

**HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD
APPEAL PANEL**

**DECEMBER 6, 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. OPEN FORUM
4. NEW BUSINESS
 - A. Appeal Hearing in cases:
 - i. T17-0421, Nanos v. Jerez
 - ii. T17-0419, Beard v. Stewart et al.
 - iii. T17-0176, Guerra v. Marquez et al.
5. SCHEDULING AND REPORTS
6. ADJOURNMENT

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

Esta reunión es accesible para sillas de ruedas. Si desea solicitar adaptaciones relacionadas con discapacidades, o para pedir un intérprete de en español, Cantonese, Mandarín o de lenguaje de señas (ASL) por favor envíe un correo electrónico a sshannon@oaklandnet.com o llame al (510) 238-3715 o 711 por lo menos cinco días

hábiles antes de la reunión. Se le pide de favor que no use perfumes a esta reunión como cortesía para los que tienen sensibilidad a los productos químicos. Gracias.

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

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

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

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

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

CHRONOLOGICAL CASE REPORT

Case No.: T17-0421
Case Name: Nanos v. Jerez
Property Address: 1921 26th Avenue, #6, Oakland, CA
Parties: Scott Nanos (Tenant)
Owen Jerez (Owner)
Alexis Espare (Owner Representative)

OWNER APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	July 19, 2017
Owner Response filed	September 20, 2017
Hearing Decision mailed	February 6, 2018
1 st Owner Appeal filed	February 26, 2018
Owner filed Appeal Brief	March 15, 2018
Amended Hearing Decision mailed	May 3, 2018
2 nd Owner Appeal filed	May 23, 2018
Owner's Supporting Docs filed	June 7, 2018

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City of
Oakland
Rent Adjustment
Program



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RENT ADJUSTMENT PROGRAM
OAKLAND

Staff Dashboard

T17-0421 KM/BC

Home → T17-1054 → Submitted Petition Form

Petition type

Tenant

Applicant and Property Information

Applicant Info

David Scott Nanos,
,
1921 26th ave, unit 6
Oakland, California 94601
T 6096513306
scott.nanos@gmail.com

Representative

Michael Astanehe,
Tobener Ravenscroft Law Firm,
21 Masonic Ave, suite A,
San Francisco, California 94118
T 415 463 8106
mastanehe@tobenerlaw.com

Property owner

Owen Jerez,
1921 26th avenue property LLC,
201 13th st #32353,
Oakland, California 94612
T

Property manager

Owen Jerez,
1921 26th avenue property LLC,

201 13th st #3203,,
Oakland, California 94612

T

Number of units	17
Type of unit you rent	Apartment, Room or Live-work
Are you current on your rent?	Yes

Grounds for Petition

i) My property owner is providing me with fewer housing services than I previously received 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.)

Rent Increases

When did you move into the unit?	3/1/2014
Initial monthly rent	\$1200
When did the property owner first provide you with a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program (RAP NOTICE)?	12/15/2015
Did the property owner provide you with a RAP Notice, a written notice of the existence of the Rent Adjustment Program?	Yes
Is your rent subsidized or controlled by any government agency, including HUD	No

(Section 8)?

Have you ever filed a petition for your rental unit?

No

Description of loss of service and problems

The housing services I am being provided have decreased.

Yes

Are you being charged for a service originally provided to you by the property owner?

Yes

What is the estimated dollar value of the lost service or problem?

700

Reduced Service description

The service I have lost is the second bedroom of my two bedroom apartment. My younger brother, Sean Nanos and I, moved into this apartment in March 2014. In June 2017, he moved out due to receiving a promotion in his company that requires him to relocate to Los Angeles. I have been trying to complete a one-for-one transfer request to move my partner and our nine month old daughter into my spare bedroom, which has remained vacant since June 2017. My landlord has been unreasonably refusing my transfer request, imposing thirteen different requirements on my partner, including a minimum income of over \$18,000/year, even though I have explained that she is a full-time mother to our nine month old daughter. Although I've done my best to be compliant, and to complete as many requirements as possible, the situation has escalated and my landlord has made it clear that if he even sees my partner around or inside the premises, he will take aggressive action to evict me for trying to illegally move her into the unit. I have since provided him with documentation and

photographs proving that she is living elsewhere but he has refused to contact me or make any effort to reach a resolution. After receiving a three day notice to cure or quit on thursday, July 13, 2017, I have made constant and numerous attempts to contact him since friday, July 14, 2017, in hopes of reaching a peaceful resolution. But I have not received any communication whatsoever, and it is now 4:45 pm on Wednesday, July 19, 2017. Since June 2017 I have been covering all rent and utility payments on the apartment. I have tried attaching documentation but have been unsuccessful, please contact the law offices of Tobener Ravenscroft for more information and documentation regarding this issue.

Date loss of this service began

2017/6/1

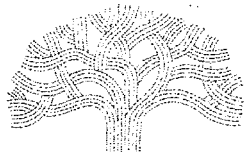
Loss of service documentary evidence

Are you claiming any serious problems with the condition of your unit?

No

Problem documentary evidence

Additional Documentation



CITY OF OAKLAND

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

For date stamp.

RECEIVED
SEP 20 2017
PROPERTY OWNER
RENT ADJUSTMENT PROGRAM
RESPONSE
OAKLAND

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 - 17-0421 / T17-1054 online case#

Your Name 1921 26th Avenue Property, LLC	Complete Address (with zip code) 5424 Sunol Blvd #10146 Pleasanton, CA 94566	Telephone: 510-485-9287
Your Representative's Name (if any)	Complete Address (with zip code)	Email: my property management cloud@gmail.com
Tenant(s) Name(s) David Scott Nanos	Complete Address (with zip code) 1921 26th Avenue Oakland, Ca 94601	Telephone:
Property Address (If the property has more than one address, list all addresses) 1921 26th Avenue Oakland, Ca 94601		Email:
		Total number of units on property 17

Have you paid for your Oakland Business License? Yes No Lic. Number: **00169246**
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: **026-0737-005-00**
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: **10/22/2014**

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

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

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

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

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

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

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

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

The tenant moved into the rental unit on April 7, 2014.

The tenant's initial rent including all services provided was: \$ 1,200.00 / 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? 3/14/2014

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	
10/21/2016	12/1/2016	\$ 1,220.40	\$ 1,244.81	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
10/16/2015	12/1/2015	\$ 1,200.00	\$ 1,220.40	<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

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. *Please see attached.*

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

9-15-2017
Date

IMPORTANT INFORMATION:

Time to File

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

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

File Review

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

Mediation Program

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

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

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

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

Property Owner's Signature

Date

Property Owner Response:

Mr. Nanos and his lawyer have been attempting to intimidate, harass and extort the landlord into adding a person (Francis Mead) to the lease although the person does not appear to qualify due to lack of income and employment. The candidate stated that she met the income requirements on the rental application submitted but she has failed to provide proof of this income so that we can process the application. Mr. Nanos had actually moved Francis Mead, child and all of their furniture into the apartment and stated that she was now an occupant before starting the known process of adding a person to the lease, thus breaking the covenants of his lease for which he was noticed. He disputed the need to go through any process and stated that if I simply do not allow Francis Mead to be added to the lease, that he will call his father, get a lawyer, etc. He proceeded to do just that, we received a threatening letter from his father and an even more threatening and ominous letter from his lawyer. Mr. Nanos has demonstrated an incredible lack of cooperation to resolve this matter by any means formal or informal. In addition, he has been actively harassing the landlord, negatively talking about the landlord to tenants, prospective tenants both verbally and through social media to further his case that the landlord is a "P.O.S. slumlord" and other expletives. He has caused us significant damage and costs both monetary and to our reputation, due to his recalcitrance over the years regarding smoking, curbing his cat, feeding feral animals, wantonly vandalizing the property (repeatedly removing bug screens from windows to allow cats in and out of his apartment), paying the rent late (over 20 times late in 36 months). Despite all of this, we are still willing to process the application if he would provide the necessary information that is common to every multi-family building in Oakland. In this case, the applicant needs to provide proof of the employment income specified in the rental application of \$1500.00 per month. We have numerous emails requesting this information and it has not been provided. We have suggested that he submit another candidate but he is unwilling to cooperate with us. We have clear proof that Mr. Nanos and his lawyer wantonly ignored the signed lease agreement on file and the process for a one for one tenant replacement and only changed course (removing Robin Meade from occupying the apartment) after we repeatedly pointed to the lease agreement and presented several official notices. Mr. Nanos and his lawyer Michael Astanehe's conduct during these matters can only be described as indefensible, unprofessional, and lacking any due regard for the truth. In one of his threats, Mr. Astanehe stated that his client has been conducting his own investigation into the private matters of each of our tenants in 1921 26th Avenue and that he has discovered "proof" that the Landlord treats other tenants differently than him and that he will present this unless we immediately allow Francis Mead into the building and onto the lease. I stated that we seek to treat all tenants the same and that if we are aware of any violation, that we address it immediately. I asked them to please provide information about these situations and that we would seek to resolve them, he did not cooperate and stated that he would provide this information "at the rent board hearing". Last, we asked Mr. Nanos to please stop befriending tenants with the intent of getting ahold of confidential details about their tenancy and to use portions of that information to threaten the landlord with legal action unless we do as he says.

CITY OF OAKLAND

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

Housing and Community Development Department
Rent Adjustment Program



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

HEARING DECISION

CASE NUMBER: T17-0421, Nanos v. Jerez

PROPERTY ADDRESS: 1921 26th Avenue, Apt. 6

DATE OF HEARING: December 12, 2017

DATE OF DECISION: February 6, 2018

APPEARANCES: Scott Nanos, Tenant
Owen Jerez, Owner
Alexis Espare, Owner Representative

SUMMARY OF DECISION

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

CONTENTIONS OF THE PARTIES

The tenant filed a petition on July 19, 2017, claiming decreased housing services associated with the loss of use of the second bedroom in his unit.

The owner filed a timely response to the tenant petition on September 20, 2017, denying that the tenant's housing services had decreased.

THE ISSUES

1. When, if ever, was the tenant provided with a *Notice to Tenants of the Rent Adjustment Program (RAP Notice)*?
2. What claims can be raised by the tenant?
3. Has the tenant suffered a decrease in housing services?
4. What, if any, restitution is owed between the parties and how does it affect the rent?

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EVIDENCE

Rental History: The tenant testified that he moved into the 2 bedroom subject unit in April of 2014, with his brother, at an initial rent of \$1,200 a month. His brother moved out of the unit in June of 2017. The tenant's current rent is \$1,244.81 a month.

The tenant produced a lease, dated March 14, 2014, signed by both him and his brother Sean, documenting the terms of the agreement. A *RAP Notice* was attached to the lease, and was signed by the tenant on March 14, 2014.¹

Decreased Housing Services: Prior to the Hearing, the tenant submitted documents relating to claims associated with his cat, as well as documents associated with the loss of use of the bedroom. (See below regarding why claims were limited to the loss of the bedroom.)

Loss of the bedroom: The tenant testified that before his brother moved out, he asked the owner for approval to allow Frances Mead, his partner and the mother of his child, and his young son, to move in. He sent a letter to the owner on June 14, 2017, requesting that she be allowed to move in.² The owner refused to allow Ms. Mead and the child to move in, because she did not meet the minimum income requirements.

After asking the owner to allow Ms. Mead to move in, Ms. Mead had a housing crisis and had to leave her unit, and moved in temporarily as a guest while waiting for a response from the owner.

On or about June 21, 2017, the tenant received a *Notice to Cease* both about smoking and the presence of a cat, and about allowing another person to occupy the premises without consent.³ Additionally, on July 12, 2017, a *Three Day Notice to Quit* was served on the tenant based on the presence of Ms. Mead in the unit.⁴ After receipt of the *Notice to Cease* and the *Three Day Notice*, Ms. Mead left the premises on July 13, 2017.

The tenant further has been paying the rent on his own since his brother moved out. Even when his brother was living there, he paid the vast majority of the rent.

The tenant further testified that in June of 2017, Frances Mead filled out an application to rent and provided proof of her past income. Because Ms. Mead recently had a baby, she is now not earning much money because her primary responsibility is caring for the baby.

The owner testified that during the time Ms. Mead was living in the unit, he did not process her rental application because they do not take applications from someone staying on the premises without permission. Once she moved out, the application was

¹ Exhibit 11. All documents referred to in this Hearing Decision were admitted into evidence without objection.

² Exhibit 1

³ Exhibit 2

⁴ Exhibit 6

processed and she was denied because her income qualifications do not match his requirements.

Alexis, the owner's employee, testified that after receipt of the application by Ms. Mead, he determined that the documents she provided did not qualify her for the income necessary to take over the co-tenant's responsibility.

The owner testified that after Ms. Mead did not qualify, he informed the tenant that if he could qualify for the unit by himself, that the tenant could re-apply and the owner would allow the tenant to take over the entire rental. The owner claimed that the tenant informed the owner that he and Ms. Mead were receiving income help from their parents, and could not qualify alone. Additionally, for the tenant to qualify alone, he would have to earn more than $\$1,200 \times 3 \times 12$, or $\$43,200$ annually. For each to reside in the unit and for Ms. Mead to be accepted as a co-tenant, they would each have to earn at least $\frac{1}{2}$ of that amount.⁵ The owner does not allow the tenants to cumulatively earn the correct amount. Either one person needs to qualify alone, or both individuals need to qualify at $\frac{1}{2}$ of the required annual income. This is because if the second person is added to the rental agreement, that person would have rights to the apartment.

The tenant contended that the owner imposed 13 different requirements before he would approve Ms. Mead as a co-tenant, and she passed all but one of the thirteen. Those requirements were that the prospective tenant was required to fill out a rental application; provide government identification; proof of income; earn a minimum income of $\$18,672$ annually; have a clean eviction record; have a clean bankruptcy record; have a clean collections record; have no co-signors; have no government assistance; have no pets; be a non-smoker, provide a notarized letter from the tenant's brother that he was requested removal from the lease; and pay a $\$35$ credit report fee. However, he further argued that his lease states only that "Tenant will not assign or sublet Premises or any part thereof without the prior written consent of Landlord" and does not impose these additional restrictions.⁶ Additionally, he contends that the owner's failure to allow Ms. Mead to move in violated the Just Cause requirement that an owner not unreasonably withhold approval of a subtenant.

The owner contended that the tenant's claim is not really a claim of decreased housing services and that he is not unreasonably withholding consent, because he has the right to set policy for his rental units and that he applies this same policy to all of his tenants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

When, if ever, was the tenant provided with a *RAP Notice*?

⁵ Note that this is a different amount than stated in a June 15, 2017, letter written by Jerez to the tenant, in which he said that the prospective roommate would have to earn an amount equal to the current rent ($\$1200$), multiplied by $\frac{1}{2}$, multiplied by 2.5, multiplied by 12. This amount equals $\$18,000$ annually. See June 15, 2017, letter from Jerez to Nanos, Exhibit 2.

⁶ See Exhibit 11, page 6 of 25

The Rent Adjustment Ordinance requires an owner to serve the *RAP Notice* at the start of a tenancy⁷ and together with any notice of rent increase or change in the terms of a tenancy.⁸ An owner can cure the failure to give notice at the start of the tenancy, but may not raise the rent until 6 months after the first *RAP Notice* is given.⁹

The evidence established that the tenant was given a *RAP Notice* when he signed his lease in March of 2014.

What claims can be raised by the tenant?

Under the Oakland Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent¹⁰ and may be corrected by a rent adjustment.¹¹ However, in order to justify a decrease in rent, a decrease in housing services must be the loss of a service that seriously affects the habitability of a unit or one that was provided at the beginning of the tenancy that is no longer being provided.

The tenant has the burden of proof with respect to each claim.

In order to bring a claim of decreased housing services, the tenant is required to provide a list or a description of his claims when the petition is filed. O.M.C. § 8.22.070 (F). Here the tenant filed a list of decreased housing services with his petition related to the failure of the owner to allow a one-to-one transfer request to move in Ms. Mead and their daughter. No other issues were raised with the tenant petition.

In filing his documents prior to the Hearing, the tenant also produced evidence concerning problems with his comfort animal and problems related to harassment. Because the Ordinance requires a tenant to provide a list of all claims, and because allowing any other claim to go forward would deny the owner the due process right to know and understand the claims against him, only that issue that was on the Tenant Petition was considered at the Hearing.

Has the tenant suffered a decrease in housing services?

The owner has refused the tenant's request for a one-to-one replacement of Frances Mead (and his newborn daughter) to move in and replace his brother, who moved out in July of 2017. The tenant has consistently been able to pay rent in every month since his brother moved out, even though he is the only person who lives in the unit. While the tenant admitted that his income alone would not satisfy the owner's "formula" for allowable rentals, the evidence is uncontested that the tenant has paid rent in every month.¹²

⁷ O.M.C. § 8.22.060(A)

⁸ O.M.C. § 8.22.070(H)(1)(A)

⁹ O.M.C. § 8.22.060 (C)

¹⁰ O.M.C. § 8.22.070(F)

¹¹ O.M.C. § 8.22.110(E)

¹² The owner and tenant provided conflicting testimony about whether or not the tenant has been late paying rent. The issue of late rent payments is not relevant to this claim and is not detailed here. It is sufficient to say that on the

“Housing services” are defined in the Ordinance to mean “all services provided by the Owner related to the use or occupancy of a Covered Unit.”¹³ This reasonably includes the rights permitted to the tenant by agreement to have a specific number of occupants or a roommate to share the cost of the rental.¹⁴

The tenant rented a two bedroom apartment with his brother. His brother moved out and he reasonably wishes to live with his partner, who is the mother of his daughter, and his daughter. He does not wish to live with any other roommate. As such, the actions of the owner in refusing to allow Ms. Mead to move-in, are denying him the use of the second bedroom in his apartment.

It is not a requirement of the law that the owner approve Ms. Mead as a co-tenant, with the same rights and responsibilities that Mr. Nanos has. This is what the owner wants to do in requiring that Ms. Mead meet the same requirements to move-in as if she were an original tenant. The owner can allow Ms. Mead to move in as a subtenant. All the responsibilities of the paying of rent would continue on Mr. Nanos’ shoulders, as is the case now with his brother’s absence. Additionally, the lease signed by the parties when the tenant moved in, does not require that a subtenant satisfy the many requirements set forth by the owner in order to approve Ms. Mead. It simply states that the tenant cannot move someone in without prior written consent.

Failing to consent to the reasonable request to move in Ms. Mead, who satisfies all but one of the 13 requirements set forth by the owner, is unreasonable. Therefore, the owner has decreased the tenant’s housing services.

Because the tenant is being required to pay for a two bedroom unit, while the owner withholds the consent for Ms. Mead to move in, the tenant has lost the use of 1/3 of the value of his apartment. The tenant still has the use of his bedroom, the kitchen, living room and bathroom. Therefore a 1/3 reduction is reasonable.

The tenant’s rent is currently \$1,244.81 a month. The tenant is entitled to a rent decrease of 1/3 of that amount, or \$414.90, for a total monthly rent of \$829.91, effective March 1, 2018, until the owner consents to allow Ms. Mead to move-in. Additionally, the tenant has overpaid rent in all months since August of 2018.¹⁵

only ledger in evidence, Exhibit 9, no late fees are charged to this tenant. This ledger came from the time that *Lapham Property* was managing the property, and predates this dispute.

¹³ O.M.C. § 8.22.020

¹⁴ Additionally, the Just Cause for Eviction Ordinance requires that “a landlord shall not endeavor to recover possession of a rental unit as a result of subletting of the rental unit by the tenant if the landlord has unreasonably withheld the right to sublet following a written request by the tenants, so long as the tenant continues to reside in the rental unit and the sublet constitutes a one-for-one replacement of the departing tenants.” O.M.C. § 8.22.360(A)(2).

¹⁵ Since the letter from his brother requesting to be taken off the lease was dated July 17, 2017, and Ms. Mead’s application was signed on June 26, 2017, it is reasonable for there to be a one month delay in approving the move-in request.

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

The chart below calculates the rent overpayments. In all months since August of 2017, the tenant has paid rent of \$1,244.81, an overpayment of \$414.90 a month. He has overpaid a total of \$2,904.30.

OVERPAID RENT						
From	To	Monthly Rent paid	Max Monthly Rent	Difference per month	No. Months	Sub-total
1-Aug-17	28-Feb-18	\$1,244.81	\$829.91	\$ 414.90	7	\$ 2,904.30
				\$ -		-
TOTAL OVERPAID RENT						\$ 2,904.30
RESTITUTION						
MONTHLY RENT						\$829.91
TOTAL TO BE REPAID TO TENANT						\$ 2,904.30
TOTAL AS PERCENT OF MONTHLY RENT						350%
AMORTIZED OVER		12	MO. BY REG. IS			\$ 242.03

An overpayment of this size is normally adjusted over a period of 12 months.¹⁶ For now \$242.03 a month is subtracted from the current legal rent of \$829.91, for a total rent of \$587.88 a month. From March of 2018 through February of 2019, the tenant's rent is \$587.88 a month. The rent reverts to \$829.91 a month in March of 2019, if the owner continues to deny Ms. Mead the right to move-in.

However, should the owner allow Ms. Mead to move in (as either a subtenant or a cotenant), the owner can increase the rent by \$414.90 a month. **In order to increase the rent after allowing Ms. Mead to move in, the owner must provide the necessary notice pursuant to Civil Code § 827.**

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

ORDER

1. Petition T17-0421 is granted.
2. The tenant's base rent is \$1,244.81. Before consideration of restitution, the tenant's base rent is reduced by 1/3, to \$829.91, based on the owner's unreasonable withholding of consent to allow Ms. Mead to move-in to the unit.

¹⁶ Regulations, Section 8.22.110(F)

3. Due to past decreased services, the tenant is owed restitution of \$2,904.30. This overpayment is adjusted by a rent decrease for the next 12 months in the amount of \$242.03 a month.

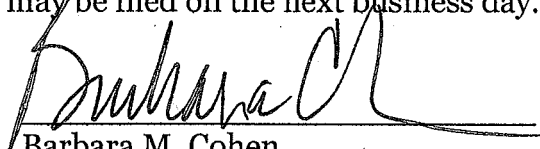
4. The tenant's rent for the months of March 2018 through February 2019 is \$587.88 per month. The rent reverts to \$829.91 a month in March of 2019 (if the owner continues to deny Ms. Mead the right to move-in.)

5. If the owner wishes to, he can repay the restitution owed to the tenant at any time. If he does so, the monthly decrease for restitution ends at the time the tenant is provided restitution.

6. If the owner allows Ms. Mead to move-in, he can increase the rent by \$414.90 a month. **In order to increase the rent, the owner must provide the necessary notice pursuant to Civil Code § 827.**

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

Dated: February 6, 2018



Barbara M. Cohen
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE
Case Number T17-0421

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

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

Documents Included

Hearing Decision

Owner

1921 26th Ave Property LLC/Jerez Owen
201 13th St #32353
Oakland, CA 94612

Owner

1921 26th Ave Property, LLC
5424 Sunol Blvd. #10146
Pleasanton, CA 94566

Tenant

David Scott Nanos
1921 26th Avenue #6
Oakland, CA 94601

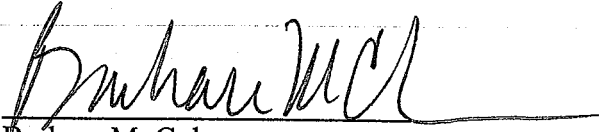
Tenant Representative

Tobener Ravenscroft Law Firm/Michael Astanehe
21 Masonic Ave #A
San Francisco, CA 94118

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.

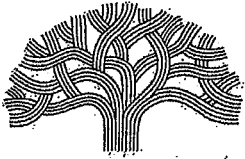
000020

- I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on Feb 6, 2018 in Oakland, CA.

A handwritten signature in black ink, appearing to read "Barbara M. Cohen", written over a horizontal line.

Barbara M. Cohen
Oakland Rent Adjustment Program

2018 FEB 26 PM 4:32
For date stamp.

 CITY OF OAKLAND	CITY OF OAKLAND RENT ADJUSTMENT PROGRAM 250 Frank Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721	<u>APPEAL</u>
	(This area is blank in the original image)	

Appellant's Name 1921 26th Avenue Property LLC / Jerez Owen		<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant
Property Address (Include Unit Number) 1921 26th Avenue, Apt. 6		
Appellant's Mailing Address (For receipt of notices) c/o Fried & Williams LLP 1901 Harrison Street, 14th Floor Oakland, CA 94612		Case Number T-17-0421 Date of Decision appealed February 6, 2018
Name of Representative (if any) Clifford E. Fried, Esq. Liz Hart	Representative's Mailing Address (For notices) Fried & Williams LLP 1901 Harrison Street, 14th Floor Oakland, CA 94612	

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.

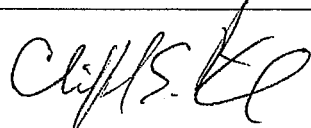
- f) **I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim.** (In your explanation, you must describe how you were denied the chance to defend your claims and what evidence you would have presented. Note that a hearing is not required in every case. Staff may 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: 4.

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 February 26, 2018, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<u>Name</u>	David Scott Nanos
<u>Address</u>	1921 26th Avenue, Apt. 6
<u>City, State Zip</u>	Oakland, CA 94601
<u>Name</u>	Michael Astanehe, Tobener Ravenscroft Law
<u>Address</u>	21 Masonic Ave, #A
<u>City, State Zip</u>	San Francisco, CA 94118

	02-26-2018
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

For more information phone (510) 238-3721.

The Hearing Decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board and issued by other Hearing Officers.

