

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

**October 11, 2018**

**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
  - i. Approval of Minutes
    - a. Board Minutes, September 27, 2018
  - ii. Minutes Available for Review
    - a. Board Panel Minutes, September 20, 2018
4. OPEN FORUM
5. NEW BUSINESS
  - A. Appeal Hearings in:
    - 1) L17-0061, Feiner v. Tenants
    - 2) T17-0205, Ogden v. Clahan
    - 3) T16-0549 & T17-0523, Beasley v. Horejsi
6. SCHEDULING AND REPORTS
7. ADJOURNMENT

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

courtesy to attendees with chemical sensitivities.

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

會場有適合輪椅出入設施。需要殘障輔助設施, 手語, 西班牙語, 粵語或國語翻譯服務, 請在會議前五個工作天電郵 [sshannon@oaklandnet.com](mailto:sshannon@oaklandnet.com) 或致電 (510) 238-3715 或 711 California relay service。請避免塗搽香氛產品, 參加者可能對化學成分敏感。

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

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

If you will be accompanied by an emotional support animal, then you must provide documentation on letterhead from a licensed mental health professional, not more than one year old, stating that you have a mental health-related disability, that having the animal accompany you is necessary to your mental health or treatment, and that you are under his or her professional care.

Service animals and emotional support animals must be trained to behave properly in public. An animal that behaves in an unreasonably disruptive or aggressive manner (barks, growls, bites, jumps, urinates or defecates, etc.) will be removed.

**CITY OF OAKLAND  
HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD  
Meeting  
September 27, 2018  
7:00 p.m.  
City Hall, Hearing Room #1  
One Frank H. Ogawa Plaza, Oakland, CA**

**MINUTES**

**1. CALL TO ORDER**

The HRRRB was called to order at 7:14 p.m. by Board Chair Jessie Warner.

**2. ROLL CALL**

MEMBER	STATUS	PRESENT	ABSENT	EXCUSED
U. Fernandez	Tenant			X
D. Mesaros	Tenant	X		
T. Hall	Tenant alt.	X		
Ed Lai	Homeowner Alt.			X
R. Stone	Homeowner	X		
M. Cook	Homeowner	X		
J. Warner	Homeowner	X		
K. Blackburn	Homeowner Alt.			X
K. Friedman	Landlord	X		
B. Scott	Landlord Alt.	X		

Staff Present

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

**3. CONSENT ITEMS**

a. Board Minutes, September 20, 2018

K. Friedman moved to approve the minutes. B. Scott seconded. The Board voted as follows:

Aye:	J. Warner, B. Scott, K. Friedman, T. Hall, R. Stone, M Cook, D. Mesaros
Nay:	0
Abstain:	0

The motion was approved by consensus.

4. OPEN FORUM SPEAKERS

Jackie Zaneri  
James Vann

5. OLD BUSINESS

a. Memo to Board Regarding New Construction Exemptions

The Board discussed the memo regarding new construction. Section 8.22.030 (A)(5) of the Ordinance applies to dwelling units which were newly constructed and received a certificate of occupancy on or after January 1, 1983. The exemption does not apply to any newly constructed dwelling units that replace covered units withdrawn from the rent market in accordance with OM.C. 8.22.400 et seq. (Ellis Act Ordinance). To qualify as a newly constructed dwelling unit, the dwelling unit must be entirely newly constructed **or (emphasis added)** created from space that was formerly entirely non-residential.

The Board discussed three options based on prior hearing decisions which have adopted three different approaches.

Option 1-Pursuant to Castellanos v. Greer, T01-0107, a Board appeal decision, properties with prior residential use that are fully replaced with new structures or units are exempt on a unit by unit basis depending on whether the new unit occupied space was used as residential space. Units created from space that was previously residential are not exempt as newly constructed. Units created from empty space or previously non residential space are exempt.

Option 2-In properties with prior residential use where old units are demolished and replaced with a new structure containing new units, the new units are not exempt T16-0377, Buggs v. Bay Property).

Option 3-Properties with prior residential use that are totally demolished and replaced with new units are exempt. The Board determined that in properties with prior residential use where old units are demolished and replaced with a new structure containing new units, the new units are exempt-Board over ruled the Buggs case (Buggs v. Bay Property), T16-0377

i. T16-0515, Krivitz v. Ma

Appearances: Jeremy Krivitz	Tenant Appellant
Gloria Fong	Owner Appellee

The tenant filed a petition which claimed decreased housing services regarding fleas in the building. The hearing officer determined that the claims regarding fleas were untimely. She also stated that the owner acted reasonably to eliminate fleas and provided

proof of spraying, and there was no evidence that the tenant gave the owner notice of the flea complaint in September 2016.

The tenant appealed on the grounds that the hearing decision is not supported by substantial evidence. The owner contended that no other tenant complained about fleas, the tenant had cats, and his unit was unsanitary and smelled bad.

During Board discussion it was determined that the tenant sent a letter dated September 1, 2016, about the flea complaint and which the owner responded to on September 10, 2016.

After questions to the parties and Board discussion J. Warner moved to remand the hearing decision regarding whether the tenant gave the owner notice of the flea complaint in September 2016, and to hold a hearing if necessary. D. Mesaros seconded. The Board voted as follows:

Aye: D. Mesaros, B. Scott, M. Cook, K. Friedman  
Nay: T. Hall, R. Stone  
Abstain: 0

The motion carried.

ii. T16-0515, Prager v. Lagos

Appearances: John Hughes      Owner Appellant  
                  Mark Prager        Tenant Appellee

The tenant filed a petition which contested a rent increase and claimed he did not receive the notice of the existence of the Rent Adjustment Program (RAP). The owner contended that the unit is exempt as new construction. **The owner purchased a 10 unit residential building in 1997. Prior to the construction of the building a prior single family residence existed on the property. The Hearing Decision denied the rent increase and the exemption for new construction on the grounds that the owner offered no evidence to establish the size of the prior single family residence in order to show that the tenant's unit was outside the footprint. The Hearing Officer stated that in order to qualify for a new construction exemption the new construction must create new units from space not already being used for residential purposes. Since the owners did not provide any evidence regarding the footprint of the prior residential building, there is no way to establish that the tenant's unit is new construction.**

The owner appealed on the following grounds:

- The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board;

- The decision violates federal, state or local law;
- The decision is not supported by substantial evidence.

After questions to the parties and extensive Board discussion concerning the three options presented B. Scott moved to reverse the Hearing Decision and apply the standard in the Buggs appeal case to this case. R. Stone seconded.

The Board voted as follows:

Aye: M. Cook, R. Stone, T. Hall, B. Scott, T. Hall

Nay: D. Mesaros, J. Warner

Abstain: 0

The motion carried.

iii. LI16-0094, Wiebe v. Tenants

Appearances: William Wiebe     Owner  
                  No appearance by tenants

The owner appealed from a hearing decision which denied an exemption from the Rent Adjustment Ordinance on the basis of substantial rehabilitation. The hearing decision stated that the owner did not meet the 50% cost requirement for the exemption. The hearing officer disallowed certain costs because there was no invoice and proof of payment. She also disallowed certain categories of costs such as appliances, landscaping costs and construction insurance and owner contributed labor.

The owner filed an appeal on the following grounds:

- The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board;
- The decision is inconsistent with decisions issued by other hearing officers;
- The decision raises a new policy issue that has not been decided by the Board;
- The decision is not supported by substantial evidence;
- He was denied a sufficient opportunity to present his claim or respond to the petitioner's claim;
- The decision denies him a fair return on his investment

The owner contended that he has affidavits from vendors regarding work performed, that he is a carpenter and contributed over 2000 hours of labor, and that there are errors in the calculations

During discussion of this case the Board voted to extend the Board meeting time

past 10:00 p.m.

The Board voted as follows:

Aye: J. Warner, R. Stone, B. Scott, T. Hall  
Nay: D. Mesaros, M. Cook, K. Friedman  
Abstain: 0

The motion carried.

After questions to the owner and Board discussion J. Warner moved to affirm the Hearing Decision based on substantial evidence. T. Hall seconded.

The Board voted as follows:

Aye: T. Hall, J. Warner  
Nay: R. Stone  
Abstain: B. Scott

The motion carried.

## 6. OLD BUSINESS

None

## 7. SCHEDULING & REPORTS

Staff stated that they would be asking the Board about future topics they would like to discuss for future Board trainings. R. Stone stated that he would like information concerning what costs apply to capital improvement pass-throughs and guidelines.

## 8. ADJOURNMENT

The meeting was adjourned by consensus at 10:45 p.m.

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

**PANEL MEETING  
September 20, 2018  
7:00 p.m.  
City Hall, Hearing Room #2  
One Frank H. Ogawa Plaza, Oakland, CA**

**MINUTES**

**1. CALL TO ORDER**

The HRRRB meeting was called to order by 7:10 p.m. by Board Chair, Ed Lai. There was no quorum and the Board meeting was converted into a panel meeting with the consent of the parties whose cases are listed under New Business, paragraph 4 of these Minutes.

**2. ROLL CALL**

MEMBER	STATUS	PRESENT	ABSENT	EXCUSED
Ubaldo Fernandez	Tenant	X		
Ed Lai	Homeowner	X		
Benjamin Scott	Owner	X		

Staff Present

Luz Buitraigo	Deputy City Attorney, Office of the City Attorney
Barbara Kong-Brown	Senior Hearing Officer, Rent Adjustment Program
Kelly Rush	Acting Program Analyst, Rent Adjustment Program

**3. OPEN FORUM**

No speakers

**4. NEW BUSINESS**

- i. Appeal Hearing in cases:
  - a. T17-0103, Worekneh v. Lankford
  - b. T17-0368, Guidry v. MYND Management
  - c. T17-0271, Jacobs v. Montoya
- a. **T17-0103, Worekneh v. Lankford**



Appearances:

Lavette Lankford  
Jackie Zenari

Owner Appellant  
Tenant Appellee Representative

The tenant filed a petition contesting several rent increases and claiming several decreased housing services. At the hearing the tenant withdrew the decreased housing claims. The Hearing Officer denied the rent increases due to no Rent Adjustment Program (RAP) notice being provided. The owner contends that the decision violates law and is not supported by substantial evidence.

The tenant representative contends that the hearing decision should be affirmed because the owner did not provide the required RAP notice

Board Discussion

After argument made by the owner, questions to the owner, and Board discussion, B. Scott moved to affirm the Hearing Decision based on substantial evidence. U. Fernandez seconded.

The Board panel voted as follows:  
Aye: U. Fernandez, E. Lai, B. Scott  
Nay: 0  
Abstain: 0

The Motion was approved by consensus.

**b. T17-0368, Guidry v. MYND Management**

Appearances:

No appearance by Tenant

The tenant appellant did not appear at the hearing. E. Lai moved to dismiss the appeal pending a showing of good cause. B. Scott seconded. The Board panel voted as follows:

Aye: U. Fernandez, E. Lai, B. Scott  
Nay: 0  
Abstain: 0

The Motion was approved by consensus.

**c. T17-0271, Jacobs v. Montoya**

Appearances:

Yesenia Montoya	Owner Appellant
DeAndre Haskins	Owner Appellant
No appearance by tenants	

The tenant filed a petition which contested a proposed rent increase and claimed decreased housing services. The hearing officer found that the tenants did not receive the required RAP notice, and granted decreased housing services in the amount of \$310 for lack of garbage service.

The owner appealed on the grounds that that she did not own the property when the tenant claimed a decreased housing claim regarding garbage service. She provided the RAP notice after she found out that it was required. The unit was found to be an illegal unit and the tenant has moved out.

After questions to the owners and Board discussion B. Scott moved to affirm the hearing decision based on substantial evidence. U. Fernandez seconded.

The Board panel voted as follows:  
Aye: U. Fernandez, E. Lai, B. Scott  
Nay: 0  
Abstain: 0

The Motion was approved by consensus.

**5. SCHEDULING AND REPORTS**

- a. Memo re new construction is tabled to the next Board meeting

**6. ADJOURNMENT**

The meeting was adjourned at 7:55 p.m.

## CHRONOLOGICAL CASE REPORT

Case Nos.: L17-0061

Case Name: Feiner et al. v. Tenants

Property Address: 1153 63<sup>rd</sup> Street, Oakland, CA

Parties: Daniel Abud (Tenant)  
Michael Feiner (Owner)  
Jennifer Shy (Owner)

### OWNER APPEAL:

<u>Activity</u>	<u>Date</u>
Owner Petition filed	March 27, 2017
No Tenant Response filed	---
Hearing Decision issued	September 8, 2017
Owner Appeal filed	September 27, 2017

217-0061 Re: JK

<p><b>CITY OF OAKLAND</b>  <b>RENT ADJUSTMENT PROGRAM</b>          250 Frank H. Ogawa Plaza, Suite 5313          Oakland, CA 94612          (510) 238-3721</p>	<p>For date stamp.</p> <p style="text-align: center;">RECEIVED          CITY OF OAKLAND          RENT ADJUSTMENT PROGRAM</p> <p style="text-align: center;">2017 MAR 27 AM 10:07</p> <p style="text-align: center;"><b><u>LANDLORD PETITION</u></b>  <b><u>FOR CERTIFICATE OF EXEMPTION</u></b>          (OMC §8.22.030.B)</p>
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**Please Fill Out This Form Completely As You Can.** Failure to provide needed information may result in your petition being rejected or delayed. Attach to this petition copies of the documents that prove your claim. Before completing this petition, please read the Rent Adjustment Ordinance, section 8.22.030. A hearing is required in all cases even if uncontested or irrefutable.

**Section 1. Basic Information**

Your Name MICHAEL FEINER JENNIFER SHY		Complete Address (with zip code) POBOX 86 BERK CA 94701	Telephone Day: 510 525 6261
Your Representative's Name		Complete Address (with zip code)	Telephone Day:
Property Address 1153 63 <sup>rd</sup> Street, Units A, B, C			Total number of units in bldg or parcel. 3
Type of units (circle one)	Single Family Residence (SFR)	Condominium	Apartment or Room
If an SFR or condominium, can the unit be sold and deeded separately from all other units on the property?		Yes	No

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

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

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

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

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CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM  
APR 27 AM 10:07

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

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

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

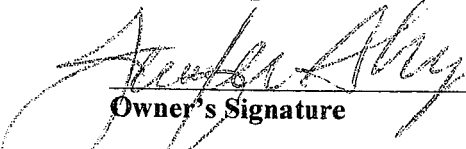
<input checked="" type="checkbox"/>	New Construction
<input checked="" type="checkbox"/>	Substantial Rehabilitation
<input type="checkbox"/>	Single Family Residence or Condominium (Costa-Hawkins)

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

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

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

3/20/2017  
\_\_\_\_\_  
Date

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

3/20/2017  
\_\_\_\_\_  
Date

**Important Information**

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

**File Review** Your tenant(s) will be given the opportunity to file a response to this petition within 35 days of notification by the Rent Adjustment Program. You will be sent a copy of the tenant's Response. Copies of attachments to the Response form will not be sent to you. However, you may review any attachments in the Rent Program Office. Files are available for review by appointment only. For an appointment to review a file, call (510) 238-3721. Please allow six weeks from the date of filing for notification processing and expiration of the tenant's response time before scheduling a file review.

Michael Feiner  
Jennifer Shy  
P.O. Box 86  
Berkeley, CA 94701  
510-525-6261

RECEIVED  
CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM  
2017 MAR 27 AM 10:07

March 27, 2017

City of Oakland  
Rent Adjustment Program  
250 Frank H. Ogawa Plaza, Suite ~~5313~~ 6301  
Oakland, CA 94612

Re: Landlord Petition for Certificate of Exemption  
1153 63<sup>rd</sup> Street  
Oakland, CA 94608

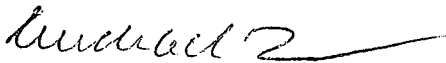
To Whom It May Concern:

Attached is our Landlord Petition for Certificate of Exemption. We are filing this Exemption per the following provisions of the Rent Adjustment Law and Just Cause for Evictions Law:

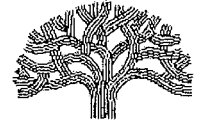
- **Newly Constructed Dwelling Units.** We lifted this single family home to create a new ground floor with two new apartment dwelling units with 655 square feet each (1,310 square feet total). This work was done under Building Permit #RB1200420 (with RE1200575, RP1200440, RM1200333) issued 2-23-2012 and final approval 6-20-2013. The Assessed Value (per County Assessor) in this time period was \$170,000. Per the attached City of Oakland Building Services Construction Valuation for Building Permits/Cost Index Tables the cost of new construction was \$189,243 (1,310 square feet x \$144.46 per square foot).
- **Buildings That Were Substantially Rehabilitated.** Under the same Building Permit we substantially rehabilitated the existing house. This included: Gutting the interior of the house to install all new electrical, plumbing, heating and finishes; Restoring interior and exterior trim and finish details consistent with those original to this house built in 1896 for both the original house and the two new apartment dwelling units. The existing house is 1,310 square feet total. Per the attached Cost Index Tables the cost of remodel construction was \$98,407 (1,310 square feet x \$75.12 per square foot).

Please do not hesitate to let us know if any further information is required.

Yours,

  
Michael Feiner

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

CITY OF OAKLAND

Department of Housing and Community Development  
Rent Adjustment Program

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

## **HEARING DECISION**

**CASE NUMBER:** L17-0061, Feiner, et al. v. Tenants  
**PROPERTY ADDRESS:** 1153 - 63<sup>rd</sup> St., Oakland, CA  
**DATE OF HEARING:** August 8, 2017  
**DATE OF DECISION:** August 28, 2017  
**APPEARANCES:** Michael Feiner (Owner)  
(No Appearance by any Tenant)

### **SUMMARY OF DECISION**

The owners' petition is partly granted.

### **CONTENTIONS OF THE PARTIES**

The owners filed a petition which seeks a Certificate of Exemption for the subject building on the ground that it has been "newly constructed" and also on the ground of "substantial rehabilitation." No tenant filed a response to the owners' petition.

### **THE ISSUES**

- (1) Is the subject building "newly constructed," and are the rental units in the building exempt from the Rent Adjustment Ordinance on that basis?
- (2) Has the subject building been 'substantially rehabilitated?'

### **EVIDENCE**

New Construction: At the Hearing, owner Michael Feiner testified that, prior to construction, there was an existing single-family house. This is known as Unit "A." The owner testified that

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he “gutted” the existing single family house, and increased it in size. He also raised the house, and constructed 2 new units beneath it. These new units are known as Units “B” and “C.” The owner submitted a Building Permit for the house, which was issued on February 23, 2012.<sup>1</sup> The permit describes the work as “Raise Dwelling and Add Two Units Beneath.” The permit was “finalized” on June 27, 2013.

Substantial Rehabilitation: The owners attached to their petition a statement that certain work was done on the subject building and that the building contains a certain number of square feet. The owners submitted no documentation in support of this claim.

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

New Construction: The Oakland Rent Adjustment Ordinance<sup>2</sup> states that dwelling units are not “covered units” under the Ordinance if such units “were newly constructed and received a certificate of occupancy on or after January 1, 1983.” The Board has repeatedly held that a “finalized” building permit is the practical equivalent of a Certificate of Occupancy.<sup>3</sup> The dwelling units must be entirely newly constructed or created from space that was formerly entirely non-residential.

The 2 units new units in the subject building meet this requirement. The former single family house – whether it has been enlarged or not – was neither entirely newly constructed nor was it created from space that was formerly entirely non-residential. Therefore, it is found that only the two new units in the subject building – Units “B” and “C” – are exempt from the Rent Adjustment Ordinance on the ground that the units have been “newly constructed.”

Substantial Rehabilitation: O.M.C. 8.22.030(A)(6) states that dwelling units located in “substantially rehabilitated buildings” are not “covered units” under the Rent Ordinance.

- a. In order to obtain an exemption based on substantial rehabilitation, an owner must have spent a minimum of fifty (50) percent of the average basic cost for new construction for a rehabilitation project.
- b. The average basic cost for new construction shall be determined using tables issued by the chief building inspector applicable for the time period when the substantial rehabilitation was completed.<sup>4</sup>

An owner has the burden of proving that a building has been substantially rehabilitated by presenting convincing evidence of construction costs (i.e., invoices and proof of payment) as

<sup>1</sup> Exhibit No. 1, which was admitted into evidence

<sup>2</sup> O.M.C. Section 8.22.030(A)(5)

<sup>3</sup> Peacock, et al. v. Vulcan, T05-0110 & Williams v. Taplin, T12-0112

<sup>4</sup> O.M.C. Section 8.22.030(B)(2)




well as competent evidence of the square footage of the building.<sup>5</sup> The owners submitted no such documentation. Therefore, this part of the owners' petition is denied.

**ORDER**

1. Petition L17-0061 is partly granted.
2. The subject building is not exempt from the Rent Adjustment Ordinance on the ground of substantial rehabilitation.
3. Unit "A" is not exempt from the Rent Adjustment Ordinance.
4. The lower Units, "B" and "C," are exempt from the Rent Adjustment Ordinance on the ground of new construction.
5. A Certificate of Exemption for the subject units will be issued upon this Decision becoming final.
6. **Right to Appeal: This decision is the final decision of the Rent Adjustment Program Staff.** Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within twenty (20) calendar days after service of the decision. The date of service is shown on the attached Proof of Service. If the Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.

Dated: August 28, 2017

  
\_\_\_\_\_  
Stephen Kasdin  
Hearing Officer  
Rent Adjustment Program

<sup>5</sup> Appeal Decisions in Ullman v. Breen, T04-0158 & Rose v. Polanski, T05-0233

**PROOF OF SERVICE**

**Case Number L17-0061**

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

**Tenants**

Resident  
1153 63rd St #C  
Oakland, CA 94609

Resident  
1153 63rd St #B  
Oakland, CA 94609

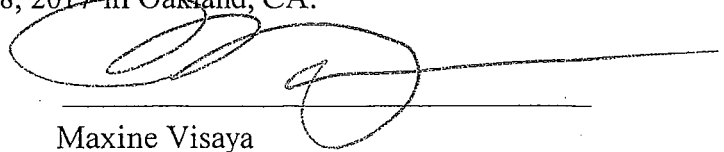
Resident  
1153 63rd St #A  
Oakland, CA 94609

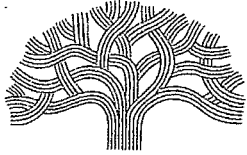
**Owner**

Michael Feiner & Jennifer Shy  
P.O. Box 86  
Berkeley, CA 94701

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 September 08, 2017 in Oakland, CA.

  
\_\_\_\_\_  
Maxine Visaya



CITY OF OAKLAND

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

For date stamp.

2017 SEP 27 PM 4:07

**APPEAL**

<b>Appellant's Name</b> Michael Feiner & Jennifer Shy		<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant	
<b>Property Address (Include Unit Number)</b> 1153 63rd Street, Apartment A, Oakland, CA 94608			
<b>Appellant's Mailing Address (For receipt of notices)</b> POBox 86 Berkeley, CA 94701		<b>Case Number</b> L17-0061	
		<b>Date of Decision appealed</b> September 27, 2017	
<b>Name of Representative (if any)</b>		<b>Representative's Mailing Address (For notices)</b>	

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

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

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

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

For more information phone (510) 238-3721.

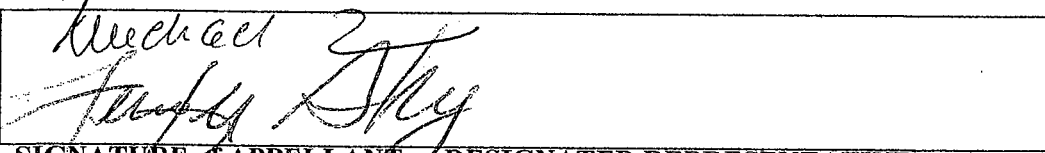
- f)  I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. (In your explanation, you must describe how you were denied the chance to defend your claims and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue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

Submissions to the Board are limited to 25 pages from each party. Please number attached pages consecutively.  
 Number of pages attached: 2.

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

I declare under penalty of perjury under the laws of the State of California that on September 27, 2017, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<b><u>Name</u></b>	Daniel Abud
<b><u>Address</u></b>	1153 63rd Street, Unit A
<b><u>City, State Zip</u></b>	Oakland, CA 94608
<b><u>Name</u></b>	
<b><u>Address</u></b>	
<b><u>City, State Zip</u></b>	

	9/27/2017
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SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE

DATE

For more information phone (510) 238-3721.

September 27, 2017

City of Oakland  
Rent Adjustment Program  
250 Frank Ogawa Plaza, Suite 5313  
Oakland, CA 94612

Case Number:	L17-0061
Property Address:	1153 63 <sup>rd</sup> Street, Unit A, Oakland, CA 94608
Date of Hearing:	August 8, 2017
Date of Decision:	August 28, 2017
Date of Service:	September 8, 2017
Deadline Date for Appeal:	September 28, 2017

Explanation of grounds for Appeal:

Prior to submitting the original Landlord Petition for Certificate of Exemption we consulted with City of Oakland staff as to what documentation to submit in support of our Petition. The Exemption we filed was for both New Construction of two units and Substantial Rehabilitation of the remaining building. We were granted exemption for newly constructed Units B and C but were denied exemption for Unit A. We were given and relied on ambiguous and contradictory information, so did not understand the process and what was required, and consequently were denied a sufficient and informed opportunity to present the full existing documentation to support our Petition. Today we spoke with Keith Mason who provided clear information. We ask for the opportunity to present this existing documentation in support of our Petition via this Appeal.

The Scope of Work for this project was extensive. The existing single story building was raised to create a new two story building. Both the newly created units and the substantial rehabilitation were in the same building and was achieved through expansion of the existing building. Prior to construction this was a Single-Family house which is exempt under the Costa-Hawkins Rental Housing Act. However, post construction, this Single-Family house was then one of three apartment units. We were told that this might be considered three newly created units – not two newly created units plus substantial rehabilitation of a Single-Family house because the floor plan of the existing house changed significantly. For instance, the existing house was 2 bedrooms plus 1 bathroom, a minimal kitchen and no laundry (washer and dryer). The new unit is 3 bedrooms plus 1 bathroom, a full kitchen and laundry.

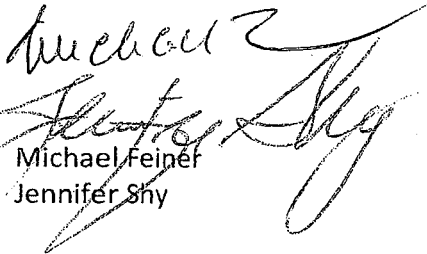
Because the Scope of Work was so extensive, the construction receipts, bank statements, plans and other documentation fill multiple large binders. We asked City of Oakland staff if we were to photocopy every document within these multiple large binders.

In response we were referred to the paragraph entitled "Substantial Rehabilitation" on the Landlord Petition for Certificate of Exemption. Although this paragraph states "This applies only to entire buildings" we were told that our

Scope of Work fell within this definition. This paragraph goes on to state "An owner must have spent a minimum of fifty (50) percent of the average basic cost for new construction for a rehabilitation project. The average basic cost for new construction is determined using the tables issued by the Chief Building Inspector applicable for the time period when the Substantial Rehabilitation was completed". We were told that in lieu of submitting binders of receipts, bank statements, etc., these Construction Valuation tables would take precedence. We submitted the Construction Valuation tables for the period when the substantial rehabilitation took place, together with an explanation of the Alameda County Assessor's valuation prior to construction, square footage calculations (using the Construction Valuation tables) and the property's City-issued Building Permit with Final Building Inspection approval. For the first time, at our Hearing, we were told that this was not sufficient documentation to support our Petition.

Because we didn't understand the process or the extent of documentation required and were given and relied on ambiguous and contradictory information we were denied a sufficient opportunity to present the full underlying documentation to support our Petition. We respectfully ask for the opportunity to present this existing documentation in support of our Petition via this Appeal.

Thank you,



Michael Feiner  
Jennifer Shy

## CHRONOLOGICAL CASE REPORT

Case Nos.: T17-0205

Case Name: Ogden v. Clahan

Property Address: 540 Merritt Avenue, Oakland, CA  
538 Merritt Avenue, Oakland, CA

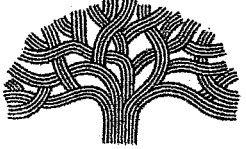
Parties: Laura Ogden (Tenant)  
Masami Clahan (Owner)

### OWNER APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	March 31, 2017
Owner Response filed	May 24, 2017
Hearing Decision issued	November 1, 2017
Owner Appeal filed	November 20, 2017

T17-0205 MS/MA

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 CITY OF OAKLAND	<b>CITY OF OAKLAND</b> <b>RENT ADJUSTMENT PROGRAM</b> P.O. Box 70243 Oakland, CA 94612-0243 (510) 238-3721	2017 MAR 31 PM 3:41
	<b>TENANT PETITION</b>	

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

**Please print legibly**

Your Name <b>Laura Ogden</b>	Rental Address (with zip code) <b>540 Merritt Avenue Oakland, CA 94610</b>	Telephone: <b>415-290-3045</b>
		E-mail: <b>lxomerritt@gmail.com</b>
Your Representative's Name <b>Tobener Ravenscroft Law Jackie Ravenscroft</b>	Mailing Address (with zip code) <b>21 Masonic Avenue San Francisco, CA 94118</b>	Telephone: <b>415-504-2165</b>
		Email:
Property Owner(s) name(s) <b>Masami Clahan</b>	Mailing Address (with zip code) <b>532 Portlock Avenue Honolulu, HI 96825</b>	Telephone: <b>unknown</b>
		Email:
Property Manager or Management Co. (if applicable) <b>Nathaniel Reinke (RRR)</b>	Mailing Address (with zip code) <b>1373 Clay Street #11 San Francisco, CA 94109</b>	Telephone: <b>415-710-7284</b>
		Email: <b>rockridge.re@gmail.com</b>

Number of units on the property: 5 (1 non-conforming)

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

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

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

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

Rev. 2/10/17

For more information phone (510) 238-3721.



	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)
not checked →	(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: 2001 Initial Rent: \$ 2500,- /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: 2015. 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		
2/11/17	4/15/17	\$ 2743 <sup>03</sup>	\$ 4759 <sup>76</sup>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
10/10/06	11/1/06	\$ 2500-	\$ 2595-	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

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

Have you ever filed a petition for this rental unit?

- Yes  
 No

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

---

**III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:**

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

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

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

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

Please attach documentary evidence if available.

