

**HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD  
SPECIAL FULL BOARD MEETING**

**February 7, 2019**

**7:00 P.M.**

**CITY HALL, HEARING ROOM #1  
ONE FRANK H. OGAWA PLAZA  
OAKLAND, CA**

**AGENDA**

1. CALL TO ORDER
2. ROLL CALL
3. CONSENT ITEMS

None

4. OPEN FORUM
5. NEW BUSINESS

a. Appeal Hearings in:

- i. L17-0241, Faussner v. Tenants
- ii. T17-0574, Weisman v Oakmore
- iii. T17-0078 Ortiz v. Leon  
T17-0045 Lopez v. Leon  
T17-0044, Maciel v. Leon  
T17-0043, De La Torre v. Leon  
T17-0042 Caneles v. Leon  
T17-0041, Miranda v. Leon  
T17-0040, Gonzalez v. Leon

6. SCHEDULING AND REPORTS

7. ADJOURNMENT

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

courtesy to attendees with chemical sensitivities.

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

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

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

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

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

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

## CHRONOLOGICAL CASE REPORT

Case Nos.: L17-0241

Case Name: Faussner v. Tenants

Property Address: 1738 4<sup>th</sup> Ave., Oakland, CA

Parties:

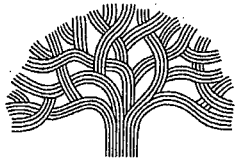
Ben Lewis	(Agent for Owner)
Merkeb Tecle	(Agent for Owner)
Joshua Palmer	(Tenant)
Brendan Blandy	(Tenant)
Kevin Alvarado	(Tenant)
Clay Hayes	(Tenant)
Christina White	(Tenant)
Annabelle Fuentes	(Tenant)
Maria D. Dominguez	(Tenant Representative)

### OWNER APPEAL:

<u>Activity</u>	<u>Date</u>
Owner Petition filed	November 7, 2017
Tenant Responses filed	January 18 <sup>th</sup> through January 31 <sup>st</sup> , 2018
Hearing Decision issued	July 3, 2018
Owner Appeal filed	July 23, 2018
Owner Attorney filed Supporting Argument Documentation	August 7, 2018

L17-0241 RC/SK

RECEIVED  
MAY 17 2007  
For date stamp.  
-7 PM 4:38



CITY OF OAKLAND

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

**PROPERTY OWNER**  
**PETITION FOR**  
**APPROVAL OF RENT**  
**INCREASE**

**Please Fill Out This Form Completely As You Can.** Failure to provide needed information may result in your petition being rejected or delayed. Attach copies of the documents that support your petition. Before completing this petition, please read the Rent Adjustment Ordinance (Oakland Municipal Code 8.22), sections 8.22.010 through 8.22.190, and the Rent Adjustment Program Regulations.

Your Name c/o Lapham Co Robert E Faussner	Complete Address (with zip code) 4844 Telegraph Ave Oakland CA 94609	Daytime Telephone: <b>510-594-7600</b>
		E-mail: Merkeb@laphamcompany.com
Your Representative's Name (if any) Lapham Company	Complete Address (with zip code) 4844 Telegraph Ave Oakland CA 94609	Daytime Telephone: <b>510-594-7600</b>
		E-mail: Merkeb@laphamcompany.com
Property Address (If the property has more than one address, list all addresses) <b>1738 4th Ave, Oakland CA 94606</b>		

Total number of units on property: 24

Date on which you acquired the building: 3/26/2007

Type of units (circle one)                      House                      Condominium                      Apartment, Room, or Live-Work

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 the tenants in each unit affected by the petition?	Yes	No
On what date was the RAP Notice first given?	Please see attached listing with RAP Notice Dates	
Have you paid your Oakland Business License? The property owner must have a current Oakland Business License. If it is not current, an Owner Petition may not be considered in a Rent Adjustment proceeding. (Provide proof of payment.)	Yes	No
Oakland Business License number.	00093227	



<p>Have you paid the Rent Adjustment Program Service Fee (\$68 per unit)? The property owner must be current on payment of the RAP Service Fee. If the fee is not current, an Owner Petition may not be considered in a Rent Adjustment proceeding. (Provide proof of payment.) Note: If RAP fee is paid on time, the property owner may charge the tenant one-half of the \$68 per-unit RAP Service fee (\$34).</p>	Yes	No
<p>Use the table on the next page to list each tenant who is affected by this petition.</p>		

**REASON(S) FOR PETITION.**

**Note: Justifications for Rent Increases other than the annual allowable rate are discussed in the Rent Adjustment Program Regulations – Appendix A, Sec. 10.**

**You must attach organized documentation clearly showing the rent increase justification(s) and detailing the calculations to which the documentation pertains. All documents submitted to the Rent Adjustment Program become permanent additions to the file. (Regs. 8.22.090.C)**

**I (We) petition for approval of one or more rent increases on the grounds that the increase(es) is/are justified by (check all that apply):**

- Banking (Reg. App. 10.5)
- Capital Improvements (Reg. App. 10.2)
- Fair return (Reg. App. 10.6)
- Increased Housing Service Costs (Reg. App. 10.1)
- Uninsured Repair Costs (Reg. App. 10.3)

Have you ever filed a petition for this property?

- Yes
- No

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

**N/A**

List each tenant and requested information for each unit affected by this petition. Increases based on increased housing service costs and fair return affect all of the units on the property. Attach additional sheets if necessary.

Address	Unit #	Tenant Name(s)	Phone	E-mail	Current Rent
1738 4th Ave, Oakland CA 94606	101	Brain Ko	415-926-0620	byko1209@gmail.com	\$1,502.67
1738 4th Ave, Oakland CA 94606	103	Kendra Brennan	773-807-6125	kendra.A.brennan@gmail.com	\$1,895.00
1738 4th Ave, Oakland CA 94606	104	Clay Hays	925-330-3545	clayhays1123@yahoo.com	\$1,220.89
1738 4th Ave, Oakland CA 94606	106	Tyler Hopps	510-734-9587	Thopps@yahoo.com	\$1,171.11
1738 4th Ave, Oakland CA 94606	107	John Gillham	707-799-4082	marathon1981@gmail.com	\$1,085.44
1738 4th Ave, Oakland CA 94606	108	Aynalm Zegeye	510-499-7389	n/a	\$1,296.21
1738 4th Ave, Oakland CA 94606	201	Lauren Richard Valeria Richard	216-533-0171	Lau28ren@gmail.com	\$1,495.00

List each tenant and requested information for each unit affected by this petition. Increases based on increased housing service costs and fair return affect all of the units on the property. Attach additional sheets if necessary.

Address	Unit #	Tenant Name(s)	Phone	E-mail	Current Rent
1738 4th Ave, Oakland CA 94606	202	Kevin Alvarado Marcelino Martinez	917-951-7896	kalvarado9109@gmail.com	\$1,173.41
1738 4th Ave, Oakland CA 94606	203	Lani Shotwell	925-984-3086	lanishotwell@yahoo.com	\$1,203.19
1738 4th Ave, Oakland CA 94606	204	Jackelyn Kelley Shawn Kelley	724-544-3437	jack.rae.kelley@gmail.com	\$1,503.03
1738 4th Ave, Oakland CA 94606	206	Brendan Blandy	541-729-7605	n/a	\$1,322.20
1738 4th Ave, Oakland CA 94606	208	Jessica Steele Joseph Blasher	808-464-2676	steelejessica2@gmail.com	\$1,950.00
1738 4th Ave, Oakland CA 94606	301	Shane Caldwell Anna Smylie	773-960-9447	caldwell.shane@gmail.com	\$1,950.00
1738 4th Ave, Oakland CA 94606	302	Bahij Austin	650-725-2973	bahijaustin@gmail.com	\$1,348.64

List each tenant and requested information for each unit affected by this petition. Increases based on increased housing service costs and fair return affect all of the units on the property. Attach additional sheets if necessary.

Address	Unit #	Tenant Name(s)	Phone	E-mail	Current Rent
1738 4th Ave, Oakland CA 94606	303	Lindsay Shuman Shawn Rusich	714-287-6455	elleshuman@gmail.com	\$1,349.64
1738 4th Ave, Oakland CA 94606	304	Christina White	925-784-5846	c.white0415@gmail.com	\$1,398.60
1738 4th Ave, Oakland CA 94606	307	Annabelle Fuentes Joshua Palmer	415-572-9965 415-806-2467	annabelle.fuentes@gmail.com	\$1,145.75
1738 4th Ave, Oakland CA 94606	308	Eric Johnson	n/a	ejohnla@yahoo.com	\$1,490.73

**Address: 1738 4th Ave, Oakland CA 94606**

Unit #	Tenant Name(s)	Phone	Email	Current Rent	RAP Notice Date
101	Brain Ko	415-926-0620	<a href="mailto:byko1209@gmail.com">byko1209@gmail.com</a>	\$1,502.67	3/1/2014
103	Kendra Brennan	773-807-6125	<a href="mailto:kendra.A.brennan@gmail.com">kendra.A.brennan@gmail.com</a>	\$1,895.00	9/1/2016
104	Clay Hays	925-330-3545	<a href="mailto:clayhays1123@yahoo.com">clayhays1123@yahoo.com</a>	\$1,220.89	6/16/2009
106	Tyler Hopps	510-734-9587	<a href="mailto:Thopps@yahoo.com">Thopps@yahoo.com</a>	\$1,171.11	1/10/2012
107	John Gillham	707-799-4082	<a href="mailto:marathon1981@gmail.com">marathon1981@gmail.com</a>	\$1,085.44	3/17/2011
108	Aynalm Zegeye	510-499-7389	n/a	\$1,296.21	6/16/2017
201	Lauren & Valeria Richard	216-533-0171	<a href="mailto:Lau28ren@gmail.com">Lau28ren@gmail.com</a>	\$1,495.00	5/23/2014
202	Kevin Alvarado & Marcelino Martinez	917-951-7896	<a href="mailto:kalvarado9109@gmail.com">kalvarado9109@gmail.com</a>	\$1,173.41	5/1/2012
203	Lani Shotwell	925-984-3086	<a href="mailto:lanishotwell@yahoo.com">lanishotwell@yahoo.com</a>	\$1,203.19	12/1/2011
204	Jackelyn & Shawn Kelley	724-544-3437	<a href="mailto:jack.rae.kelley@gmail.com">jack.rae.kelley@gmail.com</a>	\$1,503.03	4/16/2014
206	Brendan Blandy	541-729-7605	n/a	\$1,322.20	11/1/2014
208	Jessica Steele & Joseph Blasher	808-464-2676	<a href="mailto:steelejessica2@gmail.com">steelejessica2@gmail.com</a>	\$1,950.00	7/11/2016
301	Shane Caldwell & Anna Smylie	773-960-9447	<a href="mailto:caldwell.shane@gmail.com">caldwell.shane@gmail.com</a>	\$1,950.00	7/1/2015
302	Bahij Austin	650-725-2973	<a href="mailto:bahijaustin@gmail.com">bahijaustin@gmail.com</a>	\$1,348.64	11/1/2012
303	Lindsay Shuman & Shawn Rusich	n/a	<a href="mailto:elleshuman@gmail.com">elleshuman@gmail.com</a>	\$1,349.64	6/16/2009
304	Christina White	925-784-5846	<a href="mailto:c.white0415@gmail.com">c.white0415@gmail.com</a>	\$1,398.60	6/11/2013
307	Annabelle Fuentes & Joshua Palmer	415-572-9965	<a href="mailto:annabelle.fuentes@gmail.com">annabelle.fuentes@gmail.com</a>	\$1,145.75	3/1/2010
308	Eric Johnson	n/a	<a href="mailto:ejohnla@yahoo.com">ejohnla@yahoo.com</a>	\$1,490.73	6/16/2009

**Uninsured Repair Costs:** Uninsured repair costs are casualty losses that are not reimbursed to the property owner. See Regulations for details. An increase for uninsured repairs is calculated the same way as an increase for capital improvements.

**Increased Housing Service Costs:** Housing Service Costs are expenses for services provided by the property owner. The costs are related to the use of a rental unit and also known as "operating expenses". The most recent two years of operating expenses are compared to determine if a rent increase greater than the CPI is justified. The calculation in both years must provide a reasonable comparison of all expenses. Evidence is required to prove each of the claimed expenses.

**Fair Return:** A property owner may submit evidence to show that without the requested rent increase he or she is being denied a fair return on the investment. A fair return will be measured by maintaining the net operating income (NOI) produced by the property in a base year (2014), subject to CPI related adjustments. Permissible rent increases will be adjusted upon a showing that the NOI in the comparison year is not equal to the base year NOI.

**Banking:** "Banking" refers to deferred allowed annual rent increases. These annual rent increases are known as CPI increases. CPI rent increases that were not given, or were not given in full, can be carried forward to future years. Subject to certain limitations, property owners may defer giving CPI increases up to ten years. CPI increases that were not imposed within ten years expire. No banked increase can exceed three times the then current CPI allowable increase. If your petition includes a request for a banked increase, **attach a rent history for the current tenant(s) in each affected unit.**

You do not need to petition the Rent Adjustment Program for approval to increase rent based on banking. Rents can be increased for banked CPI rent increases by giving the Tenant a rent increase notice. (Note that the Tenant can file a petition contesting the increase if the Tenant believes the banking is incorrect or unjustified.) If you do choose to petition for approval of a banked rent increase, provide the documentation and calculations as required by this petition.

**Capital Improvements:** Capital improvements increases may be taken to reimburse the property owner for property improvements. Reimbursement is limited to 70% of the cost of the improvement spread out over an amortization period as set forth in the Amortization Schedule below. The property owner must show the costs incurred were to improve the property and benefit the tenants. Property owners must also show that these costs were paid. Examples include: copies of receipts, invoices, bid contracts or other documentation.

- If your petition contains capital improvements for which permits are first issued on or after February 1, 2017, capital improvements will be amortized according to an amortization schedule (attached at the end of this form).
- If the petition includes only work where permits were issued before February 1, 2017, improvements will be amortized over five years unless the increase causes a rent increase over 10 percent in one year or 30 percent in five years, in which case the amortization period will be extended until the rent increase is smaller than 10 percent in one year or 30 percent in five years.

<b>Building-Wide Capital Improvements</b> CATEGORY (attach separate sheet if needed)	<b>TOTAL COSTS</b>	<b>DATE COMPLETED</b>	<b>DATE PAID FOR</b>
Structural/ Exterior Wall	\$296,460.42	02/3/2017	Please see attached sheet
Painting	\$2,500.00	5/13/2016	Please see attached sheet
Stucco	\$13,562.77	10/10/2016	Please see attached sheet
<b>SUBTOTAL:</b>	<b>\$312,523.19</b>	<b>2/3/2017</b>	Please see attached

<b>Unit-Specific Capital Improvements</b> CATEGORY (attach separate sheet if needed)	<b>TOTAL COSTS</b>	<b>DATE COMPLETED</b>	<b>DATE PAID FOR</b>	<b>AFFECTED UNITS</b>
<b>SUBTOTAL:</b>				

**Verification (Each petitioner must sign this section):**

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

Robert E. Farnmer, TRUSTEE

Owner's Signature

11-7-2017

Date

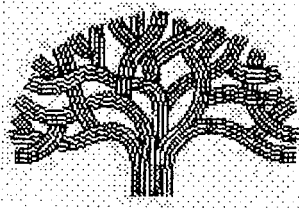
[Signature] - Agent of Owner

Owner's Signature

11-7-2017

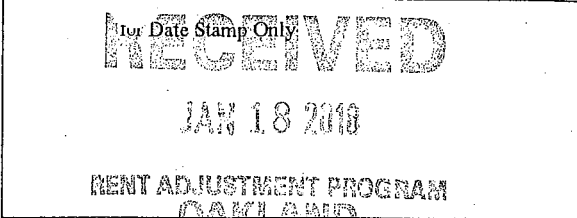
Date





**CITY OF OAKLAND  
RENT ADJUSTMENT  
PROGRAM**

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



CASE NUMBER L17-0241

**Tenant Response Contesting Rent Increase**

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

Your Name <i>Annalyn Zegeye</i>	Complete Address (with Zip Code) <i>1738 U<sup>th</sup> Avenue #108. Oakland CA 94606</i>	Telephone Day <i>510-499-73-89</i> Evening _____
Your Representative's Name	Complete Address (with Zip Code)	Telephone Day _____ Evening _____

Are you current on your rent? Yes  No

Number of Units in this Building: 24

**Rental History**

Date you entered into the Rental Agreement for this unit: Feb, 2001

Date you moved into this unit: Feb, 2001

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

Initial Rent: \$ 1368 Initial rent included (please check all that apply) ( ) Gas  
( ) Electricity ( ) Water ( ) Garbage ( ) Parking ( ) Storage ( ) Cable TV ( ) Other (please specify)

Did you receive the City of Oakland's NOTICE TO TENANTS OF RESIDENTIAL ADJUSTMENT PROGRAM at any time during your tenancy in this unit? Yes  No

Please list the date you first received the Notice to Tenants 01/05/2018

List all increases your received. Begin with the most recent and work backwards. Attach most recent rent increase notice. If you need additional space please attach another sheet.

Date Notice Given (Mo/Day/Yr)	Date Increase Effective	Rent Increased		Did you receive a NOTICE TO TENANTS with the notice of rent 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

**Contested Justification(s) for Rent Increase**

Please attach a brief statement explaining why the owner is not entitled to the proposed increase. The legal justifications are Banking, Capital Improvements, Increased Housing Service Costs, Debt Service, Uninsured Repair Costs, and Necessary to Meet Constitutional Fair Return requirements.

<b>Banking</b>		<b>Debt Service</b>	
<b>Capital Improvement</b>		<b>Uninsured Repair Costs</b>	
<b>Increased Housing Service Costs</b>		<b>Constitutional Fair Return</b>	

For the detailed text of these justifications, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site.

**The property owner has the burden of proving the contested rent increase is justified.**

<sup>1</sup> <http://www.oaklandnet.com/government/hcd/rentboard/ordinance.html>

<sup>1</sup> <http://www.oaklandnet.com/government/hcd/rentboard/rules.html>

**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.

*[Handwritten Signature]*  
 Tenant's Signature

1-12-18  
 Date

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

\_\_\_\_\_  
 Date

**Important Information**

This form must be received at the following address within the time limits prescribed by Oakland Municipal Code, Chapter 8.22. City of Oakland, Housing Residential Rent Relocation Board, Dalziel Building, 250 Frank H. Ogawa Plaza Suite 5313, Oakland, CA 94612. For more information, please call: 510-238-3721.

**You cannot get an extension of time to file your Response by telephone.**

**File Review**

You should have received with this letter a copy of the landlord petition.

Copies of attachments to the petition will not be sent to you. However, you may review these in the Rent Program office. Files are available for review by appointment.

For an appointment to review a file call (510) 238-3721.

**MEDIATION PROGRAM**

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

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).

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.**

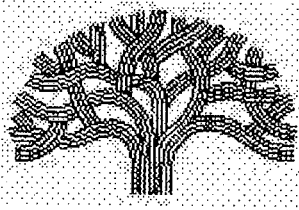
I agree to have my case mediated by a Rent Adjustment Program Staff Hearing Officer (no charge).

*Kashish Tanya*  
Tenant's Signature (for Mediation Request)

1-12-18  
Date

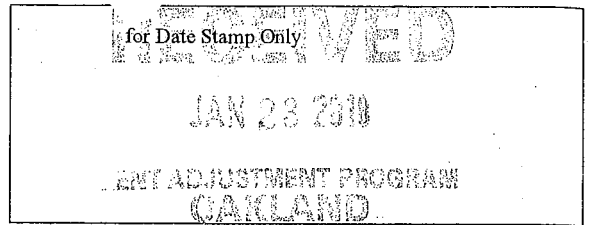
\_\_\_\_\_  
Tenant's Signature (for Mediation Request)

\_\_\_\_\_  
Date



**CITY OF OAKLAND  
RENT ADJUSTMENT  
PROGRAM**

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



CASE NUMBER L17-0241

**Tenant Response Contesting Rent Increase**

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

Your Name <i>Christina White</i>	Complete Address (with Zip Code) <i>1738 14th Ave. #304 Oakland CA. 94606</i>	Telephone Day <i>925-784-5846</i> Evening _____
Your Representative's Name	Complete Address (with Zip Code)	Telephone Day _____ Evening _____

Are you current on your rent? Yes  No

Number of Units in this Building: 124

**Rental History**

Date you entered into the Rental Agreement for this unit: Oct 11, 2013

Date you moved into this unit: Oct 11, 2013

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

Initial Rent: \$ 1350 + parking Initial rent included (please check all that apply) ( ) Gas  
( ) Electricity (X) Water (X) Garbage ( ) Parking ( ) Storage ( ) Cable TV ( ) Other (please specify)

Did you receive the City of Oakland's NOTICE TO TENANTS OF RESIDENTIAL ADJUSTMENT PROGRAM at any time during your tenancy in this unit? Yes  No

Please list the date you first received the Notice to Tenants \_\_\_\_\_

\* List all increases your received. Begin with the most recent and work backwards. Attach most recent rent increase notice. If you need additional space please attach another sheet.

Date Notice Given (Mo/Day/Yr)	Date Increase Effective	Rent Increased		Did you receive a NOTICE TO TENANTS with the notice of rent increase?
		From	To	
11/1/15	11/1/15	\$ 1350	\$ 1398.60	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No

**Contested Justification(s) for Rent Increase**

Please attach a brief statement explaining why the owner is not entitled to the proposed increase. The legal justifications are Banking, Capital Improvements, Increased Housing Service Costs, Debt Service, Uninsured Repair Costs, and Necessary to Meet Constitutional Fair Return requirements.

<b>Banking</b>		<b>Debt Service</b>	
<b>Capital Improvement</b>		<b>Uninsured Repair Costs</b>	
<b>Increased Housing Service Costs</b>		<b>Constitutional Fair Return</b>	

For the detailed text of these justifications, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site.

**The property owner has the burden of proving the contested rent increase is justified.**

<sup>1</sup> <http://www.oaklandnet.com/government/hcd/rentboard/ordinance.html>

<sup>2</sup> <http://www.oaklandnet.com/government/hcd/rentboard/rules.html>

**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.

Christine White  
 Tenant's Signature

11/18/2015  
 Date

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

\_\_\_\_\_  
 Date

**Important Information**

This form must be received at the following address within the time limits prescribed by Oakland Municipal Code, Chapter 8.22. City of Oakland, Housing Residential Rent Relocation Board, Dalziel Building, 250 Frank H. Ogawa Plaza Suite 5313, Oakland, CA 94612. For more information, please call: 510-238-3721.

**You cannot get an extension of time to file your Response by telephone.**

**File Review**

You should have received with this letter a copy of the landlord petition.

Copies of attachments to the petition will not be sent to you. However, you may review these in the Rent Program office. Files are available for review by appointment.

For an appointment to review a file call (510) 238-3721.

**MEDIATION PROGRAM**

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

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).

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.**

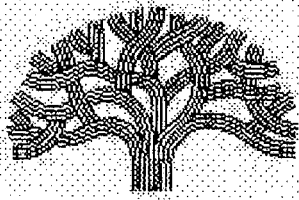
I agree to have my case mediated by a Rent Adjustment Program Staff Hearing Officer (no charge).

Christina [Signature]  
Tenant's Signature (for Mediation Request)

1/18/2018  
Date

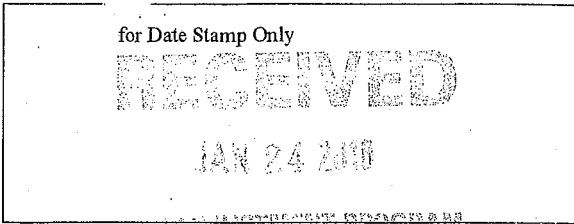
\_\_\_\_\_  
Tenant's Signature (for Mediation Request)

\_\_\_\_\_  
Date



**CITY OF OAKLAND  
RENT ADJUSTMENT  
PROGRAM**

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



**CASE NUMBER L17-0241**

**Tenant Response Contesting Rent Increase**

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

Your Name <i>Brandon Blandy</i>	Complete Address (with Zip Code) <i>1739 Al West 206 Oakland, CA, 94606</i>	Telephone Day <i>541-729-7605</i> Evening <i>541-729-7605</i>
Your Representative's Name	Complete Address (with Zip Code)	Telephone Day _____ Evening _____

Are you current on your rent? Yes  No

Number of Units in this Building: 24

**Rental History**

Date you entered into the Rental Agreement for this unit: 10/12

Date you moved into this unit: 10/22/12

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

Initial Rent: \$ 21300 Initial rent included (please check all that apply) ( ) Gas  
( ) Electricity (X) Water (X) Garbage (X) Parking ( ) Storage ( ) Cable TV ( ) Other (please specify)

Did you receive the City of Oakland's NOTICE TO TENANTS OF RESIDENTIAL ADJUSTMENT PROGRAM at any time during your tenancy in this unit? Yes  No

Please list the date you first received the Notice to Tenants \_\_\_\_\_

List all increases your received. Begin with the most recent and work backwards. Attach most recent rent increase notice. If you need additional space please attach another sheet.

Date Notice Given (Mo/Day/Yr)	Date Increase Effective	Rent Increased		Did you receive a NOTICE TO TENANTS with the notice of rent increase?
		From	To	
	11/1/13	\$ 1300	\$ 1365	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	11/1/14	\$ 1365	\$ 1415	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	11/1/15	\$ 1415	\$ 1465 <sup>00</sup>	<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

**Contested Justification(s) for Rent Increase**

Please attach a brief statement explaining why the owner is not entitled to the proposed increase. The legal justifications are Banking, Capital Improvements, Increased Housing Service Costs, Debt Service, Uninsured Repair Costs, and Necessary to Meet Constitutional Fair Return requirements.

<b>Banking</b>		<b>Debt Service</b>	
<b>Capital Improvement</b>		<b>Uninsured Repair Costs</b>	
<b>Increased Housing Service Costs</b>		<b>Constitutional Fair Return</b>	

For the detailed text of these justifications, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site.

The property owner has the burden of proving the contested rent increase is justified.

<sup>1</sup> <http://www.oaklandnet.com/government/hcd/rentboard/ordinance.html>

<sup>1</sup> <http://www.oaklandnet.com/government/hcd/rentboard/rules.html>

**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.

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

1/18/18  
 \_\_\_\_\_  
 Date

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

\_\_\_\_\_  
 Date



Hello –

I do not consent or agree to any proposed increase.

I have had two rent increases during my tenancy already; the first was effective 11/1/13 and the most recent was effective 11/1/15. In addition, there is a capital improvement pass-through charge of \$52.55/month effective 11/1/14 through 10/31/19. Costs continue to rise but incomes do not, and any increase would create an undue hardship.

In regard to the listed capital improvements, they were the result of needing to repair damage to the building from neglect. There was a mold and dry rot issue that required the building to have new walls put in. As a result of these repairs they had to repaint. Not our fault, nor a capital improvement.

Furthermore, repairs to my own unit have yet to be completed weeks after having been requested. Neglect to the upstairs pipes resulted in my apartment being flooded. The ceiling has been repaired, but no one will address repairs to my floor or to my personal property.

Again, given the history of increases and the issues I have raised above, I do not agree to any increase.

Brendan Blandy

1/19/18

1738 4<sup>th</sup> ave #206, Oakland, CA, 94606

000021

**Important Information**

This form must be received at the following address within the time limits prescribed by Oakland Municipal Code, Chapter 8.22. City of Oakland, Housing Residential Rent Relocation Board, Dalziel Building, 250 Frank H. Ogawa Plaza Suite 5313, Oakland, CA 94612. For more information, please call: 510-238-3721.

**You cannot get an extension of time to file your Response by telephone.**

**File Review**

You should have received with this letter a copy of the landlord petition.

Copies of attachments to the petition will not be sent to you. However, you may review these in the Rent Program office. Files are available for review by appointment.

For an appointment to review a file call (510) 238-3721.

**MEDIATION PROGRAM**

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

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).


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.**

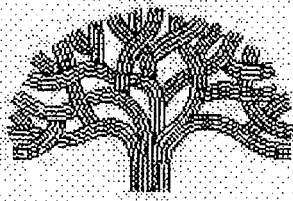
I agree to have my case mediated by a Rent Adjustment Program Staff Hearing Officer (no charge).

  
\_\_\_\_\_  
Tenant's Signature (for Mediation Request)

  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Tenant's Signature (for Mediation Request)

\_\_\_\_\_  
Date



**CITY OF OAKLAND  
RENT ADJUSTMENT  
PROGRAM**

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

for Date Stamp Only  
2010 JAN 25 8:13:26

CASE NUMBER L17-0241

**Tenant Response Contesting Rent Increase**

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

Your Name <i>Clay Hays</i>	Complete Address (with Zip Code) <i>1738 4th Avenue Apt. #104, Oakland 94606</i>	Telephone Day <i>510 515 6954</i> Evening <i>925 330 3545</i>
Your Representative's Name	Complete Address (with Zip Code)	Telephone Day _____ Evening _____

Are you current on your rent? Yes  No

Number of Units in this Building: 24

**Rental History**

Date you entered into the Rental Agreement for this unit: 2/11/08

Date you moved into this unit: 2/08

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

Initial Rent: \$ 1200 Initial rent included (please check all that apply) ( ) Gas  
( ) Electricity  Water  Garbage ( ) Parking ( ) Storage ( ) Cable TV ( ) Other (please specify)

Did you receive the City of Oakland's NOTICE TO TENANTS OF RESIDENTIAL ADJUSTMENT PROGRAM at any time during your tenancy in this unit?  
Yes  No

Please list the date you first received the Notice to Tenants 2/14/08

List all increases your received. Begin with the most recent and work backwards. Attach most recent rent increase notice. If you need additional space please attach another sheet.

Date Notice Given (Mo/Day/Yr)	Date Increase Effective	Rent Increased		Did you receive a NOTICE TO TENANTS with the notice of rent increase?
		From	To	
7/25/11	9/1/11	\$ 1025	\$ 1045.50	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
7/26/12	9/1/12	\$ 1045.50	\$ 1120.80	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
7/26/13	9/1/13	\$ 1120.80	\$ 1178.47	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
9/26/14	11/1/14	\$ 1178.47	\$ 1231.02	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
9/27/15	11/1/15	\$ 1231.02	\$ 1273.44	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No

**Contested Justification(s) for Rent Increase**

Please attach a brief statement explaining why the owner is not entitled to the proposed increase. The legal justifications are Banking, Capital Improvements, Increased Housing Service Costs, Debt Service, Uninsured Repair Costs, and Necessary to Meet Constitutional Fair Return requirements.

<b>Banking</b>	X	<b>Debt Service</b>	
<b>Capital Improvement</b>		<b>Uninsured Repair Costs</b>	
<b>Increased Housing Service Costs</b>		<b>Constitutional Fair Return</b>	

For the detailed text of these justifications, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site.


The property owner has the burden of proving the contested rent increase is justified.

<sup>1</sup> <http://www.oaklandnet.com/government/hcd/rentboard/ordinance.html>

<sup>1</sup> <http://www.oaklandnet.com/government/hcd/rentboard/rules.html>

**Verification**

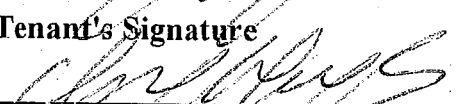
I declare under penalty of perjury pursuant to the laws of the State of California that all statements made in this Response are true and that all of the documents attached hereto are true copies of the originals.

  
\_\_\_\_\_

Tenant's Signature

11/25/18  
\_\_\_\_\_

Date

  
\_\_\_\_\_

Tenant's Signature

11/25/18  
\_\_\_\_\_

Date

**Important Information**

This form must be received at the following address within the time limits prescribed by Oakland Municipal Code, Chapter 8.22. City of Oakland, Housing Residential Rent Relocation Board, Dalziel Building, 250 Frank H. Ogawa Plaza Suite 5313, Oakland, CA 94612. For more information, please call: 510-238-3721.

**You cannot get an extension of time to file your Response by telephone.**

**File Review**

You should have received with this letter a copy of the landlord petition.

Copies of attachments to the petition will not be sent to you. However, you may review these in the Rent Program office. Files are available for review by appointment.

For an appointment to review a file call (510) 238-3721.

**MEDIATION PROGRAM**

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

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).

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.

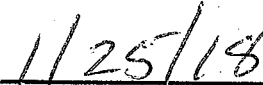
Mediation will be scheduled only if both parties agree (after both your petition and the owner's response have been filed with the Rent Adjustment Program).

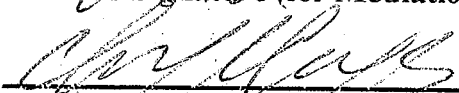
**The Rent Adjustment Program will not schedule a mediation session if the owner does not file a response to the petition. Rent Board Regulation 8.22.100.A.**

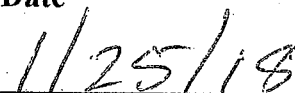
**If you want to schedule your case for mediation, sign below.**

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

  
\_\_\_\_\_  
Tenant's Signature (for Mediation Request)

  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Tenant's Signature (for Mediation Request)

  
\_\_\_\_\_  
Date

Case Number L17-0241

Clay Hays

1738 4<sup>th</sup> Avenue, Apartment #104

Oakland, CA 94606

TO WHOM IT CONCERN

This letter is in connection with the Tenant Response Contesting Rent Increase form, specifically regarding Contested Justification(s) for Rent Increase subsection Capital Improvement.

While it is true that the owner has recently done structural work to the building whether one may call it a capital improvement is for discussion.

First the work took approximately nine months during which time there was significant noise, inconvenience, exposure to the elements, dirt, security issues, often and repeated entry into residents by workmen and inspectors and darkness (mine and several other apartments had their windows covered by a tarp for the entire duration of the work making are apartments dark and significantly less inviting). The noise from constant use of very loud power tools, conversation of the workers and a radio brought by the work crew was significant and constant Monday through Friday from 9:00 a.m. to approximately 6:00 p.m. with occasional work on Saturdays. Also, for most of the work all of the insulation was removed from half of my and several other residents' exterior walls, making these residents very hot in the summer and very cold in the winter. This exposure resulted in a significant increase in tenants' energy bills, especially during the winter months in attempts to keep warm. The lack of light made the residents dark and gloomy for the entire time of the work since they covered half of all of the exterior windows for the length of the work and no natural light could get into the these apartments. Additionally, there was a scaffold up for the entire time of the work which made access to the windows of these apartments significantly easier raising significant security concerns on nights, weekends and holidays. There was a locked gate, but this could easily have been climbed which would have given anyone possible access to several apartments. No security was ever provided or introduced. Additionally, repeated twenty-four hour notices were put up on individual residents for workers and Lapham Staff to enter the premises. While these notices were not always followed through on, they provided an additional inconvenience and disturbance to the people living in these residents. Finally, the work that was done in conjunction with the exposure of an exterior wall made the residents dirty from dust and construction debris and required constant cleaning by the inhabitants.

Second, since the completion of these "capital improvements," problems have arisen in regards to the interior of the apartments and to quality of life. Many of the residents where the work was done now have many and significant cracks in the walls where the work was done. This brings for the resident a sense of anxiety, embarrassment and shame to their residents whenever they think about inviting anyone over and/or hosting any type of event. This may be capital, but not necessarily an improvement. In my apartment specifically there is mold on the bathroom walls due to the exposure to the elements

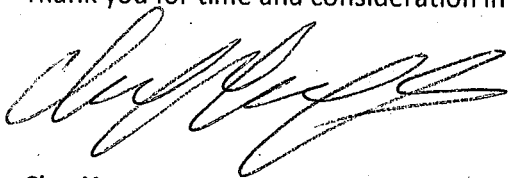
000026

for an extended period of time. I have made several written request as well as spoke to the personnel for Lapham Company who does an annual inspection of 1738 4<sup>th</sup> Avenue in Oakland, with absolutely no work done to correct the issue, no one contacting me about the issue or any response to my inquiries. Additionally, there is the cosmetic work that was promised to be done once the work was completed. I have yet to see this work done in my apartment. I still have discolored paint as well as bulging and chipping paint that was supposed to be correct after the work was done. A twenty-four hour notice was taped to my door as notice that this work was to be done, but no one arrived and the work has not been done as of the writing of this letter. All of this is a constant reminder of the time when our apartments were in a constant state noise, dirt and ugliness, as well as that the work has yet to be completed to a state where a tenant may feel respected, let alone comfortable in the building.

Third, the work that was done may have done as solution to a problem. That problem may even be corrected. Unfortunately the work has not been completed. Because of this how could this be called a capital improvement, or any improvement at all. With this being the case how can an increase to rent be contemplated if, as it has been shown, is still in progress?

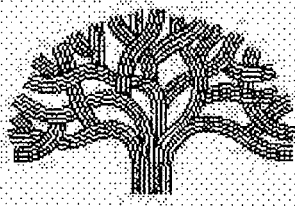
Finally, please note that in the documents from the owners' petition received by the Rent Adjustment Program to increase the rent for 2018 beyond the current C.P.I. it was stated that there has not been an increase in the rent due to capital improvements. This is not true. In November of 2014 the owners at the time submitted, and were granted, a petition to increase the rent by \$52.55 due to capital improvements. Additionally, a petition for a rent increase beyond the current C.P.I. was submitted and granted in September of 2012 for "Banked Rent" and the rent was increase by 9%. Here are two examples of beyond C.P.I. rent increases in three years. If the current beyond C.P.I. rent increase is granted this would be the third one in six years (Please see attached). If this many beyond C.P.I. rent increases are allowed is the C.P.I. a device for the protection of tenants of a floor for owners to use as a starting point to increase rent?

Thank you for time and consideration in this manner.



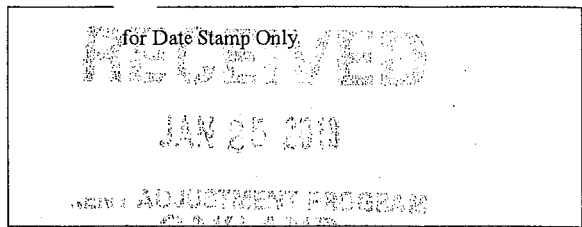
Clay Hays

RECEIVED  
11/15/17



**CITY OF OAKLAND  
RENT ADJUSTMENT  
PROGRAM**

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



CASE NUMBER L17-0241

**Tenant Response Contesting Rent Increase**

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

Your Name  KENDRA BRENNAN	Complete Address (with Zip Code) 1738 4TH AVE. #103 OAKLAND, CA 94606	Telephone Day (773) 807-0125 Evening " "
Your Representative's Name	Complete Address (with Zip Code)	Telephone Day _____ Evening _____

Are you current on your rent? Yes  No

Number of Units in this Building: 24

**Rental History**

Date you entered into the Rental Agreement for this unit: 9.1.16

Date you moved into this unit: 9.1.16

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

Initial Rent: \$ 1925.00 Initial rent included (please check all that apply) ( ) Gas  
( ) Electricity  Water  Garbage ( ) Parking ( ) Storage ( ) Cable TV ( ) Other (please specify)

Did you receive the City of Oakland's NOTICE TO TENANTS OF RESIDENTIAL ADJUSTMENT PROGRAM at any time during your tenancy in this unit? Yes  No

Please list the date you first received the Notice to Tenants 03/17



List all increases your received. Begin with the most recent and work backwards. Attach most recent rent increase notice. If you need additional space please attach another sheet.

Date Notice Given (Mo/Day/Yr)	Date Increase Effective	Rent Increased		Did you receive a NOTICE TO TENANTS with the notice of rent 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

**Contested Justification(s) for Rent Increase**

Please attach a brief statement explaining why the owner is not entitled to the proposed increase. The legal justifications are Banking, Capital Improvements, Increased Housing Service Costs, Debt Service, Uninsured Repair Costs, and Necessary to Meet Constitutional Fair Return requirements.

<b>Banking</b>		<b>Debt Service</b>	
<b>Capital Improvement</b>	✓	<b>Uninsured Repair Costs</b>	
<b>Increased Housing Service Costs</b>		<b>Constitutional Fair Return</b>	

For the detailed text of these justifications, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site.

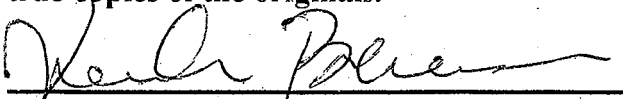
**The property owner has the burden of proving the contested rent increase is justified.**

<sup>1</sup> <http://www.oaklandnet.com/government/hcd/rentboard/ordinance.html>

<sup>2</sup> <http://www.oaklandnet.com/government/hcd/rentboard/rules.html>

**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.

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

01.24.18  
 \_\_\_\_\_  
 Date

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

\_\_\_\_\_  
 Date

January 20, 2018

**Deborah Griffin**  
**Oakland Rent Adjustment Program**

Dear Miss Griffin,

I am writing to contest the proposed rate increased by the owner of the property at 1738 4th Avenue, Oakland, CA 94606. The Capital Improvements that they are claiming to be justifiable for the rate increase do not meet the qualifications laid out in City of Oakland Code of Ordinances, **Title 8: Health and Safety, Chapter 8.22 Residential Rent Adjustments and Evictions**. The Chapter specifically states that admissible Capital improvements do not include the following as set forth in the regulations: correction of serious code violations not created by the tenant; improvements or repairs required because of deferred maintenance; or improvements that are greater in character or quality than existing improvements ("gold-plating" "over-improving").

As I see it, the **Structural/Exterior Wall** repairs were necessary due to "deferred maintenance" of the building. The extensive dry rot they discovered in the entire east side of the building seemed to stem from negligence on the owner's part over a much longer period of time. I see no reason why this construction should fall on the responsibility of the tenant's who lived here during the time the repairs took place. Furthermore, the **Painting** costs they have included in the petition are cosmetic and would appear to fall under "improvements that are greater in character or quality than existing improvements." During the time the painting took place I was not a tenant in the building.

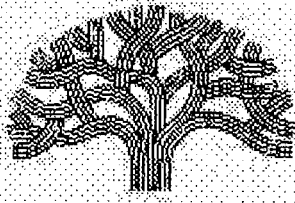
The construction itself took much longer than the original time line and resulted in the compromised safety of the tenants. The construction crew left dangerous equipment unattended around the property, as well as employing unsafe practices while making the actual repairs. Additionally, I have serious cracks in my walls as a result of the construction on the exterior wall, which still have yet to be inspected by the property management company.

Thank you for your time and attention to this matter.

Sincerely,

**Kendra Brennan**  
**17438 4th Avenue #103**  
**Oakland, CA 94606**

000030



**CITY OF OAKLAND  
RENT ADJUSTMENT  
PROGRAM**

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

for Date Stamp Only  
**RECEIVED**  
JAN 20 2011  
RENT ADJUSTMENT PROGRAM  
CITY OF OAKLAND

CASE NUMBER L17-0241

**Tenant Response Contesting Rent Increase**

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

Your Name <i>Lani Shotwell</i>	Complete Address (with Zip Code) <i>1738 4th Ave #203 Oakland, CA 94606</i>	Telephone Day <u><i>925 984 3086</i></u> Evening <u><i>SAME</i></u>
Your Representative's Name	Complete Address (with Zip Code)	Telephone Day _____ Evening _____

Are you current on your rent? Yes  No

Number of Units in this Building: *24*

**Rental History**

Date you entered into the Rental Agreement for this unit: *12/1/11*

Date you moved into this unit: *12/1/11*

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

Initial Rent: \$ *1125* Initial rent included (please check all that apply) ( ) Gas  
 ( ) Electricity  Water  Garbage ( ) Parking ( ) Storage ( ) Cable TV ( ) Other (please specify)  
*\* Garage space became available within first year of tenancy, increasing rent to \$1200*

Did you receive the City of Oakland's NOTICE TO TENANTS OF RESIDENTIAL ADJUSTMENT PROGRAM at any time during your tenancy in this unit?  
Yes  No

Please list the date you first received the Notice to Tenants *11/22/12*

List all increases your received. Begin with the most recent and work backwards. Attach most recent rent increase notice. If you need additional space please attach another sheet.

Date Notice Given (Mo/Day/Yr)	Date Increase Effective	Rent Increased		Did you receive a NOTICE TO TENANTS with the notice of rent increase?
		From	To	
11/22/12	1/1/13	\$ 1200	\$ 1236	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
11/22/13	1/1/14	\$ 1236	\$ 1261.95	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
12/23/14	2/1/15	\$ 1261.95	\$ 1314.50	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
1/22/16	3/1/16	\$ 1314.50	\$ 1335.95	<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

**Contested Justification(s) for Rent Increase**

Please attach a brief statement explaining why the owner is not entitled to the proposed increase. The legal justifications are Banking, Capital Improvements, Increased Housing Service Costs, Debt Service, Uninsured Repair Costs, and Necessary to Meet Constitutional Fair Return requirements.

<b>Banking</b>		<b>Debt Service</b>	
<b>Capital Improvement</b>	<input checked="" type="checkbox"/>	<b>Uninsured Repair Costs</b>	
<b>Increased Housing Service Costs</b>		<b>Constitutional Fair Return</b>	

For the detailed text of these justifications, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site.


The property owner has the burden of proving the contested rent increase is justified.

<sup>1</sup> <http://www.oaklandnet.com/government/hcd/rentboard/ordinance.html>

<sup>1</sup> <http://www.oaklandnet.com/government/hcd/rentboard/rules.html>

**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.

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

1/25/18  
 \_\_\_\_\_  
 Date

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

\_\_\_\_\_  
 Date

**Important Information**

This form must be received at the following address within the time limits prescribed by Oakland Municipal Code, Chapter 8.22. City of Oakland, Housing Residential Rent Relocation Board, Dalziel Building, 250 Frank H. Ogawa Plaza Suite 5313, Oakland, CA 94612. For more information, please call: 510-238-3721.

**You cannot get an extension of time to file your Response by telephone.**

**File Review**

You should have received with this letter a copy of the landlord petition.

Copies of attachments to the petition will not be sent to you. However, you may review these in the Rent Program office. Files are available for review by appointment.

For an appointment to review a file call (510) 238-3721.

**MEDIATION PROGRAM**

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

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).

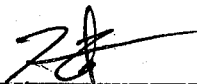
You may choose to have the mediation conducted by a Rent Adjustment Program Hearing Officer or select an outside mediator. Rent Adjustment Program Hearing Officers conduct mediation sessions free of charge. If you and the owner agree to an outside mediator, please call (510) 238-3721 to make arrangements. 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).