In the October 11, 2017 decision for the case *Gottfried, et al. v. Beacon Properties* (T16-0727), the tenants petitioned the Rent Adjustment Program claiming a number of Decreased Housing Services. One of the claims was that the Owner's failure to approve the application of several one-for-one replacement potential housemates had resulted in a de facto \$3,000 rent increase due to the lack of a full number of housemates. Our case and the *Gottfried* cases are very similar. In both cases, there was no testimony that the Owner had changed their screening requirements or made them more stringent. In both cases, there was testimony that the Owner had readily approved of prior applicants. And in both cases, the tenants acknowledged that the refused candidates were somewhat below the Owner's announced standards.

But more importantly, the Hearing Officer in the *Gottfried* case denied the claim stating on page 8 of the Decision "The tenants' contention is essentially a claim for damages which is beyond the jurisdiction of a Rent Control agency." The Hearing Officer cited *Larson v. City and County of San Francisco* (2011)192 Cal. App. 4th 12163 as the basis of their determination for this claim.

When the City of Oakland is on strike, and mail is not being delivered to the Rent Adjustment Program, special consideration should be taken to allow the late receipt of documents submitted by the parties.

It would be a miscarriage of justice for the RAP to not consider the evidence of one party because its submission of documents supporting its case petition or defense was not received by the RAP due to a labor strike by the City of Oakland. The RAP is requested to take judicial notice of the fact that the Landlord's submission of written evidence was mailed by overnight mail and should have been received by the RAP but for the strike. As a result, none of the Landlord's exhibits were considered or mentioned by the Hearing Officer.

The failure of exhibits to be received by the RAP, due to a City labor strike, is a new policy issue that has not been decided by the Board. Here the policy issue should be decided in favor of the Landlord because neither the Landlord nor the mail service provider did

anything wrong. It was a strike by the employees of the City of Oakland, and the RAP staff, that led to the failure of the RAP to receive the landlord's exhibits in a timely fashion.

The Decision violates State of California law by violating the Judicial Powers Clause of the California Constitution.

The Decision in this case, if allowed to stand, would violate the judicial powers clause of the California Constitution (Cal. Const., art. VI, § 1.). The Decision in this case allows for an expanded definition of "decrease in [housing] services" by allowing the RAP to find that an alleged denial of a subletting request is a decrease in housing services. Whether or not a landlord's consideration of a subletting request is proper, or whether a denial is proper, is an usurpation of the power reserved to the judiciary to adjudicate tortious conduct and award general damages.

Article VI, section 1, of the California Constitution provides: "The judicial power of this State is vested in the Supreme Court, courts of appeal, and superior courts" (Cal. Const., art. VI, § 1.) "[A]gencies not vested by the Constitution with judicial powers may not exercise such powers." *McHugh v. Santa Monica Rent Control Bd.* (1989) 49 Cal.3d 348, 356.

The decision is not supported by substantial evidence.

The Hearing Officer failed to consider the tenant's failure to cooperate to allow the Owner to process the application for Ms. Mead. The finding that Ms. Mead satisfies all but one of the 13 requirements set forth by the Owner is not supported by substantial evidence. The evidence shows that:

1. Mead failed to provide proof of income as she signed for in the application
2. Mead failed to respond to a TransUnion Tenant Screening
3. The Owner was not able to receive a credit report
4. The Owner was not able to confirm if the applicant had evictions
5. The Owner was not able to confirm if the applicant had any bankruptcies
6. The Owner was not able to confirm if the applicant had a criminal history
7. The Owner was not able to confirm if the applicant had collections

The evidence shows that 7 of 13 of the landlord's requirements were not satisfied and thus the Decision is not supported by substantial evidence.

The Owner was denied a sufficient opportunity to present his claim.

The Owner's written evidence was not taken into account by the Hearing Officer during the Hearing.

On the audio tape of the Hearing, at 1:24 mins into the Hearing on Tuesday, December 12th, 2017, the Hearing Officer notes that a letter was sent to the Owner regarding a proof of payment of the Business License tax or the Rent Adjustment fee that were not included with the Owner's Response form.

At 1:38 the Owner confirms they did receive the letter, they sent the documents via fax and certified mail and that they have copies with them at the hearing. At 1 min & 47 secs, the Hearing Officer accepts the copies stating, "the likelihood is it's in a file somewhere and I will not see it for a few days."

The missing proof of payment for the Business License tax and the Rent Adjustment fee were sent via FedEx overnight mail to the RAP offices on Dec. 4th, 2017 along with another 88 pages. The FedEx receipt documenting this is exhibit A. The additional 88 pages were the documents the Owner wished to file as their evidence.

However, when FedEx attempted to deliver these documents, the City offices were closed as a consequence of the City workers' Union strike which began on December 5th and continued through close of business on Monday, December 11th when the strike concluded. FedEx attempted delivery of the Owner's documents every day until they were able to successfully delivery on Tuesday, Dec 12th. (Exhibit B) The RAP office accepted delivery and L. Carmichael signed for the FedEx envelope at 10:24 am. (Exhibit C)

Since at least July 2008, the RAP has recognized that if there is a deadline to file documents and the RAP offices are closed on that last day, the time to file is extended to the next day the office is open. That exact language is stated on page 4 of both the Tenant's and the Owner's Response forms.

Furthermore, there is a prior case that recognizes this practice. In T09-0013 *MLK Partners v. Tenants*, the deadline to file an appeal petition was extended to January 4th, 2009 due to closure of city offices. Unfortunately, the Owner did not file until the 5th of January and thus their Appeal was dismissed. But the case demonstrates that there is precedent for this.

In this case, the Owner's last day to file evidence in this case was December 5th. The Owner, through no fault of their own, was not able to meet that deadline because the RAP offices were closed due to the City staff being on strike.

The Owner was denied a fair Hearing because every item of the Owner's evidence (all 88 pages) was not considered at the Hearing.

PAK MATL 152
5424 Sunol Blvd Ste 10
PLEASANTON, CA 94566

925.462.2292

Shipment

FedEx Priority Overnight Envelope
Ship To:

CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM
250 FRANK H OGAWA PLZ STE 5313
OAKLAND, CA 94612-2034

Package ID: 17898 31.50

Tracking #: 788747484053

Expected arrival: Tue 12/05 10:30 AM

Actual Wt: 1 lbs 2.3 ozs

Rating Wt: 1.15 lbs

Copies 137 @ 0.10 13.70 TX

SUBTOTAL 45.20

TAX

State Tax on 13.70 1.27

TOTAL 46.47

END MasterCard 46.47

Total shipments: 1

..: 1921 26TH AVENUE PROPERTY LLC

12/04/2017

#26595

09:12 AM

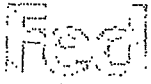
Workstation: 0 Master Workstation

Thank you for your business

EXHIBIT

A

000028



February 14, 2018

Dear Customer:

The following is the proof-of-delivery for tracking number **788747484053**.

Delivery Information:

Status:	Delivered	Delivered to:	Mailroom
Signed for by:	L.CARMICHAEL	Delivery location:	OAKLAND, CA
Service type:	FedEx Priority Overnight	Delivery date:	Dec 12, 2017 10:24
Special Handling:	Deliver Weekday		

Signature image is available. In order to view image and detailed information, the shipper or payor account number of the shipment must be provided.

Shipping Information:

Tracking number:	788747484053	Ship date:	Dec 4, 2017
		Weight:	2.0 lbs/0.9 kg

Recipient:
OAKLAND, CA US

Shipper:
PLEASANTON, CA US

Reference
Invoice number

..
PKG ID: 17898

Thank you for choosing FedEx.

EXHIBIT

3

000029

- More actions

Travel History

Hide
Help

Date/Time	Activity	Location
12/12/2017 - Tuesday		
10:24 am	Delivered	OAKLAND, CA
9:13 am	On FedEx vehicle for delivery	EMERYVILLE, CA
12/11/2017 - Monday		
8:57 am	At local FedEx facility	EMERYVILLE, CA
8:41 am	Delivery exception Customer not available or business closed	EMERYVILLE, CA
6:49 am	At local FedEx facility	EMERYVILLE, CA
12/09/2017 - Saturday		
5:19 pm	At local FedEx facility	EMERYVILLE, CA
12/08/2017 - Friday		
9:25 am	At local FedEx facility	EMERYVILLE, CA
9:18 am	Delivery exception Customer not available or business closed	EMERYVILLE, CA
6:28 am	At local FedEx facility	EMERYVILLE, CA
12/07/2017 - Thursday		
9:31 am	At local FedEx facility	EMERYVILLE, CA
9:28 am	Delivery exception Customer not available or business closed	EMERYVILLE, CA
6:32 am	At local FedEx facility	EMERYVILLE, CA
12/06/2017 - Wednesday		
6:23 pm	At local FedEx facility	EMERYVILLE, CA
10:17 am	Delivery exception Customer not available or business closed	EMERYVILLE, CA
8:43 am	On FedEx vehicle for delivery	EMERYVILLE, CA
6:37 am	At local FedEx facility	EMERYVILLE, CA
12/05/2017 - Tuesday		
6:27 pm	At local FedEx facility	EMERYVILLE, CA
11:21 am	Delivery exception Customer not available or business closed	EMERYVILLE, CA
8:28 am	On FedEx vehicle for delivery	EMERYVILLE, CA
7:47 am	At local FedEx facility	EMERYVILLE, CA
6:20 am	Departed FedEx location	OAKLAND, CA
12/04/2017 - Monday		
9:32 pm	Arrived at FedEx location	OAKLAND, CA
9:00 pm	Left FedEx origin facility	PLEASANTON, CA
5:04 pm	Picked up	PLEASANTON, CA
11:19 am	Shipment information sent to FedEx	

Select time zone

Local Scan Time ▼

EXHIBIT

000030

2018 MAR 15 PM 12:07

Clifford E. Fried ESQ, SBN 118288
Liz Hart, Rent Board Assistant
Fried & Williams LLP
1901 Harrison St., 14th Floor
Oakland, CA 94612
Tel: (510) 625-0100
Fax: (510) 550-3621
cfried@friedwilliams.com

Attorneys for Appellant
1921 26th Avenue Property LLC/ Jerez Owen

CITY OF OAKLAND
RENT STABILIZATION BOARD

1921 26th Avenue Property LLC;
Jerez Owen

Appellant,

v.

David Scott Nanos;

Respondent.

CASE NO'S.: T17-0421

PROPERTY ADDRESS:

1921 26th Ave. Apt. #6

Oakland, CA 94601

APPEAL BRIEF

Supporting Argument of 1921 26th Avenue Property LLC and Jerez Owen on Appeal

RE
E
RENT ADJUSTMENT PROGRAM
2018 MAR 15 PM 12:07

A. ARGUMENTS

1. The Decision Must be Reversed Because the Rent Adjustment Program Lacks Jurisdiction to Determine Issues Related to The Approval of Subtenants.

The Decision of the Hearing Officer must be *reversed* because the RAP lacks the jurisdiction to adjudicate any issues related to a landlord's approval of subtenants, including the reasonableness of a landlord's refusal to consent to a particular applicant after the master tenant requests consent to sublease.

A Hearing Decision in the matter of T16-0727, Gottfried, et al., v. Beacon Properties (decided on October 11, 2017) held that a tenant's claim for decreased housing services, based on the landlord's denial of consent for replacement roommates was beyond the jurisdiction of the RAP. The facts in T16-0727 are the same as the facts in this case and establish a precedent for the issue being presented in this appeal.

In T16-0727, the tenants filed a petition which alleged that their housing services had been decreased based on an increased criteria for replacement roommates. The issue, as phrased by Hearing Officer Kasdin in that matter was: "[h]ave the tenants' housing services been decreased and, if so, by what percentage of the total housing services that are provided by the owner?" The tenants then testified that the procedure for replacement roommates had always been for the existing tenants to interview prospective roommates; the owner would then approve all potential tenant who had been recommended. Then, when new management took over, the incomes and credit histories of the proposed replacement roommates were below management standards. As a result, the tenants had to pay an additional \$3000 in rent due to lack of a full number of housemates.

Hearing Officer Kasdin ruled that "[t]he tenants' contention is essentially a claim for damages, which is beyond the jurisdiction of a Rent Control agency" citing *Larson v. City & County of San Francisco* (2011) 192 Cal.App.4th 1263. The claim for decreased housing services, due to the landlord's denial of consent to the new housemates, was denied.

In *Larson v. City & County of San Francisco*, the California Court of Appeal for the First District (the same Appellate District that creates binding legal authority for the RAP) concluded that:

"the decrease in housing services provisions added to the City's Rent Ordinance . . . are an attempt to bypass the judicial system and impermissibly endow the Board with judicial power constitutionally reserved to the judiciary. As such, . . . [parts of the Ordinance] are facially invalid under the judicial powers clause to the extent they empower the Board to order rent reductions." *Larson v. City & County of San Francisco* (2011) 192 Cal.App.4th 1263, 1283.

Article VI, section 1, of the California Constitution provides: "[t]he judicial power of this State is vested in the Supreme Court, courts of appeal, and superior courts" (Cal. Const., art. VI, § 1.) "[A]gencies not vested by the Constitution with judicial powers may not exercise such powers." (*McHugh v. Santa Monica Rent Control Bd.* (1989) 49 Cal.3d 348, 356. *McHugh* held that

an administrative agency may constitutionally hold hearings, determine facts, apply the law to those facts, and order relief — including certain types of monetary relief — so long as (i) such activities are authorized by statute or legislation and are reasonably necessary to effectuate the administrative agency's primary, legitimate regulatory purposes, and (ii) the "essential" judicial power (i.e., the power to make enforceable, binding judgments) remains ultimately in the courts, through review of agency determinations. *Id.* at p. 372.

Allowing the RAP to award a decrease in housing services based on a landlord's attempt to regulate the standards of approval for new roommate or subtenant requests would unlawfully invest the RAP with judicial power in violation of the judicial powers clause of the California Constitution (Cal. Const., art. VI, § 1.) Including landlord standards of approval, or denials of consent, as a decrease in housing services combined with the authority of the RAP to order a reduction in rent of an unspecified amount and for an unspecified duration, effectively invests the RAP with the power reserved to the judiciary to adjudicate tortious conduct and award general damages. Any tenant loss compensated through a "rent reduction" due to a landlord's roommate/subtenant approval standards, or the outright denial consent after a proper tenant request, will be nonquantifiable and nonrestitutive in character. There is no readily measured, quantifiable or pecuniary loss, for an arguably unreasonable landlord standard of review for proposed roommates/subtenants. Therefore, any reduction in rent awarded by the RAP for a decreased housing service, based on a claim of improper landlord standard of consent for, or denial of, roommate/subtenant request is a violation of the judicial powers clause and improper.

Our case and the *Gottfried* cases are very similar. In both cases, there was no testimony that the landlord had changed their screening requirements or made them more stringent. In both cases, there was testimony that the Landlord had readily approved of prior applicants. And in both cases, the tenants acknowledged that the refused candidates were somewhat below the Landlord's announced standards.

In our case, the Hearing Decision of Barbara Cohen violates the judicial powers clause to the extent it permits a rent reduction for the Landlord's conduct in response to a tenant request for new roommates or subtenants. The application of *Larson v. City & County of San Francisco* in the matter of T16-0727 was a correct application by Hearing Officer Kasdin and should have been applied in this case. The Decision of Hearing Officer Cohen in this case must be reversed.

2. The Decision Must be Reversed Because Issues Related to The Approval of Subtenants Do Not Affect Housing Services.

Prior RAP decisions hold that in order to justify a decrease in rent, a decrease in housing services must either be 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. In our case, there has been no *elimination* or *reduction* of any *service*. Any habitability is not an issue.

First, the rental agreement between the Landlord and Tenant contains no standard of approval for a requested roommate/subtenant. Without an express statement of the landlord's standard of approval, how can it ever be argued that the standard was reduced in a way so as to justify a reduction in rent? Because no promise or service was eliminated or reduced, there can be no decrease in housing services which would justify a decrease in rent.

Second, a landlord's standard of approval for a requested roommate/subtenant is not a housing service; it is a standard to be applied in the landlord's sound discretion. Nor is a denial, after applying the landlord's standard, the denial of a service. There is no evidence in the record that the Landlord would never permit the Tenant to replace a roommate or never permit a subtenant. Arguably, denying roommates or subtenants, in the absence of a strict lease prohibition, would be a denial of a housing service. But that is not the case here.

Third, it is not a proper function of the RAP to be involved with property management decisions such as those involving the approval or denial of requests for new roommates or subtenants. Nowhere does the RAP Ordinance authorize the intervention of the RAP in second-guessing the sound business decisions of residential landlords.

3. It Is a Miscarriage of Justice and a Violation of Due Process to Not Allow A Rehearing to Consider Landlord's Evidence.

Even if the RAP has jurisdiction to determine issues related to the approval of subtenants, the Decision of the HO should be remanded to allow a rehearing to consider the landlord's written evidence.

It would be a miscarriage of justice for the RAP to not consider the evidence of one party because its submission of documents supporting its case petition or defense was not received by the RAP due to a labor strike by the City of Oakland. The RAP is requested to take judicial notice of the fact that the Landlord's submission of written evidence was mailed by overnight mail and should have been received by the RAP but for the strike. As a result, *none* of the Landlord's exhibits were considered or mentioned by the Hearing Officer.

RENT ADJUSTMENT BOARD
2016 MAR 13 11:12 AM

The failure of exhibits to be received by the RAP, due to a City labor strike, is a new policy issue that has not been decided by the Board. Here the policy issue should be decided in favor of the Landlord because neither the Landlord nor the mail service provider did anything wrong. It was a strike by the employees of the City of Oakland, and the RAP staff, that led to the failure of the RAP to receive the landlord's exhibits in a timely fashion.

The Landlord's written evidence was not taken into account by the Hearing Officer during the Hearing. On the audio tape of the Hearing, at 1:24 minutes into the Hearing on Tuesday, December 12th, 2017, the Hearing Officer notes that a letter was sent to the Landlord regarding a proof of payment of the Business License tax or the Rent Adjustment fee that were not included with the Landlord's Response form.

At 1:38 the Landlord confirms they did receive the letter, they sent the documents via fax and certified mail and that they have copies with them at the hearing. At 1 minute & 47 seconds, the Hearing Officer accepts the copies stating, "the likelihood it's in a file somewhere and I will not see it for a few days."

The missing proof of payment for the Business License tax and the Rent Adjustment fee were sent via FedEx overnight mail to the RAP offices on Dec. 4th, 2017 along with another 88 pages. There is a FedEx receipt documenting this. The additional 88 pages were the documents the Landlord wished to file as their evidence.

However, when FedEx attempted to deliver these documents, the City offices were closed as a consequence of the City workers' Union strike which began on December 5th and continued through close of business on Monday, December 11th when the strike concluded. FedEx attempted delivery of the Landlord's documents every day until they were able to successfully delivery on Tuesday, Dec 12th. The RAP office accepted delivery and L. Carmichael signed for the FedEx envelope at 10:24 am.

Since at least July 2008, the RAP has recognized that if there is a deadline to file documents and the RAP offices are closed on that last day, the time to file is extended to the next day the office is open. That exact language is stated on page 4 of both the Tenant's and the Landlord's Response forms. The same language has been stated on page 2 of the Petition for Appeal since May 2009.

An Administrative Appeal Decision in the matter of T09-0013 *MLK Partners v. Tenants* (decided on January 10, 2010), establishes the last day to file papers at the RAP where the RAP offices are closed in the immediate preceding days. In T09-0013, the deadline to file an appeal petition was extended to January 4th, 2009 due to closure of city offices. Unfortunately, the Landlord did not file until the 5th of January and thus their Appeal was dismissed. T09-0013 demonstrates that there is

precedent for extending the time for the Landlord to file its evidence and exhibits due to the closure of RAP offices and that precedent should be applied in our case.

In our case, the Landlord's last day to file evidence in this case was December 5th. The Landlord, through no fault of their own, was not able to meet that deadline because the RAP offices were closed due to the City staff being on strike.

The Landlord was denied a fair Hearing because none of the Landlord's evidence (all 88 pages) was considered at the Hearing. It would be a miscarriage of justice and a violation of due process to not remand this matter for a rehearing to consider all of the Landlord's exhibits and evidence.

4. The Hearing Decision is Not Supported By Substantial Evidence.

The Hearing Officer failed to consider the tenant's failure to cooperate to allow the Landlord to process the application for Ms. Mead. The finding that Ms. Mead satisfies all but one of the 13 requirements set forth by the Owner is not supported by substantial evidence. The evidence shows that:

1. Mead failed to provide proof of income as she signed for in the application
2. Mead failed to respond to a TransUnion Tenant Screening
3. The Owner was not able to receive a credit report
4. The Owner was not able to confirm if the applicant had evictions
5. The Owner was not able to confirm if the applicant had any bankruptcies
6. The Owner was not able to confirm if the applicant had a criminal history
7. The Owner was not able to confirm if the applicant had collections

The evidence shows that 7 of 13 of the landlord's requirements were not satisfied and thus the Decision is not supported by substantial evidence. The Decision further exemplifies how the RAP should not be determining the reasonableness of a landlord's refusal or failure to approve a tenant's request for a replacement roommate or subtenant. The RAP Hearing Officers are not educated or trained to make management decisions for landlords and they have no business making rulings simply because they personally would have approved of a request for a new roommate or tenant.

B. CONCLUSION

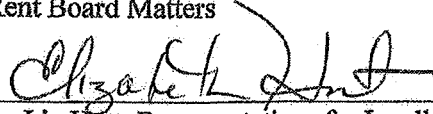
Because the RAP lacks jurisdiction to determine issues related to the approval of subtenants and

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because there is substantial evidence for the rejection of the proposed roommate/subtenant by the landlord, the Hearing Decision of the Hearing Officer should be reversed on appeal. Such reversal is warranted even in the absence of the Landlord's evidence and exhibits being taken into consideration. However, if for any reason the RAP refuses to reverse on appeal, then the Landlord respectfully requests that the matter be remanded for the full consideration of the Landlord's proposed evidence and exhibits which were excluded from the prior hearing.

Date: March 15, 2018

Fried & Williams LLP
Rent Board Matters



By Liz Hart, Representatives for Landlord

PROOF OF SERVICE BY FIRST-CLASS MAIL

2018 MAR 15 PM 12:00

I declare that I am a resident of or employed in the County of Alameda, State of California. I am over the age of eighteen years and am not a party this action. My residence or business address is 1901 Harrison Street, 14th Floor, Oakland, CA 94612.

On the date below, I served the attached, concerning the action known as (*Nanos v. Jerez, Rent Board No. T17-0421*):

APPEAL BRIEF

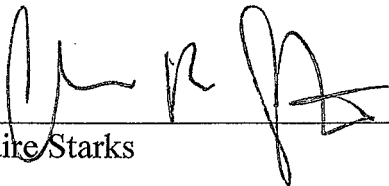
on the parties herein in said action, by placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for mailing with the United States Postal Service. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

The envelope was addressed, sealed and placed for collection and mailing, following this business' ordinary business practices, from Oakland, California, as follows:

Michael Astanehe
Tobener Ravenscroft Law
21 Masonic Ave. Unit. A
San Francisco, CA 94118
Attorney for David Scott Nanos

David Scott Nanos
1921 26th Ave. Apt. 6
Oakland, CA 94601

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and this declaration was executed on March 15, 2018, at Oakland, California.



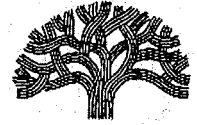
Claire Starks

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CITY OF OAKLAND

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

Housing and Community Development Department
Rent Adjustment Program



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

AMENDED HEARING DECISION

CASE NUMBER: T17-0421, Nanos v. Jerez

PROPERTY ADDRESS: 1921 26th Avenue, Apt. 6

DATES OF HEARING: December 12, 2017, April 19, 2018

DATE OF DECISION: May 1, 2018

APPEARANCES: Scott Nanos, Tenant (all dates)
Owen Jerez, Owner (all dates)
Alexis Espare, Witness for Owner (all dates)
Clifford Fried, Attorney for Owner (4/19/18)
Elizabeth Hart, Observer (4/19/18)

SUMMARY OF DECISION

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

CONTENTIONS OF THE PARTIES

The tenant filed a petition on July 19, 2017, claiming decreased housing services associated with the loss of use of the second bedroom in his unit.

The owner filed a timely response to the tenant petition on September 20, 2017, denying that the tenant's housing services had decreased.

PROCEDURAL HISTORY

This case was initially heard on December 12, 2017. At the time the Hearing was held, the file contained a series of documents filed by the tenant. No owner documents were in the file. The Hearing was held and the owner was asked questions about whether he had proof of payment of the Rent Program Service fee and the Oakland Business tax and

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the owner replied that he had provided those to the RAP already. In light of the fact that the City of Oakland had just been on strike, the owner's testimony was believed and the owner was fully allowed to participate in the Hearing. He gave testimony and provided argument.

During the course of the Hearing, the owner did not mention that he had filed documents with the RAP that were not being discussed at the Hearing. The Hearing concluded.

On December 12, 2017, after the Hearing was over, a group of documents filed by the Owner were provided to the Hearing Officer. The Hearing Officer looked through the documents briefly, and determined that the documentation was substantially similar to those documents filed by the tenant and used as Exhibits at the Hearing. Therefore no additional Hearing was scheduled.

A Hearing Decision in this case was issued on February 6, 2018, upholding the tenant petition. The owner appealed that decision, and his appeal was based in part on the failure to consider the documents he had filed.

In light of the Appeal, an *Order to Vacate Hearing Decision and Set New Hearing Date* was issued on March 19, 2018. The new hearing was set to specifically determine:

“when the previously filed Owner documents were sent by the Owner to the RAP, and to determine if any of the Owner documents should be added as Exhibits in this matter. If any new documents are admitted, the parties will be given an opportunity to comment on these documents and they will be considered by the Hearing Officer in rendering a new decision. **The testimony and the evidence will be limited to these questions. No new evidence may be filed by either party.**” Emphasis added.