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

**IV. VERIFICATION:** The tenant must sign:

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

  
\_\_\_\_\_  
Tenant's Signature

3/31/17  
\_\_\_\_\_  
Date

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

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

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

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

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

\_\_\_\_\_  
Tenant's Signature

\_\_\_\_\_  
Date

## **VI. IMPORTANT INFORMATION:**

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

### **File Review**

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

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

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

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RENT ADJUSTMENT PROGRAM

2017 MAR 31 PM 3:41

Laura Ogden  
540 Merritt Avenue & 538 Merritt Avenue  
Oakland, CA 94610

Friday, March 31, 2017

To: Rent Adjustment Program, City of Oakland  
RE: Key Dates - RAP Tenant Petition

**Single Residence Spanning 540 & 538 Merritt Avenue**

<b>1997</b>	Tenant (Laura Ogden) moved into 540 Merritt Avenue in Oakland.
<b>2001</b>	To create a larger apartment for tenant (Laura Ogden), the original owner combined into one residence the 540 Merritt apartment with an adjoining apartment at 538 Merritt. The owner did this by opening up the shared wall between the two apartments, removing the kitchen in 538 and converting the space into a laundry room. The tenant (Laura Ogden) rented 538 Merritt as an extension of 540 Merritt and moved her bedroom & office into 538 Merritt. She has since resided there with living quarters spanning both apartments. Photographs or videos of living quarters spanning both apartments can be provided at the hearing, if desired.
<b>2006</b>	A capital improvements rent increase went into effect.
<b>2007</b>	Current owner decided to start treating both apartments as one in terms of rent payments and other rental documentation.
<b>2011</b>	The 2006 capital improvements rent increase term of 5 years ended and no reduction in rent was received.
<b>2016</b>	Rent increase took effect in November for combined apartments with rent in the amount of \$2743.03. Amounts for 538 & 540 were not broken down as they had been previously combined in rental documentation.
<b>2016</b>	As part of selling the building, previous owner (Calvin Fung) provided purchasing/comps documentation to prospective buyers which listed 540 Merritt & 538 Merritt as combined residence with a single rent of \$2743.03. Prior to purchasing the building, the new owner's building manager (Nathaniel Reinke) came to see the building and toured the combined apartments (538/540) several times while tenant was present. The new owner (Masami Clahan) also toured the building and apartments.
<b>2017</b>	Building purchased 12/29/16. New owner's building manager (Nathaniel Reinke) sent letter attempting to revoke 2016 rent increase. Tenant did not agree to revocation of 2016 increase.
<b>2017</b>	In notice dated 1/27/17, the manager issued and then revoked a rent increase for 538 Merritt Avenue only with rent in the amount of \$3200. That increase is approximately 3 times the current rent ( the 538 apartment alone), based on the manager's breakdown of separate rent amounts for each apartment (letter dated 2/2/17). Effective date of that notice was 60 days from notice and it was subsequently revoked in the 2/2/17 letter.
<b>2017</b>	The manager then re-issued the revoked rent increase of \$3200 for 538 Merritt only with an effective date of 4/15/17. That latest notice was posted on door on 2/11/17.

**Summary:**

Effective 4/15/17, the latest rent increase notice raises the rent on the combined apartments (538 & 540) from \$2743.03 to \$4759.76.

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

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2017 MAY 14 PM 3:41  
RENT ADJUSTMENT PROGRAM

**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 T17 - 0205**

Your Name Masami & Mina Clahan	Complete Address (with zip code) 532 Portlock Avenue Honolulu, HI 96825	Telephone: 510-913-1869 Email: M33hasse@gmail.com
Your Representative's Name (if any) Daniel Bornstein Bornstein Law	Complete Address (with zip code) .507 Polk Street, Suite 410 San Francisco, CA 94102	Telephone: 415-409-7611 Email: Daniel@bornstein.law
Tenant(s) Name(s) Laura Ogden	Complete Address (with zip code) 540 Merritt Avenue Oakland, CA 94610	
Property Address (If the property has more than one address, list all addresses) 538 & 540 Merritt Avenue, Oakland, CA 94610		Total number of units on property

Have you paid for your Oakland Business License? Yes  No  Lic. Number check #1700L completed 4/12  
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. received.

Have you paid the current year's Rent Program Service Fee (\$68 per unit)? Yes  No  APN: 230920-16  
The property owner must be current on payment of the RAP Service Fee. If the fee is not current, an Owner Petition or Response may not be considered in a Rent Adjustment proceeding. Please provide proof of payment.

Date on which you acquired the building: 12/20/10

Is there more than one street address on the parcel? Yes  No  ALTHOUGH TENANTS USE 538A, 538B AND 542 AS MAILING ADDRESSES

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

2017 MAY 26 PM 3:41  
 RENT ADJUSTMENT PROGRAM

**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.

Date of Contested Increase	Banking (deferred annual increases)	Increased Housing Service Costs	Capital Improvements	Uninsured Repair Costs	Debt Service	Fair Return
2/9/17	<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"/>

UNIT # 538

If you are justifying additional contested increases, please attach a separate sheet.  
 UNIT # 538 IS TENANT'S SECOND UNIT AND THEREFORE EXEMPTED FROM 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 4-10-1995 # 538-2001

The tenant's initial rent including all services provided was: \$ 1,000 / month - per unit # 538

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? JANUARY 13, 2017 at the latest

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.

Date Notice Given (mo./day/year)	Date Increase Effective	Rent Increased		Did you provide the "RAP NOTICE" with the notice of rent increase?
		From	To	
2/9/2017	4/15/2017	\$ 1,129.49	\$ 3,200.00	<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

2017 MAR 24 PM 3:41  
OFFICE OF THE  
RENT ADJUSTMENT PROGRAM

**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~~ <sup>apartment</sup> 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)? *No*
- 2. Did the prior tenant leave after being given a notice of rent increase (Civil Code Section 1947)? *No*
- 3. Was the prior tenant evicted for cause? *No*
- 4. Are there any outstanding violations of building housing, fire or safety codes in the unit or building? *No*
- 5. Is the unit a single family dwelling or condominium that can be sold separately? *No*
- 6. Did the petitioning tenant have roommates when he/she moved in? *No*
- 7. If the unit is a condominium, did you purchase it? If not 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. *COSTA HAWKINS ACT*

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.

*[Signature]*  
Property Owner's Signature

5/24/2017  
Date

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF

I have read the foregoing

and know its contents.

CHECK APPLICABLE PARAGRAPHS

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am  an Officer  a partner  
 a of

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason.

I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.  The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am one of the attorneys for a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on \_\_\_\_\_, at \_\_\_\_\_, California.

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

TYPE OR PRINT NAME

SIGNATURE

PROOF OF SERVICE

1013a (3) CCP Revised 2004

STATE OF CALIFORNIA, COUNTY OF Alameda

I am employed in the county of San Francisco

\_\_\_\_\_, State of California.

I am over the age of 18 and not a party to the within action; my business address is:  
507 Polk Street, Suite 410, San Francisco, CA 94102-3396

On 5/24/17

\_\_\_\_\_, I served the foregoing document described as

Proepty Owner Response to Tenant's Rent Board Petition

on Laura Ogden

\_\_\_\_\_, in this action

by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:

by placing  the original  a true copy thereof enclosed in sealed envelopes addressed as follows:

Laura Ogden  
540 Merritt Avenue  
Oakland, CA 94610

BY MAIL

\*I deposited such envelope in the mail at \_\_\_\_\_, California.

The envelope was mailed with postage thereon fully prepaid.

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at San Francisco \_\_\_\_\_ California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on 5/24/17

\_\_\_\_\_, at San Francisco, California.

\*\*(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on \_\_\_\_\_, at \_\_\_\_\_, California.

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

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Kathryn Quetel (SBN 167100).....

TYPE OR PRINT NAME

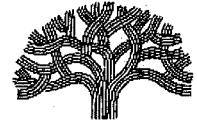
SIGNATURE

\*(BY MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG)

\*\* (FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)



# CITY OF OAKLAND



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

Housing and Community Development Department  
Rent Adjustment Program

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

## HEARING DECISION

**CASE NUMBER:** T17-0205, Ogden v. Clahan

**PROPERTY ADDRESS:** 540 Merritt Avenue, Oakland, CA  
538 Merritt Avenue, Oakland, CA

**DATE OF HEARING:** August 1, 2017

**DATE OF DECISION:** October 30, 2017

**APPEARANCES:** Laura Ogden, Tenant  
Tiffany Patel, Tenant Representative  
David Hatfield, Tenant Witness  
Dilraj Kahai, Tenant Witness  
Nathaniel Reinke, Property Manager  
Daniel Cheung, Attorney for Owner

## SUMMARY OF DECISION

The tenant petition is GRANTED. The subject unit is not exempt from the Rent Adjustment Program. The base rent for the subject unit is set forth below.

## INTRODUCTION

The tenant filed a petition on March 31, 2017, which contests two (2) monthly rent increases as set forth below:

1. From \$2,743.03 to \$4,759.76 effective April 15, 2017.
2. From \$2,500.00 to \$2,595.00 effective November 1, 2006

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

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- The rent increase exceeds the CPI Adjustment and is unjustified or is greater than 10%;
- 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;
- The rent increase I am contesting is the second increase in my rent in a 12-month period;
- My rent was not reduced after a prior rent increase period for a Capital Improvement had expired;
- The proposed rent increase would exceed an overall increase of 30% in 5 years; and
- The owner did not give me a summary of the justification for the increase despite my written request.

The owner filed a timely response claiming that the subject unit is exempt from the Rent Adjustment Program pursuant to the Costa Hawkins Act.

### ISSUES

1. Is the subject unit exempt from the jurisdiction of the Rent Adjustment Program?
2. If not exempt, are the contested rent increases valid?
3. Did the owners fail to provide a summary of the justification for the rent increases pursuant to a written request?
4. Is the rent increase effective April 15, 2017, a second increase within a twelve (12) month period?

### EVIDENCE

#### Background and Description of Tenant's Unit

The tenant testified that she moved into the apartment at 540 Merritt Avenue in 1997. In 2001, at the request of the tenant, the original owner combined 540 Merritt Avenue with the adjoining apartment at 538 Merritt Avenue to create a larger apartment for the tenant. He did this by opening up a shared wall between the two apartments, removing the kitchen in 538 Merritt Avenue and converting that space into a laundry room. The tenant testified that she rented 538 Merritt Avenue as an extension of 540 Merritt Avenue and moved her bedroom and office into 538 Merritt Avenue. The monthly rent for the combined apartments was \$2,500.00 in 2001. The tenant testified that since 2001 she has resided there with living quarters spanning both apartments. The tenant submitted a copy of the floor plan in support of her testimony<sup>1</sup>. The floor plan shows that the shared wall between the units in the entryway has been removed. The tenant also

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<sup>1</sup> Exhibit 9

submitted a photograph of the entryway which clearly shows that the shared wall between the two entryways has been removed<sup>2</sup>.

The tenant also called David Hatfield and Dilraj Kahai as witnesses. Both witnesses are long term friends of the tenant, and they both testified that they have visited the tenant in her apartment numerous times over the years and can confirm that the tenant's living quarters span both 540 Merritt Avenue and 538 Merritt Avenue. They both testified that the tenant's bedroom is in 538 Merritt Avenue, and her living room and kitchen are in 540 Merritt Avenue. Dilraj Kahai testified that there's no question that the two former apartments are now one large unit. This testimony is consistent with the floorplan and photograph submitted by the tenant<sup>3</sup>.

### Rent Increases at Issue

The tenant testified that on September 20, 2006, the owner at the time issued a capital improvements rent increase of \$95.00 effective November 1, 2006<sup>4</sup>. The capital improvements increase raised the rent on the combined 540 Merritt Avenue and 538 Merritt Avenue apartment from \$2,500.00 to \$2,595.00 monthly. The tenant testified that she is contesting the capital improvements rent increase because she did not receive a reduction in rent after the five (5) year amortization period for the capital improvements rent increase ended in October of 2011.

The tenant testified that on September 30, 2016, the prior owner issued a notice of rent increase proposing to increase the rent on the combined apartments from \$2,689.25 to \$2,743.03 monthly effective November 1, 2016. The amounts for 540 Merritt Avenue and 538 Merritt Avenue were not broken down individually as both apartments had been treated as one in terms of rent payments and other rental documentation since approximately 2004. The tenant submitted a copy of the rent increase notice<sup>5</sup>.

The subject building was sold to the current owners on December 29, 2016. On January 27, 2017, the property manager for the new owners, Nathaniel Reinke, issued a notice of rent increase for 538 Merritt Avenue only, raising the rent for that apartment to \$3,200.00 monthly. In a letter dated February 2, 2017, the property manager rescinded the rent increase served on January 27, 2017. He also rescinded the rent increase effective November 1, 2016. The property manager stated that the rent for the subject premises remained \$2,689.25. He further broke down the rent by stating that the rent for 538 Merritt Avenue was \$1,129.49 monthly, and the rent for 540 Merritt Avenue was \$1,559.76 monthly. With that letter, the property manager enclosed a check for \$161.34 as restitution for three (3) months of rent overpayments in November, December, and January. The tenant submitted a copy of the rescission letter into

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<sup>2</sup> Exhibit 7

<sup>3</sup> Exhibits 7 and 9

<sup>4</sup> Exhibit 1

<sup>5</sup> Exhibit 3

evidence<sup>6</sup>. The tenant testified that she did not agree to the rescission of the rent increase effective November 1, 2016.

On February 9, 2017, the property manager re-issued a notice of rent increase for 538 Merritt Avenue only, raising the rent for that apartment from \$1,129.49 to \$3,200.00 monthly, effective April 15, 2017. The tenant testified that the rent increase effective April 15, 2017, would raise the rent on the combined apartments at 540 Merritt Avenue and 538 Merritt Avenue to \$4,759.76 monthly.

At the hearing the tenant testified that she has paid \$2,743.03 in rent monthly since November 1, 2016, even though the property manager revoked that rent increase. She further testified that in April of 2017, after she filed her petition, the owners posted a Three (3) Day Notice to Pay or Quit for 538 Merritt Avenue. To avoid eviction, the tenant made a one-time payment of \$981.00 but thereafter she continued to pay \$2,743.03 monthly. The property manager testified that after he rescinded the rent increase effective November 1, 2016, he issued a check for \$161.34 as restitution for three (3) months of rent overpayments in November, December, and January. Since then, the tenant continues to send a check for \$2,743.03 every month, and he in turn sends her a check for the difference between the amount paid and the amount owed every month which she refuses to cash.

#### Written Summary of Justification for Rent Increase

The tenant did not provide any evidence of a written request to the owners for a summary of the justification for the rent increase.

#### Second Rent Increase Within a Twelve (12) Month Period

The November 1, 2016, rent increase was rescinded by the property manager. The next rent increase was imposed on April 15, 2017.

#### RAP Notice

The tenant stated on her petition and testified at the hearing that she received the notice of the existence of the Rent Adjustment Program (RAP Notice) in 2015 and she also received it with all subsequent rent increase notices.

#### Exemption Based on Costa Hawkins Act

The owners claim that the tenant is currently residing in two separate units, and because 538 Merritt Avenue is the tenant's second unit, it should be exempt from the Rent Adjustment Program under the Costa Hawkins Act. They argue that 540 Merritt Avenue is the tenant's primary residence, and that 538 Merritt Avenue is an auxiliary unit and the tenant does not have a right to hold it as a rent controlled unit, since it is not her primary residence. They argue that giving a tenant rent control protection for two

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<sup>6</sup> Exhibit 5

separate units is counter to the spirit of the Costa Hawkins Act and the Rent Adjustment Ordinance.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### Exemption Based on Costa Hawkins Act

The tenant testified credibly that 540 Merritt Avenue and 538 Merritt Avenue were combined into one large unit in 2001 and that she has lived in that combined unit as her primary place of residence since 2001. She provided a floorplan and photographs in support of her claim as well as credible witness testimony corroborating her claim that the two former apartments have been merged into one as of 2001. The overwhelming evidence in this case clearly shows that 540 Merritt Avenue and 538 Merritt Avenue have been combined into one large unit. Therefore, 538 Merritt Avenue is not exempt from the Rent Adjustment Program as a separate unit. Further, the owners have not cited any specific provisions in either the Rent Adjustment Ordinance or the Costa Hawkins Act to support their argument that a tenant cannot have rent control protection for two separate units. So even if the owners had prevailed in demonstrating that 540 Merritt Avenue and 538 Merritt Avenue are two separate units, 538 Merritt Avenue would still not be exempt from the Rent Adjustment Ordinance.

### Invalid Rent Increase

The Rent Adjustment Ordinance states that an owner seeking a rent increase in excess of the CPI Rent Adjustment or available banking must first petition the Rent Adjustment Program and receive approval for the rent increase before the rent increase can be imposed<sup>7</sup>. Furthermore, a rent increase in excess of the CPI Rent Adjustment or available banking must be justified on one or more grounds listed in the Rent Adjustment Ordinance.<sup>8</sup>

The owners did not receive approval from the Rent Adjustment Program before raising the rent for 538 Merritt Avenue to \$3,200.00 effective April 15, 2017, and did not provide a justification for the rent increase in excess of the CPI Rent Adjustment. Therefore the contested rent increase is not valid.

### Rescission of 2016 Rent Increase

The owners have rescinded the rent increase from \$2,689.25 to \$2,743.03 monthly effective November 1, 2016, so that rent increase is no longer in effect. Although the tenant continues to pay the November 2016 rent increase despite the rescission, the property manager sends her a check every month for the difference between the amount paid and the amount owed, therefore the tenant is not entitled to restitution for overpayment of rent for payments made pursuant to the November 2016 rent increase.

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<sup>7</sup> O.M.C. §8.22.065(A)

<sup>8</sup> O.M.C. §8.22.070(C)1

### Failure to Remove Capital Improvements Increase

The Rent Adjustment Ordinance states that the dollar amount of the rent increase justified by capital improvements shall be removed from the allowable rent at the end of the amortization period<sup>9</sup>. If an owner fails to reduce a capital improvement rent increase in the month following the end of the amortization period for such improvement and the tenant pays any portion of such rent increase after the end of the amortization period, the tenant may recover interest on the amount overpaid<sup>10</sup>.

The tenant is entitled to the removal of the \$95.00 capital improvements rent increase from her current rent of \$2,689.25. The tenant's base rent is now \$2,594.25. Because the tenant continued to pay the capital improvements increase after the amortization period ended in October of 2011, she is entitled to restitution for overpayment of rent plus interest on the overpaid amount, however, restitution is limited to three (3) years prior to the hearing<sup>11</sup>. Therefore, the tenant is entitled to restitution in the amount of \$3,420.00 (\$95.00 x 36 months) plus interest. The applicable rate of interest for overpaid capital improvements is 7%<sup>12</sup>. The total amount of restitution owed to the tenant is \$3,659.40.

### Written Summary of Justification for Rent Increases

This claim is denied. The tenant did not provide any evidence of a written request for a summary of the justification for the rent increase.

### ORDER

1. Petition T17-0205 is GRANTED.
2. 538 Merritt Avenue is not exempt from the Rent Adjustment Program.
3. The rent increase effective April 15, 2017, is invalid.
4. The rent increase effective November 1, 2016, has been rescinded.
5. The \$95.00 monthly rent increase for capital improvements has been removed. The tenant's base rent is now \$2,594.25.
6. Due to overpayment of rent, the tenant is owed restitution in the amount of \$3,659.40. The overpayment is adjusted by a rent decrease for the next twelve (12) months in the amount of \$304.95. From December 2017 through

<sup>9</sup> Residential Rent Arbitration Board Rules and Regulations Section 10.2.3(2)

<sup>10</sup> Residential Rent Arbitration Board Rules and Regulations Section 10.2.5

<sup>11</sup> HRRAB Appeal Decisions T06-0051 (*Barajas/Avalos v. Chu*) & T08-0139 (*Jackson-Redick v. Burks*)

<sup>12</sup> California Constitution Article XV §1

November 2018, the tenant's rent will be decreased by \$304.95 to \$2,289.30 monthly. Her rent will revert to \$2,594.25 monthly in November of 2018.

7. The owner may increase the monthly rent in accordance with the notice requirements of Cal. Civil Code §827 and the Rent Adjustment Ordinance (O.M.C. §8.22 et seq.).

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

Date: October 30, 2017

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

**PROOF OF SERVICE**

**Case Number T17-0205**

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

**Tenant**

Laura Ogden  
540 Merritt Ave  
Oakland, CA 94610

**Owner**

Masami Clahan  
532 Portlock Ave  
Honolulu, HI 96825

**Tenant Representative**

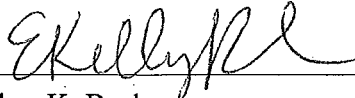
Tiffany Patel  
447 Sutter St 811  
San Francisco, CA 94108

**Owner Representative**

Daniel Bornstein  
507 Polk St 410  
San Francisco, CA 94102  
  
Nathaniel Reinke  
1373 Clay St #11  
San Francisco, CA 94109

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 November 01, 2017 in Oakland, CA.

  
\_\_\_\_\_  
Esther K. Rush

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

For date stamp.

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**APPEAL**

<b>Appellant's Name</b> <b>Masami Clahan</b>		<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant	
<b>Property Address (Include Unit Number)</b> 540 Merrit Avenue, Oakland, CA 538 Merrit Avenue, Oakland, CA			
<b>Appellant's Mailing Address (For receipt of notices)</b> 532 Portlock Avenue Honolulu, HI 96825		<b>Case Number</b> T17-0205	
		<b>Date of Decision appealed</b> November 1, 2017	
<b>Name of Representative (if any)</b> Bornstein Law		<b>Representative's Mailing Address (For notices)</b> 507 Polk Street, Suite 410 San Francisco, CA 94102	

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

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

For more information phone (510) 238-3721.

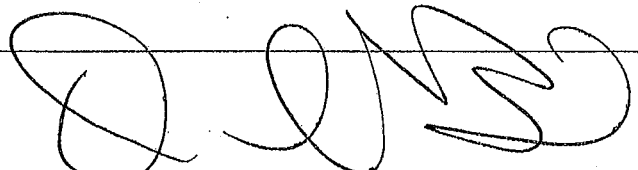
- f)  I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. (In your explanation, you must describe how you were denied the chance to defend your claims and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue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

Submissions to the Board are limited to 25 pages from each party. Please number attached pages consecutively.  
 Number of pages attached: 2.

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

I declare under penalty of perjury under the laws of the State of California that on November 20   , 2017   , 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>	Tiffany Patel	RECEIVED CITY OF SAN FRANCISCO 2017 NOV 20 PM 1:53
<u>Address</u>	447 Sutter Street 811	
<u>City, State Zip</u>	San Francisco, CA 94610	
<u>Name</u>		
<u>Address</u>		
<u>City, State Zip</u>		

	11/20/17
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 of the information required or your appeal cannot be processed and may be dismissed.
- Any supporting argument or documentation to be considered by the Board must be received by the Rent Adjustment Program with a proof of service on opposing party within 15 days of filing the appeal.
- Any response to the appeal by the other party must be received by the Rent Adjustment Program with a proof of service on opposing party within 35 days of filing the appeal.
- The Board will not consider new claims. All claims, except as to jurisdiction, must have been made in the petition, response, or at the hearing.
- The Board will not consider new evidence at the appeal hearing without specific approval.
- You must sign and date this form or your appeal will not be processed.
- The entire case record is available to the Board, but sections of audio recordings must be pre-designated to Rent Adjustment Staff.

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For more information phone (510) 238-3721.

Explanation regarding grounds for appeal:

2.a. The decision is inconsistent with OMC Chapter 8.22.010(A), (B), and (C), as well as Chapter 8.22.030(A)(7). In the instant matter, tenant petitioner is renting two residential units and claiming rent control limits for both of them. She occupies both units for below market monthly rent, using one unit for residential purposes and the other for luxury and leisure. The decision, which preserves the tenant's scheme of maintaining an auxiliary residential unit for below market rent, all for her own private enjoyment, effectively contributes to the shortage of decent, safe, and affordable and sanitary residential rental housing in Oakland. The decision is inconsistent with the findings and purposes of the Residential Rent Adjustment Program, which was specified under OMC Chapter 8.22.010(A), (B), and (C). The decision is inconsistent with OMC Chapter 8.22.010(A), because subsidizes the tenant's petitioner to occupy an extra residential unit for selfish reasons, depriving the extra unit from people who are still seeking to rent a home in Oakland. The decision runs counter to the very spirit and purpose of the Rent Adjustment Program.

Moreover, the decision is inconsistent with OMC Chapter 8.22.010(B), which states that the Rent Adjustment Program's purpose is also to encourage persons to invest in residential rental property in Oakland. The decision is inconsistent with this purpose, because it sends a message to investors that the spirit and purpose of the Rent Adjustment Program takes back seat to exploitable loopholes that makes Oakland residential property undesirable to invest in.

The decision is also inconsistent with OMC Chapter 8.22.010(C) and Chapter 8.22.030(A)(7). Allowing an individual tenant to rent multiple properties for below market rent discourages rehabilitation of units to be made available to the public. It is also inconsistent with subsection C's purpose to work in tandem with the Costa-Hawkins Act, which allows landlords to reset for a rental unit when the last original tenant moves out of a residential rental unit. In this matter, the tenant petitioner uses one unit as a primary residence and occupies another unit as leisure space. The decision creates a rift between the Costa-Hawkins Act and the Rent Adjustment Program, which is clearly inconsistent with OMC Chapter 8.22.010(C) and Chapter 8.22.030(A)(7).

2.c. The decision raises a new policy issue that has not been decided by the Board.

In the instant matter, the decision states that two individual residentials, each with its own individual address, can be considered a single unit based on tenant's tandem use of one unit as her primary residence and the other as additional luxury living space. This ruling creates a new policy issue of whether separate units and addresses can be legally combined through occupant usage and not through the legal processes required by the Department of Building Inspection or other agencies. The decision creates an ambiguity as to whether the two legal addresses in question should be considered one unit for matters concerning building permits, unlawful detainer actions, tax information reporting, and so forth. This ambiguity must be addressed in order to determine the policy when and how separate rental units can be legally combined into 1 unit for all purposes. This also raises the policy issue of whether the Rent Adjustment Program has the authority, or should be granted the authority, to make this legal determination that legal implications beyond the issue of rent increases.

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The decision also states that even if the subject units are considered separate units, they still would not be exempt under the Rent Adjustment Ordinance. This ruling raises a new policy issue of whether a tenant, who is already renting a rent controlled residential unit, should be allowed rent control protection for an auxiliary rental unit that is used for luxury or leisure. The decision states that rent control exemption does not exist in this situation, but yet the policies outlined in OMC Chapter 8.22.010(A), (B), and (C) suggests that an exemption should exist.

2.d. For the reasons stated in the sections above, the decision violates the Costa Hawkins Act, local laws governing zoning, as well as state and federal law regarding tax information and reporting.

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DEPT. OF  
CIVIL SERVICE AND  
HUMAN RESOURCE PROGRAM

## **CHRONOLOGICAL CASE REPORT**

Case Nos.: T16-0549 & T17-0523

Case Name: Beasley v. Horejsi

Property Address: 3764 39<sup>th</sup> Ave., Apt. # D, Oakland, CA

Parties: Linda Akenduca Beasley (Tenant)  
Satchidananda Mims (Tenant)  
Michael E. Horejsi (Property Owner)

### **OWNER APPEAL, CASE# T16-0549**

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	October 4, 2016
Owner Response filed	November 2, 2016
Hearing Decision issued	March 15, 2017
Owner Appeal filed	April 3, 2017
Tenant's Response to Owner Appeal	July 17, 2018

### **TENANT APPEAL, CASE# T17-0523**

Tenant Petition filed	September 12, 2017
Owner Response filed	February 1, 2018
Hearing Decision issued	March 29, 2018
Tenant Appeal filed	April 18, 2018
Tenant filed Supporting Memorandum	May 3, 2018

T116-0549 KM/BC

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

For date stamp.

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**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

**TENANT PETITION**

Your Name Akenduca Beasley aka Linda J. Beasley	Rental Address (with zip code) 3764 39th Ave. Apt D. Oakland, CA 94619	Telephone
Your Representative's Name Self	Mailing Address (with zip code) PO Box 19304, Oakland CA 94619	Telephone
Property Owner(s) name(s) Michael E. Horejsi	Mailing Address (with zip code) P.O. Box 2883 Castro Valley, CA 94546	Telephone

Number of units on the property: 7

Type of unit you rent (circle one)	House	Condominium	Apartment, Room, or Live-Work
Are you current on your rent? (circle one)	Yes	No	Legally Withholding Rent. You must attach an explanation and citation of code violation.

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

<input checked="" type="checkbox"/>	(a) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
<input checked="" type="checkbox"/>	(b) The owner did not give me a summary of the justification(s) for the increase despite my written request.
<input checked="" type="checkbox"/>	(c) The rent was raised <u>illegally</u> after the unit was vacated (Costa-Hawkins violation).
<input checked="" type="checkbox"/>	(d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.)
<input checked="" type="checkbox"/>	(e) A City of Oakland form notice of the existence of the Rent Program was not given to me at least six months before the effective date of the rent increase(s) I am contesting.
<input checked="" type="checkbox"/>	(f) The housing services I am being provided have decreased. (Complete Section III on following page)
<input checked="" type="checkbox"/>	(f2) At present, there exists a health, safety, fire, or building code violation in the unit. <u>If the owner has been cited in an inspection report, please attach a copy of the citation or report.</u>
<input checked="" type="checkbox"/>	(g) The contested increase is the second rent increase in a 12-month period.
<input type="checkbox"/>	(h) The notice of rent increase based upon capital improvement costs does not contain the "enhanced notice" requirements of the Rent Adjustment Ordinance or the enhanced notice was not filed with the RAP.
<input checked="" type="checkbox"/>	(i) My rent was not reduced after the expiration period of the rent increase based on capital improvements.
<input type="checkbox"/>	(j) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).
<input type="checkbox"/>	(k) I wish to contest an exemption from the Rent Adjustment Ordinance (OMC 8.22, Article I)

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

Date you moved into the Unit: 7/24/1982 Initial Rent: \$ 425.00 /month

When did the owner first provide you with a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program (RAP NOTICE)? Date: 06/05/2002 . 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. You must check "Yes" next to each increase that you are challenging.

Date Notice Served (mo/day/year)	Date Increase Effective (mo/day/year)	Amount Rent Increased		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
Not served***	Oct 1, 2016	\$ 828	\$ 882.42	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
June 30, 2016	Aug 1, 2000	\$ 675	\$ 780.00	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Aug 23, 1999	Oct 1, 1999	\$ 650	\$ 675.00	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
June 30, 1998	Aug 1, 1998	\$ 625	\$ 650.00	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
June 1, 1991	July 1, 1991	\$ 525	\$ 625.00	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Dec 26, 185	Feb 1, 1986	\$	\$ 525.00	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

\* You have 60 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 never got the RAP Notice you can contest all past increases.

List case number(s) of all Petition(s) you have ever filed for this rental unit: No. T03-0300

**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 service problems, 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, please attach a separate sheet listing a description of the reduced service(s) and problem(s). Be sure to include at least the following: 1) a list of the lost housing service(s) or serious problem(s); 2) the date the loss(es) began or the date you began paying for the service(s); and 3) how you calculate the dollar value of lost problem(s) or service(s). Please attach documentary evidence if available.

To have a unit inspected and code violations cited, contact the City of Oakland, Code Compliance Unit, 250 Frank H. Ogawa Plaza, 2<sup>nd</sup> Floor, Oakland, CA 94612. Phone: (510) 238-3381



**IV. VERIFICATION:** The tenant must sign:

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

  
\_\_\_\_\_  
Tenant's Signature

10-3-2016  
Date

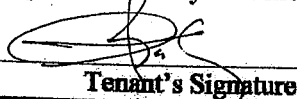
**V. MEDIATION AVAILABLE:** Mediation is an entirely voluntary process to assist you in reaching an agreement with the owner. If both parties agree, you have the option to mediate your complaints before a hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal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

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

10-3-2016  
Date

**VI. IMPORTANT INFORMATION:**

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

**File Review**

The owner is required to file a Response to this petition within 35 days of notification by the Rent Adjustment Program. You will be mailed a copy of the **Landlord's Response form**. Copies of documents attached to the Response form will not be sent to you. However, you may review these in the Rent Program office by appointment. For an appointment to review a file call (510) 238-3721; please allow six weeks from the date of filing before scheduling a file 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
- \_\_\_\_ Other (describe): \_\_\_\_\_

BEASLEY, AKENDUCA D.: TENANT PETITION ATTACHMENT

Regarding legally withholding rent: The rent is current in accordance with a court order issued by the Superior court of California.

II. RENTAL HISTORY

Service of Notice.