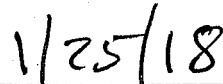
**The Rent Adjustment Program will not schedule a mediation session if the owner does not file a response to the petition. Rent Board Regulation 8.22.100.A.**

**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 (for Mediation Request)



\_\_\_\_\_  
Date

\_\_\_\_\_  
Tenant's Signature (for Mediation Request)

\_\_\_\_\_  
Date

Lani Shotwell  
1738 4th Ave, No. 203  
Oakland, CA 94606

January 25, 2018

Deborah Griffin  
CITY OF OAKLAND  
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
Rent Adjustment Program  
P.O. Box 70243  
Oakland, CA 94612-0243

Re: **Faussner v. Tenants**  
Address: 1738 4th Avenue, Oakland  
Case No: L17-0241

Dear Ms. Griffin:

This responds to the petition submitted by Robert Faussner (the Owner) for a rent increase at the above referenced property.

The Owner seeks a rent increase on the ground that work performed in 2016 and 2017 amounts to "Capital Improvements" to the property (Oakland Municipal Code §8.22.070(C)(1)(a); Reg. App. 10.2). I and the other tenants strongly disagree that the work in question amounts to "Capital Improvements," as defined in §8.22.020:

"Capital improvements" means those improvements to a covered unit or common areas that materially add to the value of the property and appreciably prolong its useful life or adapt it to new building codes. Those improvements must primarily benefit the tenant rather than the owner.... Capital improvements do not include the following as set forth in the regulations: correction of serious code violations not created by the tenant; improvements or repairs required because of deferred maintenance; or improvements that are greater in character or quality than existing improvements ("gold-plating" "over-improving")....

The work in question involved "repairs required because of deferred maintenance." It was discovered that windows along one wall of the building were leaking. In the course of replacing the leaking windows, mold and dry rot conditions were discovered within the wall assemblies. The damage was so extensive the repair contractor was required to erect structural stilts within the effected units to prevent the building from collapsing when outer wall support members were removed so they could be replaced. This required substantial work to remedy these conditions, following which the walls were re-stuccoed and painted.

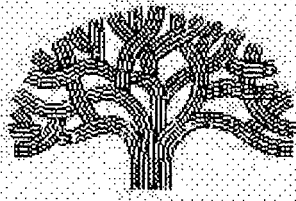
000034

Notably, this repair work actually downgraded the aesthetic quality of the building. The newly applied stucco was installed incorrectly, and has since been cracking. Also, the repair work caused substantial cracking to the interior sheetrock in many of the units bordering the exterior wall that was repaired.

Accordingly, we respectfully request that the petition be denied.

Very truly yours,

Lani Shotwell



**CITY OF OAKLAND  
RENT ADJUSTMENT  
PROGRAM**

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

for Date Stamp Only **RECEIVED**  
JAN 30 2018  
RENT ADJUSTMENT PROGRAM  
OAKLAND

CASE NUMBER L17-0241

**Tenant Response Contesting Rent Increase**

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

Your Name <i>Shane Caldwell + Anna Caldwell</i>	Complete Address (with Zip Code) <i>1738 4th Ave #301 Oakland, CA 94606</i>	Telephone Day _____ Evening <sup>773</sup> <i>960-9447</i>
Your Representative's Name	Complete Address (with Zip Code)	Telephone Day _____ Evening _____

Are you current on your rent? Yes  No

Number of Units in this Building: 24

**Rental History**

Date you entered into the Rental Agreement for this unit: June 2015

Date you moved into this unit: June 2015

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

Initial Rent: \$ 1950 Initial rent included (please check all that apply) ( ) Gas  
( ) Electricity (x) Water (x) Garbage ( ) Parking ( ) Storage ( ) Cable TV ( ) Other (please specify)

Did you receive the City of Oakland's NOTICE TO TENANTS OF RESIDENTIAL ADJUSTMENT PROGRAM at any time during your tenancy in this unit?  
Yes  No

Please list the date you first received the Notice to Tenants June 2015 (with lease)



List all increases your received. Begin with the most recent and work backwards. Attach most recent rent increase notice. If you need additional space please attach another sheet.

Date Notice Given (Mo/Day/Yr)	Date Increase Effective	Rent Increased		Did you receive a NOTICE TO TENANTS with the notice of rent 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

**Contested Justification(s) for Rent Increase**

Please attach a brief statement explaining why the owner is not entitled to the proposed increase. The legal justifications are Banking, Capital Improvements, Increased Housing Service Costs, Debt Service, Uninsured Repair Costs, and Necessary to Meet Constitutional Fair Return requirements.

<b>Banking</b>		<b>Debt Service</b>	
<b>Capital Improvement</b>	X	<b>Uninsured Repair Costs</b>	
<b>Increased Housing Service Costs</b>		<b>Constitutional Fair Return</b>	

For the detailed text of these justifications, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site.

**The property owner has the burden of proving the contested rent increase is justified.**

<sup>1</sup> <http://www.oaklandnet.com/government/hcd/rentboard/ordinance.html>

<sup>1</sup> <http://www.oaklandnet.com/government/hcd/rentboard/rules.html>

**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.

Anna Caldwell

Tenant's Signature

21 Jun 2018

Date

Anna Caldwell

Tenant's Signature

1/21/2018

Date

**Important Information**

This form must be received at the following address within the time limits prescribed by Oakland Municipal Code, Chapter 8.22. City of Oakland, Housing Residential Rent Relocation Board, Dalziel Building, 250 Frank H. Ogawa Plaza Suite 5313, Oakland, CA 94612. For more information, please call: 510-238-3721.

**You cannot get an extension of time to file your Response by telephone.**

**File Review**

You should have received with this letter a copy of the landlord petition.

Copies of attachments to the petition will not be sent to you. However, you may review these in the Rent Program office. Files are available for review by appointment.

For an appointment to review a file call (510) 238-3721.

**MEDIATION PROGRAM**

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

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).

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 (for Mediation Request)**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Tenant's Signature (for Mediation Request)**

\_\_\_\_\_  
**Date**

**Anna & Shane Caldwell**

1738 4th Avenue  
Apartment 301  
Oakland, CA 94606  
caldwell.shane@gmail.com  
(773) 960-9447

**21 January 2018**

**% Deborah Griffin**

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

File Name: Faussner v. Tenants  
Property Address: 1738 4th Avenue, Oakland, CA 94606  
Case Number: L17-0241

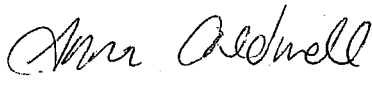
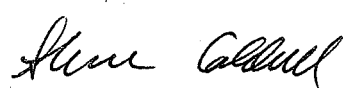
Dear Ms. Griffin,

We are writing in response to Robert E. Faussner's claim of exemption from the Rent Adjustment Program on grounds of Capital Improvements to the property (1738). Reading the text of the Rent Adjustment Ordinance, we find that Capital Improvements are defined as "those improvements to a covered unit or common areas that materially add to the value of the property and appreciably prolong its useful life or adapt it to new building codes. Those improvements must primarily benefit the tenant rather than the owner."<sup>1</sup>

The costs enumerated in Mr. Faussner's petition were incurred to fix a dry-rot problem in one of the outer walls of the building. Fixing the dry rot was a matter of maintenance and did not benefit us as tenants or change the value proposition of living at 1738 for us. The result of the project was only to restore the building to its original condition.

We have lived at 1738 since June 2015 and have always paid our rent on time. Apart from a long-standing problem with the phone wiring in the building, we are generally satisfied with the living situation. However the facts in this case do not appear to support a claim of exemption based on Capital Improvements as defined by the City.

Sincerely,

Anna & Shane Caldwell  
Unit 301

---

<sup>1</sup> <http://www2.oaklandnet.com/oakca1/groups/ceda/documents/agenda/oak050309.pdf>, page 3



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

For date stamp.

**TENANT RESPONSE**

CASE NUMBER: **L17-0241**

**Please fill out this form as completely as you can.** Failure to provide needed information may result in your response being rejected or delayed.

Your Name Annabelle Fuentes Joshua Palmer	Complete Address (with Zip Code) 1738 4th Ave. #307 Oakland, CA 94606	Telephone: 415-572-9965 (AF) / 510-693-1352 (JP)
		Email: annabelle.fuentes@gmail.com
Your Representative's Name	Complete Address (with Zip Code)	Telephone
		Email:

Are you current on your rent?      Yes       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.)

**What are your reasons for contesting the proposed rent increase or exemption? Attached additional sheets if necessary. If you are contesting a petition that includes a banking increase, you must complete rental history on the next page. For decreased housing services, you need to file a separate tenant petition.**

See Attached Letter, and additional sheets p.1-21

**Rental History**

Date you moved into this unit: 3/01/2010

Initial rent: \$1,025.00

Is your rent subsidized or controlled by any government agency, including HUD (Section 8)?

- Yes  No

Did you receive the City of Oakland's NOTICE TO TENANTS OF RESIDENTIAL ADJUSTMENT PROGRAM (RAP Notice) at any time during your tenancy in this unit?

- Yes  No

Please list the date you first received the RAP Notice. September 25, 2015

List all increases you received. Begin with the most recent and work backwards. Attach most recent rent increase notice. If you need additional space please attach another sheet.

Date Notice Given (Mo/Day/Yr)	Date Increase Effective	Rent Increased From	Rent Increased To
	11/01/2015	\$ 1,145.75	\$ 1,198.30
	11/01/2015	\$ 1,105.94	\$ 1,145.75
	11/01/2014	\$ 1,105.94	\$ 1,158.49
	6/01/2013	\$ 1,073.73	\$ 1,105.94
	6/01/2012	\$ 1,025.00	\$ 1,073.73
		\$	\$
		\$	\$

**Verification**

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

[Signature]

Tenant's Signature

[Signature]

Tenant's Signature

01/30/2018

Date

01-30-18

Date



January 30, 2018

I am writing to contest the proposed rate increased by the owner of the property at 1738 4th Avenue, Oakland, CA 94606.

1. Tenants have not received a rent increase notice from landlord with specific proposed rent increase amount.
2. The capital improvements in landlord's petition were not building-wide and are not unit specific to tenants in Unit #307. The improvements noted by landlord in their petition do not primarily benefit us the tenants of Unit #307. Moreover, the improvements noted by landlord in their petition provide no benefit to us the tenants of Unit #307.
  - a. The improvements noted by landlord in their petition were improvements to part of the building, not to the entire building, and not in or near Unit #307. Please reference the attached four (4) pictures. (See 10.2.)
  - b. The stucco work was done to a specific part of the building and not to the entire building.
  - c. The painting work was done to a specific part of the building and not to the entire building.
  - d. The structural/exterior wall work was done to a specific part of the building and not to the entire building.
3. The landlord must show evidence of costs paid and furnish receipts, invoices, bid contracts, or other documentation, but has not provided such evidence to tenants in landlord's petition.
4. Not all units have been included in the landlord's petition.
5. If a unit is occupied by an agent of the landlord, that unit must be included when determining the average cost per unit. The landlord did not include the unit that is occupied by an agent of the landlord in their petition, Unit #102. (See 10.2.3.)
6. The Capital Improvements that they are claiming to be justifiable for the rate increase do not meet the qualifications laid out in City of Oakland Code of Ordinances, Title 8: Health and Safety, Chapter 8.22 Residential Rent Adjustments and Evictions. The Chapter specifically states that admissible Capital improvements do not include the following as set forth in the regulations: correction of serious code violations not created by the tenant; improvements or repairs required because of deferred maintenance; or improvements that are greater in character or quality than existing improvements ("gold-plating" "over-improving").
  - a. The Structural/Exterior Wall repairs were necessary due to "deferred maintenance" of the building. The extensive dry rot they discovered in the entire east side of the building seemed to stem from negligence on the owner's part over a much longer period of time. I see no reason why this construction should fall on the responsibility of the tenant's who lived here during the time the repairs took place. Furthermore, the Painting costs they have included in the petition are cosmetic and would appear to fall under "improvements that are greater in character or quality than existing improvements"
7. The construction itself took much longer than the original time line and resulted in the compromised safety of the tenants. The construction crew left dangerous equipment unattended around the property, as well as employing unsafe practices while making the actual repairs. Additionally, tenants have cracks on the walls that are a result of the construction on the exterior wall, which still have yet to be inspected by the property management company.

Thank you for your time and attention to this matter.

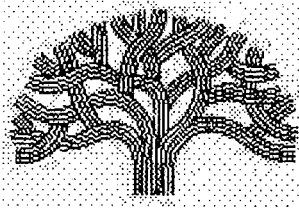
Sincerely,

Annabelle Fuentes and Joshua Palmer

1738 4<sup>th</sup> Ave. #307

Oakland, CA 94606

000043



**CITY OF OAKLAND  
RENT ADJUSTMENT  
PROGRAM**

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

for Date Stamp Only

2010 JUN 01 PM 12:12

CASE NUMBER L17-0241

**Tenant Response Contesting Rent Increase**

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

Your Name Kevin Alvarado Marcelino Martinez	Complete Address (with Zip Code) 1738 4th ave #202 Oakland, CA 94606	Telephone 925 719 5270 Day 209 323 0269 Evening _____
Your Representative's Name	Complete Address (with Zip Code)	Telephone Day _____ Evening _____

Are you current on your rent? Yes  No

Number of Units in this Building: 24

**Rental History**

Date you entered into the Rental Agreement for this unit: 05/01/2012

Date you moved into this unit: 05/01/2012

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

Initial Rent: \$ 1180.00 Initial rent included (please check all that apply) ( ) Gas  
 ( ) Electricity  Water  Garbage ( ) Parking  Storage ( ) Cable TV ( ) Other (please specify)

Did you receive the City of Oakland's NOTICE TO TENANTS OF RESIDENTIAL ADJUSTMENT PROGRAM at any time during your tenancy in this unit?  
Yes  No

Please list the date you first received the Notice to Tenants —



List all increases your received. Begin with the most recent and work backwards. Attach most recent rent increase notice. If you need additional space please attach another sheet.

Date Notice Given (Mo/Day/Yr)	Date Increase Effective	Rent Increased		Did you receive a NOTICE TO TENANTS with the notice of rent increase?
		From	To	
04/06/15	04/23/15	\$1240.92	\$1264.50	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
03/24/14	05/01/14	\$1215.40	\$1240.92	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
03/22/13	05/01/13	\$1180.00	\$1215.40	<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

**Contested Justification(s) for Rent Increase**

Please attach a brief statement explaining why the owner is not entitled to the proposed increase. The legal justifications are Banking, Capital Improvements, Increased Housing Service Costs, Debt Service, Uninsured Repair Costs, and Necessary to Meet Constitutional Fair Return requirements.

<b>Banking</b>		<b>Debt Service</b>	
<b>Capital Improvement</b>	<input checked="" type="checkbox"/>	<b>Uninsured Repair Costs</b>	
<b>Increased Housing Service Costs</b>		<b>Constitutional Fair Return</b>	

For the detailed text of these justifications, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site.

**The property owner has the burden of proving the contested rent increase is justified.**

<sup>1</sup> <http://www.oaklandnet.com/government/hcd/rentboard/ordinance.html>

<sup>1</sup> <http://www.oaklandnet.com/government/hcd/rentboard/rules.html>

**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.

Tenant's Signature

*[Handwritten Signature]*

Tenant's Signature

Date

1-30-18

1-30-19

Date

**Important Information**

This form must be received at the following address within the time limits prescribed by Oakland Municipal Code, Chapter 8.22. City of Oakland, Housing Residential Rent Relocation Board, Dalziel Building, 250 Frank H. Ogawa Plaza Suite 5313, Oakland, CA 94612. For more information, please call: 510-238-3721.

**You cannot get an extension of time to file your Response by telephone.**

**File Review**

You should have received with this letter a copy of the landlord petition.

Copies of attachments to the petition will not be sent to you. However, you may review these in the Rent Program office. Files are available for review by appointment.

For an appointment to review a file call (510) 238-3721.

**MEDIATION PROGRAM**

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

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).

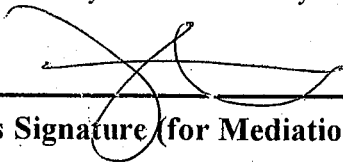
You may choose to have the mediation conducted by a Rent Adjustment Program Hearing Officer or select an outside mediator. Rent Adjustment Program Hearing Officers conduct mediation sessions free of charge. If you and the owner agree to an outside mediator, please call (510) 238-3721 to make arrangements. 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 (for Mediation Request)

1-30-18

Date



Tenant's Signature (for Mediation Request)

1-30-18

Date

The following is in response to the rent increase proposed by Robert Faussner and Lapham property management for Capital Improvements. We as tenets do not own property in this building, we are only renters. However, for the owner of the building, the structural improvement will increase the longevity of the building and his ability to collect rent payments from tenets. The overall benefit from the improvements made to the building and income from tenets paying rent will only benefit the owner in the long-run. We feel this does not affect us directly and is more of a home improvement that tenets should not be responsible for absorbing the cost for the building owner.

Kind regards,

Marcelino Martinez & Kevin Alvarado

Case Number L17-0241



250 FRANK OGAWA PLAZA, OAKLAND, CA 94612 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:** L17-0241, Faussner v. Tenants  
**PROPERTY ADDRESS:** 1738 - 4<sup>th</sup> Ave., Oakland, CA  
**DATE OF HEARING:** May 3, 2018  
**DATE OF DECISION:** July 2, 2018  
**APPEARANCES:** Ben Lewis (Agent for Owner)  
Merkeb Tecele (Agent for Owner)  
Joshua Palmer (Tenant)  
Brendan Blandy (Tenant)  
Kevin Alvarado (Tenant)  
Clay Hayes (Tenant)  
Christina White (Tenant)  
Annabelle Fuentes (Tenant)  
Maria D. Dominguez (Tenant Representative)

## **SUMMARY OF DECISION**

The owner's petition is denied.

## **CONTENTIONS OF THE PARTIES**

The owner filed a petition on November 7, 2017, for approval of rent increases for tenants in the subject 24-unit building on the ground of Capital Improvements. Numerous tenants filed responses to the owner's petition, in which they contest the owner's right to rent increases.

## **THE ISSUE**

Are rent increases based upon Capital Improvements justified and, if so in what amounts?

000048

## EVIDENCE

Scope of the Project: The owner's agents at first testified that the work was a "seismic upgrade," replacement of windows, and associated work. They further testified that they are employed by Lapham Co., a property management firm, and all payments were made by Lapham Company on behalf of the owner.

Owner Exhibits: Prior to the Hearing, the owner submitted a number of documents, which were marked Exhibits 1 through 101.<sup>1</sup> Following the Hearing, as ordered by this Hearing Officer, the owner submitted a corrected rent roll, which documents have been marked Exhibit Nos. 102 through 106. These documents state the following current monthly rents for tenants in the building, as follows:

Unit No. 101: Brian Ko - \$1,502.67  
Unit No. 102 (Engelbrecht) - \$1,116.67  
Unit No. 103 (Brennan) - \$1,925  
Unit No. 104 (Hayes) - \$1,73.44  
Unit No. 105 (Dominic & Colin) - \$1,895 (moved in 3-10-17)  
Unit No. 106 (Hopps) - \$1,348.66  
Unit No. 107 (Fuentes & Plummer) - \$1,850  
Unit No. 108 (Zegeye) - \$1,348.76  
Unit No. 201 (Richard) - \$1,642.55  
Unit No. 202 (Alvarado & Marcelino) - \$1,264.50  
Unit No. 203 (Shotwell) - \$1,335.95  
Unit No. 204 (Kelley) - \$1,598.03  
Unit No. 205 (Brown) - \$1,895 (moved in 9-16-17)  
Unit No. 206 (Blandy) - \$1,464.66  
Unit No. 207 (Spadaro) - \$1,895 (moved in 10-1-17)  
Unit No. 208 (Steele & Blasher) - \$1,950  
Unit No. 301 (Caldwell & Smylie) - \$2,050  
Unit No. 302 (Austin) - \$1,489.25  
Unit No. 303 (Shuman & Rusich) - \$1,430.33  
Unit No. 304 (White) - \$1,539.21  
Unit No. 305 (Pearman & Jacuinde) - \$1,925 (moved in 10-1-17)  
Unit No. 306 (Johnson) - \$2,250 (moved in 9-16-17)  
Unit No. 307 (Fuentes & Palmer) - \$1,198.30  
Unit No. 308 (Johnson) - \$1,608.36

/

/

/

/

---

<sup>1</sup> At the Hearing, the tenants objected to these documents being admitted into evidence because they had not had an opportunity to review them. The documents had been submitted more than 7 days before the Hearing, as specified in the Notice of Hearing. Therefore, the tenants had an opportunity to review and/or obtain a copy of the file, and the objection was therefore overruled and the documents were admitted into evidence.

Exhibits Submitted by the Owner:

Building Permit: A City Building Permit was issued on May 4, 2016, and “finaled” on January 27, 2017.<sup>2</sup> The description of the work is “Dry rot repair / investigation for 4 story building (24 units building) stucco finish to match existing only.” On the first page is a handwritten note: “5-19-16 Dry rot + 9 windows.” It is unknown who wrote these words. However, there is no further formal documentation regarding a building permit for installation of windows. The owners also submitted a photograph of the exterior of a building with hand writing regarding replacement of windows and an invoice for windows.<sup>3</sup>

Fixit Construction, Inc Contract: A contract for work not to exceed the cost of \$325, 632.90. The scope of the contract is for “Repair and replacement of dry rotten framing members and related stucco. Replacement as necessary of related windows, tub surrounds, electrical, sheetrock, plaster and paint.” The contract also states: “What this proposal does not include: Structural engineering and plans.”<sup>4</sup> The contract was signed by the parties on May 6 and 7, 2016.

Fixit Invoices: Invoices in the total amount of \$308,725.<sup>5</sup> The most recent invoice is dated February 9, 2017.

Payments to Fixit: Checks in the total amount of \$386,340.<sup>6</sup> The last of these payments was made on March 27, 2017.

Testimony of Owner’s Agents: The owner’s agents testified that the initial work was removal of stucco in order to find which, if any, structural members needed replacement. Fixit Co. replaced a number of wooden structural members. As part of the work, several windows were also replaced. The agents testified that they did not know if these windows had been leaking or why they had been replaced. On questioning by tenants, the agents testified that they did not know what the original plan was. They further testified that they believed that the owner had hired a structural engineer in connection with this work, but they did not know his or her identity nor did they know if a structural engineer had prepared a report.

The owner’s agents further testified that the Lapham Company conducts annual inspections of buildings that it manages, after which reports of the inspections are prepared. The agents testified that they did not have any reports for the subject building, nor did they know if any reports commented on the condition of windows in the building.

Exhibit No. 24, a Fixit invoice states, in part: “Cut and remove buckling stucco carefully . . .” The owner’s agents testified that they did not know how long the stucco had been buckling, or if this condition had ever been noticed and reported by the Lapham Co. The Fixit invoices reflect a

---

<sup>2</sup> Exhibit Nos. 11 through 14

<sup>3</sup> Exhibit Nos. 15 & 16

<sup>4</sup> Exhibit Nos. 17 through 21

<sup>5</sup> Exhibit Nos. 23 through 72; 75, & 76. The amounts in invoices and payments are rounded to the nearest dollar.

<sup>6</sup> Exhibit Nos. 22, and 77 through 101

significant project, involving the replacement of much structural lumber, at a cost of more than \$300,000.

Tenant Testimony: Tenant Fuentes testified that several times she had reported to building management that windows in her unit leaked when it rained, but nothing was done. Tenant Hayes testified that in the year 2015 he told the building manager that two windows in his unit leaked. The manager inspected the windows and said that they needed replacement. However, nothing was done before the construction discussed in this case. Tenant Palmer testified that his windows began to leak in the year 2014, and he reported this problem to the property manager several times between 2014 and 2016. Nothing was done before the subject construction project.

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

The Rent Adjustment Ordinance: A rent increase in excess of the C.P.I. Rent Adjustment may be justified by capital improvement costs.<sup>7</sup> Capital improvement costs are those improvements which materially add to the value of the property and appreciably prolong its useful life or adapt it to new building codes. Normal routine maintenance and repair is not a capital improvement cost, but a housing service cost.<sup>8</sup>

Items defined as capital improvements will be given a useful life period of 5 years or more and the total costs shall be amortized over that time period unless the rent increase using this amortization would exceed 10% of the existing rent. Whenever a capital improvement rent increase alone or with any other rent increases would exceed 10% or 30% in 5 years, the excess can only be recovered by extending the amortization period in yearly increments sufficient to cover the excess.

The dollar amount of the capital improvement rent increase shall be removed from the rent in the sixty-first month or at the end of an extended amortization period.<sup>9</sup> A maximum of 70% of the total cost for the capital improvement may be passed through to the tenant.<sup>10</sup>

In order to be considered a capital improvement, the improvement has to be “completed.” (Regulations Appendix, Section 10.2.1). The Oakland Building Code provides that “all construction work for which a permit is required shall be subject to inspection by the Building Official.” (O.M.C. Section 15.08.140). Without a permit, the work cannot be said to have been “completed.”

The Board has held that if a construction project required a permit, then a capital improvement rent increase cannot be granted for costs expended on that project for which there was no permit. See Falcom v. Bostrum, Case No. T13-0279 & Ludwig v. Tenants, Case No. L16-0038.

Section 105 of the California Building Code, which has been incorporated into the Oakland Building Codes, lists the types of work for which no permit is required. Installation of windows

---

<sup>7</sup> O.M.C. Section 8.22.070(C)

<sup>8</sup> Regulations Appendix, Section 10.2.2(5)

<sup>9</sup> Regulations Appendix, Section 10.2.3(2)

<sup>10</sup> Regulations Appendix, Section 10.2.3(3)

is not one of the listed items. Therefore, a Building Permit was required for the installation of the subject windows.

The following may not be considered as capital improvements:

- a. Costs for work or portion of work that could have been avoided by the landlord's exercise of reasonable diligence in making timely repairs after the landlord knew or should reasonably have known of the problem that caused the damage leading to the repair claimed as a capital improvement.
  - i. Among the factors that may be considered in determining if the landlord knew or reasonably should have known of the problem that caused the damage:
    - (a) Was the condition leading to the repairs outside the tenant's unit or inside the tenant's unit?
    - (b) Did the tenant notify the landlord in writing or use the landlord's procedures for notifying the landlord of conditions that might need repairs?
    - (c) Did the landlord conduct routine inspections of the property?
    - (d) Did the tenant permit the landlord to inspect the interior of the unit?
  - ii. Examples:
    - (a) A roof leaks and, after the landlord knew of the leak, did not timely repair the problem and leak causes ceiling or wall damage to units that could have been avoided had the landlord acted timely to make the repair. In this case replacement of the roof would be a capital improvement, but the repairs to the ceiling or wall would not be.
    - (b) A problem has existed for an extended period of time visible outside tenants' units and could be seen from a reasonable inspection of the property, but the landlord's agents either had not inspected the property for an unreasonable period of time, or did not exercise due diligence in making such inspections. In such a case, the landlord should have reasonably known of the problem. Annual inspections may be considered a reasonable time period for inspections depending on the facts and circumstances of the property such as age, condition and tenant complaints.
  - iii. Burden of Proof
    - (a) The tenant has the initial burden to prove that the landlord knew or should have reasonably known of the problem that caused the repair.
    - (b) Once a tenant meets the burden to prove the landlord knew or should have reasonably known, the burden shifts to the landlord to prove that the landlord exercised reasonable diligence in making timely repairs after the landlord knew or should have known of the problem.<sup>11</sup>

---

<sup>11</sup> Regulations Appendix, Section 10.2.2(4)



Discussion: The California Evidence Code states: "If weaker and less satisfactory evidence is offered when it was within the power of the party to produce stronger and more satisfactory evidence, the evidence offered should be viewed with distrust."<sup>12</sup> Although there was testimony that Lapham Co. conducts annual inspections and then prepares reports, no reports were introduced by the owner's agents. The agents further testified that they believed that the owner had hired a structural engineer, but there was neither testimony nor a report from this person. Therefore, the only substantial evidence regarding the construction project was the testimony of several tenants, the Fixit contract for more than \$300,000, and the quoted language in the Fixit invoice: "buckling stucco."

It is found that several tenants reported that their windows leaked as early as 2014, yet a Building Permit was not issued until May 2016. There is no doubt that the stucco buckled because water from leaking windows eventually damaged wooden structural members, which then buckled the stucco. The Fixit employees obviously inspected the building, noted the buckling stucco, and anticipated how extensive the underlying damage would be. Presumably, an inspection by the owner or his agents would have revealed buckling stucco some time earlier, at which time the damage would not have been as extensive.

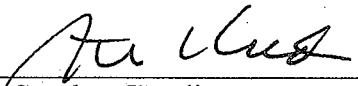
Applying the language in the Regulations cited above, it is clear that the owner knew or reasonably should have known that there was a problem with water entry in 2014, if not earlier. Therefore, the burden has shifted to the owner to prove that reasonable diligence was exercised.

The owner did not act diligently and, has not sustained his burden of proof. Therefore, the owner's petition is denied. Further, since there is no evidence that there was a building permit for installation of the windows, and the invoices do not apportion the cost of these windows and their installation, the cost of these windows is not allowed. Therefore, the owner's petition is denied.

### ORDER

1. Petition L17-0241 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: July 2, 2018

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

<sup>12</sup> Evidence Code, Section 412

**PROOF OF SERVICE**  
Case Number L17-0241

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**

Robert E. Faussner c/o Lapham Co.  
4844 Telegraph Ave  
Oakland, CA 94609

**Owner Representative**

The Lapham Company  
4844 Telegraph Ave  
Oakland, CA 94609

**Tenants**

Annabelle Fuentes & Joshua Palmer  
1738 4th Ave #307  
Oakland, CA 94606

Aynaim Zegeye  
1738 4th Ave #108  
Oakland, CA 94606

Bahij Austin  
1738 4th Ave #302  
Oakland, CA 94606

Brendan Blandy  
1738 4th Ave #206  
Oakland, CA 94606

Brian Ko  
1738 4th Ave #101  
Oakland, CA 94606

Christina White  
1738 4th Ave #304  
Oakland, CA 94606

Clay Hays  
1738 4th Ave #104  
Oakland, CA 94606

Eric Johnson  
1738 4th Ave #308  
Oakland, CA 94606

000054

Jackelyn & Shawn Kelley  
1738 4th Ave #204  
Oakland, CA 94606

Jessica Steele & Joseph Blasher  
1738 4th Ave #208  
Oakland, CA 94606

John Gillham  
1738 4th Ave #107  
Oakland, CA 94606

Kendra Brennan  
1738 4th Ave #103  
Oakland, CA 94606

Kevin Alvarado & Marcelino Martinez  
1738 4th Ave #202  
Oakland, CA 94606

Lani Shotwell  
1738 4th Ave #203  
Oakland, CA 94606

Lauren & Valeria Richard  
1738 4th Ave #201  
Oakland, CA 94606

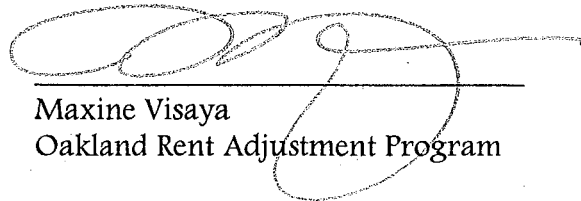
Lindsay Shuman & Shawn Rusich  
1738 4th Ave #303  
Oakland, CA 94606

Shane Caldwell & Anna Smylie  
1738 4th Ave #301  
Oakland, CA 94606

Tyler Hopps  
1738 4th Ave #106  
Oakland, CA 94606

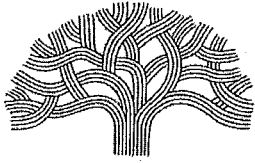
I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first 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 July 03, 2018 in Oakland, CA.



Maxine Visaya  
Oakland Rent Adjustment Program

000055



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  
RENT ADJUSTMENT PROGRAM  
2018 JUL 23 PM 3:33

**APPEAL**

<b>Appellant's Name</b> Robert Faussner c/o Lapham Company		<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant	
<b>Property Address (Include Unit Number)</b> 1738 4th Avenue, Oakland, CA 94606 Units 101, 103, 104, 106, 107, 108, 201, 202, 203, 204, 206, 208, 301, 302, 303, 304, 307 & 308			
<b>Appellant's Mailing Address (For receipt of notices)</b> 4844 Telegraph Avenue Oakland, CA 94609		<b>Case Number</b> L17-0241 <b>Date of Decision appealed</b> July 2nd, 2018	
<b>Name of Representative (if any)</b> Clifford Fried, Esq. Fried & Williams, LLP		<b>Representative's Mailing Address (For notices)</b> 1901 Harrison St., 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.

2018 JUL 23 PM 3:33

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


Submissions to the Board must *not* exceed 25 pages from each party, and they must be received by the Rent Adjustment Program with a proof of service on opposing party within 15 days of filing the appeal. Only the first 25 pages of submissions from each party will be considered by the Board, subject to Regulations 8.22.010(A)(5). Please number attached pages consecutively. Number of pages attached: 2.

**A Supporting Brief will be provided prior to August 7th, 2018**

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

I declare under penalty of perjury under the laws of the State of California that on July 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: **See the attached list of parties served.**

<u>Name</u>	
<u>Address</u>	
<u>City, State Zip</u>	
<u>Name</u>	
<u>Address</u>	
<u>City, State Zip</u>	

	<b>07/23/2018</b>
---	-------------------

**SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE**

**DATE**

For more information phone (510) 238-3721.

**IMPORTANT INFORMATION:**

2018 JUL 23 PM 3:33

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

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

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

City of Oakland Rent Adjustment Program, Case No. L17-0241

Appeal of Owner Robert Faussner

Date of Hearing Decision: July 2, 2018

2018 JUL 23 PM 3:33

## EXPLANATION OF 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.

Oakland Municipal Code, Section 8.22.070(C) permits a rent increase in excess of the CPI based on capital improvement costs. Capital improvement costs are those improvements which materially add to the value of the property and appreciably prolong its useful life or adapt it to new building codes. RAP Regulations, Appendix, Section 10.2.2. Appellant's capital improvement project qualifies for a passthrough under these laws.

There have been cases at the RAP where a capital improvement project did not have a specific permit for window repairs or replacement and yet the requested capital improvement passthrough was permitted by the RAP. Neither *Falcom v. Bostrum*, Case No. T13-0279, nor *Ludwig v. Tenants*, Case. No. L16-0038, are precedent cases which must or should be followed.

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

There have been cases at the RAP where a capital improvement project did not have a specific permit for window repairs or replacement and yet the requested capital improvement passthrough was permitted by the RAP. Neither *Falcom v. Bostrum*, Case No. T13-0279, nor *Ludwig v. Tenants*, Case. No. L16-0038, are precedent cases which must or should be followed.

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

There are several questions presented by the case which raise policy issues not previously addressed by the Board, including but not limited to:

1. What permits are required for a capital improvement passthrough.
2. Whether California Evidence Code Section 412 is applicable at the RAP.
3. Whether a Hearing Officer without the necessary expertise or background can make a finding as to the cause of conditions in need of repair (in this case, buckling stucco and damaged wooden because of window leaks.

4. Whether an inspection by Owner or his agents would reveal conditions that could only be discovered by a trained professional contractor.
5. Whether alleged complaints from tenants about window leaks is sufficient to put an owner on notice of actual structural damage.
6. Whether a visual inspection by the Owner or his agents gives an Owner notice of any kind that there was extensive underlying structural damage to the Property.
7. Whether a delay in repairs automatically leads to underlying structural damage.

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

Oakland Municipal Code, Section 8.22.070(C) permits a rent increase in excess of the CPI based on capital improvement costs. Capital improvement costs are those improvements which materially add to the value of the property and appreciably prolong its useful life or adapt it to new building codes. RAP Regulations, Appendix, Section 10.2.2. Appellant's capital improvement project qualifies for a passthrough under these laws. Thus, the Decision is in violation of Oakland's Municipal Code.

**2)e) The Decision Is Not Supported By Substantial Evidence.**

There is no evidence in the record that

1. A separate permit is required for the window repairs and or replacements.
2. Owner failed to obtain a permit for the window repairs and or replacements.
3. That the alleged delay in investigating and acting diligently caused the extensive underlying damage to the Property.
4. That an inspection by Owner or his agents would have revealed conditions in immediate need of repair or that there was extensive underlying structural damage to the Property.
5. That the alleged complaints from tenants about window leaks was sufficient to put the Owner or his agents on notice of actual structural damage.
6. The alleged delay in repairs caused the extensive underlying structural damage to the Property.

**2)f) Appellant Was Denied A Sufficient Opportunity to Present His Claim.**

Appellant was permitted to submit Tenant Repair Requests since 2014 and none evidenced window leaks. This evidence was submitted, yet the Decision ignores this evidence. It appears that Appellant's evidence was not considered by the Hearing Officer.



2018 JUL 23 PM 3: 33

Opposing parties served with Appeal petition for L17-0241

Brian Ko 1738 4 <sup>th</sup> Avenue, #101 Oakland, CA 94606	Jackelyn & Shawn Kelley 1738 4 <sup>th</sup> Avenue, #204 Oakland, CA 94606
Kendra Brennan 1738 4 <sup>th</sup> Avenue, #103 Oakland, CA 94606	Brendan Blandy 1738 4 <sup>th</sup> Avenue, #206 Oakland, CA 94606
Clay Hays 1738 4 <sup>th</sup> Avenue, #104 Oakland, CA 94606	Jessica Steele Joseph Blasher 1738 4 <sup>th</sup> Avenue, #208 Oakland, CA 94606
Tyler Hopps 1738 4 <sup>th</sup> Avenue, #106 Oakland, CA 94606	Shane Caldwell Anna Smylie 1738 4 <sup>th</sup> Avenue, #301 Oakland, CA 94606
John Gillham 1738 4 <sup>th</sup> Avenue, #107 Oakland, CA 94606	Bahij Austin 1738 4 <sup>th</sup> Avenue, #302 Oakland, CA 94606
Anaim Zegeye 1738 4 <sup>th</sup> Avenue, #108 Oakland, CA 94606	Lindsay Shuman Shawn Rusish 1738 4 <sup>th</sup> Avenue, #303 Oakland, CA 94606
Lauren & Valeria Richard 1738 4 <sup>th</sup> Avenue, #201 Oakland, CA 94606	Christin White 1738 4 <sup>th</sup> Avenue, #304 Oakland, CA 94606
Kevin Alvarado Marcelino Martinez 1738 4 <sup>th</sup> Avenue, #202 Oakland, CA 94606	Annabelle Fuentes Joshua Palmer 1738 4 <sup>th</sup> Avenue, #307 Oakland, CA 94606
Lani Shotwell 1738 4 <sup>th</sup> Avenue, #203 Oakland, CA 94606	Eric Johnson 1738 4 <sup>th</sup> Avenue, #308 Oakland, CA 94606

RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM

2018 AUG -7 PM 4:13

Clifford E. Fried, Esq. SBN 118288  
Fried & Williams LLP  
1901 Harrison Street, 14<sup>th</sup> Floor  
Oakland, CA 94612  
Telephone: 510-625-0100  
Email: [cfried@friedwilliams.com](mailto:cfried@friedwilliams.com)

Representative for Owner and Appellant  
Robert E. Faussner

City of Oakland  
Rent Adjustment Program

Case No. L17-0241  
Appeal of Owner  
Robert E. Faussner

In re 1738 4<sup>th</sup> Avenue, Oakland

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

Owner and Appellant Robert Faussner hereby submits the following supporting argument and documentation, pursuant to RAP Regulations, Sec.8.22.120A.2, in support of the Appeal he filed on July 23, 2018.

**INTRODUCTION**

Appellant filed a petition for a capital improvement passthrough based on seismic upgrades, window upgrades, and associate work. Hearing Decision at page 2. All payments were made by Appellant's property management company on behalf of

RECEIVED  
CITY OF OAKLAND  
2018 AUG - 7 11 11 AM

the Appellant as the owner. Hearing Decision at page 2. Capital improvement expenses claimed by Appellant's petition is \$312,523.19 while evidence was presented at the hearing of \$386,340 in expenses. Hearing Decision at page 2 and Exhibits 22 and 77-101; Petition at page 5.

Appellant's petition was ostensibly denied because the Hearing Officer found that (1) Appellant lacked a window permit, (2) Appellant could have avoided the capital improvement work by inspecting sooner than he did, and (3) several tenants reported their windows leaked as early as 2014 which led to more extensive structural wood rot.

### ARGUMENTS

#### A. APPELLANT HAS A WINDOW PERMIT.

Appellant met his burden of proof by a preponderance of the evidence. Appellant introduced into evidence a permit that incorporates the 9 windows that were part of this capital improvement project. See Evidence Exhibits 11 – 14 per Footnote 2 at Hearing Decision page 3. Appellant also introduced into evidence a Xerox of a photograph of the building exterior with hand writing regarding replacement of windows. See Evidence Exhibits 15 – 16 per Footnote 3 at Hearing Decision page 3. However, while not noted by the Hearing Officer in the Decision, Evidence Exhibits 15 – 16 also include a dated and signed 'APPROVED' stamp from the City of Oakland Planning and Zoning department. Another copy of this document is attached hereto as Exhibit A.

It doesn't matter if words are handwritten on the permit or who may have written the notes. The handwritten information is all part of the permit. The City approved the window replacement and would only do so if a permit was issued. Had Appellant been given advanced notice that the window permit would be questioned, he could have brought in witnesses from the City of Oakland's Building Department, including Neil Gray who signed off on the window work. But it wasn't necessary for Appellant to introduce more evidence concerning the window permit. He introduced enough evidence to meet his burden of proof where the standard is preponderance of the evidence. In other words, it was more likely than not that a permit was pulled for the window upgrades. In the event there is really a question about whether there are permits for the windows, the RAP can take judicial notice of the Building Department's Acela Online Permit Records. Copies are attached hereto as Exhibit B.

During the Hearing, there was *no* testimony or evidence that the permit was not authentic or finalized by the City of Oakland. The Tenants certainly didn't provide testimony or introduce evidence that a window permit was lacking. Nor did the

Hearing Officer challenge or even elicit any testimony about a permit for the windows. In fact, at no point during the Hearing was there any mention made about the permit for windows. Despite being unable to substantiate the lack of a window permit, the Hearing Decision improperly concludes that Appellant lacks a window permit. The Permit submitted by the Appellant at the hearing, a copy of which is attached hereto as Exhibit C is real and should not have been ignored by the Hearing Officer simply because he didn't believe it.

After the contractor removed stucco from the building and determined the true extent of the construction work necessary, he returned to the City of Oakland and sought approval of City of Oakland to obtain its approval for the extent of the structural and dry rot work on the building – including the replacement of windows. Building Officials approved the installation of the windows at the building. There is no actual controversy about the windows being installed without a permit.

**B. THE CAPITAL IMPROVEMENT WORK WAS DONE NOT BECAUSE OF LEAKING WINDOWS, BUT BECAUSE OF A BULGE IN THE STUCCO AT THE SOUTHWEST CORNER OF THE BUILDING.**

The Hearing Officer mistakenly concludes that leaking windows from certain tenants' units caused or possibly exacerbated a dry rot problem.

First, the tenants who testified that they complained about leaks from their windows reside in units quite a distance away from the structural and dry rot work was done. Exhibit D attached to this brief is a drawing showing that the tenants who testified about alleged leaks in their windows reside in the same "stack" as Unit 307, nowhere near the capital improvement work. Even if they did complain about window leaks, which they didn't, their windows are at the opposite end of the building where the work was done.

Second, Appellant submitted written maintenance requests from the tenants in units who testified about leaking windows and none of the requests mentioned window leaks. If the Tenants really complained about window leaks, the complaints would appear in the written maintenance requests. The Tenants fabricated their complaints knowing that the Hearing Officer was use their testimony to deny the Petition.

Third, windows eventually wear out. Appellant's new windows are new, energy efficient and work nicer. Since windows needed to be removed to do new framing and put back, it was a small cost compared to the overall capital improvement project. The extra new windows added at most 2-3% of the overall project. Exhibit A shows the cost of the 9 windows.

10/11/00 4:14

Fourth, the Hearing Officer is not qualified to supply evidence as to cause and effect of leaking windows. It is entirely possible that the alleged window leaks in the 307 Stack caused no structural or dry rot problems whatsoever. Had Appellant been given fair warning that leaking windows from this Stack would be an issue, he would have brought the correct percipient and expert witnesses to the Hearing, including but not limited to the contractor, the City Planning Official, the City Building Official and the Owner himself. However, neither the Tenants' Responses to the Petition nor the Rules and Regulations of the RAP provided notice and a fair opportunity to be heard on the issue. And so, two agents of the property manager appeared at the Hearing and were blindsided.

**C. APPELLANT PULLED A PERMIT TO INVESTIGATE WHAT WORK MIGHT BE NECESSARY.**

While the Hearing Officer is confident as to the cause of the buckling stucco, the owner and his highly paid licensed professionals were not. To determine why the stucco was buckling at one part of the building, Appellant pulled a permit to "investigate". See Permit Inspection Record; Exhibits 11-14.

No person has x-ray eyes that can see and know what damage there is and the extent of any dry rot. That is the nature of water intrusion and dry rot. There is absolutely no evidence supporting the conclusion that the Fixit employees had any certainty as to cause or extent of dry rot damage prior to taking off the stucco - it could have been a \$ 10,000 job or a \$ 1,000,000 job.

Had Appellant been given an adequate opportunity, he would have had an expert opine that the leaks around windows in the building could not have caused the type and extent of damage that was present. Stucco is a cementitious material that, like sidewalks, develops cracks and leaks, frequently right after it is installed. At most, the hearing officer had evidence that only one of the nine windows that was replaced in the area of the capital improvement work was leaking - but no evidence of how long, or what type of leak (e.g., around the windows, on the sills, through the window, below the window, above the window).

**D. THE HEARING OFFICER'S OPINIONS AS TO CAUSATION OF DRY ROT AND DAMAGE ARE MERELY LAY OPINIONS THAT SHOULD NOT HAVE BEEN THE BASIS FOR THE HEARING DECISION.**

The Hearing Decision at page 6 states that "There is no doubt that the stucco buckled because water from leaking windows eventually damaged wooden structural members, which then buckled the stucco." How did the Hearing Officer ever come up with this conclusion! There was nothing in the evidence to support the conclusion.

RECEIVED  
CITY OF CARLETON  
2018 AUG - 7 PM 4: 14

The Decision further states "The Fixit employees obviously inspected the building noted the buckling stucco and anticipated how extensive the underlying damage would be." Again, there was nothing in the evidence to support this conclusion.

The Hearing Officer is not qualified to give these opinions. The Hearing Officer is not a building inspector or a licensed General Contractor and has never even been present at the building. It is difficult enough for real dry rot and construction experts to make these conclusions let alone a lay person with no experience in the building trades.