At the Hearing on April 19, 2018, the owner produced a claimed “copy” of the documents previously filed by the owner, with numbers in the bottom right corner of each document. Contrary to the specific direction that no new evidence may be filed by either party, this set of documents included two documents that were not included in the owner's original submission.¹ Those documents were not admitted into evidence as they were not a part of the original submission and pertained to events that occurred after the original Hearing. The documents that were and were not admitted into evidence are discussed in the evidence section below.

This Decision is an entirely new decision and sets out a new appeal period. The prior appeal filed by the owner had been vacated when the *Order to Vacate Hearing Decision and Set New Hearing Date* was served on the parties.

///

¹ Pages 82 and 83

THE ISSUES

1. When, if ever, was the tenant provided with a *Notice to Tenants of the Rent Adjustment Program (RAP Notice)*?
2. What claims can be raised by the tenant?
3. Has the tenant suffered a decrease in housing services?
4. What, if any, restitution is owed between the parties and how does it affect the rent?

EVIDENCE

Rental History: The tenant testified that he moved into the 2 bedroom subject unit in April of 2014, with his brother, at an initial rent of \$1,200 a month. His brother moved out of the unit in June of 2017. The tenant's current rent is \$1,244.81 a month.

The tenant produced a lease, dated March 14, 2014, signed by both him and his brother Sean, documenting the terms of the agreement. A *RAP Notice* was attached to the lease, and was signed by the tenant on March 14, 2014.²

Decreased Housing Services:

Prior to the Hearing, the tenant submitted documents relating to claims associated with his cat, as well as documents associated with the loss of use of the bedroom. (See below regarding why claims were limited to the loss of the bedroom.)

Testimony from Hearing on December 12, 2017

Loss of the bedroom: The tenant testified that before his brother moved out, he asked the owner for approval to allow Frances Mead, his partner and the mother of his child, and his young child, to move in. He sent a letter to the owner on June 14, 2017, requesting that Ms. Mead be allowed to move in.³ The owner refused to allow Ms. Mead and the child to move in, because Ms. Mead did not meet the minimum income requirements.

After asking the owner to allow Ms. Mead to move in, Ms. Mead had a housing crisis and had to leave her unit, and moved in temporarily as a guest while waiting for a response from the owner.

On or about June 21, 2017, the tenant received a *Notice to Cease* both about smoking and the presence of a cat, and about allowing another person to occupy the premises without consent.⁴ Additionally, on July 12, 2017, a *Three Day Notice to Quit* was served on the tenant based on the presence of Ms. Mead in the unit.⁵ After receipt of the *Notice to Cease* and the *Three Day Notice*, Ms. Mead left the premises on July 13, 2017.

² Exhibit 11. All documents referred to in this Hearing Decision were admitted into evidence without objection.

³ Exhibit 1

⁴ Exhibit 2

⁵ Exhibit 6

The tenant further testified that he has been paying the rent on his own since his brother moved out. Even when his brother was living there, he paid the vast majority of the rent.

The tenant further testified that in June of 2017, Frances Mead filled out an application to rent and provided proof of her past income. Because Ms. Mead recently had a baby, she is now not earning much money because her primary responsibility is caring for the baby.

The owner testified that during the time Ms. Mead was living in the unit, he did not process her rental application because they do not take applications from someone staying on the premises without permission. Once she moved out, the application was processed and she was denied because her income qualifications do not match his requirements.

Alexis, the owner's employee, testified that after receipt of the application by Ms. Mead, he determined that the documents she provided did not qualify her for the income necessary to take over the co-tenant's responsibility.

The owner testified that after Ms. Mead did not qualify, he informed the tenant that if he could qualify for the unit by himself, that the tenant could re-apply and the owner would allow the tenant to take over the entire rental. The owner claimed that the tenant informed the owner that he and Ms. Mead were receiving income help from their parents, and could not qualify alone. Additionally, for the tenant to qualify alone, he would have to earn more than $\$1,200 \times 3 \times 12$, or $\$43,200$ annually. For each to reside in the unit and for Ms. Mead to be accepted as a co-tenant, they would each have to earn at least $\frac{1}{2}$ of that amount.⁶ The owner does not allow the tenants to cumulatively earn the correct amount. Either one person needs to qualify alone, or both individuals need to qualify at $\frac{1}{2}$ of the required annual income. This is because if the second person is added to the rental agreement, that person would have rights to the apartment.

The tenant contended that the owner imposed 13 different requirements before he would approve Ms. Mead as a co-tenant, and she passed all but one of the thirteen. Those requirements were that the prospective tenant was required to fill out a rental application; provide government identification; proof of income; earn a minimum income of $\$18,672$ annually; have a clean eviction record; have a clean bankruptcy record; have a clean collections record; have no co-signors; have no government assistance; have no pets; be a non-smoker, provide a notarized letter from the tenant's brother that he was requested removal from the lease; and pay a $\$35$ credit report fee. However, he further argued that his lease states only that "Tenant will not assign or sublet Premises or any part thereof without the prior written consent of Landlord" and does not impose these additional restrictions.⁷ Additionally, he contends that the

⁶ Note that this is a different amount than stated in a June 15, 2017, letter written by Jerez to the tenant, in which he said that the prospective roommate would have to earn an amount equal to the current rent ($\$1200$), multiplied by $\frac{1}{2}$, multiplied by 2.5, multiplied by 12. This amount equals $\$18,000$ annually. See June 15, 2017, letter from Jerez to Nanos, Exhibit 2.

⁷ See Exhibit 11, page 6 of 25

owner's failure to allow Ms. Mead to move in violated the Just Cause requirement that an owner not unreasonably withhold approval of a subtenant.

The owner contended that the tenant's claim is not really a claim of decreased housing services and that he is not unreasonably withholding consent, because he has the right to set policy for his rental units and that he applies this same policy to all of his tenants.

Testimony from Hearing on April 19, 2018

At the Hearing, the owner's documentation was reviewed. Those documents that were previously admitted into evidence in the prior Hearing, were not admitted again. Additionally, the owner's summary of events (pages 2-5 of his submitted documents) were not admitted into evidence because he had already testified as to his version of the events and the document was simply a summary of the already provided testimony. The owner produced other emails (Exhibits 12-29) which were written between the owner and the tenant, about the tenant's request to have Ms. Mead move in. These emails were supplementary to the already filed documents admitted into evidence as Exhibits 1-6 and simply highlight the information already in the record: the tenant wished Ms. Mead to move in and the owner would only allow her to move in if she met the financial requirements of a tenant. For example, Exhibit 15, an email from the owner to the tenant states: "We do not agree to adding anyone to leases unless we go through the specified tenant screening process. Communicated to you in a letter."

Additionally, Mr. Jerez testified that he would only allow Ms. Mead to move in, if Ms. Mead was able to establish the income necessary for a tenant to move in. He never received proof that Ms. Mead had adequate income to qualify to move into the unit. The reason he has a minimum income requirement is because income standards are imperative to be sure that accepted tenants have enough income to afford the rent. His business practice is based on advice he has read in journals and other landlord documentation he has read over the years.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

When, if ever, was the tenant provided with a *RAP Notice*?

The Rent Adjustment Ordinance requires an owner to serve the *RAP Notice* at the start of a tenancy⁸ and together with any notice of rent increase or change in the terms of a tenancy.⁹ An owner can cure the failure to give notice at the start of the tenancy, but may not raise the rent until 6 months after the first *RAP Notice* is given.¹⁰

The evidence established that the tenant was given a *RAP Notice* when he signed his lease in March of 2014.

⁸ O.M.C. § 8.22.060(A)

⁹ O.M.C. § 8.22.070(H)(1)(A)

¹⁰ O.M.C. § 8.22.060 (C)

What claims can be raised by the tenant?

Under the Oakland Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent¹¹ and may be corrected by a rent adjustment.¹² However, in order to justify a decrease in rent, a decrease in housing services must be the loss of a service that seriously affects the habitability of a unit or one that was provided at the beginning of the tenancy that is no longer being provided.

The tenant has the burden of proof with respect to each claim.

In order to bring a claim of decreased housing services, the tenant is required to provide a list or a description of his claims when the petition is filed. O.M.C. § 8.22.070 (F). Here the tenant filed a list of decreased housing services with his petition related to the failure of the owner to allow a one-to-one transfer request to move in Ms. Mead and their daughter. No other issues were raised with the tenant petition.

In filing his documents prior to the Hearing, the tenant also produced evidence concerning problems with his comfort animal and problems related to harassment. Because the Ordinance requires a tenant to provide a list of all claims, and because allowing any other claim to go forward would deny the owner the due process right to know and understand the claims against him, only that issue that was on the Tenant Petition was considered at the Hearing.

Has the tenant suffered a decrease in housing services?

The owner has refused the tenant's request for a one-to-one replacement of Frances Mead (and his newborn daughter) to move in and replace his brother, who moved out in July of 2017. The tenant has consistently been able to pay rent in every month since his brother moved out, even though he is the only person who lives in the unit. While the tenant admitted that his income alone would not satisfy the owner's "formula" for allowable rentals, the evidence is uncontested that the tenant has paid rent in every month.^{13, 14}

"Housing services" are defined in the Ordinance to mean "all services provided by the Owner related to the use or occupancy of a Covered Unit."¹⁵ This reasonably includes the

¹¹ O.M.C. § 8.22.070(F)

¹² O.M.C. § 8.22.110(E)

¹³ The owner and tenant provided conflicting testimony about whether or not the tenant has been late paying rent. The issue of late rent payments is not relevant to this claim and is not detailed here. It is sufficient to say that on the only ledger in evidence, Exhibit 9, no late fees are charged to this tenant. This ledger came from the time that *Lapham Property* was managing the property, and predates this dispute.

¹⁴ The fact that the tenant has requested to move in two people (Ms. Mead and their child) does not impact the requirement for a one-to-one replacement. The child is a minor and does not count as one of the individuals subject to the one to one replacement.

¹⁵ O.M.C. § 8.22.020

rights permitted to the tenant by agreement to have a specific number of occupants or a roommate to share the cost of the rental.¹⁶

The tenant rented a two bedroom apartment with his brother. His brother moved out and he reasonably wishes to live with his partner, who is the mother of his child, and his child. He does not wish to live with any other roommate. As such, the actions of the owner in refusing to allow Ms. Mead to move-in, are denying him the use of the second bedroom in his apartment.

It is not a requirement of the law that the owner approve Ms. Mead as a co-tenant, with the same rights and responsibilities that Mr. Nanos has. This is what the owner wants to do in requiring that Ms. Mead meet the same requirements to move-in as if she were an original tenant. The owner can allow Ms. Mead to move in as a subtenant. All the responsibilities of the paying of rent would continue on Mr. Nanos' shoulders, as is the case now with his brother's absence. Additionally, the lease signed by the parties when the tenant moved in, does not require that a subtenant satisfy the many requirements set forth by the owner in order to approve Ms. Mead. It simply states that the tenant cannot move someone in without prior written consent.

Failing to consent to the reasonable request to move in Ms. Mead, who satisfies all but one of the 13 requirements set forth by the owner, is unreasonable. Therefore, the owner has decreased the tenant's housing services.

The owner has argued that this case is bound by the case *Gottfried v. Beacon Properties* T16-0727. In that case the Hearing Officer held that the tenants' claims that the owner would not agree to replacement roommates "is essentially a claim for damages, which is beyond the jurisdiction of a Rent Control agency." The Hearing Officer cited *Larson v. City and County of San Francisco*, 192 Cal. App.4th 1263 (2011). In *Larson* the Court invalidated a statute seeking to broaden the Rent Board's ability to grant rent reductions for a landlord's act of influencing or attempt to influence a tenant to vacate through fraud, intimidation or coercion. It was deemed invalid because any such rent reduction would not be quantifiable or restitutive in character, as is required for an administrative agency. The Hearing Officer mistakenly relied on *Larson* to invalidate that part of the tenants' claims and the decision in *Gottfried* is not persuasive. Unlike in *Larson* the owner's acts here are quantifiable and the calculation discussed below is meant to provide restitution to the tenant.

The owner additionally cited a statute governing mobile home parks (Civil Code § 798.74) and the Code of Federal Regulations relating to screening for families on Section 8. See 24 CFR 982.307. Neither of these statutes relate to the claim at issue here.

¹⁶ Additionally, the Just Cause for Eviction Ordinance requires that "a landlord shall not endeavor to recover possession of a rental unit as a result of subletting of the rental unit by the tenant if the landlord has unreasonably withheld the right to sublet following a written request by the tenants, so long as the tenant continues to reside in the rental unit and the sublet constitutes a one-for-one replacement of the departing tenants." O.M.C. § 8.22.360(A)(2).

Because the tenant is being required to pay for a two bedroom unit, while the owner withholds the consent for Ms. Mead to move in, the tenant has lost the use of 1/3 of the value of his apartment. The tenant still has the use of his bedroom, the kitchen, living room and bathroom. Therefore a 1/3 reduction is reasonable.

The tenant's rent is currently \$1,244.81 a month. The tenant is entitled to a rent decrease of 1/3 of that amount, or \$414.90, for a total monthly rent of \$829.91, effective June 1, 2018, until the owner consents to allow Ms. Mead to move-in. Additionally, the tenant has overpaid rent in all months since August of 2017.^{17, 18}

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

The chart below calculates the rent overpayments. In all months since August of 2017, the tenant has paid rent of \$1,244.81, an overpayment of \$414.90 a month. He has overpaid a total of \$4,149.

OVERPAID RENT						
From	To	Monthly Rent paid	Max Monthly Rent	Difference per month	No. Months	Sub-total
1-Aug-17	31-May-18	\$1,244.81	\$829.91	\$ 414.90	10	\$ 4,149.00
				\$ -		-
TOTAL OVERPAID RENT						\$ 4,149.00
RESTITUTION						
MONTHLY RENT						\$829.91
TOTAL TO BE REPAID TO TENANT						\$ 4,149.00
TOTAL AS PERCENT OF MONTHLY RENT						500%
AMORTIZED OVER		12	MO. BY REG. IS			\$ 345.75

An overpayment of this size is normally adjusted over a period of 12 months.¹⁹ For now \$345.75 a month is subtracted from the current legal rent of \$829.91, for a total rent of \$484.16 a month. From June of 2018 through May of 2019, the tenant's rent is \$484.16 a month. The rent reverts to \$829.91 a month in June of 2019, if the owner continues to deny Ms. Mead the right to move-in.

However, should the owner allow Ms. Mead to move in (as either a subtenant or a cotenant), the owner can increase the rent by \$414.90 a month. **In order to increase**

¹⁷ Since the letter from his brother requesting to be taken off the lease was dated July 17, 2017, and Ms. Mead's application was signed on June 26, 2017, it is reasonable for there to be a one month delay in approving the move-in request.

¹⁸ There was no testimony at the second day of Hearing as to whether the tenant has continued to pay full rent since the prior Hearing Decision was appealed and then vacated. It is assumed that the tenant has been paying full rent. If the tenant has paid less than full rent, the parties can adjust the amount owed accordingly.

¹⁹ Regulations, Section 8.22.110(F)

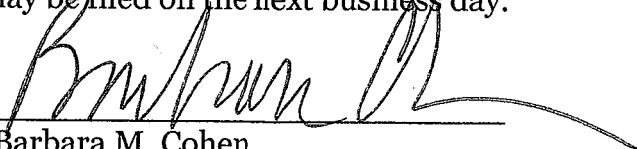
the rent after allowing Ms. Mead to move in, the owner must provide the necessary notice pursuant to Civil Code § 827.

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

ORDER

1. Petition T17-0421 is granted.
2. The tenant's base rent is \$1,244.81. Before consideration of restitution, the tenant's base rent is reduced by 1/3, to \$829.91, based on the owner's unreasonable withholding of consent to allow Ms. Mead to move-in to the unit.
3. Due to past decreased services, the tenant is owed restitution of \$4,149. This overpayment is adjusted by a rent decrease for the next 12 months in the amount of \$345.75 a month.
4. The tenant's rent for the months of June 2018 through May 2019 is \$484.16 per month. The rent reverts to \$829.91 a month in June of 2019 (if the owner continues to deny Ms. Mead the right to move-in.)
5. If the owner wishes to, he can repay the restitution owed to the tenant at any time. If he does so, the monthly decrease for restitution ends at the time the tenant is provided restitution.
6. If the owner allows Ms. Mead to move-in, he can increase the rent by \$414.90 a month. **In order to increase the rent, the owner must provide the necessary notice pursuant to Civil Code § 827.**
7. **Right to Appeal: This decision is the final decision of the Rent Adjustment Program Staff.** Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within twenty (20) calendar days after service of the decision. The date of service is shown on the attached Proof of Service. If the Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.

Dated: May 1, 2018


Barbara M. Cohen
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE

Case Number T17-0421

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

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

Documents Included

Amended Hearing Decision

Owner

1921 26th Ave Property LLC/Jerez Owen
201 13th St #32353
Oakland, CA 94612

1921 26th Ave Property, LLC
5424 Sunol Blvd. #10146
Pleasanton, CA 94566

Owner Representative

Clifford Fried, Fried & Williams LLP
1901 Harrison Street, 14th Floor
Oakland, CA 94612

Tenant

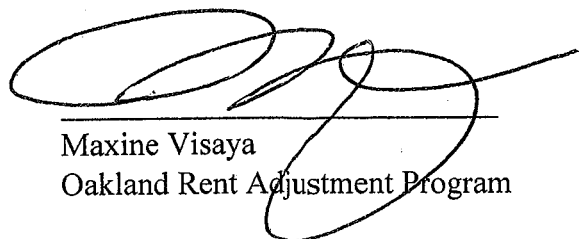
David Scott Nanos
1921 26th Ave #6
Oakland, CA 94601

Tenant Representative

Tobener Ravenscroft Law Firm/Michael Astanehe
21 Masonic Ave #A
San Francisco, CA 94118

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on May 3, 2018 in Oakland, CA.



Maxine Visaya
Oakland Rent Adjustment Program

000048



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

For date stamp: 2018 MAY 23 PM 2:41

APPEAL

Appellant's Name 1921 - 26th Ave. Property LLC / Owen Jerez		<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant	
Property Address (Include Unit Number) 1921 - 26th Avenue, Apt. 6 Oakland, CA 94601			
Appellant's Mailing Address (For receipt of notices) c/o Clifford E. Fried, Fried & Williams LLP 1901 Harrison Street, 14th Floor Oakland, CA 94612		Case Number T17-0421	
		Date of Decision appealed May 1, 2018	
Name of Representative (if any) Clifford E. Fried, Esq. SBN 118288 Liz Hart		Representative's Mailing Address (For notices) Fried & Williams LLP 1901 Harrison Street, 14th Floor Oakland, CA 94612	

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.

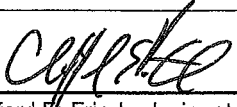
- f) I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. (In your explanation, you must describe how you were denied the chance to defend your claims and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue 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: 4

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 May 23, 2018, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<u>Name</u>	David Scott Nanos
<u>Address</u>	1921 - 26th Ave. #6
<u>City, State Zip</u>	Oakland, CA 94601
<u>Name</u>	
<u>Address</u>	
<u>City, State Zip</u>	

 Clifford E. Fried - designated representative	05-23-2018
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SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE

DATE

For more information phone (510) 238-3721.

City of Oakland Rent Adjustment Program, Case No. T17-0421
Appeal of Landlord 1921 – 26th Avenue LLC/Owen Jerez
Date of Hearing Decision: May 1, 2018

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GROUNDS FOR APPEALING THE DECISION

2)a) The Decision Is Inconsistent with the Oakland Municipal Code, RAP Regulations, or Prior Decisions of the RAP Board.

The tenant petitioned for a decrease in housing services claiming the loss of one bedroom in his two-bedroom apartment. See Petition and Hearing Decision. However, there is nothing stopping the tenant from using the second bedroom. There is no substantial evidence that the owner eliminated or reduced a bedroom at the premises. What the tenant is really arguing is that the landlord's refusal to allow a particular person to occupy the unit, based on lack of income and employment, is a decrease in housing services.

Both Oakland Municipal Code, Section 8.22.040, and RAP Regulation 8.22.020 define housing services as:

“all services provided by the owner related to the use or occupancy of a covered unit, including, but not limited to, insurance, repairs, maintenance, painting, utilities, heat, water, elevator service, laundry facilities, janitorial service, refuse removal, furnishings, parking, security service, and employee services.”

Consent to, or approval for, a request for a replacement roommate or for permission to sublease to a particular person is not an elimination or reduction of a housing service for which a rent reduction can be awarded. Nor are the owner's *standards of approval* of a subtenant a housing service.

The Decision of the Hearing Officer in this case is inconsistent with Oakland's laws because the right to sublet to a particular person and the approval of a proposed roommate is not a “service” as that term is used in the Oakland Municipal Code.

Prior RAP decisions hold that in order to justify a decrease in rent, a decrease in housing services must either be 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. In our case, there has been no elimination or reduction of any service. Lack of habitability was not raised by the tenant in this case. There is nothing prohibiting a qualified roommate or subtenant from applying for occupancy in the second bedroom of tenant's unit. Therefore, there has been no elimination or reduction in a housing service.

2)b) The Decision Is Inconsistent with Decisions Issued By Other Hearing Officers.

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A Hearing Decision in the matter of T16-0727, *Gottfried, et al., v. Beacon Properties* (decided on October 11, 2017) held that a tenant's claim for decreased housing services, based on the landlord's denial of consent for replacement roommates was beyond the jurisdiction of the RAP.

The facts in T16-0727 are the same as the facts in our case and establish a precedent for the issue being presented in this appeal. In T16-0727, the tenants filed a petition which alleged that their housing services had been decreased based on an increased criteria for replacement roommates. The issue, as phrased by Hearing Officer Kasdin in that matter was: "[h]ave the tenants' housing services been decreased and, if so, by what percentage of the total housing services that are provided by the owner?" Hearing Officer Kasdin ruled that "[t]he tenants' contention is essentially a claim for damages, which is beyond the jurisdiction of a Rent Control agency" citing *Larson v. City & County of San Francisco* (2011) 192 Cal.App.4th 1263. The claim for decreased housing services, due to the landlord's denial of consent to the new housemates, was denied.

Our case and the *Gottfried* case are very similar. This main issue is the same in both cases. And in both case there was no testimony that the landlord had changed their screening requirements or made them more stringent for the tenant who was denied consent to sublet. In both cases, there was testimony that the Landlord had approved of prior applicants. And in both cases, the tenants acknowledged that the refused candidates were below the Landlord's announced standards.

The hearing decision in *Gottfried* established that the RAP lacks jurisdiction to hear and rule on a dispute over whether or not the landlord unreasonably withheld consent. Hearing officer Kasdin got it right on this issue.

2)c) The Decision Raises New Policy Issues That Have Not Been Decided by the Board.

It appears that the Rent Adjustment Program Board has never ruled on the following issues:

Whether or not consent to, or approval for, a request to sublet is a "housing service".

Whether or not the RAP has jurisdiction to hear a dispute over a landlord's refusal to consent to, or approve, a request to sublet.

If consent to a request to sublet is a housing service and the RAP does have jurisdiction to adjudicate disputes over the reasonableness of a landlord's denial of consent, what standards are to be applied by the Hearing Officer?

Whether the owner's denial of a particular proposed subtenant, but not a denial of the general right to sublet under the rental agreement, is a reduction in housing service warranting a reduction in rent.

There is nothing the RAP's published index of cases that discloses these issues have ever been addressed by the Board. See

<http://www2.oaklandnet.com/oakca1/groups/ceda/documents/agenda/oak048285.pdf>

The RAP Board should not allow the RAP to be deciding landlord-tenant disputes over the reasonableness of a landlord's lack of consent to either a request to sublet or a request for replacement of roommates. This issue is best left to the courts which have subpoena power, afford the parties the right to discovery, and can award damages for breach of contract or issue rulings in unlawful detainer actions (in the event the tenant ignores the lack of consent and subleases in breach of the rental agreement). The RAP currently has its hands full with hearing the proliferation of landlord petitions for rent increases due to a recent change in the law. Allowing the RAP to decide issues which have traditionally been the domain of the civil courts will only exacerbate the backlog of cases currently being experience at the RAP.

2)d) The Decision Violates Federal, State, or Local Law.

The Hearing Decision violates Article VI, section 1, of the California Constitution and the holdings in *Larson v. City & County of San Francisco*, *McHugh v. Santa Monica Rent Control Bd.*, and *Harris v. Capital Growth*.

In *Larson v. City & County of San Francisco* (2011) 192 Cal.App.4th 1263, 1283., the California Court of Appeal for the First District (the same Appellate District that creates binding legal authority for the RAP) concluded that:

"the decrease in housing services provisions added to the City's Rent Ordinance . . . are an attempt to bypass the judicial system and impermissibly endow the Board with judicial power constitutionally reserved to the judiciary. As such, . . . [parts of the Ordinance] are facially invalid under the judicial powers clause to the extent they empower the Board to order rent reductions."

Article VI, section 1, of the California Constitution provides: "[t]he judicial power of this State is vested in the Supreme Court, courts of appeal, and superior courts" (Cal. Const., art. VI, § 1.) "[A]gencies not vested by the Constitution with judicial powers may not exercise such powers."