\*\*\* On or about 8/27/16, Petitioner discovered the notice to increase rent folded up, in the inside of the bottom right side of the front door at residence 3764 39th Ave. Apt. D., Oakland, CA 94619. The Notice was not served within the confines of applicable California law. For example service under applicable law requires:

Personal service - To serve you personally, the person serving the notice must hand you the notice (or leave it with you if you refuse to take it).

Substituted service on another person -If the landlord can't find you at home, the landlord should try to serve you personally at work. If the landlord can't find you at home or at work, the landlord can use "substituted service" instead of serving you personally.

To comply with the rules on substituted service, the person serving the notice must leave the notice with a person of "suitable age and discretion" at your home or work and also mail a copy of the notice to you at home. A person of suitable age and discretion normally would be an adult at your home or workplace, or a teenage member of your household.

Service of the notice is legally complete when both of these steps have been completed. The three-day period begins the day after both steps have been completed.

Posting and mailing - If the landlord can't serve the notice on you personally or by substituted service, the notice can be served by taping or tacking a copy to the rental unit in a conspicuous place (such as the front door of the rental unit) and by mailing another copy to you at the rental unit's address. (This service method is commonly called "posting and mailing" or "nailing and mailing.")

Service of the notice is not complete until the copy of the notice has been mailed. The three-day period begins the day after the notice was posted and mailed.

See California Civil Code §§ 827; 1162; Walters v. Meyers (1990) 226 Cal.App.3d Supp. 15

III. Description of Decreased or Inadequate Housing Services

Services: dates are estimated below, exact dates not known at this time. Services not believed to be in compliance with California Civil Code §1941.

Table with 3 columns: Date, Decreased/Inadequate Services, Amount (\$). Rows include: 7/2015 Heater doesn't function; 7/2007 Bath Tub -- rusted and full of mold; 7/2007 Bathroom Mold and Mildew; 7/2007 Defective stove.

		board
7/2007	Hole in closet	To be determined by rent board
7/2007	Window Screens	To be determined by rent board
1/2005	Parking- is a part of the original rental agreement.	(\$25 per month.)- should be noted, No. T03-0300 tenant petition filed challenged increase and the land lord rescinded the increase.
7/2005	<b>Electrical wiring and power surges- causes a lot of lightbulbs to blow out within a few days of instillation.</b>	To be determined by rent board

Several documents have been ordered masked from public view by the Superior Court of California. Documents in support of this petition will be filed at a later time. Along with any other information the Rent board indicates it needs to make a determination in this case. If you have questions or concerns please contact petitioner Akenduca D. Beasley by means above.

KM

<b>CITY OF OAKLAND</b> <b>RENT ADJUSTMENT PROGRAM</b> P.O. Box 70243 250 Frank H. Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721	For filing stamp.  <div style="text-align: center;"> <b>RECEIVED</b>   <b>NOV - 2 2016</b>   <small>OAKLAND RENT ADJUSTMENT</small> </div>
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**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 T16-0549

**OWNER RESPONSE**

**Please print legibly.**

Your Name  <i>Michael E Horejsi</i>	Complete Address (with zip code)  <i>P.O. Box 2883 Castro Valley Ca 94546</i>	Phone: _____ Email: _____
Your Representative's Name (if any)  <i>Self.</i>	Complete Address (with zip code)	Phone: _____ Fax: _____ Email: _____
Tenant(s) name(s)  <i>Linda Beasley</i>	Complete Address (with zip code)  <i>3764 39th Ave Apt D Oakland, Ca 94619</i>	

Have you paid for your Oakland Business License? Yes  No  Number 2826364  
 (Provide proof of payment.)

Have you paid the Rent Adjustment Program Service Fee? (\$30 per unit) Yes  No   
 (Provide proof of payment.)

There are 7 residential units in the subject building. I acquired the building on 1/6/94.

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

**I. RENTAL HISTORY**

The tenant moved into the rental unit on 7/24/1982.

The tenant's initial rent including all services provided was \$ 832.48 / month. *Rent was set at this figure, RAB Hearing Decision, Jan 22, 2004. Tenant did not pay this amount.*

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? 5 June 2002

Is the tenant current on the rent? Yes  No

If you believe your unit is exempt from Rent Adjustment you may skip to **Section IV. EXEMPTION.**

If a contested increase was based on **Capital Improvements**, did you provide an **Enhanced Notice to Tenants for Capital Improvements** to the petitioning tenant(s)? Yes \_\_\_\_\_ No \_\_\_\_\_. If yes, on what date was the Enhanced Notice given? \_\_\_\_\_. Did you submit a copy of the Enhanced Notice to the RAP office within 10 days of serving the tenant? Yes \_\_\_\_\_ No \_\_\_\_\_. Not applicable: there was no capital improvements increase. \_\_\_\_\_

Begin with the most recent rent increase and work backwards. Attach another sheet if needed.

Date Notice Given (mo/day/year)	Date Increase Effective (mo/day/year)	Amount Rent Increased		Did you provide NOTICE TO TENANTS with the notice of rent increase?
		From	To	
Aug 26, 2016	Oct 1, 2016	\$ 832.48	\$ 882.42	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Jan 22, 2004	Oct 1, 2003	\$ 800.00	\$ 832.48	<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

Rent set by RAB TO3-0300

**II. JUSTIFICATION FOR RENT INCREASE**

You must prove that each contested rent increase greater than the Annual CPI Adjustment is justified and was correctly served. Use the following table and check the applicable justification(s) box for each increase contested by the tenant(s) petition. For a summary of these justifications, please refer to the "Justifications for Increases Greater than the Annual CPI Rate" section in the attached Owner's Guide to Rent Adjustment.

Date of Increase	Banking (deferred annual increases)	Increased Housing Service Costs	Capital Improvements	Uninsured Repair Costs	Fair Return	Debt Service (if purchased before 4/1/14)
Aug 26, 2016	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jan 22, 2004	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/> never paid	<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"/>	<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"/>

For each justification checked, you must submit organized documents demonstrating your entitlement to the increase. Please see the "Justifications" section in the attached Owner's Guide for details on the type of documentation required. In the case of Capital Improvement increases, you must include a copy of the "Enhanced Notice to Tenants for Capital Improvements" that was given to tenants. Your supporting documents do not need to be attached here, but are due in the RAP office no later than seven (7) days before the first scheduled Hearing date.

### **III. 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 on a separate sheet. Submit any documents, photographs or other tangible evidence that supports your position.

### **IV. 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** for 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.

### **V. IMPORTANT INFORMATION**

**Time to File.** This form **must be received** by the Rent Adjustment Program, P.O. Box 70243, Oakland, CA 94612-0243, within 35 days of the date that a copy of the Tenant Petition was mailed to you. (The date of mailing is shown on the Proof of Service attached to the Tenant Petition and other response documents mailed to you.) A postmark does not suffice. 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. If you wish to deliver your completed Owner Response to the Rent Adjustment Program office in person, go to the City of Oakland Housing Assistance Center, 250 Frank H. Ogawa Plaza, 6<sup>th</sup> Floor, Oakland, where you can date-stamp and drop your Response in the Rent Adjustment drop box. The Housing Assistance Center is open Monday through Friday, except holidays, from 9:00 a.m. to 5:00 p.m. **You cannot get an extension of time to file your Response by telephone.**

**NOTE: If you do not file a timely Response, you will not be able to produce evidence at the Hearing, unless you can show good cause for the late filing.**

**File Review.** You should have received a copy of the petition (and claim of decreased services) filed by your tenant with this packet. Other documents provided by the tenant will not be mailed to you. You may review additional documents in the RAP office by appointment. For an appointment to review a file or to request a copy of documents in the file call (510) 238-3721.

**VI. VERIFICATION**

Owner must sign here:

*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.*

  
Owner's Signature

30 Oct 2016  
Date

**VII. MEDIATION AVAILABLE**

Your tenant may have signed the mediation section in the Tenant Petition to request mediation of the disputed issues. Mediation is an entirely voluntary process to assist the parties to reach an agreement on the disputed issues in lieu of a Rent Adjustment hearing.

If the parties reach an agreement during the mediation, a written Agreement will be prepared immediately by the mediator and signed by the parties at that time. If the parties fail to settle the dispute, the case will go to a formal Rent Adjustment Program Hearing, usually the same day. A Rent Adjustment Program staff Hearing Officer serves as mediator unless the parties choose to have the mediation conducted by an outside mediator. If you and the tenant(s) agree to use an outside mediator, please notify the RAP office at (510) 238-3721. 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. (There is no charge for a RAP Hearing Officer to mediate a RAP case.)

Mediation will be scheduled only if both parties request it – after both the Tenant Petition and the Owner 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).*

  
Owner's Signature

30 Oct 2016  
Date



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

CITY OF OAKLAND

Department of Housing and Community Development  
Rent Adjustment Program

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

## HEARING DECISION

**CASE NUMBER:** T16-0549, Beasley v. Horejsi  
**PROPERTY ADDRESS:** 3764 - 39<sup>th</sup> Ave., #D, Oakland, CA  
**DATE OF HEARING:** January 27, 2017  
**DATE OF DECISION:** March 15, 2017  
**APPEARANCES:** Linda Akenduca Beasley (Tenant)  
Satchidananda Mims (Tenant)  
Michael E. Horejsi (Owner)

## SUMMARY OF DECISION

The tenant's petition is partly granted.

## CONTENTIONS OF THE PARTIES

Tenant Beasley filed a petition on October 4, 2016, which alleges that a proposed rent increase from \$828 to \$882.42, effective October 1, 2016, and a rent increase in the year 2000, exceed the CPI Adjustment and are unjustified or is greater than 10%; that the owner did not give her a summary of the justification for the proposed rent increase despite her written request; that she did not receive the form Notice to Tenants (RAP Notice) at least 6 months before the effective date of the contested rent increase or together with the contested rent increase; that the contested rent increase is the second rent increase in a 12-month period; that her rent has not been reduced after the expiration period of the rent increase based on capital improvements; that at present there exists a health, safety, fire or building code violation in her unit; and that her housing services have been decreased due to problems with the heater; the bathtub; mold and mildew; the stove; the closet; window screens; and electrical problems; and that parking was a part of her original rental agreement.

000056



The owner filed a response to the petition, which alleges that the tenant was given the RAP Notice on July 24, 2002 and together with both contested rent increases; that the current rent increase is justified by Banking; and denies that the tenant's housing services have decreased.

### THE ISSUES

- (1) Did the owner respond to the tenant's request for the justification for the current rent increase?
- (2) When, if ever, did the tenant receive the RAP Notice?
- (3) Was the current contested rent increase notice served in accordance with legal requirements?
- (4) Is a current rent increase justified by Banking and, if so, in what amount?
- (5) Have the tenant's housing services been decreased and, if so, by what percentage of the total housing services that are provided by the owner?

### EVIDENCE

Request for Justification of Rent Increase: At the Hearing, the tenant testified that the owner responded to her request for the justification for the rent increase.

RAP Notice: At the Hearing, the tenant testified that she received the RAP Notice "many years ago." On Page 2 of her sworn petition, the tenant wrote that she received the Notice in the year 2002, as well as together with both contested rent increases.

Service of Rent Increase Notice: The tenant testified that the current rent increase notice was "stuck in her door," and that she never received a copy in the mail. The tenant further testified that the mail carrier sometimes does not deliver mail properly. At times, mail is placed in the "community box," rather than in her individual mail box. Also, she sometimes gets other tenants' mail in her box, and her mail is put in the mail boxes of others. The owner testified that he mailed a copy to the tenant on August 26, 2016, and that it was not returned to him by the postal service.

Rent History: The parties agreed that the tenant's rent has not been increased since the year 2004, when the rent was \$828 per month. The parties stipulated that a document signed by both of them on August 15, 2016, entitled "Stipulation Re: Dismissal / Judgment" (Stipulation) in an Alameda County Superior Case entitled Horesji v. Beasley, Mims" could be admitted into evidence.<sup>1</sup>

This Stipulation states, on page 2, "Defendants acknowledge that their current rent is \$828 and that they owe an additional \$25/month for parking, which is not rent." This document further states that "Defendant shall pay to plaintiff \$3,856.84, which constitutes a bargained for amount of all rents, fees, parking fees, etc. and costs due and owing for the premises through 8/31/16. . . Defendant shall pay \$100 every month, along with his/her monthly rent, beginning with September 2016 . . ."

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<sup>1</sup> Exhibit No. 1. This Exhibit, and all other Exhibits to which reference is made in this Decision, were admitted into evidence without objection.

Decreased Housing Services:

Heater: The tenants testified that there is one gas heater in her unit. Beginning about 3 years ago, the heater would not come on using the thermostat, although the pilot light was lit. The tenants notified the owner at that time, but nothing was done. The above-mentioned Stipulation, dated August 15, 2016, states, in part: “within 30 days, plaintiff [the owner] shall inspect and repair as necessary the following defects . . . heater.” The tenants testified that the thermostat was replaced in late November 2016. The owner testified that his first notice about this problem was when he received the tenant’s petition in the present case, which was mailed to him on October 19, 2016.

Bathtub: The tenant testified that the bathtub in her unit was re-surfaced in the year 2002. At that time, the owner’s repair person told her that the tub would need to be re-surfaced every few years. The tenant testified that she told the owner “a couple of years later,” but the tub has not been re-surfaced. One of the items listed in the Stipulation is “bathtub.” The tenant submitted photos of the tub that were taken in July and August 2016.<sup>2</sup> The tenant testified that the condition was the same at the time of the Hearing.

These photos depict several areas on the bottom of the tub where the surface is completely worn away and the metal below is rusted. The tenants testified that, because of this condition, they cannot take baths and place plastic mats on the tub floor when they take showers. The tenants further testified that the owner’s repair person put the toilet into the tub when he made repairs.

The owner testified that the rusted areas are the result of “hammer marks” or something similar, and that the damage was caused by the tenants. The owner further stated that he did nothing regarding the tub after signing the Stipulation.

Mold: The tenants testified that there is a window in their bathroom, but no fan. They open the window after showering, but there is significant mold on the wall and window above the shower. A photo submitted by the tenants supports the claim of mold accumulation.<sup>3</sup> The Stipulation includes inspection and repair of “bathroom mold and mildew.” The tenants testified that this problem has existed for 20 years, and that the mold “comes from the walls.” The owner testified that he has cleaned the bathroom walls, the last time being 5 or 6 years ago. He inspected in November 2016, at which time he saw soap scum, but no mold.

Stove: The tenants testified that the burners on the electric stove in their unit do not heat consistently, and that they notified the owner about this problem 2-3 years ago. The Stipulation lists “defective stove.” The owner testified that he inspected the stove in November 2016, and the burners performed normally.

Closet: The tenants testified that there is a hole in the wall of the closet in that was caused by a leaking roof. They cover the hole, and it has no effect upon their tenancy.

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<sup>2</sup> Exhibit Nos. 2B through 2D

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

Screens: The tenants testified that they moved into the unit in 1982, and there were window screens on the windows at that time. They fell into disrepair, and were replaced in November 2016. The list of repairs in the Stipulation includes “window screens.”

Electrical problems: The tenants testified that at times the lights in the unit flicker. There was no evidence of the cause of this problem.

Parking: The tenants testified that one parking space was included in their original rental agreement.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

Request for Justification of Rent Increase: It is found that the owners complied with the tenants’ request.

RAP Notice: It is found that the tenants received the RAP Notice in the year 2002, as well as together with both contested rent increases. A tenant petition must be filed within 90 days of the date of service of a rent increase notice or the date the tenant first receives the RAP Notice, whichever is later.<sup>4</sup> Therefore, the tenant’s petition was filed far too late to contest the rent increase in the year 2002.

Service of Rent Increase Notice: Rent Adjustment proceedings are governed by State law as well as the Rent Adjustment Ordinance (O.M.C.). Under State law,<sup>5</sup> a written notice of rent increase must be served either by delivering a copy to the tenant personally or by serving a copy by mail under the procedures prescribed in Code of Civil Procedure Section 1013. This Code section requires that the document be deposited in a mailbox, post office or other facility maintained by the U. S. Postal Service.

The owner’s testimony that he mailed the rent increase notice to the tenants is found to be credible, and a letter correctly addressed and properly mailed is presumed to have been received in the ordinary course of mail.<sup>6</sup> It is likely that the tenant did not receive the mailed notice due to problems with the postal service. This is not the fault of the owner. Therefore, it is found that the 2016 rent increase notice was properly served upon the tenant.

Banking: The Rent Adjustment Ordinance<sup>7</sup> defines “rent” as “the total consideration charged or received by an Owner in exchange for the use or occupancy of a Covered Unit **including all Housing Services provided to the tenant.**” (emphasis added). Therefore, the tenant’s current rent – which includes parking – is \$853 per month.

An owner is allowed to bank rent increases and use them in subsequent years, subject to certain limitations.<sup>8</sup> The parties agree on the dates and rent amounts entered into the Banking

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<sup>4</sup> O.M.C. Section 8.22.090 (A)(2)

<sup>5</sup> Civil Code Section 827(b)(1)

<sup>6</sup> Evidence Code Section 641.

<sup>7</sup> O.M.C. Section 8.22.020

<sup>8</sup> O.M.C. Section 8.22.070(C); Regulations Appendix, Section 10.5.1

calculations shown on the attached Table. The method of calculation on this Table has been approved by the Rent Board.<sup>9</sup> As set forth in this Table, the maximum rent for the tenant's unit is \$904.18 per month. This is more than the amount stated in the contested rent increase notice. Therefore, before consideration of the tenant's claims of decreased housing services, the rent is \$882.42 per month, effective October 1, 2016.

Decreased Housing Services: Under the Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent<sup>10</sup> and may be corrected by a rent adjustment.<sup>11</sup> However, in order to justify a decrease in rent, a decrease in housing services must be either the elimination or reduction of a service that existed at the start of the tenancy or a violation of the housing or building code which seriously affects the habitability of the tenant's unit. Also, an owner must have notice of a problem, and a reasonable opportunity to make needed repairs, before a claim of decreased housing services will be granted.

There is also a time limit for claiming decreased housing services. A tenant petition must be filed within 90 days after the date of service of a rent increase notice or change in the terms of a tenancy or the date the tenant first receives the RAP Notice, whichever is later.<sup>12</sup>

However, when a tenant complains of ongoing problems with his or her unit, the Board has declared that such claims should not be completely denied if the tenant received the RAP Notice more than 90 days before the petition was filed. The tenant first received the RAP Notice in the year 2002, far more than 90 days before filing her petition on October 4, 2016. Therefore, in accordance with the Regulations and Board decision,<sup>13</sup> the tenant can only be granted relief on her claims for decreased housing services beginning 90 days before the date on which she filed her petition. Allowable claims of decreased housing services therefore begin on July 4, 2016.

Heater: This was an item included in the court Stipulation, dated August 15, 2016. Contrary to his testimony at the Hearing, the owner obviously had notice of this problem before the court appearance in mid-August 2016. Heat is a basic housing service, and the heater should have been repaired before July 4, 2016. The lack of heat reduced the package of housing services by 10% from July 4 through November 30, 2016. As set forth on the Table below, the tenants overpaid rent during that time.

Bathtub: There is no evidence that the damage to the tub -- which was also an item listed in the Stipulation -- was caused by the tenants' misuse; the owner's testimony to the contrary was mere speculation. The tenants' testimony that they have been unable to take baths is supported by photos of several areas of the tub. This condition has reduced the housing services by 3% since July 4, 2016. Because of the current decrease in housing services, the rent is reduced by 3%, being \$26.47 per month, to \$855.95 per month. This rent decrease will remain in effect until the bathtub is re-surfaced or replaced, as specified in the Order below.

<sup>9</sup> Appeal Decision, Case No. 98-02, et al. Merlo v. Rose Ventures III et al. The Board has designated this decision to be a Precedent Decision.

<sup>10</sup> O.M.C. Section 8.22.070(F)

<sup>11</sup> O.M.C. Section 8.22.110(E)

<sup>12</sup> O.M.C. Section 8.22.090(A)(2)

<sup>13</sup> Appeal Decision in Case No. T09-0086, Lindsey v. Grimsley, et al., as modified by O. M. C. Section 8.22.090(A)(3)

Further, the tenant has overpaid rent since August 4, 2016. As set forth on the Table below, the tenant overpaid rent during that time.

Mold: Mold is caused by excess moisture in the air. When asked the cause of the mold in their bathroom, the tenants testified that they believed it “comes from the walls.” This is not a condition that the owner can correct and, therefore, the claim is denied.

Stove: The testimony of the parties was equally credible, and the tenants have not sustained their burden of proof. For this reason, the claim is denied.

Closet: Since the tenants testified that the hole in the wall does not affect their tenancy, the condition does not constitute a decreased housing service. The claim is denied.

Screens: This item is listed in the Stipulation. Since there were intact screens at the start of the tenancy, their dilapidation reduced the tenants’ housing services by 1% from July 4 through November 30, 2016. As set forth on the Table below, the tenants overpaid rent during that time.

Electrical problems: Intermittent flickering of the lights is a vague claim, and there is no practical way in which an Order can be stated to allow an owner to correct the problem; the claim is therefore denied.

Parking: This claim is addressed earlier in this Decision. Parking is a housing service, and the separate charge is part of the Base Rent. Therefore, the claim is denied.

**VALUE OF LOST SERVICES**

Service Lost	From	To	Rent	% Rent Decrease	Decrease /month	No. Months	Overpaid
Heat	4-Jul-16	30-Nov-16	\$828	10%	\$ 82.80	5	\$414.00
Bath tub	4-Jul-16	8-Mar-17	\$828	3%	\$ 24.84	9	\$223.56
Screens	4-Jul-16	30-Nov-16	\$828	1%	\$ 8.28	5	\$ 41.40
<b>TOTAL LOST SERVICES</b>							<b>\$678.96</b>

**RESTITUTION**

**TOTAL TO BE REPAYED TO TENANT \$678.96**


Conclusion: The current rent is \$855.95 per month, effective October 1, 2016. The tenants paid a total of \$4,968 for the months of October 2016 through March 2017. The full amount of rent for this time period was \$5,135.70 (\$855.95 x 6). Before considering past decreased housing services, this was an underpayment of \$167.70. However, because of past decreased housing services, as set forth in the Table above, the tenants overpaid \$678.96.

The underpayment and overpayment are set off against each other. This results in a total overpayment of \$511.26. This overpayment is ordered repaid over a period of 9 months.<sup>14</sup> The current rent of \$855.95 per month is temporarily reduced by \$56.81 per month, to \$799.14 per month, beginning with the rent payment in April 2017 and ending with the rent payment in March 2018. When the bathtub is re-surfaced or replaced, the owner may increase the rent by \$26.47 per month, after giving proper notice in accordance with Civil Code Section 827.

**ORDER**

1. Petition T16-0549 is partly granted.
2. The Base Rent is \$882.42 per month.
3. Because of an ongoing decrease in housing services, the current rent, before reduction due to rent overpayments, is \$855.95 per month.
4. Because of past decreased housing services, the tenant has overpaid rent in the amount of \$511.26. This overpayment is adjusted by a rent reduction for 9 months.
5. The rent is temporarily reduced by \$56.81 per month. The current rent is \$799.14 per month, beginning with the rent payment in April 2017 and ending with the rent payment in March 2018.
6. In April 2018, the rent will increase to \$855.95 per month.
7. When the bathtub is re-surfaced or replaced, the owner may increase the rent by \$26.47 per month, after giving proper notice in accordance with Civil Code Section 827.
8. The Anniversary Date for future rent increases is October 1.
9. **Right to Appeal:** This decision is the final decision of the Rent Adjustment Program Staff. Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within twenty (20) calendar days after service of the decision. The date of service is shown on the attached Proof of Service. If the Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.

Dated: March 15, 2017



Stephen Kasdin  
Hearing Officer  
Rent Adjustment Program

<sup>14</sup> Regulations, Section 8.22.110(F)

# CITY OF OAKLAND



Department of Housing and Community Development  
 Rent Adjustment Program  
<http://www2.oaklandnet.com/Government/o/hcd/o/RentAdjustment/>

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

## CALCULATION OF DEFERRED CPI INCREASES (BANKING)

Initial move-in date	24-Jul-1982	<b>MUST FILL IN D9, D10, D11 and D14</b>	Case No.:		<b>CHANGE YELLOW CELLS ONLY</b>
Effective date of increase	1-Oct-2016		Unit:		
Current rent (before increase and without prior cap. improve pass-through)	\$853				
Prior cap. imp. pass-through					
Date calculation begins	1-Oct-2006				
Base rent when calc. begins	\$853				

If the planned increase includes other than banking put an X in the box →

## ANNUAL INCREASES TABLE

Year Ending	Debt Serv. or Fair Return increase	Housing Serv. Costs increase	Base Rent Reduction	Annual %	CPI Increase	Rent Ceiling
10/1/2016				2.0%	\$ 20.91	\$ 1,066.32
10/1/2015				1.7%	\$ 17.47	\$ 1,045.41
10/1/2014				1.9%	\$ 19.17	\$ 1,027.94
10/1/2013				2.1%	\$ 20.75	\$ 1,008.77
10/1/2012				3.0%	\$ 28.78	\$ 988.02
10/1/2011				2.0%	\$ 18.81	\$ 959.24
10/1/2010				2.7%	\$ 24.72	\$ 940.44
10/1/2009				0.7%	\$ 6.37	\$ 915.71
10/1/2008				3.2%	\$ 28.20	\$ 909.35
10/1/2007				3.3%	\$ 28.15	\$ 881.15
10/1/2006				-	-	\$853

## Calculation of Limit on Increase

Prior base rent	\$853.00
Banking limit this year (3 x current CPI and not more than 10%)	6.0%
Banking available this year	\$ 51.18
Banking this year + base rent	\$ 904.18
Prior capital improvements recovery	\$ -
<b>Rent ceiling w/o other new increases</b>	<b>\$ 904.18</b>

Notes:

1. You cannot use banked rent increases after 10 years.
2. CPI increases are calculated on the base rent only, excluding capital improvement pass-throughs.
3. The banking limit is calculated on the last rent paid, excluding capital improvement pass-throughs.
4. Debt Service and Fair Return increases include all past annual CPI adjustments.
5. An Increased Housing Service Cost increase takes the place of the current year's CPI adjustment.
6. Past increases for unspecified reasons are presumed to be for banking.
7. Banked annual increases are compounded.
8. The current CPI is not included in "Banking", but it is added to this spreadsheet for your convenience.

Revised April 30, 2015

000063

**PROOF OF SERVICE**

**Case Number T16-0549**

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

**Tenants**

Akenduca Beasley aka Linda J. Beasley  
P.O. Box 19304  
Oakland, CA 94619

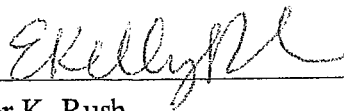
Akenduca Beasley aka Linda J. Beasley  
3764 39th Ave #D  
Oakland, CA 94619

**Owner**

Michael E. Horejsi  
P.O. Box 2883  
Castro Valley, CA 94546

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on March 15, 2017 in Oakland, CA.

  
\_\_\_\_\_  
Esther K. Rush



KM

<b>City of Oakland</b> <b>Residential Rent Adjustment Program</b> 250 Frank Ogawa Plaza, Suite 5313 Oakland, California 94612 (510) 238-3721		RECEIVED CITY OF OAKLAND RENT ARBITRATION PROGRAM <b>APPEAL</b> 2017 APR -3 PM 4:00	
<b>Appellant's Name</b>  Michael E. Horejsi		<b>Landlord</b> <input checked="" type="checkbox"/>	<b>Tenant</b> <input type="checkbox"/>
<b>Property Address (Include Unit Number)</b>  3764 39 <sup>th</sup> Avenue, Apt. D Oakland, CA 94619			
<b>Appellant's Mailing Address (For receipt of notices)</b>  Michael E. Horejsi P.O. Box 2883 Castro Valley, CA 94546		<b>Case Number</b> T16-0549	<b>Date of Decision appealed</b> March 15, 2017
<b>Name of Representative (if any)</b>  N/A	<b>Representative's Mailing Address (For notices)</b>  N/A		

I appeal the decision issued in the case and on the date written above on the following grounds:  
 (Check the applicable ground(s). Additional explanation is required (see below). Please attach additional pages to this form.)


1.  **The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board.** You must identify the Ordinance section, regulation or prior Board decision(s) and specify the inconsistency.
2.  **The decision is inconsistent with decisions issued by other hearing officers.** You must identify the prior inconsistent decision and explain how the decision is inconsistent.
3.  **The decision raises a new policy issue that has not been decided by the Board.** You must provide a detailed statement of the issue and why the issue should be decided in your favor.
4.  **The decision is not supported by substantial evidence.** You must explain why the decision is not supported by substantial evidence found in the case record. The entire case record is available to the Board, but sections of audio recordings must be pre-designated to Rent Adjustment Staff.
5.  **I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim.** You must explain how you were denied a sufficient opportunity 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.
6.  **The decision denies me a fair return on my investment.** You must specifically state why you have been denied a fair return and attach the calculations supporting your claim.

Revised 5/29/09

7. /  / Other. You must attach a detailed explanation of your grounds for appeal. Submissions to the Board are limited to 25 pages from each party. Number of pages attached 23. Please number attached pages consecutively. *w/ Exhibits*

8. You must serve a copy of your appeal on the opposing party(ies) or your appeal may be dismissed. I declare under penalty of perjury under the laws of the State of California that on April 3, 2017, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

Name : Akenduca Beasley aka Linda Beasley
Address : P.O. Box 19304
City, State Zip : Oakland, CA 94619
Name : Saichidonanda Mims
Address : 3764 39 <sup>th</sup> Avenue, Apt. D
City, State Zip : Oakland, CA 94619

	<i>3 April 2017</i>
SIGNATURE OF APPELLANT or DESIGNATED REPRESENTATIVE	DATE

**IMPORTANT INFORMATION:**

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

- Appeals filed late without good cause will be dismissed.
- You must provide all of the information required or your appeal cannot be processed and may be dismissed.
- Anything to be considered by the Board must be received by the Rent Adjustment Program by 3:00 p.m. on the 8th day before the appeal hearing.
- The Board will not consider new claims. All claims, except as to jurisdiction, must have been made in the petition, response, or at the hearing.
- The Board will not consider new evidence at the appeal hearing without specific approval.
- You must sign and date this form or your appeal will not be processed.

Revised 5/29/09

APPEAL ISSUES

Tenants were allowed to file an appeal of the rent increase **despite** the fact that they were behind in their rent. This is a violation of OMC 8.22 0904b and their appeal should be denied. Tenants were behind in their rent by an amount of \$2,000 when they filed. This issue was **not** addressed in the decision.

The tenants refused to pay the lawful rent increase, which was to begin on October 1, 2016. This requirement was spelled out in the RAP notice issued with the rent increase. This was acknowledged by the hearing officer, but omitted from the decision. This is a violation of OMC 8.22 70 D5. They are currently behind on their rent increase 6 months. This fact again was omitted from the decision.

Tenants' appeal is a litigation of the same issues between the same parties settled by a Stipulated Judgment, no longer subject to an appeal. This matter has been judged and litigation is prohibited by the Doctrine of res judicata. The tenants' appeal regarding all housing service issues must be denied.

The housing service reduction regarding the heater, in addition to being barred by the doctrine of res judicata, is also barred by the state law. Tenants caused their heater to not work by turning off the gas. This is an improper use of a gas fixture, CCC Section 1941.2b. The tenants, by turning off the gas, caused an unlivable condition to occur. If the tenant fails to meet the requirement articulated in CCC Section 1941.2, no action can be taken against the landlord concerning any violation of the implied warranty of habitability. CCC Sections 1929, 1942. Any claim for reduced housing service must be denied.

