tenant.⁸³

On the other hand, the tenant's testimony as to particular rent payments is also not credible. It is not credible to believe that the tenant mailed cash to the owner in November of 2018. After establishing that for years she has taken out money orders to pay her rent, it is highly questionable that the tenant would send \$850 in cash in the mail. Further, the tenant's testimony that she paid rent in every month for that same month was also not accurate. The tenant has a habit of holding on to her rent checks and mailing them in groups, as she sees fit. While these periods of time relate to her claims

⁸² Although Batiste did establish that the tenant would pay rent in bundles. She would withhold rent for several months and then mail a series of checks to him all at once. While the tenant would testify that she paid rent every month, the tenant does not deny this practice of sending multiple checks at once.

⁸³ This lack of credibility was further impacted by Batiste's acknowledgement that he had received a letter from the tenant in May of 2018, about paying someone to do work on her doors, where she enclosed a receipt for \$300. At the Hearing on December 10, 2018, Batiste denied that he also received a check for that month's rent. In Exhibit 22, Batiste acknowledges receipt of the \$100 check paid for the same month.

of habitability problems in the unit, the tenant is expected to pay rent monthly going forward.

As noted above, because the tenant's claim for decreased services only goes back 90 days from the date she filed her petition, this analysis as to rent payments made is starting in April of 2018, the first month 90 days prior to the date her petition was filed. Whether or not there is underpaid rent before that date is not relevant to this case.

The evidence shows that the tenant paid rent as follows:

Month Paid For	Amount	Proof/Comments
April 2018	\$450	The owner's Exhibit 23 shows a payment received on June 9, 2018, with a check dated May 1, 2018. The tenant's records show a Bank Originated Debit of \$451.16 on May 3, 2018. Since the tenant was in the habit of paying rent late, and she paid again in May of 2018, it is assumed that this was for April's rent.
May 2018	\$400	This comes from a combined check of \$100 (Exhibit 6, check #10) and a construction work credit of \$300 for work on the doors. (Exhibit 5, pp 1-2)
June 2018	\$850	Exhibit 6, p. 11
July 2018	\$850	Exhibit 6, p. 12
August 2018	\$0	See Exhibit 22. The tenant testified that this money was put back into her account to recompense her for expenses related to washing her walls from the mold. She had no evidence of any receipt. Note however that the tenant paid rent twice in September of 2018.
September 2018	\$850	Exh. 1, page 2
September 2018	\$850	Exh. 1, page 1, Exh. 6, #14
October 2018	\$850	Exh. 1, p. 2, Exh. 6, #15

November 2018	0	The tenant testified she mailed cash
December 2018	\$400	Exh. 41
January 2019	\$400	By parties testimony
Total:	\$5,900	

There are 10 months between April 2018 and January of 2019. Prior to a consideration of the rent decrease for the conditions, which is analyzed below, the tenant owed rent of \$850 a month in those months, for a total owed of \$8,500. The tenant paid a total of \$5,900 during this period. The restitution analysis below includes an underpayment of this amount for this period.

The tenant is entitled to an ongoing rent decrease of 10% for the mold in her unit and a 2% for the failure to maintain the yard, for a total ongoing rent decrease of 12% or \$102. Therefore, the tenant's current legal rent, before consideration of restitution is \$748 a month, effective February 1, 2019.

Additionally, according to the spreadsheet below, the tenant is entitled to a credit of \$4,938.50 for the decreased services she has experienced since March of 2018 through January 31, 2019. This credit is offset by the rent underpayment of \$2,600. The tenant is therefore owed restitution of a total of \$2,338.50.