McHugh v. Santa Monica Rent Control Bd. (1989) 49 Cal.3d 348, 356 held that an administrative agency may constitutionally hold hearings, determine facts, apply the law to those facts, and order relief — including certain types of monetary relief — so long as (i) such activities are authorized by statute or legislation and are reasonably necessary to effectuate the administrative agency's primary, legitimate regulatory purposes, and (ii) the "essential" judicial power (i.e., the power to make

enforceable, binding judgments) remains ultimately in the courts, through review of agency determinations. *Id.* at p. 372.

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Harris v. Capital Growth stands for the proposition that a tenant's ability to pay rent is of paramount importance in the landlord-tenant relationship. In our case, the Hearing Officer didn't think that the proposed subtenant's lack of income, a job, or bank account was relevant.

2)e) The Decision Is Not Supported by Substantial Evidence.

There is no finding based on substantial evidence that the tenant lost the use of his second bedroom. The Hearing Officer cites to no evidence or reason as to why the owner acted unreasonably refusing to consent to Ms. Mead's subletting and occupancy.

There is no evidence in the record establishing that the owner acted unreasonably in withholding consent to a change in roommates or a request to sublet. The only evidence concerning the reasonableness of the owner's lack of consent came from the owner who testified that a subtenant's income and ability to pay rent is the primary factor in deciding whether give consent. The evidence at the hearing was that the proposed subtenant and roommate had no income or employment.

The Hearing Officer also failed to consider the tenant's refusal to cooperate with the Landlord to process the application for the proposed roommate and subtenant (Ms. Mead). The finding that Ms. Mead satisfies all but one of the 13 requirements set forth by the Owner is not supported by substantial evidence. The evidence shows that:

1. Mead failed to provide proof of income as she signed for in the application
2. Mead failed to respond to a TransUnion Tenant Screening
3. The Owner was not able to receive a credit report
4. The Owner was not able to confirm if the applicant had evictions
5. The Owner was not able to confirm if the applicant had any bankruptcies
6. The Owner was not able to confirm if the applicant had a criminal history
7. The Owner was not able to confirm if the applicant had collections

There is evidence in the record showing that 7 of 13 of the landlord's requirements were not satisfied and thus the Decision is not supported by substantial evidence. The RAP should not be determining the reasonableness of a landlord's refusal or failure to approve a tenant's request for a replacement roommate or subtenant. The RAP Hearing Officers are not educated or trained to make management decisions for landlords and they have no business making rulings simply because they personally would have given consent to a request for a new roommate or tenant.

Also, there is no evidence in the record concerning the value of the tenant's reduced housing service. The tenant failed to meet his burden of proof with regard to a reduction in housing services. The Hearing Officer's decision to reduce the tenant's rent by 1/3 is arbitrary and capricious and not based on substantial evidence.

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I declare that I am a resident of or employed in the County of Alameda, State of California. I am over the age of eighteen years and am not a party this action. My residence or business address is 1901 Harrison Street, 14th Floor, Oakland, CA 94612.

On the date below, I served the attached, concerning the action known as (*Nanos v. Jerez, Rent Board No. T17-0421*):

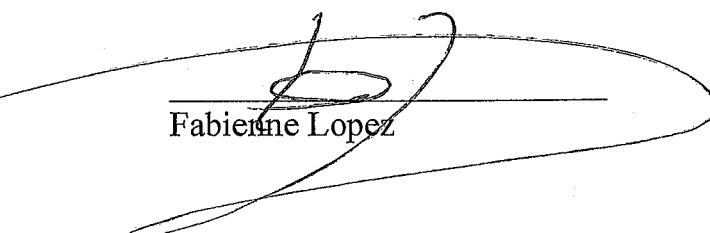
APPEAL

on the parties herein in said action, by placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for mailing with the United States Postal Service. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

The envelope was addressed, sealed and placed for collection and mailing, following this business' ordinary business practices, from Oakland, California, as follows:

David Scott Nanos
1921 26th Ave. Apt. 6
Oakland, CA 94601

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and this declaration was executed on May 23, 2018, at Oakland, California.



Fabienne Lopez

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Clifford E. Fried, Esq. SBN 118288
Fried & Williams LLP
1901 Harrison Street, 14th Floor
Oakland, CA 94612
Telephone: 510-625-0100
Email: cfried@friedwilliams.com

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Representative for Owner and Appellant

City of Oakland
Rent Adjustment Program

Case No. T17-0421

Appeal of Owner 1921 – 26th
Avenue LLC/Owen Jerez

In re 1921 26th Avenue, Oakland

**APPELLANT'S SUPPORTING ARGUMENT AND DOCUMENTATION TO BE
CONSIDERED BY THE BOARD ON APPEAL**

Owners and Appellants 1921 – 26th Avenue LLC/Owen Jerez hereby submit the following supporting argument and documentation, pursuant to RAP Regulations, Sec.8.22.120A.2, in support of the Appeal filed on May 23, 2018.

A. Introduction

This is not a case of an owner denying a tenant the right to sublet where the rental agreement permits subletting. It is also not a case of an owner denying a tenant the right to have a replacement roommate where the law permits replacement roommates. There is no evidence in the record that the owner denied the tenant the right to sublet or to have a replacement roommate or that the tenant lost the use of his second bedroom.

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The Hearing Decision sets up the contention of the tenant who claims “decreased housing services associated with the loss of use of the second bedroom in his unit.” Hearing Decision at page 1.

This is a case where a proposed subtenant and replacement roommate applied to occupy the premises but did not qualify due to lack of ANY income and employment. And while the Hearing Decision implies that the owner refused to rent to the tenant’s proposed subtenant and roommate, that is not what the record shows. What the record shows is that the proposed subtenant and roommate refused or could not complete the owner’s application process. And before the application process could be completed, the tenant filed a petition for a decrease in housing services which claimed the loss of a bedroom at the premises.

The Hearing Officer questioned the RAP’s jurisdiction to even hear this Petition and make a decision. Recording of Hearing (First Session on 12/12/2017) at 00:25:50. It is unclear why jurisdiction was taken and a decision issued because no housing service was decreased.

B. Consent to, or approval for, a request for a replacement roommate or for permission to sublease to a particular person is not an elimination or reduction of a housing service for which a rent reduction can be awarded.

Both Oakland Municipal Code, Section 8.22.040, and RAP Regulation 8.22.020 define *housing services* as:

“all services provided by the owner related to the use or occupancy of a covered unit, including, but not limited to, insurance, repairs, maintenance, painting, utilities, heat, water, elevator service, laundry facilities, janitorial service, refuse removal, furnishings, parking, security service, and employee services.”

In her Decision, the Hearing Officer quotes this definition but purposely omits the part of the sentence that provides the examples of “insurance, repairs, maintenance, painting, utilities, heat, water, elevator service, laundry facilities, janitorial service, refuse removal, furnishings, parking, security service, and employee services.” See Hearing Decision at page 6. This omission and misquote was done to deflect attention from the fact that denying consent to a requested sublet or roommate is conspicuously absent from the definition of housing services.

And while the Hearing officer may argue that the examples contained in the definition are just examples and are not exclusive, the examples in the definition are very important. They provide guidance to owners, tenants and the RAP of what should be included as a housing service.

There is a big difference between withholding consent to allow a sublet and services such as “insurance, repairs, maintenance, painting, utilities, heat, water, elevator service, laundry facilities, janitorial service, refuse removal, furnishings,

parking, security service, and employee services.” The former has to do with the exercise of rights under the rental agreement and the latter are actual services.

Dictionary.com defines “services” as “the supplying or supplier of utilities or commodities, as water, electricity, or gas, required or demanded by the public; the providing or provider of accommodation and activities required by the public, as maintenance, repair, etc.”. This definition corroborates the examples contained in the RAP definition of housing services. This definition does not support an argument that the failure to consent to, or approval for, a request for a replacement roommate or for permission to sublease to a particular person, is a housing service.

And even if the dictionary definition of services supports a right to sublet, the owner in this case did not deny the tenant the right to sublet; the owner merely insisted on its right to have a completed application process and a qualified applicant before giving consent to a particular person. Had the applicant been employed and had an income or savings, she would have been approved.

The right to sublet, and the owner’s process of reviewing applications and exercising its right to reject an applicant is not a housing service. It is a legal, intangible, concept more like an attorney’s provision in a rental agreement. An owner is permitted to give a change in terms of tenancy to remove an attorney’s fee provision from a rental agreement without any claim that it is a reduction in housing services. Likewise, an owner should be permitted to reasonably reject an applicant for subletting or replacement roommate without concern of the RAP imposing a rent reduction.

C. The Decision Violates Federal, State, or Local Law.

1. The Hearing Decision Imposes an Unconstitutional Taking of Property Without Just Compensation.

The Hearing Officer granted the petition ruling that until the owner agrees to permit one particular applicant to sublease and become a roommate, a rent reduction for reducing housing services will be in place. This ruling is an unconstitutional taking of property because it forces an owner to allow an occupation of its property without the owner’s consent and without the payment of just compensation to the owner (actually, the Decision imposes a penalty on the owner for the taking).

The Decision forces an unqualified subtenant to take possession of the owner’s property. If and when the original tenant vacates, the owner will be stuck with a tenant who cannot pay the rent. The owner will then be forced to file an expensive and lengthy unlawful detainer action to recover possession of its property.

There is a reason for the process of reviewing applications for proposed subtenants and roommates: so that the owner can make a reasonable determination of the creditworthiness and risks involved with the applicant, and then to accept or reject the applicant. If this were not the purpose of the application process, then why even have a law that says the owner cannot unreasonably withhold consent? The law would

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just say "Owner shall never decline a tenant request to sublet or add replacement roommates."

2. The Hearing Decision violates Article VI, section 1, of the California Constitution and the holdings in *Larson v. City & County of San Francisco*, *McHugh v. Santa Monica Rent Control Bd.* and *Harris v. Capital Growth*.

In Larson v. City & County of San Francisco, the California Court of Appeal for the First District (the same Appellate District that creates binding legal authority for the RAP) concluded that:

"the decrease in housing services provisions added to the City's Rent Ordinance . . . are an attempt to bypass the judicial system and impermissibly endow the Board with judicial power constitutionally reserved to the judiciary. As such, . . . [parts of the Ordinance] are facially invalid under the judicial powers clause to the extent they empower the Board to order rent reductions." *Larson v. City & County of San Francisco* (2011) 192 Cal.App.4th 1263, 1283.

Article VI, section 1, of the California Constitution provides: "[t]he judicial power of this State is vested in the Supreme Court, courts of appeal, and superior courts" (Cal. Const., art. VI, § 1.) "[A]gencies not vested by the Constitution with judicial powers may not exercise such powers."

McHugh v. Santa Monica Rent Control Bd. (1989) 49 Cal.3d 348, 356 held that an administrative agency may constitutionally hold hearings, determine facts, apply the law to those facts, and order relief — including certain types of monetary relief — so long as (i) such activities are authorized by statute or legislation and are reasonably necessary to effectuate the administrative agency's primary, legitimate regulatory purposes, and (ii) the "essential" judicial power (i.e., the power to make enforceable, binding judgments) remains ultimately in the courts, through review of agency determinations. *Id.* at p. 372.

The Hearing Decision ordered a rent reduction by making a judicial determination, unsupported by facts, that the owner unreasonably withheld consent to a request for a replacement roommate or subtenant. There is nothing in the Oakland Municipal Code or the RAP Regulations that permit the RAP to determine the reasonableness of an owner's consent to a particular request to sublet or for a replacement roommate. By exercising the power to second guess the owner's decision to have an income and employment criteria and to reject an unqualified applicant, the Hearing Officer improperly exercised a judicial power to award declaratory relief to the tenant in this case.

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D. The Decision Is Inconsistent with Decisions Issued by Other Hearing Officers.

A Hearing Decision in the matter of T16-0727, *Gottfried, et al., v. Beacon Properties* (decided on October 11, 2017) held that a tenant's claim for decreased housing services, based on the owner's denial of consent for replacement roommates was beyond the jurisdiction of the RAP.

The facts in T16-0727 are very similar to the facts in our case and establish a precedent for the issue being presented in this appeal: whether the RAP has jurisdiction to hear decrease in housing services petition based on the owner's lack of consent to a proposed new roommate.

Hearing Officer Kasdin ruled that "[t]he tenants' contention is essentially a claim for damages, which is beyond the jurisdiction of a Rent Control agency" citing *Larson v. City & County of San Francisco* (2011) 192 Cal.App.4th 1263. The claim for decreased housing services, due to the owner's denial of consent to the new housemates, was denied.

The hearing decision in *Gottfried* established that the RAP lacks jurisdiction to hear and rule on a dispute over whether the owner unreasonably withheld consent to a proposed roommate or subtenant.

There is no legal reason for a Hearing Officer to make a ruling that is inconsistent with Mr. Kasdin's decision. Hearing officer Kasdin got it right.

E. The Decision Raises New Policy Issues That Have Not Been Decided by the Board.

It does not appear that the Rent Adjustment Program Board has ever ruled on the following issues:

- Whether or not consent to a request to sublet or have a replacement roommate is a "housing service".
- Whether or not the RAP has jurisdiction to hear a dispute over a owner's refusal to consent to a request to sublet or roommate.
- If consent to a request to sublet is a housing service and the RAP does have jurisdiction to adjudicate disputes over the reasonableness of a owner's denial of consent to a particular applicant, what standards are to be applied by the Hearing Officer.
- Whether the owner's denial of a particular proposed subtenant, but not a denial of the general right to sublet under the rental agreement, is a reduction in housing service warranting a reduction in rent.

The RAP Board should not allow the RAP to decide owner-tenant disputes over the reasonableness of a owner's lack of consent to either a request to sublet or a

request for replacement of roommates. This issue is best left to the courts which have subpoena power, afford the parties the right to discovery, and can award damages for breach of contract or issue rulings in unlawful detainer actions (in the event the tenant ignores the lack of consent and subleases in breach of the rental agreement). The RAP currently has its hands full with hearing the proliferation petitions filed due to recent changes in the law. Allowing the RAP to decide issues which have traditionally been the domain of the civil courts will only exacerbate the backlog of cases currently being experience at the RAP.

Given the backlog of cases at the RAP, and the amount of time it takes to have a Petition heard and finally decided, the RAP should not be looking for ways to expand its jurisdiction. It should be working to reduce its backlog of work. It should be working to do what it does best: reviewing improper rent increases and reduction in traditional housing services such as those actually described in Oakland Municipal Code, Section 8.22.040 and RAP Regulation 8.22.020.

F. The Decision Is Not Supported by Substantial Evidence.

The tenant in this case contends that he lost the use of the second bedroom in his unit because the owner would not approve of the applicant or give consent. There is no substantial evidence that the owner's conduct caused a loss of a bedroom. The tenant testified that he doesn't use the second bedroom. But that is the tenant's choice. The tenant still has access to the second bedroom and can keep his possession there, exercise there, do his art there, and put his child there, etc. Most importantly, the tenant is free to have a different person, one who has a job and income, and can submit a complete application for the owner's review. Because the tenant has access to and can use his second bedroom, there can be no reduction in housing services that warrants a rent reduction.

There is NO evidence in the record establishing that the owner acted unreasonably in withholding consent to a change in roommates or a request to sublet.

Proving the absence of substantial evidence is usually difficult for the appellant. But in our case, it is very easy because there was **NO** evidence submitted to prove that the owner acted unreasonably.

The record shows that the Hearing Officer ignored the facts that the proposed subtenant and roommate lacked employment, income, or savings. The tenant provided **NO** evidence that the proposed applicant was qualified. Yet, the Hearing Officer made a finding that the owner acted unreasonably because the applicant satisfied all but one of the alleged 13 requirements of the owner. It appears that the Hearing Officer believed that the owner actually imposed 13 different requirements before he would approve the applicant; but there was no actual evidence of 13 different requirements, just a letter from the tenant's lawyer arguing that there were 13 requirements. In fact, there were only 3 requirements (See Exhibit 24, a copy of which is attached hereto as Exhibit A)

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and the applicant was denied because she failed to provide sufficient proof of income and employment.

The owner testified at the hearing that the most important criteria for accepting or rejecting an application is the income and employment of the applicant. Recording of Hearing (First Session on 12/12/2017) at 00:18:00. The Hearing Decision seems to concede the fact that the applicant had no job or income. Hearing Decision at page 4. The Decision downplays the lack of income by saying the applicant recently had a baby and doesn't have much income. However, the facts are that the applicant's income in prior years was almost non-existent and the applicant currently has no income. Recording of Hearing (First Session on 12/12/2017) at 00:10:30. The Hearing Officer ignored the facts. Recording of Hearing (First Session on 12/12/2017) at 00:18:00 to 00:21:30.

Harris v. Capital Growth stands for the proposition that a tenant's ability to pay rent is of paramount importance. And, In the case of *Giebeler v. M & B Associates* (9th Cir. 2003) 343 F.3d 1143, 1157 the court expressed the considerable interest in a owner having a minimum income requirement:

"The record reveals that, as one would expect, the purpose of M & B's minimum income requirement is to ensure that tenants have sufficient income to pay rent consistently and promptly. This interest is, of course, considerable."

Both public and private housing providers recognize the paramount importance of an applicant having sufficient income so that the rental obligation can be paid during the course of the tenancy. See the Federal Government's position on ability of Section 8 applicants to pay rent. Exhibit B hereto. And see the California Apartment Association's emphasis on income of applicants. Exhibit C hereto. Income requirements are the first and foremost screening criteria when it comes to accepting or rejecting an applicant. The owner in this case acted reasonably and consistently with industry standards of practice.

In our case, the Hearing Officer didn't think that the proposed subtenant's lack of income, a job, or bank account was relevant to the reasonableness of the owner's rejection of the applicant. The Decision is not supported by any facts showing that the owner acted unreasonably. Unreasonableness on the part of the owner cannot even be implied from the facts that are in the record. The only unreasonableness is the conclusions reached in the Hearing Decision itself.

The only evidence concerning the reasonableness of the owner's lack of consent came from the owner himself who testified that a subtenant's income and ability to pay rent are the primary factors in deciding whether to consent.

Furthermore, the Hearing Officer failed to consider the tenant's refusal to cooperate with the owner's application process. The finding that Ms. Mead satisfies all

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but one of the alleged 13 requirements of the Owner is not supported by substantial evidence. The evidence shows that:

1. Mead failed to provide proof of income as she signed for in the application
2. Mead failed to respond to a TransUnion Tenant Screening
3. The Owner was not able to receive a credit report
4. The Owner was not able to confirm if the applicant had evictions
5. The Owner was not able to confirm if the applicant had any bankruptcies
6. The Owner was not able to confirm if the applicant had a criminal history
7. The Owner was not able to confirm if the applicant had collections

The record shows these 7 of 13 alleged requirements were not satisfied and thus the Decision is not supported by substantial evidence. The Decision further exemplifies how the RAP should not be determining the reasonableness of a owner's refusal or failure to approve a tenant's request for a replacement roommate or subtenant. The RAP Hearing Officers are not educated or trained to make management decisions for owners and they have no business making rulings simply because they personally would have approved of a request for a new roommate or tenant.

The Hearing Officer also concluded that "the tenant has lost the use of 1/3 of the value of his apartment . . . [t]herefore a 1/3 reduction is reasonable." Hearing Decision at page 8. Yet, there is no evidence in the record concerning the value of the tenant's reduced housing service. The tenant failed to meet his burden of proof regarding a reduction in housing services. The Hearing Officer's decision to reduce the tenant's rent by 1/3 is arbitrary and capricious and not based on substantial evidence.

As the Hearing Officer points out in the Hearing Decision,

"Under the Oakland Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent and may be corrected by a rent adjustment. However, in order to justify a decrease in rent, a decrease in housing services must be the loss of a service that seriously affects the habitability of a unit or one that was provided at the beginning of the tenancy that is no longer being provided." Hearing Decision at page 6.

First of all, all the tenant did was file a Petition claiming the loss of his second bedroom. There is no claim or finding that the premises is uninhabitable.

Second, there is no evidence that at the beginning of the tenancy the tenant and his brother had a right for Ms. Mead to rent, sublease, or occupy the premises. The rental agreement only gave the tenant and his brother the right to rent and occupy. Granted the rental agreement gives the tenant the right to sublease--a right which the owner never tried to take away—but there is nothing in the rental agreement that the owner must allow Ms. Mead, in particular, to rent, sublease or occupy the premises. The Owner never stopped providing the tenant with the right to sublet.

Thus, any refusal to approve Ms. Mead as an occupant cannot be a reduction in housing services because the tenant never had a right to have Ms. Mead occupy the premises at the beginning of the tenancy.

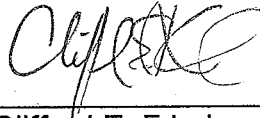
G. Conclusion

The Hearing Decision in this case is incorrect as a matter of law. The Hearing Officer substituted her opinion for what is reasonable and ignored the evidence and common sense to arrive at a Decision that defies logic and the law. A Hearing Officer cannot be judge and an expert witness defining the bounds of reasonableness for approving what is essentially a rental application. It is understandable how Hearing Officers could do this: they have don't have to face the future reality that there will be a tenant occupying the property who has no income and cannot pay the rent should the original occupant under the rental agreement vacate.

The Appeal should be granted and the Tenant's Petition denied on appeal without any remand.

Date: June 07, 2018

Fried & William LLP



Clifford E. Fried,
Designated Representative for
Owner and Appellant

2018 JUN -7 PM 4:37

Exhibit 13

from: Property Management <mypropertymanagementcloud@gmail.com>

to: Scott Nanos <scott.nanos@gmail.com>

date: Thu, Jun 29, 2017 at 6:22 PM

subject: Rental Application Process has started

mailed- gmail.com
by:

Mr Nanos,

After we have consulted with legal counsel, we will be processing the submitted application for a 1 for 1 replacement of Sean Nanos on your existing lease agreement. Since you have started to cooperate with us, we will be accepting your rent payment without reservations.

The first step requires us to settle any and all issues regarding the prior tenant that is being replaced. This is necessary in order to make sure Sean Nanos rights are protected. Please see list of requirements below for us to proceed:

X 1) A notarized original letter from Sean Nanos requesting that he be taken off the lease agreement and replaced by X _____ (applicant's name). The letter also needs to state that he waives his right to his portion of the security deposit that he placed on the unit at the time the lease agreement was signed. This is standard for all 1 for 1 replacements. X

X 2) We need the ID and or drivers license of the applicant and proof of income. Proof may be in the form of pay stubs, W-2, or any form that can provide proof of income (bank account balance, receipts, etc). Standard for all applications. X

X 3) Once the above items are received, the applicant will need to respond to a TransUnion Screening email and pay the \$35.00 processing fee charged by TransUnion. Again, standard for all applications. X

As a reminder, these are the minimum requirements needed for qualification. They are specified in the attachment we sent you several days ago. They are the same for every new application since ownership change.

We wish you success with this application and thank you for your cooperation, we hope it will be a new beginning for our relationship.

The Management.

EXHIBIT

A

EX 24

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Code of Federal Regulations, § 982.307 Tenant screening re Section 8.

(a) *PHA option and owner responsibility.*

(1) The PHA has no liability or responsibility to the owner or other persons for the family's behavior or suitability for tenancy. However, the PHA may opt to screen applicants for family behavior or suitability for tenancy. The PHA must conduct any such screening of applicants in accordance with policies stated in the PHA administrative plan.

(2) The owner is responsible for screening and selection of the family to occupy the owner's unit. At or before PHA approval of the tenancy, the PHA must inform the owner that screening and selection for tenancy is the responsibility of the owner.

(3) *The owner is responsible for screening of families on the basis of their tenancy histories.*

An owner may consider a family's background with respect to such factors as:

(i) Payment of rent and utility bills;

(ii) Caring for a unit and premises;

(iii) Respecting the rights of other residents to the peaceful enjoyment of their housing;

(iv) Drug-related criminal activity or other criminal activity that is a threat to the health, safety or property of others; and

(v) Compliance with other essential conditions of tenancy.

(b) *PHA information about tenant.*

(1) The PHA must give the owner:

(i) The family's current and prior address (as shown in the PHA records); and

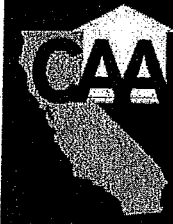
(ii) The name and address (if known to the PHA) of the landlord at the family's current and prior address.

(2) When a family wants to lease a dwelling unit, the PHA may offer the owner other information in the PHA possession, about the family, including information about the tenancy history of family members, or about drug-trafficking by family members.

(3) The PHA must give the family a statement of the PHA policy on providing information to owners. The statement must be included in the information packet that is given to a family selected to participate in the program. The PHA policy must provide that the PHA will give the same types of information to all families and to all owners.

(4) In cases involving a victim of domestic violence, dating violence, sexual assault, or stalking, 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) applies.

(Approved by the Office of Management and Budget under control number 2577-0169) [60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 61 FR 27163, May 30, 1996; 64 FR 26645, May 14, 1999; 64 FR 49658, Sept. 14, 1999; 73 FR 72344, Nov. 28, 2008; 75 FR 66263, Oct. 27, 2010; 81 FR 80816, Nov. 16, 2016]



CALIFORNIA APARTMENT ASSOCIATION

Industry Insights

Screening: Establishing Criteria

Developing Appropriate Screening Criteria

Prior to offering residential property for rent, every owner and manager should develop written screening criteria that will be applied consistently to all applicants. Criteria should include minimum income requirements, credit, employment, and other objective criteria. Appropriate screening criteria will help rental property owners attract qualified applicants and quickly identify applicants who do not qualify. A property owner who establishes appropriate screening criteria should find, more often than not, that he or she ends up with tenants who pay rent on time and who adhere to house rules and policies. Consistent application of these criteria, including renting to the first applicant who qualifies, will protect against claims of discrimination. This paper does not set model screening guidelines for owners – that is a business decision for each individual property owner or management company. Instead it provides an overview of the legal, practical, and ethical considerations that should be addressed by an owner in the development and application of screening criteria. CAA recommends that owners have their written screening policies reviewed by an attorney prior to implementation.