The reasons for denial of a housing service reduction regarding the window screens are essentially as previously stated. The screens were damaged by an identical hole in each screen; this is not normal fair wear and tear. The tenant has a responsibility under CCC Section 1941.2d to not damage property.

The reasons for denial of a housing service reduction regarding the tub are also as stated previously. Additionally, there is indisputable evidence that the tub finish is damaged and that it occurred while tenants were living in the apartment. It is well established that chipped porcelain, or other damaged surface, is not considered fair wear and tear. In this case, the tenant was absolved of her responsibilities under CCC Section 1941.2d. In addition, the landlord was levied a reduction of rent for the previous 6 months, and also fined with a permanent 3% reduction in rent for the remainder of the tenants' stay in the unit. For all of the above reasons, this claim should be denied. There is no basis in law for this ruling.

This decision denies me a fair return on my investment. Not only was my requested banked rent increase denied, but the unit rent was decreased by 3%. The collected rent on this unit has not covered the basic cost of maintaining and operating the unit for the past three years.

### 1. BANKED RENT

The rent was last increased on February 2, 2004, R.H.P.R. Case TO3-300. The rent at that time was set at \$832.48. A separate fee for parking in the amount of \$25 per month was paid, treated and accounted for as a separate service fund. Tenant refused to pay more than \$828 per month in rent and \$25 extra for rent of her parking. I do not know how she determined that to be the amount of rent due.

Since tenants' rent had not been increased for 12 years, considerable rent has been banked. An election was made to legally request a rent increase, including some of the banked rent permitted.

Tenants were served on August 26, 2016 with a rent increase of 6%. The increase was effective on October 1, 2016.

It appears that the playing field is not level – these decisions all came off the bottom of the deck. They are arbitrary and not supported by law. It appears that every effort was made to assure the tenants did not get an increase in rent – this is unacceptable.

The rent in this unit is less than half the rent of the lowest 25% of apartments rented in the 94619 zip code. A survey conduction in 2015 ranged rents from \$1,695 to \$2,850 for a 2 bedroom unit. See Exhibit \_\_\_/

## II. SUPERIOR COURT STIPULATED JUDGMENT

This Stipulation between parties resulted from an unlawful detainer action. (See file)

The tenant is compelled to pay her rent plus \$100 in delinquent rent from September 2016 to June 2018.

This Stipulation eliminated the landlord from receiving any more money for delinquent rent, or the tenants from attaining anymore reimbursement in rent relief for any complaints she may have had concerning the apartment for the period of time **prior** to August 31, 2016.

The tenants' petition is barred by the Doctrine of Collateral Estoppel, which precludes relitigation of a suit on a different cause of action involving a party to the first case – this is considered legal harassment. It is also barred by the doctrine of res judicata as previously stated.

The Stipulation issuing Court maintains sole jurisdiction over this case until September 20, 2018.

The Stipulation also, in paragraph 6, contains a specified wavier to wit: "With the exception of the rights set forth herein, the parties waive all other rights known to them at this time."

Paragraph 6 also contains a very vague list of things with no explanation of any particular problems. There was no penalty specified for the results of dealing with these issues. The instructions were:

'within 30 days plaintiff shall inspect and repair as necessary the following defects'

No particular defects were noted. This is a typical unlawful detainer maneuver. My attorney at the time suggested an inspection be delayed to assure tenant was able to pay the amounts agreed upon or be evicted. However, contrary to the hearing officer's statement, this was the first notice of any particular problem from this tenant, beyond the shower.

The statement of (inspect and repair as necessary) was apparently interpreted by the hearing officer as some kind of blanket, all-encompassing repair commitment.

My point of reference for 'inspect and repair as necessary' is the California Consumer Affairs Outline – Landlord's and Tenant's Responsibility for Habitability and Repairs: Legal Guide LT-8. Landlord's responsibilities are defined by California Civil Code Section 1941 and the Tenant's Responsibilities under California Civil Code Section 1941.2. For Information See Exhibit \_\_\_.

I also consulted the California Apartment House Association's guide to 'wear and tear' or 'damages' to determine if the tenant is responsible for damages to the apartment. See Exhibit \_\_\_.

An inspection of the unit was completed on November 2, 2016. I returned to the unit several times after that to complete the work and installed needed items. The heater and shower issues were resolved on that date. Although the inspection was late, it was well within the 90 day limit set by R.A.P.R. 10.2.2 4b. For results and actions taken see letter dated January 24, 2017 in file.

## III. RENT REDUCTIONS

I reject the rent reductions concerning the shower, heater and window screens. The findings are not supported by the facts, the law, or the authority of the hearing officer.

A. On page 6 of the decision, the hearing officer listed a beginning date for loss of service as July 4, 2016 for the heater, shower and window screens. This is improper because the tenant settled all claims for any possible alleged loss of service which occurred **prior** to August 31, 2016 as previously stated.

B. The hearing officer does **not** have the authority to override a Superior Court Judge who maintains jurisdiction over the case.

C. The tenant waived all rights to further claims in the Stipulation.

D. The causation of the damage to the tub was due to tenant's actions/neglect – explanation to follow.

E. The damage to the window screens are due to tenant's actions/neglect.

F. Tenant's additional claim for damages prior to August 31, 2016 are precluded by the Doctrine of Collateral Estoppel and the Doctrine of res judicata.

G. Rent reduction provided for the window screens and heater continued through November 2016. Both of these items were addressed during my visit on November 2, 2016. See letter dated Jan. 24, 2017.

There was a statement in the Decision that work was not done in the apartment until **late** November 2016. This statement is incorrect and contrary to my testimony and letter of January 14, 2017 concerning the issue. To settle the issue, receipts for materials purchased as a result of my November 2, 2016 inspection are attached as Exhibit \_\_\_\_\_. On November 4, 2016, window cranks, a window casement operator, on/off push switch, and cabinet knobs were purchased, and an order for window screens was placed on November 5, 2016. All items were included in the letter sent to the tenants.

None of the alleged decreased housing services include substantial problems with the condition of the unit.

The only months that are available for a rent reduction are the months of September and October 2016.

#### IV THE LAW AND OTHER REQUIREMENTS

What follows are the laws I have referenced above, which I used to determine what was 'repair as necessary' identified in the Stipulation.

The general rule is that:

"When a landlord (property owner) rents an apartment to a tenant (Renter), the rented property must be fit to live in. In other words, the rented property must be 'habitable.' During the time that the property is being rented, the landlord must do maintenance work and make repairs which are necessary to keep it habitable. However, a landlord is not responsible for repairing damage caused by the tenant, or the tenant's guest, children or pets." See Exhibit \_\_\_\_\_

The following landlord responsibilities are relevant to the issues presented to the Rent Board.

CCC Section 1941 b: Plumbing facilities in good working order, including hot and cold running water, connected to a disposal system. (no problem)

CCC Section 1941 d: Heating facilities in good working order. (no problem, heater turned off by tenant)

CCC Section 1941 i: A working toilet, wash basin, and bathtub or shower, the tub shower must be in a room that is ventilated, and that allows privacy.

(Note: The tenant did not complain that she did not have hot and cold running water. Tenant did not complain of a lack of ventilation; tenant did want a fan in addition to the window. There is no requirement to provide both [window and fan]. Tenant did not complain of not having a bathtub or shower, only one is required.)

Tenant claimed building code violations, but presented no evidence of any violation.

What follows are the laws and general rules I used to determine whether the tenant is complying with the law and their legal responsibilities.

General Rules: "A tenant must take reasonable care of the rental property and common areas, such as hallways. This means that the tenant must keep those areas in good condition. A tenant also must repair all damages that he or she causes, or that is caused by the tenant's guests, children or pets."

The following laws are relevant to the issues in this appeal:

CCC Section 1941.2 a: Keep the premises 'as clean and sanitary as the condition of the premises permits.' (Note: The tenants' housekeeping is deplorable.)

CCC Section 1941.2 b: Use and operate gas, electrical and plumbing fixtures properly. (example of improper use includes overloading the electrical outlets. Flushing large, foreign objects down the toilet and allowing any gas, electrical or plumbing fixtures to become filthy.)

(Note: In this case, no one could accuse the tenant of having a bathtub that is **not** filthy. The gas heater did not operate because the **tenant turned off the gas** – this is improper use of a gas fixture.)

CCC Section 1941.2 d: Not destroy, damage, or deface the premises, or allow anyone else to do so.

(Note: Tub and window screens were damaged.)

CCC Section 1941.2 e: Not remove any part of the structure, dwelling unit, facilities, equipment or appurtenance, or allow anyone else to do so.

(Note: This pertains to the window screen clips that secure the window screens to the window.)

"If the tenant does not perform these duties and causes the property to become uninhabitable, the tenant cannot require the landlord to repair the property to make it habitable."

OMC 8.22.360 4 – This provides an eviction remedy for damage to the property and refusal to pay for the damages.

Both HUD and the California Apartment House Association consider chipped porcelain as tenant damage. The later identifies damaged window screens as tenant damage.

This unit rents for \$828 a month and is not in perfect condition. It is not in the same condition as a \$3,000 a month unit, nor is it required to be. The implied warranty of habitability is not violated merely because the rental unit is not in perfect, aesthetically pleasing condition, nor is the implied warranty of habitability violated if there are minor housing code violations, which standing alone, do not affect habitability. Green v. Superior Court (1974)

## V. BATHTUB

The bathtub was inspected on November 2, 2016. Fresh damage was noted on the surface of the tub. Damage consisted of numerous small areas of damaged porcelain on the bottom of the tub, as well as the sides and upper ledge – these were not caused by normal wear. Several areas of irregular chipped porcelain were noted, most were roughly 1 inch in diameter or less. Areas of mineral stains were also observed.

It was obvious the tub and tile walls had not been cleaned in a very long time. The accumulation of soap scum was heavy.

The tub had been refinished in 2002 and the finish showed no sign a failure, peeling or blistering.

This is a steel tub, most new ones have a lifetime warranty. All units have their original tubs, they are over 60 years old and still serviceable.

When the tub was resurfaced, a five year warranty and recommended instructions for cleaning and use were provided. See Exhibit \_\_\_\_.

1. Use only non-abrasive bathmats.
2. Avoid trapping water against the surface for a long period of time.
3. Use non-suction bathmats.
4. Suction bathmats will harm finish. and
5. Do not leave any bathmats on the floor from day to day.

The tenant was provided with these instructions and failed to follow them. While at the unit on March 10, 2017, it was noted that several inches of water and bleach was standing in the tub, as well as the suction type bathmats [not recommended]. I doubt this tenant would treat a new resurface better than the one she has.

Contrary to the tenant's claims, the new resurfaced tubs have a warranty of over 10 years; one installer informed me he had one in his house that was 20 years old. A new roof has a warranty of 3 years and a life expectancy of 25 years.

Tenants provided photos taken in preparation for their unlawful detainer trial which occurred in August 2016. In retrospect, I believe the photos presented at the hearing showed considerably more 'rust' than was present in the photos I took on November 2, 2016. I believe the tenants possibly enhanced, with shoe polish, damaged areas in the bottom of the tub.

Upon close of the hearing, I was going to provide some photos for the file – for some reason I didn't. I believe the hearing officer indicated he had enough material to make a decision. After reviewing the decision, it appears that the photos are relevant and should have been part of the record. Please enter these in the record. See Exhibit \_\_\_\_.

**The hearing officer should conduct a joint on-site visit to inspect the actual, true condition and damage to the tub.**

The statement by the hearing officer that 'there is no evidence that the damage to the tub was caused by tenant misuse' is irrelevant. This conclusion is interesting. "Misuse" is the mother of damage. The wrong standard is being applied. First, he acknowledges that there is damage to the tub, I concur. Second, it is irrelevant whether it was caused intentionally or through carelessness or the tenants' misuse. In this case, the tub would not rust if the porcelain was intact. The tenant, in some manner, damaged the porcelain; also damaged was the rust barrier under the porcelain in some areas, this is black and ordinarily is revealed under a normal chip.

The tenants, through some means, caused damage to the tub, which, according to tenants, created so much rust to occur in the tub that they can no longer use the tub and has now become uninhabitable in their minds. The tenants, and no one else, created this condition. CCC Section 1941.2.

The law regarding this issue is covered in IV above.

1. The damage to the surface enamel of the tub is considered tenant damage by both HUB and the California Apartment House Association. See Exhibit \_\_\_\_.
2. CCC Section 1941.2 d restricts tenant from either destroying or damaging the property.
3. A general rule is that if the tenant causes the property to become uninhabitable, the tenant cannot require the landlord to repair the property to make it habitable.
4. CCC Section 1941 i states that a landlord provide either a bathtub or shower, both are not required. This is not a habitability issue.

The tenants freely admit they are able to use the shower. A problem with their complaint is if there is rust, which I did not see, it's far more sanitary than the normal state of sanitation in the rest of the tub and enclosure. CCC Section 1941.2 b requires tenants to prevent plumbing fixtures from becoming filthy.

For all of the above reasons, this claim should be denied. Tenants should be required to repair the damaged areas in the tub as normally is required or pay for such service to be provided.

No credible legal authority was provided for this ruling.

This claim is barred by the doctrine of res judicata and collateral estoppel. It should be dismissed.

## VI. WINDOW SCREENS

The tenants complained of window screens in their appeal since 2007 (whatever that means).

An inspection was conducted on November 2, 2016. The window screens are constructed with an aluminum metal screen, surrounded by a metal frame. Each screen is secured to the window frame by four metal clips. These screens do not deteriorate – some have been in place in excess of 60 years.

The inspection revealed that four of the screens had a single 3/8 inch hole, about pencil or pen size in each one. The likelihood of this happening due to age is not possible. The condition of the screens otherwise were excellent – no deterioration was noted. Additionally, about 6 of the securing clips were gone. This allowed the screen to fit loosely; in some cases, the screen was 1 inch away from the window.

The window screens were replaced with screens that did not have holes – all missing clips were replaced. The tenant was not, as yet, charged for the damaged screens.

The California Apartment House Association identifies missing, bent or torn screens as tenant caused damage. See Exhibit \_\_\_\_.

The law in this matter, IV above, covers this type of damage.

CCC Section 1941.2 d states that the tenant cannot destroy property (punch hole through window screen).

CCC Section 1941.2 e states that the tenant cannot remove any part of the dwelling unit (clips securing window screens).

Testimony to the above damage was disregarded.

The rent reduction for this is not justified by law – tenants are responsible for damage caused by themselves.

As previously stated, the timeframe specified by the RAP overrides a Superior Court judgment for Stipulation. This is barred by the Doctrine of Collateral Estoppel. This matter was resolved by that Court and still remains under its jurisdiction.

This type of ruling removes a tenant's responsibility and rewards them for damaging a landlord's property.

This is akin to a tenant appearing at a Hearing demanding that a reduction for housing services is justified because they have four broken windows. The story is that they have lived in the unit for 32 years, the windows were okay when they moved in, but fell into disrepair. Landlord had replaced windows prior to Hearing. RAP awards tenants rent reduction for 6 months (really?).



## VII HEATER

Tenants claim their heater did not function properly since July 2015. In their testimony, they claimed beginning about 3 years ago the heater would not come on using the thermostat, although the pilot light was lit. The condition of the heater was also confirmed by myself at the hearing and in a letter dated January 14, 2017.

The statement that 'tenants notified the owner at that time (when?) and nothing was done' is unclear. No evidence of notification was provided. The rental contract requires a **written** notification, as does state law and the OMC.

The first notification I received of the heater being a problem was at the conclusion of an unlawful detainer action filed against the tenant. Obviously, since I signed the Stipulation on August 15, 2016, I was aware of the problem. The hearing officer perhaps misunderstood my answer – I was also informed on October 19, 2016 when I received the tenants' petition.

The unit was inspected on November 2, 2016. The condition of the heater was as described previously. Further investigation revealed the gas heating control at the heater was in the OFF position. This control has three different possible positions controlled by a selector knob: ON, Pilot, and OFF – the selector knob was set to the OFF position. In the OFF position, the heater is prevented from receiving and acting upon any signals received from the thermostat. No one provided testimony contrary to this fact. When the heating control knob was turned to the ON position, the heater functioned as designed when the thermostat was manipulated. No one contested this fact. Both tenants were present at the time. At that time, tenants were also informed that I was going to upgrade the thermostat. The tenants' testimony as to when the heater was fixed is incorrect. I also advised the tenants at that time that the control was in the OFF position.

This was explained in detail to the hearing officer – it was my impression he was having some difficulty understanding the concept of how heaters operate.

A similar situation would be having a lamp controlled by a wall switch that lights when the wall switch was turned on. If the lamp switch was turned OFF, even three years of manipulation of the wall switch would not cause the lamp to light. (Would this be worth 6 months of rent reduction for loss of housing service??)

Again, reference is made to the Stipulation rather than the tenants' appeal. I object to this for a variety of legal reasons. However, for the sake of discussion, the Stipulation in my view may have been signed on August 15, 2016, but contains a date thru August 31, 2016.

The hearing officer seems to suggest he can administer some type of penalty based upon this agreement. The tenant has defined penalties in this Stipulation. If she does not comply with her obligations under the Stipulation, she will be evicted, end of story. The landlord does not.

So, per the Agreement, the 30 days in my view runs from September 1 thru September 30, 2016. I agreed to repair what I am required by law to do, in accordance with the law as identified in IV above. This was not a blanket agreement to remodel the apartment, or repair tenant damages. In essence, I was a month late in turning on tenants' wall furnace that was **turned off by them (tenants)**. Presumably, this was used to again bolster their unlawful detainer defense. Tenants again defied the law in this issue:

CCC Section 1941.2 – They are required to use gas fixtures properly.

It is my position that an award of a 10% reduction in rent for six months because **tenants disabled their heater** is unwarranted, and excessive. The statement that 'contrary to his testimony at the hearing, the owner obviously had notice of this problem before the court appearance in mid-August 2016' is unsupported by facts and is mere speculation. This is why tenants are **required to actually provide written notification** of issues.

A rent reduction prior to August 31, 2016 is further barred by the Doctrine of Collateral Estoppel. A reduction of rent for the month of November 2016 is barred because the furnace operated during that month. A rent reduction during the month of September and October 2016 is excessive because heaters are not required during these months due to mild weather. This would be like allowing a 6 month 10% reduction for an inoperable air conditioning unit during the month of April.

#### VIII ACTION REQUESTED

Tenants' appeal should be **dismissed** based on any number of the stated objections. In the alternative, any reductions in rent based on housing services should not be allowed. None of the alleged decreased housing services include substantial problems with the condition of the unit.

The base rent should be set at \$882.42 per the noticed rent increase.



# ARE YOU GETTING THE MOST OUT OF YOUR INCOME PROPERTY?

## MAY 2015 - DECEMBER 2015 RENT DATA FOR OAKLAND BY ZIP CODE & UNIT TYPE

Zip Code	Rent		Units	Data Points
	2015	2014		
94601	\$998	\$1,195	483	27
94602	\$1,000	\$1,500	514	26
94603	Not enough data points for this zip code and room type			
94605	Not enough data points for this zip code and room type			
94606	\$1,150	\$1,395	500	50
94607	\$1,150	\$2,515	570	34
94608	\$1,188	\$1,225	585	24
94609	\$1,250	\$1,400	450	41
94610	\$1,450	\$1,500	487	62
94611	\$1,395	\$1,495	550	38
94612	\$1,273	\$1,495	548	40
94618	\$1,338	\$1,525	467	24
94619	Not enough data points for this zip code and room type			
94621	\$845	\$863	425	25

\*More data points assume greater accuracy

Zip Code	Rent		Units	Data Points
	2015	2014		
94601	\$1,400	\$1,650	850	52
94602	\$1,638	\$1,795	1000	47
94603	\$1,370	\$1,400	850	38
94605	\$1,400	\$1,650	900	58
94606	\$1,650	\$2,000	918	106
94607	\$2,725	\$3,000	\$3,417	104
94608	\$2,048	\$2,200	888	35
94609	\$2,300	\$2,698	972	71
94610	\$2,300	\$2,800	1042	77
94611	\$2,295	\$2,595	944	66
94612	\$2,500	\$3,281	\$3,566	1088
94618	\$2,525	\$2,950	\$3,350	44
94619	\$1,695	\$2,515	1075	52
94621	\$1,400	\$1,450	889	45

\*More data points assume greater accuracy

Zip Code	Rent		Units	Data Points
	2015	2014		
94601	\$1,150	\$1,295	700	77
94602	\$1,450	\$1,550	617	64
94603	\$1,125	\$1,200	700	28
94605	\$1,100	\$1,200	600	51
94606	\$1,455	\$1,613	\$1,975	650
94607	\$1,973	\$2,371	\$2,696	781
94608	\$1,450	\$1,550	775	99
94609	\$1,650	\$1,850	600	36
94610	\$1,800	\$1,995	750	94
94611	\$1,700	\$1,850	750	136
94612	\$1,612	\$1,950	\$2,173	700
94618	\$1,725	\$1,998	\$2,530	108
94619	\$1,275	\$1,500	655	96
94621	\$1,025	\$1,300	770	51

\*More data points assume greater accuracy

Zip Code	Rent		Units	Data Points
	2015	2014		
94601	\$1,700	\$1,850	1150	23
94602	\$2,348	\$2,500	\$3,675	1250
94603	\$1,700	\$1,725	1100	24
94605	\$1,950	\$2,200	1200	21
94606	\$1,950	\$2,050	987	22
94607	\$2,100	\$2,630	\$3,725	1222
94608	Not enough data points for this zip code and room type			
94609	\$1,895	\$2,550	\$3,695	1200
94610	\$2,295	\$2,975	\$3,500	1168
94611	Not enough data points for this zip code and room type			
94612	\$2,085	\$2,595	\$3,338	1100
94618	\$995	\$2,048	\$3,295	1600
94619	\$1,900	\$2,000	\$2,523	1721
94621	Not enough data points for this zip code and room type			

\*More data points assume greater accuracy

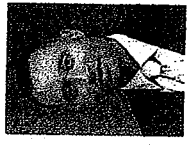
Be informed. Know the market. Have a plan.

Oakland remains one of the hottest real estate markets in the country, and both rents and sales prices have been trending up for some time now.

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Savvy investors utilize up-to-date market data and partner with professionals who can help them plan all aspects of their investment strategy, including acquisition, management, valuation and disposition.

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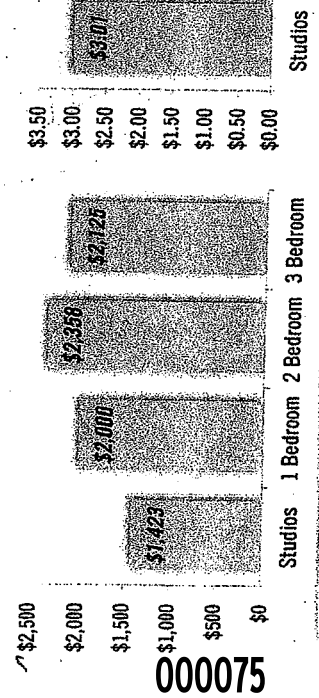
**Nolan Prescott**  
Partner  
Real Estate Services  
BRE0150417

**Roger Allen**  
Associate  
Real Estate Services  
BRE0165823

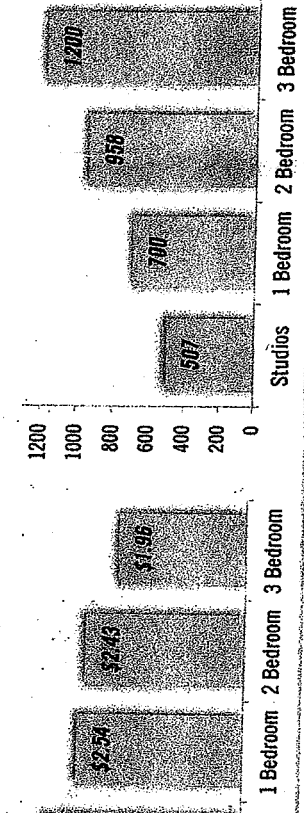
**510.474.7421**  
rodger@baypropertygroup.com

## MAY 2015 - DECEMBER 2015 RENT DATA FOR ENTIRE CITY OF OAKLAND

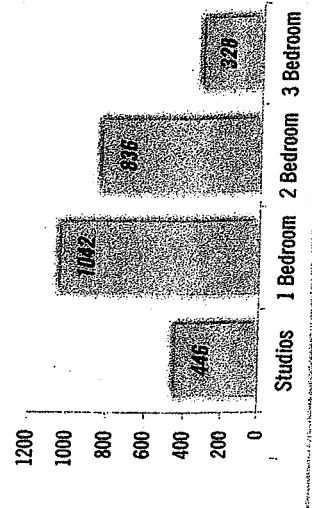
Median Rents



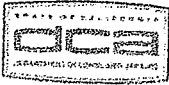
Median Square Feet



Data Points Collected



000075



## Outline - Landlords' And Tenants' Responsibilities For Habitability And Repairs: Legal Guide LT-8

Printer Friendly Version

May 2012

**General Rule:** When a landlord (property owner) rents an apartment or a house to a tenant (renter), the rented property must be fit to live in. In other words, the rented property must be "habitable." During the time that the property is being rented, the landlord must do maintenance work and make repairs which are necessary to keep it habitable. However, a landlord is not responsible for repairing damage caused by the tenant, or the tenant's guests, children or pets.

### Landlord's Responsibilities

California Civil Code section 1941 states that when a landlord rents property to a tenant as a place to live, the property must be in a "habitable" condition. ("Habitable" means fit to live in; "uninhabitable" means not fit to live in.) Section 1941 also states that the landlord must repair problems that make the property uninhabitable -- except for problems caused by the tenant or the tenant's guests, children or pets. In order for the property to be habitable, it must have all of the following:

- a) Effective waterproofing and weather protection of roof and exterior walls, including unbroken windows and doors.
  - b) Plumbing facilities in good working order, including hot and cold running water, connected to a sewage disposal system.
  - c) Gas facilities in good working order.
  - d) Heating facilities in good working order.
  - e) An electrical system, including lighting, wiring and equipment, in good working order.
  - f) Clean and sanitary buildings, grounds and appurtenances (for example, a garden or a detached garage) which are free from debris, filth, rubbish, garbage, rodents and vermin.
  - g) Adequate trash receptacles in good repair.
  - h) Floors, stairways and railings in good repair.
- In addition, the rented property must have all of the following:
- i) A working toilet, wash basin, and bathtub or shower. The toilet and bathtub/shower must be in a room that is ventilated, and that allows for privacy.
  - j) A kitchen with a sink, which cannot be made of an absorbent material (for example, wood).
  - k) Natural lighting in every room through windows or skylights. Unless there is a ventilation fan, the windows must be able to open at least halfway.
  - l) Safe fire or emergency exits leading to a street or hallway. Stairs, hallways and exits must be kept litter free. Storage areas, garages, and basements must be kept free of combustible materials.
  - m) Operable deadbolt locks on the main entry doors of rental units, and operable locking or security devices on windows.
  - n) Working smoke detectors in all units of multi-unit buildings, such as duplexes and apartment complexes. Apartment complexes also must have smoke detectors in common stairwells.

These are minimum requirements. Other conditions may make the rented property not habitable. For example, the rented property may not be habitable if it does not substantially comply with building and housing code standards that materially affect tenants' health and safety.

### Tenant's Responsibilities

A tenant must take reasonable care of the rented property and common areas, such as hallways. This means that the tenant must keep those areas in good condition. A tenant also must repair all damage that he or she causes, or that is caused by the tenant's guests, children or pets. California Civil Code section 1941.2 requires the tenant to do all of the following:

- a) Keep the premises "as clean and sanitary as the condition of the premises permits."
- b) Use and operate gas, electrical and plumbing fixtures properly. (Examples of improper use include overloading electrical outlets, flushing large, foreign objects down the toilet, and allowing any gas, electrical or plumbing fixture to become filthy.)
- c) Dispose of trash and garbage in a clean and sanitary manner.
- d) Not destroy, damage, or deface the premises, or allow anyone else to do so.
- e) Not remove any part of the structure, dwelling unit, facilities, equipment or appurtenances, or allow anyone else to do so.
- f) Use the premises as a place to live, and use the rooms for their proper purposes. For example, the bedroom must be used as a bedroom and not as a kitchen.
- g) Notify the landlord when deadbolt locks and window locks or security devices do not operate properly.

If the tenant does not perform these duties and causes the property to become uninhabitable, the tenant cannot require the landlord to repair the property to make it habitable.

Similarly, the tenant cannot require the landlord to repair the property if the tenant substantially interferes with the landlord's ability to repair defects (for example, by not allowing the landlord's electrician to enter the apartment to fix faulty wiring).

In addition, the landlord is not obligated to repair damage caused by the tenant's own carelessness (for example, a toilet that will not flush because the tenant's child flushed a sock down it).

This Legal Guide is only a summary of landlords' and tenants' rights and responsibilities in this area. For more complete information, including, a discussion of tenants' remedies, please consult *California Tenants - A Guide to Residential Tenants' and Landlords' Rights and Responsibilities*.

**NOTICE:** We strive to make our Legal Guides accurate as of the date of publication, but they are only guidelines and not definitive statements of the law. Questions about the law's application to particular cases should be directed to a specialist.

Prepared by Legal Services Unit, June 1996. Updated May 2012.

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## "WEAR AND TEAR" OR "DAMAGES"?

### "Normal wear and tear" caused by ordinary comings and goings

Well-worn keys  
"Sticky" key  
Balky door lock

Depressurized fire extinguisher with unbroken seal  
Worn pattern in plastic countertop  
Rust stain under sink faucet  
Loose, inoperable faucet handle  
Rusty refrigerator shelf  
Discolored ceramic tile  
Loose grout around ceramic tile  
Carpet seam unraveling  
Threadbare carpet in hallway

Scuffing on wooden floor  
Linoleum with the back showing through  
Wobbly toilet  
Rusty shower curtain rod  
Rust stain under bathtub spout  
Tracks on doorjamb where door rubs  
Door off its hinges and stored in garage  
Plant hanger left in ceiling  
Stain on ceiling caused by leaky roof

Cracked paint  
Chipped paint (minor)

Pleasing, professional tenant wallpapering  
Mildew around shower or tub  
Urine odor around toilet  
Discolored light fixture globe  
Odd-wattage lightbulbs which work  
Light fixture installed by tenant which fits its location  
Window cracked by settling or high wind  
Faded shade  
Paint-blistered Venetian blinds  
Sun-damaged drapes  
Drapery rod which won't close properly  
Dirty window screen  
Ants inside after rain storm  
Scrawny landscaping which was sparingly watered due to drought conditions  
Grease stains on parking space

### "Damage" caused by carelessness, abuse, thievery, mysterious disappearance, accident, rules violation, or special request

Missing keys  
Key broken off inside lock  
Door lock replaced by tenant without management's permission  
Depressurized fire extinguisher with broken seal (not used to put out fire)  
Burn in plastic countertop  
Sink discolored by clothing dye  
Missing faucet handle  
Missing refrigerator shelf  
Painted ceramic tile  
Chipped or cracked ceramic tile  
Carpet burn  
Rust marks on carpet from indoor plant container  
Gouge in wooden floor  
Tear in linoleum  
Broken toilet tank lid  
Kinked shower curtain rod  
Chip in bathtub enamel  
Hole in hollow-core door  
Missing door  
Two-inch-diameter hole in ceiling  
Stain on ceiling caused by popping champagne or beer bottles  
Crayon marks on wall  
Walls painted by tenant in dark color necessitating repainting  
Amateurish tenant wallpapering  
Mildew where tenant kept aquarium  
Urine odor in carpet  
Missing light fixture globe  
Burned out or missing lightbulbs  
Light fixture installed by tenant which must be replaced  
Window cracked by movers  
Torn shade  
Venetian blinds with bent slats  
Pet-damaged drapes  
Drapery rod with missing parts  
Missing, bent, or torn window screen  
Fleas left behind by tenant's pet  
Neglected landscaping which must be replaced with similar plantings  
Caked grease on parking space



2569 CASTRO VALLEY BLVD.  
CASTRO VALLEY, CA 94546  
(510) 581-7633

# SPECIAL ORDER FORM

DATE 11/5/16

CUSTOMER #375 MICHAEL HOREJSI

HOME PHONE (510) 582-7662

CELL PHONE

WORK PHONE

DRESS

SKU#	QTY	DESCRIPTION	PRICE
270A	4	18 1/8 x 48 1/2	30.43
270A	4	18 1/4 x 48 1/4	30.43
270A	1	18 1/8 x 48 1/2	30.43
		RE-SCREEN	
		FIELD ALUMINUM FLIGHT	

RESPERSON YASMINA

PRICE 270.39

TAX

TOTAL

LESS DEPOSIT

BALANCE DUE

SPECIAL ORDERS LEFT AFTER 30 DAYS WILL BE RETURNED TO THE MANUFACTURER.  
CUSTOM SIZE SCREENS ARE NON REFUNDABLE.