VALUE OF LOST SERVICES							
Service Lost	From	To	Rent	% Rent Decrease	Decrease /month	No. Months	Overpaid
Mold	7-Mar-18	31-Jan-19	\$850	20%	\$ 170.00	11	\$ 1,870.00
Rodents	7-Mar-18	31-Jan-19	\$850	15%	\$ 127.50	11	\$ 1,402.50
Doors	7-Mar-18	20-May-18	\$850	3%	\$ 25.50	3	\$ 76.50
Water flow	7-Mar-18	18-Jan-19	\$850	15%	\$ 127.50	11	\$ 1,402.50
Back and side yard	7-Mar-18	31-Jan-19	\$ 850.00	2%	\$ 17.00	11	\$ 187.00
TOTAL LOST SERVICES							\$ 4,938.50
UNDERPAID RENT							
	From	To	Rent paid	Total Base Rent	Difference		Sub-total
	1-Apr-18	31-Jan-19	\$5,900	\$8,500	\$ (2,600.00)		\$(2,600.00)
TOTAL UNDERPAID RENT							\$(2,600.00)
RESTITUTION							
						MONTHLY RENT	\$850
						TOTAL TO BE REPAID TO TENANT	\$ 2,338.50
						TOTAL AS PERCENT OF MONTHLY RENT	275%
AMORTIZED OVER				12	MO. BY REG. IS		\$ 194.88

An overpayment of this size is adjusted over a period of 12 months.⁸⁴ The tenant is entitled to reduce the rent by \$194.88 a month, once this Hearing Decision is final. The Decision becomes final twenty days after the date it is served on the parties, unless any party appeals the Decision.

However, should the owner eradicate the mold in her closet and behind the sofa, the owner can increase the rent by 10% (\$85), and two months after the owner starts to provide monthly yard service, the owner can increase the rent by 2% (\$17.00). **In order to increase the rent after repairs the owner must provide the necessary notice pursuant to Civil Code § 827.**

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

Finally, it is not known what rent payments the tenant may have made in February, March or April of 2019. The tenant's rent due in each of those months, based on the conditions, was \$748. The parties should adjust any rent overpayments for these months between themselves.

Additionally, since there was a problem with the mailing of the prior Hearing Decision, it is not known what rent was paid in May of 2019. The parties should adjust any rent overpayments or underpayments for this May 2019 required rent amongst themselves.

ORDER

1. Petition T18-0302 is granted in part.
2. The tenant's base rent is \$850 a month before consideration of restitution, rent underpayments and decreased services.
3. Due to ongoing conditions, the tenant is entitled to a 12% rent decrease. The tenant's current legal rent, effective May 1, 2019, before consideration of restitution, is \$748 a month.
4. Due to past decreased services and rent underpayments, the tenant is owed restitution of \$2,338.50 through January of 2019. This overpayment is adjusted by a rent decrease for 12 months in the amount of \$194.88 a month.
5. The tenant is entitled to reduce the rent per the restitution order after the Hearing Decision becomes final.
6. It is unknown whether or not the tenant has paid any rent in February, March or April of 2019. The tenant's rent in those months should have been \$748 a month for a total of \$2,244. The parties are expected to adjust any rent overpayments and underpayments for these three months amongst themselves.

⁸⁴ Regulations, Section 8.22.110(F)

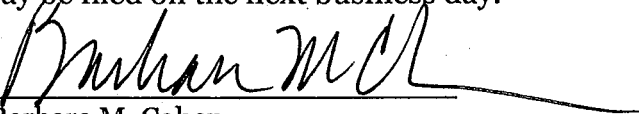
7. If the owner wishes to, it can repay the restitution owed to the tenant at any time. If it does so, the monthly decrease for restitution ends at the time the tenant is provided restitution.

8. If the owner eradicates the mold in the tenant's bathroom closet and behind the sofa, it can increase the rent by 10% (\$85 a month); and two months after the owner starts providing monthly yard service, the owner can increase the rent by 2% (\$17 a month). **In order to increase the rent after repairs the owner must provide the necessary notice pursuant to Civil Code § 827.**

9. Pursuant to the stipulation by the parties, they are to meet and confer as to the October 4, 2017, Money Order made out to Mr. Batiste. If Wells Fargo confirms that this check has not been cashed, Ms. Spencer will ask to have the money redeposited into her account and return the money to the owner.