At one point the Hearing Officer contradicts his findings by stating that "The owner's agents testified that the initial work was removal of stucco to find which, if any structural members needed replacement." It is unclear why the Hearing Officer chose to ignore this testimony and instead base the Hearing Decision on his fictional, lay opinions.

The type of damage repaired by Appellant at the building happened decades ago (over \$ 300K of damage did not occur in one to two years from a few window leaks). In one or two years you would just have wet wood, probably with minor damage that did not have to be replaced. Most of the damage found by Appellant was dry, indicating no active leaking. This kind and extent of damage could not have occurred in the one or two years prior to the work, the time period the tenants testified to.

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

There are several questions presented by the case which raise policy issues not previously addressed by the Board. Given the lack of notice to the Appellant of the issues that would be raised at the Hearing and in the Hearing Decision, it isn't wise to apply strict burdens of proof or rules of evidence.

Nor is it wise to allow a Hearing Officer to substitute his expert opinions without any technical or factual basis. Allowing such latitude opens the door for all kinds of mischief based on sympathy for tenants and biases against landlords.

**F. APPELLANT WAS DENIED A SUFFICIENT OPPORTUNITY TO PRESENT HIS CLAIM.**

Appellant was blindsided by the evidence presented by the Tenants and the Hearing Decision. Without notice being given by the Tenants in their Responses, the Tenants then gave uncorroborated testimony during the Hearing that they had complained to the landlord about leaking windows. See Hearing Decision at page 4. Because the Tenant Responses did not disclose any evidence, notice of

RECEIVED  
CITY OF OAKLAND  
ADJUTANT GENERAL  
2018 AUG 7 PM 4:14

complaints or argument about leaking windows, Appellant was not prepared at the hearing to provide testimony or documentation concerning the absence of complaints from Tenants about leaking windows. Nor was Appellant prepared with an expert witness to give testimony about how leaking windows on one side of the building would not have put the Appellant on notice of a potential rot issue on another side of the building.

For the parties to have real notice of the issues to be raised at the hearing, both landlord and tenant must file petitions and responses with enough detail to put the other on notice of what documents to provide to the RAP and what witnesses to bring to the Hearing. ***NONE of the Tenants' Responses provide any claim of leaking windows that should have put the owner on notice of substantial deferred maintenance or that he lacked a window permit.*** The RAP Form Response says, "Please attach a brief statement explaining why the owner is not entitled to the proposed increase." There was *no* attached statement. It was therefore reasonable for Appellant to appear at the hearing without anticipating a claim of window leaks and lack of permits.

The Hearing Decision is based entirely on the unsubstantiated complaints about window leaks on the wrong side of the building. Appellant did not have a fair and adequate opportunity to reply to the conclusions in the Hearing Decision. Had Appellant been given a fair and reasonable opportunity to respond and reply to the testimony of the Tenants and the conclusion of the Hearing Officer, ample evidence could have been presented by the Appellant to support the petition.

When a landlord prepares for a RAP hearing, it is impossible to anticipate all testimony that will be raised at the hearing. One would hope that the testimony would at least fall within the scope of the Tenant Responses to the Landlord Petition. But that does not always happen. And it did not happen here.

Because Appellant was not given enough opportunity to provide rebuttal documentation and testimony in response to the Tenants' surprise testimony and the surprising conclusions of the Hearing Officer, this case must be remanded back for further hearings on the issues of (1) notice of leaks to the Appellant, and (2) expert testimony on causation of building rot.

Appellant was permitted to submit Tenant Repair Requests since 2014 and none evidenced window leaks. The Decision ignores this evidence. It appears that Appellant's evidence was not considered by the Hearing Officer. On remand, the Hearing Officer should consider the absence of written complaints from tenants and how that affects the truth of self-serving statements made at the RAP and overall credibility of the Tenants' testimony.

RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM

2018 AUG - 7 PM 4: 14

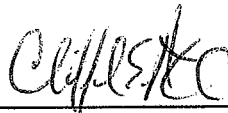
## CONCLUSION

Appellant respectfully requests that the Hearing Decision be reversed for the reasons set forth above and the Petition granted. If the Board is inclined to not grant the petition, it is requested that the matter be remanded back to the Hearing Officer to take expert testimony regarding the cause, nature and effects of the dry rot and any connected window leaks, and to allow percipient testimony from witnesses about Appellant's possession of a window permit.

A great injustice was done here because the outcome of the case was pre-determined and Appellant's evidence was ignored. The Hearing Decision is completely wrong and should not be rubber-stamped on appeal.

Date: August 07, 2018

Fried & William LLP



---

Clifford E. Fried,  
Designated Representative for  
Owner and Appellant Robert E.  
Faussner



RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM

2018 AUG -7 PM 4:14

000070

Replacement of 9  
aluminium windows  
w/ rail on vinyl  
windows ok per  
zoning. NG-X3878

APPROVED

City of Oakton Planning & Zoning

Signature: *Neil Gray* Date: 5/19/83

NOTICE  
TO THE PUBLIC  
THIS PROPERTY IS  
UNDER CONSTRUCTION  
AND ALL ACCESS  
TO THE PROPERTY  
IS RESTRICTED  
TO THE WORK AREA  
ONLY.

NOTICE  
TO THE PUBLIC  
THIS PROPERTY IS  
UNDER CONSTRUCTION  
AND ALL ACCESS  
TO THE PROPERTY  
IS RESTRICTED  
TO THE WORK AREA  
ONLY.

NOTICE  
TO THE PUBLIC  
THIS PROPERTY IS  
UNDER CONSTRUCTION  
AND ALL ACCESS  
TO THE PROPERTY  
IS RESTRICTED  
TO THE WORK AREA  
ONLY.

Economy Lumber Co. - Jacki Lewis  
 750 High Street  
 Oakland, CA 94601  
 Phone: (510) 437-1196

JELD-WEN  
 Windows & Doors

RECEIVED  
 CITY OF OAKLAND  
 RENT ARBITRATION PROGRAM

2010 AUG -7 PM 4:14

QUOTE BY: Jacki Lewis  
 SOLD TO: Iapham

QUOTE #: JIL100614  
 SHIP TO:

PROJECT NAME:  
 REFERENCE:

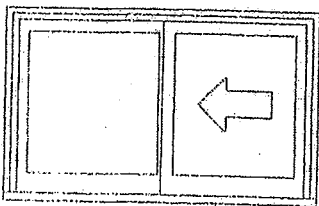
PO#:

Ship Via: Ground/Next Truck

LINE NO.	LOCATION SIZE INFO	BOOK CODE DESCRIPTION	NET UNIT PRICE	QTY	EXTENDED PRICE
----------	-----------------------	--------------------------	-------------------	-----	-------------------

Line-1

Rough Opening: 39 X 25



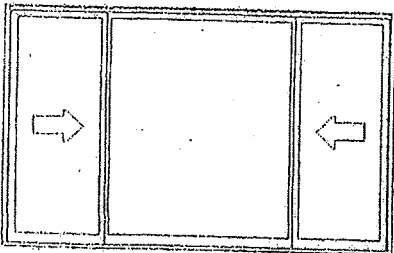
Viewed from Exterior. Scale: 1/2" = 1'

Frame Size: 38 1/2 x 24 1/2  
 Actual Size: 38 1/2 -in X 24 1/2 -in  
 Premium Vinyl Sliding Window With Even Sight Line, Nail Fin (1 1/4" setback), White Ext/White Int , OX (RH) Vent Width = 19 1/2 ,  
 CA Title 24, Low-E 366 Obscure Tempered , Argon 1/8 in - 1/8 out ,  
 0 - 3500 feet  
 Standard Screen with Fiberglass Mesh,  
 White Int Hardware, Mag-Lock(s), 1 Lock, \*Does Not Meet Egress\*,  
 US National-AAMA PG35, DP+35/-35,  
 PEV 2016.1.2.1483/POV 6.388 (05/05/16) WO

\$281.78 3 \$845.34

Line-2

Rough Opening: 96 X 62



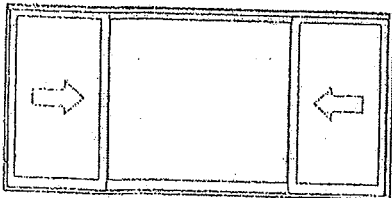
Viewed from Exterior. Scale: 1/4" = 1'

Frame Size: 95 1/2 x 61 1/2  
 Actual Size: 95 1/2 -in X 61 1/2 -in  
 Premium Vinyl Sliding Window 3 Panel, With Even Sight Line, Nail Fin (1 1/4" setback), White Ext/White Int , XO (1/4 Vent) Vent Width = 24 ,  
 CA Title 24, Low-E 366 Clear Argon 0 - 3500 feet  
 Standard Screen with Fiberglass Mesh,  
 White Int Hardware, Mag-Lock(s), 2 Locks, \*Meets 5.7 sqft Egress (All Floors)\*,  
 US National-AAMA PG35, DP+35/-35,  
 PEV 2016.1.2.1483/POV 6.388 (05/05/16) WO

\$571.40 3 \$1,714.20

Line-3

Rough Opening: 96 X 48



Viewed from Exterior. Scale: 1/4" = 1'

PRVSL39648  
 Frame Size: 95 1/2 x 47 1/2  
 Actual Size: 95 1/2 -in X 47 1/2 -in  
 Premium Vinyl Sliding Window 3 Panel, With Even Sight Line, Nail Fin (1 1/4" setback), White Ext/White Int , XO (1/4 Vent) Vent Width = 24 ,  
 CA Title 24, Low-E 366 Clear Argon 0 - 3500 feet  
 Standard Screen with Fiberglass Mesh,  
 White Int Hardware, Mag-Lock(s), 2 Locks, \*Meets 5.7 sqft Egress (All Floors)\*,  
 US National-AAMA PG35, DP+35/-35,  
 PEV 2016.1.2.1483/POV 6.388 (05/05/16) WO

\$468.36 3 \$1,405.08

QQ-2.20.900.1693 cust-013663

Quote Date: 5/16/2016

Page 1 of 2(Prices are subject to change.)

Drawings are for visual reference only and may not be to exact scale. All orders are subject to review by JELD-WEN

JIL100614 - 5/16/2016 - 12:38 PM

Last Modified: 5/16/2016

000071

RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM

2016 AUG -7 PM 4:14

2016 AUG -7 PM 4:14

Search

Clear

19 Record results matching your search results

Click any of the results below to view more details.

Showing 1-19 of 19 | Download results

<input type="checkbox"/>	File Date	Status	Record Number	Record Type	Address	Description	Action
<input type="checkbox"/>	10/13/2016	Void	DS160500	Small Project DR	1738 4TH AVE, Oakland CA 94606	Antenna swap of 3 antennas (6409) behind frp	
<input type="checkbox"/>	10/13/2016	Approved	DS160501	Small Project DR	1738 4TH AVE, Oakland CA 94606	Antenna swap of 3 antennas (6409) behind frp	
X <input type="checkbox"/>	05/19/2016	Approved	DRX160836	DR Exemption	1738 4TH AVE, Oakland CA 94606	Replacement of 9 aluminum windows with vinyl nail on windows as part of dry rot repair.	X
<input type="checkbox"/>	03/11/2015	Approved	DS160114	Small Project DR	1738 4TH AVE, Oakland CA 94606	Add 3 additional antennas to 6 existing within a rooftop penthouse.	
<input type="checkbox"/>	02/04/2015	Approved	ZC150321	Zoning Clearance	1738 4TH AVE, Oakland CA 94606	Home business for music lessons (unit #105)	
<input type="checkbox"/>	07/09/2012	Approved	DS120187	Planning/Applications /Counter/Small Project DR	1738 4TH AVE, OAKLAND CA	DS to replace 6 antennas with 6 new antennas located within an existing screened enclosure of rooftop	
<input type="checkbox"/>	01/20/2010	Approved	ZC100134	Planning/Applications /Counter/Zoning Clearance	1738 4TH AVE, 203, OAKLAND CA	Home office for an arts consulting business.	
<input type="checkbox"/>	11/14/2017	Application Inactive	PI703305	Non-Residential Plumbing - Alteration	1738 4TH AVE, Oakland CA 94606	Installation of earthquake shut-off valves for 24 unit apartment building	
<input type="checkbox"/>	10/26/2016	Final	B1605173	Non-Residential Building - Alteration	1738 4TH AVE, Oakland CA 94606	Antenna swap of 3 antennas (6409) behind frp at apartment building for T-Mobile.	
<input type="checkbox"/>	09/21/2016	Final	E1603501	Non-Residential Electrical - Alteration	1738 4TH AVE, Oakland CA 94606	Upgrade exiting 60 AMP breaker/feeder to 100 AMP for existing BTS cabinet related to T-Mobile cell site modification; add 3 additional antennas to 6 existing within a rooftop penthouse. DS160114	
X <input type="checkbox"/>	05/04/2016	Final	B1602022	Non-Residential Building - Repair	1738 4TH AVE, Oakland CA 94606	Dry rot repair/investigation for 4 story building (24 units building) stucco finish to match existing only. 5/19/16: Remove dryrot, repair, replace 9 windows.	X
<input type="checkbox"/>	03/31/2016	Final	B1601364	Non-Residential Building - Alteration	1738 4TH AVE, Oakland CA 94606	T-Mobile cell site modification; add 3 additional antennas to 6 existing within a rooftop penthouse. DS160114	
<input type="checkbox"/>	05/13/2014	Final	CGS1480892	Curb, Gutter, Sidewalk	1738 4TH AVE, Oakland CA 94606	Repair sidewalk to City Standards (minimum 2% slope) Permit valid 30 days. Call PWA INSPECTION prior to start: 510-238-3651. 4th FLOOR	
<input type="checkbox"/>	04/24/2014	Expired	B1400585	Non-Residential Building - Alteration	1738 4TH AVE, Oakland CA 94606	Soft story retrofit. Provide steel moment frames w/ new partial foundations, at moment frame locations only.	
<input type="checkbox"/>	06/06/2013	Final	B1302093	Building/Non-Residential /Building/Alteration	1738 4TH AVE, OAKLAND CA	T-Mobile proposal to replace 6 antennas & add hybrid cables to existing rooftop	

000073

RECEIVED  
CITY OF OAKLAND



City of  
**OAKLAND** California

For Assistance  
510-444-CITY  
TTY 238-3254

Oakland Insight

- Home
- Residents
- Business
- Visitors
- Government

Taiwanese (TW) Spanish (MX) English (US)

### City of Oakland Online Access

- Announcements
- Register for an Account

For best results, use one of the following browsers: Internet Explorer 11, Google Chrome 42, Mozilla Firefox 37, or Safari 8.

- Building
- Planning**
- Enforcement
- Fire

Submit an Application Search Planning Records

Application Number DRX160836:  
Application  
Application Status: Approved

Record Info Custom Component

#### Processing Status

Application Intake  
Due on 05/20/2016, assigned to TBD  
Marked as Approved on 05/19/2016 by NG

Zoning Review  
Due on 05/26/2016, assigned to TBD  
Marked as Approved on 05/19/2016 by NG



- Home
- Residents
- Business
- Visitors
- Government
- Contact Us
- Feedback

© 2017 City of Oakland All Rights Reserved

000074

City of Oakland Online Access

st results, use one of the following browsers: Internet Explorer 11, Google Chrome 42, Mozilla Firefox 37, or Safari 8.

Global Search...

ne [Building](#) [Planning](#) [Enforcement](#) [Fire](#)

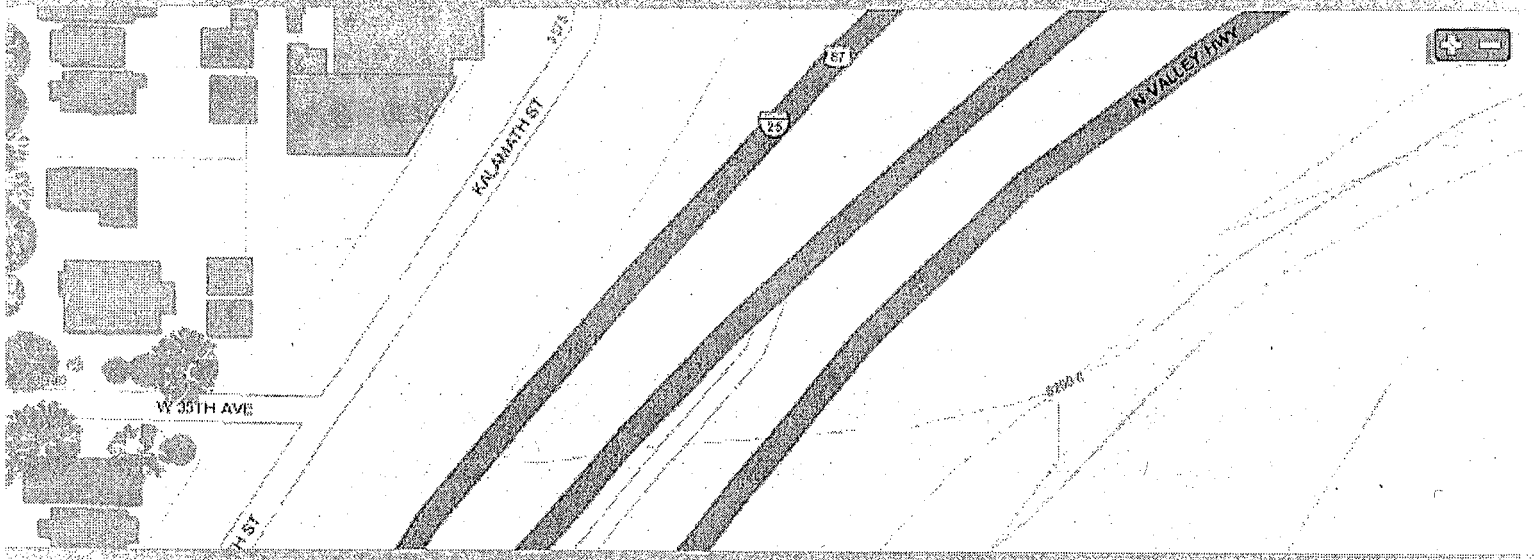
[Create an Application](#) [Search Planning Records](#)

Planning Number DRX160836:  
Exemption  
Record Status: Approved

Record Info Custom Component

Project Location

738 4TH AVE  
Oakland CA 94606



Project Details

**Applicant:**  
Individual  
Elix Sanchez  
24 E 17th St #8  
OAKLAND, CA, 94606

**Project Description:**  
Replacement of 9 aluminum windows with vinyl nail on windows  
Replacement of 9 aluminum windows with vinyl nail on windows as part of dry rot repair.

**Owner:**  
4TH AT 17TH OAKLAND LLC & DRAKE INVESTORS LLC  
ETAL  
860 URBANO DR  
SAN FRANCISCO CA 941272835

More Details



Global Search...

Home Building Planning Enforcement Fire

Apply for a Permit Search Building Records

Record B1602022:  
Non-Residential Building - Repair  
Record Status: Final

Record Info

Processing Status

- ▶ Application Intake
- Plan Routing
- Plan Check Review
- Zoning Review
- Zoning Inspection Unit Review
- Fire Marshal Review
- Constr Recycling Review
- CP Permit Compliance Review
- Final Check
- ▼ Permit Issuance

Marked as Issued on 05/04/2016 by CB

▼ Inspection

Marked as Final - CO Not Required on 01/30/2017 by DV

- ▶ Certificate of Occupancy
- Post Construction Monitoring

000076

RECEIVED  
CITY OF DENVER  
RENT ARBITRATION PROGRAM  
2016 AUG -7 PM 4:14



RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM

2010 AUG -7 PM 4:14

CITY OF OAKLAND  
 Department of Planning and Building  
 BUILDING SERVICES  
 250 Ogawa Plaza · 2nd Floor · Oakland, CA 94612  
 telephone (510) 238-3444 · facsimile (510) 238-7287 · www.oaklandnet.com

RECEIVED  
 CITY OF OAKLAND  
 RENT ARBITRATION PROGRAM  
 2018 AUG -7 PM 4:15

**PERMIT INSPECTION RECORD**

Commercial and Multiple-Unit Residential  
 California Building, Electrical, Plumbing, Mechanical, Energy, and Green Building Codes  
 Oakland Building, Planning, Sustainability, Fire, and Municipal Codes

Address: 1738 4TH AVE, Oakland, CA 94606 ST Suite: APN: 021 022201300

Description: Dry rot repair/investigation for 4 story building (24 units building) stucco finish to match existing only *5-19-16 Dry Rot + 9 windows*

Owner: 4th At 17th Oakland Llc & Drake Investors Llc Etal Issued: 05/04/2016

Contractor: FIXIT CONSTRUCTION INC CRAIG STEPHEN TURNER Type: Non-Residential Building Repair  
 Construction: Sprinklers: No

Spec Insp: Permits: B1602022

Pre-paid Inspections 6

- General Notes**
- 1a This Inspection Record Card and the Approved Plans and Approved Construction Management Plan must be readily available at the job site for all inspections. Protect all documents from the weather.
  - 1b All construction must remain readily visible for inspection until the "OK TO COVER" box on this Inspection Record Card has been signed and dated by the City inspector.
  - 1c Noise levels and Hours of Construction shall conform with the Zoning Conditions of Approval and Oakland Municipal Code regulations.
  - 1d Follow all hazardous material testing, worker protection, remediation, and disposal regulations (lead-based paint, asbestos, etc.).
  - 1e Toilet facilities must be provided on-site for construction workers.
- Permit Expiration & Refunds**
- 2a A permit may be extended (fee required) for a total of one year from the date of issuance only if no inspections have been performed.
  - 2b Each permit will expire separately unless each of the Major Inspections (Foundation, First Floor, Frame, Final) is approved by the City Inspector every 6 months (or sooner). An expired permit cannot be reinstated if an inspection has been performed.
  - 2c A Refund Request must be filed for all refunds. Up to 80% of inspection fees may be refunded if no inspections have been performed. No fees may be refunded more than 180 days after a permit has expired.
- Site Maintenance**
- 3a "Best Management Practices" must be used daily for dust control and to protect storm water drainage systems (C6).
  - 3b Jobsite must be cleaned daily of trash and debris and maintained free of graffiti. Construction materials must be neatly stock piled on-site. Vehicles and equipment must be parked on-site (see 5a below).
- Inspections**
- 4a To avoid being charged for an inspection, a cancellation must be called-in before 10:00 am on the morning of the scheduled inspection.
  - 4b For Building (B), Electrical (E), Plumbing (P), Mechanical (M), Grading (GR), Solar (SE, SP), Zoning, and Infrastructure (PX, PZ) inspections, call (510) 238-3444 week days 8:00 am to 4:00 pm, Wednesdays 9:30 am to 4:00 pm well in advance. Each permit must be scheduled separately.
  - 4c For Fire inspections, call (510) 238-3851. For Public Works inspections, call (510) 238-3651. For EBMUD sewer lateral certification inspections, call (510) XXX-XXXX.
  - 4d When a permit is Green point or LEED energy rated, third-party inspections by a pre-Certified Rater must be also be completed.
- Additional Permits**
- 5a Separate permits (OB) are required to reserve curbside parking or to obstruct the sidewalk or street in any way (scaffolding, pedestrian canopy, construction fencing, material stock piles, debris dumpsters, traffic lane closure, etc.).
  - 5b Separate Fire Prevention Bureau permits are required for fire sprinkler and fire alarm systems.
  - 5c Separate permits (X, SL, CGS) are required for excavation and repair work in the Public Right-of-Way (sidewalk, curb, gutter, driveway approach, sewer lateral, water and gas piping, storm drain, etc.).

RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM

2018 AUG -7 PM 4:15

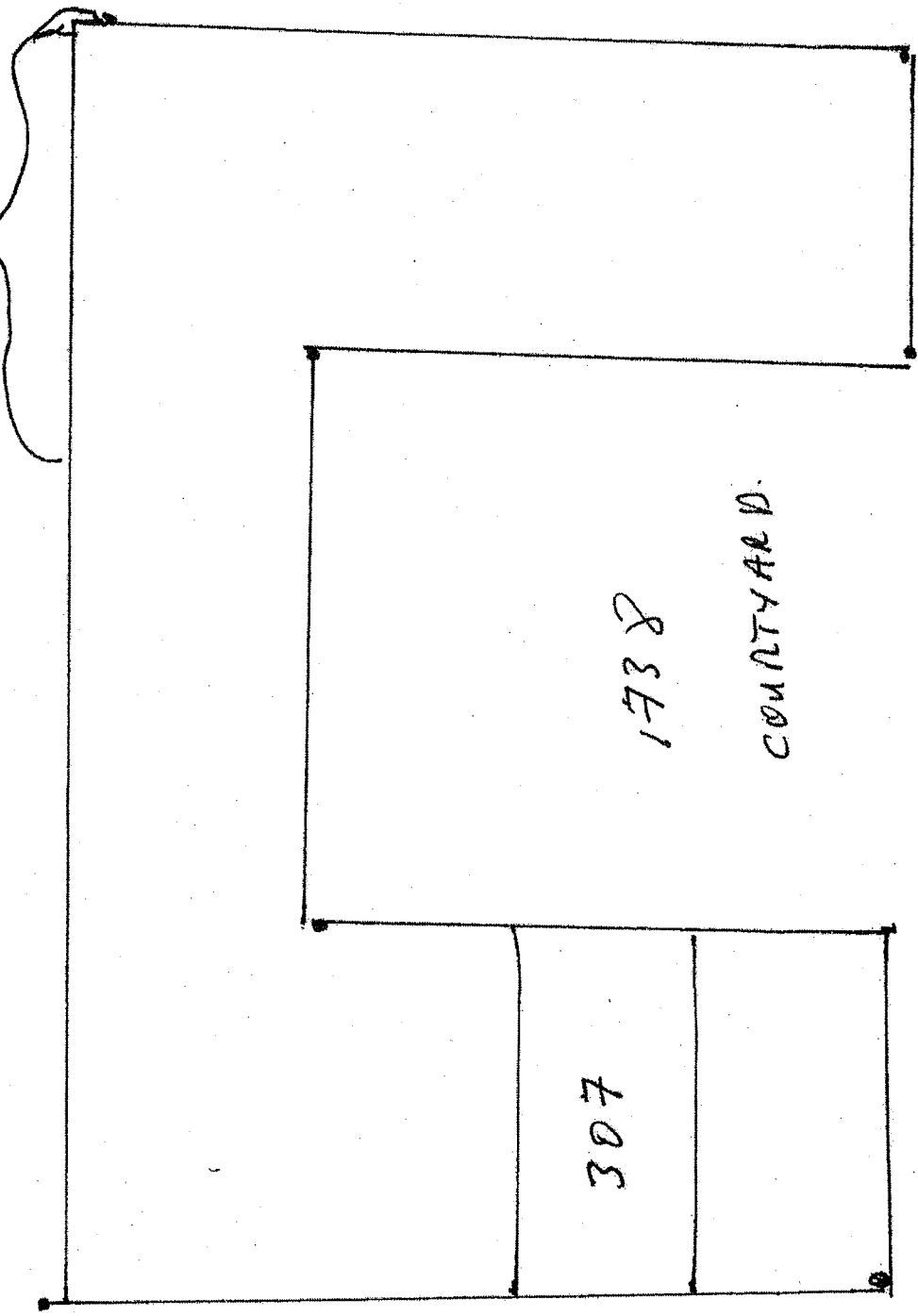
1320'S 4TH STREET

RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM

2018 AUG -7 PM 4:15

NEXT DOOR BUILDING

AREA OF DILY NOT  
STRUCTURAL REPAIR



4TH AVENUE

RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM

**PROOF OF SERVICE BY FIRST-CLASS MAIL**

2018 AUG -7 PM 4:15

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:

**APPELANT'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:

See attached service list

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 August 7, 2018, at Oakland, California.

---

Fabienne Lopez

000081

SERVICE LIST

RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM  
2010 AUG -7 PM 4:15

Annabelle Fuentes Joshua Palmer 1738 4 <sup>th</sup> Avenue #307 Oakland, CA 94606	Aynaim Zegeye 1738 4 <sup>th</sup> Avenue #108 Oakland, CA 94606
Bahji Austin 1738 4 <sup>th</sup> Avenue #302 Oakland, CA 94606	Brendan Blandy 1738 4 <sup>th</sup> Avenue #206 Oakland, CA 94606
Brian Ko 1738 4 <sup>th</sup> Avenue #101 Oakland, CA 94606	Christina White 1738 4 <sup>th</sup> Avenue #304 Oakland, CA 94606
Clay Hays 1738 4 <sup>th</sup> Avenue #104 Oakland, CA 94606	Eric Johnson 1738 4 <sup>th</sup> Avenue #308 Oakland, CA 94606
Jackelyn Kelley Shawn Kelley 1738 4 <sup>th</sup> Avenue #204 Oakland, CA 94606	Jessica Steele Joseph Blasher 1738 4 <sup>th</sup> Avenue #208 Oakland, CA 94606
John Gillham 1738 4 <sup>th</sup> Avenue #107 Oakland, CA 94606	Kendra Brennan 1738 4 <sup>th</sup> Avenue #103 Oakland, CA 94606
Kevin Alvarado Marcelino Martinez 1738 4 <sup>th</sup> Avenue #202 Oakland, CA 94606	Lani Shotwell 1738 4 <sup>th</sup> Avenue #203 Oakland, CA 94606
Lauren Richard Valeria Richard 1738 4 <sup>th</sup> Avenue #201 Oakland, CA 94606	Lindsay Shuman Shawn Rusich 1738 4 <sup>th</sup> Avenue #303 Oakland, CA 94606
Shane Caldwell Anna Smylie 1738 4 <sup>th</sup> Avenue #301 Oakland, CA 94606	Tyler Hopps 1738 4 <sup>th</sup> Avenue #106 Oakland, CA 94606

## CHRONOLOGICAL CASE REPORT

Case Nos.: T17-0574

Case Name: Weisman v. Oakmore Properties

Property Address: 4217 Oakmore Road, Oakland, CA


Parties: Matthew Weisman (Tenant)  
Michelle Gaubert (Owner)  
Claude Gaubert (Owner)  
Denise Leadbettter (Attorney for Owners)

### TENANT APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	October 17, 2017
Owner Response filed	December 12, 2017
Hearing Decision issued	June 20, 2018
Tenant Appeal filed	July 9, 2018

T17-0574 MS/BC

RECEIVED  
CITY OF OAKLAND

 <p><b>CITY OF OAKLAND</b>  <b>RENT ADJUSTMENT PROGRAM</b>          P.O. Box 70243          Oakland, CA 94612-0243          (510) 238-3721</p>	For date-stamp: <b>RENT ADJUSTMENT PROGRAM</b>
	<p>2017 OCT 17 PM 4:00</p> <p><b>TENANT PETITION</b></p>

**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 <i>Matthew and Sarah Weisman</i>	Rental Address (with zip code) <i>4217 Oakmore Rd Oakland, CA 94602</i>	Telephone: <i>415-377-9123</i>
		E-mail: <i>matthewweisman1.org</i>
Your Representative's Name <i>Matthew Weisman</i>	Mailing Address (with zip code) <i>4217 Oakmore Rd Oakland, CA 94602</i>	Telephone: <i>415-377-9123</i>
		Email: <i>matthewweisman1.org</i>
Property Owner(s) name(s) <i>Oakmore Properties, LLC</i>	Mailing Address (with zip code) <i>P.O. Box 1381 Lafayette, CA 94549</i>	Telephone: <i>925-283-8082</i>
		Email: <i>cgobare@sbcglobal.net</i>
Property Manager or Management Co. (if applicable) <i>Claude Gaubert</i>	Mailing Address (with zip code) <i>P.O. Box 1381 Lafayette, CA 94549</i>	Telephone: <i>925-351-3212</i>
		Email: <i>cgobare@sbcglobal.net</i>

Number of units on the property: \_\_\_\_\_

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.

000084



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

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

*2001 & 2000. Amended to 2004 & 2000.*

Date you moved into the Unit: August 2001 Initial Rent: \$ \_\_\_\_\_ /month

When did the owner first provide you with the RAP NOTICE, a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program? Date: July 2006. 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		
7/20/2017	8/1/17	\$ 2282.15	\$ 2334.60	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
7/16	8/1/16	\$ 2237.40	\$ 2282.15	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
7/15	8/1/15	\$ 2200.	\$ 2237.40	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
7/14	8/1/14	\$ 2159	\$ 2200	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

\* 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:

- See attached statement and exhibits*
- 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.

*Matthew A. Wassman*  
Tenant's Signature

*October 16, 2017*  
Date

\_\_\_\_\_

\_\_\_\_\_

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

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

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

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

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

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

\_\_\_\_\_  
Date

## **VI. IMPORTANT INFORMATION:**

### **Time to File**

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

### **File Review**

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

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

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

**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:**

THIS IS THE

*See Attachments: statement and exhibits*

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

#### Background:

At inception of the lease: The building was designed and constructed by the current owners' grandfather, Mr. Gaubert, in 1939/1940. It was one of two multiplex buildings built across the street from one another, by Mr. Gaubert.

Mr. Gaubert, an engineer who moved from France to Oakland, built the buildings in a French mansard exterior style. The apartment building has 4 units. The rooms are well proportioned. Unit 4217 construction is of a high quality and with quality interior detail including many windows and two sets of French doors providing extensive sunlight. Unit 4217, is one of two duplicate ground floor units each across a courtyard from one another. The ground floor units have two baths, two bedrooms, a living room, a dining room, and a kitchen.

The petitioning tenants were 59 years of age at the inception of the lease. They are now 75 years of age.

They moved from a house in Massachusetts to be close to their 3 adult children, two of whom lived in Oakland, and their 2 grandchildren.

Mr. Weisman has been a volunteer Alameda County Emergency Services worker since 2003. He was a business consultant and business teacher but is now retired. He has attended and received certificates from the Alameda County Citizens Academy and the Alameda County Sheriff's Citizen's Academy. Mrs. Weisman is a volunteer reading tutor in the Oakland elementary school system.

Until 2012, the relationship with the landlord was cooperative, and the building maintenance satisfactory. One major exception was the collapse of the master bathroom ceiling due to a leak taking place over months in the second floor apartment bathroom piping. This event is related to the second issue of decreased services and ongoing concern of this tenant. See Leaks and Mold below.

In 2012, the landlord became less responsive except with issues such as a clogged drain or an inoperative washing machine. This decline in services is coincident with the surge in rental rates in Oakland. This reduction of services along with landlord's statements during the recent years indicate an intent to encourage the rent controlled tenant to move elsewhere, in effect to create a constructive eviction of tenant.

Decreased Services:

I. Significant diminishment of backyard usability

over that provided from inception of the lease and for the next 11 years. Reduced usability was due first to over watering and then due to redesign and reduction of usable space by 30+%, the installation of uneven and hazardous surface areas and the addition of sand, which is easily tracked indoors, in lieu of more appropriate material. See photos Exhibit 1 and correspondence with Landlord.

The landlord may claim that the redesign was done in response to the environmental concerns of the drought and need to reduce water consumption.

The landlord was up to that time engaged in excessive watering in duration and frequency causing lawn damage and water overflow in both the front and back lawns.

An immediately available drought complying remedy was to reduce the sprinkler head flows and the duration and frequency of the watering.

The landlords conservation and regulatory compliance interests can be evaluated by considering landlord's treatment of storm water discharge, a specifically regulated subject.

Concurrent with the backyard redesign, the building storm water drainage system was changed. The then in place system had for over 50 years absorbed roof and lawn storm water by using the lawn, tree, and shrubs to absorb rainfall and roof water from down spouts discharging into the backyard.

This system was replaced by a non-compliant storm water drainage system.

The new storm water system eliminated the natural storm water absorption of the backyard. Down spouts and new yard drains were attached to piping that now carries roof and backyard storm water into the street and into the storm water drainage system. This storm water drainage system now empties into nearby Sausal Creek, a protected and important Oakland creek that empties into East Bay. It is believed that no permit of exception was received by the landlord for this new storm water discharge.

Attached are communications with the landlord and photos of the backyard (a) before it became mismanaged (b) the overwatering damage, and (c) the redone and diminished backyard.

Dates:

The backyard usability at the level of inception of the lease August 2001 to 2012.

Tenant Petition Rent Adjustment Program  
4217 Oakmore Rd Oakland 94602  
Matthew and Sarah Weisman

The backyard became diminished and increasingly a place of mud or dried dirt 2013 to November 2015.

The backyard redesigned, usable space significantly reduced, hazardous surfaces and nuisance materials used for patio areas November 2015 to present.

The backyard redesign was concurrent with a lease of the other first floor unit to a new tenant at market rates. The previous tenant was in her mid 80's, frail, and did not use the backyard.

Value:

From inception of the lease, until 2013 when the backyard became dominated by wet or dried mud, we often used the backyard. During the approximate 7 months a year of good weather, we would often take our dogs to the backyard for exercise and play. We frequently had a late afternoon drink and snack or an evening cookout in the backyard. Friends and family would gather for an afternoon or early evening get together in the backyard. Grandchildren's birthdays and other family celebrations took place in the backyard. See Before and After photos in Exhibit I.

Today, due to space available and unattractive conditions cited above, we do not hold gathering of friends and family outside. Also the sand and woodchips did not provide a suitable exercise space for our two dogs who were both active and alive until this summer.

Reduced value: Estimate: During the 7+ months of good weather, the value of the original backyard is estimated at 20% of the monthly rent. During the winter months, when on good days the yard was used to play with and exercise our dogs, the reduced number of days of use would 1/4 of that used in the good weather months or 5% of the monthly rent.

Value: Petitioner acknowledges that there are to be considered three stages of the backyard, as rented, deteriorated, and redesigned with reduced utility.

Estimated adjustment for the years of overwatering and mud where the backyard was significantly diminished: During each 12 month period, 20% reduction of rent for 7 months, and 5% reduction of rent for 5 months. Average monthly rent reduction is 13.75%.

Estimating the reduction of value of the redesigned backyard versus the backyard at inception is as follows. The tenant finds little utility in the backyard as presently designed including the hazard of the uneven loose stones and sand. From having meaningful use of the whole backyard, there is only use of the stone and sand patio nearest to the tenants unit. This patio area represents approximately 30% of the backyard (or a reduction in utility of 70% of the backyard as it was at inception).

Using the estimated ratios of the loss of utility during the years of overwatering and mud, the value reduction of rent of the redesigned backyard is as follows.

During each 12 month period, 14% reduction of rent for 7 months (70% of the 20%), and 3.5% reduction of rent for 5 months (70% of the 5%).

Average monthly reduction is 9.6%.

## II. Decreased Services and Health conditions: Leaks and Mold.

Background to water and mold.

Prior to 2015, The second floor unit tenant, directly above our unit 4217, suspected that there was a water leak. The landlord's maintenance person used an inadequate non-penetrating moisture testing tool applied to walls and floor boards and concluded that there was not a water problem.

Subsequently, accumulated water weakened the heavy canvas insulation and ceiling plaster and wood lathing in our bathroom ceiling. The ceiling collapsed.

The water piping was repaired and the ceiling rebuilt. No inspection of the basement crawl space was undertaken to determine if water had descended between the walls and affected the structure in the basement including the underneath side first floor flooring.

In 2014 and 2015, Mr. Weisman saw a EYN physician about an incessant nasal drip. Medication was prescribed. It was partially effective but was steroid based and was indentified to have long term side effects.

At the end of the summer, and having returned from over a week away without a nasal drip, Mr. Weisman considered that there might be a mold problem in the flooring of our bedroom or bathroom.

Mr. Weisman researched online for the California guidelines for the medical symptoms produced by mold, and the building inspection and correction of mold conditions. He had two of the symptoms.

Concerned about the landlord's change in attitude about maintenance and not wanting to have a disagreement over doing or not doing a mold inspection that might find nothing, Mr. Weisman undertook to have the inspection made. If nothing was found, he would pay the cost and not seek reimbursement from the landlord. If mold was found,



he would provide the report to the landlord, request a timely correction of the health hazard, and request reimbursement.

Mold in place and airborne was found.

Remediation was not forthcoming from the landlord. Remediation did not happen until months later after Mr. Weisman sent a notice that he was going to contract for the work and seek reimbursement from the Landlord. See Exhibit 2 Leaks and Mold.

The landlord did ultimately but reluctantly have the work done. The landlord refused to reimburse Mr. Weisman for the cost of the initial inspection and belittled the health hazard issue.

Since the mold cleanup I have not had to use the prescribed medication and the incessant nasal drip has not reoccurred.

Current water and mold concerns:

This year there have been three water leaks in unit 4217, each originating outside the unit. See details below.

Based upon the landlord's historical conduct and statements, see Exhibit Leaks and Mold, it is improbable unless economically compelled to do so, that the landlord will have a licensed water damage specialist inspect for further damage.

Two early 2017 leaks resulted in ceiling and wall and wood millwork being damaged.

The landlord has reminded tenant twice this year about his attentiveness to maintenance, and that if the tenant did not like his maintenance approach, the tenant should consider moving elsewhere.

In spite of landlord's statements of attentiveness, after many months, the water damaged surface repair and repaint in the living room, hallway, and second bath has not taken place.

The living room ceiling leak was from exterior rainwater. The hallway ceiling and bathroom ceiling leak was from the second floor bathroom which required structural repairs and a new shower drain pan.

The third leak was from failure of the second apartment's hot water heater. Mr. Weisman saw water seeping along the exterior wall next to the back steps. He notified the second floor tenant who notified the landlord.

An inspection for water damage in the first floor crawl space, is I believe prudent, particularly in consideration of the history of second floor water leaks leading to water

Tenant Petition Rent Adjustment Program  
4217 Oakmore Rd Oakland 94602  
Matthew and Sarah Weisman

descending water on basement beams and the bottom of first floor flooring. However, landlord was reluctant to take action when a health hazard had been verified and action of a precautionary inspection is unlikely.

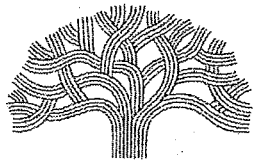
Value:

The 2015/2016 water and mold remediation could have been accomplished within 30 days of notice of the problem. As mold is a health hazard and in consideration that a health problem had resulted, the delay in remediation should have a high value.

A nominal value reduction would reinforce the landlord's inclination to defer and decline maintenance even if a health hazard was involved.

From notice to remediation 4 months. 3 months 2015/2016 rent of \$2237.40/month at a 50% reduction.  $\$1118.70 \times 3 \text{ months} = \$3356.10$

In addition, reimbursement of the \$250 inspection/laboratory testing fee.



CITY OF OAKLAND

**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 DEC 12 PM 4: 31**  
**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 17-0574**

Your Name <i>Claude Gaubert, Jr. Oakmore Properties, Inc</i>	Complete Address (with zip code) <i>PO BOX 1381 Lafayette, CA 94549</i>	Telephone: <i>925 283 8082</i>
		Email: <i>cgobare@stcglobal.net</i>
Your Representative's Name (if any)	Complete Address (with zip code)	Telephone:
		Email:
Tenant(s) Name(s) <i>Matthew and Sarah Welsman</i>	Complete Address (with zip code) <i>4217 Oakmore Rd Oakland, CA 94602</i>	
Property Address (If the property has more than one address, list all addresses) <i>4217, 4219, 4227, 4229 Oakmore Road Oakland 94602</i>		Total number of units on property <i>4</i>

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

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

Date on which you acquired the building: *1/17/13*

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>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

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

The tenant moved into the rental unit on \_\_\_\_\_.

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

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

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

Is the tenant current on the rent? Yes \_\_\_\_\_ No \_\_\_\_\_

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

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

### III. EXEMPTION

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

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

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

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

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

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

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

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

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


### IV. DECREASED HOUSING SERVICES

*See Response Attached Document*

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

### V. VERIFICATION

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

  
Property Owner's Signature

12/7/17  
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

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

# 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:** T17-0574, Weisman v. Oakmore Properties  
**PROPERTY ADDRESS:** 4217 Oakmore Road, Oakland, CA  
**DATE OF HEARING:** March 28, 2018  
**DATE OF INSPECTION:** April 4, 2018  
**DATE OF DECISION:** June 13, 2018  
**APPEARANCES:** Matthew Weisman, Tenant  
Michelle Gaubert, Owner  
Claude Gaubert, Owner  
Denise Leadbetter, Attorney for Owners

## SUMMARY OF DECISION

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

## CONTENTIONS OF THE PARTIES

The tenant filed a petition on October 17, 2017, contesting a rent increase from \$2,282.15 to \$2,334.60, effective August 1, 2017. Additionally, the tenant contested multiple other rent increases given in prior years. The tenant did not list the grounds for contesting the rent increases on his petition.

The tenant also alleged that there is a current health, safety, fire or building code violation in his unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance and that the owner is providing him with fewer housing services that he received previously. His list of decreased services includes: significant diminishment in backyard usability, along with

000099

a dangerous condition in the backyard and leaks (past and more recent), resulting in water damage and mold inside the unit.

The owner filed a timely *Owner Response* to the tenant petition in which he denied the claims made by the tenant.

At the Hearing, the tenant withdrew his claims contesting the rent increases.

### THE ISSUES

1. When, if ever, was the tenant served with written notice of the RAP Program (*RAP Notice*?)
2. Are any of the tenant's claims of decreased housing services time barred?
3. Other than any claim that is time barred, have the tenant's housing services decreased and if yes, in what amount?
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 subject rental unit in August of 2011. He was first served the *RAP Notice* in July of 2016. He is currently paying rent of \$2,334.60 a month. There are four units in the building.

The owner did not disagree with this testimony.

The owner testified that he has owned the buildings at this address for a long time. The tenant is current on his rent.

#### Decreased Housing Services:

##### Backyard Area:

Loss of use: The tenant testified that when he tenant moved into the building there was a large grassy area in the backyard and one patio.<sup>1</sup> He was told when he moved in that the backyard was a common area for the use of everyone who lived in the building. He and his family enjoyed the back yard area and used the grassy area regularly, about a few times a week outside of the rainy season. His son was married in the backyard. Over the years, because of what he believed was overwatering, the grass started getting splotchy.<sup>2</sup> In the fall of 2016, the owner changed the back yard. He took out the grass, added a second patio area (there had been only one patio area previously), and added a section of plants.<sup>3</sup> There is also a large pathway connecting the two patios.

---

<sup>1</sup> See Exhibit 1, photo A. All Exhibits referred to in this Hearing Decision, were admitted into evidence without objection.

<sup>2</sup> See Exhibit 1, photo B.

<sup>3</sup> See Exhibit 1, photos D, G and K.