PURPOSE OF SCREENING CRITERIA

EXHIBIT

C-1

The purpose of written screening criteria is to ensure that owners have an objective means to determine whether an applicant qualifies for a particular unit. Owners and managers who rely on "gut instinct" or other subjective criteria often face costly mistakes, as the "nice" residents fail to pay rent on time (or at all), damage the unit, and disrupt the quiet enjoyment of other residents. An owner who provides written screening criteria to each prospective resident, may encourage those individuals with poor credit or problematic rental history to look elsewhere.

Objective screening criteria allows the owner to evaluate the risk posed by a particular applicant. Some flexibility is possible, as long as it is justified and documented. For example, an owner could choose to require tenants who are on the lower end of the minimum income standard to have a higher credit score, or pay a larger deposit. Similarly, an applicant with an unacceptable eviction history, who participates in a program for homeless veterans, could be considered to pose less risk if the program assists with security deposits and utility bills; and guarantees coverage of unpaid rent and move-out repairs. Any deviation from a property's standard screening criteria should be reviewed by an attorney prior to implementation and the basis for the deviation well-documented.

CONSISTENT APPLICATION OF SCREENING CRITERIA

Consistent application of screening criteria is essential to (1) ensure that all residents meet the standards and (2) avoid fair housing claims. This means that owners should rent to the first applicant who meets the screening criteria, rather than the one who seems "best" qualified. Treat all applicants in the same way from the first contact on the telephone to the in-person meetings. Written selection criteria should be provided to each and every applicant or may be attached to all rental applications or posted in the office for everyone to see. The date and time of receipt should be noted on each application. The applications should be processed in the order received. The first qualified applicant should be accepted.

CHANGES TO SCREENING CRITERIA

EXHIBIT

C-2

A change in property ownership or economic conditions may result in a change in screening criteria. It is critically important to document these changes, and retain them in case of any complaint that may arise.

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A. Common Screening Criteria

Income Requirements. Owners may establish a policy that requires applicants to have a combined gross income at least "X" times the monthly rent (or equivalent financial assets). For example: If the unit rent for \$1000/month, owners could require an income of 3 times the rent i.e., \$3000/per month. This amount should be appropriate based on the age, location, and condition of the property and the demographics of the area. If you find that too great a percentage of prospective applicants fail the income standard, it may be that the expectation is too high. Similarly, if you have many qualified applicants you may consider making your criteria more stringent.

- **Combined Income:** If you allow married couples to combine their income to meet the income requirement, by law, you must also allow unmarried couples/roommates to do the same.
- **Source of Income:** California law does not allow property owners to discriminate based on an applicant's source of income. Income from sources such as AFDC, SSI, etc., must be considered when determining whether the applicant meets the minimum income standard. In addition, some applicants may have grants, investment accounts, or other sources of income, but may not be employed. All legal financial resources need to be treated equally. (California law, however, does not require owners/managers to participate in the federal Section 8 program.)
- **Proof of Income:** An applicant's potential sources include bank records, an offer of employment, income tax returns, proof of ongoing income from a legal settlement, contract employment, government subsidy, divorce decree, or maintenance.

EXHIBIT

C-3

- For more information see: CAA's Industry Insight "Screening Criteria, Credit Checks, Notices of Denial and Adverse Action"

[<http://caanet.org/kb/screening-developing-appropriate-screening-criteria/>]

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Credit Requirements. There are a variety of potential disclosures that may, based on an owner's screening criteria, disqualify an applicant, including insufficient income, too many obligations for the income (i.e., debt to income ratio), unpaid collection accounts, a pattern of late payments or non-sufficient funds (NSF) checks, and bankruptcies.

- **Questions to Consider:**

- How do you define "good credit"? Be specific.
- Will a FICO score be acceptable? (See note below)
- Will past due payments on medical bills be an exception?
- Will you take into consideration the number of credit check inquiries completed prior to yours?
- How will you handle those new to our country? Immigrants, resident workers, or foreign students may well be good risks, but they have no conventional credit track record.

Note: A FICO score is a credit score developed by Fair Isaac & Co. Rental property owners and other business owners use credit scores to determine the likelihood that credit users will pay their bills. Credit scores are calculated by using scoring models and mathematical tables that assign points for different pieces of information that best predict future credit performance. There are three FICO scores computed by data provided by each of the three bureaus. Some property managers use one of these three scores, while others may average the scores from the three bureaus.

• **Questions to Consider:**

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- How will you address:
 - No rental history
 - Gaps in rental history
 - Incomplete rental history
 - Disparities between information provided by the applicant and information provided by previous landlords (e.g. rental payment amounts, named occupants on the lease).
 - Negative information from previous landlords
 - Eviction filings or judgments
 - Unverifiable addresses or inconsistency with residence history in the credit report
 - Landlords who are members of the applicant's family.

Lack of Rental History Due to Homeownership. If an applicant previously owned his or her own home and does not have recent rental tenancies to verify, ask for proof that a mortgage was paid regularly. A consumer credit report should also show whether mortgage payments were missed or paid late.

Eviction History. A number of property owners are currently involved in litigation over tenant screening reports that provide information about unlawful detainer actions. The following resources provide more information on this issue and can be found here: CAA's Industry Insight "Screening Criteria, Credit Checks, Notices of Denial and Adverse Action" [<http://caanet.org/kb/screening-developing-appropriate-screening-criteria/>].

4. Criminal Background Checks: As information about criminal background becomes more readily available, many owners and managers are adding criminal background checks to their screening process for prospective residents. As with any other screening criteria, an owner's standards must be narrowly tailored to avoid illegal discrimination. Excluding every applicant with any criminal background, without regard to the offense's relationship to the

applicant's ability to meet tenancy obligations is likely to run afoul of fair housing laws. CAA has developed a separate background paper that presents the pros and cons and suggests questions and issues that members should discuss with their counsel concerning criminal background checks.

B. Additional Requirements

The following information addresses the use of the property by residents rather than screening criteria applied by the property owner. Many owners find it helpful to provide to prospective tenants the policies and the rules for the property during the screening process.

1. **Occupancy Standards.** Setting an occupancy limit that is too strict may run afoul of fair housing laws. The State Department of Fair Employment and Housing has historically used a 2 persons per bedroom + 1 additional person for the unit as guidance for enforcement actions. This means that 5 persons should be allowed to live in a two-bedroom apartment. See CAA's Industry Insight "Occupancy Standards – Federal, State and Local."

[<http://caanet.org/kb/occupancy-standards-federal-state-local/>]

2. **Pets.** Property owners may prohibit pets or set restrictions based on species, breed, size, etc. However, owners may not refuse to rent to a disabled person who has a service animal nor may the owner refuse to rent to an individual who trains and has a service animal. In some cases it may be a reasonable accommodation to allow a disabled person to have a "companion" animal that may not otherwise qualify as a "service animal." See CAA's Industry Insight "When is a Pet Not a Pet? – Accommodating Persons with Disabilities."

[<http://caanet.org/kb/pets-companion-animals-pet-not-pet-accommodating-persons-disabilities-caa-white-paper/>]

3. **Smoking.** Owners of residential rental property may designate some or all of the property as "nonsmoking." See CAA's Industry Insight "Tobacco Smoking at Residential Rental Properties

[<http://caanet.org/kb/smoking-rental-property-caa-white-paper/>] and CAA's Form 34.0 – Smoke-Free Lease Addendum. [<http://caanet.org/kb/smoking-policy-addendum-form-34-0/>]

4. Parking, Guests, and Other Policies. Many other types of restrictions on use of the property can be addressed in an owner's house rules. It is helpful to prospective residents for a property owner to provide them with information up front about what type of parking is or is not available. Restrictions on guest are also permissible but cannot be "unreasonable." For more information see: CAA's Industry Insight "When Does a Guest Become a Resident" [<http://caanet.org/kb/room-mates-co-tenants/>].

C. Other Resources

- CAA offers applicant screening services, including credit checks and eviction history. Screening can be performed immediately (online) for instant results. Contact your local Chapter or Division.
- CAA Form 3.0 – Application to Rent [<http://caanet.org/kb/application-to-rent-form-3-0/>] – Owners should provide an Application to Rent form to all applicants. CAA's form includes a space for the applicant to sign, which grants written permission needed for the owner to perform a credit check.
- Use CAA Form 3.0-R – Application to Rent with Receipt Attached [<http://caanet.org/kb/application-rent-screening-fees-receipt-form-3-0-r/>] or CAA Form 3.5 – Receipt for Tenant Screening and/or Credit Checking Fees [<http://caanet.org/kb/receipt-tenant-screening-andor-credit-checking-fees-form-3-5/>], if owners charge an application fee. California law limits the fee owners may charge a prospective resident to cover the cost of screening. The fee cannot be greater than the actual out-of-pocket costs of gathering information on the applicant. The initial law provided that in no case, however, can the amount of the application fee charged by the owner be greater than \$30 per applicant. This fee may be adjusted annually by the owner commensurate with an increase in the Consumer Price Index. If the owner charges applicants a fee to obtain a credit report, applicants are entitled to a copy of the report if they request it. If a credit check is not run and the prospective tenant has paid a fee to the property owner, the owner must return the fee to the applicant.

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PROOF OF SERVICE BY PRIORITY MAIL

I declare that I am a resident of or employed in the County of Alameda, State of California. I am over the age of eighteen years and am not a party to this action. My residence or business address is 1901 Harrison Street, 14th Floor, Oakland, CA 94612.

On May 14, 2018, I served the attached, concerning the action known as 1921-26th Avenue LLC v. Nanos, Oakland Rent Board Petition T17-0421

**APPELLANT'S SUPPORTING ARGUMENT AND DOCUMENTATION
TO BE CONSIDERED BY THE BOARD ON APPEAL**

on the parties herein in said action, by placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for mailing with the United States Postal Service. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

The envelope was addressed, sealed and placed for collection and mailing, following this business' ordinary business practices, from Oakland, California, as follows:

David Scott Nanos
1921-26th Avenue #6
Oakland, CA 94601

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and this declaration was executed on June 7, 2018, at Oakland, California.


Fabienne Lopez

000074

CHRONOLOGICAL CASE REPORT

Case No.: T17-0419

Case Name: Beard v. Stewart et al

Property Address: 1470 Alice Street, #206, Oakland, CA

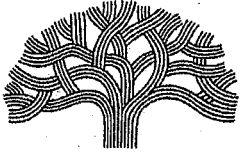
Parties: James Beard (Tenant)
Thomas Preston (Agent for Owner)
Joanna Ediin (Agent for Owner)
Greg McConnell (Owner Representative)
JR McConnell (Owner Representative)

TENANT APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	July 17, 2017
Owner Response filed	October 4, 2017
Hearing Decision mailed	March 8, 2018
Tenant Appeal filed	March 28, 2018

T17-0419 KM/SK

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RENT ADJUSTMENT PROGRAM

 CITY OF OAKLAND	CITY OF OAKLAND RENT ADJUSTMENT PROGRAM P.O. Box 70243 Oakland, CA 94612-0243 (510) 238-3721	For date stamp: 2017 JUL 17 PM 3:04
	<u>TENANT PETITION</u>	

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 James Beard	Rental Address (with zip code) 1470 Alice St #206 Oakland, CA 94612	Telephone: (510) 289-5301 E-mail:
Your Representative's Name	Mailing Address (with zip code)	Telephone: Email:
Property Owner(s) name(s) Lucky Stewart Thomas Preston	Mailing Address (with zip code) 1145 Bush St San Francisco, CA 94109	Telephone: (415)-434-9700 x 209 Email: SFbuildings@gmail.com
Property Manager or Management Co. (if applicable) Alice B. Building LLC	Mailing Address (with zip code) 1470 Alice St Oakland, CA 94612	Telephone: 415-819-5996 Email: 1470Alice@gmail.com

Number of units on the property: 22

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

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

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

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

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

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

Date you moved into the Unit: 3-15-2014 Initial Rent: \$ 1400.00 /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: 3-15-2014 If never provided, enter "Never."

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

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

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

T15-0395, T16-0734

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:

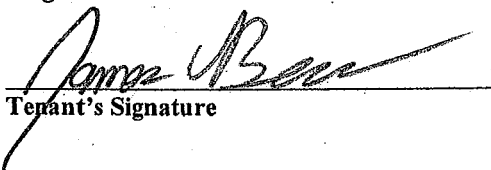
- 1) a list of the lost housing service(s) or problem(s);
- 2) the date the loss(es) or problem(s) began or the date you began paying for the service(s)
- 3) when you notified the owner of the problem(s); and
- 4) how you calculate the dollar value of lost service(s) or problem(s).

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

6-22-2017
Date

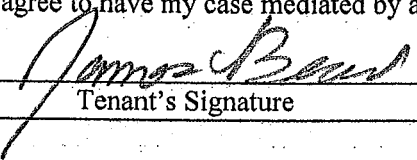
V. MEDIATION AVAILABLE: Mediation is an entirely voluntary process to assist you in reaching an agreement with the owner. If both parties agree, you have the option to mediate your complaints before a hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal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

6-22-2017
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): _____

Decrease in Services

SUMMER RECEIVED
CITY OF OAKLAND
RENT ARBITRATION PROGRAM 2017

2017 JUL 17 PM 3:04

1. On or about 4-24-2017, All electrical outlets were blocked and shut off. I use these outlets to vacume my vehicle and charge my drill batteries in my storage unit for work. There were at least 6 working wall/column ^{available} outlets for electrical service since the apartment was built in 1966. This is an electrical utility shut-off There is also 2 light switches in my unit currently not working that has not been addressed. \$75 a month reduction seems fair untill All power gets restored through out the building for judgement. Photo's and email's will be produced when I get back in town after July 26, 2017.

2. On or about 5-01-2017, The 2 front door master locks were changed without providing any tenants at least 2 keys (master + spare). The FOB key is the only way into the front entrances. If we loose power again to the building, the FOB key will not open the door and we will be locked out of the building. \$50 reduction monthly, in ~~rent~~ reduction is fair untill every tenant gets at least 2 keys to the front entrance and for the months the decrease in service started.

3. Elevator issues including expired permit. In the last 6 weeks the elevator stops working. Management has not updated the elevator inspections and the elevator permit expired Fall 2016

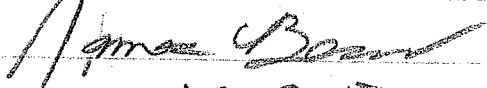
000080

3. (continued)

\$100 monthly rent reduction starting from June 2017, until elevator has updated permits and is fully functioning is a fair judgement. Photographs + emails will be produced and filed

4. Mold exists in the garage in storage unit #15 next to mine #14. 3 types of mold were found in the garage. Mold reports + emails will be produced and filed. \$100 reduction in rent seems fair until all mold is cleared with a certificate from a mold inspector/expert, indicating that repairs are completed with satisfaction.

James Beard - Tenant


7-17-2017



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

For date stamp: RECEIVED
 CITY OF OAKLAND
 RENT ARBITRATION PROGRAM
 2017 OCT -4 PM 2:01
PROPERTY OWNER
RESPONSE

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

CASE NUMBER T 17-0419

Your Name Lucky Stewart Thomas Preston Alice B. Building, LP	Complete Address (with zip code) 1145 Bush St. San Francisco, CA 94109	Telephone: 415-434-9700
		Email: sfbuildings@gmail.com
Your Representative's Name (if any) Greg McConnell JR McConnell The McConnell Group	Complete Address (with zip code) 300 Frank H. Ogawa Plaza Suite 460 Oakland, CA 94612	Telephone: 510-834-0400
		Email: gmc@themcconnellgroup.com jr@themcconnellgroup.com
Tenant(s) Name(s) James Beard	Complete Address (with zip code) 1470 Alice St. #206 Oakland, CA 94612	georgiacyclone@sbcglobal.net
Property Address (If the property has more than one address, list all addresses) 1470 Alice St., Oakland, CA 94612		Total number of units on property 22

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

Have you paid the current year's Rent Program Service Fee (\$68 per unit)? Yes No APN: 8-627-27
 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.**
 *will be provided prior to hearing

Date on which you acquired the building: 03 / 15 / 14.

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.

* Tenant is not contesting a rent increase. Tenant claims decreased housing services.

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

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

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

The tenant moved into the rental unit on March 15, 2014.

The tenant's initial rent including all services provided was: \$ 1400 / 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? March 15, 2014

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>	
11/1/16	12/1/16	\$ 1,400.00	\$ 1,450.85	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
* 4/28/16	6/1/16	\$ 1,261.50	\$ 1,331.50	<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

* Per RAP order in tenant petition T15-0395

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 A

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

10/3/17

Date

IMPORTANT INFORMATION:

Time to File

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

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

File Review

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

Mediation Program

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

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

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

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

Property Owner's Signature

Date

T17-0419; Beard v. Alice B. Building, LP
Attachment A

Landlord Response to tenant claims:

Landlord respectfully demands that this petition be dismissed. The claims in this petition were heard and decided upon in T16-0228 and T16-0734. Tenant dismissed T16-0228 and T16-0734 was denied by RAP Hearing Officer Kasdin. His decision was affirmed by Administrative Appeal dismissal with prejudice. These decisions have been finalized and are unreviewable per the doctrine of res judicata. Furthermore, when Tenant filed prior petitions he was under the obligation to include all issues that he claims required adjudication. A petitioner must bring all actions at one time, or he / she is barred by collateral estoppel.

For the record:

1. Landlord denies electrical issue claims. The outlets in the garage are intended for management use. They were removed / disabled due to tampering and misuse which caused a safety threat to the entire building and all of the residents. This issue was reviewed by city inspectors and RAP hearing officers and deemed to be a non-issue.

Per the in-unit light switch, all of the lights and electrical outlets in the unit are working, and the switch doesn't affect anything.

2. Entry code / key fob issue was included in T16-0228 which tenant dismissed. Issue was also included in T16-0734 and denied by RAP via Hearing Officer decision with affirmation by Administrative appeal dismissal with prejudice. Claim is untimely and has been decided upon. Landlord disputes claim and any entitlement to reductions in rent.
3. Landlord disputes Elevator claim, the elevator is in working order and has a current permit. Landlord will present evidence at hearing.
4. Landlord disputes storage area claim and will defend issue at hearing. Issues was included in T16-0734 and denied by RAP via Hearing Officer decision with affirmation by Administrative appeal dismissal with prejudice.

Additional Responses:

5. Landlord contests all claims of service reductions.
6. Landlord denies each and every allegation in petition and reserves the right to supplement the response prior to hearing and provide additional testimony at hearing.

CITY OF OAKLAND



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

Housing and Community Development Department
Rent Adjustment Program

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

HEARING DECISION

CASE NUMBER: T17-0419, Beard v. Stewart

PROPERTY ADDRESS: 1470 Alice Street, Unit 206

DATE OF HEARING: December 14, 2017

DATE OF DECISION: February 5, 2018

APPEARANCES: James Beard, Tenant
Thomas Preston, Agent for Owner
Joanna Ediin, Agent for Owner
Greg McConnell, Owner Representative
JR McConnell, Owner Representative

SUMMARY OF DECISION

The tenant's petition is denied.

CONTENTIONS OF THE PARTIES

The tenant filed a petition on July 17, 2017, claiming that his housing services had decreased. The claims of decreased services involve: the loss of the electrical outlets in the garage; broken light switches in his unit; master locks were changed without providing tenants two keys; elevator problems associated with an expired permit; and, mold in the garage in the storage unit next to the tenant's.

The owner filed a timely response to the tenant petition on October 4, 2017, claiming that there had been no decrease in the tenant's housing services.

///

///

THE ISSUE

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

Decreased Housing Services:

Loss of the electrical outlets in the garage: Official Notice is taken of the Hearing Decision in Case No. T16-0734, Beard v. Stewart, which involved the same parties as in the present case. In that prior case, the parties agreed that in April 2017, the owner placed "blocking caps" over all electrical outlets in the parking garage below the subject building. One of the tenant's claims of decreased housing services was that he could no longer charge his power tools in the garage.

The property manager in that prior case testified that the outlets were only for the use of building management, and they were covered over because they were felt to be a fire hazard. The Findings of Fact in that case states, in part: "The testimony of the owner's agent that the garage outlets were never intended to be used by tenants is credited. Further, the . . . closure of the outlets had minimal effect upon the tenancy. The claim is denied." That case is currently on appeal.

Broken light switches in his unit: At the Hearing, the tenant testified that a light switch in his bedroom and living room have never worked. The bedroom switch activates an outlet; there is no overhead light in this room. The living room has a dual switch. One switch activates an outlet, and the other activates the overhead light. On this fixture, only the switch that activates the outlet does not work. Both switches were repaired in September 2017. The parties agreed that there are 3 outlets in the bedroom and at least one outlet in the living room as well as the ceiling light.

Master locks were changed without providing tenants two keys: The tenant testified that in May 2017 a new entry system was installed in the subject building. Previously, tenants could open the front door with a key as an alternative to the electronic entry system. Now, the front door can only be opened with a "fob." The tenant contends that, if there were a power outage, he might be unable to enter the front door. There has not been such a power outage since the new system was installed.

Ms. Ediin, the property manager, testified that the change occurred in April 2016, not in 2017, the new system was installed to provide greater security for the tenants, and that there is a backup system with 2 large batteries. Official Notice is taken of the prior case referenced above, in which the tenant stated in his sworn petition that a new building entry system was installed in April 2016. That claim was denied since the petition was filed past the filing deadline.

Elevator problems associated with an expired permit: The tenant testified that the inspection permit for the building elevator had expired in October of 2016; it was renewed prior to the Hearing.¹ At the Hearing, when asked how this affected the functioning of the elevator, the tenant testified that on 2 occasions the elevator would not operate because someone had not fully closed the door on another floor.

Ms. Ediin testified that the elevator functioned well. That she called to arrange the annual inspection a little late and that the inspection was not scheduled until after the permit expired. After the inspection, which occurred in January of 2017, she was informed that some maintenance work was necessary. She arranged this work right away, had the work done and then received her elevator permit in August of 2017.²

Mold in the garage in the storage unit next to the tenant's: The tenant testified that there is mold in the garage storage locker next to his, and that he believes the presence of this mold is harmful to his health. In the prior case, it was found that the tenant's housing services were temporarily decreased because of mold in *his* storage locker because he was unable to store his work tools in the locker. The tenant testified that he complained about this to Ms. Ediin last year; Ms. Ediin denied that she had ever received such a complaint.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Decreased Housing Services:

Loss of the electrical outlets in the garage: The tenant made the identical claim in the prior case discussed above. 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. 4th 888, 896 (2002). "A party cannot by negligence or design withhold issues and litigate them in consecutive actions. Hence the rule is that the prior judgment is *res judicata* on matters which were raised or could have been raised, on matters litigated or litigable." *Amin v. Khazindar*, 112 Cal. App. 4th 582, 589-590 (2003). A party cannot have more than "one bite at the apple," and the claim is denied.³

Broken light switches in his unit: This claim is denied for two reasons. First, since the condition is unchanged since he tenant moved in, his housing services have not been decreased. Secondly, O.M.C. Section 15.08. 260(C), being part of the Building Maintenance Code, states, in part: "Every habitable room shall contain at least two electrical convenience receptacles or one convenience receptacle and one switched electric light fixture." There is no Code violation, and the claim is denied.

¹ See photo of expired permit, Exhibit 1

² See Exhibit 6

³ While the tenant's initial complaint in his first petition was about the temporary loss of electricity in the garage, at the Hearing the tenant testified to the complete loss of electricity. The Hearing Decision in the prior case specifically denied the tenant's permanent loss of use of electricity.

Master locks were changed without providing tenants two keys: It is more likely than not that this event occurred in the year 2016, and is therefore time-barred, as was found in the prior case. Further, since prior building tenants may well have kept their front door keys, the new system does provide greater tenant security, and the likelihood that a power outage would coincide with a failure of the backup batteries is highly unlikely. For both of these reasons, the claim is denied.

Elevator problems associated with an expired permit: The expired permit had no effect upon the functioning of the elevator and, therefore, no effect upon the tenant's housing services. The occasional failure of the elevator testified to by the tenant was related to other tenants' carelessness and not any problem with the elevator itself. The claim is therefore denied.

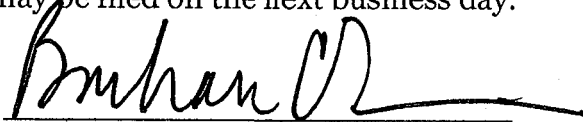
Mold in the garage in the storage unit next to the tenant's: The presence of mold in an area in which the tenant would be present for occasional, very brief periods of time, and in an open area, would have a minimal, if any effect upon anyone. Further, this locker is in an underground parking garage, where the air quality is hardly ideal. This is a frivolous claim, and is denied.

ORDER

1. Petition T17-0419 is denied.

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

Dated: February 5, 2018



Barbara M. Cohen
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE

Case Number T17-0419

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

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

Documents Included

Hearing Decision

Owner

Alice B. Building LLC
1145 Bush St
San Francisco, CA 94109

Owner

Lucky Stewart & Thomas Preston
1145 Bush St
San Francisco, CA 94109

Owner Representative

Greg McConnell/JR McConnell/ The McConnell Group
300 Frank H. Ogawa Plaza Ste. #460
Oakland, CA 94612

Tenant

James Beard
1470 Alice St #206
Oakland, CA 94612

Tenant Representative

Mercedes Gavin
145 Town Center #543
Corte Madera, CA 94925

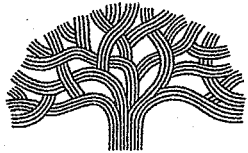
000091

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 8, 2018, in Oakland, CA

A handwritten signature in black ink, appearing to read 'Barbara Cohen', written over a horizontal line.