10. **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: May 17, 2019


Barbara M. Cohen
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE
Case Number T18-0302

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

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

Documents Included

Amended Hearing Decision

Owner

Philip Wilson, Eagle Environmental Construction
1485 Bayshore Blvd. #374
San Francisco, CA 94124

Owner

Ronald Batiste, Eagle Environmental Construction
1485 Bayshore Blvd #374
San Francisco, CA 94124

Owner

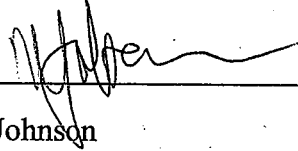
Wilton Watson
1485 Bayshore Blvd. #374
San Francisco, CA 94124

Tenant

Patsy Spencer
1052 63rd Street
Oakland, CA 94608

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 17, 2019** in Oakland, CA.



Nia Johnson

Oakland Rent Adjustment Program

PROOF OF SERVICE
Case Number T18-0302

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.

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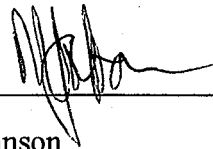
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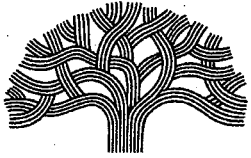
I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first 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 23, 2019** in Oakland, CA.



Nia Johnson

Oakland Rent Adjustment Program



CITY OF OAKLAND

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

RECEIVED

JUN 06 2019

RENT ADJUSTMENT PROGRAM
OAKLAND APPEAL

Appellant's Name Patsy Spencer		<input type="checkbox"/> Owner <input checked="" type="checkbox"/> Tenant	
Property Address (Include Unit Number) 1052 63rd Street, Oakland, CA			
Appellant's Mailing Address (For receipt of notices) 1052 63rd Street, Oakland, Ca		Case Number T18-0302	
		Date of Decision appealed May 17, 2019	
Name of Representative (if any) Broderick H. Brown, Esq.		Representative's Mailing Address (For notices) 2831 Telegraph Avenue, Oakland, Ca 94609	

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

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


For more information phone (510) 238-3721.

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

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

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

<u>Name</u>	Eagle Environmental Construction
<u>Address</u>	1054 63rd Street
<u>City, State Zip</u>	Oakland, Ca 94608
<u>Name</u>	
<u>Address</u>	
<u>City, State Zip</u>	

	June 06, 2019
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

For more information phone (510) 238-3721.

IMPORTANT INFORMATION:

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

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

For more information phone (510) 238-3721.



**BRODERICK
BROWN**
ATTORNEY AT LAW

RECEIVED

831 TELEGRAPH AVENUE
OAKLAND, CA 94609

JUN 06 2019

TELEPHONE: (510) 452-6300

FAXSIMILE: (866) 417-9197

RENT ADJUSTMENT PROGRAM
OAKLAND

June 6, 2019

City of Oakland
Rent Adjustment Program

Re: Our Client: Patsy Spencer
Case #: T18-0302
Date of Decision appealed: May 17, 2019

To Whom It May Concern:

Please be advised that this firm has been retained to represent the above-named client. Our client is appealing the May 17, 2019 decision for the above referenced case. Our client makes the appeal based on the following grounds:

- 1) **There are mathematical/clerical errors that require the Hearing Decision to be updated.** In the May 17, 2019 hearing decision, the RAP board acknowledges that based on prior RAP Order T15-0074 Patsy Spencer was to pay \$25.75 monthly in rent from October 2015 to September 2017. Additionally, it was confirmed that despite the prior RAP Order order Patsy Spencer paid more than \$25.75 in the months of October 2015 through September 2017. The May 17, 2019 hearing decision did not take into account the amount that was owed to Patsy Spencer due to overpayment in rent in the months of October 2015 through September 2017.
- 2a-b) **The decision is inconsistent with OMC 8.22, Rent Board Regulations or prior decisions of the Board; The decision is inconsistent with decisions issued by other Hearing Officer:** The May 17, 2019 RAP hearing decision is inconsistent with RAP Order T15-0074. While the May 17, 2019 decision acknowledges that Plaintiff was only supposed to pay \$25.75 in rent in the months of October 2015 through September 2017 they did not include that overpayment in rent when calculating what the landlord owes Patsy Spencer. Therefore it does not enforce the previous orders made by the RAP board.

Very truly yours,

Broderick H. Brown, Esq.

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