This work resulted in a significant decrease of usable space. The tenant estimated that prior to the work the usable space was 1,100 square feet and now it is 280 square feet.<sup>4</sup> Before the work was done, the tenant had his own patio furniture on the one patio, but he and other tenants shared that one patio. After the new patio was created, he was informed by a tenant (Mrs. Friedman) that she wanted to use the far patio and suggested that he could use the newer patio closer to his unit. After that conversation, he moved his patio furniture to the new area. He then emailed the owner asking about whether the patios were common areas, and the owner wrote back saying that they were common areas and that he would inform the other tenants that the patios were shared spaces. Nonetheless, the tenant has limited his activities to the newer patio closer to his unit. Since the work was done he hardly ever uses the space as it is much less inviting.

On cross-examination the tenant testified that someone told him that he had to get his furniture moved from the original patio. He does not remember if it was the owner or someone else. Also, the use of the backyard area has significantly diminished because of plantings and the placement of wood chips, and the planted area is much wider than it used to be.

The owner testified that the reason that he changed the back yard is because the lawn had deteriorated over the years, he had multiple complaints from tenant Weisman about the mud and lawn, and because of the drought, he decided to install drought tolerant plants and add an additional patio. The work was done in October and November of 2015. He produced invoices from *Mt. Diablo Gardening*, showing that the work was done at that time.<sup>5</sup>

Uneven Surfaces: The tenant testified that the stone surfaces at the back yard patios are uneven, creating a tripping hazard. While he has not tripped, he feels he has to be very careful in the backyard. The tenant produced photographs taken of the patio showing that there are gaps between the stones and that the surfaces are uneven.<sup>6</sup> Between the stones there is some kind of sand, which he has been told is decomposed stone, that is lower than the top of the stones. There are areas with 1/2 inch – 2 inch differences between some of the stones and some of them are unstable.

The owner testified that he was informed by the tenant that the decomposed granite around the patio stones was eroding, causing uneven surfaces in approximately the fall of 2017. He had the people who did the work on the patio come back and add more decomposed granite to help even the area. The owner does not believe that there is a current tripping hazard after this work was done. The rocks are naturally uneven.

At the inspection of the property by this Hearing Officer, the backyard patio stones are uneven with some areas that appear to be between 1/4 to a 1/2 inch lower than other areas.

---

<sup>4</sup> This 280 square feet is just the square footage of the patio closest to him.

<sup>5</sup> Exhibit 7

<sup>6</sup> See Exhibit 2, photos A-F

Leaks, Mold, and Water Intrusion: The tenant testified that there have been no leaks in his unit since July of 2017. However, in late 2016, there was a leak in his unit where he saw water dripping down the side of his guest bathroom and the hallway nearby. The source of water was from the bathroom from the unit above him. This leak caused the molding above and along his bathroom door to crack, caused cracks and bubbling in the bathroom, as well as caused cracks in the drywall in the area immediately outside the bathroom.<sup>7</sup> Prior to the leak, the molding was intact and there were no cracks or bubbling. He contacted the owner and was informed that the owner would look into it. It took several weeks to repair the source of the leak. He was told by the owner that someone would repair the damage in his unit, but the only thing that happened is a painter came by and checked the color of the paint. He said he'd return to do the paint job but he never returned.

Additionally, in early 2017, there was a leak in the bay window area in his living room caused by a particularly rainy and windy storm.<sup>8</sup> The tenant contacted the owner and was told he would look into it, but as far as he knows no action was taken to repair the condition. Additionally, no action was taken to repair the ongoing damage in the living room which includes water stains and streaks in the paint.

The tenant never turned down any work by any worker to repair these matters.

Additionally, more than 10 years ago there was a substantial water leak in this bedroom.<sup>9</sup> This was repaired. But the tenant remains concerned that there is an ongoing mold issue in the unit that may be related to this problem.

With respect to mold, the tenant further testified that he has an ongoing complaint of mold, related to a moldy, musty smell in the hallway and guest room that he believes is from the bathroom water leak from early 2017. He also is concerned about mold caused by the bedroom leak over ten years back and mold from the water intrusion in the living room. He testified he cannot confirm whether or not there is mold, as no testing has been done. However, he believes science indicates that if there is water entry, that mold would grow. He does not visualize mold in any place in his unit.

The tenant testified that to prevent mold growth in his unit he wipes down damp surfaces, uses the fan in the shower or opens the window.

The tenant further testified that he did not contact a City of Oakland housing inspector to inspect the property.

The tenant testified that back in October of 2015, there was a moldy condition that he discovered under his unit from a leak in the master bedroom shower pan. He noticed a musty condition in his bedroom so he hired a mold testing company (*SA Fresh Environment*) to test the area, and mold was discovered in the crawl space. This

---

<sup>7</sup> See Exhibit 2, photos Z-FF

<sup>8</sup> See Exhibit 2, photos V-Y

<sup>9</sup> See Exhibit 2, photos GG-HH

inspector looked around the apartment, but focused his attention on the tenant's bathroom area. He only informed the tenant about mold in the crawl space under the master bathroom.<sup>10</sup> He contacted the owner, who after a delay, hired a different mold remediation company to do the work.

On cross-examination the tenant testified that he has no evidence that there is mold in his unit as of today other than the musty smell in his guest room and guest bathroom. He did not have any inspections since the October 2015 inspection by SA Fresh Environment. He believes that scientifically it is probable that there is mold present because there was water entry in multiple places.

He may have been told by the owner that his painter was instructed to repair the damage to his unit after the leak in his bathroom, but that work never occurred.

The owner testified that there have been occasional water leaks in Mr. Weisman's apartment for over 15 years. With respect to the leak from the shower pan in the bathroom in December of 2016, he immediately had the plumber come to inspect what needed to be done with the unit above. After some investigation the shower and the shower pan was replaced. He told the painter to paint Mr. Weisman's unit and repaint from the leak from above. He did not know that this work did not happen and was not billed for the work. He never checked to see if the work had been done.

With respect to the living room leak in 2017, there is a balcony belonging to another unit immediately over Mr. Weisman's unit.<sup>11</sup> When Weisman complained about water entry in his unit, the owner had a membrane installed on the balcony of the unit above within a month of the complaint. In the past, when this has happened he has had Weisman's ceiling painted, but in this instance there was a miscommunication and no one painted the ceiling.

With respect to the crawl space mold issue, the owner testified that after receiving the report from *SA Fresh Environment*, he had a company named *Water Damage Recovery (WDR)* come to remove the minor amount of mold that was present in the crawl space under the tenant's shower.<sup>12</sup> The owner also hired someone to recaulk the tenant's shower. There were no complaints of mold from the tenant after *WDR* did the mold removal.

At the Inspection by this Hearing Officer, there was water damage present in the living room, the guest bathroom and the hallway adjacent to the guest bathroom. There was a

///

///

---

<sup>10</sup> Exhibit 4, Report from SA Fresh Environment re: mold in October of 2015.

<sup>11</sup> Exhibit 8, page 1. Note that the narrative information in Exhibit 8 was not admitted into evidence. The document was admitted only for the photographs.

<sup>12</sup> See Exhibit 9

very slight musty smell in the guest bedroom. There was no sign of visible mold in that room, or any indication of the cause of the musty smell.

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

#### **When, if ever, was the tenant served with written notice of the RAP Program (*RAP Notice*)?**

The Rent Adjustment Ordinance requires an owner to serve the *RAP Notice* at the start of a tenancy<sup>13</sup> and together with any notice of rent increase or change in the terms of a tenancy.<sup>14</sup> The tenant testified that he was served with the *RAP Notice* in July of 2016. There was no contrary testimony.

It is found the tenant was served with the *RAP Notice* in July 2016.

#### **Are any of the tenant's claims of decreased housing services time barred?**

Under the Oakland Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent<sup>15</sup> and may be corrected by a rent adjustment.<sup>16</sup> 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 Ordinance specifies the statute of limitations for claims of decreased services:

“If the decreased housing service is the result of a noticed or discrete change in services provided to the tenant (e.g.; the removal of parking space, requirement that tenant pay utilities previously paid by owner) the petition must be filed within ninety (90) days of whichever of the following is the later:

- i. The date the tenant is noticed of first becomes aware of the decreased housing service; or
- ii. The date the tenant first receives written notice of the existence and scope of this chapter as required by Section 8.22.060.” O.M.C. § 8.22.090(A)(3)(a).

In this case, the tenant was served with the *RAP Notice* in July of 2016. In the fall of 2015, the owner did work on the back yard causing the usable area to change significantly. This was a discrete change to the space that was known to the tenant at the time it was done. If the tenant wished to complain about that discrete change, he had 90 days from the date he first got the *RAP Notice*. Since he got the *RAP Notice* in July of 2016 and filed his petition on October 17, 2017, far more than 90 days passed between the date of the *RAP Notice* and the filing of the petition. Therefore, as to the claim for

---

<sup>13</sup> O.M.C. § 8.22.060(A)

<sup>14</sup> O.M.C. § 8.22.070(H)(1)(A)

<sup>15</sup> O.M.C. § 8.22.070(F)

<sup>16</sup> O.M.C. § 8.22.110(E)

loss of use of the backyard area due to the configuration change, the tenant's claim is time barred and is denied.

**Other than any claim that is time barred, have the tenant's housing services decreased and if yes, in what amount?**

The tenant is entitled to bring claims for decreased services for ongoing claims. These include his claim that the stone areas in the backyard are uneven and dangerous, the complaints about the failure to repair the water damage in his guest bathroom area, the complaints about the failure to repair water damage in the living room and the ongoing complaints of mold.

Stone areas in backyard: The backyard area does have several areas where the stones are uneven and the decomposed granite between the stones has eroded enough that there are gaps greater than 1/2" between the stones. This might cause a tripping hazard. However, the tenant has testified that he does not use the backyard anymore since the configuration has changed as it is no longer to his liking. Therefore, any decreased housing service as a result of the stones is minimal as to this tenant and is not compensable. This claim is denied.

Water damage in bathroom, hallway and living room: There have been several leaks in the tenant's apartment that have been readily repaired but the owner has not repaired the damage to the tenant's apartment. This has left him with unsightly water damage in his guest bathroom, the bathroom hallway and the living room. The owner should have had these repaired within a month of being notified in each instance. As a result, the tenant is entitled to a 3% rent decrease for the bathroom leak damage and a 3% rent decrease for the living room water damage, until the repairs are made. See O.M.C. § 8.22.090(A)(3)(b). Additionally, as noted on the chart below, the tenant is entitled to restitution for these conditions. However, the claims for restitution begin 90 days prior to the date the tenant filed his petition.

Mold: The tenant has expressed concern regarding ongoing mold from these leaks, and other past leaks. The only mold that he established, was the mold found in October of 2015, which was repaired by a mold remediation specialist soon after he informed the owner. The tenant's speculation that there must be mold because there is water damage, is simply speculation. The tenant has the burden of proof with a decreased service claim, and just because moisture can cause mold, does not mean that moisture, in all cases, does cause mold. With no visible mold, and no report of mold, the tenant has not sustained his burden of proof. The very slight musty smell noted by the Hearing Officer at the inspection is not proof of mold, as there was no visible mold present. Additionally, the tenant never complained of mold to the owner (after the October 2015 complaint) and a claim for decreased housing services, must be proceeded by notice to the owner and an opportunity to repair. For all of these reasons, this claim is denied.

///

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

The tenant's base rent is \$2,334.60. As noted above, the tenant is entitled to an ongoing rent decrease of 6% of the rent until the repairs are made to the bathroom, the hallway and the living room from the water damage. Effective July 1, 2018, the tenant's ongoing legal rent is therefore \$2,194.52, before consideration of restitution.

Additionally, as noted on the chart below, the tenant is entitled to restitution of \$1,680.91 for these conditions. An overpayment of this size is normally adjusted over a period of 9 months.<sup>17</sup> For now \$186.77 a month is subtracted from the current legal rent of \$2,194.52 for a total rent of \$2,007.76 a month. From July of 2018 through March of 2019, the tenant's rent is \$2,007.76 a month.

VALUE OF LOST SERVICES							
Service Lost	From	To	Rent	% Rent Decrease	Decrease /month	No. Months	Overpaid
Water damage bathroom and hallway	19-Jul-17	30-Jun-18	\$2,334.60	3%	\$ 70.04	12	\$ 840.46
Water damage living room	19-Jul-17	30-Jun-18	\$2,334.60	3%	\$ 70.04	12	\$ 840.46
					\$ -		-
<b>TOTAL LOST SERVICES</b>							<b>\$ 1,680.91</b>
RESTITUTION							
MONTHLY RENT							\$2,334.60
TOTAL TO BE REPAID TO TENANT							\$ 1,680.91
TOTAL AS PERCENT OF MONTHLY RENT							72%
AMORTIZED OVER	9	MO. BY REG. IS					\$ 186.77

**However**, should the owner fix the paint damage in the bathroom and the hallway, the owner can increase the rent by 3% (\$70.04 a month); and, if the owner fixes the paint damage in the living room the owner can increase the rent by 3% (\$70.04). **In order to increase the rent after repairs the owner must provide the necessary notice pursuant to Civil Code § 827.**

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

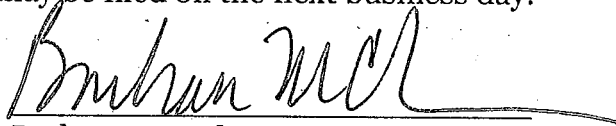
///

<sup>17</sup> Regulations, Section 8.22.110(F)

**ORDER**

1. Petition T17-0574 is granted in part.
2. The tenant's base rent is \$2,334.60 a month. The tenant has withdrawn his claims regarding any rent increases.
3. Due to ongoing conditions, the tenant is entitled to a 6% rent decrease. The tenant's current legal rent, effective July 1, 2018, before consideration of restitution, is \$2,194.52 a month.
4. Due to past decreased services, the tenant is owed restitution of \$1,680.91. This overpayment is adjusted by a rent decrease for the next 9 months in the amount of \$186.77 a month.
5. The tenant's rent for the months of July 2018 through March 2019 is \$2,007.76 per month. The rent reverts to \$2,194.52 a month in April of 2019 (if the repairs have not been completed and/or a rent increase notice has not been sent).
6. 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.
7. If the owner repairs the guest bathroom and hallway paint damage, he can increase the rent by 3% (\$70.04); and, if the owner repairs the living room paint damage, he can increase the rent by 3% (\$70.04). **In order to increase the rent after repairs the owner must provide the necessary notice pursuant to Civil Code § 827.**
8. **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: June 13, 2018



Barbara M. Cohen  
Hearing Officer  
Rent Adjustment Program

PROOF OF SERVICE

Case Number T17-0574

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**

Oakmore Properties LLC/Claude Gaubert

P.O. Box 1381

Lafayette, CA 94549

**Owner Representative**

Denise Leadbetter

870 Market Street, Suite 1103

San Francisco, CA 94102

**Tenant**

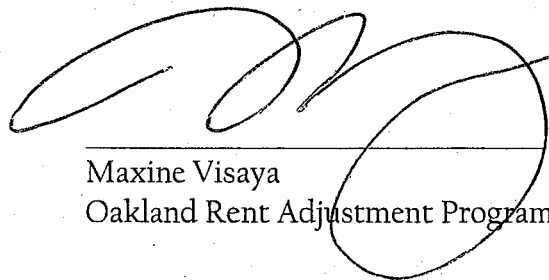
Matthew & Sarah Weisman

4217 Oakmore Rd

Oakland, CA 94602

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.

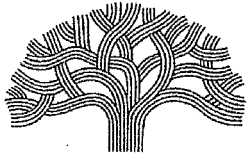
I declare under penalty of perjury under the laws of the State of California that the above is true and correct.  
Executed on June 20, 2018 in Oakland, CA.



Maxine Visaya  
Oakland Rent Adjustment Program

000108





CITY OF OAKLAND

**CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM**

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

For date stamp.

2018 JUL -9 PM 4:18

**APPEAL**

Appellant's Name <i>Matthew and Sarah Weisman</i>		<input type="checkbox"/> Owner <input checked="" type="checkbox"/> Tenant	
Property Address (Include Unit Number) <i>4217 Oakmore Road</i>			
Appellant's Mailing Address (For receipt of notices) <i>4217 Oakmore Road Oakland, CA 94602</i>		Case Number <i>T17-0574</i>	Date of Decision appealed <i>June 13, 2018</i>
Name of Representative (if any) <i>Matthew Weisman</i>		Representative's Mailing Address (For notices) <i>4217 Oakmore Road Oakland, CA 94602</i>	

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

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

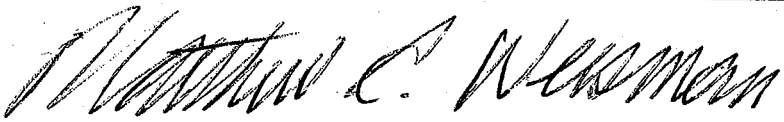
For more information phone (510) 238-3721.

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

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

• You must serve a copy of your appeal on the opposing parties or your appeal may be dismissed. •  
 I declare under penalty of perjury under the laws of the State of California that on July 9, 2018, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<b>Name</b>	Oakmore Properties
<b>Address</b>	PO Box 1381
<b>City, State Zip</b>	Lafayette, CA 94549
<b>Name</b>	
<b>Address</b>	
<b>City, State Zip</b>	

	<u>7/9/2018</u>
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

For more information phone (510) 238-3721.

CASE NUMBER: T17-0574, WEISMAN V. OAKMORE PROPERTIES  
DECISION NOTICE: JUNE 20, 2018  
FILING OF TENANT APPEAL: JULY 9, 2018 (19 days from notice)

The following grounds of appeal are presented with the request that restitution and reduction of rent be applied as to the hazardous patio.

**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.)**

Tenant Appeals the Decision as to no restitution and no ongoing reduction of rent until the hazard has been eliminated due to Hearing Officer's findings that were not supported by substantial evidence found in the case record.

Hearing Officer's appealed findings:

- (1) that Tenant did not want to use the patio, and
- (2) that Tenant being aware of the tripping hazard made the use of the patio prudent and Tenant's avoidance of using the patio while the hazard existed made inappropriate restitution and rent reduction.

Finding 1 is addressed in this grounds for appeal under 2 (e) . Finding 2 is addressed in the grounds for appeal under grounds for Appeal 2 (c) and 2 (d) below.

The Petition made two claims as to the backyard.

One claim was as to reduction in usable space. The Hearing Officer made a finding of the that this claim was time barred, which finding is not being appealed by the Tenant.

One claim was as to the hazardous conditions and diminished usability of the patio.

1. The Decision's finding is in error as to Tenant having no desire to use the patio.

No such statement was made in Tenant's Petition.

In the Petition, Tenant intent to use the patio is evidenced by Tenant's proposed calculation of reduced value. Though time barred, the calculation of the reduced remaining area of the backyard was 30%, that included use of the new patio. However, including the new patio in the calculation of useable space did not remove consideration of the hazardous conditions that affected Tenant's use of the patio.

Tenant's Petition Filed 2017 October 17, 2017

*Petition: Page 3 bottom paragraph and Page 4 top two paragraphs :*

CASE NUMBER: T17-0574, WEISMAN V. OAKMORE PROPERTIES  
DECISION NOTICE: JUNE 20, 2018  
FILING OF TENANT APPEAL: JULY 9, 2018 (19 days from notice)

*Estimating the reduction of value of the redesigned backyard versus the backyard at inception is as follows. The tenant finds little utility in the backyard as presently designed including the hazard of the uneven loose stones and sand. From having meaningful use of the whole backyard, there is only use of the stone and sand patio nearest to the tenants unit. This patio area represents approximately 30% of the backyard (or a reduction in utility of 70% of the backyard as it was at inception).*

*Using the estimated ratios of the loss of utility during the years of overwatering and mud, the value reduction of rent of the redesigned backyard is as follows.*

*During each 12 month period, 14% reduction of rent for 7 months (70% of the 20%), and 3.5% reduction of rent for 5 months (70% of the 5%).  
Average monthly reduction is 9.6%.*

Tenant's deferring use of the patio was prudent concern about the hazard and its related consequences both from the increased risks of physical injury and also the legal diminishment of rights if the patio was used and an injury resulted.

*Petition: Page 3 of 6, bottom paragraph: Second sentence*

*"The tenant finds little utility in the backyard as presently designed including the hazard of the uneven loose stones and sand"*

Tenant made no statement in the hearing of Tenant abandoning use of the patio regardless of whether or not the hazardous condition existed.

In Tenant's Petition and in the hearing, Tenant did make statements of concern about the hazardous condition and reluctance to use the patio in its then current condition.

Tenant both in the Petition and in testimony at the hearing did note the personal loss of that certain uses of the backyard had been eliminated by the significant reduction in total size and change from a large grass lawn to wood chips, sand, and stone.

Tenant's lack of desire to use the patio surface was related to prudence and the existence of the hazardous condition, not because certain types of use, such as identified larger gatherings of families and friends could no longer be undertaken due to the substantial, and uncontested, reduction in useable backyard.

If the Hearing Officer heard Tenant's testimony as containing lament over the changed backyard conditions, she was correct. But no statement of abandoning the use of the patio regardless of its condition was made or intended to be interpreted as such.

*Petition: Page 3 of 6, fourth and fifth paragraphs from the top of the page*

*From inception of the lease, until 2013 when the backyard became dominated by wet or dried mud, we often used the backyard. During the approximate 7 months a year of good weather, we would often take our dogs to the backyard for exercise and play. We frequently had a late afternoon drink and snack or an evening cookout in the backyard. Friends and family would gather for an afternoon or early evening get together in the backyard. Grandchildren's birthdays and other family celebrations took place in the backyard. See Before and After photos in Exhibit I.*

*Today, due to space available and unattractive conditions cited above, we do not hold gathering of friends and family outside. Also the sand and woodchips did not provide a suitable exercise space for our two dogs who were both active and alive until this summer.*

**d)  The decision violates federal, state or local law. (In your explanation, you must provide a detailed statement as to what law is violated.)**

The hazardous surface of the specific patio was a valid reason for Tenant's reduced use of the patio by reason of prudence, and of the California law of negligence, see citation and comments below, and of the City of Oakland's public policy of protecting the safety of tenants and seniors.

California Code Section	Civ. §1714
Statutory Definition of Liability for Negligent Acts	Everyone is responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself or herself.
Comparative Negligence	"Pure" form adopted by <i>Li v. Yellow Cab Co.</i> , 532 P.2d 1226 (1975).

California's "primary assumption of the risk" doctrine was first set forth in *Knicht v. Jewett* (1992) 3 Cal.4th 296. That case involved a plaintiff's claim for personal injuries sustained when the defendant knocked her over and stepped on her finger while they were playing touch football. At issue was how the courts should apply the traditional

legal defense of assumption of the risk, in light of the comparative fault principles that had recently evolved in California jurisprudence.

In *Knight*, the California Supreme Court focused on legal duty: "In cases involving 'primary assumption of risk' – where, by virtue of the nature of the activity and the parties' relationship to the activity, the defendant owes no legal duty to protect the plaintiff from the particular risk of harm that caused the injury – the doctrine continues to operate as a complete bar to the plaintiff's recovery. In cases involving 'secondary assumption of risk' – where the defendant does owe a duty of care to plaintiff, but the plaintiff proceeds to encounter a known risk imposed by the defendant's breach of duty— the doctrine is merged into the comparative fault scheme...." (*Knight*, 3 Cal.4th at pp. 314–315.)

For defense counsel, the chance that there might be a judicial finding of "no duty" will be enough incentive to make it worthwhile for them to assert the doctrine of plaintiff's failing to take due care as a bar in all sorts of factual circumstances, including construction accidents, motor vehicle accidents, and premises liability claims, among others. Defendant's can make a tenable case for application of the doctrine pretty much any time the plaintiff arguably assumes some risk of harm when undertaking his or her actions: a construction worker walking on a damaged roof, for example; or a business invitee walking on a cracked walkway.

The practical prospective consequences of the Decision issued as to Case T17-0574 Weisman v. Oakmore Properties are perverse in setting in a Rent Board decision a rule that Tenant should use a hazardous surface that otherwise can be avoided.

An example of negligence, which though is hypothetical matches real possibilities: *Tenant has gathered with friends at the patio. He has informed his friends that the patio presents a tripping hazard and to be careful. Tenant is grilling hot dogs. He places the hot dogs on a tray along with buns. As he moves the five feet from the grill to the table he is focusing on the tray which blocks his vision of where his feet are and he catches a toe on an elevated patio stone around which the granular sand like filler has eroded. Tenant falls forward and hits his head on the edge of the patio table falls to the ground and is stunned, concussed, and bleeding from a cut on his head. Plaintiff's guest, who is 43 years of age and physically fit, rushes to help him. She forgets the warning about the hazardous patio surface, and in her hasty movement trips on the edge of a raised stone and twists and fractures her ankle which requires extensive surgery and pins to repair.*

*The guest sues the Landlord for knowing of the hazardous condition and failing to make a timely correction of the hazardous condition.*

CASE NUMBER: T17-0574, WEISMAN V. OAKMORE PROPERTIES  
DECISION NOTICE: JUNE 20, 2018  
FILING OF TENANT APPEAL: JULY 9, 2018 (19 days from notice)

*Tenant sues the Landlord for failing to make a timely correction of the hazardous condition.*

*In court, the Landlord's attorney states that both plaintiff's knew of the risk and were negligent and did not use ordinary care in their actions.*

*Accordingly, each plaintiff was found by the court to be comparatively negligent. The 76 year old plaintiff, though not frail, was shown to be aware that his reflexes, vision, and walking motions had diminished over the years and should have avoided the use of the patio. Tenant's claim for injuries was reduced by 90%. The 43 year old plaintiff's was aware of the risk and her injuries were in part attributable to her acting hastily. The plaintiff guest's damages were reduced by 50%.*

**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.)**

The decision of the hearing officer that a tenant is expected to make use of a hazardous surface for walking, which use is otherwise avoidable, if upheld on appeal by the Board creates a perverse policy.

The policy is perverse to the safety of tenants and incentivizes Landlords to withhold repairs rather than to be economically motivated by restitution and rent reductions to make timely repairs.

It is the Hearing Officer's finding as to water damage and ordering restitution and reduction in rent that motivated the Landlord, after over a year of notice, quickly make repairs within a week of notice.

When Tenant informed Landlord that Tenant was going to appeal the Decision as to no restitution and reduction of rent, the Landlord promptly made the necessary repairs to the patio on June 28, 2018 thus setting a stop date for rent reduction but not restitution.

The decisions of the Board are not accessible online or subject to a thorough search at the offices of the Board of all Board decisions during the time available to Appeal. If the board has decided that its policy is to require tenant's to use unsafe surfaces when the use is avoidable, then Tenant asks the Board to reconsider that policy in view of the laws that relate to negligence and the disincentive that policy creates for Landlords to maintain safe surfaces on which to walk. See appeal grounds 2. (d) above.

CASE NUMBER: T17-0574, WEISMAN V. OAKMORE PROPERTIES  
DECISION NOTICE: JUNE 20, 2018  
FILING OF TENANT APPEAL: JULY 9, 2018 (19 days from notice)

**h)  Other. (In your explanation, you must attach a detailed explanation of your grounds for appeal.**

Though not stated in the Hearing Officer decision, there is the possibility that upon the review by the Board of the record of the hearing, an issue of mitigation might seem to arise based upon the incorrect assumption that there was available a second patio that was without a tripping hazard. The second patio was made of the same material and design as the patio subject of this Appeal. The second patio's condition was and is similar to that of the first patio. See photos of second patio taken July 8, 2018 and attached as Appeal Exhibit B.

It was during the hearing discussion about the amount of the space reduction that the Landlord stated that Tenant had access to the patio adjacent to two of the four apartments in the building. The Landlord presented no evidence that either the first or second patio, which in fact were constructed with the same type of materials and in similar condition was free of tripping hazard. See photos attached as Appeal Exhibit A, which exhibit shows the first patio condition before its recent repair and the patio post repair. Photos of the first patio which was the subject of the hazardous claim were presented in accordance with the hearing rules for submitting evidence. Photos of the second patio were taken by Tenant on July 8, 2018.

Tenant had not provided in the Petition or at the hearing evidence as to the hazard of the second patio because he understood that the patio created nearest his apartment was for the primary use of the two tenants on his side of the building and the far patio (the second patio) was for the use of the two tenants on the far side of the building.

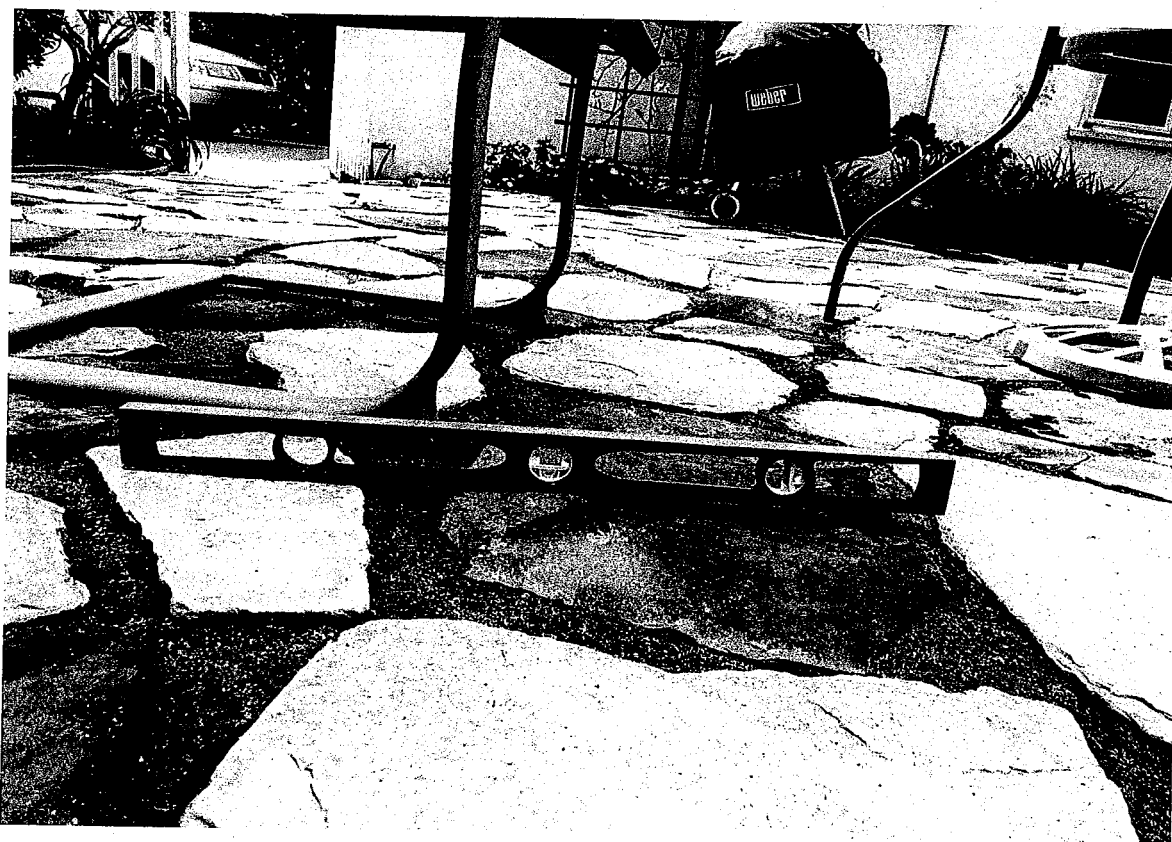
The Hearing Officer early in the hearing made clear for the record that photos were admissible evidence and testimony was not photos. Neither Tenant or Landlord had with them at the hearing close up photos of the condition of the surface of the second patio.

Access to the second patio, if considered, should be dismissed as a mitigation to the hazards of the first patio.

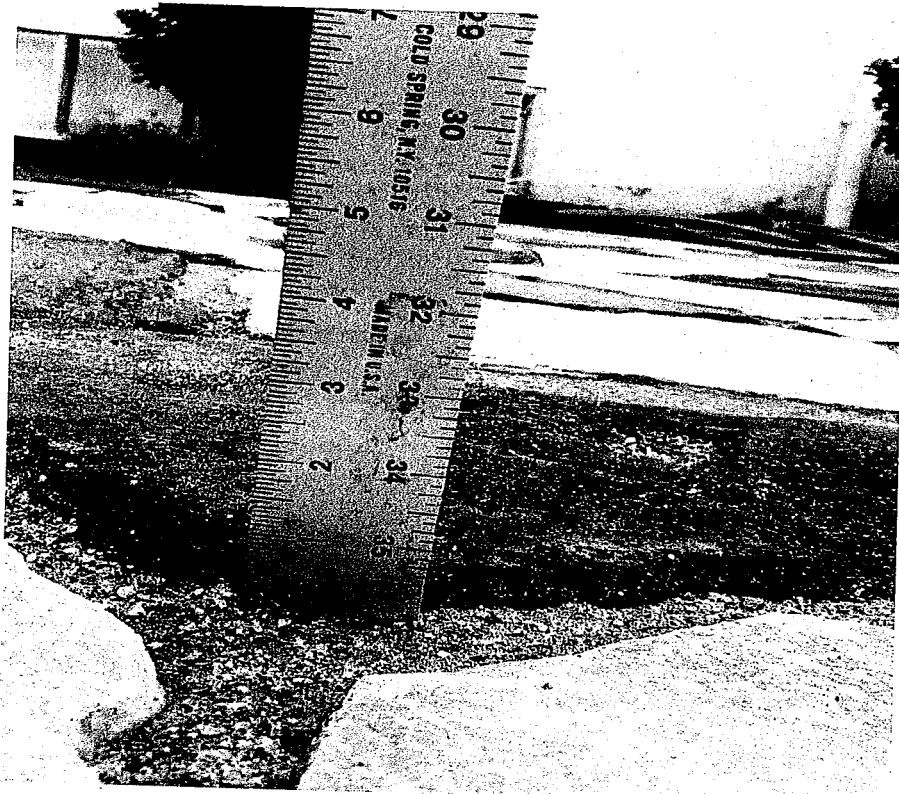


Patio unevenness and gaps

Case T17-0574 Appeal Exhibit A (Petition Exhibit 2 A and B)



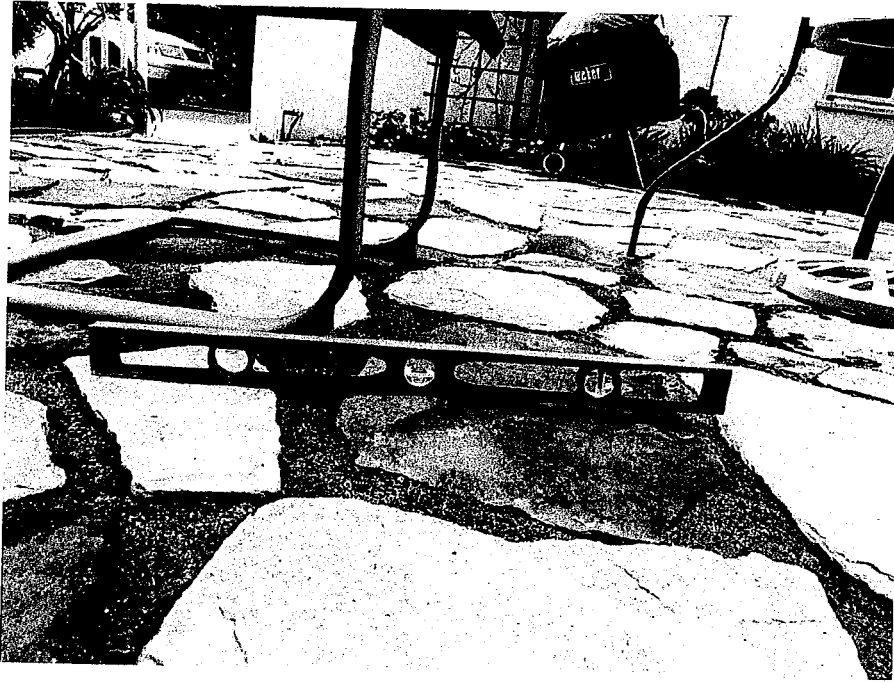
Patio unevenness and gaps



8 of 13

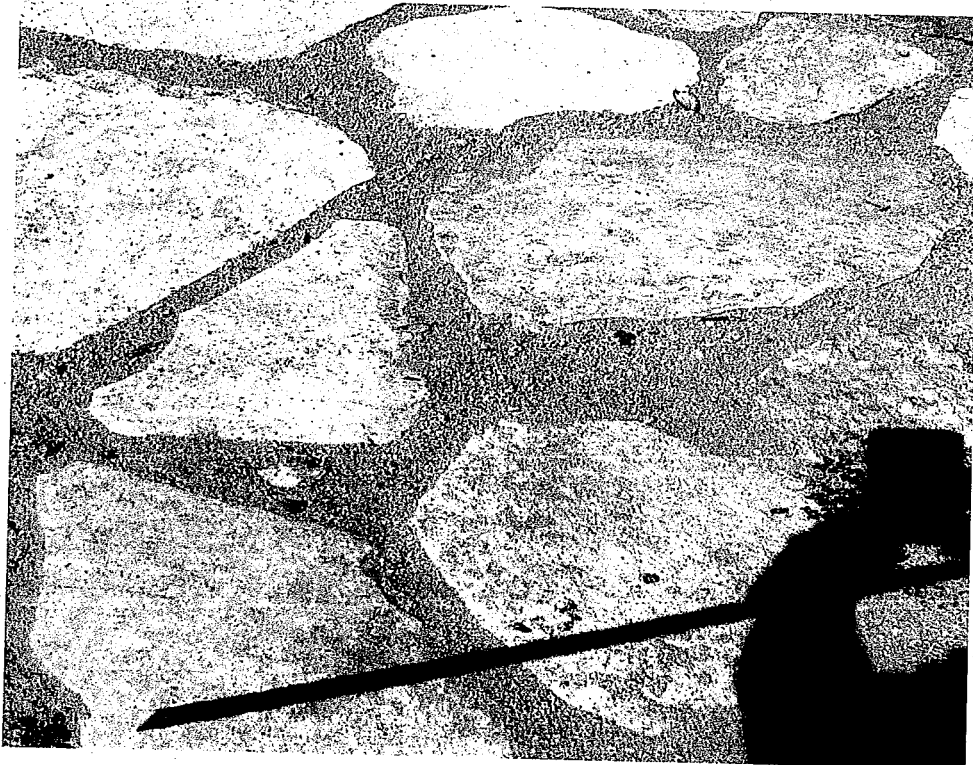
000118

ratio uneven. ss and gaps



9 of 13

000119



10 OF 13

000120

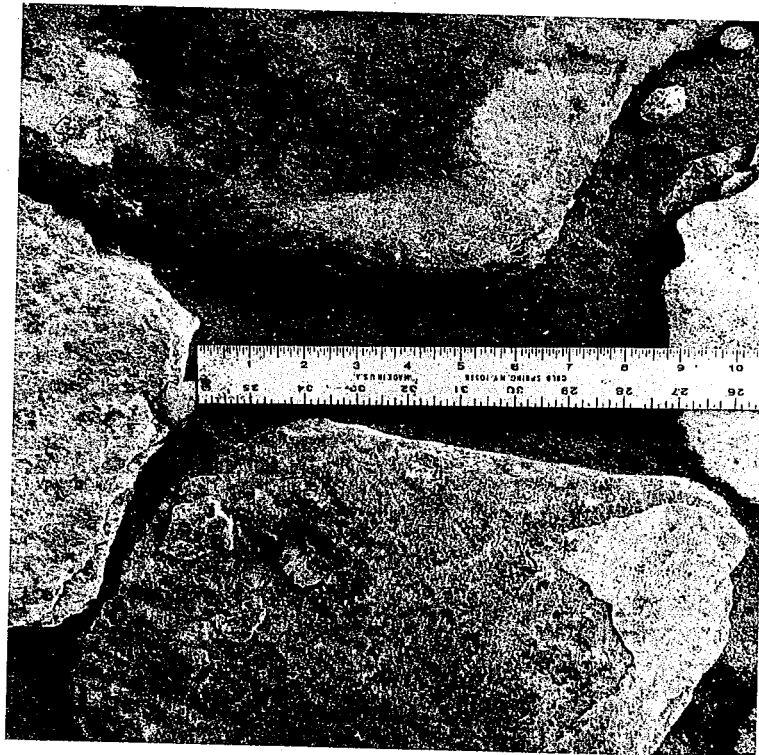
Second Patio unevenness and gaps at 7/8/18



17 of 13

000121

Second Patio unevenness and gaps at 7/8/18





Second Patio unevenness and gaps at 7/8/18



## CONSOLIDATED CHRONOLOGICAL CASE REPORT

Case Nos.: T17-0040, Gonzalez, et al. v. Leon  
T17-0041, Miranda v. Leon  
T17-0042, Canales v. Leon  
T17-0043, De La Torre v. Leon  
T17-0044, Maciel v. Leon  
T17-0045, Lopez v. Leon &  
T17-0078, Ortiz v. Leon

Property Address: 3020 E. 18<sup>th</sup> St., #2, #4, #8, #12, #11, #13, & #5, Oakland, CA

Parties:

Marvin Ortiz	(Tenant)
Laura Canales	(Tenant)
Martina De La Torre	(Tenant)
Martha Godoy	(Tenant)
Andrea Gonzalez	(Tenant)
Feliciano Lopez	(Tenant)
Liliana Maciel	(Tenant)
Adriana Miranda,	(Tenant)
Gloria Lopez	(Tenant)
Martina Cucullo-Lim	(Attorney for Tenants)
Sarah Winfield	(Tenant Representative)
Daniel Leon	(Owner)
Vivian Leon	(Owner)

### OWNER APPEAL:

<u>Activity</u>	<u>Date</u>
Tenants filed Petitions	January 25, 2017
Owner Responses filed	March 16, 2017
Tenant Ortiz filed Petition	February 8, 2017
Owner Response filed	March 24, 2017
Hearing Decision mailed to all parties	June 5, 2018
Amended Hearing Decision mailed to all parties	June 21, 2018



Activity

Date

Second Amended Hearing Decision mailed to all parties July 16, 2018

Owner Appeal filed August 6, 2018

T17-0040 MS/SK

<p><b>CITY OF OAKLAND</b> <b>RENT ADJUSTMENT PROGRAM</b> Mail To: P. O. Box 70243 Oakland, California 94612-0243 (510) 238-3721</p>	<p>For date stamp: <b>2017 JAN 25 AM 9:00</b></p>
---	---

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

**TENANT PETITION**

**Please print legibly**

Your Name Andrea Gonzalez Feliciano Lopez	Rental Address (with zip code) 3020 E. 18th Street Apt 2 Oakland, CA 94601	Telephone 510-575-1681 510-401-7256
Your Representative's Name NA	Mailing Address (with zip code)	Telephone
Property Owner(s) name(s) Javier Leon Vivian Leon Daniel Leon	Mailing Address (with zip code) 30 Sky Terrace Danville, CA 94526	Telephone

Number of units on the property: 21

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

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

<input checked="" type="checkbox"/>	(a) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
	(b) The owner did not give me a summary of the justification(s) for the increase despite my written request.
	(c) The rent was raised <u>illegally</u> after the unit was vacated (Costa-Hawkins violation).
<input checked="" type="checkbox"/>	(d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.)
<input checked="" type="checkbox"/>	(e) A City of Oakland form notice of the existence of the Rent Program was not given to me at least six months before the effective date of the rent increase(s) I am contesting.
<input checked="" type="checkbox"/>	(f1) The housing services I am being provided have decreased. (Complete Section III on following page)
<input checked="" type="checkbox"/>	(f2) At present, there exists a health, safety, fire, or building code violation in the unit. <u>If the owner has been cited in an inspection report, please attach a copy of the citation or report.</u>
	(g) The contested increase is the second rent increase in a 12-month period.
<input type="checkbox"/>	(h) The notice of rent increase based upon capital improvement costs does not contain the "enhanced notice" requirements of the Rent Adjustment Ordinance or the enhanced notice was not filed with the RAP.
<input type="checkbox"/>	(i) My rent was not reduced after the expiration period of the rent increase based on capital improvements.
<input type="checkbox"/>	(j) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).
<input type="checkbox"/>	(k) I wish to contest an exemption from the Rent Adjustment Ordinance (OMC 8.22, Article I)

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

Date you moved into the Unit: Approx 8/2013 Initial Rent: \$ 850 /month

When did the owner first provide you with a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program (RAP NOTICE)? Date: approx 8/2014. If never provided, enter "Never."

NEVER IN SPANISH

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

List all rent increases that you want to challenge. Begin with the most recent and work backwards. If you need additional space, please attach another sheet. You must check "Yes" next to each increase that you are challenging.

Date Notice Served (mo/day/year)	Date Increase Effective (mo/day/year)	Amount Rent Increased		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
29 Dec 2016	1 Feb 2017	\$ <u>850</u>	\$ <u>935</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<i>We are not contesting any previous increases!</i>		\$	\$	<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 60 days from the date of notice of increase or from the first date you received written notice of the existence of the Rent Adjustment program (whichever is later) to contest a rent increase. (O.M.C. 8.22.090 A 2) If you never got the RAP Notice you can contest all past increases.

List case number(s) of all Petition(s) you have ever filed for this rental unit: T15-0445

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

Decreased or inadequate housing services are considered an increase in rent. If you claim an unlawful rent increase for service problems, you must complete this section.

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

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

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

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

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

Andrea Gonzalez  1/19/17  
Tenant's Signature Date

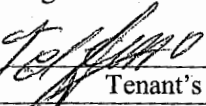
**V. MEDIATION AVAILABLE:** Mediation is an entirely voluntary process to assist you in reaching an agreement with the owner. If both parties agree, you have the option to mediate your complaints before a hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal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

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

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

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

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

 Andrea Gonzalez 1/19/17  
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**  
The owner is required to file a Response to this petition within 35 days of notification by the Rent Adjustment Program. You will be mailed a copy of the Landlord's Response form. Copies of **documents attached to the Response form** will not be sent to you. However, you may review these in the Rent Program office by appointment. For an appointment to review a file call (510) 238-3721; please allow six weeks from the date of filing before scheduling a file review.

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

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

**Addendum A-Decrease in Services**

Description of Decreased Service	Approximate Date Service was Lost	Date Tenant Notified Landlord and how	Date fixed	Estimated Value to Loss of Service
1. There is dirty water coming out of the kitchen sink that smells horrible. We are not able to use the sink and this is a health concern.	12/15/16	We informed the manager who said he was not able to fix it and left various messages for the landlord. On about December 29 we spoke to the landlord about the issue by phone, and on January 5 we sent him a letter.	Approximately 1/7/17.	10%
2. The doors of one of our closets were falling down. The landlord told us to take them down and that he would replace them, but they have not been replaced.	Approximately two years ago	We have informed the landlord verbally various times.	NA	10%
3. The light in our other closet is broken. It is a nonstandard light so we are unable to replace it ourselves.	Approximately one year	We have informed the landlord verbally various times.	NA	10%
4. The lock of the front door of our building frequently breaks, and the door is not able to be locked. It often takes many months for the landlord to fix this.	Most recently, the door did not lock for approximately three months in late 2016 until last week.	We have verbally notified landlord and manager various times.	Approximately 1/12/17.	10%

**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 ARBITRATION PROGRAM  
 2017 MAR 16 PM 2:07

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 T17-0040

OWNER RESPONSE

Please print legibly.