SIGNATURE

*[Handwritten Signature]*

: X \_\_\_\_\_  
Michael E. Horejsi  
#375 MICHAEL E. HOREJSI  
1339#

*3764 Reports*

THANK YOU FOR SHOPPING AT  
PETE'S HARDWARE CO  
(510) 581-7633

www.peteshardware.com

INSTORE CREDIT ISSUED ON RETURNS WITHOUT  
RECEIPT. CHECKS REQUIRE 10 DAYS TO VERIFY  
11/04/16 11:41AM JOSE 551 SALE

53609	1 EA	4.29 EA
← WINDOW CRANK HNDL ALUM 5/16"		4.29
3530813	1 EA	3.49 EA
← PUSH SWITCH ON/OFF NCKL6A		3.49
5065529	1 EA	15.99 EA
← CASEMENT OPERATOR ALUM 1762RA		15.99
50523	1 EA	4.29 EA
6d5 SCREEN PATCH ALUM		4.29
57276	1 EA	3.59 EA
SHOWER DOOR ROLLER 7/8 #1901		3.59
55078	4 EA	2.49 EA
← CABINET KNOB-BRASS BP3413-3		9.96

SUB-TOTAL: \$ 41.61 TAX: \$ 3.95  
DISCOUNT: TOTAL: \$ 45.56  
CHARGE AMT: 45.56

654

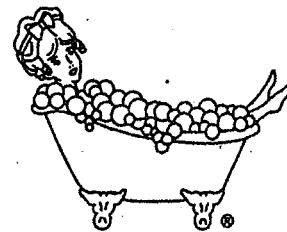


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 (510) 482-3788  
 CA Lic. # 612463



Independently  
Owned & Operated

### AGREEMENT

Job Site Name: Mike Harris  
 Street Address: 3764 39th Ave  
 City: Oakland State: CA Zip: \_\_\_\_\_  
 Home Phone: \_\_\_\_\_ Work Phone: \_\_\_\_\_

Bill To: \_\_\_\_\_  
 Street Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Home Phone: 482-7662 Work Phone: 425-8046 R

COLOR: B White

Date Work Completed: 4/9/02

Special Notes: \_\_\_\_\_

**5 YEAR LIMITED WARRANTY**

The independent company above warrants its refinishing on bathtubs, ceramic tile and sinks for a period of (5) five years from the date of completion on residential jobs and (1) one year on commercial jobs and other refinished items. Chip repairs and other repair work is warranted for one hundred twenty (120) days. This warranty is limited by problems from man-made damage, abuse, rust, leaky faucets and/or other plumbing problems, and noncompliance with the Care & Maintenance instructions printed on the back of the Agreement. This warranty is only for the repair of the problem area. The caulking must be maintained around the reglazed surface and is not covered by the warranty. A service fee may be charged for non-warranty repairs. Franchiser's liability is limited to the cost of the refinishing material only. At option of contractor or franchiser, any reimbursement will be prorated over the warranty term. Neither franchiser nor it's franchisees shall be liable for incidental, special, direct or consequential damages. All franchises are independently owned and operated.

Description/Item	Amount
Bathtub	\$ <u>475</u>
Tile	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
<b>Total</b>	\$ <u>475</u>
Sales Tax	\$ _____
Deposit	\$ _____
<b>Total Due</b>	\$ <u>475</u>

pd (kr) 853

#### TERMS AND CONDITIONS

1. All work is due and payable when completed unless prior arrangements in writing have been specifically made. A "Repeat Billing Charge" will be added to all accounts over 30 days old. We also reserve the right to charge interest at 1.5% per month (18% per annum) on balances 30 days or older. In the event any amount due hereunder is not paid as agreed, the undersigned jointly and severally agree to pay all costs incurred in securing payment of said unpaid balance, including a reasonable attorney's fee.
2. The resurfaced items shall not have a non-skid surface unless customer specifically requests and pays for a non-skid surface.

I have resurfaced the above items using the approved safety procedures and followed the Bathcrest reglazing methods and procedures.

Technician's Signature: \_\_\_\_\_ Date: 4/9/02

I certify that the installations listed on this agreement have all been completed satisfactorily.

Customer's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

#### CUSTOMER ACKNOWLEDGEMENT

Both parties hereby acknowledge the receipt of this contract and the prescribed care and maintenance (printed on back). No oral agreements are accepted.

Customer's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Company Representative's Signature: David M Date: 4/9/02

# EASY MAINTENANCE

## Cleaning Tips

### HOW CAN I KEEP MY BATHTUB LOOKING NEW?

The fixture may be used after the following date:

4/11/02

The investment you have made in your bathroom can be a lasting improvement to your home and give you many years of comfort. Please take the time to read this care and maintenance sheet. It will help you to properly maintain your bathtub.

#### IMPORTANT REMINDERS

Only use nonabrasive cleansers such as Bathcrest Bathroom Cleaner (a cleaner that is safe on your tub and the environment) or a spray mist cleaner that you like. Do not use abrasive cleaners. The particles in abrasive cleaners will scratch the finish and wear away the shine.

Avoid trapping water against the surface for a long period of time. Do not leave bathmats, washcloths, soap bars and/or bottles on the refinished surface. The moisture gets trapped underneath and damages the finish. Do not hang bathmats, rugs or wet towels over the edge of the bathtub.

Fix your leaky faucets. Dripping water will wear through the hardest of surfaces. Make sure that your plumbing problems are fixed immediately.

Avoid chips and scratches by keeping heavy, sharp, metal and other damaging items away from your bathroom fixtures. If a chip does occur, please contact us for repairs.

#### BATHMATS

You may use a non-suction type bathmat. The suction type mat will harm your new finish. Your local authorized Bathcrest franchise has approved bathmats available. Do not leave any bathmat on the tub from day to day. If you use bathmat, take it out of the tub when finished bathing or showering.

#### STUBBORN STAINS

For stubborn stains or scum buildup, use a Purex Dobie pad or a nylon net scrubber with the Bathcrest Bathroom Cleaner. Let the Bathcrest cleaner stand on the surface for 1-2 minutes. You may also use a more concentrated strength of the Bathcrest cleaner for stubborn stains. Do not use Scotch-Brite pads or other heavy abrasion type pads--they will only harm the finish.

#### DRAIN PAINS

The good old fashioned remedies work. First, clean out the hair and gunk under the strainer. Pour one cup of baking soda down the drain. Follow with one cup of white vinegar and one-half gallon of boiling water. Repeat if necessary. The baking soda will also help eliminate drain odors.

#### MINERAL DEPOSITS

Bathcrest Bathroom Cleaner is a great cleaner for unsightly mineral deposits on your fixtures and plumbing faucets. If more cleaning treatment becomes necessary, then try a more concentrated strength of the Bathcrest cleaner. Once a week, clean the faucets with the cleaner to maintain the shine. The Bathcrest cleaner also works well on windows, shower doors, bathtubs, sinks and tiles.

Thank you for your confidence in Bathcrest refinishing. If we can be of more service, please let us know.



*If your bathtub isn't becoming to you,  
you should be coming to us.*

000080



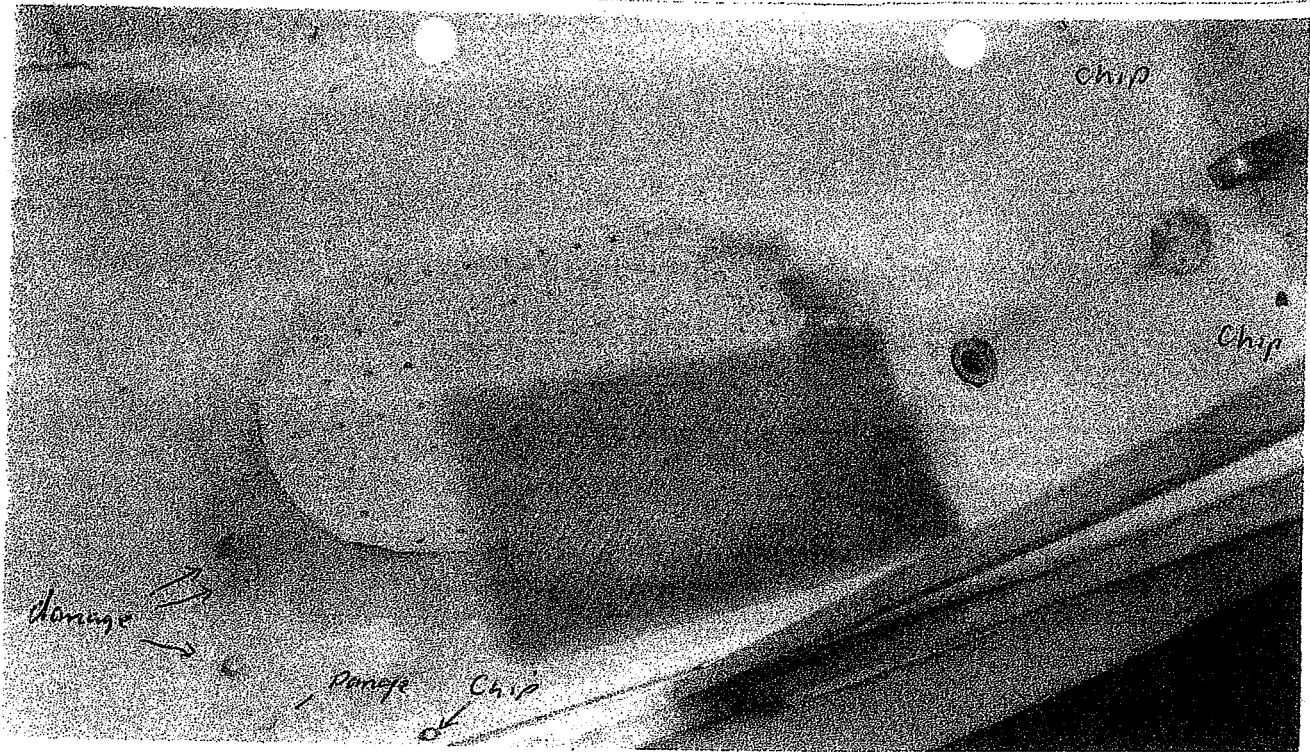
March 2013

Chip

Chip

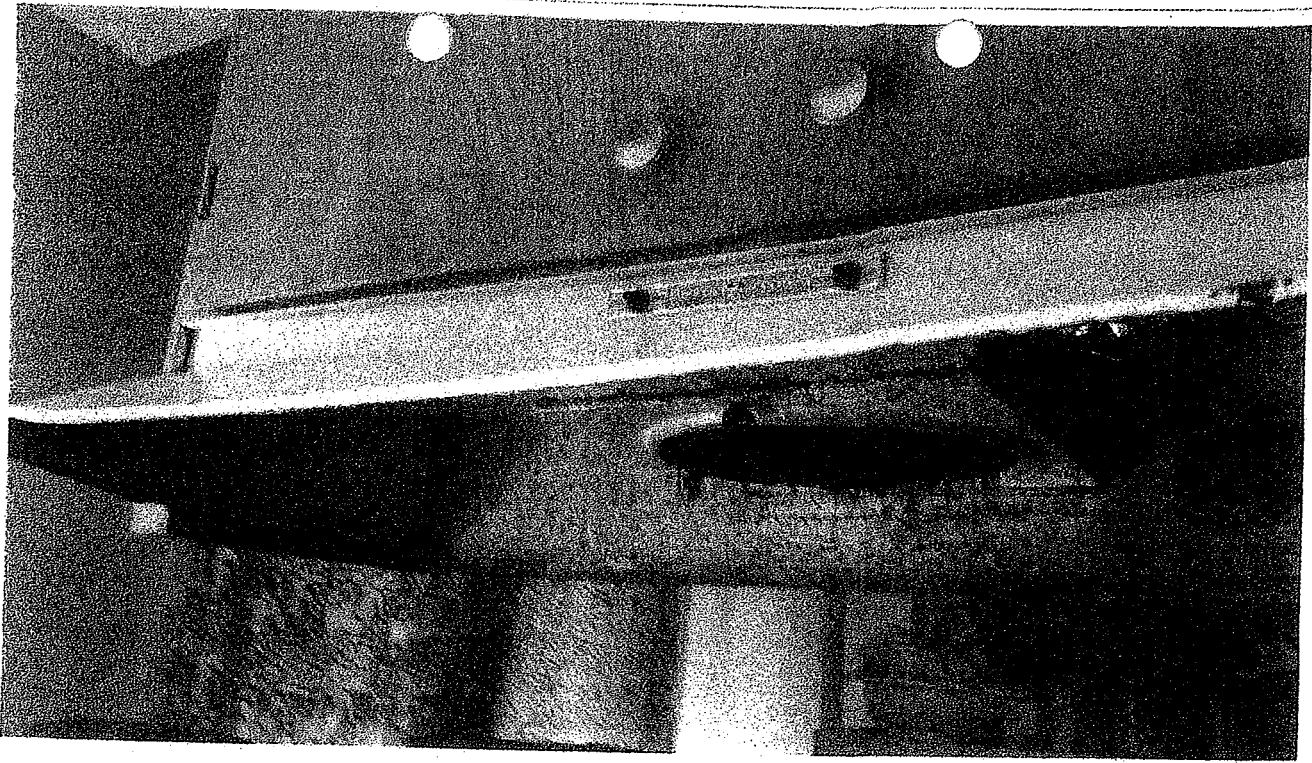
Blowout

MS



2 Nov 2016

1. NO RUST noted.
2. Some mineral deposits Noted.  
Bottom of tub not worn through  
Surface finish, Body oil and Soap  
Scum noted.



2 NOV 2016

Range hood, fire danger  
filthy



2 NOV 2016

Bedroom



2 NOV 2016

Bedroom

**EXAMPLES (Not all inclusive) of  
TENANT DAMAGE versus "NORMAL WEAR AND TEAR"**

Normal costs of turning over an apartment after a tenant vacates may not be included on a claim to HUD for tenant damages. The costs an owner incurs for the basic cleaning and repairing of such items necessary to make a unit ready for occupancy by the next tenant are part of the costs of doing business. The following is a list of items typically attributable to routine use or "normal wear and tear".

**Normal Wear and Tear:**

- ñ Fading, peeling, or cracked paint
- ñ Slightly torn or faded wallpaper
- ñ Small chips in plaster
- ñ Nail holes, pin holes, or cracks in wall
- ñ Door sticking from humidity
- ñ Cracked window pane from faulty foundation or building settling
- ñ Floors needing coat of varnish
- ñ Carpet faded or worn thin from walking
- ñ Loose grouting and bathroom tiles
- ñ Worn or scratched enamel in old bathtubs, sinks, or toilets
- ñ Rusty shower rod
- ñ Partially clogged sinks caused by aging pipes
- ñ Dirty or faded lamp or window shades

Tenant damages usually require more extensive repair, and at greater cost than "normal wear and tear", and are often the result of a tenant's abuse or negligence that is above and beyond normal wear and tear.

**Tenant Damage**

- ñ Gaping holes in walls or plaster
- ñ Drawings, crayon markings, or wallpaper that owner did not approve
- ñ Seriously damaged or ruined wallpaper
- ñ Chipped or gouged wood floors
- ñ Doors ripped off hinges
- ñ Broken windows
- ñ Missing fixtures
- ñ Holes in ceiling from removed fixtures
- ñ Holes, stains, or burns in carpet
- ñ Missing or cracked bathroom tiles
- ñ Chipped and broken enamel in bathtubs and sinks
- ñ Clogged or damaged toilet from improper use
- ñ Missing or bent shower rods
- ñ Torn, stained, or missing lamp and window shades

RECEIVED  
CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM

2010 JUL 17 PM 2:19

**THE CITY OF OAKLAND RENT ADJUSTMENT PROGRAM:**

**APPEAL**

**No. T16-0549**

**Michael Horejsi,**  
*Landlord and Appellant;*

vs.

*Akenduca D. Beasley,*  
*Respondent and Tenant;*

**CITY OF OAKLAND RENT ADJUSTMENT PROGRAM, et al.**

**Real Parties in Interest.**

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**Respondent's Evidential Response To Landlord Appeal**

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**Akenduca D. Beasley**  
**P.O. Box 19304**  
**Oakland, California 94619**  
**Telephone:**

**Respondent -Tenant, Representing**  
**Tenants at 3764 39<sup>th</sup> Ave Apt. D, Oakland, 94619**

000087

## STATEMENT OF RELEVANT FACTS

Tenant A. Beasley filed a petition on October 4, 2016, which alleges that the proposed rent increase from \$828 to \$882.42, effective October 1, 2016, and a rent increase in the year 2000, exceed the CPI Adjustment and are unjustified or is greater than 10%; that the owner did not give summary of the justification for the proposed rent increase despite her written request; that she did not receive the form Notice to Tenants (RAP Notice) at least 6 months before the effective date of the contested rent increase or together with the contested rent increase; that the contested rent increase is the second rent increase in a 12-month period; that her rent has not been reduced after the expiration period of the rent increase based on capital improvements; that at present there exists a health, safety, fire or building code violation in her unit; and that her housing services have been decreased due to problems with the heater; the bathtub; mold and mildew; the stove; the closet; window screens; and electrical problems; and that parking was a part of her original rental agreement.

The owner filed a response to the petition, which alleges that the tenant was given the RAP Notice on July 24, 2002 and together with both contested rent increases; that the current rent increase is justified by Banking; and denies that the tenant's housing services have decreased.

Tenant A. Beasley filed a petition on October 4, 2016, which alleges that the proposed rent increase from \$828 to \$882.42, effective October 1, 2016, and a rent increase in the year 2000, exceed the CPI Adjustment and are unjustified or is greater than 10%; that the owner did not give summary of the justification for the proposed rent increase despite her written request; that she did not receive the form Notice to Tenants (RAP Notice) at least 6 months before the effective date of the contested rent increase or together with the contested rent increase; that the contested rent increase is the second rent increase in a 12-month period; that her rent has not been reduced after the expiration period of the rent increase based on capital improvements; that at present there exists a health, safety, fire or building code violation in her unit; and that her housing services have been decreased due to problems with the heater; the bathtub; mold and mildew; the stove; the closet; window screens; and electrical problems; and that parking was a part of her original rental agreement.



The owner filed a response to the petition, which alleges that the tenant was given the RAP Notice on July 24, 2002 and together with both contested rent increases; that the current rent increase is justified by Banking; and denies that the tenant's housing services have decreased.

The decision appealed is for March 15, 2017. At this time the Residential Rent Adjustment Program did not alert Respondent of time limits as to filing response or evidence. Respondent contacted the RAP and was informed that a response or evidence is due 7 days before a hearing on appeal. So far no hearing has been scheduled for the Appeal submitted by landlord.

**POINTS AND AUTHORITIES &  
ARGUMENT IN OPPOSITION TO APPEAL**

**LEGAL AUTHORITY**

**Evidence Code.** The Evidence Code governs proceedings in all actions [Evid. Code §12(a)] and defines "actions" to include both civil and criminal proceedings. Evid. Code §105. Unless otherwise provided in the Penal Code, the rules of evidence in civil actions are applicable to criminal prosecutions. Penal Code §1102.

**Code of Civil Procedure.** The Code of Civil Procedure is to be interpreted liberally in order to affect its objects and promote justice. *Justus v. Atchison* (1977) 19 Cal. 3d 564, 579, 139 Cal. Rptr. 97; Code Civ. Proc. §4, Code Commissioners' Notes. While it is advisable to comply literally with its provisions, nothing short of a substantial departure will be fatal to a proceeding under it. *Shim v. Cummins* (1884) 65 Cal. 97, 3 P. 133.

Certain provisions of the Code of Civil Procedure are applicable in criminal prosecutions. As used in the Code, an "action" includes a proceeding in which a party seeks punishment for a public offense. Code Civ. Proc. §22. In the Code of Civil Procedure, actions are divided into two kinds, civil and criminal, and unless it appears that the particular statute was intended to apply only to civil actions, it applies equally to criminal proceedings. *See People v. Bouchard* (1957) 49 Cal. 2d 438, 440-441, 317 P.2d 971.

**LANDLORD'S APPEAL SHOULD BE DENIED BECAUSE IT IS BASED ON  
CONJECUTRE, HEARSAY & UNTRUTHFUL STATMENTS**

Tenants filed a petition challenging landlord rent increase, because the landlord agreed in court stipulation, within 30 days, to inspect and make following repairs to the apartment: bathtub, bathroom mold + mildew, hood above stove, defective stove, heater, hole in closet, window screens. He did not act within the 30 day period, thereby breaching the order issued by the court. In addition, within the court stipulation the landlord agreed to accept \$2000, he indicates in his appeal was not paid. Therefore landlord claim that rent is late is false.

Also Contrary to idea that tenants refused to pay lawful rent increase, the rent increase was challenged in the RAP hearing and was found credible by the decrease in service claims within the petition. All of the tenants claims are based from the agreement, in which landlord agreed to make repairs to the within the thirty day period.

Moreover the claims for tenants is not barred by res judicata, because they were not claims filed in a court by tenants and the defects in the apartment described were apart of settlement, governed by *California Code of Civil Procedure Section 664.6*; as a result of the landlord filing a frivolous unlawful detainer in which he indicated tenants didn't pay rent. Actually the landlord is prohibited from making claims regarding damages to the apartment. See paragraph 4 of the stipulation agreement. The court stipulation states in relevant part: paragraph (4.) plaintiff hereby waives any and all claims for rent, fees, costs, parking and late fees and daily damages for the premises above the \$3856.84 amount outlined in paragraph 1, through 8/31/16. Therefore the claims from landlord that *Cal Civ. Code Sections 1929 and 1941.2* prohibit any claim for reduction in housing services as a defense, is unsubstantiated. In court he agreed to make repairs within a reasonable time and he did not act.

With respect to the claims that were granted by RAP, relating to the heater and bathtub. *Cal. Civ. Code § 1942.4* prohibits the landlord of a dwelling from issuing a notice of a rent increase or obtaining an increase when such decreases exist. Particularly when an employee who is responsible for the enforcement of any housing law, after inspecting the premises, has notified the landlord or the landlord's agent in writing of his or her obligations to abate the nuisance or repair the substandard conditions. The conditions have existed and have not been abated 35 days beyond the date of service of the notice specified in paragraph, and the delay is without good

cause; and the conditions were not caused by an act or omission of the tenant or lessee in violation of Section 1929 or 1941.2... It was determined by the hearing officer Kasdin after examine evidence that decreases exist and neither claim, was caused by tenants. Consequently the rent increase should be denied.

The Rent Adjustment board decision indicated the following regarding tenants claims regarding the heater and bathtub: "**Heater**: This was an item included in the court Stipulation, dated August 15, 2016. Contrary to his testimony at the Hearing, the owner obviously had notice of this problem before the court appearance in mid-August 2016. Heat is a basic housing service, and the heater should have been repaired before July 4, 2016. The lack of heat reduced the package of housing services by 10% from July 4 through November 30, 2016. As set forth on the Table below, the tenants overpaid rent during that time. **Bathtub**: There is no evidence that the damage to the tub — which was also an item listed in the Stipulation — was caused by the tenants' misuse; the owner's testimony to the contrary was mere speculation. The tenants' testimony that they have been unable to take baths is supported by photos of several areas of the tub. This condition has reduced the housing services by 3% since July 4, 2016. Because of the current decrease in housing services, the rent is reduced by 3%, being \$26.47 per month, to \$855.95 per month. This rent decrease will remain in effect until the bathtub is re-surfaced or replaced, as specified in the Order below." A true and correct copy of the letter from Landlord is attached as Exhibit 1. A true and correct copy of the PG &E analysis given by technician is attached as Exhibit 2. A true and correct copy of picture of the removal of the heater taken 4/11/2018 is attached as Exhibits 3 and 4. A true and correct copy of picture of bathtub taken 2/16/2018 is attached as Exhibits 5 and 6.

On April 26, 2018, tenants discovered the building isn't grounded correctly. Akenduca and Satchidananda (tenants) spoke with a technician named Shay about fixing problems with cable and internet services. After the technician ran tests. It was learned that the building is grounded into Comcast. The technician didn't have a way of printing out his notes to give a copy to the landlord, but I was able to contact customer service and receive the relevant part of technician notes indicating building isn't grounded. Tenants had a claim involving flickering lights, the building not being properly grounded might be the problem. A true and correct copy of the conversation with Comcast customer service online is attached as Exhibit 7.

Based on 3\19\2018, PG &E inspection that the heater wasn't repaired properly and did not function when tested, and the bathtub has not been repaired as ordered, and building isn't grounded, in violation of *Cal. Civ. Code § 1942.4*, and other applicable law. Therefore rent increase should be void and the decreased calculations should be adjusted to reflect that the heater and tub were not repaired.

**OBJECTIONS TO EVIDENCE**

**LANDLORD TEXT**

**OBJECTIONS**

<p><b>Exhibit 1, pg. 11</b> <b>(Bay area Property Group)</b></p>	<p>1. Lacks Foundation; Speculation; Lacks Relevance; Lacks Authentication. Cal. Evid. Code §§ 210, 403, 702, 1401.</p>
<p><b>Exhibit 1, pg. 11</b> <b>(Bay area Property Group)</b></p>	<p><b><u>#1 Lacks Foundation and are Speculative:</u></b> The statement and accompanying exhibit lack foundation and are speculative because the landlord does not state any facts upon which his purported knowledge is based.</p>
<p><b>Exhibit 1, pg. 11</b> <b>(Bay area Property Group)</b></p>	<p><b><u>#2 Lacks Relevance:</u></b> Exhibit 1 is not relevant because it does not have any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action.</p>

<p><b>Exhibit 1, pg. 11</b> (Bay area Property Group)</p>	<p><u>#3 Lacks Authentication:</u> Exhibit 1 lacks authentication because landlord doesn't make it clear where exhibit came from, it appears to be Newspaper Advertisement. Not declared to be true and correct copy.</p>
<p><b>Exhibit 1, pg. 11</b> (Bay area Property Group)</p>	<p><u>#4 Hearsay:</u> The statement and accompanying exhibit are hearsay because they are based on an out of court statement offered for the truth of the matter asserted, regarding an event that occurred at tenant's home. Also Newspaper is inadmissible evidence. See <i>Bebbington v California W. States Life Ins. Co.</i>, 30 Cal. 2d 157, (1947).</p>
<p><b>Exhibit 2, pg. 12,</b> quote from page 5, Appeal: "What follows are the laws I have referenced above, which I used to determine what was 'repair as necessary' identified in the Stipulation. The general rule is that: "When a landlord (property owner) rents an apartment to a tenant (Renter), the rented property must be fit to live in. In other words, the rented property must be 'habitable.' During the time that the property is being rented, the landlord must do maintenance work and make repairs which are necessary to keep it habitable. However, a landlord is not responsible for repairing damage caused by the tenant, or the tenant's guest, children or pets." See Exhibit 2</p>	<p>Improper Opinion; Lacks Foundation; Speculation. Cal Evid. Code §§ 702, 720, 800, 801.</p>
<p><b>Exhibit 2, pg. 12</b> quote from page 5, Appeal: "What follows are the laws I have referenced above,</p>	<p><u>#1 Improper Opinion:</u> The statement is improper opinion testimony because the</p>

<p>which I used to determine what was 'repair as necessary' identified in the Stipulation. The general rule is that: "When a landlord (property owner) rents an apartment to a tenant (Renter), the rented property must be fit to live in. In other words, the rented property must be 'habitable.' During the time that the property is being rented, the landlord must do maintenance work and make repairs which are necessary to keep it habitable. However, a landlord is not responsible for repairing damage caused by the tenant, or the tenant's guest, children or pets." See Exhibit 2</p>	<p>landlord does not lay any foundation to establish his qualifications as an expert on determining which repairs to make or assertion about a general rule.</p>
<p><b>Exhibit 2, pg. 12</b> quote from page 5, Appeal: "What follows are the laws I have referenced above, which I used to determine what was 'repair as necessary' identified in the Stipulation. The general rule is that: "When a landlord (property owner) rents an apartment to a tenant (Renter), the rented property must be fit to live in. In other words, the rented property must be 'habitable.' During the time that the property is being rented, the landlord must do maintenance work and make repairs which are necessary to keep it habitable. However, a landlord is not responsible for repairing damage caused by the tenant, or the tenant's guest, children or pets." See Exhibit 2</p>	<p><b>#2 Lack Foundation and are Speculative:</b> The statement and accompanying exhibit lack foundation and are speculative because the landlord does not state any facts upon which his purported knowledge is based.</p>
<p><b>Exhibit 3, quote from page pg. 4:</b> "I also consulted the California Apartment House Association's guide to 'wear and tear' or 'damages' to determine if the tenant is responsible for damages to the apartment."</p>	<p>Hearsay, Lacks Foundation; Speculation; Lacks Relevance; Lacks Authentication. Cal. Evid. Code §§ 210, 403, 702, 1401.</p>
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<p><b>Exhibit 3, quote from page pg. 4:</b>          “I also consulted the California Apartment House Association's guide to 'wear and tear' or 'damages' to determine if the tenant is responsible for damages to the apartment.”</p>	<p><b>#3 Lacks Relevance:</b> Exhibit 3 is not relevant because it does not have any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action.</p>
<p><b>Exhibit 3, quote from page pg. 4:</b>          “I also consulted the California Apartment House Association's guide to 'wear and tear' or 'damages' to determine if the tenant is responsible for damages to the apartment.”</p>	<p><b>#4 Improper Opinion:</b> The statement is improper opinion testimony because the landlord does not lay any foundation to establish his qualifications as an expert on determining if the tenant is responsible for damages to the apartment.</p>
<p><b>Exhibit 3, quote from page pg. 4:</b>          “I also consulted the California Apartment House Association's guide to 'wear and tear' or 'damages' to determine if the tenant is responsible for damages to the apartment.”</p>	<p><b>#5 Lacks Authentication:</b> Exhibit 3 lacks authentication because landlord doesn't make it clear where exhibit came from, book or pg. number and is not declared to be true and correct copy.</p>
<p><b>Exhibit 4, receipt from Pete hardware quote from page pg5:</b>          “There was a statement in the Decision that work was not done in the apartment until late November 2016. This statement is incorrect and contrary to my testimony and letter of January 14, 2017 concerning</p>	<p>Lacks Relevance; Lacks Authentication; Improper Opinion. Cal. Evid. Code §§ 210, 403, 702, 1401</p>

<p>the issue. To settle the issue, receipts for materials purchased as a result of my November 2, 2016 inspection are attached as Exhibit 1”</p>	
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<p><b>Exhibit 5, pg. 15-16, Bath Crest</b></p>	<p>Lacks Foundation; Speculation; Lacks Relevance; Lacks Authentication. Cal. Evid. Code §§ 210, 403, 702, 1401.</p>



<b>Exhibit 5, pg. 15-16, Bath Crest</b>	<b>#1 Lack Foundation and are Speculative:</b> The statement and accompanying exhibit lack foundation and are speculative because the landlord does not state any facts upon which his purported knowledge is based.
<b>Exhibit 5, pg. 15-16, Bath Crest</b>	<b>#2 Lacks Relevance:</b> Exhibit 1 is not relevant because it does not have any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action
<b>Exhibit 5, pg. 15-16, Bath Crest</b>	<b>#3 Lacks Authentication:</b> Exhibit 4 lacks authentication because landlord doesn't declared it to be true and correct copy.
<b>Exhibit 6, pg. 17</b>	Lacks Foundation; Speculation; Lacks Relevance; Lacks Authentication. Cal. Evid. Code §§ 210, 403, 702, 1401.
<b>Exhibit 6, pg. 17</b>	<b>#1 Lack Foundation and are Speculative:</b> The statement and accompanying exhibit lack foundation and are speculative because the landlord does not state any facts upon which his purported knowledge is based.
<b>Exhibit 6, pg. 17</b>	<b>#2 Lacks Relevance:</b> Exhibit 6 is not relevant because it does not have any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action
<b>Exhibit 8, pg. 19</b>	Lacks Foundation; Speculation; Lacks Relevance; Lacks Authentication. Cal. Evid. Code §§ 210, 403, 702, 1401.