Barbara Cohen
Oakland Rent Adjustment Program



CITY OF OAKLAND

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

date stamp.
RECEIVED
CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM
2018 MAR 28 PM 2:37
APPEAL

Appellant's Name James Beard		<input type="checkbox"/> Owner <input checked="" type="checkbox"/> Tenant	
Property Address (Include Unit Number) 1470 Alice st #206 Oakland, CA 94612			
Appellant's Mailing Address (For receipt of notices) same as property address		Case Number T17-0419	
		Date of Decision appealed executed on 3-8-2018	
Name of Representative (if any)		Representative's Mailing Address (For notices)	

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

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

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

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

For more information phone (510) 238-3721.


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

Submissions to the Board are limited to 25 pages from each party. Please number attached pages consecutively.
 Number of pages attached: 5.

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 3-28 _____, 2018, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<u>Name</u>	Lucky Stewart
<u>Address</u>	1145 Bush st
<u>City, State Zip</u>	San Francisco, CA 94109
<u>Name</u>	Thomas Preston
<u>Address</u>	1145 Bush st
<u>City, State Zip</u>	San Francisco, CA 94109

	3-28-2018
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SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE

DATE

For more information phone (510) 238-3721.

- The decision hasn't been supported by substantial evidence
- Joanne Eiden provided no PROOF of evidence that the security system with new master locks changed in April 2016. She gave a completely false testimony. I used those locks all the way until April 2017. She provided no receipts or work order from the lock smith on the date all front door master locks were changed. I always use the master lock until April 2017. On November 2016, I tested my key with Joanne Eiden present and the key still worked.

I was denied a sufficient opportunity to present my claim on many levels and occasions during the 7-7-0419 hearing.

- I was often interrupted by Mr. Greg McConneil and during the last hearing he misdirected the hearing ^{process} trying to confuse the hearing officer with previous and introducing new evidence as he walked in 15 minutes late that was irrelevant to this case and I was not allowed to present new contradictory evidence on Loss of electrical outlets in the garage which constitutes a utility service cut off. I was denied any opportunity to present my claim.

- After Joanne Eiden provided a false testimony with no evidence or proof that the master locks were changed in April 2016 and not the real date of early April 2017, I was not allowed to provide any new evidence nor did Joanne Eiden show any receipts or work orders proving the master locks were not changed on April 2017 without providing at least 2 master keys.

a) The FOB system has failed me on multiple times before April 2017 and I used my master key to get in.

Other: Broken light switches claim was denied.

Light switches are not there for decorations. All IBR/IBA units in 1470 Alice St have the same outlets and switches in the same locations and they all operate and function except mine until 9/2017, months after the petition was filed.

The luxury tenants in the newly renovated units have all switches & outlets working and but they refuse to help the middle income blue collar worker with a southern accent that has no control over how I speak. That is a unfair and discriminatory business practice. Its part of gentrification and class warfare and lucky steward is destroying our community.

If mgmt continues to reduce ~~or~~ remove services at the rate they are going, there going to be more petitions & hearings at best or family displacements and evictions due to power hungry landlords that set away with violating tenants rights by decreasing services. They will continue down this path until the hearing officers say enough is enough. A fair decision is reduced Rent based on all decreased services.

On Nov. 2016 Joanne and I used my master key to open the front door just to show her that the master key and lock work just fine. After the FOB failed me more than 3 times I relied on the master key.

Since the 2 master locks have been changed with no spare keys or master keys the FOB has failed me more than twice. I got off work at Oracle Area @ 3am and my FOB failed last November 22²⁰¹⁷. A tenant in 103 let me in as he was checking his mail in the middle of the night. I called Joanne to tell her I couldn't get in the building and she refused to answer her phone.

Joanne lied or gave false testimony about the date and reasons the master locks were changed. Electronics fail during bad weather, earthquakes & power outages. Sometimes they fail for no reason at all and they have

Loss of electrical outlets in the garage: In T16-073 loose & exposed wire was the hazard I protested. I didn't lose the outlets until after I filed a complaint on one exposed wire. Loss of electrical outlets in a completely different 000098 of serv

On loss of electricity outlets in the garage I was denied sufficient opportunity to present my case and dispute new evidence introduced on the day of the hearing in which Mr. McCombe was 15 minutes late. He could have either submitted evidence by mail or walked one building over to submit evidence 7 days prior. The service employees strike was over before then. Denying my opportunity to challenge new evidence or introduce new evidence is unfair.

The electrical outlets in the garage have been used by tenants in the parking garage since 1966, 52 years, with knowledge of property mgmt and permission. The roof is equiped with solar panels before Lucky Stewart purchased the building in April 2016. The tenants barely draw any power out of a 110v plug. Removing electrical outlets in the building used by tenants for 52 years constitutes a utility blockage or shut off. My home is not an adult daycare center.

CHRONOLOGICAL CASE REPORT

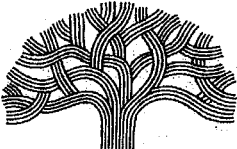
Case No.: T17-0176
Case Name: Guerra v. Marquez et al.
Property Address: 3327 38th Avenue, Oakland, CA
Parties: Kathy A. Guerra (Tenant)
James Vann (Tenant Representative)
Maria S. Marquez (Owner)
Carlos Ramirez (Owner)

OWNER APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	March 14, 2017
Owner Response filed	August 24, 2017
Hearing Decision mailed	January 25, 2018
Owner Appeal filed	February 13, 2018
Tenants Response to Appeal filed	March 19, 2018

T17-0176 MS/MA

RECEIVED
CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM

 CITY OF OAKLAND	CITY OF OAKLAND RENT ADJUSTMENT PROGRAM P.O. Box 70243 Oakland, CA 94612-0243 (510) 238-3721	For date stamp: MAR 14 PM 3:02
	TENANT PETITION	

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

Please print legibly

Your Name Kathy A. Guerra	Rental Address (with zip code) 3327 38th Ave Oakland, CA 94619	Telephone: (415) 305-1717 E-mail: girasols@yahoo.com
Your Representative's Name James Vann	Mailing Address (with zip code) 251 Wayne Ave Oakland, CA 94606	Telephone: (510) 703-0142 Email:
Property Owner(s) name(s) Silvia Marquez Carlos Ramirez	Mailing Address (with zip code) 4431 James Ave Castro Valley, CA 94546	Telephone: (707) 315-1287 Email: ct.rv@hotmail.com
Property Manager or Management Co. (if applicable)	Mailing Address (with zip code)	Telephone: Email:

Number of units on the property: 6

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 type="checkbox"/> Yes	<input type="checkbox"/> No	

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

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

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

	rent increase.
	(d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.)
	(e) The property owner did not give me the required form "Notice of the Rent Adjustment Program" at least 6 months before the effective date of the rent increase(s).
	(f) The rent increase notice(s) was (were) not given to me in compliance with State law.
	(g) The increase I am contesting is the second increase in my rent in a 12-month period.
<input checked="" type="checkbox"/>	(h) There is a current health, safety, fire, or building code violation in my unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance. (Complete Section III on following page)
<input checked="" type="checkbox"/>	(i) The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner. (OMC 8.22.070(F): A decrease in housing services is considered an increase in rent. A tenant may petition for a rent adjustment based on a decrease in housing services.) (Complete Section III on following page)
	(j) My rent was not reduced after a prior rent increase period for a Capital Improvement had expired.
	(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: 8/16/15 Initial Rent: \$ 1,400.00 /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: NEVER. If never provided, enter "Never."

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

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

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

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

Have you ever filed a petition for this rental unit?

- Yes
 No

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

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).

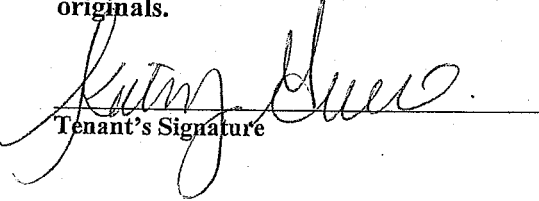
Please attach documentary evidence if available.

Please see attached documents; #46 pages attached.

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

3/14/17

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): _____

List of Outstanding Damages at 3327 38th Ave. Oakland, Ca 94619

1. Windows: Outside window frames need to be sealed with foam. Concrete or stucco need will be added to cover the exposed wires,
2. Kitchen cabinets: The ledges of the cabinets need to be sanded and re-painted. Damages after first replacement of windows was done.
3. Bathroom window: The inside of the window frames needs to be patched and repainted. Damages after Carlos replaced the window.

CITY OF OAKLAND RENT ADJUSTMENT PROGRAM P.O. Box 70243 250 Frank H. Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721	For filing stamp. RECEIVED CITY OF OAKLAND RENT ADJUSTMENT PROGRAM 2017 AUG 24 PM 3:14
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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 T17-0176

OWNER RESPONSE

Please print legibly.

Your Name Silvia Marquez Carlos Ramirez	Complete Address (with zip code) 4431 James Ave Castro Valley, CA 94546	Phone: 510-301-6262 SM 707-315-1287 CE Email: msrsilvia@yahoo.com cf.ru@hotmail.com
Your Representative's Name (if any)	Complete Address (with zip code)	Phone: _____ Fax: _____ Email: _____
Tenant(s) name(s) Kathy A. Guerra	Complete Address (with zip code) 3327 38th Ave. Oakland CA 94619	

Have you paid for your Oakland Business License? Yes No Number 001 81936
(Provide proof of payment.)

Have you paid the Rent Adjustment Program Service Fee? ^{\$65⁰⁰} (\$30 per unit) Yes No
(Provide proof of payment.)

There are 3 residential units in the subject building. I acquired the building on July 12, 2015

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

I. RENTAL HISTORY

The tenant moved into the rental unit on Aug 15, 2015

The tenant's initial rent including all services provided was \$ 1400.00 / month.

Have you (or a previous Owner) given the City of Oakland's form entitled **NOTICE TO TENANTS OF RESIDENTIAL RENT ADJUSTMENT PROGRAM ("RAP Notice")** to all of the petitioning tenants?
Yes No I don't know If yes, on what date was the Notice first given? _____

Is the tenant current on the rent? Yes No

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	
October 7, 2016	Nov 7, 2016	\$ 1400.00	\$ 1428.00	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Dec. 7, 2016	Jan 1, 2017	\$ 1400.00	\$ 1428.00	<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

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.

<u>Date of Increase</u>	Banking (deferred annual increases)	Increased Housing Service Costs	Capital Improvements	Uninsured Repair Costs	Fair Return	Debt Service (if purchased before 4/1/14)
_____	<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"/>	<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, 6th 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.**

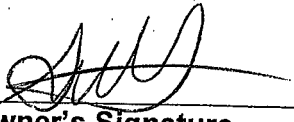
NOTE: If you do not file a timely Response, you will not be able to produce evidence at the Hearing, unless you can show good cause for the late filing.

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

Aug 23, 2017
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

Date

RECEIVED
CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM

NOTICE OF ENTRY

2017 AUG 24 PM 3:16

To: Kathy Guerra ("Tenant")
and any other occupant(s) in possession of the premises located at: (Street Address) _____
3327 38th Ave (Unit/Apartment#) _____
(City) Oakland (State) Ca (Zip Code) 94619 ("Premises").
Other notice address if different from Premises above: _____

Notice to the above-named person(s) and any other occupants of the above-referenced Premises:

1. DATE AND TIME OF ENTRY:

A. YOU ARE HEREBY NOTIFIED that, pursuant to California Civil Code §1954, the Landlord will be entering the Premises at the date and time stated in **B** below, which is at least 24 HOURS from personal delivery of this Notice or, if mailed, at least 6 DAYS from the date of mailing this Notice. Entry to be scheduled during normal business hours.

B. (i) Monday (DATE) August 28, 2017 (TIME) 10:00 Am - 4:00 Pm
(ii) _____ (DATE) _____ (TIME) _____

2. PURPOSE OF ENTRY: The entry is for the following purpose(s):

- A. To make the following necessary or agreed repairs: _____
- B. To supply the following necessary or agreed services: RE: CITY OF OAKLAND RENT ADJUSTMENT PROGRAM
CASE NUMBER: T17-0176
- C. To show the Premises to prospective or actual purchasers, mortgagees, tenants, workers or contractors.
- D. To install/test/repair/maintain smoke detectors. California Health and Safety Code §13113.7 provides that the owner or the owner's agent may enter a dwelling for this purpose.
 - To ensure that the water heater is properly braced, anchored, or strapped to resist falling in horizontal displacement. California Health and Safety Code §19211 provides that the owner or the owner's agent may enter the dwelling for this purpose.
 - To install/test/repair/maintain carbon monoxide devices. California Health and Safety Code §17926.1 provides that the owner or the owner's agent may enter a dwelling for this purpose.
- E. Oakland City Inspector, Travis H or other assigned. 510-238-6144

Landlord Maria S. Marquez Date August 23, 2017
(Owner or Agent)
Address 3327 38th Ave City Oakland State Ca Zip 94619
Telephone 510-301-6262 Fax _____ E-mail mrsilvia@yahoo.com cf.rv@hotmail.com

3. DELIVERY OF NOTICE/PROOF OF SERVICE:

This Notice was served by Carlos Ramirez, on August 23, 2017 (Date)
in the following manner: (if mailed, a copy was mailed at girasols@yahoo.com (Location).

A. PERSONAL DELIVERY:

- (1) **Personal service.** A copy of the Notice was personally delivered to the above named Tenant.
- (2) **Substituted service.** A copy of the Notice was left with a person of suitable age and discretion at the Premises.
- (3) **Left at Entry.** A copy of the Notice was left on, near or under, the usual entry door of the Premises.

B. MAIL DELIVERY:

Mail. A copy of this Notice was mailed to Tenant at the Premises. **Email**

(Signature of person serving Notice) Carlos Ramirez August 23, 2017
(Date)

(Print Name) (Keep a copy for your records.)

Reviewed by _____ Date _____



RE: CITY OF OAKLAND RENT ADJUSTMENT PROGRAM

CASE NUMBER: T17-0176

DATECASE FILED: MARCH 14, 2017

FILE NAME: KATHY GUERRA

PROPERTY ADDRESS: 3327 38TH AVENUE, OAKLAND CA, 94619

List of Outstanding Damages at 3327 38th Ave, Oakland Ca, 94619

1. Windows: Outside window frames need to be sealed with foam. Concrete or stucco need will be added to cover exposed wires.
2. Kitchen cabinet: The ledges of the cabinets need to be sanded and re-painted. Damages after first replacement of windows was done.
3. Bathroom window: The inside of the window frames needs to be patched and repainted. Damages after Carlos re-place the window.

RE: EVIDENCE OF REPAIR

Base on unit inspection performed on, April 24, 2017

Tenant pointed to following needs:

- Mold in hallway closet
- Under neat sink, pain clippind stick
- Blind replacement/install old blinds in windows

This is prof of evidence of repairs performed on: April 26, 2017

- Closet clean and treaded
- Base board by sink painted
- Blinds installed

Base on Claim Filed by Kathy Guerra, a re-repair on May 12, 2017 is performed to address following:

List of Outstanding Damages at 3327 38th Ave, Oakland Ca, 94619

1. Windows: still outstanding as of 5/30/17 / completed as of 6/14/17
2. Kitchen cabinet: Completed on 5/30/17
3. Bathroom window: Completed on 5/30/17

Tenant Name: Kathy Guerra

Date: 5/30/17

Signature: Kathy Guerra



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

CITY OF OAKLAND

Housing and Community Development Department
Rent Adjustment Program

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

HEARING DECISION

CASE NUMBER: T17-0176, Guerra v. Marquez et al
PROPERTY ADDRESS: 3327 38th Avenue, Oakland, CA
DATE OF HEARING: September 18, 2017
DATE OF DECISION: January 24, 2018
APPEARANCES: Kathy A. Guerra, Tenant
James Vann, Tenant Representative
Maria S. Marquez, Owner
Carlos Ramirez, Owner

SUMMARY OF DECISION

The tenant's petition is partly granted.

CONTENTIONS OF THE PARTIES

On March 14, 2017, tenant Kathy A. Guerra filed a petition claiming that her housing services have decreased and that at present there exists a health, safety, fire or building code violation in her unit. Her list of decreased services includes complaints about the windows in the unit and the presence of mold in the unit.

A Notice of Hearing was issued to all parties in the case on April 7, 2017, with a proof of service and was not returned to the Rent Adjustment Program. The owners filed a response to the tenant petition on August 24, 2017, more than thirty-five (35) days after the original Notice of Hearing was issued. The owners' response was untimely. Therefore their participation at the hearing was limited to cross-examination.

000112

THE ISSUES

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

EVIDENCE

Rent History and RAP Notice

The tenant moved into the subject unit in August of 2015, at an initial monthly rent of \$1,400.00. The subject unit is located in a residential building consisting of six (6) units. On January 1, 2017, the tenant's rent was increased to \$1,428.00¹. The tenant testified at the hearing that she has paid the increased monthly rent of \$1,428.00 since January 1, 2017.

There is conflicting testimony about whether the tenant ever received the RAP Notice. The tenant stated on her petition and testified at the hearing that she never received the RAP Notice. The owners testified that the RAP Notice was provided to the tenant and submitted a RAP Notice dated April 22, 2016, with an illegible signature on it². The tenant denied ever receiving a RAP Notice and testified that the signature on the RAP Notice submitted by the owners was not hers. The owner, Carlos Ramirez, agreed that it was not the tenant's signature. He testified that he signed the RAP Notice himself and then gave it to the tenant on April 22, 2016. However, the owners failed to produce any documents verifying that they served the tenant the RAP Notice.

Decreased Housing Services

Windows: The tenant testified that when she first visited the unit in July of 2015, prior to moving in, the owners told her that the windows in the living room, kitchen, and bathroom would be replaced. When the tenant moved into the unit in August of 2015, the windows had still not been replaced. There was mold in the metal frames of all windows and the screens were missing. The windows did not close properly, posing a safety hazard, there were no screens on the windows, and the window above the kitchen sink did not open and was sealed shut. The tenant testified that the window in the bathroom was replaced in May of 2016 but there was damage to the drywall around the frame of the window. After many delays the windows in the living room and kitchen were finally replaced in January of 2017. However, the new windows were installed incorrectly, and the installation resulted in damage to the kitchen cabinets as well as dust and debris throughout the unit. The windows were not sealed on the inside and there was exposed wiring and stucco damage on the outside of the windows. The tenant submitted photographs of the poorly installed windows and resulting damage and

¹ At the hearing the tenant testified that she wished to contest the rent increase effective January 1, 2017. However, the tenant failed to list the rent increase as one of the grounds for her petition. Therefore, her challenge to the rent increase will not be considered.

² Exhibit 1

debris³. The tenant immediately notified the owners that the windows were installed improperly and had not been sealed. The owner, Carlos Ramirez, inspected the windows in February, and agreed that they were not installed properly. He told the tenant he would reinstall the windows. On March 6, 2017, an Inspector from the City of Oakland Building Services Department inspected the new windows and determined that the windows were installed incorrectly and without permits. The inspector issued a notice of violation regarding the installation of the windows. The windows were reinstalled on March 11, 2017, and were sealed from the inside but not from the outside. The window installation was finally completed on June 14, 2017, at which time the windows were sealed from the outside and all the stucco was patched. The tenant testified that she has not had any issues operating the windows since the installation was completed on June 14, 2017. However, she testified that a City Inspector conducted an inspection of the unit on September 5, 2017, and the windows still did not pass inspection.

Mold: The tenant testified that during her move-in inspection on August 15, 2015, she found mold in the bedroom closet and hallway closet and her move into the unit was delayed due to the mold. Later that same day, the owners notified her that the mold had been cleaned and treated, and the tenant moved into the unit the following day, August 16, 2015. The tenant testified that on February 25, 2017, she found mold in the bedroom. She found the mold on a wicker basket and a black chair. The tenant submitted photographs of the mold⁴. She immediately notified the owners and requested an inspection. The owners inspected the unit on the following day, February 26, 2017. During the inspection, they found mold on the bedroom walls, on the furniture, and in the bedroom closet. There was also mold on the exterior facing walls. The owner, Maria Marquez, offered to come to the unit the next day and clean the mold off the walls, but the tenant wanted the mold issue remediated by a professional company. The owners retained Restoration Management Company (RMC) to perform an inspection of the bedroom. RMC inspected the tenant's bedroom on March 1, 2017. The tenant also hired her own company to perform an inspection on March 3, 2017. The mold in the bedroom was remediated by RMC on March 9, 2017. During this period the tenant was unable to sleep in her bedroom due to the mold, and she was unable to sleep in her living room because the windows were installed incorrectly at the time so the living room was too cold. Therefore, the tenant was unable to stay in her apartment during that two-week period.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

RAP Notice

Notice and Filing Requirements: The Rent Adjustment Ordinance requires an

³ Exhibit 3

⁴ Exhibit 3

owner to serve notice of the existence and scope of the Rent Adjustment Program (RAP Notice) at the start of a tenancy⁵ and together with any notice of rent increase.⁶

Although the owners testified that they provided the tenant with the RAP Notice and submitted a RAP Notice dated April 22, 2016, the tenant denied ever receiving the RAP Notice. Both parties agreed that the signature on the RAP Notice that was submitted was that of the owner, Carlos Ramirez. The owners did not provide any supporting documentation verifying that they served the tenant the RAP Notice. It is the owner's burden to show that the notice was provided and the owners have not met their burden of proof regarding notice of the RAP to the tenant. The tenant has not received notice of the Rent Adjustment Program.

Decreased Housing Services

Under the Oakland Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent⁷ and may be corrected by a rent adjustment.⁸ However, in order to justify a decrease in rent, a decrease in housing services must be either the elimination or reduction of a service that existed at the start of the tenancy, or one that is required to be provided in a contract between the parties, or a violation of the housing or building code which seriously affects the habitability of the tenant's unit. Further, an owner must be given notice of a problem, and a reasonable opportunity to make repairs, before a claim of decreased housing services will be granted.

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

Windows: The tenant testified credibly that the owners agreed to replace the windows in her unit prior to her move-in date because they did not close properly. The windows were not completely replaced until June 14, 2017. The tenant testified credibly that a City Inspector initially inspected the property on March 6, 2017, and noted a window violation. The inspector subsequently inspected the property on September 5, 2017, and found that the new windows were installed incorrectly and the violation had not been abated.

This claim affects the habitability of the unit and the tenant is entitled to an ongoing rent decrease of 10% (\$142.80) until the new windows are installed correctly and the window violation is abated. The tenant is also entitled to compensation for past decreased housing services from August 2015 through January 2018, as stated in the Table below.

⁵ O.M.C. Section 8.22.060(A)

⁶ O.M.C. Section 8.22.070(H)(1)(A)

⁷ O.M.C. Section 8.22.070(F)


⁸ O.M.C. Section 8.22.110(E)

-current decreased housing service-windows	- \$142.80
Rent payment from February 2018 through January 2019	\$932.17
Rent payment commencing February 2019	\$1,285.20

3. Once the windows are installed correctly and the window violation is abated, the owners may increase the tenant's rent by \$142.80 upon proper notice in accordance with Section 827 of the California Civil Code.

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

Dated: January 24, 2018



Maimoona Sahi Ahmad
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE

Case Number T17-0176

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

Kathy A. Guerra
3327 38th Ave
Oakland, CA 94619

Owner

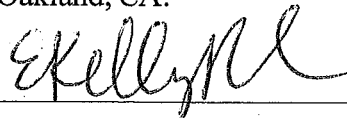
Silvia Marquez & Carlos Ramirez
4431 James Ave
Castro Valley, CA 94546

Tenant Representative

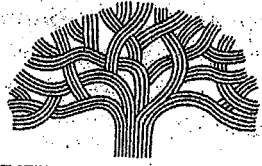
James Vann
251 Wayne Ave
Oakland, CA 94606

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on January 25, 2018 in Oakland, CA.



Esther K. Rush



CITY OF OAKLAND

**CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM**

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

For date stamp

RECEIVED
CITY OF OAKLAND
REGISTRATION PROGRAM
2018 FEB 13 AM 11:41

APPEAL

Appellant's Name Maria Silvia Marquez Ramirez / Carlos Ramirez		<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant	
Property Address (Include Unit Number) 3323 38th Ave, Oakland CA, 94619 Unit 3327			
Appellant's Mailing Address (For receipt of notices) Katty Alexandra Guerra / Oakland CA 94619		Case Number T 17-0176	Date of Decision appealed Feb 12th, 2018
Name of Representative (if any)		Representative's Mailing Address (For notices) 23 Railroad Rd, # 573 Danville CA, 94526	

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.

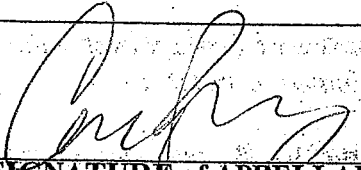

- f) I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. (In your explanation, you must describe how you were denied the chance to defend your claims and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue 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: 16 - Double pages 34

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 February 12th, 2018, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

Name	Katty Alexandra Guerra
Address	3327 38th Ave.
City, State Zip	Oakland CA, 94619
Name	
Address	
City, State Zip	

	
	
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE
	Feb 12, 2018

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.

For more information phone (510) 238-3721.