Your Name Daniel Leon Vivian Leon	Complete Address (with zip code) 30 SKY TERRACE Danville, CA 94526	Phone: 925.765.9009 Email: _____
Your Representative's Name (if any) NA	Complete Address (with zip code)	Phone: _____ Fax: _____ Email: _____
Tenant(s) name(s) Andrea Gonzalez Feliciano Lopez	Complete Address (with zip code) 3020 E. 18th Apt. #2 Oakland, CA 94601	

Have you paid for your Oakland Business License? Yes  No  Number 00068148  
 (Provide proof of payment.)

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

There are 21 residential units in the subject building. I acquired the building on 9/21/04.

Is there more than one street address on the parcel? Yes  No  (3012-3020)

**I. RENTAL HISTORY**

The tenant moved into the rental unit on 6/1/13

The tenant's initial rent including all services provided was \$ 850.00 / month.

Have you (or a previous Owner) given the City of Oakland's form entitled NOTICE TO TENANTS OF RESIDENTIAL RENT ADJUSTMENT PROGRAM ("RAP Notice") to all of the petitioning tenants? Yes  No  I don't know  If yes, on what date was the Notice first given? 6/1/13

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? 12/30/14 . 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	
<del>12/30/16</del>	<del>1/31/17</del>	<del>\$ 850.<sup>00</sup></del>	<del>\$ 935.<sup>00</sup></del>	<del><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</del>
<del>8/1/15</del>	<del>9/1/15</del>	<del>\$ 900.<sup>00</sup></del>	<del>\$ 990.<sup>00</sup></del>	<del><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</del>
12/30/16	1/31/17	\$ 850. <sup>00</sup>	\$ 935. <sup>00</sup>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
8/1/15	9/1/15	\$ 875. <sup>00</sup>	\$ 962. <sup>50</sup>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
4/30/14	6/1/14	\$ 850. <sup>00</sup>	\$ 875. <sup>00</sup>	<input checked="" 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.

Date of Increase	Banking (deferred annual increases)	Increased Housing Service Costs	Capital Improvements	Uninsured Repair Costs	Fair Return	Debt Service (if purchased before 4/1/14)
<u>1/31/17</u>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>9/1/15</u>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>6/1/14</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

### III. DECREASED HOUSING SERVICES

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

### IV. EXEMPTION

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

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

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

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

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

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

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

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

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

### V. IMPORTANT INFORMATION

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

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

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





T17.0040

Thurs 3/16/17 Andrea Gonzalez, Feliciano Lopez  
Answer to decrease in Services

1. Tenant clogged sink, it's tenants responsibility to unclog. We tried to help snake and cleared.
2. Tenant damaged from overfilling/hoarding. I told him it was his responsibility to repair/fix.
3. Light is standard/works. Need to buy bulbs.
4. Tenants and guest or vandals/homeless break. We repair as needed.

T17.0041 MB/SK

<p><b>CITY OF OAKLAND</b> <b>RENT ADJUSTMENT PROGRAM</b> Mail To: P. O. Box 70243 Oakland, California 94612-0243 (510) 238-3721</p>	<p>For date stamp <b>2017 JAN 25 AM 8:59</b></p>
---	--

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

**TENANT PETITION**

**Please print legibly**

<p>Your Name ADRIANA MIRANDA</p>	<p>Rental Address (with zip code) 3020 E. 18<sup>TH</sup> ST., Apt 4 OAKLAND, CA 94601</p>	<p>Telephone 510-395-3311</p>
<p>Your Representative's Name NA</p>	<p>Mailing Address (with zip code)</p>	<p>Telephone</p>
<p>Property Owner(s) name(s) DANIEL LEON VIVIAN LEON</p>	<p>Mailing Address (with zip code) 30 SKY TERRACE DANVILLE, CA 94526</p>	<p>Telephone</p>

Number of units on the property: 21

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

**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:**

<p><input checked="" type="checkbox"/></p>	<p>(a) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.</p>
<p><input type="checkbox"/></p>	<p>(b) The owner did not give me a summary of the justification(s) for the increase despite my written request.</p>
<p><input type="checkbox"/></p>	<p>(c) The rent was raised <u>illegally</u> after the unit was vacated (Costa-Hawkins violation).</p>
<p><input checked="" type="checkbox"/></p>	<p>(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.)</p>
<p><input checked="" type="checkbox"/></p>	<p>(e) A City of Oakland form notice of the existence of the Rent Program was not given to me at least six months before the effective date of the rent increase(s) I am contesting.</p>
<p><input checked="" type="checkbox"/></p>	<p>(f1) The housing services I am being provided have decreased. (Complete Section III on following page)</p>
<p><input checked="" type="checkbox"/></p>	<p>(f2) At present, there exists a health, safety, fire, or building code violation in the unit. <u>If the owner has been cited in an inspection report, please attach a copy of the citation or report.</u></p>
<p><input type="checkbox"/></p>	<p>(g) The contested increase is the second rent increase in a 12-month period.</p>
<p><input type="checkbox"/></p>	<p>(h) The notice of rent increase based upon capital improvement costs does not contain the "enhanced notice" requirements of the Rent Adjustment Ordinance or the enhanced notice was not filed with the RAP.</p>
<p><input type="checkbox"/></p>	<p>(i) My rent was not reduced after the expiration period of the rent increase based on capital improvements.</p>
<p><input type="checkbox"/></p>	<p>(j) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).</p>
<p><input type="checkbox"/></p>	<p>(k) I wish to contest an exemption from the Rent Adjustment Ordinance (OMC 8.22, Article I)</p>

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

Date you moved into the Unit: JULY 2011 Initial Rent: \$ 850 /month

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

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

List all rent increases that you want to challenge. Begin with the most recent and work backwards. If you need additional space, please attach another sheet. You must check "Yes" next to each increase that you are challenging.

Date Notice Served (mo/day/year)	Date Increase Effective (mo/day/year)	Amount Rent Increased		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
DEC 2016	Feb 2017	\$ 765	\$ 935	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Not contesting previous increases		\$	\$	<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 60 days from the date of notice of increase or from the first date you received written notice of the existence of the Rent Adjustment program (whichever is later) to contest a rent increase. (O.M.C. 8.22.090 A 2) If you never got the RAP Notice you can contest all past increases.

List case number(s) of all Petition(s) you have ever filed for this rental unit: T15-0509

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

Decreased or inadequate housing services are considered an increase in rent. If you claim an unlawful rent increase for service problems, you must complete this section.


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

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

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

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

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

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

1-19-17  
\_\_\_\_\_  
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 Rent Adjustment Program Hearing Officer the same day.

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

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

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

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

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

1-19-17  
\_\_\_\_\_  
Date

**VI. IMPORTANT INFORMATION:**

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

**File Review**

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

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

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

**Addendum A-Decrease in Services**

Description of Decreased Service	Approximate Date this Service was Lost	Date Tenant Notified Landlord and how	Date fixed, if any	Estimated Value to Loss of Service
The carpeting is detached and poses a tripping hazard	March 2016 when owner attempted to make changes pursuant to mediation agreement.	Landlord was on constructive notice.	N/A.	5%
Some of the plugs have not been repaired at all and others do not function properly, with the plug falling out of the wall.	Since move in.	Notified Landlord approximately six months after moving in.	LL took action in March 2016 but it is still a problem.	5%
Cockroach infestation	Since move in, however the problem became worse in summer 2016.	Notified landlord when moved in.	N/A	10%
The fan in the hood of the stove has stopped working.	Summer 2016	T is notifying LL through this petition	N/A	5%

<b>CITY OF OAKLAND</b> <b>RENT ADJUSTMENT PROGRAM</b> P.O. Box 70243 250 Frank H. Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721	RECEIVED For filing stamp RENT ADJUSTMENT PROGRAM 2017 MAR 16 PM 2:07
---	--

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 T17-0041

OWNER RESPONSE

Please print legibly.

Your Name Daniel Leon Virlian Leon	Complete Address (with zip code) 30 Sky Terrace Danville, CA 94526	Phone: 925.765.9009 Email: _____
Your Representative's Name (if any)	Complete Address (with zip code)	Phone: _____ Fax: _____ Email: _____
Tenant(s) name(s) Adriana Miranda	Complete Address (with zip code) 3020 E. 18th St Apt. 4 Oakland, CA 94601	

Have you paid for your Oakland Business License? Yes  No  Number 00068148  
 (Provide proof of payment.)

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

There are 21 residential units in the subject building. I acquired the building on 9/21/04

Is there more than one street address on the parcel? Yes  No  (3012-3020)

I. RENTAL HISTORY

The tenant moved into the rental unit on 6/1/12

The tenant's initial rent including all services provided was \$ 850.00 / month.

Have you (or a previous Owner) given the City of Oakland's form entitled NOTICE TO TENANTS OF RESIDENTIAL RENT ADJUSTMENT PROGRAM ("RAP Notice") to all of the petitioning tenants? Yes  No  I don't know  If yes, on what date was the Notice first given? 6/1/12

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? 12/30/16 . 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	
12/30/16	1/31/17	\$ 850.00	\$ 935.00	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
8/1/15	9/1/15	\$ 900.00	\$ 990.00	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
4/30/14	6/1/14	\$ 850.00	\$ 900.00	<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

**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)
1/31/17	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9/1/15	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6/1/14	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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



### III. DECREASED HOUSING SERVICES

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

### IV. EXEMPTION

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

- \_\_\_\_\_ The unit is a single family residence or condominium exempted by the **Costa Hawkins Rental Housing Act** (California Civil Code 1954.50, et seq.). **If claiming exemption under Costa-Hawkins, please answer the following questions on a separate sheet:**
1. Did the prior tenant leave after being given a notice to quit (Civil Code Section 1946)?
  2. Did the prior tenant leave after being given a notice of rent increase (Civil Code Section 827)?
  3. Was the prior tenant evicted for cause?
  4. Are there any outstanding violations of building housing, fire or safety codes in the unit or building?
  5. Is the unit a single family dwelling or condominium that can be sold separately?
  6. Did the petitioning tenant have roommates when he/she moved in?
  7. If the unit is a condominium, did you purchase it? If so: 1) from whom? 2) Did you purchase the entire building?
- \_\_\_\_\_ The rent for the unit is **controlled, regulated or subsidized** by a governmental unit, agency or authority other than the City of Oakland Rent Adjustment Ordinance.
- \_\_\_\_\_ The unit was **newly constructed** and a certificate of occupancy was issued for it on or after January 1, 1983.
- \_\_\_\_\_ On the day the petition was filed, the tenant petitioner was a resident of a **motel, hotel, or boarding house** for less than 30 days.
- \_\_\_\_\_ The subject unit is in a building that was **rehabilitated** at a cost of 50% or more of the average basic cost of new construction.
- \_\_\_\_\_ The unit is an accommodation in a **hospital, convent, monastery, extended care facility, convalescent home, non-profit home for aged, or dormitory** owned and operated by an educational institution.
- \_\_\_\_\_ The unit is located in a building with three or fewer units. The owner occupies one of the units continuously as his or her principal residence and has done so for at least one year.

### V. IMPORTANT INFORMATION

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

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

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



T17-0041

Thurs 3/16/17

Adriana Miranda

Answer to decrease in Services

1. Carpet was professionally installed. Tenant never notified me until this notice.
2. Plugs have been replaced, they work properly. Inspect March 2017. Waiting for tenant to move bed, Claims he has another bad plug?
3. NOT TRUE. Pest control is done bi-monthly. Tenants do not prep or refuse service.
4. Inspected March 2017, it's maintenance issue. Already replaced. Tenant needs to clean better.

000143

T17-0042 MB/SK

RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM

<b>CITY OF OAKLAND</b> <b>RENT ADJUSTMENT PROGRAM</b> Mail To: P. O. Box 70243 Oakland, California 94612-0243 (510) 238-3721	For date stamp <b>2017 JAN 25 AM 9:03</b>
--	--

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

**TENANT PETITION**

Please print legibly

Your Name <i>Laura Canales</i>	Rental Address (with zip code) <i>3020 E. 18th St., Apt. 8 Oakland, CA 94601</i>	Telephone <i>510-688-7951</i>
Your Representative's Name <i>NA</i>	Mailing Address (with zip code)	Telephone
Property Owner(s) name(s) <i>Daniel Leon Vivian Leon</i>	Mailing Address (with zip code) <i>30 Sky Terrace Danville, CA 94526</i>	Telephone

Number of units on the property: 21

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

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

<input checked="" type="checkbox"/> (a) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
<input type="checkbox"/> (b) The owner did not give me a summary of the justification(s) for the increase despite my written request.
<input type="checkbox"/> (c) The rent was raised <u>illegally</u> after the unit was vacated (Costa-Hawkins violation).
<input checked="" type="checkbox"/> (d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.)
<input checked="" type="checkbox"/> (e) A City of Oakland form notice of the existence of the Rent Program was not given to me at least six months before the effective date of the rent increase(s) I am contesting.
<input checked="" type="checkbox"/> (f1) The housing services I am being provided have decreased. (Complete Section III on following page)
<input checked="" type="checkbox"/> (f2) At present, there exists a health, safety, fire, or building code violation in the unit. <u>If the owner has been cited in an inspection report, please attach a copy of the citation or report.</u>
<input type="checkbox"/> (g) The contested increase is the second rent increase in a 12-month period.
<input type="checkbox"/> (h) The notice of rent increase based upon capital improvement costs does not contain the "enhanced notice" requirements of the Rent Adjustment Ordinance or the enhanced notice was not filed with the RAP.
<input type="checkbox"/> (i) My rent was not reduced after the expiration period of the rent increase based on capital improvements.
<input type="checkbox"/> (j) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).
<input type="checkbox"/> (k) I wish to contest an exemption from the Rent Adjustment Ordinance (OMC 8.22, Article I)

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

Date you moved into the Unit: summer 2012 Initial Rent: \$ 850 /month

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

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

List all rent increases that you want to challenge. Begin with the most recent and work backwards. If you need additional space, please attach another sheet. You must check "Yes" next to each increase that you are challenging.

Date Notice Served (mo/day/year)	Date Increase Effective (mo/day/year)	Amount Rent Increased		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
12/29/16	1/31/17	\$ 990	\$ 1049	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
7/31/15	9/1/15	\$ 900	\$ 990	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
2013	2013	\$ 850	\$ 900	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

no - not Spanish

\* You have 60 days from the date of notice of increase or from the first date you received written notice of the existence of the Rent Adjustment program (whichever is later) to contest a rent increase. (O.M.C. 8.22.090 A 2) If you never got the RAP Notice you can contest all past increases.

List case number(s) of all Petition(s) you have ever filed for this rental unit: \_\_\_\_\_

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

Decreased or inadequate housing services are considered an increase in rent. If you claim an unlawful rent increase for service problems, you must complete this section.

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

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

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

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

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

Cynthia Lawrence  
Tenant's Signature

1/19/2017  
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 Rent Adjustment Program Hearing Officer the same day.

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

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

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

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

Cynthia Lawrence  
Tenant's Signature

1/19/2017  
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**

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

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

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

**Addendum A-Decrease in Services**

Description of Decreased Service	Approximate Date this Service was Lost	Date Tenant Notified Landlord and how	Date fixed, if any	Estimated Value to Loss of Service
Bathroom door not functioning	9/2016	9/2016; Verbally	Landlord came to repair at the end of December, but the frame is still missing	10%
Electrical plug not working in kitchen; when we pulled the plug out, cockroaches came out.	2012	2015; Verbally	N/A	5%
Cockroach problem	2011	2011; Verbally	Sprayed annually; problem persisted.	20%
Mold in the bathroom	12/2015	12/2015; Verbally	Owner told family to wash it, took no other actions	15%
Most lights in the parking lot have never worked. This poses a safety concern.	Since move in	Owner is on constructive notice	N/A	5%

<b>CITY OF OAKLAND</b> <b>RENT ADJUSTMENT PROGRAM</b> P.O. Box 70243 250 Frank H. Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721	For filing stamp: RECEIVED CITY OF OAKLAND RENT ADJUSTMENT PROGRAM 2017 MAR 16 PM 2:07
---	---

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 T17-0042

OWNER RESPONSE

Please print legibly.

Your Name Daniel Leon Vivian Leon	Complete Address (with zip code) 30 Sky Terrace Danville, CA 94526	Phone: <u>925.765.9009</u> Email: _____
Your Representative's Name (if any)	Complete Address (with zip code)	Phone: _____ Fax: _____ Email: _____
Tenant(s) name(s) Laura Canales	Complete Address (with zip code) 3020 E 18th St Apt. 8 Oakland, CA 94601	

Have you paid for your Oakland Business License? Yes  No  Number 00068148  
 (Provide proof of payment.)

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

There are 21 residential units in the subject building. I acquired the building on 9/21/04

Is there more than one street address on the parcel? Yes  No  (3012-3020)

I. RENTAL HISTORY

The tenant moved into the rental unit on 1/1/12 *x moved in before*

The tenant's initial rent including all services provided was \$ 850.00 / month.

Have you (or a previous Owner) given the City of Oakland's form entitled NOTICE TO TENANTS OF RESIDENTIAL RENT ADJUSTMENT PROGRAM ("RAP Notice") to all of the petitioning tenants? Yes  No  I don't know  If yes, on what date was the Notice first given? 8/1/15

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 **X**. If yes, on what date was the Enhanced Notice given? ~~11/31/17~~. Did you submit a copy of the Enhanced Notice to the RAP office within 10 days of serving the tenant? Yes ~~✓~~ No **X** **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	
12/30/16	1/31/17	\$ 990.00	\$ 1049.00	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
8/1/15	9/1/15	\$ 900.00	\$ 990.00	<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.

Date of Increase	Banking (deferred annual increases)	Increased Housing Service Costs	Capital Improvements	Uninsured Repair Costs	Fair Return	Debt Service (if purchased before 4/1/14)
1/31/17	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9/1/15	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

### **III. DECREASED HOUSING SERVICES**

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

### **IV. EXEMPTION**

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

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

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

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

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

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

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

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

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

### **V. IMPORTANT INFORMATION**

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

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

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

**VI. VERIFICATION**

Owner must sign here:

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

*David Lee*

Owner's Signature

3/15/17

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

T17-0042

Thurs 3/16/17

Laura Canales

Answer to decrease in Services

1. Door functions properly.
2. Kitchen plug works. Tenants need to clean/declutter.
3. Pest control bimonthly. Tenants do not prep or refuse service.
4. It's maintenance. Tenant does not clean thoroughly. Need to clean better. Too many people in a one bedroom?
5. NOT TRUE. Light work. Replace as needed when they go out or damaged by tenants or guest.

T17-0043 MS/6K

<p><b>CITY OF OAKLAND</b>  <b>RENT ADJUSTMENT PROGRAM</b>          Mail To: P. O. Box 70243          Oakland, California 94612-0243          (510) 238-3721</p>	<p>For date stamp  <b>2017 JAN 25 AM 9:02</b></p>
---	---

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

**TENANT PETITION**

**Please print legibly**

Your Name Martina De La Torre	Rental Address (with zip code) 3020 E.18th Street, Apt 12 Oakland, CA 94601	Telephone 510-689-7305
Your Representative's Name NA	Mailing Address (with zip code)	Telephone
Property Owner(s) name(s) Jose Javier Leon Vivian Leon Daniel Leon	Mailing Address (with zip code) 30 Sky Terrace Danville, CA 94526	Telephone

Number of units on the property: 21

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

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

<input checked="" type="checkbox"/>	(a) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
	(b) The owner did not give me a summary of the justification(s) for the increase despite my written request.
	(c) The rent was raised <u>illegally</u> after the unit was vacated (Costa-Hawkins violation).
<input checked="" type="checkbox"/>	(d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.)
<input checked="" type="checkbox"/>	(e) A City of Oakland form notice of the existence of the Rent Program was not given to me at least six months before the effective date of the rent increase(s) I am contesting.
<input checked="" type="checkbox"/>	(f1) The housing services I am being provided have decreased. (Complete Section III on following page)
<input checked="" type="checkbox"/>	(f2) At present, there exists a health, safety, fire, or building code violation in the unit. <u>If the owner has been cited in an inspection report, please attach a copy of the citation or report.</u>
	(g) The contested increase is the second rent increase in a 12-month period.
	(h) The notice of rent increase based upon capital improvement costs does not contain the "enhanced notice" requirements of the Rent Adjustment Ordinance or the enhanced notice was not filed with the RAP.
	(i) My rent was not reduced after the expiration period of the rent increase based on capital improvements.
	(j) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).
	(k) I wish to contest an exemption from the Rent Adjustment Ordinance (OMC 8.22, Article I)

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

Date you moved into the Unit: 05/2008 Initial Rent: \$ 850 /month

When did the owner first provide you with a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program (RAP NOTICE)? Date: 08/01/2015 . If never provided, enter "Never."

*NOT IN SPANISH*

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

List all rent increases that you want to challenge. Begin with the most recent and work backwards. If you need additional space, please attach another sheet. You must check "Yes" next to each increase that you are challenging.

Date Notice Served (mo/day/year)	Date Increase Effective (mo/day/year)	Amount Rent Increased		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
<i>29 Dec 2016</i>	<i>1 February 2017</i>	<i>\$ 765</i>	<i>\$ 935</i>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<i>we are not contesting any previous increases</i>		\$	\$	<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 60 days from the date of notice of increase or from the first date you received written notice of the existence of the Rent Adjustment program (whichever is later) to contest a rent increase. (O.M.C. 8.22.090 A 2) If you never got the RAP Notice you can contest all past increases.

List case number(s) of all Petition(s) you have ever filed for this rental unit: T15-0507

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

Decreased or inadequate housing services are considered an increase in rent. If you claim an unlawful rent increase for service problems, you must complete this section.

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

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

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

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

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

*Martina de la Torre*  
Tenant's Signature

1/19/2017  
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 Rent Adjustment Program Hearing Officer the same day.

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

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

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

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

*Martina de la Torre*  
Tenant's Signature

1/19/2017  
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**

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

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

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

**Addendum A-Decrease in Services**

Description of Decreased Service	Approximate Date Service was Lost	Date Tenant Notified Landlord and how	Date fixed	Estimated Value to Loss of Service
1. The kitchen cabinet handles are broken and unscrewed.	Since I moved into unit.	Verbally notified landlord since moving in. Landlord agreed to fix as a result of case T15-0507 but never has.	NA	1%
2. The bathroom fan does not work. In the past, this has caused mold problems. To avoid mold now we have to take very short showers and leave the bathroom door open immediately after, and sometimes even leave the bathroom door open while showering.	Approximately since I moved in to the unit.	The landlord is aware of this because we discussed it at the hearing for case T15-0507. At the time, the landlord agreed to fix it but never has. I most recently notified the landlord that it was still broken in January 2017.	NA	10%
3. The stove is broken. One of the burners does not work.	Approximately three years.	I notified the landlord of this verbally approximately three years ago, and reminded him again a number of times.	NA	10%
4. The lock of the front door of our building frequently breaks, and the door is not able to be locked. It often takes many months for the landlord to fix this..	Most recently, the door did not lock for approximately three months in late 2016 until last week.	Tenant verbally notified onsite property manager various times.	Approximately 1/12/17.	10%



<b>CITY OF OAKLAND</b> <b>RENT ADJUSTMENT PROGRAM</b> 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 MAR 16 PM 2:07
---	--

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 T17-0043

OWNER RESPONSE

Please print legibly.

Your Name Daniel Leon Vivian Leon	Complete Address (with zip code) 50 Sky Terrace Danville, CA 94526	Phone: <u>925.765.9009</u> Email: _____
Your Representative's Name (if any)	Complete Address (with zip code)	Phone: _____ Fax: _____ Email: _____
Tenant(s) name(s) Martina De la Torre	Complete Address (with zip code) 3020 E. 18th St. Apt. 12 Oakland, CA 94601	

Have you paid for your Oakland Business License? Yes  No  Number 00068148  
 (Provide proof of payment.)

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

There are 21 residential units in the subject building. I acquired the building on 9/21/04

Is there more than one street address on the parcel? Yes  No  3012-3020

I. RENTAL HISTORY

The tenant moved into the rental unit on 5/09

The tenant's initial rent including all services provided was \$ 850.00 / month.

Have you (or a previous Owner) given the City of Oakland's form entitled NOTICE TO TENANTS OF RESIDENTIAL RENT ADJUSTMENT PROGRAM ("RAP Notice") to all of the petitioning tenants? Yes  No  I don't know  If yes, on what date was the Notice first given? 5/09

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? 12/30/16 . 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	
12/30/16	1/31/17	\$ 850. <sup>00</sup>	\$ 935. <sup>00</sup>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
8/1/15	9/1/15	\$ 900. <sup>00</sup>	\$ 990. <sup>00</sup>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
4/30/14	6/1/15	\$ 850. <sup>00</sup>	\$ 900. <sup>00</sup>	<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)
<u>1/31/17</u>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>9/1/15</u>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>6/1/14</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

### III. DECREASED HOUSING SERVICES

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

### IV. EXEMPTION

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

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

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

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

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

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

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

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

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

### V. IMPORTANT INFORMATION

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

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

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

**VI. VERIFICATION**

Owner must sign here:

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

*David Lee*

Owner's Signature

*3/15/17*

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

T17-0043

3/16/17

Martina De la Torre  
Answer to decrease in service

1. Tenant/guest remove. Repair/replaced after mediation.
2. Bathroom fan has always worked. Tenant needs to clean and ventilate. Cleaned for tenant
3. Stove works. Tenant needs to clean properly. Cleaned for tenant and showed her.
4. Main door works. Tenants/guest damage. Repair as needed.

T17.0044 MS/SK

RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM

<p><b>CITY OF OAKLAND</b>  <b>RENT ADJUSTMENT PROGRAM</b>          Mail To: P. O. Box 70243          Oakland, California 94612-0243          (510) 238-3721</p>	<p>For date stamp  <b>2017 JAN 25 AM 9:01</b></p>
---	---

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

**TENANT PETITION**

**Please print legibly**

Your Name Lilitana Maciel	Rental Address (with zip code) 3020 E. 18th St., Apt 11 Oakland CA 94601	Telephone (510)-563-9046
Your Representative's Name NA	Mailing Address (with zip code)	Telephone
Property Owner(s) name(s) Vivian Leon Daniel de Leon	Mailing Address (with zip code) 30 Sky Terrace Danville, CA 94526	Telephone

Number of units on the property: 21

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

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

<input checked="" type="checkbox"/>	(a) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
	(b) The owner did not give me a summary of the justification(s) for the increase despite my written request.
	(c) The rent was raised <u>illegally</u> after the unit was vacated (Costa-Hawkins violation).
<input checked="" type="checkbox"/>	(d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.)
<input checked="" type="checkbox"/>	(e) A City of Oakland form notice of the existence of the Rent Program was not given to me at least six months before the effective date of the rent increase(s) I am contesting.
<input checked="" type="checkbox"/>	(f1) The housing services I am being provided have decreased. (Complete Section III on following page)
<input checked="" type="checkbox"/>	(f2) At present, there exists a health, safety, fire, or building code violation in the unit. <u>If the owner has been cited in an inspection report, please attach a copy of the citation or report.</u>
	(g) The contested increase is the second rent increase in a 12-month period.
	(h) The notice of rent increase based upon capital improvement costs does not contain the "enhanced notice" requirements of the Rent Adjustment Ordinance or the enhanced notice was not filed with the RAP.
	(i) My rent was not reduced after the expiration period of the rent increase based on capital improvements.
	(j) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).
	(k) I wish to contest an exemption from the Rent Adjustment Ordinance (OMC 8.22, Article I)

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

Date you moved into the Unit: Nov. 2013 Initial Rent: \$ 400 /month

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

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

List all rent increases that you want to challenge. Begin with the most recent and work backwards. If you need additional space, please attach another sheet. You must check "Yes" next to each increase that you are challenging.

Date Notice Served (mo/day/year)	Date Increase Effective (mo/day/year)	Amount Rent Increased		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
12/29/16	1/31/17	\$ 765	\$ 935	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
not contesting past increases		\$	\$	<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

not in Spanish

\* You have 60 days from the date of notice of increase or from the first date you received written notice of the existence of the Rent Adjustment program (whichever is later) to contest a rent increase. (O.M.C. 8.22.090 A 2) If you never got the RAP Notice you can contest all past increases.

List case number(s) of all Petition(s) you have ever filed for this rental unit: T-15-0466

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

Decreased or inadequate housing services are considered an increase in rent. If you claim an unlawful rent increase for service problems, you must complete this section.

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

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

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

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

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

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

1/19/17  
\_\_\_\_\_  
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 Rent Adjustment Program Hearing Officer the same day.

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

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

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

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

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

1/19/17  
\_\_\_\_\_  
Date

**VI. IMPORTANT INFORMATION:**

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

**File Review**

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

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

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



**Addendum A-Decrease in Services**

Description of Decreased Service	Approximate Date this Service was Lost	Date Tenant Notified Landlord and how	Date fixed, if any	Estimated Value to Loss of Service
There is a fuse box in the closet; the landlord went in to change the wiring/plugs, and never fully repaired the fuse box. When you touch a plug/cord, the switch to the fuse box shuts off w/o being manually touched.	Nov. 2013	2013; verbally	N/A	10%
The closet doors do not close properly.	Nov. 2013	2013; verbally	N/A	5%
The metal lock to the front door needs to be inspected and repaired; it does not lock, open, or close properly, which is a safety hazard.	Nov. 2013	2013; verbally	N/A	20%
The cabinets/wall in the kitchen have mold.	Nov. 2013	2013; verbally	The landlord came to fix the problem in 2015, but the problem persists.	15%
There are exposed plugs and outlets in the kitchen.	Nov. 2013	2013; verbally	N/A	10%
Between the bathroom and kitchen, there is a sensitive plug that shuts off all the light in the apartment when touched.	May 2016	Tenant is notifying landlord through this petition.	N/A	10%

Description of Decreased Service	Approximate Date this Service was Lost	Date Tenant Notified Landlord and how	Date fixed, if any	Estimated Value to Loss of Service
In the bathroom, the landlord took off the lock; they are now using a string to close/lock the door.	Nov. 2013	2013; verbally	N/A	10%
Most of the lights in the parking lot do not work. Additionally, the gate to the garage does not work.	Nov. 2013	Landlord is on constructive notice	N/A	10%
The main entrance to the apartment kept getting stuck; the landlord took the locks out to repair and never replaced them.	Nov. 2013; landlord removed the locks in May 2016	2013; verbally	N/A	20%
Serious cockroach problem	Nov. 2013	2013; verbally	Landlord has sprayed two times since 2013; problem persisted until Liliana purchased a remedy in May 2016.	20%

**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 ARBITRATION PROGRAM  
 2017 MAR 16 PM 2:07

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 117-0044

OWNER RESPONSE

Please print legibly.

Your Name Daniel Leon Vivian Leon	Complete Address (with zip code) 30 Sky Terrace Danville, CA 94526	Phone: 925.765.9009 Email:
Your Representative's Name (if any)	Complete Address (with zip code)	Phone: Fax: Email:
Tenant(s) name(s) Liliana Maciel	Complete Address (with zip code) 3020 E. 18th St Apt. 11 Oakland, CA 94601	

Have you paid for your Oakland Business License? Yes  No  Number 00068148  
 (Provide proof of payment.)

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

There are 21 residential units in the subject building. I acquired the building on 9/21/04.

Is there more than one street address on the parcel? Yes  No  3012-3020

I. RENTAL HISTORY

The tenant moved into the rental unit on 1/1/14.

The tenant's initial rent including all services provided was \$ 880.00 / 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? 1/1/14

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? 12/30/16 . 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	
12/30/16	1/31/17	\$ 850. <sup>00</sup>	\$ 935. <sup>00</sup>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
8/1/15	9/1/15	\$ 850. <sup>00</sup>	\$ 968. <sup>00</sup>	<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)
1/31/17	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9/1/15	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

### III. DECREASED HOUSING SERVICES

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

### IV. EXEMPTION

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

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

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

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

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

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

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

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

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

### V. IMPORTANT INFORMATION

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

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

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



T17-0045 MS/SK

<p><b>CITY OF OAKLAND</b>  <b>RENT ADJUSTMENT PROGRAM</b>          Mail To: P. O. Box 70243          Oakland, California 94612-0243          (510) 238-3721</p>	<p>RECEIVED          CITY OF OAKLAND          RENT ARBITRATION PROGRAM          For date stamp.          2017 JAN 30 AM 9:42</p>
---	--

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

**TENANT PETITION**

Please print legibly

Your Name Gloria Lopez	Rental Address (with zip code) 3020 E 18th St, Apt 13 Oakland, CA 94601	Telephone (510) 830-7945
Your Representative's Name NA	Mailing Address (with zip code)	Telephone
Property Owner(s) name(s) VIVIAN LEON DANIEL LEON	Mailing Address (with zip code) 30 SKY TERRACE DANVILLE, CA 94526	Telephone 925-765-5404

Number of units on the property: 21

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

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

<input checked="" type="checkbox"/>	(a) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
<input type="checkbox"/>	(b) The owner did not give me a summary of the justification(s) for the increase despite my written request.
<input type="checkbox"/>	(c) The rent was raised <u>illegally</u> after the unit was vacated (Costa-Hawkins violation).
<input checked="" type="checkbox"/>	(d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.)
<input checked="" type="checkbox"/>	(e) A City of Oakland form notice of the existence of the Rent Program was not given to me at least six months before the effective date of the rent increase(s) I am contesting.
<input checked="" type="checkbox"/>	(f1) The housing services I am being provided have decreased. (Complete Section III on following page)
<input checked="" type="checkbox"/>	(f2) At present, there exists a health, safety, fire, or building code violation in the unit. <u>If the owner has been cited in an inspection report, please attach a copy of the citation or report.</u>
<input type="checkbox"/>	(g) The contested increase is the second rent increase in a 12-month period.
<input type="checkbox"/>	(h) The notice of rent increase based upon capital improvement costs does not contain the "enhanced notice" requirements of the Rent Adjustment Ordinance or the enhanced notice was not filed with the RAP.
<input type="checkbox"/>	(i) My rent was not reduced after the expiration period of the rent increase based on capital improvements.
<input type="checkbox"/>	(j) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).
<input type="checkbox"/>	(k) I wish to contest an exemption from the Rent Adjustment Ordinance (OMC 8.22, Article I)

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

Date you moved into the Unit: Approx 1/2006 Initial Rent: \$ Approx 1050 /month

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

spanish

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

List all rent increases that you want to challenge. Begin with the most recent and work backwards. If you need additional space, please attach another sheet. You must check "Yes" next to each increase that you are challenging.

Date Notice Served (mo/day/year)	Date Increase Effective (mo/day/year)	Amount Rent Increased		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
12/29/16	2/1/17	\$ 945	\$ 1155	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Tenant not challenging previous increases		\$	\$	<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 60 days from the date of notice of increase or from the first date you received written notice of the existence of the Rent Adjustment program (whichever is later) to contest a rent increase. (O.M.C. 8.22.090 A 2) If you never got the RAP Notice you can contest all past increases.

List case number(s) of all Petition(s) you have ever filed for this rental unit: T15-0510

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

Decreased or inadequate housing services are considered an increase in rent. If you claim an unlawful rent increase for service problems, you must complete this section.

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

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

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



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

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

Gloria Lopez  
Tenant's Signature

1/19/17  
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 Rent Adjustment Program Hearing Officer the same day.

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

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

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

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

Gloria Lopez  
Tenant's Signature

1/19/17  
Date

**VI. IMPORTANT INFORMATION:**

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

**File Review**

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

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

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

**Addendum A-Decease in Services**

Description of Decreased Service	Approximate Date this Service was Lost	Date Tenant Notified Landlord and how	Date fixed, if any	Estimated Value to Loss of Service
Living room window converted to wall, blocking sunlight; resulting increase in monthly electricity bill of \$10 - \$15 / month	2014 / 2015	LL did the work to convert the window and is on constructive notice. T additionally notified LL that the electricity bill would increase as a result of the work at the time of the conversion.	N/A	15%
Paint in apartment is chipping and some parts of the wall have no paint	2012	T verbally notified LL in 2012	N/A	5%
Carpet installed in the living room and hallways has created asthma problems for child	March 2016	T is notifying LL through this petition	N/A	5%
Mold in bathroom	November 2016	T is notifying LL through this petition	N/A	5%
Two leaks from the bathroom ceiling	November 2016	T verbally notified Manager in November 2016	N/A	10%
Mold on bedroom wall	8 years ago	T is notifying LL through this petition	LL has done nothing to fix the problem. T	10%

Tenant Petitioner

Description of Decreased Service	Approximate Date this Service was Lost	Date Tenant Notified Landlord and how	Date fixed, if any	Estimated Value to Loss of Service
			repeatedly cleans but the mold comes back.	
Refrigerator base broken and temperature is unstable	Summer 2015	T verbally notified LL in summer 2015	N/A	10%
Kitchen floor board is detaching, which has led to insect infestation in the past	2014	T verbally notified Manager in 2014	LL took action in 2016 but the problem has returned	5%

<b>CITY OF OAKLAND</b> <b>RENT ADJUSTMENT PROGRAM</b> P.O. Box 70243 250 Frank H. Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721	For filing stamp, RECEIVED CITY OF OAKLAND RENT ARBITRATION PROGRAM 2017 MAR 16 PM 2:07
---	--

**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 T17-0045

OWNER RESPONSE

Please print legibly.

Your Name Daniel Leon Vivian Leon	Complete Address (with zip code) 30 Sky Terrace Danville, CA 94526	Phone: 925.765.9009 Email: _____
Your Representative's Name (if any)	Complete Address (with zip code)	Phone: _____ Fax: _____ Email: _____
Tenant(s) name(s) Gloria Lopez	Complete Address (with zip code) 3020 E. 18th St, Apt 13 Oakland, CA 94601	

Have you paid for your Oakland Business License? Yes  No  Number 00068148  
 (Provide proof of payment.)

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

There are 21 residential units in the subject building. I acquired the building on 9/21/04.

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

I. RENTAL HISTORY

The tenant moved into the rental unit on 3/09.

The tenant's initial rent including all services provided was \$ 1050.<sup>00</sup> / 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? 3/09

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? 12/30/16 . 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	
12/30/16	1/31/17	\$ 1050. <sup>00</sup>	\$ 1155. <sup>00</sup>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
10/29/14	12/1/14	\$ 1100. <sup>00</sup>	\$ 1210. <sup>00</sup>	<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.

Date of Increase	Banking (deferred annual increases)	Increased Housing Service Costs	Capital Improvements	Uninsured Repair Costs	Fair Return	Debt Service (if purchased before 4/1/14)
1/31/17	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12/1/14	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

### III. DECREASED HOUSING SERVICES

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

### IV. EXEMPTION

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

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

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

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

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

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

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

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

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

### V. IMPORTANT INFORMATION

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

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

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

**VI. VERIFICATION**

Owner must sign here:

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

*Daniel Pen*

Owner's Signature

*3/15/17*

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

T17.0045

3/16/17

\* Tenant Petitioner?

Answer to decrease in Service

1. Tenant never notified me. Had hearing 1/16.
2. Inspected with Tenant, Tenant needs to clean/declutter  
Unit was painted in 2015/2016.
3. Inspected with Tenant. Called installer waiting for specs.  
Tenant needs to clean and declutter. And remove pet.
4. Tenant needs to clean/ventilate and open window.
5. Presently no leaks. Inspected with tenant March 2017.  
No marks of leaks. Tenant needs to clean/ventilate
6. Tenant needs to clean/declutter. Inspected with Tenant
7. Tenant/guest damaged. Over fills or step on it.
8. Repair/replaced last year. Tenant/guest remove.  
Repaired several times.

\* believe to be Gloria Lopez



T17-0078 MS/LM

RECEIVED  
CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM

<p><b>CITY OF OAKLAND</b>  <b>RENT ADJUSTMENT PROGRAM</b>          Mail To: P. O. Box 70243          Oakland, California 94612-0243          (510) 238-3721</p>	<p>For date stamp.  <b>2017 FEB -8 AM 9:35</b></p>
---	--

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

**TENANT PETITION**

**Please print legibly**

Your Name  Marvin Ortiz	Rental Address (with zip code) 3020 E. 18th St, Apt 5 Oakland, CA 94601	Telephone  (510) 395-6160
Your Representative's Name  NA	Mailing Address (with zip code)	Telephone
Property Owner(s) name(s)  Vivian Leon Daniel Leon	Mailing Address (with zip code)  30 Sky Terrace Danville, CA 94526	Telephone  925-765-5404

Number of units on the property: 21

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

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

<input checked="" type="checkbox"/>	(a) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
	(b) The owner did not give me a summary of the justification(s) for the increase despite my written request.
	(c) The rent was raised <u>illegally</u> after the unit was vacated (Costa-Hawkins violation).
<input checked="" type="checkbox"/>	(d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.)
<input checked="" type="checkbox"/>	(e) A City of Oakland form notice of the existence of the Rent Program was not given to me at least six months before the effective date of the rent increase(s) I am contesting.
<input checked="" type="checkbox"/>	(f1) The housing services I am being provided have decreased. (Complete Section III on following page)
<input checked="" type="checkbox"/>	(f2) At present, there exists a health, safety, fire, or building code violation in the unit. <u>If the owner has been cited in an inspection report, please attach a copy of the citation or report.</u>
	(g) The contested increase is the second rent increase in a 12-month period.
	(h) The notice of rent increase based upon capital improvement costs does not contain the "enhanced notice" requirements of the Rent Adjustment Ordinance or the enhanced notice was not filed with the RAP.
	(i) My rent was not reduced after the expiration period of the rent increase based on capital improvements.
	(j) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).
	(k) I wish to contest an exemption from the Rent Adjustment Ordinance (OMC 8.22, Article I)

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

Date you moved into the Unit: 2013 Initial Rent: \$ 900 /month

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

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

List all rent increases that you want to challenge. Begin with the most recent and work backwards. If you need additional space, please attach another sheet. You must check "Yes" next to each increase that you are challenging.

Date Notice Served (mo/day/year)	Date Increase Effective (mo/day/year)	Amount Rent Increased		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
12/29/16	2/1/17	\$ 900	\$ 990	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Tenant is not contesting prior rent increases.		\$	\$	<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 60 days from the date of notice of increase or from the first date you received written notice of the existence of the Rent Adjustment program (whichever is later) to contest a rent increase. (O.M.C. 8.22.090 A 2) If you never got the RAP Notice you can contest all past increases.

List case number(s) of all Petition(s) you have ever filed for this rental unit: T15-0467

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

Decreased or inadequate housing services are considered an increase in rent. If you claim an unlawful rent increase for service problems, you must complete this section.

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

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

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

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

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

Martin A. Ortiz A.  
Tenant's Signature

2/3/17  
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 Rent Adjustment Program Hearing Officer the same day.

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

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

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

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

Martin A. Ortiz A.  
Tenant's Signature

2/3/17  
Date

**VI. IMPORTANT INFORMATION:**

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

**File Review**

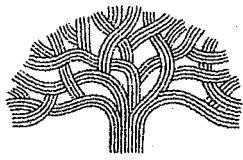
The owner is required to file a Response to this petition within 35 days of notification by the Rent Adjustment Program. You will be mailed a copy of the Landlord's Response form. Copies of **documents attached** to the Response form will not be sent to you. However, you may review these in the Rent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

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

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

**Addendum A-Decrease in Services**

Description of Decreased Service	Approximate Date this Service was Lost	Date Tenant Notified Landlord and how	Date fixed, if any	Estimated Value to Loss of Service
1. The stove does not work properly and needs to be replaced.	March 2016	Verbally notified owner in May 2016	NA	10%
2. The backsplash is too close to the stove and this poses a fire hazard.	The backsplash has always been in the same place but this problem has worsened since March 2016 because certain burners haven't worked and we've had to use burners closer to the backsplash.	Notifying LL through this petition.	NA	10%
3. The smoke detector in the kitchen doesn't work.	Approx November 2016	The owner is on constructive notice because the smoke detector has a date on it that says when it should be changed and it is 2015. Owner's agents previously installed this and should know when it needs to be changed.	NA	10%



CITY OF OAKLAND

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

date stamp.  
RECEIVED  
CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM  
2017 MAR 24 AM 11:10  
**PROPERTY OWNER**  
**RESPONSE**

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

CASE NUMBER T17-0078

Your Name Daniel Leon Vivian Leon	Complete Address (with zip code) 30 Sky Terrace Danville, CA 94526	Telephone: 925.765.9009 Email:
Your Representative's Name	Complete Address (with zip code)	Telephone: Email:
Property Address (If the property has more than one address, list all addresses) 3012-3020 E 18th St Oakland, CA 94601		Total number of units on property 21

Have you paid your business license? Yes  No  Number 00068148

Have you paid the Rent Program Service Fee (\$69 per unit)? Yes  No  APN: 25-72518-1

Date on which you acquired the building 9/21/04

Is there more than one street address on the parcel? Yes  No  (3012-3020)

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.

Date of Contested Increase <i>Effective</i>	Banking (deferred annual increases)	Increased Housing Service Costs	Capital Improvements	Uninsured Repair Costs	Debt Service	Fair Return
<u>1/31/17</u>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<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

When did you enter into the rental agreement for this unit?

The tenant moved into the rental unit on 6/15/14 *is record I have. Tenant claimed diff date in previous mediation?*

The tenant's initial rent including all services provided was: \$ 900.<sup>00</sup> / 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? 8/1/15

Is the tenant current on the rent? Yes  No

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

Date Notice Given (mo./day/year)	Date Increase Effective	Rent Increased		Did you provide NOTICE TO TENANTS with the notice of rent increase?
		From	To	
<u>12/30/14</u>	<u>1/31/17</u>	\$ <u>900.<sup>00</sup></u>	\$ <u>990.<sup>00</sup></u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<u>8/1/15</u>	<u>9/1/15</u>	\$ <u>900.<sup>00</sup></u>	\$ <u>990.<sup>00</sup></u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No

### III. EXEMPTION

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

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

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

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

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

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

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

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

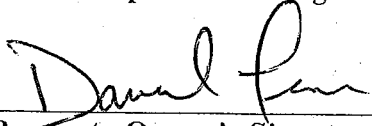
The unit is located in a building with three or fewer units. The owner occupies one of the units continuously as his or her principal residence and has done so for at least one year.