<b>Exhibit 8, pg. 19</b>	<u>#1 Lack Foundation and are Speculative:</u> The statement and accompanying exhibit lack foundation and are speculative because the landlord does not state any facts upon which his purported knowledge is based.
<b>Exhibit 8, pg. 19</b>	<u>#2 Lacks Relevance:</u> Exhibit 6 is not relevant because it does not have any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action
<b>Exhibit 9, pg. 20</b>	Lacks Foundation; Speculation; Lacks Relevance; Lacks Authentication. Cal. Evid. Code §§ 210, 403, 702, 1401.
<b>Exhibit 9, pg. 20</b>	<u>#1 Lack Foundation and are Speculative:</u> The statement and accompanying exhibit lack foundation and are speculative because the landlord does not state any facts upon which his purported knowledge is based.
<b>Exhibit 9, pg. 20</b>	<u>#2 Lack Foundation and are Speculative:</u> The statement and accompanying exhibit lack foundation and are speculative because the landlord does not state any facts upon which his purported knowledge is based.
<b>Exhibit 9, pg. 20</b>	<u>#3 Lacks Relevance:</u> Exhibit 3 is not relevant because it does not have any tendency in reason

	to prove or disprove any disputed fact that is of consequence to the determination of the action.
<b>Exhibit 10, 11, pg. 21-22 picture of bedroom</b>	Lacks Foundation; Speculation; Lacks Relevance; Lacks Authentication. Cal. Evid. Code §§ 210, 403, 702, 1401.
<b>Exhibit 10, 11, pg. 21-22 picture of bedroom</b>	<u>#1 Lack Foundation and are Speculative:</u> The statement and accompanying exhibit lack foundation and are speculative because the landlord does not state any facts upon which his purported knowledge is based.
<b>Exhibit 10, 11, pg. 21-22 picture of bedroom</b>	<u>#2 Lack Foundation and are Speculative:</u> The statement and accompanying exhibit lack foundation and are speculative because the landlord does not state any facts upon which his purported knowledge is based.
<b>Exhibit 10, 11, pg. 21-22 picture of bedroom</b>	<u>#3 Lacks Relevance:</u> Exhibit 3 is not relevant because it does not have any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action.
<b>Exhibit 12, pg. 23</b>	Hearsay, Lacks Foundation; Speculation; Lacks Relevance; Lacks Authentication. Cal. Evid. Code §§ 210, 403, 702, 1401.
<b>Exhibit 12, pg. 23</b>	<u>#1 Hearsay:</u> The statement and accompanying

	<p>exhibit are hearsay because they are based on an out of court statement offered for the truth of the matter asserted.</p>
<p><b>Exhibit 12, pg. 23</b></p>	<p><b>#2 Lack Foundation and are Speculative:</b> The statement and accompanying exhibit lack foundation and are speculative because the landlord does not state any facts upon which his purported knowledge is based.</p>
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<p><b>Exhibit 12, pg. 23</b></p>	<p><b>#4 Improper Opinion:</b> The statement is improper opinion testimony because the landlord does not lay any foundation to establish his qualifications as an expert on determining if the tenant is responsible for damages to the apartment.</p>

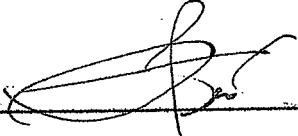
**CONCLUSION**

Based on the foregoing, Petitioner request that the Rent Adjustment Board deny landlord appeal and deny all claims for rent increases pursuant to *Cal. Civ. Code § 1942.4* and any other applicable law.

**VERIFICATION**

I, Akenduca D. Beasley am the Respondent in this proceeding. I have read the foregoing Tenant Evidentiary Response and know the contents thereof. The same is true of my own knowledge, except as to those matters that are therein stated on information and belief, and, as to those matters, I believe it to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration is executed on July 14, 2018.

  
\_\_\_\_\_  
Akenduca D. Beasley aka Linda Beasley

# EXHIBIT

1

# Letter

April 24, 2018

Linda Beasley  
3764 39<sup>th</sup> Ave., #D  
Oakland, CA 94619

Re: Your letter dated April 5, 2018

Dear Linda:

You raised several issues in your letter referenced above. You apparently requested that PGE conduct an inspection of your electric cook range. They [PGE] arrived on March 19, 2018 to provide the requested service. My understanding from you is that upon arrival, the PGE representative advised you that he could not check the range/perform the inspection because the range is electric [and not gas].

The PGE rep asked you if you wanted a safety check performed on the wall heater – you indicated that he told you the pilot light was too high and upon lowering the pilot light, the heater would not operate. The heater had been operating properly prior to this adjustment. According to the Service Report, there was an indication that the 'possible control valve is bad.'

Your wall heater was checked by myself on April 11, 2018. The heater burner assembly was removed and taken to Appliance Parts Distributor and bench tested. The technicians found that it functioned normally. The burner unit was reinstalled and a new 750 millivolt power generator was installed. The burner unit seemed to work well even with the lower pilot light setting.

The PGE representatives have special sensors and are normally good at detecting gas leaks; however, they are not experienced technicians. I would suggest if you want an expert evaluation of your appliances, you contact a professional to perform this service.

As far as your rent is concerned, you have paid the amount required per the Stipulation. You pay by check and therefore have a record of what you have paid. As you know, you have failed to pay the basic CPI (2%) increase mandated by the RAP since October 2016 as required by law. This failure amounts to a delinquency of \$17.06 per month since that date [2016]. You have also failed to pay the basic CPI (2.3%) increase mandated by the RAP since October 2017. This failure amounts to an additional delinquency of \$20.28 per month since October 2017.

There is also the matter of damages to the kitchen range that you have refused to pay. Further, your portion of the RAP fees of \$34.00 is also due – please include this with your May rent.

In February, wire, plastic and onion peelings were removed from your disposal – these are not items that belong in the disposal. Upon checking it again during my current visit, it was clear of debris and works properly. It does make some noise, but continues to work as designed.

000103

Linda Beasley  
April 24, 2018  
Page | 2

Concerning your request for painting, you have previously indicated that you intend to move when you settle the lawsuit. There is little justification for performing this type of work at this time. However, I will arrange for a contractor to come in and evaluate the work you have requested, as well as provide an estimate for the proposed work. You will be advised when this evaluation is scheduled.

Sincerely,



Mike Horejsi, Landlord/Owner

/meh

000104



**EXHIBIT**

**2**

**PG & E**

**TECH**



# SERVICE REPORT

PG&E Visited your Property Today to Service Your Account

Valued Customer: 3764 39<sup>th</sup> Ave #1 Address Oakland

Service Date/Time: 3-19-18 A.M./P.M. (P.M.)

Service Technician: Kiel Confirmation/Field Order # \_\_\_\_\_

Transaction Type: Delight

- SORRY WE MISSED YOU: Unfortunately we were not able to complete your service request because it requires your presence or the presence of an adult. Please call us at 1-800-743-5000
- SORRY WE MISSED YOU: Please see reverse side for additional information

Gas Service									
Service/Inspection of Gas Equipment									
Appliance Type	Inspected	Cleaned Burner Pilot	Filter Inspected	Adjusted	Repaired	Gas Leak Repaired	Appliance Parts Replaces Program	Unsafe Condition Identified	Refer to Licensed Contractor
Range									
Oven									
Water Heater									
Heating Appliance	✓								
Dryer									
Pool/Spa Heater									
Other									

Electric Service						
Service/Inspection of Electric Equipment						
Equipment Type	Inspected	Voltage Read	Problem Corrected	Parts/Contractor Referral	Unsafe Condition Identified	Refer to Dealer
Service Panel						
Voltage Problem						
Complete Outage						
Partial Outage						
Electric Range						
Electric Water Heater						
Other						

Remarks:

Unable to do safety check on stove due to electric stove safety check wall furnace pilot tripped still on but heater won't turn on. Possible control valve is bad. Refer to license contractor for service. CO detector active onsite.

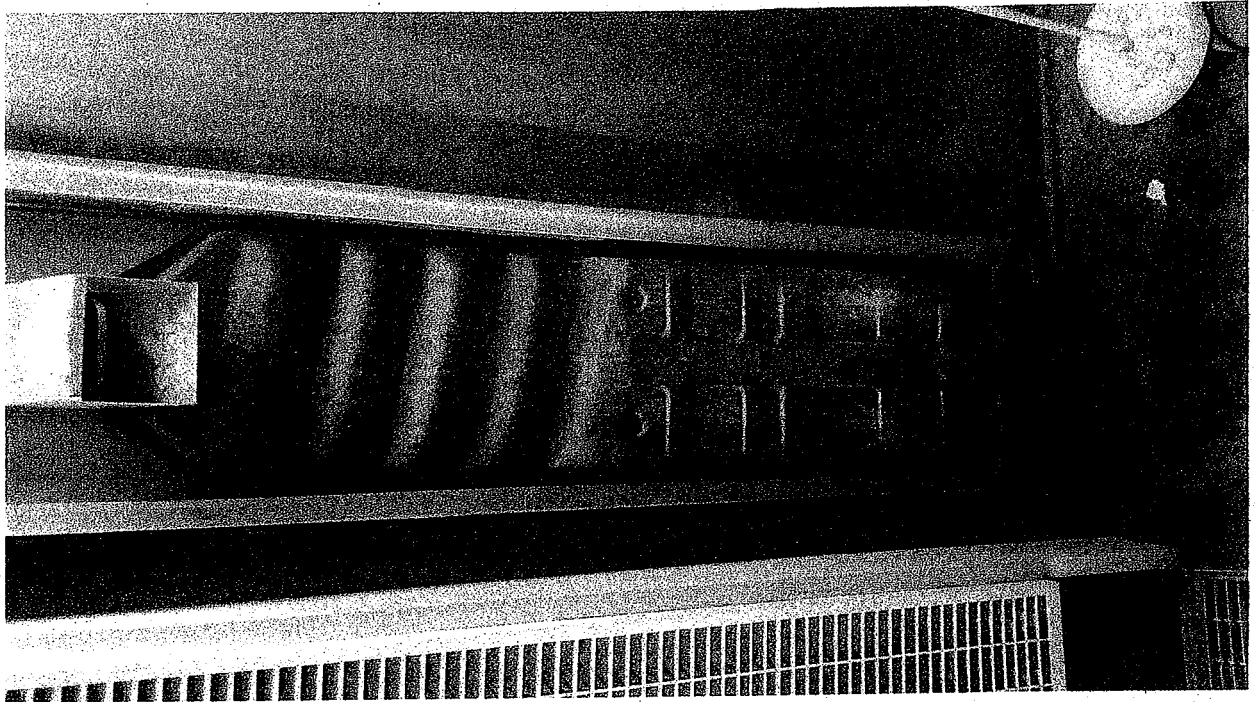
Case # \_\_\_\_\_

**Additional PG&E Work Required**

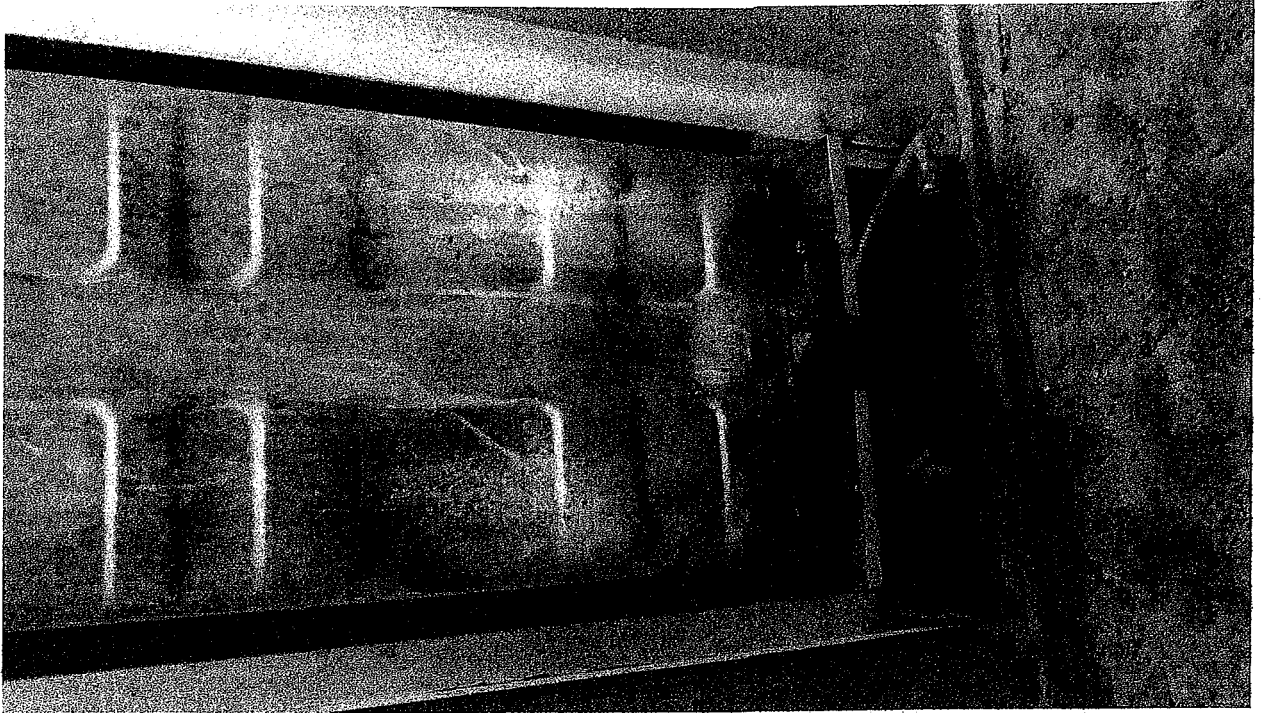
- The work you requested will require additional PG&E follow up or repairs to complete. Please refer to your case number above when calling for additional information regarding your request.

Thank you for the opportunity to serve you

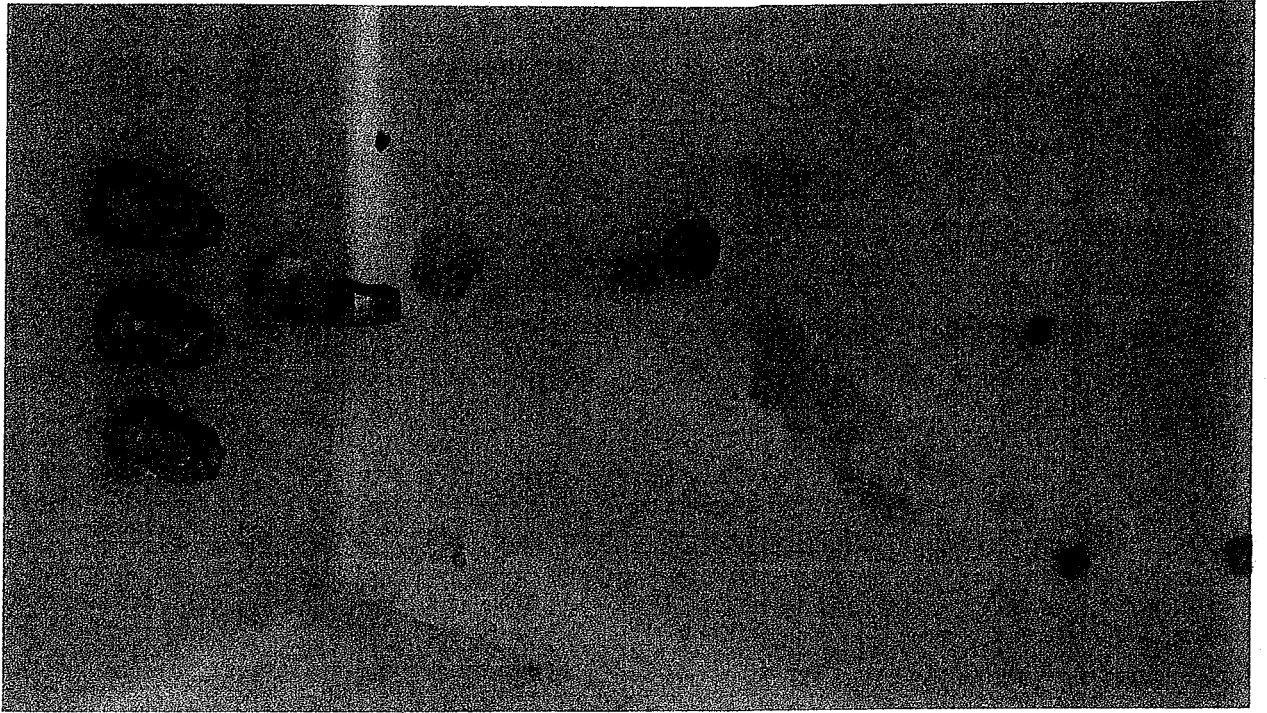
Were you satisfied with the service? Yes  No  If your answer is "No" how can we improve?



**Exhibit 3, picture of heater taken 4/11/2018, removal of parts.**



**Exhibit 4, picture of heater taken 4/11/2018, removal of parts.**



**Exhibit 5, picture of tub taken 2/16/2018.**



**Exhibit 6, picture of tub taken 2/16/2018.**

# EXHIBIT

7

# xfinity Chat Transcript

**CHAT STARTED AT Apr 26, 2018 11:15:17 PM**

**11:15:17 PM AKENDUCA BEASLEY :** On 4/26 a technician came to my apartment to determine problem with TV and internet service. After careful review he indicated that the building I live in is grounded into Comcast and Comcast has installed filters to compensate. I spoke with customer service earlier and the agent indicated that she did not have a way of giving me a copy of what the tech stated in his notes. It could only be obtained by warrant or subpoena. The agent indicated that she would cut and paste a copy of what was stated in the technician notes in an email and sent it to my linda\_B\_year2000@hotmail.com, email address, but after looking into my account it appears that she did not send it.

The information is necessary to demand the landlord fix the problem.

---You are now chatting with Namita---

**11:16:02 PM Namita :** Hi Akenduca, thank you for contacting Xfinity Chat Support. My name is Namita.

**11:16:08 PM AKENDUCA BEASLEY :** hi

**11:16:47 PM Namita :** I will certainly assist you with this by checking on your account status and provide assistance as needed.

**11:16:57 PM AKENDUCA BEASLEY :** okay

**11:17:00 PM Namita :** Please provide your complete name and the complete service address, including apartment number and state zip code. This is required for the verification purposes.

**11:17:36 PM AKENDUCA BEASLEY :** Akenduca Beasley

**11:18:01 PM AKENDUCA BEASLEY :** service address: 3764 39th Ave Apt. D., Oakland, 94619

**11:18:43 PM Namita :** Thank you for confirming these details.

**11:18:58 PM Namita :** lease allow me 1-2 minutes to check this for you.

**11:19:07 PM AKENDUCA BEASLEY :** okay

**11:22:27 PM Namita :** Akenduca, please stay connected. I am still checking.

**11:22:38 PM AKENDUCA BEASLEY :** okay

**11:23:03 PM Namita :** Thank you for waiting.

**11:24:17 PM Namita :** Here are the notes:



**11:24:24 PM Namita : INSIDE MDU BOX FILTERS ARE PLACED ON ALL UNITS INSIDE APARTMENT BUILDING VOLTAGE AND INGRESS, THE BUILDING ISN'T GROUNDED**

**11:25:10 PM Namita : This is what is mentioned here in the note.**

**11:26:45 PM AKENDUCA BEASLEY : yeah the agent indicated that he mad several notes about the building, in addition to that he stated something about the building was using Comcast to ground the building.**

**11:27:47 PM Namita : Akenduca, this is what I found in the notes that the building isn't grounded.**

**11:28:50 PM Namita : yes, there one more note- " the building is using Comcast as a ground instead of PGE"**

**11:29:31 PM Namita : That's it. These are the two notes mentioned here.**

**11:29:36 PM AKENDUCA BEASLEY : okay**

**11:30:26 PM AKENDUCA BEASLEY : Is there a way to get a formal letter or email indicating the tech findings?**

**11:31:54 PM Namita : Unfortunately, we are not able to send emails to our customers. We can just chat. However, you can save a transcript of this chat by clicking on the 3 horizontal lines at the top left corner of the screen.**

**11:32:21 PM AKENDUCA BEASLEY : okay**

**11:33:03 PM Namita : While going over to your account, I see a great deal that would save your money and internet speed would increase. Would you like to have a look at this offer?**

**Powered By eGain**

**Proof of Service**

**Case No. T16-0549**

The undersigned hereby declares: I am over the age of eighteen and a tenant of 3764 39<sup>th</sup> Ave. Apt. D, Oakland, CA 94619. I am a resident of or employed in the county where the following mailing took place and my name and residence or business address is as follows:

Name: Satchidananda Mims

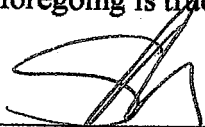
Address: PO Box 19304, Oakland, CA 94619

**Documents served:** Respondent's Evidential Response to Landlord Appeal and Supporting Documents

On July 16, 2018, I served a copy of the foregoing on the following person(s), by placing it in a sealed envelope addressed to those persons, with the postage fully paid, and then placing the envelope in the mail at the following place: Oakland, CA.

Person Served: Michael Horejsi, PO Box 2883, Castro Valley, CA 94546.

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

  
\_\_\_\_\_  
Satchidandanda Mims

## CHRONOLOGICAL CASE REPORT

Case Nos.: T16-0549 & T17-0523

Case Name: Beasley v. Horejsi

Property Address: 3764 39<sup>th</sup> Ave., Apt. # D, Oakland, CA

Parties: Linda Akenduca Beasley (Tenant)  
Satchidananda Mims (Tenant)  
Michael E. Horejsi (Property Owner)


### **OWNER APPEAL, CASE# T16-0549**

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	October 4, 2016
Owner Response filed	November 2, 2016
Hearing Decision issued	March 15, 2017
Owner Appeal filed	April 3, 2017
Tenant's Response to Owner Appeal	July 17, 2018

### **TENANT APPEAL, CASE# T17-0523**

Tenant Petition filed	September 12, 2017
Owner Response filed	February 1, 2018
Hearing Decision issued	March 29, 2018
Tenant Appeal filed	April 18, 2018
Tenant filed Supporting Memorandum	May 3, 2018

T17-0523 KM/SL

 CITY OF OAKLAND	<b>CITY OF OAKLAND</b> <b>RENT ADJUSTMENT PROGRAM</b> P.O. Box 70243 Oakland, CA 94612-0243 (510) 238-3721	For date stamp: 2017 SEP 12 PM 1:24
	<b>TENANT PETITION</b>	

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

**Please print legibly**

Your Name Akenduca D. Beasley aka Linda J. Beasley	Rental Address (with zip code) 3764 39th Ave. Apt. D., Oakland, CA 94619	Telephone: 510-530-6345 E-mail:
Your Representative's Name self	Mailing Address (with zip code) PO Box 19304, Oakland, CA 94619	Telephone: (510)-530-6345 Email:
Property Owner(s) name(s) Michael E. Horejsi	Mailing Address (with zip code) P.O. Box 2883 Castro Valley, CA 94546	Telephone: (775) 400-6464 Email:
Property Manager or Management Co. (if applicable)	Mailing Address (with zip code)	Telephone: Email:

Number of units on the property: 7

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

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

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

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

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

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

Date you moved into the Unit: 7/24/1982 Initial Rent: \$ 425.00 /month

When did the owner first provide you with the RAP NOTICE, a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program? Date: 06/05/2002. 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		
07/27/2017	10/01/2017	\$ 882.42	\$ 968.42	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	Oct 1, 2016	\$ 828.00	\$ 882.42	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<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
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

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

Have you ever filed a petition for this rental unit?

- Yes
- No

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

T03-0300, T16-0549

**III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:**

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

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

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

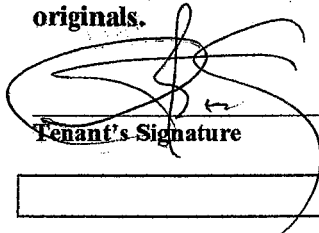
- 1) a list of the lost housing service(s) or problem(s);
- 2) the date the loss(es) or problem(s) began or the date you began paying for the service(s)
- 3) when you notified the owner of the problem(s); and
- 4) how you calculate the dollar value of lost service(s) or problem(s).

Please attach documentary evidence if available.

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

**IV. VERIFICATION:** The tenant must sign:

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

  
\_\_\_\_\_  
Tenant's Signature

9/11/2017  
\_\_\_\_\_  
Date

\_\_\_\_\_

\_\_\_\_\_

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

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

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

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

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

\_\_\_\_\_  
Tenant's Signature

\_\_\_\_\_  
Date

## **VI. IMPORTANT INFORMATION:**

### **Time to File**

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

### **File Review**

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

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

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

BEASLEY, AKENDUCA D; is representing Tenants in Apartment D.:

**Tenant's PETITION ATTACHMENT**

Regarding legally withholding rent: The rent is current in accordance with a court order issued by the Superior court of California. See exhibits and other documents associated within tenant petition T16-0549, which was decided on March 15, 2017.

**II. RENTAL HISTORY**

Tenant Akenduca Beasley was handed a notice of rent increase from landlord Mr. Horejsi on or about July 27, 2017 stating the rent would increase from \$882.42 to (\$943.42 + 25 parking) = \$968.42. The notice indicates that rental is due to banking/ rental history. Tenants contend that the rent increase claim is invalid and lists reasons below:

By definition: "**CLAIM** is the assertion of a right to money or property; the aggregate of operative facts giving rise to a right enforceable in the courts, 309 F. Supp. 1178, 1181. A claim must show the existence of a right, an injury, and a prayer for damages. See 149 F. Supp. 615, 618." *Gifts, Steven H., Barron's Law Dictionary 6<sup>th</sup> Ed. (2010), pp. 3332.* Therefore all rent increases proposed by landlord Mr. Horejsi, banked or otherwise, represent claims.

On or about August 15, 2016, (Plaintiff / Owner) Horejsi and (Defendant(s)/ Tenant(s)) Beasley and Mims entered into an agreement regarding any and all rents, fees, parking fees, late fees, etc.... and costs, and stipulated under Cal. Civ. Proc. § 664 the Superior court would retain jurisdiction. The agreement states in relevant part, in paragraphs 1, 4 and 6: "(1.) Defendant(s) shall retain possession of the premises located at 3764 39<sup>th</sup> Ave. Apt. D in Oakland, CA on the following conditions: Defendant shall pay to Plaintiff \$3856.84, which constitutes a bargained for amount of all rents, fees, parking fees, late fees et cetera and costs due and owing for the premises through 8/31/2016... (4.) Plaintiff hereby waives any and all claims for rent, fees, costs, parking and late fees and daily damages for the premises above \$3856. 84 amount outlined in paragraph 1. Through 8/31/2016... (6.) Within 30 days, Plaintiff shall inspect and repair as necessary the following defects: Bathtub, Bathroom mold and mildew, et cetera. In addition the landlord Horejsi hand wrote the following statement at the bottom in paragraph six; with the exception of the rights set forth herein the parties waive all other rights known to them at this time. "Consequently the landlord waived his rights to claim past banked rent to increases from 1



1982 through 8/31/16.

Also, the landlords past claims for banked rent through the ordinances provided from the Oakland Rent Board are preempted by *Code. Civ. Proc.* § 664.6, because the claims interfere with the courts ability to control, and settle claims for rent in the tenants unlawful detainer case.

*Code. Civ. Proc.* § 664.6. "If parties to pending litigation stipulate, in a writing signed by the parties outside the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement."

It is clear from analyzing the code of civil procedure that the legislature intended for the Superior Court of California to govern the current stipulated agreement and for the court to enforce it if requested by parties involved. Local legislation enters an area fully occupied by general law when the legislature has expressly manifested its intent to fully occupy the area or when it has impliedly done so in light of recognized indicia of intent [*California Grocers Assn. city of Los Angeles* (2011) 52 Cal. 4th 177, 188, 127 Cal. Rptr. 3d 726, 254 P.3d 1019, cert. denied, (2012) 132 S.Ct. 1144, 181 L.Ed.2d 1018 (only field occupied by Retail Food Code is health and sanitation standards for retail food establishments)]. Where the legislature has adopted statutes governing a particular subject matter, its intent with regard to occupying the field to the exclusion of all local regulation is not to be measured alone by the language used but by the whole purpose and scope of the legislative scheme [*Sequoia Park Assocs. v. Cty of Sonoma* (2009) 176 Cal. App. 4<sup>th</sup> 1270, 1278, 98 Cal. Rptr.3d 669).

A conflict exists if the ordinance duplicates, contradicts, or enters into a field of regulation expressly or impliedly reserved to the state [*California Grocers Assn. v. City of Los Angeles* (2011) 52 Cal. 4th 177, 188, 127 Cal. Rptr. 3d 726, 254 P.3d 1019, cert. to fully occupy the particular area of law [*Big Creek Lumber Co. v. Cnty: of Santa Cruz* (2006) 38 Cal. 4th 1139, 1157-1158, 45 Cal. Rptr.3d 21, 136 P.3d 821. As stated in the last paragraph of the stipulated agreement above the judges' signature: "The court accepts this stipulation for filing and accepts the parties' request to retain jurisdiction pursuant to CCP section 664.6." Therefore it is clear the legislature gave Superior courts the authority to settle claims in unlawful detainer cases.

Lastly, the landlord has violated: 8.22.600 - Tenant protection ordinance. (Ord. No. 13265, § 1, 11-5-2014). By refusing to make agreed repairs to the bathroom.

See examples of harassment in 8.22.610 - Findings and purpose.