RE: CITY OF OAKLAND RENT ADJUSTMENT PROGRAM

RECEIVED
CITY OF OAKLAND
RENT ARBITRATION PROGRAM

CASE NUMBER: T17-0176
DATE CASE FILED: MARCH 14, 2017
TENANT NAME: KATHY GUERRA
LANDLORD NAME: MARIA SILVIA MARQUEZ RAMIREZ
PROPERTY ADDRESS: 3327 38TH AVENUE, OAKLAND CA, 94619

2018 FEB 13 AM 11:41

RE: EVIDENCE OF REPAIR CRONOLOGY

MOVE IN INSPECTION: NOVEMBER 2ND, 2015 (PAGE 1 & 2)

- A walk through was performed

EMAIL; TENANT REPAIR REQUEST: AUGUST 17TH, 2015 (PAGE 3, 6 AND 7)

- A recap of requested repair and confirmation of corrections.
- NOTE: All windows are in good conditions.

EMAIL; WINDOWS: FEBRUARY 3RD, 2017 (PAGE 9 – 12)

- Windows remodel-replacement job was taking action; Tenant was un-satisfy with person whose performed job in regards of cleanliness.
- Tenant hire someone to clean unit without prior notice to Landlord, as so, tenant had require to cover such expense for.

EMAIL; RE: WINDOWS: FEBRUARY 7, 2017 (PAGE 13)

- Email confirmation of, were tenant admitted that windows replacements was schedule for summer of 2017. Since windows were on good shape, but although for cosmetic matters and value of unit, Landlord had plans to make some upgrades.

TRIMESTRIAL INSPECTION WAS PERFORMED; ON APRIL 24TH, 2017 (PAGE 17)

- Tenant had requested the following repairs:
 1. Mold in hallway closet
 2. Under neat sink, pain clippind stick
 3. Blind replacement/install old blinds in windows

RE: TRIMESTRIAL INSPECTION; EVIDENCE OF REPAIRS; APRIL 26TH, 2017 (PAGE 18)

- Proof of Repairs were addressed.

EMAIL; RE: REPAIRS: MAY 12TH, 2017 (PAGE 19)

- Tenant emailed Landlord to provide dates with Tenant's flexibility to be present in premises when job performance repairs.
- Due to such modifications, job schedules and performance was affected, directing to extend timing to finish such job.

EMAIL; INSPECTION; AUGUST 24TH, 2017 (PAGE 21)

- Tenant emailed Landlord to provide dates with Tenant's flexibility.
- Base on Tenant request, Landlord has to proceed with jobs and inspections referring to those dates, by so, job still outstanding.

RECORD OF WINDOWS PASS INSPECTION; OCTOBER 18TH, 2017 (PAGE 23 & 25)

- Copy of text message by City of Oakland inspector, with Final Ok on re-windows job.
- City of Oakland Record ID: 1700887

NOTE: Regular pages on attachment 17, Double pages 34; Pages 27 to 34 are Notice of Entries and Inspections dates.

See Capital Improvement Case; 3323, 3325 & 3327 38th Ave, Oakland CA, 94619

000122

38th Ave Oakland CA.

(FACILITY)

APARTMENT INSPECTION FORM

Date of Inspection: Nov 2 2015

Resident: Kathie Gozira.

Unit#: 3327

Case Manager: Carlos Ramirez.

Key: CL - CLEAN/OK, DA - DAMAGED, RE - REPLACE, DI - DIRTY, MI - MISSING, RP - REPAIR

Table with columns: ROOM AREA, CL, DI, DA, MI, RE, RP, COMMENTS. Rows include Entrance Door/door Lock, Windows/Locks/Screens/Blinds/Child Guards, Walls/ Ceilings, Floor/Tiles, Electric Outlets/Switches/Switch Plates/Safety Plug, Light Fixture/Bulb, Heating/Cooling Units, Fire Safety Sign/Decal on Stove/Smoke Alarm, KITCHEN (Hood Light fixture/Bulb, Hood Fan/Filter, Stove/Oven, Sink/Faucet, Refrigerator/Refrigerator Bulb*, Food, Receptacle/Receptacle Cover, Floor/Tiles, Wall/Ceiling, Electric Outlets/Switches/Switch Plates/Safety Plugs, Cabinets/Knobs/Shelves), BATHROOM (Toilet/Toilet Seat/Toilet Paper Roll, Tub/Shower/Faucet/Shower Head, Sink/Faucet, Medicine Cabinet/Mirror, Towel/Grab Bars/Soap Dish (Shower), Toothbrush Holder/Soap Dish (Sink), Floor/Floor Tiles, Walls/Tiles/Ceiling, Electric Outlets/Switches/Switch Plates/Safety Plugs, Light Fixture/Bulb, Vent/Exhaust Fan, Door/Door Lock), BEDROOM(S) (Windows/Screens/Blinds/Child Guards, Walls/Ceilings, Electric Outlets/Switches/Switch Plates/Safety Plugs, Closets/Shelves/Clothes Bar, Heating/Cooling Units, Light Fixture/Bulb, Door/Door Lock, Floor Tiles).

Key: CL - CLEAN/OK, DA - DAMAGED, RE - REPLACE, DI - DIRTY, MI - MISSING, RE - REPAIR

HALLWAY(S)	CL	DI	DA	MI	RE	RP	COMMENTS
1. Electric Outlets/Switches/Switch Plates/Safety Plugs	X						
2. Light Fixture/Bulb	X						
3. Smoke Detector/Sprinkler Head	X						
4. Walls/Ceiling	X						
5. Floor/Tiles	X						
6. Telephone - Issued							
7. Telephone - Personal							
FURNITURE							
1. Dining Table							
2. Chairs							
3. Coffee Table							
4. Bed Frames/Mattresses							
5. Dressers							
6. High Chair/Bolsters							
7. Crib(s)							
8. Other:							

Housekeeping: Excellent - _____ Good - X Fair - _____ Poor - _____

Comments - Extra smoke detector.

APARTMENT NEGLECT: YES _____ NO _____

- Window replacement
- Garage door

SIGNATURES: Case Manager: _____

Resident Name: Kathy Guerra

Resident Signature: Kathy Guerra

Inspected By: Carlos Ramirez

Original: Resident Case File
Marquez Ramirez Properties

Re: 3327 38th Ave

Kathy Guerra <girasols@yahoo.com>

Mon 8/17/2015 12:40 AM

To: Carlos Ramirez <cf.rv@hotmail.com>;

Hello Carlos,

Thank you for your email. Per our phone conversation today the following will be taking care of by Monday.

- 1) The new oven will be installed.
- 2) The live electrical wires in the bedroom closet will be covered.
- 3) The window in the living room doesn't close. You will installed an additional safety lock. As I mentioned, this is a safety concern for me, as the window is near the staircase and there is a platform underneath the window.
- 4) A new toilet seat will be installed

I also noticed a few other things during the walk through:

Bathroom

Toilet not filling/flushing fully
Electrical Outlet cover missing
Mold on Window Sill metal

Bedroom

Painting the orange section of wall above the closet and behind door

Living Room

Electrical Outlet cover missing
Mold on Window Sill metal
Windows do not close and lock without crank (security risk)

Kitchen/Dining

Mold on Window Sill metal
Window above the sink doesn't open
Electrical outlet box under the sink. What is this for?

General

Windows from outside are dirty and have cobwebs.

The prorated rent will be from Aug.16th-31st is \$675.00. Unfortunately, due to it being Sunday I

wasn't able to make the deposit in the bank. I looked into transfer services through WellsFargo it seems the way that it works is WellsFargo would send you an email to verify the transfer. I'm a little concerned about sending over so much money on a new system that I've never used before and without confirmation that it would actually go through. What I would like to do is send you \$75 and confirm that you received the email, after a confirmation from you then I would send the remaining balance of \$600.

Also as a reminder, I'm in surgery tomorrow morning and will be out of contact for at least a day or so (unfortunately timing is not on both of our sides). I will try to check my email tomorrow evening, please let me know once you receive the email and we can go from there. Please keep me updated on repairs that need to be done to the unit from there.

Thank you for your understanding and patience.

~ Kathy Alexandra Guerra

On Aug 15, 2015, at 11:50 PM, carlos ramirez <cf.rv@hotmail.com> wrote:

Hello Kathy,

Hope the rest of your day was great.

A recap for today's duties.

- Mold issue has been addressed, on both closets and also there was some test for the rest of the apartment; everything came on good conditions.

- Bathroom mirror; the one customize got broken for a corner side, I replaced for a use one that I had.

- Garage key, there is a copy of at the kitchen counter.

I will send you some picks.

The apartment is clean and ready to move in!!!

Thank you for your patience and comprehension.

Sincerely,

Carlos Ramirez

Sent from my iPhone

Re: 3327 38th Ave

carlos ramirez <cf.rv@hotmail.com>

Thu 8/20/2015 2:31 PM

To: Kathy <girasols@yahoo.com>;

Hi Kathy,
Hope you healing fast and doing well.
See below please,

Sent from my iPhone

On Aug 18, 2015, at 18:58, Kathy <girasols@yahoo.com> wrote:

Hello Carlos,

I received your message. However, I'm not able to talk due to my mouth surgery. Email will be the best way for us to communicate for the next few days. My recover is much more difficult that I thought it would be.

I looked on the Wellsfargo website and it seems the only way that I can send money to a non-wellsfargo account is by email or text. If Silvia has an email address I could send her the money this way.

silvia3327@yahoo.com.mx

Unfortunately, I won't be able to physically get to a bank until the end of the week.

In the future, I will deposit the rent in person at the bank.

Please let me know what you would like for me to do.

Also, is there any updates on the repairs in the apartment?

Thank you for your understanding,

~ Kathy Alexandra Guerra

On Aug 17, 2015, at 7:39 AM, carlos ramirez <cf.rv@hotmail.com> wrote:

Good morning Kathy,

Thanks for the email, I had receive the deposit, just to clarify deposits will be at Bank of America,

Account Name: Silvia Marquez

Account Number: 3250 0534 6907

It's on the firs page of the contract.

Section

3. Rent D

Thank you, hope you recover soon.

Sent from my iPhone

On Aug 17, 2015, at 00:40, Kathy Guerra <girasols@yahoo.com> wrote:

Hello Carlos,
Thank you for your email. Per our phone conversation today the following will be taking care of by Monday.

1) The new oven will be installed.

Stove ready.

2) The live electrical wires in the bedroom closet will be covered.

It's been cover with a sealant.

3) The window in the living room doesn't close. You will installed an additional safety lock. As I mentioned, this is a safety concern for me, as the window is near the staircase and there is a platform underneath the window.

Window close.

4) A new toilet seat will be installed

Installed

I also noticed a few other things during the walk through:

Bathroom

Toilet not filling/flushing fully

I just adjust the water coming out.

Electrical Outlet cover missing

Got fix

Mold on Window Sill metal

Been treated

Bedroom

Painting the orange section of wall above the closet and behind door

Painted

Living Room

Electrical Outlet cover missing

Fixed

Mold on Window Sill metal

Been treated

Windows do not close and lock without crank (security risk)

Window locked

Kitchen/Dining

Mold on Window Sill metal

Been treated

Window above the sink doesn't open

Yes it does not open

Electrical outlet box under the sink. What is this for?

Service

Have a nice rest of the week.

Windows

Kathy Guerra <girasols@yahoo.com>

Fri 2/3/2017 5:54 PM

To: Carlos Ramirez Landlord <cf.rv@hotmail.com>;

Hello Carlos and Silvia,

I hope you are both well. I wanted to email you about the recent window replacement in the apartment.

As I'm grateful that this replacement has been completed, I have a few concerns and questions regarding the work. In the summer of 2016, I spoke with Carlos about the window replacement that was schedule to be completed while I was on vacation. I was told that the work would take one day and that the apartment would be completely covered to prevent all the dust from spreading. However, the windows were not replaced in the summer.

In January, I was given Eliseo's contact information and was told that he would be the one doing the work to replace the windows and to contact him directly. Eliseo said that he could complete the work in one day, all three windows, and that there wouldn't be a lot of dust to clean up.

Carlos, I sent you a text on Friday January 22 asking you for tarps to cover my furniture. You mentioned that you would check your storage. I never heard back from you.

When Eliseo arrived at my apartment on January 23, he mentioned that he didn't have the key to the storage unit where the new windows were and he didn't have any tools or tarps to cover my furniture. I expressed my concern again about the spread of dust in my apartment; he said that there wouldn't be any. I let him borrow my tools, while he waited for you to come and open the storage unit. He started working on the living room window; he placed a cover on the floor near the windows only. None of my furniture was covered at that time.

A few hours later, I walked out of my bedroom to see that my living room was full of dust and there were pieces of concrete all over the floor. Eliseo said that the work was much more involved than he thought. He explained that he had to break the outside wall near the window to remove it. Which was why there was so much dust, he then shook out his shirt and a cloud of dust went into the air. At that point, I noticed that only my couch and TV were loosely covered with a clear tarp. The bookshelf and a small table in the living room weren't covered and there were dust and concrete particles all over the surface.

Eliseo was there on Saturday from 11:30am till 6:00pm and only the living room window had been replaced. He said that he would have to come back on Sunday, to replace the two windows in the kitchen. He also said that it wouldn't be as dusty because he was going to remove the windows in the kitchen from the outside. He would have removed the living room window from the outside, but that he didn't have a ladder. Of which, was supposed to be left for him on Saturday.

Sunday, went much smoother. Carlos when I saw you on Sunday, I told you that there was a lot of dust in my living room and that I wanted for the kitchen to be completely covered before any work began. Eliseo did cover all the cabinets and stove. He also covered the windows and removed them from the outside. Eliseo was at my apartment again all afternoon from 12pm - 7pm. Around 5pm, I walked into the kitchen and noticed that the kitchen floor by the window was covered in dust and concrete particles. There was no cover. My kitchen table was full of dust and concrete particles. Eliseo said that the window near my kitchen table was the wrong size and that he had to break some of the internal wall to make it fit. Which, again was why there was so much dust on the floor.

Both days, Eliseo did sweep out most of the dust and concrete - but not all of it. On Sunday night, I found several pieces of concrete on the floor behind my couch and TV. I have included a picture of one of the pieces I found. Attached are also pictures of the kitchen floor, after Eliseo swept, and of my bookshelf and small table. All the white pieces are concrete. The living room and kitchen were covered in dust. The

top of the fridge, which was not covered, had an inch or two of dust. The floor also has some minor scratches from all the concrete pieces. All of picture frames were covered in dust. It was a mess. As you both know, I keep my place very clean and tidy. I was surprise to see that my apartment was left in this condition. Especially after I had repeatedly asked for tarps to cover my belongings.

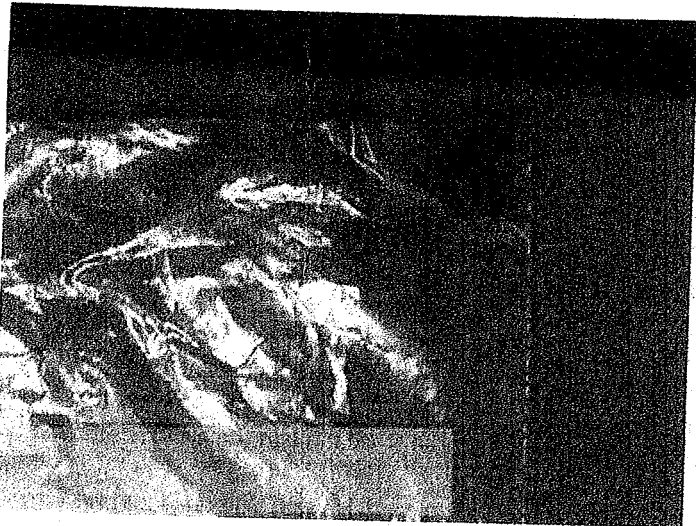
This work took over my entire weekend. There was no way that I could clean my apartment by myself. I had to take work off on Monday and call someone to come and help me clean. She charged me \$210 for a deep clean of my apartment and five hours of work. Of which, I shouldn't have to pay. This job was done poorly and the proper care of my personal belongings and the apartment itself was not taken into consideration.

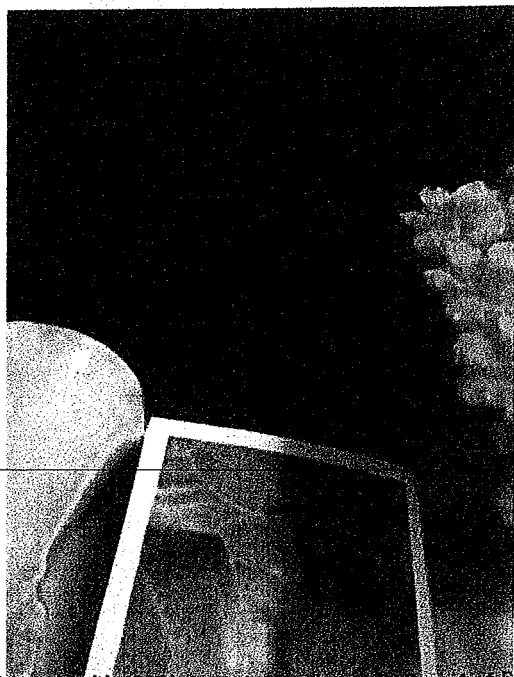
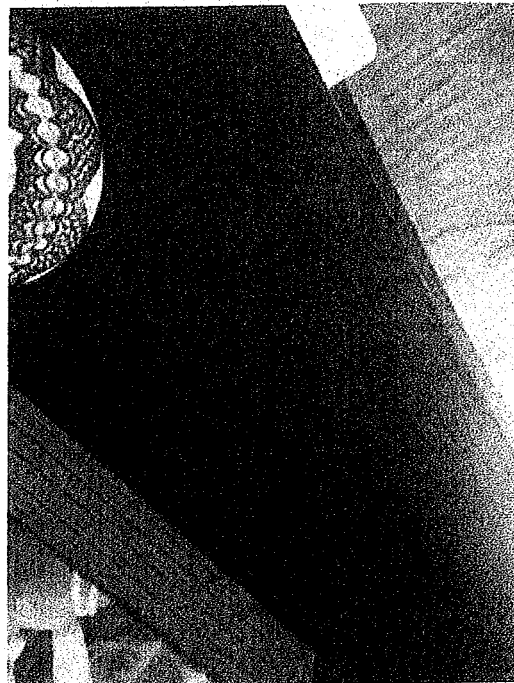
Eliseo mentioned to me that he would be back this week to complete the outside of the windows, I have not heard from him yet. All of the wires and concrete on the outside of the windows still need to be completed. In addition, the noise level in the kitchen is much louder now then it was in the past with the old windows. This is surprising to me, as the windows are double paneled. I noticed that the windows are not flushed to the wall frame and there a few gaps. It seems as if the windows need to be sealed.

Please let me know how you want to handle this issue. Again, I'm happy the windows had been replaced however I'm very disappointed in how the work was completed. Also, that I had to pay \$210 for a cleaning job that should has been taken care at the end of the job. I shouldn't have to pay for the cleanup of this work.

Please keep me posted.

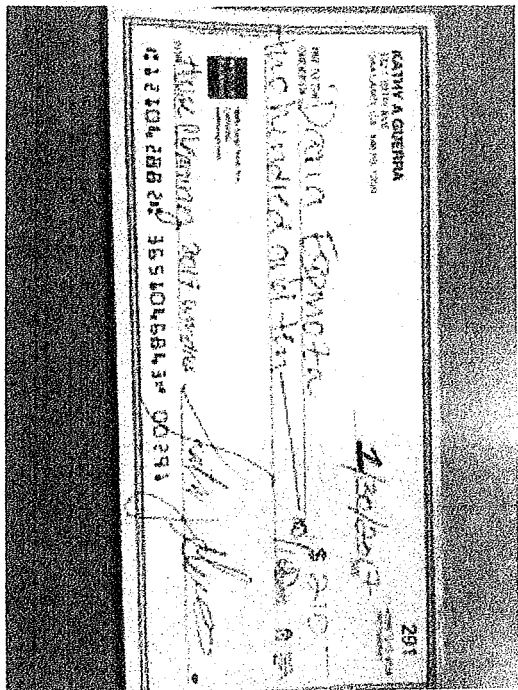
Best,
Kathy Guerra





https://outlook.live.com/owa/?viewmodel=ReadMessageItem&ItemID...E0ryodQAAALep5tMAAAA%3D&isPrintView=1&wid=100&ispopout=1&path=...

https://outlook.live.com/owa/?viewmodel=ReadMessageItem&ItemID...E0ryodQAAALep5tMAAAA%3D&isPrintView=1&wid=100&ispopout=1&path=... Page 4 of 9



~ Kathy Alexandra Guerra

Re: Windows

carlos ramirez <cf.rv@hotmail.com>

Tue 2/7/2017 7:56 AM

To: Kathy Guerra <girasols@yahoo.com>;

Cc: Maria Silvia <mrsilvia@yahoo.com>;

Dear Kathy,

I had spoken with Eliseo in regard of this matter also I met him on Sunday to discuss this matter.

He agreed to contact you for:

- Please provide him the invoice of cleaning job performed for his records.
- Date to place stucco around windows is on confirmation, due to job cannot be done with this raining weather.
- Windows are seal with foam, which means there is not issue water or dust will come inside.
- Kitchen windows noise, I will assume since this are double panel, will reduce street noise. When seal job gets done, I do hope this help to reduce this issue.
- I would like to check if window are done properly. When is a good date to do so?

Please contact Eliseo when you have the invoice to discuss this matter.

Best,

Carlos Ramirez

On Feb 6, 2017, at 6:16 PM, Kathy Guerra <girasols@yahoo.com> wrote:

Hello Carlos and Silvia,

~~Yes we did agree that the work in the summer was postpone due to scheduling issues by your staff,~~ the reason I brought this up was to stress that I had expressed concern to you that I had about the dust and level of mess that the window replacement would cause. When we spoke, you told me that every thing in my apartment would be covered with a tarp.

On Sunday, Eliseo informed me that the window for the kitchen needed some modifications, which was why he had to make the adjustment from the inside of the apartment, causing the dust and concrete in the kitchen.

As mentioned in the previous email, Eliseo on Saturday only loosely covered my couch and TV, however only after the work had started. There was already dust and concrete all over the apartment. It was only on Sunday, after speaking with you that the kitchen was

covered, tightly, by the clear plastic.

I spoke with Eliseo three times over the phone and stressed my concern about the dust and mess this work could cause. I spoke with you in the summer about the concerns I had about the dust and mess this replacement would cause. When Eliseo arrived at the apartment on Saturday, I expressed again the concern I had about the dust. Every time, I was assured that there wouldn't be any dust or mess. You hired Eliseo to complete this work and I assumed it would have been done professionally. Meaning, covering my personal belongings and minimize the mess. I stressed multiple times this issue and unfortunately it wasn't done correctly.

Yes, I agree I should have contacted you about having someone come and clean my apartment after the work was completed. However, excuse me for saying but getting work done in my apartment often takes a long time and work is often rescheduled last minute. I couldn't trust that the cleaning of my apartment would have happened the next day. I wasn't able to sleep in my apartment for two days, since there was so much dust and concrete. Not to mention, the extreme health concern that breathing in that dust can cause.

The woman I hired, doesn't have a company per say. She cleans houses on the side and I usually pay her in cash. I will ask her to send me an invoice of the work that she did. Once, I have it I will email it to you. As mentioned, this was a deep cleaning of my apartment which took much longer then a regular clean.

I'm also wondering if you are planning to check the work that was done. I also mentioned in the previous email that the noise level from the freeway is much louder in the kitchen and there seems to be a draft coming in.

Please let me know when you plan on coming by and when Eliseo will be back to complete the work of the windows on the outside.

Thank you,

Kathy Alexandra Guerra

From: carlos ramirez <cf.rv@hotmail.com>
To: Kathy Guerra <girasols@yahoo.com>
Cc: Maria Silvia <msrsilvia@yahoo.com>
Sent: Saturday, February 4, 2017 9:26 AM
Subject: Re: Windows

Hi Katie,

Re: Windows



carlos ramirez

Mon 2/13/2017, 7:49 PM

Kathy Guerra (girasols@yahoo.com); Maria Silvia (mrsilvia@yahoo.com)

Reply

Sent Items

Hi Kathy,

Eliseo is someone whose been hire for the job, and I do appreciate the fact you consider me for this matter, as I mentioned before, I have not relationship with this issue.

To remark I was not informed previously.

Yes is our property, and yes is someone who is working for us, but it does not reflect the way we do business.

We reserve the right for any actions of any company or any individual we deal business with. Please feel free to contact him to address this matter.

Wednesday will work for me to come over for windows inspection at 9:00am.

If any other concerns, we can talk over when we meet.

Carlos Ramirez

On Feb 13, 2017, at 5:41 PM, Kathy Guerra <girasols@yahoo.com> wrote:

Hello Carlos and Silvia,

I have been sick for the last few days, so I apologize for the delayed response.

Eliseo is someone you hired to do this work, which is why I'm directly contacting you for concerns regarding this job. I have attached the invoice for the cleaning. As your tenant, I feel it's my responsibility to bring these issues directly to you and for you to resolve these issues with the people hired to perform work in your properties. Please let me know how and when I will be reimbursed for this cost. To date, I haven't heard from Eliseo for any of the outstanding work.

My availability this week for you to come check the windows is Wednesday and Thursday

from 9am-11:30am, Friday from 8am-10am or Saturday morning from 11am-3pm. Please let me know if any of these days and times works for you.

Also, I have some mail for Silvia.

Thank you,
~ Kathy Alexandra Guerra
(415) 305-1717 cell

~ Kathy Alexandra Guerra :)

On Feb 7, 2017, at 7:56 AM, carlos ramirez <cf.rv@hotmail.com> wrote:

Dear Kathy,

I had spoken with Eliseo in regard of this matter also I met him on Sunday to discuss this matter.