### IV. DECREASED HOUSING SERVICES

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

### V. VERIFICATION

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

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

3/23/17  
\_\_\_\_\_  
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

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



MARVIN ORTIZ 17-0078

Answer to decrease housing

1. Stove works properly. Tenant needs to clean.  
Tenant damaged backsplash.
2. Stove has always been there. And is similar in most units. Tenant damaged backsplash.
3. Smoke detector works. Need to be tested regularly.

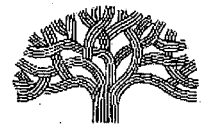
\* I'm still waiting for justification from mediation from Jan 2016. Tenants claimed different move in dated and were awarded unjust compensation.

I have called numerous times. Spoke with Margaret and Keith Mason. I'm told I can't speak with Barbara Kong-Brown. How will I get answers?

David Finn

\* See Cases T-17-0040 - 0045 for proof of BUS license and RAP Fees.

\* DO NOT WANT CASE CONSOLIDATED. It is too many in one day.



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

CITY OF OAKLAND

Department of Housing and Community Development  
Rent Adjustment Program

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

## HEARING DECISION

**CASE NUMBERS:** T17-0040, Gonzalez, et al. v. Leon; T17-0041, Miranda v. Leon  
T17-0042, Canales v. Leon; T17-0043, De La Torre v. Leon  
T17-0044, Maciel v. Leon; T17-0045, Lopez v. Leon &  
T17-0078, Ortiz v. Leon

**PROPERTY ADDRESS:** 3020 E. 18<sup>th</sup> St., #2, #4, #8, #12, #11, #13, & #5, Oakland, CA

**DATES OF HEARING:** July 24, 2017; October 6, 2017; November 3, 2017; &  
February 23, 2018

**DATE OF INSPECTION:** October 23, 2017

**DATE OF DECISION:** June 4, 2018

**APPEARANCES:** Marvin Ortiz (Tenant)  
Laura Canales (Tenant)  
Martina De La Torre (Tenant)  
Martha Godoy (Tenant)  
Andrea Gonzalez (Tenant)  
Feliciano Lopez (Tenant)  
Liliana Maciel (Tenant)  
Adriana Miranda (Tenant)  
Gloria Lopez (Tenant)  
Feliciano Lopez (Tenant)  
Martina Cucullo Lim (Attorney for Tenants)  
Sarah Winfield (Tenant Representative)  
Daniel Leon (Owner)  
Vivian Leon (Owner)  
Sinclair Higgins (Witness for Owner)  
Marci Valdivieso (Interpreter, 7-24-17 & 2-23-18)  
Noemi Gonzalez (Interpreter, 10-6-17)  
Sergio Chavarin (Interpreter, 11-3-17)

000190

## SUMMARY OF DECISION

Petition T17-0040 (Gonzalez, et al. v. Leon) is partly granted.

Petition T17-0041 (Miranda v. Leon) is partly granted.

Petition T17-0042 (Canales v. Leon) is partly granted.

Petition T17-0043 (De La Torre v. Leon) is partly granted.

Petition T17-0044 (Maciel v. Leon) is partly granted.

Petition T17-0045 (Lopez v. Leon) is partly granted.

Petition T17-0078 (Ortiz v. Leon) is partly granted.

## CONTENTIONS OF THE PARTIES

Tenants Andrea Gonzalez and Feliciano Lopez (Case No. T17-0040) filed a petition on January 25, 2017, which alleges that a proposed rent increase from \$850 to \$935 per month, effective February 1, 2017, exceeds the CPI Adjustment and is unjustified or is greater than 10%; that they have never received the form Notice to Tenants (RAP Notice) in Spanish; that at present, there exists a health, safety, fire, or building code violation in their unit; and that their housing services have been decreased as follows: dirty water is coming out of the kitchen sink; closet doors were falling down; closet light is broken; and the lock of the building's front door often breaks.

Tenant Miranda (Case No. T17-0041) filed a petition on January 25, 2017, which alleges that a proposed rent increase from \$765 to \$935 per month, effective February 1, 2017, exceeds the CPI Adjustment and is unjustified or is greater than 10%; that she has never received the form Notice to Tenants (RAP Notice) in Spanish; that at present, there exists a health, safety, fire, or building code violation in her unit; and that her housing services have been decreased as follows: carpeting is detached and is a tripping hazard; problems with electric plugs; cockroaches; and stove hood fan does not work.

Tenant Canales (Case No. T17-0042) filed a petition on January 25, 2017, which alleges that a prior rent increase in the year 2013 from \$850 to \$900 per month and a prior rent increase effective September 1, 2015, from \$900 to \$990 per month, as well as a proposed rent increase from \$990 to \$1,049 per month, effective February 1, 2017, exceed the CPI Adjustment and is unjustified or is greater than 10%; that she has never received the form Notice to Tenants (RAP Notice) in Spanish; that at present, there exists a health, safety, fire, or building code violation in her unit; and that her housing services have been decreased as follows: bathroom door not functioning; electric plug in kitchen not working; cockroaches; mold in bathroom; and most parking lot lights do not work.

Tenant De La Torre (Case No. T17-0043) filed a petition on January 25, 2017, which alleges that a proposed rent increase from \$765 to \$935 per month, effective February 1, 2017, exceeds the

CPI Adjustment and is unjustified or is greater than 10%; that she has never received the form Notice to Tenants (RAP Notice) in Spanish; that at present, there exists a health, safety, fire, or building code violation in her unit; and that her housing services have been decreased as follows: kitchen cabinet handles are broken; bathroom fan does not work; one stove burner does not work; and the lock of the building's front door often breaks.

Tenant Maciel (Case No. T17-0044) filed a petition on January 25, 2017, which alleges that a proposed rent increase from \$765 to \$935 per month, effective February 1, 2017, exceeds the CPI Adjustment and is unjustified or is greater than 10%; that she has never received the form Notice to Tenants (RAP Notice) in Spanish; that at present, there exists a health, safety, fire, or building code violation in her unit; and that her housing services have been decreased as follows: a problem with the fuse box; closet doors do not close properly; the lock of the building's front door often breaks; mold in the kitchen; exposed plugs and outlets; a "sensitive plug" that shuts off all lights when it is touched; no lock on bathroom door; most parking lot lights do not work; the lock of the building's front door often breaks; and cockroaches.

Tenant Gloria Lopez (Case No. T17-0045) filed a petition on January 25, 2017, which alleges that a proposed rent increase from \$945 to \$1,155 per month, effective February 1, 2017, exceeds the CPI Adjustment and is unjustified or is greater than 10%; that she has never received the form Notice to Tenants (RAP Notice) in Spanish; that at present, there exists a health, safety, fire, or building code violation in her unit; and that her housing services have been decreased as follows: the living room window was covered with a wall; chipping paint; carpet has caused asthma problems; bathroom mold; leaks into bathroom ceiling; bedroom mold; problems with the refrigerator; and kitchen floor board is detaching.

Tenant Ortiz (Case No. T17-0078) filed a petition on February 8, 2017, which alleges that a proposed rent increase from \$900 to \$990 per month, effective February 1, 2017, exceeds the CPI Adjustment and is unjustified or is greater than 10%; that he has never received the form Notice to Tenants (RAP Notice) in Spanish; that at present, there exists a health, safety, fire, or building code violation in his unit; and that his housing services have been decreased as follows: stove does not work properly; kitchen backsplash is too close to the stove; and kitchen smoke detector does not work.

The owners' filed responses to the petitions, which alleges that the tenants were given RAP Notices in prior years as well as together with all contested rent increases; that the proposed rent increases are justified by Banking, Increased Housing Service Costs, and Capital Improvements, and deny that the tenants' housing services have been decreased.

### THE ISSUES

- (1) Were the tenants given RAP Notices in the language in which their rental agreements were negotiated?
- (2) Are rent increased for the tenants justified and, if so in what amounts?
- (3) Have the tenants' housing services been decreased and, if so, by what percentages of the total housing services that are provided by the owner?
- (4) What, if any, restitution is owed to each party and how does it affect the rent?

## EVIDENCE

### GONZALEZ and LOPEZ (Case No. T17-0040; Unit #2)

RAP Notice: At the Hearing, the tenants testified that they speak Spanish and speak only a few words or phrases in English; they cannot read English. They were first shown the unit into which they moved by Sinclair Higgins, the building manager. The tenants testified that Mr. Higgins does not speak Spanish. After inspecting the unit, Mr. Higgins gave the tenants the phone number of the late Javier Leon, the father of Daniel Leon, who was then the owner of the subject building. The tenants testified that they spoke with Javier Leon in Spanish, and then signed a rental agreement for the unit. At that time, they were given a copy of the RAP Notice in English; they have never received a RAP Notice in Spanish.

Mr. Higgins testified that he first showed the subject unit to Mr. Lopez, and gave Mr. Lopez Javier Lopez's telephone number. The following day, Mr. Lopez returned with Ms. Gonzalez and they met Javier Leon. Mr. Higgins further testified that Mr. Lopez spoke with Mr. Leon in English and the tenants then signed a rental agreement.

On cross-examination, Mr. Higgins testified that he does not speak Spanish and always speaks to prospective tenants in English. These tenants, and all petitioning tenants, spoke Spanish and Mr. Leon spoke to them in English. He further testified that he never heard Javier Leon speak to anyone in Spanish, and does not even know if Mr. Leon spoke Spanish.

Daniel Leon testified as follows: that his father spoke Spanish; he has given all of the petitioning tenants RAP Notices in English; and he has never given any of them a Spanish version of the RAP Notice.

Rent History: The tenants testified that they have paid rent of \$930 each month since February 2017. The owner did not disagree with this testimony. The tenants further testified that they intend to pay this amount until they receive a Hearing Decision.

### Decreased Housing Services:

Kitchen Sink: The tenants testified that in mid-December 2016, dirty water was backing up into their kitchen sink. They notified Mr. Higgins, who one week later used a plunger and a type of liquid to try to correct the problem. This effort was not successful, but the sink plumbing was successfully repaired the first week of January 2017.

The owner testified that on December 23, 2016, he received a voicemail from the tenant, saying that her sink was clogged. The owner then called Mr. Higgins, and the sink was unclogged by the end of December. Mr. Lopez testified that when he told Mr. Higgins that there was a problem with the sink, his daughter interpreted for him.

Closet Doors: The tenants testified that soon after they moved into their unit in June 2013, the wooden sliding doors on the bedroom closet would occasionally fall off. In the year

2014, they notified the owner, who told them to remove the doors. The tenants removed the doors in October 2016. The owner testified that the tenants damaged the doors. The owner submitted “before” and “after” photographs of the door. The “before” photo depicts what appears to be normal sliding closet doors. The “after” photo depicts a crack in the right-hand door that is more than one foot in length.<sup>1</sup>

Closet Light: The tenants testified that when they moved into the unit there was a very large light bulb in the bedroom closet. The bulb socket was larger than the size of a standard light bulb. The bulb then burned out, and the tenants did not replace the bulb because this type of bulb is expensive. The owner told the tenants that it was their responsibility to replace light bulbs, and that replacement bulbs are available at the Home Depot. On October 23, 2017, the tenant’s unit was inspected by Barbara Cohen, a Hearing Officer with the Rent Adjustment Program. Following her inspection, Ms. Cohen prepared a Declaration, a copy of which is attached as Exhibit “A.” Ms. Cohen’s Declaration states that the closet light was operating normally.

Front Gate: The tenants testified that the lock on the front door to the building in which they live frequently breaks. The lock was repaired approximately 2 months before the date of the first Hearing, but it had taken the owner 6 months to have the lock repaired. The owner testified that the lock is frequently vandalized, or mis-used, and he has it repaired soon after he is notified. The owner submitted a photo that he took in February 2017, depicting a vandalized and repaired lock.<sup>2</sup>

#### MIRANDA (Case No. T17-0041; Unit #4)

RAP Notice: The tenant testified that she is a Spanish speaker. She speaks little or no English and cannot read English. After looking at her unit, she spoke with Javier Leon and then rented the unit. She further testified that she has never been given a RAP Notice in Spanish. The owner testified that the tenant has spoken to him in English. Mr. Higgins testified that, when he first met the tenant, she asked the rent amount in English. He further testified that, when the tenant met with Javier Leon, no Spanish was spoken. Mr. Higgins again stated that he does not know if Javier Leon spoke Spanish.

Rent History: The tenant testified that she has paid rent of \$935 per month since February 2017; the owner agreed with this testimony. The tenant further testified that she intends to continue paying this amount each month until she receives a Hearing Decision.

#### Decreased Housing Services:

Carpet: The tenant testified that a new carpet was installed in her unit as part of the Mediation Agreement in Case No. T15-0509. However, there is no threshold between the bedroom and the kitchen, which is a tripping hazard. On October 23, 2017, the tenant’s unit was inspected by Barbara M. Cohen, a Hearing Officer with the Rent Adjustment Program.

---

<sup>1</sup> Exhibit No. 192. This Exhibit, and all others to which reference is made in this Decision, were admitted into evidence without objection, unless otherwise noted.

<sup>2</sup> Exhibit No. 193

Following her inspection, Ms. Cohen prepared a Declaration, a copy of which is attached as Exhibit "A." Ms. Cohen's Declaration states, in part: "In Unit 4, there was no visible tripping hazard regarding the carpeting." The owner submitted a photograph of the area that he took in late February 2017, which reflects a normal transition between the carpeted and un-carpeted areas.<sup>3</sup>

Electrical Outlets: The Mediation Agreement that the parties signed on January 11, 2016, states that the owner will "repair bedroom outlets." The owner testified that he inspected all outlets in March 2017, and made all necessary repairs. The tenant testified that some of the outlets were repaired in accordance with this Agreement. However, there is one more outlet located behind the bed that has not been repaired. Ms. Cohen's Declaration states: "There was a loose electrical outlet behind the large bed in the bedroom. There is an appliance plugged into that unit and the plug hangs down because it does not fit properly."

Roaches: The tenant testified that there were many roaches when she moved into the unit in 2011, and she promptly told the owner. Nothing was done until approximately 2013, when the owner hired a pest control company to perform regular treatments. Ms. Cohen's Declaration states: "there were no cockroaches observed."

Stove Hood Fan: The tenant testified that the fan in the stove hood stopped working in the Spring of 2016, and the tenant notified the owner's agent at that time. The fan was repaired in early 2017.

#### CANALES (Case No. T17-0042; Unit #8)

RAP Notice: The tenant testified that she is a Spanish speaker. She speaks little or no English and cannot read English. After looking at her unit, she spoke with Javier Leon in Spanish, and then rented the unit. She further testified that she has never been given a RAP Notice in Spanish. In response to a question from the owner, the tenant testified that her son and daughter speak English. She also testified that the lease that she signed is in Spanish.

Mr. Higgins testified that he has been in charge of maintenance in the subject building for a number of years. Mr. Higgins further testified that he was present when the tenant met with Javier Leon regarding renting the unit. The tenant's daughter Jessica was also there, and Javier Leon spoke mostly with Jessica in English. Mr. Higgins stated that Javier Leon never spoke Spanish while he was present during rental negotiations. Tenants in the building see Mr. Higgins regarding repairs, and Jessica has always spoken to him in English.

Rent History: The petition and response both state that the tenant moved into her unit in the year 2012, at a rent of \$850 per month. At the Hearing, the tenant testified that at some point the rent was increased to \$900 per month, and the owner did not have this information. However, the parties agreed that in September 2015, the rent was increased from \$900 to \$990 per month, and to \$1,050 per month effective February 2017. The parties further agreed that the tenant paid rent of \$1,050 from February through July 2017. The tenant testified that she would continue to pay this amount each month until she receives a Hearing Decision.

---

<sup>3</sup> Exhibit No. 191

Decreased Housing Services: The file contains a Proof of Service in which an employee of the Rent Adjustment Program states under oath that on October 9, 2017, she mailed a Notice of Inspection to the tenant, which states that a Hearing Officer of the Rent Adjustment Program would inspect the tenant's unit on October 23, 2017. Ms. Cohen states in her Declaration: "The tenants in unit 8 were not at home when I arrived."

Bathroom Door: The tenant testified that the bathroom door was a "pocket door," which slides open and shut. In early December 2016, the tenant's daughter told the owner's agent that the door would not slide shut. The door was then removed later that month, and a new door was installed in May 2017. On questioning by the owner, the tenant testified that the bathroom door was replaced with a door on hinges in either December 2016 or January 2017, and that it now opens and closes. However, there is no doorknob or lock on the door. The tenant submitted a photograph of the door that she took in early 2017.<sup>4</sup> This photograph clearly depicts a door on hinges and with a hole where a doorknob and lock would be placed.

Electric Plug in Kitchen: The tenant testified that in November 2016, she plugged a blender into a wall outlet in her kitchen, and the blender did not work. She notified Mr. Higgins soon after Christmas; he tried to repair the outlet, but was not successful. There are 2 other outlets in the kitchen, one behind the stove and one by the refrigerator. The tenant does not know if the faulty outlet was working when she moved in.

Cockroaches: The tenant testified that she saw roaches in her unit 3 or 4 months after she moved in. She told Javier Leon, who purchased spray. There has been regular professional extermination since early 2016, and she has seen few roaches since that time. The owner submitted a number of photographs taken in March 2017, which depict a considerable amount of food packages, plastic bags, and assorted clutter on many surfaces in the kitchen.<sup>5</sup>

Bathroom Mold: The tenant testified that there is a window in her bathroom, but no exhaust fan. She further testified that she leaves the bathroom window open all the time. However, beginning in December 2015, mold developed on surfaces in the bathroom. The tenant's daughter told the owner about this in November 2016, and the owner replied that there is mold because the tenant does not clean the bathroom. Mr. Higgins cleaned the bathroom in the Spring of 2017, and there was little problem as of the Hearing on July 24, 2017. The tenant submitted photographs taken in early 2017, which show mold on and under a ledge under the bathroom window and on and in the wall and grout around the bathtub.<sup>6</sup>

The owner testified that there are 5 people living in a one-bedroom apartment, which he believes creates conditions in which mold will develop.

Parking Lot Lights: The tenant testified that, when she moved into her unit, only 1 or 2 of the 3 parking lot lights were working. The situation was greatly improved as of the Hearing

---

<sup>4</sup> Exhibit No. 138

<sup>5</sup> Exhibit Nos. 174 through 180

<sup>6</sup> Exhibit Nos. 140 & 141.



on July 24, 2017. The owner testified that all light fixtures work, and that he has bulbs replaced as needed.

De La TORRE (Case No. T17-0043; Unit #12)

RAP Notice: The tenant testified that she is a Spanish speaker. She speaks little or no English and cannot read English. After looking at her unit, she spoke with Javier Leon in Spanish and then rented the unit. She further testified that she has never been given a RAP Notice in Spanish.

Rent History: The tenant testified that she has paid rent of \$935 each month since February 2017; the owner agreed with this testimony. The tenant further testified that she intends to continue paying this rent amount until she receives a Hearing Decision.

Decreased Housing Services:

Kitchen Cabinet Handles: The tenant testified that there are 3 handles on the doors and drawers of kitchen cabinets. When she moved into the unit in May 2008, one handle was missing and the other two were hanging and could not be used. She would pull the cabinets open from the bottom. She notified Mr. Higgins in the year 2016, and they were repaired or replaced in early 2017. However, as of July 2017, some of the handles had already begun to loosen. The tenant submitted a photograph of the kitchen cabinets that she took in the year 2015.<sup>7</sup> This photo shows 2 cabinet handles, each of which is missing one of 2 screws. The owner submitted a photo of the kitchen cabinets that he took in March 2017, which shows all handles attached.<sup>8</sup> Ms. Cohen's Declaration states: "the kitchen cabinets all have handles."

Bathroom Fan: The tenant testified that there is no window in her bathroom, but there is an exhaust fan. However, when she moved into the unit in May 2008, the fan did not remove moisture from the bathroom although she would leave it on for 10-15 minutes after taking a shower. She notified Mr. Higgins at that time but the owner did not clean the fan until May 2017. She has not told any owner agent about any problem since that time. Photos taken by the tenant in 2015 depict areas of mold on several surfaces in the bathroom.<sup>9</sup>

A photo taken by the owner on March 17, 2017 depicts a ceiling fan vent on which there is a considerable amount of lint.<sup>10</sup> Ms. Cohen's Declaration states: "the bathroom fan was working."

Stove: The tenant testified that, in early 2016, one burner on the gas stove would not light. She told Mr. Higgins at that time, and the burner was repaired in May 2017. The owner submitted a photo of the stove that he took in March 2017.<sup>11</sup> This photo clearly depicts flames in 3 of the 4 burners; it is not clear whether there is a flame in the 4<sup>th</sup> burner. Ms. Cohen's Declaration states: "the burners on the stove are operable."

---

<sup>7</sup> Exhibit No. 130. The owner objected to the admission of this photo into evidence because that was not the condition at the time of the Hearing. The objection was overruled, and the photo was admitted into evidence.

<sup>8</sup> Exhibit No. 167

<sup>9</sup> Exhibit Nos. 131 & 132. The owner objected to the admission of these photos on the same ground stated above, which objection was overruled and the photo admitted into evidence.

<sup>10</sup> Exhibit No. 166

<sup>11</sup> Exhibit No. 167

Front Door Lock: The tenant's testimony was the same as that given by tenants Andrea Gonzalez and Feliciano Lopez. The tenant further testified that she has never given the owner written notice about any problem in her unit. The tenant submitted a photo that she took in 2015 which depicts a hole in a metal door in the location where a lock would be placed.<sup>12</sup>

MACIEL (Case No. T17-0044; Unit #11)

RAP Notice: The tenant testified that she is a Spanish speaker. She speaks little or no English and cannot read English. After looking at her unit, she spoke with Javier Leon in Spanish and then rented the unit. She further testified that she has never been given a RAP Notice in Spanish. On questioning by the owner, the tenant testified that her husband speaks a little English, but he spoke with Javier Leon in Spanish.

Rent History: The tenant testified that she has paid rent of \$935 each month since February 1, 2017. The owner did not disagree with this testimony. The tenant further testified that she intends to continue paying this amount of rent until she received a Hearing Decision.

Decreased Housing Services:

Fuse Box: The tenant testified that there had been a problem with the fuse box when she moved into her unit in November 2013. However, it was moved soon after, and there has been no problem since that time.

Closet Doors: The tenant was a party to a Mediation Agreement with the owner on January 11, 2016, in which she is named as Liliana Perez. That agreement states in part, with regard to the tenant: "The owner agrees to make the following repairs: . . . Owner will inspect closet door which was installed 11/15 and repair if necessary." The tenant testified that sliding doors were replaced following the Mediation, but there is still a problem. The owner testified that any problem is caused by the tenant over-filling the closet. Ms. Cohen writes: "[T]here is a closet door missing from the closet. The closet door that is present is difficult to move and does not appear to be on the runners correctly."

Front Door Lock: The Mediation Agreement states, in part: "Owner will inspect and repair key lock mechanism of tenant's metal front door."

Mold in the Kitchen: Ms. Cohen's Declaration states: "[T]here are stains that appear to be mold around the kitchen sink."

Exposed Plugs and Outlets: The tenant testified that there were outlets in the kitchen that did not have covers when she moved in, but they were repaired within the past 6 months; the Hearing at which Ms. Maciel testified was held on October 6, 2017.

---

<sup>12</sup> Exhibit No. 134. The owner objected to the admission of this photo on the same ground stated above, which objection was overruled and the photo admitted into evidence.

“Sensitive Plug”: Ms. Cohen’s Declaration states: “[T]here is a fuse box in the bedroom. The tenant explained that this fuse box will go off when she uses a particular outlet, but she was unable to replicate the complaint.”

Bathroom Door: The tenant testified that, when she moved in, there was a door knob on the bathroom, but no lock. The door knob did not work properly, and Mr. Higgins removed the door knob in late 2016. Ms. Cohen’s Declaration states: “There is no door knob or lock on the bathroom door.” The owner testified that the door was not taken off. The door is a “pocket door,” which slides into the wall.

Parking lot lights: The tenant testified that very often some of the parking lot lights are not on. This has been the situation since she moved in.

Cockroaches: The tenant testified that roaches appeared in her unit approximately one and one-half years after she moved in. However, this has not been a problem since the owner purchased roach bait in May 2016. The owner testified that he has a contract for bi-monthly pest control in the subject building. He submitted several invoices from Terminex in the year 2017 for pest control services in the building.<sup>13</sup> These invoices state that the owner has been a customer since 2015. Ms. Cohen’s Declaration states: “There were no roaches observed.”

GLORIA LOPEZ (Case No. T17-0045)

RAP Notice: The tenant testified that she speaks only Spanish. When she moved into her unit in the year 2009, she spoke with Javier Lopez in Spanish. She has never received the RAP Notice in Spanish.

Rent History: On October 6, 2017, the tenant testified that she paid rent of \$733.33 in January 2017, in accordance with the above-mentioned Mediation Agreement, and that she has paid \$1,155 each month since that time. She intends to continue paying \$1,155 per month until she receives a Hearing Decision in this case. The above-noted Mediation Agreement states that the tenant’s Base Rent was \$1,050 per month. The Mediation Agreement further states that the tenant’s rent for January 2017 is \$733 per month. The owner submitted a copy of the contested rent increase notice, which states that the rent will increase from \$1,050 to \$1,155 per month, effective January 31, 2017.<sup>14</sup>

The owner referred to his records, and testified that the tenant paid rent in the year 2017 as follows: January - \$648.33; February - \$1,175; March - \$1,135; April - \$1,150; and May through September - \$1,155; he did not know the amount of rent that the tenant paid in October.

Decreased Housing Services: The file contains a Proof of Service in which an employee of the Rent Adjustment Program states under oath that on October 9, 2017, she mailed a Notice of Inspection to the tenant, which states that a Hearing Officer of the Rent Adjustment Program would inspect the tenant’s unit on October 23, 2017. Ms. Cohen’s Declaration states: “The tenants in unit 13 were not at home when I arrived.” At the Hearing on November 3, 2017, the

<sup>13</sup> Exhibit Nos. 181 through 189

<sup>14</sup> Exhibit No. 161

tenant testified that she was not at home on October 23, 2017 because she had to work. The tenant further testified that her 19 year old son was at home, and he told her that he did not hear anyone knocking on their front door on the day of the inspection.

Living Room Window: The tenant testified that in 2014 or 2015, the owner covered a large living room window with wall board. The owner told the tenant that this was done to give the tenant protection against break-ins because the window that was covered was right next to the front door to the unit. The tenant submitted a photograph which depicts a wall area extending from a window to a corner of a room.<sup>15</sup> That wall area appears to be between 3 and 4 feet in width. She testified that she took this photo more than one year before she testified on October 6, 2017. There was no further testimony as to when the window was covered. The tenant testified that this change allows less light to enter the living room, which is where her children do their homework, and also increases her electric bill.

The tenant filed a prior Petition, Case No. T15-0510, on November 6, 2015. That petition claimed several decreased housing services, but did not include a claim regarding the living room window. The tenant testified that she took this photo more than one year before she testified on October 6, 2017.

Chipping Paint: The tenant testified that her unit had not been painted when she moved in and there is an area on her children's bedroom door where paint is chipping. She submitted a photograph that appears to show an area where paint is missing on a surface.<sup>16</sup>

Carpet: The tenant testified that, when she moved in, the floors were smooth. The owner then installed carpeting, which aggravated her son's asthma.

Mold: The tenant testified that there is mold on the walls and windows in her bathroom and bedroom. The tenant further testified that in November 2016, she told Mr. Higgins that water was entering her bathroom ceiling. Mr. Higgins repaired the leak from above in mid-October 2017. She always opens the bathroom window after showering, and there has been no problem since the repair was made. The tenant submitted photographs that depict a considerable amount of either mold or dirt on two surfaces.<sup>17</sup>

The owner testified that, when he inspected the tenant's unit in March 2017, he did not see any mold, only dirt. He told the tenant to clean these areas and ventilate the unit. The owner submitted two photographs of the tenant's bathtub area, which bear the date May 31, 2016.<sup>18</sup> These photos depict clean tub and wall areas.

The above-mentioned Mediation Agreement, signed by the parties on January 11, 2016, states, with regard to the tenant: "The owner agrees to make the following repairs: . . . "Inspect for mold in bedroom and kitchen wall and repair if necessary."

---

<sup>15</sup> Exhibit No. 144. The owner objected to the admission of the photos Exhibits 142 through 157 on the ground that they were "old photos." The objection was overruled, and the documents were admitted into evidence.

<sup>16</sup> Exhibit No. 146, photo "A"

<sup>17</sup> Exhibit Nos. 146, photo "B," 148 & 150

<sup>18</sup> Exhibit No. 158

Refrigerator: The tenant testified that in the summer of 2015, the food compartment at the bottom of the inside of the refrigerator broke when she put food in it. If she puts a lot of vegetables in this compartment, it will crack more. The tenant submitted a photograph which appears to depict a large crack in a panel.<sup>19</sup> On questioning by the owner, the tenant testified that the person who delivered the refrigerator – and later inspected it – told her that the compartment cracked because she had put too much weight in it. The owner testified that the compartment broke when the tenant overfilled it. It was not damaged before it was over-filled.

Kitchen Floor Board: The tenant testified that a floorboard in her kitchen began to come up soon after she moved in, and she reported this to the owner's agent 6 or 7 years ago. On questioning by the owner, the tenant testified that she told Javier Leon and Mr. Higgins about this condition in the year 2014. The tenant submitted a photo which appears to be the base of a cabinet under a sink, which she took in approximately September 2016.<sup>20</sup> This photo depicts a great deal of water damage and discoloration on the wooden surface.

ORTIZ (Case No. T17-0078; Unit #5)

RAP Notice: The tenant testified that she is a Spanish speaker. She speaks little or no English and cannot read English. She has never been given a RAP Notice in Spanish. The tenant further testified that she can speak a few words in English, and that if more conversation is needed, she often asks Ms. Canales' son to interpret for her. After looking at her unit, she spoke with Javier Leon in Spanish and then rented the unit.

Mr. Sinclair testified that, when the tenant was considering renting the subject unit, the tenant asked him the rent amount in English, and the tenant has always spoken to him in English. Mr. Sinclair further testified that Javier Leon spoke with the tenant in English. On cross-examination, Mr. Sinclair testified that the tenant speaks enough English to communicate with him if there is a needed repair.

Rent History: The tenant testified that she has paid rent of \$990 per month since February 2017; the owner agreed with this testimony. The tenant further testified that she intends to continue paying this amount each month until she receives a Hearing Decision.

Decreased Housing Services:

Stove: The tenant testified that, soon after she moved into her unit in June 2014, two pilot lights on the stove burners regularly began to go out, and needed to be re-lit. In the year 2016, the owner told her that he would replace the stove, but this has not been done. Ms. Cohen states in her Declaration: "all 4 burners on the stove were operable."

Kitchen Backsplash: The tenant testified that the backsplash on the wall to the right side of the stove is located too close to the stove. As a result, the panel will burn if large pots are being used on the right-hand burners. The tenant submitted a photograph that he took on March

---

<sup>19</sup> Exhibit No. 152

<sup>20</sup> Exhibit No. 155

6, 2016, which depicts two large burnt areas on a panel on the wall to the right of the stove.<sup>21</sup> The tenant further testified that this panel was in the same place when he moved into his unit in the year 2013 or 2014. Ms. Cohen wrote: "Adjacent to the stove is a linoleum backsplash that is pulling away from the wall. There are two large burn marks on this linoleum."

Smoke Detector: The tenant testified that in early November 2016, he realized that the smoke detector in his bedroom was not working, although he heard no beeping sound. He reported this to the owner's agent on November 15, 2016. The tenant did not change the battery, but the owner replaced the smoke detector in early July 2017. On cross-examination, the tenant testified that he has never given the owner written notice of any problem in his unit.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### GONZALEZ and LOPEZ (Case No. T17-0040)

RAP Notice: The tenants testified in a straightforward manner; they are Spanish speakers, and speak only a few words in English. This testimony is found to be credible. The owner testified that his father spoke Spanish, and it is probable that a Spanish speaker who speaks even some English would feel more comfortable speaking to a fellow Spanish speaker in Spanish. Mr. Higgins' testimony that he does not even know if Javier Leon spoke Spanish is found to be untrue, and the rest of his testimony is therefore suspect. It is found that the tenants have proven by a preponderance of the evidence that their rental agreement was negotiated in Spanish. The parties agree that the tenants have never been given the RAP Notice in Spanish.

Civil Code Section 1632 states, in part:

Any person engaged in a trade or business who negotiates primarily in Spanish . . . orally or in writing, in the course of entering into any of the following, shall deliver to the other party to the contract or agreement and prior to the execution thereof, a translation of the contract or agreement in the language in which the contract or agreement was negotiated, which includes a translation of every term and condition in that contract of agreement: . . . (3) A lease . . . for a period of longer than one month . . . covering a dwelling . . .

(g) The term "contract" or "agreement," as used in this section, . . . includes any subsequent document making substantial changes in the rights and obligations of the parties.

The Board has held that, in accordance with this statute, a RAP Notice must be given in the same language in which negotiations were held.<sup>22</sup> The Rent Adjustment Ordinance requires an owner to serve the RAP Notice at the start of a tenancy<sup>23</sup> and together with any notice of rent increase

---

<sup>21</sup> Exhibit No. 129.

<sup>22</sup> Case No. T06-0154, Soriano, et al. v. Western Mgt. Properties.

<sup>23</sup> O.M.C. Section 8.22.060(A)

or change in terms of a tenancy.<sup>24</sup> An owner may cure the failure to give notice at the start of the tenancy. However, a notice of rent increase is not valid if the effective date of increase is less than six months after a tenant first receives the required RAP notice.<sup>25</sup>

A tenant petition must be filed within 90 days of the date of service of a rent increase notice or the date the tenant first receives the RAP Notice, whichever is later.<sup>26</sup>

Since the tenants have never been given a Spanish version of the RAP Notice, their petition contesting the rent increase was filed within the required time limit, and the contested rent increase is invalid. Before considering the tenants' claims of decreased housing services, the tenants' base rent is \$850 per month. Further, the tenants have overpaid rent, as set forth in the Table below.

Decreased Housing Services: Under the Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent<sup>27</sup> and may be corrected by a rent adjustment.<sup>28</sup> However, in order to justify a decrease in rent, a decrease in housing services must be either the elimination or reduction of a service that existed at the start of the tenancy or a violation of the housing or building code which seriously affects the habitability of the tenant's unit.

Further, in order for a tenant's claim for decreased housing services to be granted, an owner must have notice of a problem and a reasonable opportunity to make needed repairs. The notice to the owner does not have to be in writing.

Kitchen Sink: The owner repaired the sink within a reasonable period of time, and the claim is denied.

Closet Doors: It appears that at least part of the problem is that the tenants or their guests damaged the doors. The tenants have not sustained their burden of proof regarding this claim, and the claim is denied.

Closet Light: The light fixture was in place when the tenants moved in, and replacement of light bulbs is the responsibility of tenants. The claim is denied.

Front Gate: It is found that the lock on the front gate is often damaged by vandalism and/or misuse. It appears that the owner acts within a reasonable period of time to repair or replace the damaged lock, and the claim is denied.

/

/

/

/

---

<sup>24</sup> O.M.C. Section 8.22.070(H)(1)(A)

<sup>25</sup> O.M.C. Section 8.22.060(C)

<sup>26</sup> O.M.C. Section 8.22.090 (A)(2)

<sup>27</sup> O.M.C. Section 8.22.070(F)

<sup>28</sup> O.M.C. Section 8.22.110(E)

**OVERPAID RENT**

From	To	Monthly Rent paid	Max Monthly Rent	Difference per month	No. Months	Sub-total
1-Feb-17	31-May-18	\$930	\$850	\$ 80.00	16	\$ 1,280.00
<b>TOTAL OVERPAID RENT</b>						<b>\$ 1,280.00</b>

**RESTITUTION**

MONTHLY RENT	\$850
<b>TOTAL TO BE REPAID TO TENANT</b>	<b>\$ 1,280.00</b>
TOTAL AS PERCENT OF MONTHLY RENT	151%
AMORTIZED OVER 12 MO. BY REG. IS	<b>\$ 106.67</b>

Conclusion: The tenants have overpaid rent in the amount of \$1,280. The overpayment is ordered repaid over a period of 12 months.<sup>29</sup> The rent is temporarily reduced by \$106.67 per month, to \$743.33 per month, beginning with the rent payment in June 2018 and ending with the rent payment in May 2019.

MIRANDA (Case No. T17-0041)

RAP Notice: For the same reasons stated above with regard to the Gonzalez and Lopez petitions, it is found that the tenant's rental agreement was negotiated in Spanish. Therefore, the contested rent increase is invalid, and the base rent is \$765 per month. Before considering the tenant's claims of decreased housing services, the tenant has overpaid rent, as set forth in the Table below.

Decreased Housing Services: There is a time limit for claiming decreased housing services. If the decreased service is the result of a noticed or discrete change in services provided to the tenant, the petition must be filed within 90 days after of whichever is later: (1) the date the tenant is noticed or first becomes aware of the decreased housing service; or (2) the date the tenant first receives the RAP Notice. Where the RAP notice has never been given, a tenant can be granted restitution for rent overpayments due to decreased housing services for a maximum of 3 years.<sup>30</sup>

Carpet: Both Ms. Cohen's Declaration and the photographs submitted by the owner are substantial evidence that there is nothing wrong with the carpet or threshold. The claim is therefore denied.

Electrical Outlets: The Mediation Agreement that the parties signed on January 11, 2016, states that the owner will "repair bedroom outlets." The Agreement states that "The parties agree to submit disputes arising out of this Agreement to arbitration before a Rent Adjustment Hearing Officer." Therefore, if the tenant believes that the owner has not complied with the Mediation Agreement, the dispute must be resolved in a procedure apart from this petition. For this reason, the claim is denied.

<sup>29</sup> Regulations, Section 8.22.110(F)

<sup>30</sup> Appeal Decision in Case No. T06-0051, Barajas/Avalos v. Chu



Roaches: The tenant testified that the owner hired a pest control company in 2013, and Ms. Cohen states that she observed no roaches. The roach problem was apparently resolved far more than 3 years ago, and the claim is denied.

Stove Hood Fan: A stove hood fan is a useful amenity, and the fan should reasonably have been repaired within one of month of the report to the owner. The lack of the fan reduced the package of housing services by 1% from May 2016 through January 2017, a period of 10 months, and the tenant overpaid rent during that time, as set forth in the Table below.

Conclusion: The tenant has overpaid a total of \$2,788.85. This overpayment is ordered repaid over a period of 12 months.<sup>31</sup> The rent of \$765 per month is temporarily reduced by \$232.40 per month, to \$532.60 per month, beginning with the rent payment in June 2018 and ending with the rent payment in May 2019.

**VALUE OF LOST SERVICES**

Service Lost	From	To	Rent	% Rent Decrease	Decrease /month	No. Mont hs	Overpaid
Fan Hood	1-May-16	31-Jan-17	\$765	1%	\$ 7.65	9	\$ 68.85
<b>TOTAL LOST SERVICES</b>							<b>\$ 68.85</b>

**OVERPAID RENT**

From	To	Monthly Rent paid	Max Monthly Rent	Difference per month	No. Mont hs	Sub-total
1-Feb-17	31-May-18	\$935	\$765	\$ 170.00	16	\$ 2,720.00
<b>TOTAL OVERPAID RENT</b>						<b>\$ 2,720.00</b>

**RESTITUTION**

MONTHLY RENT	\$765
<b>TOTAL TO BE REPAID TO TENANT</b>	<b>\$ 2,788.85</b>
TOTAL AS PERCENT OF MONTHLY RENT	365%
AMORTIZED OVER 12 MO. BY REG. IS	<b>\$ 232.40</b>

CANALES (Case No. T17-0042)

RAP Notice: For the same reasons stated above with regard to the Gonzalez and Lopez petitions, it is found that the tenant's rental agreement was negotiated in Spanish. Therefore, the tenant's petition was filed within the require time limit to contest all rent increases. Those rent increases are invalid, and the tenant's base rent is \$850 per month. Before considering the tenant's claims of decreased housing services, the tenant has overpaid rent, as set forth in the Table below.

Decreased Housing Services:

<sup>31</sup> Regulations, Section 8.22.110(F)

Bathroom Door: A locking bathroom door provides needed privacy. The lack of a lock on the door has reduced the package of housing services by 3% since February 2017, when the owner should reasonably have installed a doorknob and lock on the door. The tenant overpaid rent during that time, as set forth in the Table below. Because of the current decrease in housing services, the rent is reduced by 3%, being \$25.50 per month, to \$824.50 per month. This rent decrease will remain in effect until a doorknob and lock are installed in the bathroom door, as specified in the Order below. Further, as set forth on the following Table, because the bathroom door has not had a doorknob and lock, the tenant has overpaid rent since February 2017.

Electric Plug in Kitchen: Section 15.08.260(C) of the City Building Maintenance Code states: "Every habitable room shall contain at least two electrical convenience receptacles or one convenience receptacle and one switched light fixture." The tenant was unsure whether all outlets were working when she moved in, and the kitchen complies with the requirement quoted above. Therefore, the claim is denied.

Cockroaches: It is found that the owner has acted reasonably by first spraying and then having regular, professional extermination. These efforts have been successful, since the tenant testified that she has seen few roaches for the past 2 years. The claim is denied.

Bathroom Mold: The applicable Code requires either a window or exhaust fan for a bathroom, but not both.<sup>32</sup> Mold will grow if there is moisture without proper ventilation and regular cleaning. The fact that mold did not return for months after Mr. Higgins cleaned the bathroom indicates that mold in the bathroom can be controlled with proper maintenance. Further, the tenant did not identify any source of the mold other than the usual bathroom moisture. The claim is therefore denied.

Parking Lot Lights: The evidence is, at best, equally balanced. Therefore, the tenant has not sustained her burden of proof on this claim, which is denied.

Service Lost	From	To	Rent	% Rent Decrease	Decrease /month	No. Months	Overpaid
Bathroom Door	1-Feb-17	31-May-18	\$850	3%	\$ 25.50	16	\$ 408.00
<b>TOTAL LOST SERVICES</b>							<b>\$ 408.00</b>

**OVERPAID RENT**

From	To	Monthly Rent paid	Max Monthly Rent	Difference per month	No. Months	Sub-total
1-Sep-15	31-Jan-17	\$990	\$850	\$ 140.00	17	\$ 2,380.00
1-Feb-17	31-May-18	\$1,050	\$850	\$ 200.00	16	\$ 3,200.00
<b>TOTAL OVERPAID RENT</b>						<b>\$ 5,580.00</b>

<sup>32</sup> Oakland Building Maintenance Code, Section 15.08.220 (C)

RESTITUTION

	MONTHLY RENT	\$850
TOTAL TO BE REPAID TO TENANT		\$ 5,988.00
TOTAL AS PERCENT OF MONTHLY RENT		704%
AMORTIZED OVER 12 MO. BY REG. IS		\$ 499.00

Conclusion: The tenant has overpaid a total of \$5,988. This overpayment is ordered repaid over a period of 12 months.<sup>33</sup> The current rent of \$824.50 per month is temporarily reduced by \$499 per month, to \$325.50 per month, beginning with the rent payment in June 2018 and ending with the rent payment in May 2019. When a door knob and lock are installed in the bathroom door, the owner may increase the rent by \$25.50 per month, as specified in the Order below.

De La TORRE (Case No. T17-0043)

RAP Notice: For the same reasons stated above with regard to the Gonzalez and Lopez petitions, it is found that the tenant's rental agreement was negotiated in Spanish. The parties agree that the tenant has never received the RAP Notice in Spanish. Therefore, the contested rent increase is invalid and the tenant's base rent is \$765 per month. Before considering the tenant's claims of decreased housing services, the tenant has overpaid rent, as set forth in the Table below.

Decreased Housing Services:

Kitchen Cabinet Handles: This was a claim made in the above-cited Mediation Agreement, in which the owner agreed to repair the handles. Therefore, if the tenant believes that the owner has not complied with the Mediation Agreement, the dispute must be resolved in a procedure apart from this petition. For this reason, the claim is denied.

Bathroom Fan: Ceiling exhaust fans will accumulate lint, and need to be cleaned periodically in order to work efficiently. This type of maintenance is normally a tenant's responsibility unless there is a specific agreement between the parties to the contrary. The fan worked well after Mr. Higgins cleaned it in May 2017, and it also worked well at time of Ms. Cohen's inspection in October 2017. The tenant has not sustained her burden of proving that this situation was a serious problem beyond her control, and the claim is denied.

Stove: Although the fourth burner should have been repaired more quickly, this was a minor problem, and did not decrease the tenant's housing services by any quantifiable amount. Therefore, the claim is denied.

Front Gate Lock: It is found that the lock on the front gate is often damaged by vandalism and/or misuse. It appears that the owner acts within a reasonable period of time to repair or replace the damaged lock, and the claim is denied.

<sup>33</sup> Regulations, Section 8.22.110(F)

Conclusion: The tenant has overpaid a total of \$2,720. This overpayment is ordered repaid over a period of 12 months.<sup>34</sup> The current rent of \$765 per month is temporarily reduced by \$226.67 per month, to \$538.33 per month, beginning with the rent payment in June 2018 and ending with the rent payment in May 2019.

**OVERPAID RENT**

From	To	Monthly Rent paid	Max Monthly Rent	Difference per month	No. Months	Sub-total
1-Feb-17	31-May-18	\$935	\$765	\$ 170.00	16	\$ 2,720.00
<b>TOTAL OVERPAID RENT</b>						<b>\$ 2,720.00</b>

**RESTITUTION**

	MONTHLY RENT	\$765
	<b>TOTAL TO BE REPAID TO TENANT</b>	<b>\$ 2,720.00</b>
	TOTAL AS PERCENT OF MONTHLY RENT	356%
AMORTIZED OVER	12 MO. BY REG. IS	<b>\$ 226.67</b>

MACIEL (Case No. T17-0044)

RAP Notice: For the same reasons stated above with regard to the Gonzalez and Lopez petitions, it is found that the tenant's rental agreement was negotiated in Spanish. The parties agree that the tenant has never received the RAP Notice in Spanish. Therefore, the contested rent increase is invalid and the tenant's base rent is \$765 per month. Before considering the tenant's claims of decreased housing services, the tenant has overpaid rent, as set forth in the Table below.

Decreased Housing Services:

Fuse Box: As discussed above, under the Rent Adjustment Ordinance restitution is limited to 3 years. Since the problem was remedied in 2013 or 2014, the claim is denied.

Closet Doors: Because this was an issue in the above-discussed Mediation Agreement, any problem must be addressed in a different forum. Therefore, the claim is denied.