Under J stated in pertinent part: J.) Of the approximately four hundred eighty (480) Oakland tenants who received legal services at Centro Legal de la Raza during fiscal year 2014 (July 1, 2013 through June 30, 2014), approximately forty percent (40%) faced harassment by their landlords. The forms of harassment varied, but included one or more of the following in each case:

- “1. Interrupting, terminating, failing to provide or threatening to interrupt, terminate or fail to provide housing services required by contract or by State, County or municipal housing, health or safety laws;
2. Failing to perform required repairs and/or maintenance or threatening to fail to do so;
3. Failing to exercise due diligence in completing repairs and maintenance once undertaken or failing to follow appropriate industry repair, containment or remediation protocols designed to minimize exposure to noise, dust, lead paint, mold, asbestos, or other building materials with potentially harmful health impacts;
4. Abusing the owner's right of access into a rental housing unit as that right is provided by law;
5. Unlawfully removing from the rental unit personal property, furnishings, or any other items without the prior written consent of the tenant;
6. Influencing, or attempting to influence, a tenant to vacate a rental unit through fraud, intimidation or coercion;
7. Attempting to coerce a tenant to vacate with offer(s) of payments to vacate which are accompanied with threats or intimidation;
8. Threatening the tenant, by word or gesture, with physical harm;
9. Substantially and directly interfering with a Tenant's right to quiet use and enjoyment,<sub>3</sub>

of a rental housing unit as that right is defined by California law;

10. Fraudulently refusing to accept or acknowledge receipt of a Tenant's lawful rent payment."

The landlord has violated the first, three examples of harassment in 8.22.610 by first, failing to provide housing services required by contract and health and safety laws; second, by failing to perform required repairs and threaten to and failing to do so; and third by failing to exercise due diligence in completing repairs.. Or failing to follow appropriate industry repair, containment or remediation protocols designed to minimize exposure to noise, dust, lead paint, mold, asbestos, or other building materials with potentially harmful health impacts.

### **III. Description of Decreased or Inadequate Housing Services**

**Services:** dates are estimated below, exact dates not known at this time; Services not believed to be in compliance with California Civil Code §1941.

<b>Date</b>	<b>Decreased/Inadequate Services</b>	<b>Amount (\$)</b>
7/2007	Bath Tub – rusted and full of mold cannot be used to bath	\$26.47 per month, set by rent board on March 15, 2017 case no. T16-0549
7/2007	Bathroom Mold and Mildew	To be determined by rent board
7/2007	Defective stove	To be determined by rent board
7/2007	Hole in closet	To be determined by rent board
1/2005	Parking- is a part of the original rental agreement.	(\$25 per month.)- should be noted, No. T03-0300 tenant petition filed challenged increase and the land lord rescinded the increase.

Several documents have been ordered masked from public view by the Superior Court of California. Documents in support of this petition will be filed at a later time. Along with any other information the Rent board indicates it needs to make a determination in this case. If you have questions or concerns please contact petitioner Akenduca D. Beasley by means above.

**PROOF OF SERVICE BY MAIL**

The undersigned declares:

I am a citizen of the United States of America, over the age of eighteen years. My mailing address is Post Office Box 19304, Oakland, CA 94619.

On, 12, September 2017, I served the attached, Tenant Petition on the parties in this action by placing a true copy thereof, in a sealed envelope with first class postage fully prepaid, in the United States Mail at Oakland, California, addressed as follows:

Michael E. Horejsi

P.O. Box 2883  
Castro Valley, CA 94546  
(775) 400-6464

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

Sworn this 12<sup>th</sup> September 2017, at Oakland, California



---

Satchidananda Mims

RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM

2018 MAY -3 PM 3:32

**DECLARATION OF** Akenduca Beasley aka Linda Beasley

(Print your name) Landlord /Tenant (circle one)

3764 39th Ave. Apt D, Oakland, 94619; 510-530-6345

(Print your address and phone number)

**RENT ADJUSTMENT CASE NO.** T17-0523

The purpose of this declaration is to inform the City of Oakland Rent Adjustment Program about what I think is a violation of the Rent Adjustment Ordinance.

I, Akenduca Beasley aka Linda Beasley, an adult, 18 years of age or older, declare the following about:

Michael E. Horejsi, P.O. Box 2883, Castro Valley, CA 94546

(Print name and address of other party)

The landlord has violated: 8.22.600 - Tenant protection ordinance. (Ord. No. 13265, § 1, 11-5-2014). Failing to perform required

repairs and/or maintenance or threatening to fail to do so; Influencing, or attempting to influence, a tenant to vacate a rental

unit through fraud, intimidation or coercion. Since Case No. T16-0549, bathtub has not been repaired and landlord indicated he is not

going to repair bathtub. Landlord refusal is not in compliance with the rent boards rulings or the court stipulation order. In addition

Cal. Civ. Code § 1942.4. states in pertinent part: "a) A landlord of a dwelling may not demand rent, collect rent, issue a notice of a rent

increase...if all of the following conditions exist prior to the landlord's demand or notice: 1. ) The dwelling substantially lacks any

of the affirmative standard characteristics listed in Section 1941.1....or is deemed and declared substandard as set forth in

Section 17920.3 of the Health and Safety Code because conditions listed in that section exist to an extent that life, limb, health, property

safety, welfare of the public or the occupants of the dwelling..." Based on the fact the adjustment program notified the landlord

via rulings about obligations to repair tub and it has been more than 35 days, good cause doesn't exist to explain landlord behavior and tenants

did not due damage to the tub. That law has been violated as well as the protection ordinance.

(attach extra sheets if necessary)

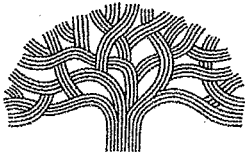
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Oakland, California on 05/03/2018 (date).

Signature

Revised 1-17-14

000125



CITY OF OAKLAND

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

For date stamp.

2018 JAN 31 PM 1:02  
FEB 1 (KR)  
**PROPERTY OWNER**  
**RESPONSE**

**RECEIVED**

FEB 01 2018

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

**CASE NUMBER T 17 0523**

RENT ADJUSTMENT PROGRAM  
**OAKLAND**

Your Name  Michael E. Horejsi	Complete Address (with zip code) P.O. Box 2883 Castro Valley, CA 94546	Telephone: 775-400-6464
		Email: mhorejsi@aol.com
Your Representative's Name (if any)  Self	Complete Address (with zip code)	Telephone:
		Email:
Tenant(s) Name(s)  Linda Beasley	Complete Address (with zip code) 3764 39th Ave, Apt D Oakland, CA 94619	
Property Address (If the property has more than one address, list all addresses) 3764 39th Ave., Apt D, Oakland, CA 94619		Total number of units on property 7

Have you paid for your Oakland Business License? Yes  No  Lic. Number: 0054416  
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: 030-1925-033  
The property owner must be current on payment of the RAP Service Fee. If the fee is not current, an Owner Petition or Response may not be considered in a Rent Adjustment proceeding. **Please provide proof of payment.**

Date on which you acquired the building: 01 / 6 / 1974

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>
10/1/17	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
*10/1/16	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
*T16-0549	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Pending Appeal)

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 7/24/1982

The tenant's initial rent including all services provided was: \$ 425.00 / month.

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

If yes, on what date was the Notice first given? 6/05/2002

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>	
7/27/2017	10/01/17	\$ 907.42	\$ 968.42	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
8/26/2016	10/01/16	\$ 828.00	\$ 907.42	<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

\*\*Rent set at \$882.42, T16-0549, appeal still pending.

### 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.

**\*\* See Attachment for further information and facts.\*\***

### V. VERIFICATION

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

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

1 Feb 2018  
\_\_\_\_\_  
Date



## PROPERTY OWNER RESPONSE

(Attachment to form)

1. Assignment of Hearing Officer:

I respectfully request that a different hearing officer, other than Mr. Kasdin, be assigned to this case. Mr. Kasdin was the hearing officer in the last case, T16-0549, which is currently under appeal. It would be a conflict of interest for him to handle this Petition.

2. Rental History:

The rent for this unit was last increased on Feb. 2, 2004, over 13 years ago.

Tenants were given a rent increase, which was to be effective Oct. 1, 2016. Tenants' filed an appeal to that increase, T16-0549. A hearing was conducted and a decision was rendered on March 15, 2017. An owner's appeal to that decision was filed on April 3, 2017. This appeal has still not been scheduled for a hearing. OMC 8.22-120 B1 **requires** that a hearing be scheduled **within 30 days of filing the appeal**. Over 270 days have passed since the appeal was filed. This is unacceptable. The OMC RAP does not provide for this kind of delay which effectively freezes the rent for this unit.

I found it necessary to write a letter to the Director, Ms. Byrd, to see if this matter could be resolved. A hearing has, of yet, **not** been set for case T16-0549. However, I did receive a copy of the tenant's most recent Petition filed on September 12, 2017. Although, I was **not** served with the tenant's Petition until December 29, 2017, over 3 months after the filing date. This is unacceptable. See Encl. \_\_\_.

Considering the fees of the RAP were increased by 100% in 2017, over two million dollars, and it's my understanding only one new employee was hired, is again unacceptable. Why would any owner participate in this program?

3. Tenants' rent is delinquent:

Tenants are delinquent with their rent. While they are paying their delinquent rent at the rate of \$100 each month per a Court Stipulation, they will be in arrears until June 2018. They were in arrears \$900 when they filed their appeal in September 2016, claiming their rent was current.

Tenants are required to pay the annual CPI increase even though they may appeal banked rent. Tenants refused to pay the annual CPI increase from Oct. 1, 2016. OMC 8.22 0904b, the 2% increase was clearly specified in the Three Day Notice, as of January 2018. This is calculated at 2% of \$904.18. This amounts to \$18.08 per month for 16 months, through January 2018; an amount of \$289.33 is delinquent. This places the tenants in violation of the Court Stipulation.

Tenants also failed to pay the annual CPI increase effective Oct. 1, 2017. Based on 2.3% of \$968.42, this amounts to \$22.23 per month increase. As of January 2018, the amount of additional delinquent rent is \$88.92.

These tenants have continuously demonstrated a complete disregard for the RAP ordinance. The hearing decision and owner's appeal to T16-0549 should be incorporated herein by reference.

I. Owner's Response to Tenants' Petition

(a-b) The base rent as outlined in the Order for T16-0549 was set at \$882.42; when the \$25.00 was added, the total base rent comes to \$907.42. The rent for the current increase (2017) based on the 2.3% CPI with banking allowance is 6.9%. A 6.9% increase for \$907.42 is \$62.61 for a total of \$970.03. The total amount for rent and parking on the rent increase notice is \$968.42. This is less than authorized by the RAP. Objection is without merit.

(c) The rent increase does not exceed the CPI Adjustment and the banked rent increase. Grounds for the Petition are not credible.

(f) The rent increase notice was given, in person by myself, to Ms. Beasley in accordance with the law. Grounds for Petition are not credible.

(g) The anniversary date for future yearly rent increases was set by Order for T16-0549 as of October 1<sup>st</sup> each year. Her last rent increase was effective October 1, 2016. The current rent increase was effective October 1, 2017. Ms. Beasley's grounds for her Petition are **not** credible.

(h-i) See Section III

III. Owner's Response to alleged decreased or inadequate services.

The tenant has alleged the same complaints for the most part which were addressed in T16-0549. An Appeal was filed for this ruling. The appeal addressed the rent reduction for tenants' causation of damages to window screens, bathtub surface damages and tampering with the unit wall heater. No other issues were disputed.

The tenant did **not** provide a written request for any repairs, which is required per agreement, prior to filing her Petition. A routine annual inspection of her unit was conducted on September 25, 2017. See Encl. \_\_\_.

a. Bathtub: As stated, this issue was addressed in Case T16-0549. An appeal is pending scheduling of a hearing.

b. Bathroom mold and mildew: This was addressed in Case T16-0549. Hearing officer's ruling (Mold was caused by excess moisture in the air. When asked the cause of the mold in their bathroom, the tenants testified that they believed it 'comes from the walls.' This is **not** a condition that the owner can correct). The bathroom was repainted in October 2017. There was no obvious mold on the walls. The tub and shower walls had **not** been cleaned and were covered with mineral stains, soap scum and body oil (and still have not been cleaned).

c. Defective stove: The kitchen range was new in 2006. Tenant claims the range has been defective since 2007. This was a complaint from tenant in case T16-0549. The hearing officer stated the tenants did not meet their burden of proof and the **claim was denied**.

The range was checked by myself and my assistant on September 25, 2017. The range, although extremely unclean, worked properly. Both the bake and broil elements worked properly. The thermostat cut-off temperature was reading correctly. All range top burners operated correctly. Tenant was admonished as to the danger of a fire due to excess grease on the range. Inspection Report; Encl. \_\_\_

On October 18, 2017, tenants complained that the oven did not work. The range was inspected on the same day. It was discovered that both screws securing the bake element to the back range housing had been removed, which allowed the element to short out against the grounded panel. The short caused catastrophic damage to the element.

A new bake element was installed and a new light bulb was replaced on October 25, 2017. This bake element was replaced earlier due to tenant using the oven to heat the kitchen, an act strictly forbidden by the manufacturer. Tenant was advised she would be charged for the bake element - \$81.39 was to be paid with her December rent. Tenant has yet to pay for this damage.

Owner was notified on January 2, 2018 that tenant was baking peanuts in the oven and they caught on fire, or the excess grease in the oven and pan caught on fire. The Fire Department was summoned.

Upon inspection, it appeared the tenant took no action to extinguish the fire. A fire extinguisher was located near her front door. The fire apparently burned the excess grease present and extinguished itself. There was no evidence of fire retardant used to extinguish the fire. There was fire damage to the range front above the oven door. Since the oven door is sealed to prevent heat from escaping, it is likely tenant was baking the peanuts with the oven door slightly open. The top portion of the oven seal was damaged by the fire. The range is cosmetically damaged and will need to be replaced prior to re-renting the unit. Neither the bake element or broil element were damaged – both were operational. A new door seal has been ordered. The fire may have been unintentional, but was clearly caused by unattended baking and tenant's carelessness.

d. Hole in closet floor: This issue was addressed in Case T16-0549. The tenants testified that the hole in the floor does not affect their tenancy; the condition does not constitute a decreased housing service. The claim was **denied** by the hearing officer.

During the inspection conducted on September 25, 2017, the tenants were requested to remove sufficient items stored in the closet to allow inspection of the area. No hole was present in the floor. Prior water damage to the floor was noted next to the back closet floor. This area was adjacent to the closet side of the front of the tub in the bathroom. The damaged area was reinforced with plywood to counter the softness in the floor. The bedroom is full of stored materials, thus there was not sufficient access to the damaged area to repair the area.

A letter of April 21, 2002, concerning this matter, recently came to my attention explaining the circumstances of the water damage. Encl. \_\_\_ (It should be noted that the bathroom floor was replaced in October 2001. The area around the tub was not completely

sealed. The job was not completed due to **denial of entry** by Mrs. Beasley. The new floor sustained some water damage due to the wall area next to the end of the tub not being sealed.)

The water also leaked through into the closet and was unseen to me. This is undoubtedly what caused the damage to the closet floor.

e. Parking: The parking claim as a reduction of housing services was **denied** in RAP T03-0237, T03-0300, T16-0549, and by the Stipulated Unlawful Detainer Judgment signed by Mrs. Beasley herself.

The tenants seem to have no valid claims for their petitions and are inclined to disregard the RAP decisions and continue to bring up the same complaints repeatedly.

#### IV. Owner's Response to Tenant's attachment.

Author of this attachment is simply confusing a claim for an entitlement. The annual CPI rent increase is an entitlement and can be levied by the landlord at his discretion. The tenant does not have the right to contest a basic annual CPI increase. The author would turn every annual CPI increase into a jury trial.

The argument concerning the application of CCP 664.60 is irrelevant to this case. It is absolutely applicable to the reason the Appeal was filed objecting to rent reductions granted in Case T16-0549. The RAP does not have the authority to grant relief prior to the date of the Superior Court approved Stipulation [August 31, 2016].

At the time the Unlawful Detainer was filed, June 2016, tenants were in arrears \$19,793.00. Encl. \_\_\_. State law limits claim for monetary damages to one years' rent. Consequently, monetary claims stated on the Three Day Notice were limited to one years' rent, \$9,989.76. Encl. \_\_\_. Therefore, any rights waived by myself were generally limited to claims for the period July 1, 2015 to August 31, 2016. The tenants' waiver concerned any claims they may have had prior to signing the Stipulation on August 31, 2016. Nearly \$10,000 in delinquent rent, due prior to July 2015, is still unclaimed. It is ironic that tenants bring this issue up since they recently filed a nuisance unlimited civil lawsuit action, and also in case T16-0549. This tenant is involved, concurrently, in 4 different actions, all regarding the same issues – this is burdensome and a deliberate effort to harass the owner.

The note on the Stipulation was entered by my attorney and referred to only claims which arise based on the unlawful detainer action. Since the CPI and banked rent are entitlements and not claims, any suggestion entitlements were waived is without merit.

Claims are made that the tenants' rights have been violated because I have not made repairs to the damaged to the bathtub. This is an effort to deflect attention away from the tenants' obligations as defined by CCC 1941.2d. Not destroy, damage, or deface the premises, or allow anyone else to. A landlord is not required to repair damages caused by the tenants' own carelessness.

The tub in question was refinished after this tenant caused prior damage – it was repaired in 2002. At that time, according to tenant, it was in perfect condition. It is irrefutable that the

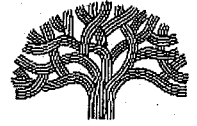
surface to the tub has been damaged. The damage consists of dents, chipped porcelain and rust where the porcelain has been damaged. The tenants still have a shower and can bathe if they choose. CCC 1941i requires a bathtub or shower, not both. Tenants claim the damage they caused to the bathtub is a building code violation and is a habitability issue – this is untrue. The law provides that if the tenant causes the apartment to become uninhabitable, they cannot require the landlord to repair the property.

The current damage occurred around the time they were raising a defense for the 2016 unlawful detainer action.

An unlawful detainer action, 01-032127, against tenants was filed in 2001. These are my comments in a letter to tenants' attorney at the time. 'The bathtub was damaged to the point it needed to be refinished. It had numerous dents and areas of chipped porcelain. It was apparent this damage was caused by being struck with a very hard object.' There was considerable other damage articulated in this letter. Encl. \_\_\_.

The tenants agreed to pay for this damage, but failed to do so.

The argument that the landlord violated OMC 8.22.600 is without merit.



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

CITY OF OAKLAND

Department of Housing and Community Development  
Rent Adjustment Program

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

## **HEARING DECISION**

**CASE NUMBER:** T17-0523, Beasley v. Horejsi  
**PROPERTY ADDRESS:** 3764 - 39<sup>th</sup> Ave., #D, Oakland, CA  
**DATE OF HEARING:** February 26, 2018  
**DATE OF DECISION:** March 29, 2018  
**APPEARANCES:** Akenduca Linda Beasley (Tenant)  
Satchidananda Mims (Tenant)  
Michael E. Horejsi (Owner)

## **SUMMARY OF DECISION**

The tenant's petition is partly granted.

## **CONTENTIONS OF THE PARTIES**

Tenant Akenduca Linda Beasley (the tenant) filed a petition on September 12, 2017, which alleges that a rent increase in the year 2016, as well as a proposed current rent increase from \$882.42 to \$968.42 per month, effective October 1, 2017, exceeds the CPI Adjustment and is unjustified or is greater than 10%; that the CPI and/or banked rent increase was calculated incorrectly; that the rent increase notice was not given to her in compliance with State law; that the current proposed rent increase is the second increase in a 12-month period; and additionally alleges that at present, there exists a health, safety, fire, or building code violation and serious problems in her unit, as follows: bathtub; bathroom mold and mildew; defective stove; hole in a closet; and that parking was part of her original rental agreement.

The owner filed a response to the petition, which alleges that the proposed rent increase is justified by Banking, and denies that the tenant's housing services have been decreased.

000134

## THE ISSUES

- (1) Does a Court Stipulation between the parties regarding rent affect this case?
- (2) Was the tenant's petition filed within the required time limit to challenge the year 2016 rent increase?
- (3) When did the first tenant receive the form Notice to Tenants (RAP Notice)?
- (4) Is a rent increase based upon Banking justified and, if so in what amount?
- (5) 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?
- (6) What effect, if any, does the tenant's pending Appeal have upon this Hearing Decision?

## EVIDENCE

Court Stipulation: In an attachment to her petition, the tenant refers to a Stipulation which the parties signed in the Alameda County Superior Court in 2016. This Stipulation regards the tenant's obligation to pay back rent, and states that the Court would retain jurisdiction in this matter.

RAP Notice: In their petitions and responses, both parties state that the tenant was given the RAP Notice on June 5, 2002.

Rent History: At the Hearing, the owner testified that the tenant's rent in the year 2007 was \$828 per month. The tenant testified that she assumed that this was correct. The parties agreed that the tenant has been paying rent of \$853 per month.

Decreased Housing Services: Official Notice is taken of Case No. T16-0549, which involved the same parties as the present case. The owner filed an Appeal of the Hearing Decision in that case, which has not yet been decided. In that prior case, the tenant claimed that her housing services had been decreased due to the condition of the bathtub; mold and mildew; the stove; a hole in a closet; and that parking was part of her original rental agreement.

The Order in that prior case states that the Base Rent is \$882.42 per month; that due to past decreased housing services, the rent was temporarily reduced by \$56.81 per month from April 2017 through March 2018; that due to the condition of the bathtub, the rent was reduced by \$26.47 per month, to \$855.95 per month, until the bathtub is repaired. The owner's Appeal contends that the tenant's housing services had not been reduced, and that the rent reduction that was ordered was not justified.

Bathtub: At the Hearing, the tenant testified that this is the same claim that she made in Case No. T16-0549 (the prior case). The parties testified that the tub has not been repaired.

Bathroom Mold and Mildew: The tenant testified that this is the same claim that she made in the prior case.

Stove: The tenant testified that on January 2, 2018, there was a fire in her electric stove. She had been roasting peanuts in the oven. She smelled smoke, and when she went into the

kitchen smoke was coming out of the oven. The tenant turned off the circuit breaker in her apartment, which caused the fire in the oven to go out. She then called the Fire Department. Fire fighters responded, and later prepared a report.<sup>1</sup> The tenant further testified that she had previously told the owner that the oven was overheating, and approximately 6 weeks before this incident the owner worked on the screws on the heating element in the oven.

The Fire Department report states, in part: "Contents of pan in oven charred, and oven extremely hot with heat damage to exterior of oven above door and door itself. Per resident, she was roasting contents at reasonable temperature (approx. 350) when broiler area ignited and flames traveled through main oven box and out top of door. . . Resident stated recent work by property manager on oven."

The owner testified that on September 25, 2017, he and Mr. Jackson, his repair person, inspected the stove. Following the inspection, the owner arranged for the heating element to be replaced. He submitted a bill for a heating element from Appliance Parts Distributor, dated October 20, 2017.<sup>2</sup>

On November 11, 2017, the owner wrote a letter to the tenant, with the caption "Findings: Annual Inspection conducted on September 25, 2017."<sup>3</sup> This letter states, in part: "The walls and kitchen area are excessively greasy. The range hood and oven require cleaning. . The oven appears to have not been cleaned since installed . . . the bake element was damaged and replaced at that time. . . Shortly after this inspection you called and stated the oven did not work. Upon inspection, it was determined that someone had removed the bake element mounting screws and apparently attempted to remove the bake element causing an electrical short to occur. The bake element was subsequently replaced."

The owner testified that, following the fire, he noted that the screws that hold the bake element (an electric tubing) in place were missing. They had been in place when he inspected the stove in September 2017. He further testified that these screws could not have come out on their own; someone would have had to remove them. With the screws missing, the bake element could touch the side of the stove, and cause a fire. The owner submitted a photo of the inside of the oven that he took after the fire.<sup>4</sup> This photo depicts a large burnt area at the back of the oven.

Hole in Closet: The tenant testified that this is the same claim that she made in the prior case.

Parking: The tenant testified that this is the same claim that she made in the prior case.

/

/

/

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<sup>1</sup> Exhibit No. 1. This Exhibit, and all others to which reference is made in this Decision, were admitted into evidence without objection.

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

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

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



## FINDINGS OF FACT AND CONCLUSIONS OF LAW

The following Findings of Fact and Conclusions of Law are based upon the assumption that the owner's Appeal will be denied, and the Hearing Decision in the prior case will stand. If the Appeal is granted, a Hearing Decision following Appeal will be issued, which will replace this Hearing Decision.

Court Stipulation: This Stipulation concerns only rent arrearages, and has no effect upon the present case, which involves a proposed rent increase and the tenant's claims of decreased housing services.

RAP Notice / Filing Requirement: It is found that the tenant received the RAP Notice in the year 2002. A tenant petition must be filed within 90 days of the date of service of a rent increase notice or the date the tenant first receives the RAP Notice, whichever is later.<sup>5</sup> Therefore, the tenant's petition was filed far too late to contest a rent increase in the year 2016. The tenant's Base Rent before considering the current proposed rent increase is \$882.42 per month. This amount does not include payment on back rent pursuant to the Court stipulation noted above.

Banking: An owner is allowed to bank rent increases and use them in subsequent years, subject to certain limitations.<sup>6</sup> The parties agree on the dates and rent amounts entered into the Banking calculations shown on the attached Table. The method of calculation on this Table has been approved by the Rent Board.<sup>7</sup> Therefore, as set forth in this Table, the maximum rent for the tenant's unit is \$942.86 per month.

Decreased Housing Services: Under the Oakland Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent<sup>8</sup> and may be corrected by a rent adjustment.<sup>9</sup> However, in order to justify a decrease in rent, a decrease in housing services must be either the elimination or reduction of a service that existed at the start of the tenancy or a violation of the housing or building code which seriously affects the habitability of the tenant's unit. A tenant has the burden of proof with respect to each decreased services claim. Further, under the legal doctrine of *res judicata*, a valid, final judgment on the merits is a bar to a subsequent action by parties on the same cause of action. Mycogen Corp. v. Monsanto Co., 28 Cal. 4<sup>th</sup> 888, 896 (2002).

Bathtub: Since the identical claim was made in the prior case, the claim is denied. However, the Order in the prior case, which decreased the rent by \$26.47 per month until the bathtub is repaired, remains in effect.

Bathroom Mold and Mildew: Since the identical claim was made in the prior case, and was denied, the claim is denied.

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<sup>5</sup> O.M.C. Section 8.22.090 (A)(2)

<sup>6</sup> O.M.C. Section 8.22.070(C); Regulations Appendix, Section 10.5.1

<sup>7</sup> Appeal Decision, Case No. 98-02, et al. Merlo v. Rose Ventures III et al. The Board has designated this decision to be a Precedent Decision.

<sup>8</sup> O.M.C. Section 8.22.070(F)

<sup>9</sup> O.M.C. Section 8.22.110(E)

Stove: It is found that the owner's testimony was credible. The condition that caused the fire could not have occurred without tampering, and the stove was otherwise not defective. At best, the evidence was equally persuasive, and the tenant has not sustained her burden of proof. Therefore, the claim is denied.

Hole in Closet: Since the identical claim was made in the prior case, the claim is denied.

Parking: Since the identical claim was made in the prior case, the claim is denied.

Rent Underpayments: The tenant has underpaid rent, as detailed in the following Table.

Month	Paid	Rent with Banked Increase	Minus Rent Reduction in Prior Case	Minus Ongoing Reduction Due to Condition of Bathtub	Rent Due	Rent Underpayment
October 2017	\$853	\$942.86	\$56.81/mo.	\$26.47/mo.	\$859.58	\$6.58
November 2017	\$853	\$942.86	\$56.81/mo.	\$26.47/mo.	\$859.58	\$6.58
December 2017	\$853	\$942.86	\$56.81/mo.	\$26.47/mo.	\$859.58	\$6.58
January 2018	\$853	\$942.86	\$56.81/mo.	\$26.47/mo.	\$859.58	\$6.58
February 2018	\$853	\$942.86	\$56.81/mo.	\$26.47/mo.	\$859.58	\$6.58
March 2018	\$853	\$942.86	\$56.81/mo.	\$26.47/mo.	\$859.58	\$6.58
April 2018	\$853	\$942.86	NONE	\$26.47/mo.	\$916.39	\$63.39

The underpayments total \$102.87. The underpayment is ordered repaid over a period of 3 months.<sup>10</sup> The rent is temporarily increased by \$34.29 per month, to \$977.15 per month, beginning with the rent payment in May 2018 and ending with the rent payment in July 2018.

**ORDER**

1. Petition T17-0523 is partly granted.

<sup>10</sup> Regulations, Section 8.22.110(F)

# CITY OF OAKLAND



Department of Housing and Community Development  
 Rent Adjustment Program  
<http://www2.oaklandnet.com/Government/o/hcd/o/RentAdjustment/>

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

## CALCULATION OF DEFERRED CPI INCREASES (BANKING)

Initial move-in date	24-Jul-1982	<b>MUST FILL IN D9, D10, D11 and D14</b>	Case No.:	<input type="text"/>
Effective date of increase	1-Oct-2017		Unit:	<input type="text"/>
Current rent (before increase and without prior cap. improve pass-through)	\$882.00		<b>CHANGE YELLOW CELLS ONLY</b>	
Prior cap. imp. pass-through				
Date calculation begins	1-Oct-2006			
Base rent when calc. begins	\$828			

If the planned increase includes other than banking put an X in the box →

## ANNUAL INCREASES TABLE

Year Ending	Debt Serv. or Fair Return increase	Housing Serv. Costs increase	Base Rent Reduction	Annual %	CPI Increase	Rent Ceiling
10/1/2017				2.3%	\$ 23.81	\$ 1,058.87
10/1/2016				2.0%	\$ 20.30	\$ 1,035.07
10/1/2015				1.7%	\$ 16.96	\$ 1,014.77
10/1/2014				1.9%	\$ 18.60	\$ 997.81
10/1/2013				2.1%	\$ 20.14	\$ 979.20
10/1/2012				3.0%	\$ 27.93	\$ 959.06
10/1/2011				2.0%	\$ 18.26	\$ 931.13
10/1/2010				2.7%	\$ 24.00	\$ 912.87
10/1/2009				0.7%	\$ 6.18	\$ 888.87
10/1/2008				3.2%	\$ 27.37	\$ 882.69
10/1/2007				3.3%	\$ 27.32	\$ 855.32
10/1/2006				-	-	\$828

## Calculation of Limit on Increase

<b>Prior base rent</b>	\$882.00
<b>Banking limit this year (3 x current CPI and not more than 10%)</b>	6.9%
<b>Banking available this year</b>	\$ 60.86
<b>Banking this year + base rent</b>	\$ 942.86
<b>Prior capital improvements recovery</b>	\$ -
<b>Rent ceiling w/o other new increases</b>	\$ 942.86

Notes:

1. You cannot use banked rent increases after 10 years.
2. CPI increases are calculated on the base rent only, excluding capital improvement pass-throughs.
3. The banking limit is calculated on the last rent paid, excluding capital improvement pass-throughs.
4. Debt Service and Fair Return increases include all past annual CPI adjustments.
5. An Increased Housing Service Cost increase takes the place of the current year's CPI adjustment.
6. Past increases for unspecified reasons are presumed to be for banking.
7. Banked annual increases are compounded.
8. The current CPI is not included in "Banking", but it is added to this spreadsheet for your convenience.

Revised April 28, 2016

000139

**PROOF OF SERVICE**

**Case Number T17-0523**

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

**Tenant**

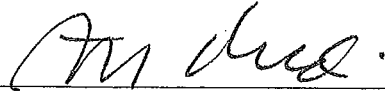
Akenduca D. Beasley aka Linda J. Beasley  
3764 39th Ave #D  
Oakland, CA 94619

**Owner**

Michael E. Horejsi  
P.O. Box 2883  
Castro Valley, CA 94546

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on March 29, 2018 in Oakland, CA.