He agreed to contact you for:

- Please provide him the invoice of cleaning job performed for his records.
- Date to place sttuco around windows is on confirmation, due to job cannot be done with this raining weather.
- Windows are seal with foam, which means there is not issue water or dust will come inside.
- Kitchen windows noise, I will assume since this are double panel, will reduce street noise. When seal job gets done, I do hope this help to reduce this issue.
- I would like to check if window are done properly. When is a good date to do so?

Please contact Eliseo when you have the invoice to discuss this matter.

Best,

Carlos Ramirez

On Feb 6, 2017, at 6:16 PM, Kathy Guerra <girasols@yahoo.com> wrote:

REQUEST FOR REPAIRS

2017 MAY 12 AM 10: 01

Please check whichever is applicable:

- My rental unit is not need of any repairs at this time.
- My rental unit needs repairs as indicated below.

Please list below, with as much detail as possible, any maintenance problems in your rental unit which are in need of repair, ranking in order from the most urgent (at the top) to the least urgent (at the bottom):

mold in hallway closet
under hood sink, paint chipping sticky
blind replacement / install old blinds on windows

If your rental unit is in need of repairs, please check below indicating whether or not you wish to be present when repairs are made:

- I do not need to be present when repairs are made. You have my permission to enter the rental unit to make repairs as requested below.
- Yes, I do wish to be present when repairs are made. Please make repairs at one of the dates and times listed below. (NOTE: There may be some times, in emergency situations, when maintenance or outside contractors may have to enter your rental unit event if you are not there whether or not this box is checked).

If you have asked to be present when repairs are made, please list dates and times, during normal working hours (Monday through Friday, 9:00 A.M. to 5:00 P.M.) when you will be available and in your rental unit. Please list several alternative dates as there may be several people requesting the same date and time.

DATE: Apr 24, 25, 26 TIME: 9-11am
 DATE: _____ TIME: _____
 DATE: _____ TIME: _____
 DATE: _____ TIME: _____

Please list your name and RENTAL UNIT address:

NAME: Kathy Guerra
 RENTAL UNIT ADDRESS: 3327 35th Ave Oakland CA 94619
 PLEASE RETURN THIS FORM TO: _____

Please note that the owner is relying on you to provide the information requested in this form in order to maintain the property in habitable condition.

EVIDENCE OF REPAIRS

My rental unit is not need of any repairs at this time.

All requested repairs are done satisfactorily.

This is proof evidence of repairs performed on:

DATE: <u>4/26/2017</u>	TIME: <u>9am</u>
DATE: _____	TIME: _____
DATE: _____	TIME: _____
DATE: _____	TIME: _____

*closet wall clean up
painting kitchen dwp
kitchen replacement.*

Please list your name and RENTAL UNIT address:

NAME: Katrina Guerra

SIGNATURE: *Katrina Guerra*

RENTAL UNIT ADDRESS: 3327 38th Ave Oakland, CA 94619

Please note that the owner is relying on you to provide the information requested in this form in order to maintain the property in habitable condition

On Friday, May 12, 2017 3:03 PM, Maria Silvia <mrsilvia@yahoo.com> wrote:

Sent from my iPhone

Begin forwarded message:

From: Kathy Guerra <girasols@yahoo.com>
Date: May 12, 2017 at 12:24:51 PM PDT
To: carlos ramirez <cf.rv@hotmail.com>
Cc: Maria Silvia <mrsilvia@yahoo.com>
Subject: Re: Repair

Hello,

Per our phone conversation, you were meeting with the city inspector today and had to reschedule the repairs to be done in the apartment this morning. You mentioned that you could come by this afternoon or Monday morning.

Per the notice, you were going to arrive between 9am-12:30pm. I did take the morning off work for this repair to be done. I have to be at work in the afternoon. Monday morning will not work for me, as I will be out of town.

Below are the times and dates that will work for me for next week, please let me know as I do need to take time off work again:

May 16th after 1pm

May 18th between 8am-10:30am. I need to leave the apartment no later then 11:15am.

May 20th between 9am - 3pm

May 21st between 9am - 3pm

Also when you post the notice of entry could you please be specific as to what work is going to be done in the apartment. This way, I can prep the area and clear personal items, so that you can have a clear work space. The notice said "paste window side scratch, perform necessary fix, re: respond of requests from RAP of Oakland". It's unclear to me as to what was going to be done. Per your text, you said you were going to be fixing the bathroom window frame. This was news to me as I believed that you were going to be finishing the outside of the apartment windows only.

Thank you,

Re: Fwd: Repair

carlos ramirez <cf.rv@hotmail.com>

Sat 5/13/2017 10:57 AM

To: Kathy <girasols@yahoo.com>;

Cc: Maria Silvia <msrsilvia@yahoo.com>;

Hi,

On Thursday May 11, 2017 It happened me be at the premises to post the notice of repair, since I had not idea how big this issue became until I saw inspector there. Since you were on rush to work, there was not much time to talk after I spoke with the city inspector, so I needed to meet with inspector the next day base on his need.

Notice of repair was schedule for Friday May 12, 2017, but since city inspector requested to meet this day, we had to modify schedule, reason why I had called you to notify you about the change.

As I mentioned before, you do not have to take time off from work, we do not want to be liable financially, personal or professional of any matter responsible.

I will confirm repair time in the next coming days so we can work our schedule the most convenience way.

Repairs to performed are base on your claim T17-0176, which it points to cosmetics repairs only.

In regards of windows outside, we have to wait for the city to review windows finish details for certification to proceed with job. Until then we can proceed.

Thanks.

From: Maria Silvia Marquez Ramirez <msrsilvia@yahoo.com>

Sent: Saturday, May 13, 2017 9:40 AM

To: Carlos Ramirez

Subject: Fw: Fwd: Repair

On Aug 24, 2017, at 2:47 PM, Kathy Guerra <girasols@yahoo.com> wrote:

Hello Carlos,

Unfortunately, Monday August 28, 2017 doesn't work for my schedule. I have to attend court with a client in the afternoon and have to leave my place no later than 11:30am on Monday.

I spoke with both Travis Ha and Ivan Ramirez about this inspection this morning. They both informed me that they individual who request the permit, usually the owner of the property, a contractor, or the tenant, are the ones who request the inspection. Usually, the date requested is granted the only thing that isn't given is the exact time. In addition, as long as you cancel before 10am the day of the inspection there won't be a charge.

If it's easier for you I can call tomorrow and request a new inspection date. I was told that you would also need to be there so that they can sign off on the permit card. Here are the dates for the next few days / weeks that are good for me:

Tuesday, August 29th

Wednesday, August 30th

Tuesday, Sept. 5th

Wednesday, Sept. 6th

If you would like for me to call the inspection hotline to schedule a new inspection date, please let me know if any of these dates would work for you, and then I can make the call.

I have had to make a few adjustments to my schedule to accommodate the open viewing for the selling of the property. I'm trying to work with you and the city to complete this inspection, however, Monday Aug. 28th will not work.

Please let me know what works.

Thank you,

Kathy Alexandra Guerra

(415) 305-1717 cell

From: carlos ramirez <cf.rv@hotmail.com>

To: Kathy <girasols@yahoo.com>

Cc: Maria Silvia <msrsilvia@yahoo.com>

Sent: Wednesday, August 23, 2017 8:46 PM

Subject: Re: Inspection 8/28/17

Re: Inspection 8/28/17

carlos ramirez <cf.rv@hotmail.com>

Wed 8/30/2017 10:10 AM

To: Kathy Guerra <girasols@yahoo.com>;

Cc: Maria Silvia <msrsilvia@yahoo.com>;

1 attachments (1 MB)

3327 38th Ave Kathie Notice Entry 9.5.17 .pdf;

Hi Kathy,
Attached is the notice of entry for 9.5.17 inspection.
thanks.

From: Kathy Guerra <girasols@yahoo.com>
Sent: Monday, August 28, 2017 1:42 PM
To: carlos ramirez
Cc: Maria Silvia
Subject: Re: Inspection 8/28/17

Hello,
Ok. Thank you.

~ Kathy Alexandra Guerra
(415) 305-1717 cell

On Aug 28, 2017, at 8:25 AM, carlos ramirez <cf.rv@hotmail.com> wrote:

Hi Kathy,

Inspection has been rescheduled for Tuesday, September 5th.
As you inform, a phone call will be made on same date to provide time.
Thanks

Carlos Ramirez

the day of the inspection the supervisors assigned the inspections in the morning it may or may not be myself thank you

Ok thanks

Wed, Oct 18, 1:51 PM

Oakland CA, 94612 Tel: 510-238-3444

Location: 3323 38TH AVE, Oakland, CA, 94619
Inspection Date:

Record Type: Residential Building - Repair
Record ID: RB1702200

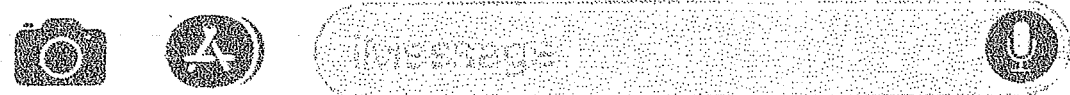
Inspection Type: Final Building
Inspector: Ivan G Ramirez

Result: Scheduled

Comments: Final is OK.

Violation Summary:

Inspector _____ Contractor _____



Correction Notice

250 Frank H. Ogawa Plaza, Suite 2340
Oakland CA 94612

Tel: 510-239-3412

Location:
3323 38TH AVE, Oakland, CA, 94619

Inspection Date:

Record Type:
Residential Building - Repair

Record ID:
RB1702200

Inspection Type:
Final Building

Inspector:
Ivan G Ramirez

Result:
Scheduled

Comments:
Final is OK.

Violation Summary:

Inspector

Contractor

▼ **Record ID: 1700877**

▼ **Description: Mold in the walls and furniture in the bedroom. Windows replaced in the kitchen and living room. They are drafty and appear to not be installed correctly. No permits to replace windows**

▼ **APN: 032 203018600**

▼ **Address: 3323 38TH AVE**

▼ **Unit #:**

▼ **Date Opened: 3/2/2017**

▼ **Record Status: Abated**

▼ **Record Status Date: 1/11/2018**

▼ **Job Value: \$0.00**

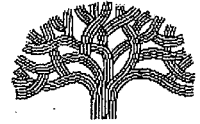
▼ **Requestor:**

▼ **: Kathy Guerra**

▼ **Business Name:**

▼ **License #:**

Comment	Date	Commenter	Comment
	3/3/2017 2:59:34 PM	THA	3-3-2017 Called tenant [REDACTED] and left message.
	3/6/2017 4:29:03 PM	THA	3-6-2017 Site visit. Verified violation. Unapproved installation of windows inside unit 3327. Unsanitary condition inside bedroom @ 1 foot X 3 feet. Gave mildew brochure to tenant. Notice of violation to come.
	3/27/2017 11:14:28 AM	THA	3-27-2017 Submitted notice of violation. Re-inspection scheduled for 5-11-2017.
	3/28/2017 4:10:12 PM	EANDERSON	Ownership verified through County Assessor. NOV mailed reg & cert with appeal form and brochures on 3/27/17. cert #7016214000072287898. Re-inspection Deadline: 5/11/17
	5/12/2017 11:00:29 AM	THA	5-12-2017 Met owner rep [REDACTED] at the counter. Explained violation. Filled out CE routing slip for window replacement. Referred Mr. Ramirez to zoning for approval.
	6/2/2017 1:05:37 PM	THA	5-11-2017 Site visit. Violation not abated. Re-inspection notice to come.
	6/2/2017 1:07:29 PM	THA	6-2-2017 Permit issued RB1702200. Will set case to monitor.
	9/5/2017 8:31:27 AM	THA	9-1-2017 progress. Permit scheduled for final on 9-5-2017.
	10/11/2017 3:49:17 PM	THA	10-10-2017 Monitor from office. Progress. Last permit inspection on 10-4-2017. Continue with monitor.
	1/11/2018 4:07:26 PM	THA	1-11-2018 Monitor from office. Abated. Permit final.



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

Department of Housing and Community Development
Rent Adjustment Program

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

April 19, 2018

Maria Silvia Marquez Ramirez & Carlos Ramirez
23 Railroad Rd., Unit 3327
Danville, CA 94526

Re: Receipt of Owner Appeal in Rent Adjustment Case: T17-0176 – Guerra v. Marquez et al

Dear Ms. Marquez Ramirez and Mr. Ramirez:

The Rent Adjustment Program received your appeal in the above-referenced case on February 13, 2018.

Please Note: There is a limit of 25 pages for attachments to the appeal form. You attached 34 pages to your appeal. The Rent Board will consider only the first 25 pages of your attachments.

Your appeal will be reviewed, and may be scheduled for an Appeal Hearing at a meeting of the Residential Rent and Relocation Board (“Rent Board”). Regular meetings of the Rent Board are held on the 2nd and 4th Thursday evenings of the month. You will receive a mailed notice of your appeal hearing approximately three (3) weeks prior to the date of the Rent Board meeting.

If you have further questions or concerns, you are welcome to contact me at my direct line (510) 238-7387 or by email at: msullivan@oaklandnet.com. Please reference the case number in your communication. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Margaret Sullivan".

Margaret Sullivan, Program Analyst III
Rent Adjustment Program

000147

March 16, 2018

Kathy Guerra

3327 38th Ave

Oakland, Ca 94619

(415) 305-1717 cell

RENT ADJUSTMENT BOARD
2018 MAR 19 AM 10:43

City of Oakland

Rent Adjustment Program (RAP)

250 Frank Ogawa Plaza, Suite #5313

Oakland, Ca 94612

Re: RAP Case #T17-0716

To whom it may concern,

My name is Kathy A. Guerra and I'm a tenant at 3327 38th Ave Oakland, Ca 94619. This letter is in response to the owner's appeal that was filed with the RAP board on February 13, 2018 for case number #T17-0716.

The owners Carlos and Silvia Ramirez indicated on their appeal that they were denied sufficient opportunity to present their claim or respond to the Decrease in Services Petition I filed on March 14, 2017. The owners received a copy of the petition on April 7, 2017 it stated that they had 35 days to respond to the Tenant's petition, which would have been May 12, 2017. The owners filed the response to the petition on August 24, 2017, after the 35 days expired. During the hearing on September 18, 2017 the hearing officer Maimoona Sahi Ahmad, informed the owners that they had submitted their response to the Decrease in Services late and would only be limited to cross-examination. The owners asked when they would be able to submit their evidence for this case. The hearing officer explained to them that they wouldn't be able to submit any or new evidence for this case since they missed the deadline. The owner's appeal filed on February 13, 2018 includes new evidence for this petition.

I respectfully request that this appeal decision be expedited due to the recent eviction attempt from the owners last month. I strongly believe that the owners were acting in a retaliatory fashion after receiving this petition. The owners submitted a Property Owner Petition for Approval for Rent Increase for capital improvements the same day they filed their owner response for this case. They requested that this petition be linked to the Decrease in Service case. During the hearing, they were informed that they would not be able to combine their petition for capital improvement and that there would be a separate hearing for their petition. On October 13, 2017, I received a 60-day notice to vacate the apartment because the owners were needing to move back in. This was not in good faith and I believe was a retaliatory action based on the petition filed against them. On January 3, 2018, the owners filed an Unlawful Detainer for eviction against me. On February 13, 2018, they filed for a Dismissal for the Unlawful Detainer. This is the same date that the owners filed their appeal for this case.

000148

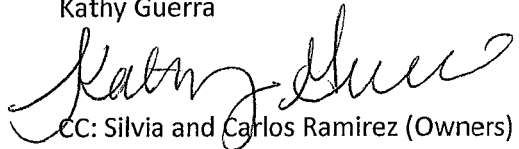
06.3

Attached to this response is the 60-day notice to vacate, a copy of the Unlawful detainer, and a copy of the request for Dismissal. In addition, a copy of the certified letter receipt sent to the owners.

Should you have any questions or need additional documentation to support this response, please contact me at (415) 305-1717. Thank you for your time and prompt response to this request.

Respectfully,

Kathy Guerra



CC: Silvia and Carlos Ramirez (Owners)

60-DAY NOTICE TO VACATE
For Use by Residential Landlord
RECEIVED
CITY OF OAKLAND
RENT ARBITRATION PROGRAM

2018 MAR 19 AM 11:12

2017 NOV 16 AM 11:12

NOTE: This form is used by a residential property manager or landlord when the landlord is terminating a month-to-month rental agreement or the occupancy of a tenant paying rent under an expired lease, and the tenant has resided in the property for one year or more, to terminate the tenancy and require the tenant to vacate.

Date: October 13th, 2017, at Oakland, California.

To Tenant: Katty Alexandra Guerra

Items left blank or unchecked are not applicable.

FACTS:

1. You are a residential Tenant under a rental agreement or expired lease agreement
 - 1.1 dated July 26th, 2015, at Oakland, California,
 - 1.2 entered into by Katty Alexandra Guerra, as the Tenant,
 - 1.3 and Maria Siliva Marquez R., as the Landlord,
 - 1.4 regarding real estate referred to as 3327 38th Ave Oakland Ca 94619

NOTICE:

2. This notice is intended as at least a sixty (60) day notice prior to termination of your month-to-month tenancy.
3. On or before December 31st, 2017, a date at least sixty (60) days after service of this notice, you will vacate and deliver possession of the premises to Landlord or _____.
4. Rents due and payable by you prior to the date to vacate include:
 - a. Monthly rent of \$ 1,428.00, due November 1st, 2017; and
 - b. Prorated rent of \$ 1,428.00 through the date to vacate, due December 1st, 2017.
5. Landlord acknowledges the prior receipt of \$ 2,000.00 as your security deposit.
 - 5.1 Within 21 days after you vacate, Landlord will furnish you with a written statement and explanation of any deductions from the deposit and a refund of the remaining amount. [Calif. Civil Code §1950.5(g)(1)]
 - 5.2 Landlord may deduct only those amounts necessary to:
 - a. Reimburse for Tenant defaults in rental payments;
 - b. Repair damages to the premises caused by Tenant (ordinary wear and tear excluded);
 - c. Clean the premises, if necessary; and
 - d. Reimburse for Tenant loss, damage or excessive wear and tear on furnishings provided to Tenant.
6. Landlord may show the leased premises to prospective tenants during normal business hours by first giving you written notice at least 24 hours in advance of the entry. The notice will be given to you in person, by leaving a copy with an occupant of suitable age and discretion, or by leaving the notice on or under your entry door.
7. Please contact the undersigned to arrange a time to review the condition of the premises before you vacate.
8. If you fail to vacate and deliver possession of the premises by the date set for you to vacate, legal proceedings may be initiated to regain possession of the premises and to recover rent owed, treble damages, costs and attorney fees.
9. **Notice:** State law permits former Tenants to reclaim abandoned personal property left at the former address of the Tenant, subject to certain conditions. You may or may not be able to reclaim property without incurring additional costs, depending on the cost of storing the property and the length of time before it is reclaimed. In general, these costs will be lower the sooner you contact your former Landlord after being notified that property belonging to you was left behind after you moved out.
10. The reason for termination is Owner to move back into unit
(Required by rent control ordinance or Section 8 housing)

Address Correction

Date: October 13th, 2017
Landlord/Agent: Maria S. Marquez R. CalBRE#:

Signature: [Signature]
Address: 4471 James Ave
Castro Valley Ca. 94545
Phone: _____ Cell: 510-301-6262
Fax: _____
Email: _____

2018 MAR 19 AM 10:44

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Maria Silvia Marquez Ramirez
 PO BOX 573
 23 Railroad Ave, Danville CA, 94526
 TELEPHONE NO.: 510-301-6262 FAX NO. (Optional):
 E-MAIL ADDRESS (Optional): **mrsilvia@yahoo.com**
 ATTORNEY FOR (Name):

FOR COURT USE ONLY
 ENDORSED
 FILED
 ALAMEDA COUNTY
 JAN 03 2018
 CLERK OF THE SUPERIOR COURT

SUPERIOR COURT OF CALIFORNIA, COUNTY OF
 STREET ADDRESS:
 MAILING ADDRESS:
 CITY AND ZIP CODE:
 BRANCH NAME:

PLAINTIFF: **Maria Silvia Marquez Ramirez**
 DEFENDANT: **Katty Alexandra Guerra**
 DOES 1 TO _____

COMPLAINT — UNLAWFUL DETAINER*
 COMPLAINT AMENDED COMPLAINT (Amendment Number): 1

CASE NUMBER:
RG17887506

Jurisdiction (check all that apply):
 ACTION IS A LIMITED CIVIL CASE
 Amount demanded does not exceed \$10,000
 exceeds \$10,000 but does not exceed \$25,000
 ACTION IS AN UNLIMITED CIVIL CASE (amount demanded exceeds \$25,000)
 ACTION IS RECLASSIFIED by this amended complaint or cross-complaint (check all that apply):
 from unlawful detainer to general unlimited civil (possession not in issue) from limited to unlimited
 from unlawful detainer to general limited civil (possession not in issue) from unlimited to limited

1. PLAINTIFF (name each):
Maria Silvia Marquez Ramirez
 alleges causes of action against DEFENDANT (name each):
Katty Alexandra Guerra
2. a. Plaintiff is (1) an individual over the age of 18 years. (4) a partnership.
 (2) a public agency. (5) a corporation.
 (3) other (specify):
 b. Plaintiff has complied with the fictitious business name laws and is doing business under the fictitious name of (specify):
3. Defendant named above is in possession of the premises located at (street address, apt. no., city, zip code, and county):
3327 38th Ave, Oakland Ca, 94619
4. Plaintiff's interest in the premises is as owner other (specify):
5. The true names and capacities of defendants sued as Does are unknown to plaintiff.
6. a. On or about (date): **Aug 15, 2015** defendant (name each): **Katty Alexandra Guerra**
 (1) agreed to rent the premises as a month-to-month tenancy other tenancy (specify):
 (2) agreed to pay rent of \$ **1400.00** payable monthly other (specify frequency): **Current rent \$1428.**
 (3) agreed to pay rent on the first of the month other day (specify):
 b. This written oral agreement was made with
 (1) plaintiff. (3) plaintiff's predecessor in interest.
 (2) plaintiff's agent. (4) other (specify):

000151

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: 2018 MAR 19 AM 10:44
 NAME: **Maria Silvia Marquez Ramirez**
 FIRM NAME:
 STREET ADDRESS: **23 RailRoad Rd, #573**
 CITY: **Danville** STATE: **Ca** ZIP CODE: **94526**
 TELEPHONE NO.: **510-301-6262** FAX NO.:
 E-MAIL ADDRESS:
 ATTORNEY FOR (Name):

FOR COURT USE ONLY

ENDORSED FILED
ALAMEDA COUNTY

FEB 13 2013

CLERK OF THE SUPERIOR COURT
 By [Signature] Deputy

CASE NUMBER:
RG17-887506

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

STREET ADDRESS:
 MAILING ADDRESS:
 CITY AND ZIP CODE:
 BRANCH NAME:

Plaintiff/Petitioner: **Maria Silvia Marquez Ramirez**
 Defendant/Respondent: **Katty Alexandra Guerra**

REQUEST FOR DISMISSAL

A conformed copy will not be returned by the clerk unless a method of return is provided with the document.

This form may not be used for dismissal of a derivative action or a class action or of any party or cause of action in a class action. (Cal. Rules of Court, rules 3.760 and 3.770.)

1. TO THE CLERK: Please dismiss this action as follows:
- a. (1) With prejudice (2) Without prejudice
 - b. (1) Complaint (2) Petition
 - (3) Cross-complaint filed by (name): _____ on (date): _____
 - (4) Cross-complaint filed by (name): _____ on (date): _____
 - (5) Entire action of all parties and all causes of action
 - (6) Other (specify):*

2. (Complete in all cases except family law cases.)
 The court did did not waive court fees and costs for a party in this case. (This information may be obtained from the clerk. If court fees and costs were waived, the declaration on the back of this form must be completed).

Date: February 13, 2018
 Maria Silvia Marquez Ramirez
 (TYPE OR PRINT NAME OF ATTORNEY PARTY WITHOUT ATTORNEY)

[Signature]
 (SIGNATURE)
 Attorney or party without attorney for:
 Plaintiff/Petitioner Defendant/Respondent
 Cross Complainant

*If dismissal requested is of specified parties only of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

3. TO THE CLERK: Consent to the above dismissal is hereby given.**
 Date: _____
 (TYPE OR PRINT NAME OF ATTORNEY PARTY WITHOUT ATTORNEY) (SIGNATURE)

** If a cross-complaint -- or Response (Family Law) seeking affirmative relief -- is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581 (i) or (j).

Attorney or party without attorney for:
 Plaintiff/Petitioner Defendant/Respondent
 Cross Complainant

(To be completed by clerk)

4. Dismissal entered as requested on (date): **FEB 13 2013**

5. Dismissal entered on (date): _____ as to only (name): _____

6. Dismissal not entered as requested for the following reasons (specify): _____

7. a. Attorney or party without attorney notified on (date): _____
 b. Attorney or party without attorney not notified. Filing party failed to provide a copy to be conformed means to return conformed copy

Date: **FEB 13 2013** Clerk, by [Signature] Deputy

K. Guerra
Case # T17-0716

2018 MAR 19 AM 10:44

7017 3380 0000 5389 1207

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Certified Mail Fee \$	\$3.45
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<input type="checkbox"/> Certified Mail Restricted Delivery \$	\$0.00
<input type="checkbox"/> Adult Signature Required \$	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery \$	\$0.00
Postage \$	\$1.21
Total Postage and Fees \$	\$4.66
0019 12 Postmark Here 03/17/2018	
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City, State, ZIP+4® Danville, VA 24016	
PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions	

000153 *da:8*