Front Door Lock: The Mediation Agreement states, in part: "Owner will inspect and repair key lock mechanism of tenant's metal front door." Further, as discussed above, the owner has acted reasonably. For both of these reasons, the claim is denied.

Mold in the Kitchen: Ms. Cohen's Declaration states: "[T]here are stains that appear to be mold around the kitchen sink." Mold will develop if surfaces become wet and are then not cleaned properly and regularly. This is a tenant's responsibility. The mold was not extensive at the time of the inspection, and the tenant has not sustained her burden of proof that the mold is due to any fault of the owner. The claim is therefore denied.

<sup>34</sup> Regulations, Section 8.22.110(F)

Exposed Plugs and Outlets: In the tenant’s prior petition, being Case No. T15-0466, the tenant alleged decreased housing services. Included in the list in that case was: “There are several faceplates missing from the electrical outlets in the kitchen.” The Mediation Agreement in that case states, in part: “The following Agreement is intended to compromise and end the dispute to resolve the issues presented in the Petitions and Responses in the cases described above.” This issue cannot be raised a second time, and the claim is denied.

“Sensitive Plug”: Ms. Cohen was unable to replicate this complaint at the time of her inspection. The tenant has not sustained her burden of proof on this claim, which is denied.

Bathroom Door: The tenant testified that, when she moved in, there was a door knob on the bathroom, but no lock. The door knob did not work properly, and Mr. Higgins removed the door knob in late 2016. Ms. Cohen’s Declaration states: “There is no door knob or lock on the bathroom door.”

The owner testified that the door was not taken off. The door is a “pocket door,” which slides into the wall. Since a “pocket door” does not have a door knob, the findings of Ms. Cohen, a neutral observer, and the testimony of the tenant, are credited. It is found that the bathroom door is a standard door, and does not have a door knob or lock.

A locking bathroom door provides needed privacy. The lack of a lock on the door has reduced the package of housing services by 3% since December 2016, when Mr. Higgins removed the door knob and lock. Because of the current decrease in housing services, the rent is reduced by 3%, being \$22.95 per month, to \$742.05 per month. This rent decrease will remain in effect until a door knob and lock are installed in the bathroom door, as specified in the Order below. Further, as set forth on the following Table, the tenant overpaid rent.

Parking lot lights: The evidence is, at best, equally balanced. Therefore, the tenant has not sustained her burden of proof on this claim, which is denied.

Cockroaches: There have been few, if any roaches since at least May 2016, and the Terminex invoice states that the owner has been a customer since 2015. The tenant has not sustained her burden of proving that there has been a serious roach problem during the past 3 years, and the claim is denied.

**VALUE OF LOST SERVICES**

Service Lost	From	To	Rent	% Rent Decrease	Decrease /month	No. Mont hs	Overpaid
Bathroom Door	1-Dec-16	31-Jan-17	\$765	3%	\$ 22.95	2	\$ 45.90
Bathroom Door	1-Feb-17	31-May-18	\$935	3%	\$ 28.05	16	\$ 448.80
<b>TOTAL LOST SERVICES</b>							<b>\$ 494.70</b>

**OVERPAID RENT**

From	To	Monthly Rent paid	Max Monthly Rent	Difference per month	No. Months	Sub-total
1-Feb-17	31-May-18	\$935	\$765	\$ 170.00	16	\$ 2,720.00
<b>TOTAL OVERPAID RENT</b>						<b>\$ 2,720.00</b>

**RESTITUTION**

MONTHLY RENT	\$765
<b>TOTAL TO BE REPAYED TO TENANT</b>	<b>\$ 3,214.70</b>
TOTAL AS PERCENT OF MONTHLY RENT	420%
AMORTIZED OVER 12 MO. BY REG. IS	<b>\$ 267.89</b>

Conclusion: The tenant has overpaid a total of \$3,214.70. This overpayment is ordered repaid over a period of 12 months.<sup>35</sup> The current rent of \$742.05 per month is temporarily reduced by \$267.89 per month, to \$474.16 per month, beginning with the rent payment in June 2018 and ending with the rent payment in May 2019. When a door knob and lock are installed in the bathroom door, the owner may increase the rent by \$22.95 per month, as specified in the Order below.

GLORIA LOPEZ (Case No. T17-0045)

RAP Notice: For the same reasons stated above with regard to the Gonzalez and Lopez petitions, it is found that the tenant's rental agreement was negotiated in Spanish. The parties agree that the tenant has never received the RAP Notice in Spanish. Therefore, the contested rent increase is invalid and the tenant's base rent is \$945 per month, effective February 2017.

The tenant did not have written proof of rent payments. By contrast, the owner referred to his bookkeeping records. It is found that the owner's records are more reliable. The owner referred to his records, and testified that the tenant paid rent in the year 2017 as follows: January - \$648.33; February - \$1,175; March - \$1,135; April - \$1,150; and May through September - \$1,155; he did not know the amount of rent that the tenant paid in October.

Based upon these figures, and assuming that the tenant continued to pay \$1,155 in each month since then, and before considering the tenant's claims of decreased housing services, the tenant has overpaid rent, as set forth in the Table below.

Decreased Housing Services:

Living Room Window: Although the owner's motive for covering over the window was to add security, the fact remains that the tenant rented the unit with the window in place. This window provided additional light in the room, which made the room more pleasant and aided her children in doing their homework. The tenant filed a prior Petition, being No. T15-0510, on

<sup>35</sup> Regulations, Section 8.22.110(F)

November 6, 2015. That petition claimed several decreased housing services, and did not include a claim regarding the living room window. The tenant testified that she took this photo more than one year before she testified on October 6, 2017, and there was no further testimony as to when the window was covered. It is therefore reasonable to assume that the window was covered in approximately July 2016.

Any increase in the tenant's electric bill is impossible to determine, since electric rates are known to increase over time. However, the loss of additional ventilation and light in the living room has reduced the package of housing services by 5%, being \$31.50 per month since July 2016. This is an ongoing rent decrease until the window is restored. Further, the tenant has overpaid rent as set forth in the Table below.

Chipping Paint: The area of missing paint shown on the photo submitted by the tenant is quite small, and has little, if any, effect upon the habitability of the unit. Further, while additional areas of chipping paint may have been noted upon inspection, the tenant was not at home at the time of Ms. Cohen's inspection. If, in fact, the tenant's son was at home, he should have been looking out for the Hearing Officer, who was to arrive at a specific time. The California Evidence Code states a common-sense principle: "If weaker and less satisfactory evidence is offered when it was within the power of the party to produce stronger and more satisfactory evidence, the evidence offered should be viewed with distrust."<sup>36</sup> Therefore, based upon the available evidence, the claim is denied.

Carpet: Installation of carpeting certainly does not in itself decrease a tenant's housing services, and the contention that the carpeting posed a health problem to the tenant's son is entirely speculative. The claim is denied.

Mold: The Mediation Agreement states, with regard to the tenant: "The owner agrees to make the following repairs: . . . "Inspect for mold in bedroom and kitchen wall and repair if necessary." If the owner has not complied with this Agreement, the tenant's remedy is in another forum. With regard to mold that developed months after the Mediation Agreement was signed, the evidence is equally well balanced. The claim is therefore denied.

Refrigerator: It is most likely that the compartment broke when it was overloaded by the tenant. An owner is not responsible for damage caused by a tenant, and the claim is denied.

Kitchen Floor Board: Wet and perhaps moldy wood is a potential health hazard, which has reduced the tenant's housing services by 2%, being \$21 per month. This rent decrease will remain in effect until the wood surface under the kitchen sink is replaced, as specified in the Order below. Further, the tenant has overpaid rent as set forth in the Table below.

/

/

/

/

---

<sup>36</sup> Evidence Code, Section 412

**VALUE OF LOST SERVICES**

Service Lost	From	To	Rent	% Rent Decrease	Decrease /month	No. Months	Overpaid
Living Room Window	1-Jul-16	31-May-18	\$1,050	5%	\$ 52.50	23	\$ 1,207.50
Kitchen Floor Board	1-Nov-14	31-May-18	\$1,050	2%	\$ 21.00	43	\$ 903.00
<b>TOTAL LOST SERVICES</b>							<b>\$ 2,110.50</b>

**OVERPAID RENT**

From	To	Monthly Rent paid	Max Monthly Rent	Difference per month	No. Months	Sub-total
1-Jan-17	31-Jan-17	\$648	\$733	\$ (85.00)	1	\$ (85.00)
1-Feb-17	28-Feb-17	\$1,175	\$945	\$ 230.00	1	\$ 230.00
1-Mar-17	31-Mar-17	\$1,135	\$945	\$ 190.00	1	\$ 190.00
1-Apr-17	30-Apr-17	\$1,150	\$945	\$ 205.00	1	\$ 205.00
1-May-17	31-May-18	\$1,155	\$945	\$ 210.00	13	\$2,730.00
<b>TOTAL OVERPAID RENT</b>						<b>\$3,270.00</b>

**RESTITUTION**

MONTHLY RENT	\$945
<b>TOTAL TO BE REPAID TO TENANT</b>	<b>\$ 5,380.50</b>
TOTAL AS PERCENT OF MONTHLY RENT	1,756%

Conclusion: Because of ongoing decreased housing services, the current rent is reduced by a total of 7%, to \$878.85 per month. Further, because of lack of a proper RAP Notice and past decreased housing services, the tenant has overpaid \$5,380.50. This overpayment is ordered repaid over a period of 12 months.<sup>37</sup> The current rent of \$878.85 per month is temporarily reduced by \$448.37 per month, to \$430.48 per month, beginning with the rent payment in June 2018 and ending with the rent payment in May 2019.

ORTIZ (Case No. T17-0078)

RAP Notice: For the same reasons stated above with regard to the Gonzalez and Lopez petitions, it is found that the tenant's rental agreement was negotiated in Spanish. The parties agree that the tenant has never received the RAP Notice in Spanish. Therefore, the contested rent increase is invalid and the tenant's base rent is \$900 per month, effective February 2017. Before considering the tenant's claims of decreased housing services, the tenant has overpaid rent, as set forth in the Table below.

<sup>37</sup> Regulations, Section 8.22.110(F)



Decreased Housing Services:

Stove: There is no evidence that there has been a problem with the stove since 2014, and all burners operated properly at the time of Ms. Cohen's inspection. The claim is therefore denied.

Kitchen Backsplash: The burn marks, and probably the resulting loosening of the backsplash, were the result of the tenant's cooking procedures. This cannot be blamed on the owner, and the claim is denied.

Smoke Detector: Smoke detector batteries do need to be replaced periodically and, without notice from the tenant, the owner had no knowledge that there was a problem. Therefore, the claim is denied.

**OVERPAID RENT**

From	To	Monthly Rent paid	Max Monthly Rent	Difference per month	No. Months	Sub-total
1-Feb-17	31-May-18	\$990	\$900	\$ 90.00	16	\$ 1,440.00
<b>TOTAL OVERPAID RENT</b>						<b>\$ 1,440.00</b>

**RESTITUTION**

MONTHLY RENT	\$900
TOTAL TO BE REPAYED TO TENANT	\$ 1,440.00
TOTAL AS PERCENT OF MONTHLY RENT	160%
AMORTIZED OVER 12 MO. BY REG. IS	\$ 120.00

Conclusion: The tenant has overpaid a total of \$1,440. This overpayment is ordered repaid over a period of 12 months.<sup>38</sup> The current rent of \$900 per month is temporarily reduced by \$120 per month, to \$780 per month, beginning with the rent payment in June 2018 and ending with the rent payment in May 2019.

**ORDER**

1. Petition T17-0040 (Gonzalez & Lopez) is partly granted.
2. The Base Rent is \$850 per month.
3. The tenants have overpaid rent in the amount of \$1,280. The overpayment is ordered repaid over a period of 12 months. The rent of \$850 per month is temporarily reduced by \$106.67 per month, to \$743.33 per month, beginning with the rent payment in June 2018 and ending with the rent payment in May 2019.
4. In June 2019, the rent will increase to \$850 per month.

<sup>38</sup> Regulations, Section 8.22.110(F)

5. The owner may otherwise be eligible for a rent increase, with an effective date not less than 6 months after the tenants are given a RAP Notice in the Spanish language.
6. Petition T17-0041 (Miranda) is partly granted.
7. The Base Rent is \$765 per month.
8. The tenant has overpaid rent in the amount of \$2,788.85. The overpayment is ordered repaid over a period of 12 months. The rent of \$765 per month is temporarily reduced by \$232.40 per month, to \$532.60 per month, beginning with the rent payment in June 2018 and ending with the rent payment in May 2019.
9. In June 2019, the rent will increase to \$765 per month.
10. The owner may otherwise be eligible for a rent increase, with an effective date not less than 6 months after the tenants are given a RAP Notice in the Spanish language.
11. Petition T17-0042 (Canales) is partly granted.
12. The Base Rent is \$850 per month.
13. Because of the current decrease in housing services, the rent is reduced by 3%, being \$25.50 per month, to \$824.50 per month. This rent decrease will remain in effect until a doorknob and lock are installed in the bathroom door.
14. The tenant has overpaid a total of \$5,988. This overpayment is ordered repaid over a period of 12 months. The current rent of \$824.50 per month is temporarily reduced by \$499 per month, to \$325.50 per month, beginning with the rent payment in June 2018 and ending with the rent payment in May 2019.
15. In June 2019, the rent will increase to \$824.50 per month.
16. When a door knob and lock are installed in the bathroom door, the owner may increase the rent by \$25.50 per month, after giving notice in accordance with Civil Code Section 827 and the Rent Adjustment Ordinance.
17. The owner may otherwise be eligible for a rent increase, with an effective date not less than 6 months after the tenants are given a RAP Notice in the Spanish language.
18. Petition T17-0043 (De La Torre) is partly granted.
18. The Base Rent is \$765 per month.
19. The tenant has overpaid a total of \$2,720. This overpayment is ordered repaid over a period of 12 months. The current rent of \$765 per month is temporarily reduced by \$226.67

per month, to \$538.33 per month, beginning with the rent payment in June 2018 and ending with the rent payment in May 2019.

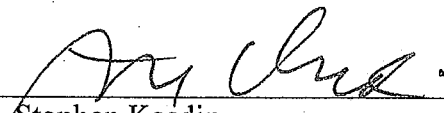
20. In June 2019, the rent will increase to \$765 per month.
21. The owner may otherwise be eligible for a rent increase, with an effective date not less than 6 months after the tenants are given a RAP Notice in the Spanish language.
22. Petition T17-0044 (Maciel) is partly granted.
23. The Base Rent is \$765 per month.
24. Because of the current decrease in housing services, the rent is reduced by 3%, being \$22.95 per month, to \$742.05 per month. This rent decrease will remain in effect until a door knob and lock are installed in the bathroom door.
25. The tenant has overpaid a total of \$3,214.70. This overpayment is ordered repaid over a period of 12 months. The current rent of \$742.05 per month is temporarily reduced by \$267.89 per month, to \$474.16 per month, beginning with the rent payment in June 2018 and ending with the rent payment in May 2019.
26. In June 2019, the rent will increase to \$824.50 per month.
27. When a door knob and lock are installed in the bathroom door, the owner may increase the rent by \$22.95 per month, after giving notice in accordance with Civil Code Section 827 and the Rent Adjustment Ordinance.
28. The owner may otherwise be eligible for a rent increase, with an effective date not less than 6 months after the tenants are given a RAP Notice in the Spanish language.
29. Petition T17-0045 (Gloria Lopez) is partly granted.
30. The Base Rent is \$945 per month.
31. Because of ongoing decreased housing services, the rent, before a temporary reduction due to past decreased housing services, is \$878.85 per month.
32. The tenant has overpaid \$5,380.50. This overpayment is ordered repaid over a period of 12 months.<sup>39</sup> The current rent of \$878.85 per month is temporarily reduced by \$448.37 per month, to \$430.48 per month, beginning with the rent payment in June 2018 and ending with the rent payment in May 2019.
33. In June 2019, the rent will increase to \$878.85 per month.

---

<sup>39</sup> Regulations, Section 8.22.110(F)

34. When the living room window is restored, the owner may increase the rent by \$47.50 per month. When the wood surface under the kitchen sink is replaced, the owner may increase the rent by \$18.90 per month. These rents may be increased after giving notice in accordance with Civil Code Section 827 and the Rent Adjustment Ordinance.
35. The owner may otherwise be eligible for a rent increase, with an effective date not less than 6 months after the tenants are given a RAP Notice in the Spanish language.
36. Petition T17-0078 (Ortiz) is partly granted.
37. The Base Rent is \$900 per month.
38. The tenant has overpaid a total of \$1,440. This overpayment is ordered repaid over a period of 12 months. The current rent of \$900 per month is temporarily reduced by \$120 per month, to \$780 per month, beginning with the rent payment in June 2018 and ending with the rent payment in May 2019.
39. In June 2019, the rent will increase to \$900 per month.
40. The owner may otherwise be eligible for a rent increase, with an effective date not less than 6 months after the tenants are given a RAP Notice in the Spanish language.
41. 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: June 4, 2018

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

PROOF OF SERVICE

Case Numbers

T17-0040, T17-0041, T17-0042, T17-0043, T17-0044, T17-0044, T17-0045, T17-0078

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

Tenants

Andrea Gonzalez & Feliciano Lopez  
3020 E. 18th St #2  
Oakland, CA 94601

Adriana Miranda  
3020 E. 18th St #4  
Oakland, CA 94601

Laura Coneles  
3020 E. 18th St #8  
Oakland, CA 94601

Martina De La Torre  
3020 E. 18th St #12  
Oakland, CA 94601

Liliana Maciel  
3020 E. 18th St #11  
Oakland, CA 94601

Gloria Lopez  
3020 E. 18th St #13  
Oakland, CA 94601

Marvin Ortiz  
3020 E 18th St #5  
Oakland, CA 94601

Owner

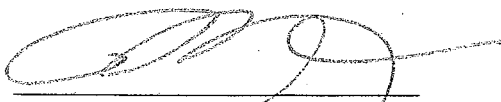
Daniel & Vivian Leon  
30 Sky Terr  
Danville, CA 94526

Tenant Representative

Centro Legal de la Raza  
Martina Cucullo Lim/Sarah Winfield  
3022 International Blvd. Ste 410  
Oakland, CA 94601

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 June 5, 2018 in Oakland, CA.

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

000217



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

CITY OF OAKLAND

Department of Housing and Community Development  
Rent Adjustment Program

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

## **AMENDED HEARING DECISION**

**CASE NUMBERS:** T17-0040, Gonzalez, et al. v. Leon; T17-0041, Miranda v. Leon  
T17-0042, Canales v. Leon; T17-0043, De La Torre v. Leon  
T17-0044, Maciel v. Leon; T17-0045, Lopez v. Leon &  
T17-0078, Ortiz v. Leon

**PROPERTY ADDRESS:** 3020 E. 18<sup>th</sup> St., #2, #4, #8, #12, #11, #13, & #5, Oakland, CA

**DATES OF HEARING:** July 24, 2017; October 6, 2017; November 3, 2017; &  
February 23, 2018

**DATE OF INSPECTION:** October 23, 2017

**DATE OF ORIGINAL DECISION:** June 4, 2018

**DATE OF AMENDED DECISION:** June 20, 2018

**APPEARANCES:** Marvin Ortiz (Tenant)  
Laura Canales (Tenant)  
Martina De La Torre (Tenant)  
Martha Godoy (Tenant)  
Andrea Gonzalez (Tenant)  
Feliciano Lopez (Tenant)  
Liliana Maciel (Tenant)  
Adriana Miranda (Tenant)  
Gloria Lopez (Tenant)  
Feliciano Lopez (Tenant)  
Martina Cucullo Lim (Attorney for Tenants)  
Sarah Winfield (Tenant Representative)  
Daniel Leon (Owner)  
Vivian Leon (Owner)  
Sinclair Higgins (Witness for Owner)  
Marci Valdivieso (Interpreter, 7-24-17 & 2-23-18)

000218

Noemi Gonzalez (Interpreter, 10-6-17)  
Sergio Chavarin (Interpreter, 11-3-17)

**REASON FOR AN AMENDED DECISION**

Because of a clerical error, the Original Hearing Decision, which was mailed to the parties on June 5, 2018, did not include as an attachment the Declaration Re: Site Inspection signed by Hearing Officer Barbara M. Cohen. That Hearing Decision referred to statements in Ms. Cohen's Declaration. As a result of this error, the parties were not provided with a complete Decision upon which to base an appeal. Therefore, this Amended Hearing Decision is being issued.

This Amended Hearing Decision is a new Decision, and there is a new time period within which to appeal, as set forth in the Order below.

**SUMMARY OF DECISION**

Petition T17-0040 (Gonzalez, et al. v. Leon) is partly granted.

Petition T17-0041 (Miranda v. Leon) is partly granted.

Petition T17-0042 (Canales v. Leon) is partly granted.

Petition T17-0043 (De La Torre v. Leon) is partly granted.

Petition T17-0044 (Maciel v. Leon) is partly granted.

Petition T17-0045 (Lopez v. Leon) is partly granted.

Petition T17-0078 (Ortiz v. Leon) is partly granted.

**CONTENTIONS OF THE PARTIES**

Tenants Andrea Gonzalez and Feliciano Lopez (Case No. T17-0040) filed a petition on January 25, 2017, which alleges that a proposed rent increase from \$850 to \$935 per month, effective February 1, 2017, exceeds the CPI Adjustment and is unjustified or is greater than 10%; that they have never received the form Notice to Tenants (RAP Notice) in Spanish; that at present, there exists a health, safety, fire, or building code violation in their unit; and that their housing services have been decreased as follows: dirty water is coming out of the kitchen sink; closet doors were falling down; closet light is broken; and the lock of the building's front door often breaks.

Tenant Miranda (Case No. T17-0041) filed a petition on January 25, 2017, which alleges that a proposed rent increase from \$765 to \$935 per month, effective February 1, 2017, exceeds the CPI Adjustment and is unjustified or is greater than 10%; that she has never received the form Notice to Tenants (RAP Notice) in Spanish; that at present, there exists a health, safety, fire, or building code violation in her unit; and that her housing services have been decreased as follows:

carpeting is detached and is a tripping hazard; problems with electric plugs; cockroaches; and stove hood fan does not work.

Tenant Canales (Case No. T17-0042) filed a petition on January 25, 2017, which alleges that a prior rent increase in the year 2013 from \$850 to \$900 per month and a prior rent increase effective September 1, 2015, from \$900 to \$990 per month, as well as a proposed rent increase from \$990 to \$1,049 per month, effective February 1, 2017, exceed the CPI Adjustment and is unjustified or is greater than 10%; that she has never received the form Notice to Tenants (RAP Notice) in Spanish; that at present, there exists a health, safety, fire, or building code violation in her unit; and that her housing services have been decreased as follows: bathroom door not functioning; electric plug in kitchen not working; cockroaches; mold in bathroom; and most parking lot lights do not work.

Tenant De La Torre (Case No. T17-0043) filed a petition on January 25, 2017, which alleges that a proposed rent increase from \$765 to \$935 per month, effective February 1, 2017, exceeds the CPI Adjustment and is unjustified or is greater than 10%; that she has never received the form Notice to Tenants (RAP Notice) in Spanish; that at present, there exists a health, safety, fire, or building code violation in her unit; and that her housing services have been decreased as follows: kitchen cabinet handles are broken; bathroom fan does not work; one stove burner does not work; and the lock of the building's front door often breaks.

Tenant Maciel (Case No. T17-0044) filed a petition on January 25, 2017, which alleges that a proposed rent increase from \$765 to \$935 per month, effective February 1, 2017, exceeds the CPI Adjustment and is unjustified or is greater than 10%; that she has never received the form Notice to Tenants (RAP Notice) in Spanish; that at present, there exists a health, safety, fire, or building code violation in her unit; and that her housing services have been decreased as follows: a problem with the fuse box; closet doors do not close properly; the lock of the building's front door often breaks; mold in the kitchen; exposed plugs and outlets; a "sensitive plug" that shuts off all lights when it is touched; no lock on bathroom door; most parking lot lights do not work; the lock of the building's front door often breaks; and cockroaches.

Tenant Gloria Lopez (Case No. T17-0045) filed a petition on January 25, 2017, which alleges that a proposed rent increase from \$945 to \$1,155 per month, effective February 1, 2017, exceeds the CPI Adjustment and is unjustified or is greater than 10%; that she has never received the form Notice to Tenants (RAP Notice) in Spanish; that at present, there exists a health, safety, fire, or building code violation in her unit; and that her housing services have been decreased as follows: the living room window was covered with a wall; chipping paint; carpet has caused asthma problems; bathroom mold; leaks into bathroom ceiling; bedroom mold; problems with the refrigerator; and kitchen floor board is detaching.

Tenant Ortiz (Case No. T17-0078) filed a petition on February 8, 2017, which alleges that a proposed rent increase from \$900 to \$990 per month, effective February 1, 2017, exceeds the CPI Adjustment and is unjustified or is greater than 10%; that he has never received the form Notice to Tenants (RAP Notice) in Spanish; that at present, there exists a health, safety, fire, or building code violation in his unit; and that his housing services have been decreased as follows:



stove does not work properly; kitchen backsplash is too close to the stove; and kitchen smoke detector does not work.

The owners filed responses to the petitions, which alleges that the tenants were given RAP Notices in prior years as well as together with all contested rent increases; that the proposed rent increases are justified by Banking, Increased Housing Service Costs, and Capital Improvements, and deny that the tenants' housing services have been decreased.

### THE ISSUES

- (1) Were the tenants given RAP Notices in the language in which their rental agreements were negotiated?
- (2) Are rent increased for the tenants justified and, if so in what amounts?
- (3) Have the tenants' housing services been decreased and, if so, by what percentages of the total housing services that are provided by the owner?
- (4) What, if any, restitution is owed to each party and how does it affect the rent?

### EVIDENCE

#### GONZALEZ and LOPEZ (Case No. T17-0040; Unit #2)

RAP Notice: At the Hearing, the tenants testified that they speak Spanish and speak only a few words or phrases in English; they cannot read English. They were first shown the unit into which they moved by Sinclair Higgins, the building manager. The tenants testified that Mr. Higgins does not speak Spanish. After inspecting the unit, Mr. Higgins gave the tenants the phone number of the late Javier Leon, the father of Daniel Leon, who was then the owner of the subject building. The tenants testified that they spoke with Javier Leon in Spanish, and then signed a rental agreement for the unit. At that time, they were given a copy of the RAP Notice in English; they have never received a RAP Notice in Spanish.

Mr. Higgins testified that he first showed the subject unit to Mr. Lopez, and gave Mr. Lopez Javier Lopez's telephone number. The following day, Mr. Lopez returned with Ms. Gonzalez and they met Javier Leon. Mr. Higgins further testified that Mr. Lopez spoke with Mr. Leon in English and the tenants then signed a rental agreement.

On cross-examination, Mr. Higgins testified that he does not speak Spanish and always speaks to prospective tenants in English. These tenants, and all petitioning tenants, spoke Spanish and Mr. Leon spoke to them in English. He further testified that he never heard Javier Leon speak to anyone in Spanish, and does not even know if Mr. Leon spoke Spanish.

Daniel Leon testified as follows: that his father spoke Spanish; he has given all of the petitioning tenants RAP Notices in English; and he has never given any of them a Spanish version of the RAP Notice.

Rent History: The tenants testified that they have paid rent of \$930 each month since February 2017. The owner did not disagree with this testimony. The tenants further testified that they intend to pay this amount until they receive a Hearing Decision.

Decreased Housing Services:

Kitchen Sink: The tenants testified that in mid-December 2016, dirty water was backing up into their kitchen sink. They notified Mr. Higgins, who one week later used a plunger and a type of liquid to try to correct the problem. This effort was not successful, but the sink plumbing was successfully repaired the first week of January 2017.

The owner testified that on December 23, 2016, he received a voicemail from the tenant, saying that her sink was clogged. The owner then called Mr. Higgins, and the sink was unclogged by the end of December. Mr. Lopez testified that when he told Mr. Higgins that there was a problem with the sink, his daughter interpreted for him.

Closet Doors: The tenants testified that soon after they moved into their unit in June 2013, the wooden sliding doors on the bedroom closet would occasionally fall off. In the year 2014, they notified the owner, who told them to remove the doors. The tenants removed the doors in October 2016. The owner testified that the tenants damaged the doors. The owner submitted “before” and “after” photographs of the door. The “before” photo depicts what appears to be normal sliding closet doors. The “after” photo depicts a crack in the right-hand door that is more than one foot in length.<sup>1</sup>

Closet Light: The tenants testified that when they moved into the unit there was a very large light bulb in the bedroom closet. The bulb socket was larger than the size of a standard light bulb. The bulb then burned out, and the tenants did not replace the bulb because this type of bulb is expensive. The owner told the tenants that it was their responsibility to replace light bulbs, and that replacement bulbs are available at the Home Depot. On October 23, 2017, the tenant’s unit was inspected by Barbara Cohen, a Hearing Officer with the Rent Adjustment Program. Following her inspection, Ms. Cohen prepared a Declaration, a copy of which is attached as Exhibit “A.” Ms. Cohen’s Declaration states that the closet light was operating normally.

Front Gate: The tenants testified that the lock on the front door to the building in which they live frequently breaks. The lock was repaired approximately 2 months before the date of the first Hearing, but it had taken the owner 6 months to have the lock repaired. The owner testified that the lock is frequently vandalized, or mis-used, and he has it repaired soon after he is notified. The owner submitted a photo that he took in February 2017, depicting a vandalized and repaired lock.<sup>2</sup>

/

/

---

<sup>1</sup> Exhibit No. 192. This Exhibit, and all others to which reference is made in this Decision, were admitted into evidence without objection, unless otherwise noted.

<sup>2</sup> Exhibit No. 193

MIRANDA (Case No. T17-0041; Unit #4)

RAP Notice: The tenant testified that she is a Spanish speaker. She speaks little or no English and cannot read English. After looking at her unit, she spoke with Javier Leon and then rented the unit. She further testified that she has never been given a RAP Notice in Spanish. The owner testified that the tenant has spoken to him in English. Mr. Higgins testified that, when he first met the tenant, she asked the rent amount in English. He further testified that, when the tenant met with Javier Leon, no Spanish was spoken. Mr. Higgins again stated that he does not know if Javier Leon spoke Spanish.

Rent History: The tenant testified that she has paid rent of \$935 per month since February 2017; the owner agreed with this testimony. The tenant further testified that she intends to continue paying this amount each month until she receives a Hearing Decision.

Decreased Housing Services:

Carpet: The tenant testified that a new carpet was installed in her unit as part of the Mediation Agreement in Case No. T15-0509. However, there is no threshold between the bedroom and the kitchen, which is a tripping hazard. On October 23, 2017, the tenant's unit was inspected by Barbara M. Cohen, a Hearing Officer with the Rent Adjustment Program. Following her inspection, Ms. Cohen prepared a Declaration, a copy of which is attached as Exhibit "A." Ms. Cohen's Declaration states, in part: "In Unit 4, there was no visible tripping hazard regarding the carpeting." The owner submitted a photograph of the area that he took in late February 2017, which reflects a normal transition between the carpeted and un-carpeted areas.<sup>3</sup>

Electrical Outlets: The Mediation Agreement that the parties signed on January 11, 2016, states that the owner will "repair bedroom outlets." The owner testified that he inspected all outlets in March 2017, and made all necessary repairs. The tenant testified that some of the outlets were repaired in accordance with this Agreement. However, there is one more outlet located behind the bed that has not been repaired. Ms. Cohen's Declaration states: "There was a loose electrical outlet behind the large bed in the bedroom. There is an appliance plugged into that unit and the plug hangs down because it does not fit properly."

Roaches: The tenant testified that there were many roaches when she moved into the unit in 2011, and she promptly told the owner. Nothing was done until approximately 2013, when the owner hired a pest control company to perform regular treatments. Ms. Cohen's Declaration states: "there were no cockroaches observed."

Stove Hood Fan: The tenant testified that the fan in the stove hood stopped working in the Spring of 2016, and the tenant notified the owner's agent at that time. The fan was repaired in early 2017.

---

<sup>3</sup> Exhibit No. 191

CANALES (Case No. T17-0042; Unit #8)

RAP Notice: The tenant testified that she is a Spanish speaker. She speaks little or no English and cannot read English. After looking at her unit, she spoke with Javier Leon in Spanish, and then rented the unit. She further testified that she has never been given a RAP Notice in Spanish. In response to a question from the owner, the tenant testified that her son and daughter speak English. She also testified that the lease that she signed is in Spanish.

Mr. Higgins testified that he has been in charge of maintenance in the subject building for a number of years. Mr. Higgins further testified that he was present when the tenant met with Javier Leon regarding renting the unit. The tenant's daughter Jessica was also there, and Javier Leon spoke mostly with Jessica in English. Mr. Higgins stated that Javier Leon never spoke Spanish while he was present during rental negotiations. Tenants in the building see Mr. Higgins regarding repairs, and Jessica has always spoken to him in English.

Rent History: The petition and response both state that the tenant moved into her unit in the year 2012, at a rent of \$850 per month. At the Hearing, the tenant testified that at some point the rent was increased to \$900 per month, and the owner did not have this information. However, the parties agreed that in September 2015, the rent was increased from \$900 to \$990 per month, and to \$1,050 per month effective February 2017. The parties further agreed that the tenant paid rent of \$1,050 from February through July 2017. The tenant testified that she would continue to pay this amount each month until she receives a Hearing Decision.

Decreased Housing Services: The file contains a Proof of Service in which an employee of the Rent Adjustment Program states under oath that on October 9, 2017, she mailed a Notice of Inspection to the tenant, which states that a Hearing Officer of the Rent Adjustment Program would inspect the tenant's unit on October 23, 2017. Ms. Cohen states in her Declaration: "The tenants in unit 8 were not at home when I arrived."

Bathroom Door: The tenant testified that the bathroom door was a "pocket door," which slides open and shut. In early December 2016, the tenant's daughter told the owner's agent that the door would not slide shut. The door was then removed later that month, and a new door was installed in May 2017. On questioning by the owner, the tenant testified that the bathroom door was replaced with a door on hinges in either December 2016 or January 2017, and that it now opens and closes. However, there is no doorknob or lock on the door. The tenant submitted a photograph of the door that she took in early 2017.<sup>4</sup> This photograph clearly depicts a door on hinges and with a hole where a doorknob and lock would be placed.

Electric Plug in Kitchen: The tenant testified that in November 2016, she plugged a blender into a wall outlet in her kitchen, and the blender did not work. She notified Mr. Higgins soon after Christmas; he tried to repair the outlet, but was not successful. There are 2 other outlets in the kitchen, one behind the stove and one by the refrigerator. The tenant does not know if the faulty outlet was working when she moved in.

---

<sup>4</sup> Exhibit No. 138

Cockroaches: The tenant testified that she saw roaches in her unit 3 or 4 months after she moved in. She told Javier Leon, who purchased spray. There has been regular professional extermination since early 2016, and she has seen few roaches since that time. The owner submitted a number of photographs taken in March 2017, which depict a considerable amount of food packages, plastic bags, and assorted clutter on many surfaces in the kitchen.<sup>5</sup>

Bathroom Mold: The tenant testified that there is a window in her bathroom, but no exhaust fan. She further testified that she leaves the bathroom window open all the time. However, beginning in December 2015, mold developed on surfaces in the bathroom. The tenant's daughter told the owner about this in November 2016, and the owner replied that there is mold because the tenant does not clean the bathroom. Mr. Higgins cleaned the bathroom in the Spring of 2017, and there was little problem as of the Hearing on July 24, 2017. The tenant submitted photographs taken in early 2017, which show mold on and under a ledge under the bathroom window and on and in the wall and grout around the bathtub.<sup>6</sup>

The owner testified that there are 5 people living in a one-bedroom apartment, which he believes creates conditions in which mold will develop.

Parking Lot Lights: The tenant testified that, when she moved into her unit, only 1 or 2 of the 3 parking lot lights were working. The situation was greatly improved as of the Hearing on July 24, 2017. The owner testified that all light fixtures work, and that he has bulbs replaced as needed.

De La TORRE (Case No. T17-0043; Unit #12)

RAP Notice: The tenant testified that she is a Spanish speaker. She speaks little or no English and cannot read English. After looking at her unit, she spoke with Javier Leon in Spanish and then rented the unit. She further testified that she has never been given a RAP Notice in Spanish.

Rent History: The tenant testified that she has paid rent of \$935 each month since February 2017; the owner agreed with this testimony. The tenant further testified that she intends to continue paying this rent amount until she receives a Hearing Decision.

Decreased Housing Services:

Kitchen Cabinet Handles: The tenant testified that there are 3 handles on the doors and drawers of kitchen cabinets. When she moved into the unit in May 2008, one handle was missing and the other two were hanging and could not be used. She would pull the cabinets open from the bottom. She notified Mr. Higgins in the year 2016, and they were repaired or replaced in early 2017. However, as of July 2017, some of the handles had already begun to loosen. The tenant submitted a photograph of the kitchen cabinets than she took in the year 2015.<sup>7</sup> This photo shows 2 cabinet handles, each of which is missing one of 2 screws. The owner submitted

---

<sup>5</sup> Exhibit Nos. 174 through 180

<sup>6</sup> Exhibit Nos. 140 & 141.

<sup>7</sup> Exhibit No. 130. The owner objected to the admission of this photo into evidence because that was not the condition at the time of the Hearing. The objection was overruled, and the photo was admitted into evidence.

a photo of the kitchen cabinets that he took in March 2017, which shows all handles attached.<sup>8</sup> Ms. Cohen's Declaration states: "the kitchen cabinets all have handles."

Bathroom Fan: The tenant testified that there is no window in her bathroom, but there is an exhaust fan. However, when she moved into the unit in May 2008, the fan did not remove moisture from the bathroom although she would leave it on for 10-15 minutes after taking a shower. She notified Mr. Higgins at that time but the owner did not clean the fan until May 2017. She has not told any owner agent about any problem since that time. Photos taken by the tenant in 2015 depict areas of mold on several surfaces in the bathroom.<sup>9</sup>

A photo taken by the owner on March 17, 2017 depicts a ceiling fan vent on which there is a considerable amount of lint.<sup>10</sup> Ms. Cohen's Declaration states: "the bathroom fan was working."

Stove: The tenant testified that, in early 2016, one burner on the gas stove would not light. She told Mr. Higgins at that time, and the burner was repaired in May 2017. The owner submitted a photo of the stove that he took in March 2017.<sup>11</sup> This photo clearly depicts flames in 3 of the 4 burners; it is not clear whether there is a flame in the 4<sup>th</sup> burner. Ms. Cohen's Declaration states: "the burners on the stove are operable."

Front Door Lock: The tenant's testimony was the same as that given by tenants Andrea Gonzalez and Feliciano Lopez. The tenant further testified that she has never given the owner written notice about any problem in her unit. The tenant submitted a photo that she took in 2015 which depicts a hole in a metal door in the location where a lock would be placed.<sup>12</sup>

MACIEL (Case No. T17-0044; Unit #11)

RAP Notice: The tenant testified that she is a Spanish speaker. She speaks little or no English and cannot read English. After looking at her unit, she spoke with Javier Leon in Spanish and then rented the unit. She further testified that she has never been given a RAP Notice in Spanish. On questioning by the owner, the tenant testified that her husband speaks a little English, but he spoke with Javier Leon in Spanish.

Rent History: The tenant testified that she has paid rent of \$935 each month since February 1, 2017. The owner did not disagree with this testimony. The tenant further testified that she intends to continue paying this amount of rent until she received a Hearing Decision.

/

/

/

/

---

<sup>8</sup> Exhibit No. 167

<sup>9</sup> Exhibit Nos. 131 & 132. The owner objected to the admission of these photos on the same ground stated above, which objection was overruled and the photo admitted into evidence.

<sup>10</sup> Exhibit No. 166

<sup>11</sup> Exhibit No. 167

<sup>12</sup> Exhibit No. 134. The owner objected to the admission of this photo on the same ground stated above, which objection was overruled and the photo admitted into evidence.

### Decreased Housing Services:

Fuse Box: The tenant testified that there had been a problem with the fuse box when she moved into her unit in November 2013. However, it was moved soon after, and there has been no problem since that time.

Closet Doors: The tenant was a party to a Mediation Agreement with the owner on January 11, 2016, in which she is named as Liliana Perez. That agreement states in part, with regard to the tenant: "The owner agrees to make the following repairs: . . . Owner will inspect closet door which was installed 11/15 and repair if necessary." The tenant testified that sliding doors were replaced following the Mediation, but there is still a problem. The owner testified that any problem is caused by the tenant over-filling the closet. Ms. Cohen writes: "[T]here is a closet door missing from the closet. The closet door that is present is difficult to move and does not appear to be on the runners correctly."

Front Door Lock: The Mediation Agreement states, in part: "Owner will inspect and repair key lock mechanism of tenant's metal front door."

Mold in the Kitchen: Ms. Cohen's Declaration states: "[T]here are stains that appear to be mold around the kitchen sink."

Exposed Plugs and Outlets: The tenant testified that there were outlets in the kitchen that did not have covers when she moved in, but they were repaired within the past 6 months; the Hearing at which Ms. Maciel testified was held on October 6, 2017.

"Sensitive Plug": Ms. Cohen's Declaration states: "[T]here is a fuse box in the bedroom. The tenant explained that this fuse box will go off when she uses a particular outlet, but she was unable to replicate the complaint."

Bathroom Door: The tenant testified that, when she moved in, there was a door knob on the bathroom, but no lock. The door knob did not work properly, and Mr. Higgins removed the door knob in late 2016. Ms. Cohen's Declaration states: "There is no door knob or lock on the bathroom door." The owner testified that the door was not taken off. The door is a "pocket door," which slides into the wall.

Parking lot lights: The tenant testified that very often some of the parking lot lights are not on. This has been the situation since she moved in.

Cockroaches: The tenant testified that roaches appeared in her unit approximately one and one-half years after she moved in. However, this has not been a problem since the owner purchased roach bait in May 2016. The owner testified that he has a contract for bi-monthly pest control in the subject building. He submitted several invoices from Terminex in the year 2017 for pest control services in the building.<sup>13</sup> These invoices state that the owner has been a customer since 2015. Ms. Cohen's Declaration states: "There were no roaches observed."

---

<sup>13</sup> Exhibit Nos. 181 through 189

GLORIA LOPEZ (Case No. T17-0045)

RAP Notice: The tenant testified that she speaks only Spanish. When she moved into her unit in the year 2009, she spoke with Javier Lopez in Spanish. She has never received the RAP Notice in Spanish.

Rent History: On October 6, 2017, the tenant testified that she paid rent of \$733.33 in January 2017, in accordance with the above-mentioned Mediation Agreement, and that she has paid \$1,155 each month since that time. She intends to continue paying \$1,155 per month until she receives a Hearing Decision in this case. The above-noted Mediation Agreement states that the tenant's Base Rent was \$1,050 per month. The Mediation Agreement further states that the tenant's rent for January 2017 is \$733 per month. The owner submitted a copy of the contested rent increase notice, which states that the rent will increase from \$1,050 to \$1,155 per month, effective January 31, 2017.<sup>14</sup>

The owner referred to his records, and testified that the tenant paid rent in the year 2017 as follows: January - \$648.33; February - \$1,175; March - \$1,135; April - \$1,150; and May through September - \$1,155; he did not know the amount of rent that the tenant paid in October.

Decreased Housing Services: The file contains a Proof of Service in which an employee of the Rent Adjustment Program states under oath that on October 9, 2017, she mailed a Notice of Inspection to the tenant, which states that a Hearing Officer of the Rent Adjustment Program would inspect the tenant's unit on October 23, 2017. Ms. Cohen's Declaration states: "The tenants in unit 13 were not at home when I arrived." At the Hearing on November 3, 2017, the tenant testified that she was not at home on October 23, 2017 because she had to work. The tenant further testified that her 19 year old son was at home, and he told her that he did not hear anyone knocking on their front door on the day of the inspection.

Living Room Window: The tenant testified that in 2014 or 2015, the owner covered a large living room window with wall board. The owner told the tenant that this was done to give the tenant protection against break-ins because the window that was covered was right next to the front door to the unit. The tenant submitted a photograph which depicts a wall area extending from a window to a corner of a room.<sup>15</sup> That wall area appears to be between 3 and 4 feet in width. She testified that she took this photo more than one year before she testified on October 6, 2017. There was no further testimony as to when the window was covered. The tenant testified that this change allows less light to enter the living room, which is where her children do their homework, and also increases her electric bill.

The tenant filed a prior Petition, Case No. T15-0510, on November 6, 2015. That petition claimed several decreased housing services, but did not include a claim regarding the living room window. The tenant testified that she took this photo more than one year before she testified on October 6, 2017.

---

<sup>14</sup> Exhibit No. 161

<sup>15</sup> Exhibit No. 144. The owner objected to the admission of the photos Exhibits 142 through 157 on the ground that they were "old photos." The objection was overruled, and the documents were admitted into evidence.



Chipping Paint: The tenant testified that her unit had not been painted when she moved in and there is an area on her children's bedroom door where paint is chipping. She submitted a photograph that appears to show an area where paint is missing on a surface.<sup>16</sup>

Carpet: The tenant testified that, when she moved in, the floors were smooth. The owner then installed carpeting, which aggravated her son's asthma.

Mold: The tenant testified that there is mold on the walls and windows in her bathroom and bedroom. The tenant further testified that in November 2016, she told Mr. Higgins that water was entering her bathroom ceiling. Mr. Higgins repaired the leak from above in mid-October 2017. She always opens the bathroom window after showering, and there has been no problem since the repair was made. The tenant submitted photographs that depict a considerable amount of either mold or dirt on two surfaces.<sup>17</sup>

The owner testified that, when he inspected the tenant's unit in March 2017, he did not see any mold, only dirt. He told the tenant to clean these areas and ventilate the unit. The owner submitted two photographs of the tenant's bathtub area, which bear the date May 31, 2016.<sup>18</sup> These photos depict clean tub and wall areas.

The above-mentioned Mediation Agreement, signed by the parties on January 11, 2016, states, with regard to the tenant: "The owner agrees to make the following repairs: . . . "Inspect for mold in bedroom and kitchen wall and repair if necessary."

Refrigerator: The tenant testified that in the summer of 2015, the food compartment at the bottom of the inside of the refrigerator broke when she put food in it. If she puts a lot of vegetables in this compartment, it will crack more. The tenant submitted a photograph which appears to depict a large crack in a panel.<sup>19</sup> On questioning by the owner, the tenant testified that the person who delivered the refrigerator – and later inspected it – told her that the compartment cracked because she had put too much weight in it. The owner testified that the compartment broke when the tenant overfilled it. It was not damaged before it was over-filled.