\_\_\_\_\_  
Stephen Kasdin

 CITY OF OAKLAND	<b>CITY OF OAKLAND</b> <b>RENT ADJUSTMENT PROGRAM</b> 250 Frank Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721	For date stamp. 2018 APR 18 AM 9:09
	<b><u>APPEAL</u></b>	

<b>Appellant's Name</b> Akenduca D. Beasley		<input type="checkbox"/> Owner <input checked="" type="checkbox"/> Tenant	
<b>Property Address (Include Unit Number)</b> 3764 39th Ave. Apt D, Oakland, CA 94619			
<b>Appellant's Mailing Address (For receipt of notices)</b> PO Box 19304 Oakland, CA 94619		<b>Case Number</b> T17-0523	
		<b>Date of Decision appealed</b> March 29, 2018	
<b>Name of Representative (if any)</b>		<b>Representative's Mailing Address (For notices)</b>	

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

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

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

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

For more information phone (510) 238-3721.

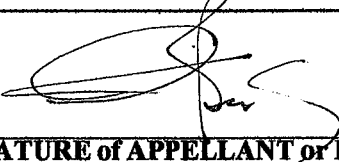
- f)  I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. (In your explanation, you must describe how you were denied the chance to defend your claims and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue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

Submissions to the Board are limited to 25 pages from each party. Please number attached pages consecutively.  
 Number of pages attached: \_\_\_\_\_.

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

I declare under penalty of perjury under the laws of the State of California that on April 18 \_\_\_\_\_, 20<sup>18</sup>, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<b>Name</b>	Michael E. Horejsi
<b>Address</b>	P.O. Box 2883
<b>City, State Zip</b>	Castro Valley, CA 94546
<b>Name</b>	
<b>Address</b>	
<b>City, State Zip</b>	

	4/18/2018
<b>SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE</b>	<b>DATE</b>

For more information phone (510) 238-3721.

RECEIVED  
CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM

2018 MAY -3 PM 3:32

**THE CITY OF OAKLAND RENT ADJUSTMENT**

**PROGRAM: APPEAL**

No. T17-0523

AKENDUCA D. BEASLEY,

*Petitioner and Tenant,*

vs.

Michael Horejsi,

*Respondent and landlord / Owner;*

CITY OF OAKLAND RENT ADJUSTMENT PROGRAM, et al.

Real Parties in Interest.

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**PETITION FOR APPEAL AND SUPPORTING MEMORANDUM  
OF POINTS AND AUTHORITIES**

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Akenduca D. Beasley  
P.O. Box 19304  
Oakland, California 94619  
Telephone: (510) 530-6345

Petitioner-Tenant, Representing  
Tenants at 3764 39<sup>th</sup> Ave Apt. D, Oakland, 94619

000143

RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM

2018 MAY -3 PM 3:32

**DECLARATION OF Akenduca Beasley aka Linda Beasley**

(Print your name) Landlord /Tenant (circle one)

3764 39th Ave. Apt D, Oakland, 94619; 510-530-6345

(Print your address and phone number)

**RENT ADJUSTMENT CASE NO. T17-0523**

The purpose of this declaration is to inform the City of Oakland Rent Adjustment Program about what I think is a violation of the Rent Adjustment Ordinance.

I, Akenduca Beasley aka Linda Beasley, an adult, 18 years of age or older, declare the following about:

Michael E. Horejsl, P.O. Box 2883, Castro Valley, CA 94546

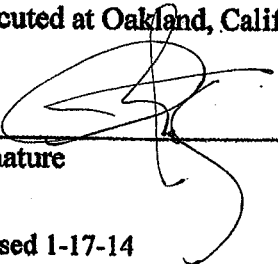
(Print name and address of other party)

The landlord has violated: 8.22.600 - Tenant protection ordinance. (Ord. No. 13265, § 1, 11-5-2014). Failing to perform required repairs and/or maintenance or threatening to fail to do so; Influencing, or attempting to influence, a tenant to vacate a rental unit through fraud, intimidation or coercion. Since Case No. T16-0549, bathtub has not been repaired and landlord indicated he is not going to repair bathtub. Landlord refusal is not in compliance with the rent boards rulings or the court stipulation order. In addition Cal. Civ. Code § 1942.4. states in pertinent part: "a) A landlord of a dwelling may not demand rent, collect rent, issue a notice of a rent increase...if all of the following conditions exist prior to the landlord's demand or notice: 1. ) The dwelling substantially lacks any of the affirmative standard characteristics listed in Section 1941.1...or is deemed and declared substandard as set forth in Section 17920.3 of the Health and Safety Code because conditions listed in that section exist to an extent that life, limb, health, property safety, welfare of the public or the occupants of the dwelling..." Based on the fact the adjustment program notified the landlord via rulings about obligations to repair tub and it has been more than 35 days, good cause doesn't exist to explain landlord behavior and tenants did not due damage to the tub. That law has been violated as well as the protection ordinance.

(attach extra sheets if necessary)

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

Executed at Oakland, California on 05/03/2018 (date).

  
\_\_\_\_\_  
Signature

Revised 1-17-14



**AKENDUCA BEASLEY**

3764 39<sup>th</sup> Ave. #D, Oakland, CA 94619

510-530-6345

Department of Housing and Community Development  
Department, Rent Adjust Program  
PO Box 70243  
Oakland, CA 94612-2043

Re: Hearing Decision made March 29, 2018  
Case Number T170523 Beasley v. Horesji

**Grounds For Tenants Appeal**

1. The decision is inconstant with decisions issued by other Hearing Officers.
2. The decision violates federal, state or local law.
3. The decision is not supported by substantial evidence.
4. I was denied a sufficient opportunity to present my claim or respond to petitioner's claim.
5. Other...

**INTRODUCTION AND SUMMARY OF FACTS**

A "CLAIM is the assertion of a right to money or property; the aggregate of operative facts giving rise to a right enforceable in the courts, *Thompson v. Zurich Insurance Company* 309 F. Supp. 1178 (1970). Therefore any assertion from the landlord right to raise or collect rent is a form of a claim.

As stated in her original petition. Tenant Akenduca Beasley was handed a notice of rent increase from landlord Mr. Horejsi on or about July 27, 2017 stating the rent would increase from \$882.42 to (\$943.42 + 25 parking) = \$968.42. The notice indicates that rental is due to banking/ rental history.

On or about August 15, 2016, (Plaintiff / Owner) Horejsi and (Defendant(s)/ Tenant(s)) Beasley and Mims entered into an agreement regarding any and all rents, fees, parking fees, late fees, etc.... and costs, and stipulated under Cal. Civ. Proc. § 664 the Superior court would retain jurisdiction. Simultaneously the court made the stipulation a court order and required parties to do their part in fulfilling the agreement. As a result of the agreement the landlord waived his rights to claim past banked rent to increases from 1982 through 8/31/16. In addition the City of Oakland Rent Adjustment Program is limited and preempted from raising the rent, because increases are in conflict with *Cal. Civil Proc. §§ 664; 1174.2;* and *Cal. Civ. Code § 1942.4;* and *California Health and Safety Code § 17920.3.*

During the hearing conducted on February 26, 2018. Both the landlord and tenants submitted evidence to be reviewed by hearing Officer Stephen Kasdin. The main issue of discussion of the hearing was the stove and the fire which occurred on January 02, 2018. Tenants testified that the oven was worked on or serviced by the landlord. The landlord is the only person who has worked on the oven since its installation many years ago. The landlord testimony through his own admission consisted of majority speculation and hearsay; however the officer found his testimony credible.

### **POINTS AND AUTHORITES**

### **ARGUMENT IN SUPPORT OF PETITION FOR APPEAL**

### **LEGAL AUTHORITY**

*California Code of Civil Procedure Section 664.6* States in pertinent part:

“If parties to pending litigation stipulate, in a writing signed by the parties outside the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.”

**California Code of Civil Procedure Section 1174.2** states in pertinent part:

a) "In an unlawful detainer proceeding involving residential premises after default in payment of rent and in which the tenant has raised as an affirmative defense a breach of the landlord's obligations under Section 1941 of the Civil Code or of any warranty of habitability, the court shall determine whether a substantial breach of these obligations has occurred. If the court finds that a substantial breach has occurred, the court (1) shall determine the reasonable rental value of the premises in its untenable state to the date of trial, (2) shall deny possession to the landlord and adjudge the tenant to be the prevailing party, conditioned upon the payment by the tenant of the rent that has accrued to the date of the trial as adjusted pursuant to this subdivision within a reasonable period of time not exceeding five days, from the date of the court's judgment or, if service of the court's judgment is made by mail, the payment shall be made within the time set forth in Section 1013, (3) may order the landlord to make repairs and correct the conditions which constitute a breach of the landlord's obligations, (4) shall order that the monthly rent be limited to the reasonable rental value of the premises as determined pursuant to this subdivision until repairs are completed, and (5) except as otherwise provided in subdivision (b), shall award the tenant costs and attorneys fees if provided by, and pursuant to, any statute or the contract of the parties. If the court orders repairs or corrections, or both, pursuant to paragraph (3), the court's jurisdiction continues over the matter for the purpose of ensuring compliance. The court shall, however, award possession of the premises to the landlord if the tenant fails to pay all rent accrued to the date of trial, as determined due in the judgment, within the period prescribed by the court pursuant to this subdivision. The tenant shall, however, retain any rights conferred by Section 1174."

**THE RENT ADJUSTMENT PROGRAM HAS THE OBLIGATION AND AUTHORITY TO STOP THE UNLAWFUL RENT INCREASE(S) IN CURRENT CASE**

It is clear from analyzing the code of civil procedure that the legislature intended for the Superior Court of California to govern certain aspects of rent. Particularly when a stipulated agreement is involved, resulting from an unlawful detainer case and both parties request for the court to retain jurisdiction over the subject matter. See *Cal. Civil Proc.* §§ 664.6; 1174.2.

The Rent Adjustment Program officer found that the order of the court stipulation Re: Dismissal / Judgment concerns only rent arrearages, and has no effect upon the present case, which involves a proposed rent increase and the tenant's claims of decreased housing services. The officer failed to justify how the Rent Adjustment Program order regarding claims based on the court order stipulation has no bearing in this rent case. The court set the amount of rent to (\$828 rent) + (\$25 parking) = \$853 and added (\$100 arrearage payment) = \$953 to be paid from September 2016 to June 2018. The court also ordered, "Within 30 days, Plaintiff shall inspect and repair as necessary the following defects: Bathtub, Bathroom mold and mildew, et cetera." *Cal. Civil Proc.* § 1174.2 states in relevant part: "(3) may order the landlord to make repairs and

correct the conditions which constitute a breach of the landlord's obligations, (4) shall order that the monthly rent be limited to the reasonable rental value of the premises as determined pursuant to this subdivision until repairs are completed. . . If the court orders repairs or corrections, or both, pursuant to paragraph (3), the court's jurisdiction continues over the matter for the purpose of ensuring compliance." Therefore all aspects of the stipulation / court order was in jurisdiction of the California Superior Court and court has the right to identify substandard portions of a dwelling, and set the rent until all repairs are done to the satisfaction of the court. Furthermore when the court made the stipulation an order, the landlord was required by law to follow the agreement, by repairing agreed defects. The Rent Adjustment Program was wrong when he evaluated each point from the stipulation and indicated in much of its analysis of each agreed upon repair, except for the bath tub, either there is not enough evidence to substantiate a claim or within the respect to mold or mildew that nothing could be done about it. See *T16-0549, Beasley v. Horejsi (2017)*. When parties agreed to the stipulation and the court made it an order, the court essentially acknowledge that the repairs that needed to be fixed made the housing substandard and order them fixed within 30 days.

In addition the law indicates that a landlord may not issue a notice of a rent increase or require a tenant pay rent when certain substandard housing defects exist. See the following laws. "*Cal. Civ. Code § 1942.4*, States in pertinent part:

(a) A landlord of a dwelling may not demand rent, collect rent, issue a notice of a rent increase, or issue a three-day notice to pay rent or quit pursuant to subdivision (2) of Section 1161 of the Code of Civil Procedure, if all of the following conditions exist prior to the landlord's demand or notice:

(1) The dwelling substantially lacks any of the affirmative standard characteristics listed in Section 1941.1 or violates Section 17920.10 of the Health and Safety Code, or is deemed and declared substandard as set forth in Section 17920.3 of the Health and Safety Code because conditions listed in that section exist to an extent that endangers the or life, limb, health, property, safety, welfare of the public or the occupants of the dwelling.

(2) A public officer or employee who is responsible for the enforcement of any housing law, after inspecting the premises, has notified the landlord or the landlord's agent in writing of his or her obligations to abate the nuisance or repair the substandard conditions.

(3) The conditions have existed and have not been abated 35 days beyond the date of service of the notice specified in paragraph (2) and the delay is without good cause. For purposes of this subdivision, service shall be complete at the time of deposit in the United States mail.

(4) The conditions were not caused by an act or omission of the tenant or lessee in violation of Section 1929 or 1941.2..."

"*California Health and Safety Code § 17920.3* states in pertinent part:

Any building or portion thereof including any dwelling unit, guestroom or suite of rooms, or the premises on which the same is located, in which there exists any of the following listed conditions to an extent that endangers the life, limb, health, property, safety, or welfare of the public or the occupants thereof shall be deemed and hereby is declared to be a substandard building:

(a) Inadequate sanitation shall include, but not be limited to, the following:

- (1) Lack of, or improper water closet, lavatory, or bathtub or shower in a dwelling unit.
- (2) Lack of, or improper water closets, lavatories, and bathtubs or showers per number of guests in a hotel
- (3) Lack of, or improper kitchen sink.
- (4) Lack of hot and cold running water to plumbing fixtures in a hotel.
- (5) Lack of hot and cold running water to plumbing fixtures in a dwelling unit.
- (6) Lack of adequate heating.
- (7) Lack of, or improper operation of required ventilating equipment,
- (8) Lack of minimum amounts of natural light and ventilation required by this code.
- (9) Room and space dimensions less than required by this code.
- (10) Lack of required electrical lighting.
- (11) Dampness of habitable rooms...
- (13) Visible mold growth, as determined by a health officer or a code enforcement officer, as defined in Section 829.5 of the Penal Code, excluding the presence of mold that is minor and found on surfaces that can accumulate moisture as part of their properly functioning and intended use...
- (14) General dilapidation or improper maintenance.

b) Structural hazards shall include, but not be limited to, the following:

- (1) Deteriorated or inadequate foundations.
- (2) Defective or deteriorated flooring or floor supports.
- (3) Flooring or floor supports of insufficient size to carry imposed loads with safety...

c) Any nuisance.

(d) All wiring, except that which conformed with all applicable laws in effect at the time of installation if it is currently in good and safe condition and working properly..."

Consequently the Rent Adjustment Program overstepped its authority bypassing applicable California law and court order, in granting increases in rent.

THE INCREASE IN RENT IS PREEMPTED BY LAW

A court may infer an intent to preempt municipal legislation only if (1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; or (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the municipality. See *Fisher v. City of Berkeley* (1984) 37 Cal. 3d 644. In the Fisher case the court invalidated an ordinance to the extent it created an evidentiary presumption that affected the burden of proof in regard to retaliatory evictions. The ordinance was rejected because evidence laws of California already govern evidence.

As stated above, the decisions for T16-0549, *Beasley v. Horejsi* (2017) and this case are prohibited by law, because the legislature intended to give the courts the right to totally govern rents when dealing with an unlawful detainer case. A conflict exists if the ordinance duplicates, contradicts, or enters into a field of regulation expressly or impliedly reserved to the state [*California Grocers Assn. v. City of Los Angeles* (2011) 52 Cal. 4th 177, 188, 127 Cal. Rptr. 3d 726, 254 P.3d 1019, cert. to fully occupy the particular area of law [*Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal. 4th 1139, 1157-1158, 45 Cal. Rptr.3d 21, 136 P.3d 821.

#### THE DECISION IS NOT BASED ON SUBSTANTIAL EVIDENCE

- a. **Appellant Has a Due Process Right to a Fair Hearing**
- b. Under the 14<sup>th</sup> Amendment to the United States Constitution and Article I, §§ 7 & 15 of the California Constitution, no person may be deprived of life, liberty, or property without “due process of law”. The words “due process of law” refers to a principal that “fundamental fairness” must be applied to every party in a civil or criminal proceeding. *Lassiter v. Department of Social Services* (1981) 452 U.S. 18, 101 S.Ct. 2153, 2158, 68 L.Ed.2d 640, 648; see also, Witkin, *Summary of California Law*, Ninth Edition, *Constitutional Law* §481

The due process requirement of fundamental fairness has been expressly interpreted to include the right to have a “fair hearing”. A fair hearing includes the right to produce evidence and cross-examine parties. This fundamental element of due process was eloquently summarized by the California Court of Appeals, Second District, in *Buchman v. Buchman* (1954) 123 Cal. App. 2d 546, 560:

“Judicial absolutism is not part of the American way of life. The odious doctrine that the end justifies the means does not prevail in our system for the administration of justice. The power vested in a judge is to hear and determine not to determine without a hearing. *When the Constitution requires a hearing, it requires a fair one, one before a tribunal which meets established standards of procedure. It is not for nothing that most of the provisions of the Bill of Rights have to do with matters of procedure.* Procedure is the fair, orderly, and deliberate method by which matters are litigated. To judge in a contested proceeding implies the hearing of evidence from both sides in open court, a comparison of the merits of the evidence of each side, a conclusion from the evidence of where the truth lays, application of the appropriate laws to the facts found, and the rendition of a judgment accordingly.”(Emphasis Added).

(*Fewel v. Fewel* (1943) 23 C.2d 431, 433; *People v. Lawrence* (1956) 140 Cal. App.2d 133, 136-137; *People v. Thompson* (1935) 5 Cal. App. 2d 655, 659-661; see also Witkin *Summary of California Law*, Ninth Edition, *Constitutional Law*, §§502-503.)

Rent Adjust Program officer Kasdin allowed landlord and tenants to submit some evidence, but quickly criticized the evidence submitted by tenants regarding the Jan 2, 2018 fire of the range. Kasdin indicated that the statement from the fire department could not be used as evidence, because the fire happened after the 2017 claim. The landlord insisted that it be used and indicated that it is relevant to the information he submitted regarding the range. Kasdin then said okay and allowed it into evidence.

The hearing officer Kasdin presented and used the following as evidence in his decision:

“Stove: The tenant testified that on January 2, 2018, there was a fire in her electric stove. She had been roasting peanuts in the oven. She smelled smoke, and when she went into the kitchen smoke was coming out of the oven. The tenant turned off the circuit breaker in her apartment, which caused the fire in the oven to go out. She then called the Fire Department. Fire fighters responded, and later prepared a report.<sup>1</sup> The tenant further testified that she had previously told the owner that the oven was overheating, and approximately 6 weeks before this incident the owner worked on the screws on the heating element in the oven.

The Fire Department report states, in part: "Contents of pan in oven charred, and oven extremely hot with heat damage to exterior of oven above door and door itself. Per resident, she was roasting contents at reasonable temperature (approx. 350) when broiler area ignited and flames traveled through main oven box and out top of door. . . Resident stated recent work by property manager on oven."

The owner testified that on September 25, 2017, he and Mr. Jackson, his repair person, inspected the stove. Following the inspection, the owner arranged for the heating element to be replaced. He submitted a bill for a heating element from Appliance Parts Distributor, dated October 20, 2017.<sup>2</sup>

On November 11, 2017, the owner wrote a letter to the tenant, with the caption "Findings: Annual Inspection conducted on September 25, 2017."<sup>3</sup> This letter states, in part: "The walls and kitchen area are excessively greasy. The range hood and oven require cleaning. . The oven appears to have not been cleaned since installed . . . the bake element was damaged and replaced at that time. . . Shortly after this inspection you called and stated the oven did not work. Upon inspection, it was determined that someone had removed the bake element mounting screws and apparently attempted to remove the bake element causing an electrical short to occur. The bake element was subsequently replaced."

The owner testified that, following the fire, he noted that the screws that hold the bake element (electric tubing) in place were missing. They had been in place when he inspected the stove in September 2017. He further testified that these screws could not come out on their own; someone would have had to remove them. With the screws missing, the bake element could touch the side of the stove, and cause a fire. The owner submitted a photo of the inside of the oven that he took after the fire.<sup>4</sup> This photo depicts a large burnt area at the back of the oven."

Mr. Horesji is the only person that service, remove and replace parts to the range. It is Akenduca's speculation that Mr. Horesji removed the bake element mounting screws at which time he took a picture of the bake element made a note to him self and reported someone removed them. The majority of the testimony regarding the oven given by the landlord Mike Horejsi at the hearing was based on speculation and or conjecture. For example Horejsi indicates that it appear the oven has not been cleaned. Also in the letter used as evidence it appears the walls of the oven were greasy. The Rent Adjustment Program should go back and listen to the testimony given by tenants and the landlord, to review several of his statements, as he admits that his analysis of the stove is based on speculation. The fire report indicates that grease was not a factor in the January 2, 2018 fire or human error.

In addition toward the end of the testimony given by the tenant and the landlord, Kasdin asked is there any more questions? The other tenant Satchidananda Mims asked Horejsi two questions. First he asked, "Who is the manufacture of the range (oven-stove)?" Mike Horejsi responded, "I don't know." Second he asked, "Are you certified to repair the range?" Mike Horejsi indicated that he is not a certified repairman authorized to fix appliances. I request the Rent Adjustment Program to review the record.



It also appears the Kasdin got the testimony twisted as the oven was serviced and not missing any screws on the date of the fire. Attached is a true copy of a pictures taken of the inside and top of the range shortly after the fire on January 2, 2018, and January 4, 2018. Also attach hereto are true copies of a letter, and notice to enter dwelling from the landlord dated October 21, 2017 and October 26, 2017.

Even though the landlord indicates he is not an expert it appears that the Rent Adjustment Officer accepted Horejsi testimony as if he were an expert repair man. Expert or not speculation or conjecture is not admissible as evidence. See *In re Lockheed Litigation Cases*, 115 CA4th 558, 564, 10 CR3d 34, 37 (2004) (“an expert opinion based on speculation or conjecture is inadmissible”); *Maatuk v. Guttman*, 173 CA4th 1191, 1197-98, 93 CR3d 381, 385-86 (2009)(expert opinion based on information outside area of expertise not of sort experts reasonably rely upon excluded as without foundation).]

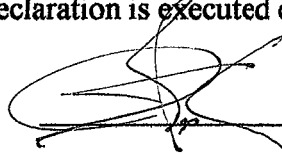
#### CONCLUSION

Based on the foregoing, Petitioner request that the Rent Adjustment Board grant appeal and deny all claims for rent increases pursuant to *Cal. Civ. Code § 1942.4*.

#### VERIFICATION

I, Akenduca D. Beasley am the Petitioner in this proceeding. I have read the foregoing Petition and know the contents thereof. The same is true of my own knowledge, except as to those matters that are therein stated on information and belief, and, as to those matters, I believe it to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration is executed on May 02, 2018

  
\_\_\_\_\_  
Akenduca D. Beasley aka Linda Beasley

**PROOF OF SERVICE**  
**Case Number T17-0523**

I am a resident of the State of California at least eighteen years of age. I am employed in Alameda County, California. My mailing address is PO Box 19304, Oakland, CA 94619.

Today, I served the attached Appeal arguments and attachments by placing a true copy of it in a sealed envelope with postage fully paid into U.S. POSTAL mail box receptacle in Oakland, California addressed to:

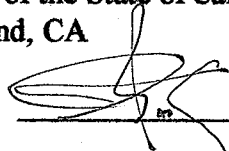
**Owner**

**Michael E. Horejsi**

**P.O. Box 2883**

**Castro Valley, CA 94546**

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on May 03, 2018 in Oakland, CA

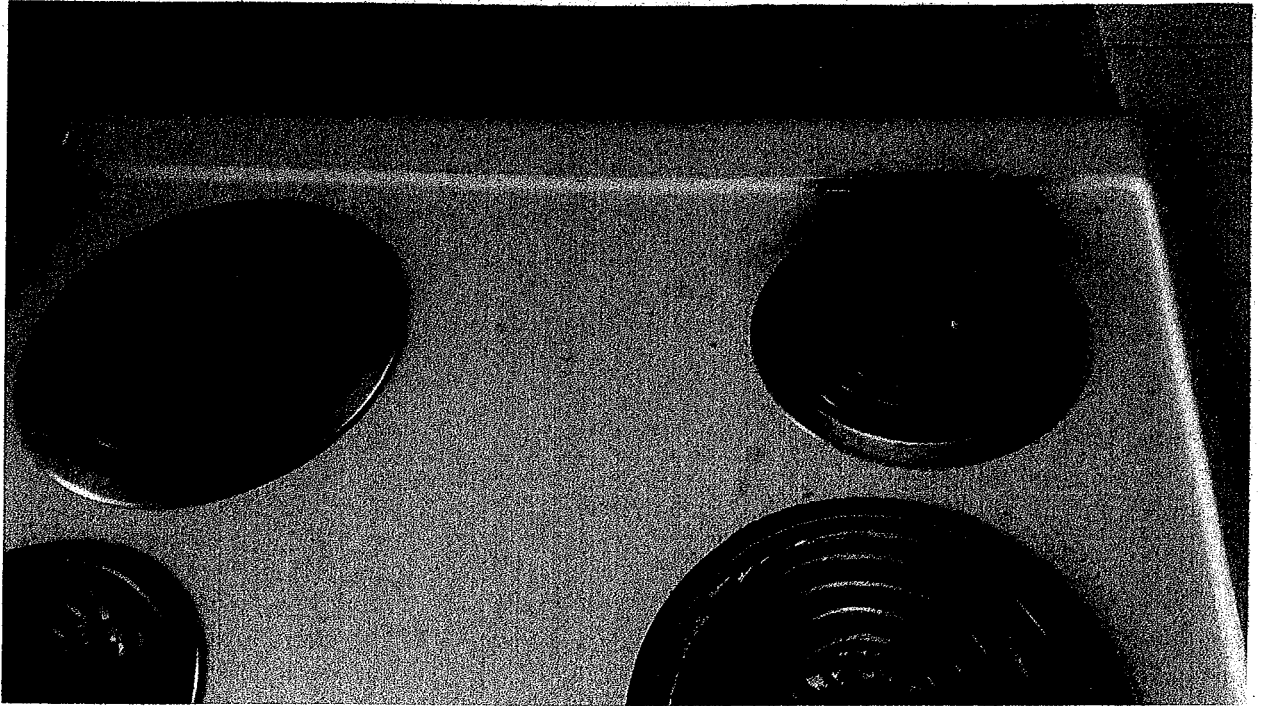


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**Akenduca D. Beasley aka Linda Beasley**



**Picture of inside of range taken January 02, 2018, shortly after the fire.**



**Picture of the top of the Range dated January 02, 2018**



Picture of the top of the Range dated January 04, 2018

# NOTICE TO ENTER DWELLING UNIT

Pursuant to California Civil Code Section 1954, Owner/Agent hereby gives notice to:

Linda Beasley and all persons in the  
premises located at: 3764 39th Ave #D Unit # (if applicable) \_\_\_\_\_  
(Street Address)  
Chaparral Co., CA 94619  
(City) (Zip)

Owner, Owner's Agent, or Owner's employee(s) will enter said premises on or about 25 Oct 2017 11-12 AM  
during normal business hours for the reason set forth in the checked item below: (Date/Time)

- 1. To make necessary or agreed repairs *oven Repair*
- 2. To do necessary or agreed decorating
- 3. To make necessary or agreed alterations or improvements
- 4. To supply necessary or agreed services
- 5. To exhibit the rental unit to prospective or actual purchasers\*
- 6. To exhibit the rental unit to prospective mortgagees
- 7. To exhibit the rental unit to prospective tenants
- 8. To exhibit the rental unit to workmen or contractors
- 9. Pursuant to Court Order
- 10. To inspect waterbed or liquid-filled furniture
- 11. To test the smoke detector
- 12. To verify Resident has abandoned premises
- 13. To inspect the unit prior to the termination of the tenancy if requested by Resident

25 Oct 2017  
Date

[Signature]  
Owner/Agent

\* If the purpose of the entry is to exhibit the dwelling unit to prospective or actual purchasers, the notice can be given orally, in person, or by telephone if the owner or his or her agent has notified the resident in writing within 120 days of the oral notice that the property is for sale and that the owner or agent may contact the Resident orally for the purpose described above. Twenty-four hours is presumed reasonable notice in the absence of evidence to the contrary. At the time of entry, the owner or agent is required to leave written evidence of the entry inside the unit

## Proof of Service To be filled out by Server AFTER service on Resident is complete

I, the undersigned, being at least 18 years of age, declare that I served this notice, of which this is a true copy, on the \_\_\_\_\_ day of \_\_\_\_\_ (month), \_\_\_\_\_ (year), in \_\_\_\_\_ (city), California, on the above mentioned Resident in possession in the manner indicated below.

- BY DELIVERING** the notice personally to the Resident or to someone of suitable age and discretion at the premises at least 24 hours prior to the intended entry, or at least 48 hours prior to entry in the case of an initial inspection prior to terminating the tenancy as required by Civil Code Section 1950.5(f)
- BY LEAVING** a copy of the notice at, near, or under the usual entry door of the premises at least 24 hours prior to the intended entry in a manner in which a reasonable person would discover the notice, or at least 48 hours prior to entry in the case of an initial inspection prior to terminating the tenancy as required by Civil Code Section 1950.5(f)
- BY MAILING** a copy of the notice addressed to the Resident at least 6 days prior to intended entry.

I declare under penalty of perjury that the foregoing is true and correct and if called as a witness to testify thereto, I could do so competently.

\_\_\_\_\_  
(Signature of Declarant)



October 21, 2017

Linda Beasley  
3764 39<sup>th</sup> Ave., #D  
Oakland, CA 94619

Re: Repair request on Oct 18, 2017 for inoperable oven

Dear Linda:

After receiving a request for repair of an inoperable oven, a cursory inspection of the oven was performed on the same day of said request, Oct. 18, 2017. The cause of the oven malfunction was deemed to be due to tenant misuse, either accidental or intentional.

Inspection of the oven revealed that both screws, which secured the bake element to the oven back plate, had been removed allowing the electrical connections on the bake element to come in contact with the range frame, which caused a major electrical short. One of the bake element securing screws was missing and the other was observed on the countertop, which I put back in to secure the bake element properly. The range was previously inspected by myself and Mr. Jackson during an annual inspection on September 25, 2017; both screws were in the bake element at that time and all features of the range functioned as designed.

I could not inspect the rear of the range because my assistant was not present and the range needed to be removed from the countertop.

On Friday, October 20, 2017, Mr. Jackson and I came by in the afternoon to remove the range from the countertop and determine the extent of damage. At that time, you denied entry to perform a complete inspection of the range. It has been a continuing problem gaining access to your unit in a timely fashion even when an appointment has been scheduled. I came by on Friday due to the fact that I would not be able to reschedule until the following Thursday, Oct. 26, 2017, due to other scheduled commitments. I did not have your phone number to call you as I had misplaced my cell phone.

While it may be possible to repair some burnt wires in the rear of the stove (if that is all that is necessary); should the damage be more severe, the following is an estimated cost of the repair parts according to Appliance Parts Distributors: (1) new bake element, if needed - \$80; and (2) new oven control, if needed - \$200 (3 wk delay in ordering part).

Additionally, it was observed and brought to your attention that the ceramic trim tile on the countertop was damaged. This again was due to misuse. The estimated cost to repair the countertop is approximately \$2,000.

Sincerely,



Mike Horejsi, Landlord/Owner

/meh

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