Kitchen Floor Board: The tenant testified that a floorboard in her kitchen began to come up soon after she moved in, and she reported this to the owner's agent 6 or 7 years ago. On questioning by the owner, the tenant testified that she told Javier Leon and Mr. Higgins about this condition in the year 2014. The tenant submitted a photo which appears to be the base of a cabinet under a sink, which she took in approximately September 2016.<sup>20</sup> This photo depicts a great deal of water damage and discoloration on the wooden surface.

ORTIZ (Case No. T17-0078; Unit #5)

RAP Notice: The tenant testified that she is a Spanish speaker. She speaks little or no English and cannot read English. She has never been given a RAP Notice in Spanish. The tenant further

---

<sup>16</sup> Exhibit No. 146, photo "A"

<sup>17</sup> Exhibit Nos. 146, photo "B," 148 & 150

<sup>18</sup> Exhibit No. 158

<sup>19</sup> Exhibit No. 152

<sup>20</sup> Exhibit No. 155

testified that she can speak a few words in English, and that if more conversation is needed, she often asks Ms. Canales' son to interpret for her. After looking at her unit, she spoke with Javier Leon in Spanish and then rented the unit.

Mr. Sinclair testified that, when the tenant was considering renting the subject unit, the tenant asked him the rent amount in English, and the tenant has always spoken to him in English. Mr. Sinclair further testified that Javier Leon spoke with the tenant in English. On cross-examination, Mr. Sinclair testified that the tenant speaks enough English to communicate with him if there is a needed repair.

Rent History: The tenant testified that she has paid rent of \$990 per month since February 2017; the owner agreed with this testimony. The tenant further testified that she intends to continue paying this amount each month until she receives a Hearing Decision.

Decreased Housing Services:

Stove: The tenant testified that, soon after she moved into her unit in June 2014, two pilot lights on the stove burners regularly began to go out, and needed to be re-lit. In the year 2016, the owner told her that he would replace the stove, but this has not been done. Ms. Cohen states in her Declaration: "all 4 burners on the stove were operable."

Kitchen Backsplash: The tenant testified that the backsplash on the wall to the right side of the stove is located too close to the stove. As a result, the panel will burn if large pots are being used on the right-hand burners. The tenant submitted a photograph that he took on March 6, 2016, which depicts two large burnt areas on a panel on the wall to the right of the stove.<sup>21</sup> The tenant further testified that this panel was in the same place when he moved into his unit in the year 2013 or 2014. Ms. Cohen wrote: "Adjacent to the stove is a linoleum backsplash that is pulling away from the wall. There are two large burn marks on this linoleum."

Smoke Detector: The tenant testified that in early November 2016, he realized that the smoke detector in his bedroom was not working, although he heard no beeping sound. He reported this to the owner's agent on November 15, 2016. The tenant did not change the battery, but the owner replaced the smoke detector in early July 2017. On cross-examination, the tenant testified that he has never given the owner written notice of any problem in his unit.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

GONZALEZ and LOPEZ (Case No. T17-0040)

RAP Notice: The tenants testified in a straightforward manner; they are Spanish speakers, and speak only a few words in English. This testimony is found to be credible. The owner testified that his father spoke Spanish, and it is probable that a Spanish speaker who speaks even some English would feel more comfortable speaking to a fellow Spanish speaker in Spanish. Mr. Higgins' testimony that he does not even know if Javier Leon spoke Spanish is found to be untrue, and the rest of his testimony is therefore suspect. It is found that the tenants have proven

---

<sup>21</sup> Exhibit No. 129.

by a preponderance of the evidence that their rental agreement was negotiated in Spanish. The parties agree that the tenants have never been given the RAP Notice in Spanish.

Civil Code Section 1632 states, in part:

Any person engaged in a trade or business who negotiates primarily in Spanish . . . orally or in writing, in the course of entering into any of the following, shall deliver to the other party to the contract or agreement and prior to the execution thereof, a translation of the contract or agreement in the language in which the contract or agreement was negotiated, which includes a translation of every term and condition in that contract of agreement: . . . (3) A lease . . . for a period of longer than one month . . . covering a dwelling . . .

(g) The term “contract” or “agreement,” as used in this section, . . . includes any subsequent document making substantial changes in the rights and obligations of the parties.

The Board has held that, in accordance with this statute, a RAP Notice must be given in the same language in which negotiations were held.<sup>22</sup> The Rent Adjustment Ordinance requires an owner to serve the RAP Notice at the start of a tenancy<sup>23</sup> and together with any notice of rent increase or change in terms of a tenancy.<sup>24</sup> An owner may cure the failure to give notice at the start of the tenancy. However, a notice of rent increase is not valid if the effective date of increase is less than six months after a tenant first receives the required RAP notice.<sup>25</sup>

A tenant petition must be filed within 90 days of the date of service of a rent increase notice or the date the tenant first receives the RAP Notice, whichever is later.<sup>26</sup>

Since the tenants have never been given a Spanish version of the RAP Notice, their petition contesting the rent increase was filed within the required time limit, and the contested rent increase is invalid. Before considering the tenants’ claims of decreased housing services, the tenants’ base rent is \$850 per month. Further, the tenants have overpaid rent, as set forth in the Table below.

Decreased Housing Services: Under the Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent<sup>27</sup> and may be corrected by a rent adjustment.<sup>28</sup> However, in order to justify a decrease in rent, a decrease in housing services must be either the elimination or reduction of a service that existed at the start of the tenancy or a violation of the housing or building code which seriously affects the habitability of the tenant’s unit.

---

<sup>22</sup> Case No. T06-0154, Soriano, et al. v. Western Mgt. Properties.

<sup>23</sup> O.M.C. Section 8.22.060(A)

<sup>24</sup> O.M.C. Section 8.22.070(H)(1)(A)

<sup>25</sup> O.M.C. Section 8.22.060(C)

<sup>26</sup> O.M.C. Section 8.22.090 (A)(2)

<sup>27</sup> O.M.C. Section 8.22.070(F)

<sup>28</sup> O.M.C. Section 8.22.110(E)

Further, in order for a tenant's claim for decreased housing services to be granted, an owner must have notice of a problem and a reasonable opportunity to make needed repairs. The notice to the owner does not have to be in writing.

Kitchen Sink: The owner repaired the sink within a reasonable period of time, and the claim is denied.

Closet Doors: It appears that at least part of the problem is that the tenants or their guests damaged the doors. The tenants have not sustained their burden of proof regarding this claim, and the claim is denied.

Closet Light: The light fixture was in place when the tenants moved in, and replacement of light bulbs is the responsibility of tenants. The claim is denied.

Front Gate: It is found that the lock on the front gate is often damaged by vandalism and/or misuse. It appears that the owner acts within a reasonable period of time to repair or replace the damaged lock, and the claim is denied.

**OVERPAID RENT**

From	To	Monthly Rent paid	Max Monthly Rent	Difference per month	No. Months	Sub-total
1-Feb-17	31-May-18	\$930	\$850	\$ 80.00	16	\$ 1,280.00
<b>TOTAL OVERPAID RENT</b>						<b>\$ 1,280.00</b>

**RESTITUTION**

MONTHLY RENT	\$850
<b>TOTAL TO BE REPAYED TO TENANT</b>	<b>\$ 1,280.00</b>
TOTAL AS PERCENT OF MONTHLY RENT	151%
AMORTIZED OVER 12 MO. BY REG. IS	<b>\$ 106.67</b>

Conclusion: The tenants have overpaid rent in the amount of \$1,280. The overpayment is ordered repaid over a period of 12 months.<sup>29</sup> The rent is temporarily reduced by \$106.67 per month, to \$743.33 per month, beginning with the rent payment in June 2018 and ending with the rent payment in May 2019.

MIRANDA (Case No. T17-0041)

RAP Notice: For the same reasons stated above with regard to the Gonzalez and Lopez petitions, it is found that the tenant's rental agreement was negotiated in Spanish. Therefore, the contested rent increase is invalid, and the base rent is \$765 per month. Before considering the tenant's claims of decreased housing services, the tenant has overpaid rent, as set forth in the Table below.

<sup>29</sup> Regulations, Section 8.22.110(F)

Decreased Housing Services: There is a time limit for claiming decreased housing services. If the decreased service is the result of a noticed or discrete change in services provided to the tenant, the petition must be filed within 90 days after of whichever is later: (1) the date the tenant is noticed or first becomes aware of the decreased housing service; or (2) the date the tenant first receives the RAP Notice. Where the RAP notice has never been given, a tenant can be granted restitution for rent overpayments due to decreased housing services for a maximum of 3 years.<sup>30</sup>

Carpet: Both Ms. Cohen’s Declaration and the photographs submitted by the owner are substantial evidence that there is nothing wrong with the carpet or threshold. The claim is therefore denied.

Electrical Outlets: The Mediation Agreement that the parties signed on January 11, 2016, states that the owner will “repair bedroom outlets.” The Agreement states that “The parties agree to submit disputes arising out of this Agreement to arbitration before a Rent Adjustment Hearing Officer.” Therefore, if the tenant believes that the owner has not complied with the Mediation Agreement, the dispute must be resolved in a procedure apart from this petition. For this reason, the claim is denied.

Roaches: The tenant testified that the owner hired a pest control company in 2013, and Ms. Cohen states that she observed no roaches. The roach problem was apparently resolved far more than 3 years ago, and the claim is denied.

Stove Hood Fan: A stove hood fan is a useful amenity, and the fan should reasonably have been repaired within one of month of the report to the owner. The lack of the fan reduced the package of housing services by 1%.from May 2016 through January 2017, a period of 10 months, and the tenant overpaid rent during that time, as set forth in the Table below.

Conclusion: The tenant has overpaid a total of \$2,788.85. This overpayment is ordered repaid over a period of 12 months.<sup>31</sup> The rent of \$765 per month is temporarily reduced by \$232.40 per month, to \$532.60 per month, beginning with the rent payment in June 2018 and ending with the rent payment in May 2019.

**VALUE OF LOST SERVICES**

Service Lost	From	To	Rent	% Rent Decrease	Decrease /month	No. Mont hs	Overpaid
Fan Hood	1-May-16	31-Jan-17	\$765	1%	\$ 7.65	9	\$ 68.85
<b>TOTAL LOST SERVICES</b>							<b>\$ 68.85</b>

<sup>30</sup> Appeal Decision in Case No. T06-0051, Barajas/Avalos v. Chu

<sup>31</sup> Regulations, Section 8.22.110(F)

**OVERPAID RENT**

From	To	Monthly Rent paid	Max Monthly Rent	Difference per month	No. Months	Sub-total
1-Feb-17	31-May-18	\$935	\$765	\$ 170.00	16	\$ 2,720.00
<b>TOTAL OVERPAID RENT</b>						<b>\$ 2,720.00</b>

**RESTITUTION**

MONTHLY RENT	\$765
<b>TOTAL TO BE REPAID TO TENANT</b>	<b>\$ 2,788.85</b>
TOTAL AS PERCENT OF MONTHLY RENT	365%
AMORTIZED OVER 12 MO. BY REG. IS	<b>\$ 232.40</b>

CANALES (Case No. T17-0042)

RAP Notice: For the same reasons stated above with regard to the Gonzalez and Lopez petitions, it is found that the tenant's rental agreement was negotiated in Spanish. Therefore, the tenant's petition was filed within the require time limit to contest all rent increases. Those rent increases are invalid, and the tenant's base rent is \$850 per month. Before considering the tenant's claims of decreased housing services, the tenant has overpaid rent, as set forth in the Table below.

Decreased Housing Services:

Bathroom Door: A locking bathroom door provides needed privacy. The lack of a lock on the door has reduced the package of housing services by 3% since February 2017, when the owner should reasonably have installed a doorknob and lock on the door. The tenant overpaid rent during that time, as set forth in the Table below. Because of the current decrease in housing services, the rent is reduced by 3%, being \$25.50 per month, to \$824.50 per month. This rent decrease will remain in effect until a doorknob and lock are installed in the bathroom door, as specified in the Order below. Further, as set forth on the following Table, because the bathroom door has not had a doorknob and lock, the tenant has overpaid rent since February 2017.

Electric Plug in Kitchen: Section 15.08.260(C) of the City Building Maintenance Code states: "Every habitable room shall contain at least two electrical convenience receptacles or one convenience receptacle and one switched light fixture." The tenant was unsure whether all outlets were working when she moved in, and the kitchen complies with the requirement quoted above. Therefore, the claim is denied.

Cockroaches: It is found that the owner has acted reasonably by first spraying and then having regular, professional extermination. These efforts have been successful, since the tenant testified that she has seen few roaches for the past 2 years. The claim is denied.

**Bathroom Mold:** The applicable Code requires either a window or exhaust fan for a bathroom, but not both.<sup>32</sup> Mold will grow if there is moisture without proper ventilation and regular cleaning. The fact that mold did not return for months after Mr. Higgins cleaned the bathroom indicates that mold in the bathroom can be controlled with proper maintenance. Further, the tenant did not identify any source of the mold other than the usual bathroom moisture. The claim is therefore denied.

**Parking Lot Lights:** The evidence is, at best, equally balanced. Therefore, the tenant has not sustained her burden of proof on this claim, which is denied.

Service Lost	From	To	Rent	% Rent Decrease	Decrease /month	No. Mont hs	Overpaid
Bathroom Door	1-Feb-17	31-May-18	\$850	3%	\$ 25.50	16	\$ 408.00
<b>TOTAL LOST SERVICES</b>							<b>\$ 408.00</b>

**OVERPAID RENT**

From	To	Monthly Rent paid	Max Monthly Rent	Difference per month	No. Mont hs	Sub-total
1-Sep-15	31-Jan-17	\$990	\$850	\$ 140.00	17	\$ 2,380.00
1-Feb-17	31-May-18	\$1,050	\$850	\$ 200.00	16	\$ 3,200.00
<b>TOTAL OVERPAID RENT</b>						<b>\$ 5,580.00</b>

**RESTITUTION**

MONTHLY RENT	\$850
<b>TOTAL TO BE REPAYED TO TENANT</b>	<b>\$ 5,988.00</b>
TOTAL AS PERCENT OF MONTHLY RENT	704%
AMORTIZED OVER 12 MO. BY REG. IS	<b>\$ 499.00</b>

**Conclusion:** The tenant has overpaid a total of \$5,988. This overpayment is ordered repaid over a period of 12 months.<sup>33</sup> The current rent of \$824.50 per month is temporarily reduced by \$499 per month, to \$325.50 per month, beginning with the rent payment in June 2018 and ending with the rent payment in May 2019. When a door knob and lock are installed in the bathroom door, the owner may increase the rent by \$25.50 per month, as specified in the Order below.

De La TORRE (Case No. T17-0043)

**RAP Notice:** For the same reasons stated above with regard to the Gonzalez and Lopez petitions, it is found that the tenant's rental agreement was negotiated in Spanish. The parties agree that the tenant has never received the RAP Notice in Spanish. Therefore, the contested rent increase is invalid and the tenant's base rent is \$765 per month. Before considering the

<sup>32</sup> Oakland Building Maintenance Code, Section 15.08.220 (C)

<sup>33</sup> Regulations, Section 8.22.110(F)

tenant's claims of decreased housing services, the tenant has overpaid rent, as set forth in the Table below.

Decreased Housing Services:

Kitchen Cabinet Handles: This was a claim made in the above-cited Mediation Agreement, in which the owner agreed to repair the handles. Therefore, if the tenant believes that the owner has not complied with the Mediation Agreement, the dispute must be resolved in a procedure apart from this petition. For this reason, the claim is denied.

Bathroom Fan: Ceiling exhaust fans will accumulate lint, and need to be cleaned periodically in order to work efficiently. This type of maintenance is normally a tenant's responsibility unless there is a specific agreement between the parties to the contrary. The fan worked well after Mr. Higgins cleaned it in May 2017, and it also worked well at time of Ms. Cohen's inspection in October 2017. The tenant has not sustained her burden of proving that this situation was a serious problem beyond her control, and the claim is denied.

Stove: Although the fourth burner should have been repaired more quickly, this was a minor problem, and did not decrease the tenant's housing services by any quantifiable amount. Therefore, the claim is denied.

Front Gate Lock: It is found that the lock on the front gate is often damaged by vandalism and/or misuse. It appears that the owner acts within a reasonable period of time to repair or replace the damaged lock, and the claim is denied.

Conclusion: The tenant has overpaid a total of \$2,720. This overpayment is ordered repaid over a period of 12 months.<sup>34</sup> The current rent of \$765 per month is temporarily reduced by \$226.67 per month, to \$538.33 per month, beginning with the rent payment in June 2018 and ending with the rent payment in May 2019.

**OVERPAID RENT**

From	To	Monthly Rent paid	Max Monthly Rent	Difference per month	No. Months	Sub-total
1-Feb-17	31-May-18	\$935	\$765	\$ 170.00	16	\$ 2,720.00
<b>TOTAL OVERPAID RENT</b>						<b>\$ 2,720.00</b>

**RESTITUTION**

	MONTHLY RENT	\$765
<b>TOTAL TO BE REPAYED TO TENANT</b>		<b>\$ 2,720.00</b>
TOTAL AS PERCENT OF MONTHLY RENT		356%
AMORTIZED OVER 12 MO. BY REG. IS		<b>\$ 226.67</b>

<sup>34</sup> Regulations, Section 8.22.110(F)



RAP Notice: For the same reasons stated above with regard to the Gonzalez and Lopez petitions, it is found that the tenant's rental agreement was negotiated in Spanish. The parties agree that the tenant has never received the RAP Notice in Spanish. Therefore, the contested rent increase is invalid and the tenant's base rent is \$765 per month. Before considering the tenant's claims of decreased housing services, the tenant has overpaid rent, as set forth in the Table below.

Decreased Housing Services:

Fuse Box: As discussed above, under the Rent Adjustment Ordinance restitution is limited to 3 years. Since the problem was remedied in 2013 or 2014, the claim is denied.

Closet Doors: Because this was an issue in the above-discussed Mediation Agreement, any problem must be addressed in a different forum. Therefore, the claim is denied.

Front Door Lock: The Mediation Agreement states, in part: "Owner will inspect and repair key lock mechanism of tenant's metal front door." Further, as discussed above, the owner has acted reasonably. For both of these reasons, the claim is denied.

Mold in the Kitchen: Ms. Cohen's Declaration states: "[T]here are stains that appear to be mold around the kitchen sink." Mold will develop if surfaces become wet and are then not cleaned properly and regularly. This is a tenant's responsibility. The mold was not extensive at the time of the inspection, and the tenant has not sustained her burden of proof that the mold is due to any fault of the owner. The claim is therefore denied.

Exposed Plugs and Outlets: In the tenant's prior petition, being Case No. T15-0466, the tenant alleged decreased housing services. Included in the list in that case was: "There are several faceplates missing from the electrical outlets in the kitchen." The Mediation Agreement in that case states, in part: "The following Agreement is intended to compromise and end the dispute to resolve the issues presented in the Petitions and Responses in the cases described above." This issue cannot be raised a second time, and the claim is denied.

"Sensitive Plug": Ms. Cohen was unable to replicate this complaint at the time of her inspection. The tenant has not sustained her burden of proof on this claim, which is denied.

Bathroom Door: The tenant testified that, when she moved in, there was a door knob on the bathroom, but no lock. The door knob did not work properly, and Mr. Higgins removed the door knob in late 2016. Ms. Cohen's Declaration states: "There is no door knob or lock on the bathroom door."

The owner testified that the door was not taken off. The door is a "pocket door," which slides into the wall. Since a "pocket door" does not have a door knob, the findings of Ms. Cohen, a neutral observer, and the testimony of the tenant, are credited. It is found that the bathroom door is a standard door, and does not have a door knob or lock.

A locking bathroom door provides needed privacy. The lack of a lock on the door has reduced the package of housing services by 3% since December 2016, when Mr. Higgins removed the door knob and lock. Because of the current decrease in housing services, the rent is reduced by 3%, being \$22.95 per month, to \$742.05 per month. This rent decrease will remain in effect until a door knob and lock are installed in the bathroom door, as specified in the Order below. Further, as set forth on the following Table, the tenant overpaid rent.

Parking lot lights: The evidence is, at best, equally balanced. Therefore, the tenant has not sustained her burden of proof on this claim, which is denied.

Cockroaches: There have been few, if any roaches since at least May 2016, and the Terminex invoice states that the owner has been a customer since 2015. The tenant has not sustained her burden of proving that there has been a serious roach problem during the past 3 years, and the claim is denied.

**VALUE OF LOST SERVICES**

Service Lost	From	To	Rent	% Rent Decrease	Decrease /month	No. Months	Overpaid
Bathroom Door	1-Dec-16	31-Jan-17	\$765	3%	\$ 22.95	2	\$ 45.90
Bathroom Door	1-Feb-17	31-May-18	\$935	3%	\$ 28.05	16	\$ 448.80
<b>TOTAL LOST SERVICES</b>							<b>\$ 494.70</b>

**OVERPAID RENT**

From	To	Monthly Rent paid	Max Monthly Rent	Difference per month	No. Months	Sub-total
1-Feb-17	31-May-18	\$935	\$765	\$ 170.00	16	\$ 2,720.00
<b>TOTAL OVERPAID RENT</b>						<b>\$ 2,720.00</b>

**RESTITUTION**

MONTHLY RENT	\$765
<b>TOTAL TO BE REPAYED TO TENANT</b>	<b>\$ 3,214.70</b>
TOTAL AS PERCENT OF MONTHLY RENT	420%
AMORTIZED OVER 12 MO. BY REG. IS	<b>\$ 267.89</b>

Conclusion: The tenant has overpaid a total of \$3,214.70. This overpayment is ordered repaid over a period of 12 months.<sup>35</sup> The current rent of \$742.05 per month is temporarily reduced by \$267.89 per month, to \$474.16 per month, beginning with the rent payment in June 2018 and

<sup>35</sup> Regulations, Section 8.22.110(F)

ending with the rent payment in May 2019. When a door knob and lock are installed in the bathroom door, the owner may increase the rent by \$22.95 per month, as specified in the Order below.

GLORIA LOPEZ (Case No. T17-0045)

RAP Notice: For the same reasons stated above with regard to the Gonzalez and Lopez petitions, it is found that the tenant's rental agreement was negotiated in Spanish. The parties agree that the tenant has never received the RAP Notice in Spanish. Therefore, the contested rent increase is invalid and the tenant's base rent is \$945 per month, effective February 2017.

The tenant did not have written proof of rent payments. By contrast, the owner referred to his bookkeeping records. It is found that the owner's records are more reliable. The owner referred to his records, and testified that the tenant paid rent in the year 2017 as follows: January - \$648.33; February - \$1,175; March - \$1,135; April - \$1,150; and May through September - \$1,155; he did not know the amount of rent that the tenant paid in October.

Based upon these figures, and assuming that the tenant continued to pay \$1,155 in each month since then, and before considering the tenant's claims of decreased housing services, the tenant has overpaid rent, as set forth in the Table below.

Decreased Housing Services:

Living Room Window: Although the owner's motive for covering over the window was to add security, the fact remains that the tenant rented the unit with the window in place. This window provided additional light in the room, which made the room more pleasant and aided her children in doing their homework. The tenant filed a prior Petition, being No. T15-0510, on November 6, 2015. That petition claimed several decreased housing services, and did not include a claim regarding the living room window. The tenant testified that she took this photo more than one year before she testified on October 6, 2017, and there was no further testimony as to when the window was covered. It is therefore reasonable to assume that the window was covered in approximately July 2016.

Any increase in the tenant's electric bill is impossible to determine, since electric rates are known to increase over time. However, the loss of additional ventilation and light in the living room has reduced the package of housing services by 5%, being \$31.50 per month since July 2016. This is an ongoing rent decrease until the window is restored. Further, the tenant has overpaid rent as set forth in the Table below.

Chipping Paint: The area of missing paint shown on the photo submitted by the tenant is quite small, and has little, if any, effect upon the habitability of the unit. Further, while additional areas of chipping paint may have been noted upon inspection, the tenant was not at home at the time of Ms. Cohen's inspection. If, in fact, the tenant's son was at home, he should have been looking out for the Hearing Officer, who was to arrive at a specific time. The California Evidence Code states a common-sense principle: "If weaker and less satisfactory evidence is offered when it was within the power of the party to produce stronger and more

satisfactory evidence, the evidence offered should be viewed with distrust.”<sup>36</sup> Therefore, based upon the available evidence, the claim is denied.

Carpet: Installation of carpeting certainly does not in itself decrease a tenant’s housing services, and the contention that the carpeting posed a health problem to the tenant’s son is entirely speculative. The claim is denied.

Mold: The Mediation Agreement states, with regard to the tenant: “The owner agrees to make the following repairs: . . . “Inspect for mold in bedroom and kitchen wall and repair if necessary.” If the owner has not complied with this Agreement, the tenant’s remedy is in another forum. With regard to mold that developed months after the Mediation Agreement was signed, the evidence is equally well balanced. The claim is therefore denied.

Refrigerator: It is most likely that the compartment broke when it was overloaded by the tenant. An owner is not responsible for damage caused by a tenant, and the claim is denied.

Kitchen Floor Board: Wet and perhaps moldy wood is a potential health hazard, which has reduced the tenant’s housing services by 2%, being \$21 per month. This rent decrease will remain in effect until the wood surface under the kitchen sink is replaced, as specified in the Order below. Further, the tenant has overpaid rent as set forth in the Table below.

**VALUE OF LOST SERVICES**

Service Lost	From	To	Rent	% Rent Decrease	Decrease /month	No. Months	Overpaid
Living Room Window	1-Jul-16	31-May-18	\$1,050	5%	\$ 52.50	23	\$ 1,207.50
Kitchen Floor Board	1-Nov-14	31-May-18	\$1,050	2%	\$ 21.00	43	\$ 903.00
<b>TOTAL LOST SERVICES</b>							<b>\$ 2,110.50</b>

**OVERPAID RENT**

From	To	Monthly Rent paid	Max Monthly Rent	Difference per month	No. Months	Sub-total
1-Jan-17	31-Jan-17	\$648	\$733	\$ (85.00)	1	\$ (85.00)
1-Feb-17	28-Feb-17	\$1,175	\$945	\$ 230.00	1	\$ 230.00
1-Mar-17	31-Mar-17	\$1,135	\$945	\$ 190.00	1	\$ 190.00
1-Apr-17	30-Apr-17	\$1,150	\$945	\$ 205.00	1	\$ 205.00
1-May-17	31-May-18	\$1,155	\$945	\$ 210.00	13	\$2,730.00
<b>TOTAL OVERPAID RENT</b>						<b>\$3,270.00</b>

<sup>36</sup> Evidence Code, Section 412

**RESTITUTION**

MONTHLY RENT	\$945
<b>TOTAL TO BE REPAID TO TENANT</b>	<b>\$ 5,380.50</b>
TOTAL AS PERCENT OF MONTHLY RENT	1,756%

Conclusion: Because of ongoing decreased housing services, the current rent is reduced by a total of 7%, to \$878.85 per month. Further, because of lack of a proper RAP Notice and past decreased housing services, the tenant has overpaid \$5,380.50. This overpayment is ordered repaid over a period of 12 months.<sup>37</sup> The current rent of \$878.85 per month is temporarily reduced by \$448.37 per month, to \$430.48 per month, beginning with the rent payment in June 2018 and ending with the rent payment in May 2019.

ORTIZ (Case No. T17-0078)

RAP Notice: For the same reasons stated above with regard to the Gonzalez and Lopez petitions, it is found that the tenant's rental agreement was negotiated in Spanish. The parties agree that the tenant has never received the RAP Notice in Spanish. Therefore, the contested rent increase is invalid and the tenant's base rent is \$900 per month, effective February 2017. Before considering the tenant's claims of decreased housing services, the tenant has overpaid rent, as set forth in the Table below.

Decreased Housing Services:

Stove: There is no evidence that there has been a problem with the stove since 2014, and all burners operated properly at the time of Ms. Cohen's inspection. The claim is therefore denied.

Kitchen Backsplash: The burn marks, and probably the resulting loosening of the backsplash, were the result of the tenant's cooking procedures. This cannot be blamed on the owner, and the claim is denied.

Smoke Detector: Smoke detector batteries do need to be replaced periodically and, without notice from the tenant, the owner had no knowledge that there was a problem. Therefore, the claim is denied.

**OVERPAID RENT**

From	To	Monthly Rent paid	Max Monthly Rent	Difference per month	No. Months	Sub-total
1-Feb-17	31-May-18	\$990	\$900	\$ 90.00	16	\$ 1,440.00
<b>TOTAL OVERPAID RENT</b>						<b>\$ 1,440.00</b>

<sup>37</sup> Regulations, Section 8.22.110(F)

**RESTITUTION**

	MONTHLY RENT	\$900
	TOTAL TO BE REPAID TO TENANT	\$ 1,440.00
	TOTAL AS PERCENT OF MONTHLY RENT	160%
AMORTIZED OVER	12 MO. BY REG. IS	\$ 120.00

Conclusion: The tenant has overpaid a total of \$1,440. This overpayment is ordered repaid over a period of 12 months.<sup>38</sup> The current rent of \$900 per month is temporarily reduced by \$120 per month, to \$780 per month, beginning with the rent payment in June 2018 and ending with the rent payment in May 2019.

**ORDER**

1. Petition T17-0040 (Gonzalez & Lopez) is partly granted.
2. The Base Rent is \$850 per month.
3. The tenants have overpaid rent in the amount of \$1,280. The overpayment is ordered repaid over a period of 12 months. The rent of \$850 per month is temporarily reduced by \$106.67 per month, to \$743.33 per month, beginning with the rent payment in June 2018 and ending with the rent payment in May 2019.
4. In June 2019, the rent will increase to \$850 per month.
5. The owner may otherwise be eligible for a rent increase, with an effective date not less than 6 months after the tenants are given a RAP Notice in the Spanish language.
6. Petition T17-0041 (Miranda) is partly granted.
7. The Base Rent is \$765 per month.
8. The tenant has overpaid rent in the amount of \$2,788.85. The overpayment is ordered repaid over a period of 12 months. The rent of \$765 per month is temporarily reduced by \$232.40 per month, to \$532.60 per month, beginning with the rent payment in June 2018 and ending with the rent payment in May 2019.
9. In June 2019, the rent will increase to \$765 per month.
10. The owner may otherwise be eligible for a rent increase, with an effective date not less than 6 months after the tenants are given a RAP Notice in the Spanish language.
11. Petition T17-0042 (Canales) is partly granted.
12. The Base Rent is \$850 per month.

---

<sup>38</sup> Regulations, Section 8.22.110(F)

13. Because of the current decrease in housing services, the rent is reduced by 3%, being \$25.50 per month, to \$824.50 per month. This rent decrease will remain in effect until a doorknob and lock are installed in the bathroom door.

14. The tenant has overpaid a total of \$5,988. This overpayment is ordered repaid over a period of 12 months. The current rent of \$824.50 per month is temporarily reduced by \$499 per month, to \$325.50 per month, beginning with the rent payment in June 2018 and ending with the rent payment in May 2019.

15. In June 2019, the rent will increase to \$824.50 per month.

16. When a door knob and lock are installed in the bathroom door, the owner may increase the rent by \$25.50 per month, after giving notice in accordance with Civil Code Section 827 and the Rent Adjustment Ordinance.

17. The owner may otherwise be eligible for a rent increase, with an effective date not less than 6 months after the tenants are given a RAP Notice in the Spanish language.

18. Petition T17-0043 (De La Torre) is partly granted.

18. The Base Rent is \$765 per month.

19. The tenant has overpaid a total of \$2,720. This overpayment is ordered repaid over a period of 12 months. The current rent of \$765 per month is temporarily reduced by \$226.67 per month, to \$538.33 per month, beginning with the rent payment in June 2018 and ending with the rent payment in May 2019.

20. In June 2019, the rent will increase to \$765 per month.

21. The owner may otherwise be eligible for a rent increase, with an effective date not less than 6 months after the tenants are given a RAP Notice in the Spanish language.

22. Petition T17-0044 (Maciel) is partly granted.

23. The Base Rent is \$765 per month.

24. Because of the current decrease in housing services, the rent is reduced by 3%, being \$22.95 per month, to \$742.05 per month. This rent decrease will remain in effect until a door knob and lock are installed in the bathroom door.

25. The tenant has overpaid a total of \$3,214.70. This overpayment is ordered repaid over a period of 12 months. The current rent of \$742.05 per month is temporarily reduced by \$267.89 per month, to \$474.16 per month, beginning with the rent payment in June 2018 and ending with the rent payment in May 2019.

26. In June 2019, the rent will increase to \$824.50 per month.
27. When a door knob and lock are installed in the bathroom door, the owner may increase the rent by \$22.95 per month, after giving notice in accordance with Civil Code Section 827 and the Rent Adjustment Ordinance.
28. The owner may otherwise be eligible for a rent increase, with an effective date not less than 6 months after the tenants are given a RAP Notice in the Spanish language.
29. Petition T17-0045 (Gloria Lopez) is partly granted.
30. The Base Rent is \$945 per month.
31. Because of ongoing decreased housing services, the rent, before a temporary reduction due to past decreased housing services, is \$878.85 per month.
32. The tenant has overpaid \$5,380.50. This overpayment is ordered repaid over a period of 12 months.<sup>39</sup> The current rent of \$878.85 per month is temporarily reduced by \$448.37 per month, to \$430.48 per month, beginning with the rent payment in June 2018 and ending with the rent payment in May 2019.
33. In June 2019, the rent will increase to \$878.85 per month.
34. When the living room window is restored, the owner may increase the rent by \$47.50 per month. When the wood surface under the kitchen sink is replaced, the owner may increase the rent by \$18.90 per month. These rents may be increased after giving notice in accordance with Civil Code Section 827 and the Rent Adjustment Ordinance.
35. The owner may otherwise be eligible for a rent increase, with an effective date not less than 6 months after the tenants are given a RAP Notice in the Spanish language.
36. Petition T17-0078 (Ortiz) is partly granted.
37. The Base Rent is \$900 per month.
38. The tenant has overpaid a total of \$1,440. This overpayment is ordered repaid over a period of 12 months. The current rent of \$900 per month is temporarily reduced by \$120 per month, to \$780 per month, beginning with the rent payment in June 2018 and ending with the rent payment in May 2019.
39. In June 2019, the rent will increase to \$900 per month.
40. The owner may otherwise be eligible for a rent increase, with an effective date not less than 6 months after the tenants are given a RAP Notice in the Spanish language.

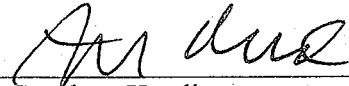
---

<sup>39</sup> Regulations, Section 8.22.110(F)



41. 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.

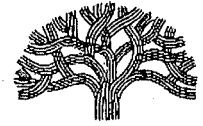
Dated: June 20, 2018



---

Stephen Kasdin  
Hearing Officer  
Rent Adjustment Program

# CITY OF OAKLAND



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

Department of Housing and Community Development  
Rent Adjustment Program

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

## DECLARATION RE: SITE INSPECTION

**CASE NUMBERS:**        **T17-0040, Gonzalez et al v. Leon**  
                              **T17-0041, Miranda v. Leon**  
                              **T17-0042, Canales v Leon**  
                              **T17-0043, De La Torre v Leon**  
                              **T17-0044, Maciel v. Leon**  
                              **T17-0045, Lopez v. Leon**  
                              **T17-0078, Ortiz v Leon**

**PROPERTY ADDRESS: 3020 E. 18<sup>th</sup> Street, Oakland, CA**

**DATE OF INSPECTION: October 23, 2017**

I, Barbara M. Cohen, declare as follows:

1. I am a Hearing Officer with the City of Oakland's Rent Adjustment Program.
2. On October 23, 2017, I performed an inspection at 3020 E. 18<sup>th</sup> Street, Oakland, CA, in multiple units.
3. I was asked to inspect the building regarding the tenants' claims of decreased housing services.
4. Present at the inspection of each unit were tenant representative Jackie Zaneri from Centro Legal, Celina (last name unknown) from Alameda County Vector Control, Daniel Leon, Owner, and Sinclair Hobbins, resident manager. Additionally, in each unit tenants were present. I did not get the names of all of the people present in each unit.
5. The photographs attached to this Declaration are true and correct copies of the photographs I took at the inspection.
6. In several cases (see below) the tenants complained about the front door to the apartment complex. I checked that door and it was working properly.
7. In unit 2, (T17-0040) I was asked to inspect the kitchen sink (because of a claim that dirty water backs up into the sink); closet doors removed and not replaced; the closet light; and the lock on the front of the building.

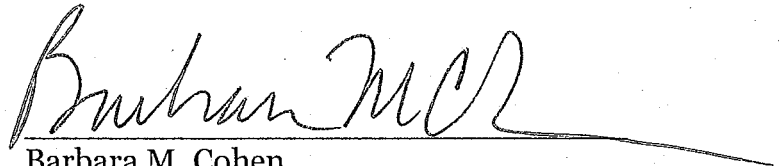
EXHIBIT 00246A "A, 1

8. In unit 2, the kitchen sink was working properly. The closet in the front room is missing two sliding doors and is covered with a cloth. The closet light in the bedroom closet was operating. (See photos 1 & 2, attached to this Declaration.)
9. In unit 4, (T17-0041) I was asked to inspect the carpeting, the electric outlets, cockroaches and a fan over the stove.
10. In unit 4, there was no visible tripping hazard regarding the carpeting; there were no cockroaches observed; and the fan over the stove was working. There was a loose electrical outlet behind the large bed in the bedroom. There is an appliance plugged into that unit and the plug hangs down because it does not fit properly. (See photo 3, attached.)
11. In unit 5, (T17-0078) I was asked to inspect the stove, the sink backsplash next to the stove and the smoke detectors.
12. In unit 5, all 4 burners of the stove were working properly and the tenant stated that the smoke detectors were operable. Adjacent to the stove is a linoleum backsplash that is pulling away from the wall. There are two large burn marks on this linoleum. (See photos 4 & 5, attached.)
13. The tenants in unit 8 were not at home when I arrived. I had been asked to inspect the bathroom door; the electric outlet in the kitchen; whether there were roaches present; whether there was mold in the bathroom; and the lights in the parking lot.
14. In unit 11, (T17-0044) I was asked to inspect the fuse box in the closet; closet doors that do not close properly; the front door lock (to the complex); mold in the kitchen; exposed outlets in the kitchen; an outlet between the bathroom and the kitchen that shuts off when touched; the absence of a lock and knob on the bathroom door; the parking lot lights and roaches.
15. In unit 11, there is a fuse box in the bedroom. The tenant explained that this fuse box will go off when she uses a particular outlet, but she was unable to replicate the complaint. The owner stated that the fuse box is triggered when the tenants overload the system. In the front room, there is a closet door missing from the closet. The closet door that is present is difficult to move and does not appear to be on the runners correctly. The missing door is in the unit. The tenant tried to replace it but could not. She explained that because it is bent, it does not fit properly. There is a slight notch that appears out of place on the top of the closet door. The owner stated that the closet door would not attach because the first door is not hanging correctly. Additionally, there are stains that appear to be mold around the kitchen sink. There is no door knob or lock on the bathroom door. (See photos 6-11.) There were no roaches observed. The tenant stated that the outlet between the bathroom and kitchen was repaired.

16. In unit 12, (T17-0043) I was asked to inspect the kitchen cabinet handles; the bathroom fan; a burner on the stove; and the entryway lock.
17. In unit 12, the kitchen cabinets all have handles; the bathroom fan was working; and the burners on the stove are operable. (See photos 12 & 13, attached.)
18. The tenants in unit 13 were not at home when I arrived. I had been asked to inspect a blocked living room window; chipping paint; the carpet; mold in the bathroom and bedroom; a water leak in the bathroom ceiling; the refrigerator; and the kitchen floor boards.
19. With respect to the concerns about the parking lot; I was unable to check the lights because I was there during the day and the owner informed me that they do not work when it is light outside.

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

October 23, 2017



Barbara M. Cohen  
Hearing Officer  
Rent Adjustment Program

PROOF OF SERVICE

Case Numbers

T17-0040, T17-0041, T17-0042, T17-0043, T17-0044, T17-0044, T17-0045, T17-0078

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

Tenants

Andrea Gonzalez & Feliciano Lopez  
3020 E. 18th St #2  
Oakland, CA 94601

Adriana Miranda  
3020 E. 18th St #4  
Oakland, CA 94601

Laura Coneles  
3020 E. 18th St #8  
Oakland, CA 94601

Martina De La Torre  
3020 E. 18th St #12  
Oakland, CA 94601

Liliana Maciel  
3020 E. 18th St #11  
Oakland, CA 94601

Gloria Lopez  
3020 E. 18th St #13  
Oakland, CA 94601

Marvin Ortiz  
3020 E 18th St #5  
Oakland, CA 94601

Owner

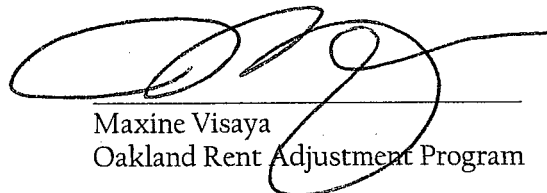
Daniel & Vivian Leon  
30 Sky Terr  
Danville, CA 94526

Tenant Representative

Centro Legal de la Raza  
Martina Cucullo Lim/Sarah Winfield  
3022 International Blvd. Ste 410  
Oakland, CA 94601

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 June 21, 2018 in Oakland, CA.

  
Maxine Visaya  
Oakland Rent Adjustment Program

000249



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

CITY OF OAKLAND

Department of Housing and Community Development  
Rent Adjustment Program

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

## **SECOND AMENDED HEARING DECISION**

**CASE NUMBERS:** T17-0040, Gonzalez, et al. v. Leon; T17-0041, Miranda v. Leon  
T17-0042, Canales v. Leon; T17-0043, De La Torre v. Leon  
T17-0044, Maciel v. Leon; T17-0045, Lopez v. Leon &  
T17-0078, Ortiz v. Leon

**PROPERTY ADDRESS:** 3020 E. 18<sup>th</sup> St., #2, #4, #8, #12, #11, #13, & #5, Oakland, CA

**DATES OF HEARING:** July 24, 2017; October 6, 2017; November 3, 2017; &  
February 23, 2018

**DATE OF INSPECTION:** October 23, 2017

**DATE OF ORIGINAL DECISION:** June 4, 2018

**DATE OF AMENDED DECISION:** June 20, 2018

**DATE OF 2<sup>ND</sup> AMENDED DECISION:** July 12, 2018

**APPEARANCES:** Marvin Ortiz (Tenant)  
Laura Canales (Tenant)  
Martina De La Torre (Tenant)  
Martha Godoy (Tenant)  
Andrea Gonzalez (Tenant)  
Feliciano Lopez (Tenant)  
Liliana Maciel (Tenant)  
Adriana Miranda (Tenant)  
Gloria Lopez (Tenant)  
Feliciano Lopez (Tenant)  
Martina Cucullo Lim (Attorney for Tenants)  
Sarah Winfield (Tenant Representative)  
Daniel Leon (Owner)  
Vivian Leon (Owner)

000250

**Sinclair Higgins (Witness for Owner)**  
**Marci Valdivieso (Interpreter, 7-24-17 & 2-23-18)**  
**Noemi Gonzalez (Interpreter, 10-6-17)**  
**Sergio Chavarin (Interpreter, 11-3-17)**

**REASON FOR A SECOND AMENDED DECISION**

Because of a clerical error, the Amended Hearing Decision did not include the photographs taken by Hearing Officer Barbara Cohen, whose Declaration refers to these photographs. As a result of this error, the parties were not provided with a complete Decision upon which to base an appeal. Therefore, this Second Amended Hearing Decision is being issued. Aside from the inclusion of these photographs, which are attached to this Second Amended Decision, the Hearing Decision remains unchanged.

This Second Amended Hearing Decision is a new Decision, and there is a new time period within which to appeal, as set forth in the Order below.

**ORDER**

1. Petition T17-0040 (Gonzalez & Lopez) is partly granted.
2. The Base Rent is \$850 per month.
3. The tenants have overpaid rent in the amount of \$1,280. The overpayment is ordered repaid over a period of 12 months. The rent of \$850 per month is temporarily reduced by \$106.67 per month, to \$743.33 per month, beginning with the rent payment in June 2018 and ending with the rent payment in May 2019.
4. In June 2019, the rent will increase to \$850 per month.
5. The owner may otherwise be eligible for a rent increase, with an effective date not less than 6 months after the tenants are given a RAP Notice in the Spanish language.
6. Petition T17-0041 (Miranda) is partly granted.
7. The Base Rent is \$765 per month.
8. The tenant has overpaid rent in the amount of \$2,788.85. The overpayment is ordered repaid over a period of 12 months. The rent of \$765 per month is temporarily reduced by \$232.40 per month, to \$532.60 per month, beginning with the rent payment in June 2018 and ending with the rent payment in May 2019.
9. In June 2019, the rent will increase to \$765 per month.
10. The owner may otherwise be eligible for a rent increase, with an effective date not less than 6 months after the tenants are given a RAP Notice in the Spanish language.

11. Petition T17-0042 (Canales) is partly granted.
12. The Base Rent is \$850 per month.
13. Because of the current decrease in housing services, the rent is reduced by 3%, being \$25.50 per month, to \$824.50 per month. This rent decrease will remain in effect until a doorknob and lock are installed in the bathroom door.
14. The tenant has overpaid a total of \$5,988. This overpayment is ordered repaid over a period of 12 months. The current rent of \$824.50 per month is temporarily reduced by \$499 per month, to \$325.50 per month, beginning with the rent payment in June 2018 and ending with the rent payment in May 2019.
15. In June 2019, the rent will increase to \$824.50 per month.
16. When a door knob and lock are installed in the bathroom door, the owner may increase the rent by \$25.50 per month, after giving notice in accordance with Civil Code Section 827 and the Rent Adjustment Ordinance.
17. The owner may otherwise be eligible for a rent increase, with an effective date not less than 6 months after the tenants are given a RAP Notice in the Spanish language.
18. Petition T17-0043 (De La Torre) is partly granted.
18. The Base Rent is \$765 per month.
19. The tenant has overpaid a total of \$2,720. This overpayment is ordered repaid over a period of 12 months. The current rent of \$765 per month is temporarily reduced by \$226.67 per month, to \$538.33 per month, beginning with the rent payment in June 2018 and ending with the rent payment in May 2019.
20. In June 2019, the rent will increase to \$765 per month.
21. The owner may otherwise be eligible for a rent increase, with an effective date not less than 6 months after the tenants are given a RAP Notice in the Spanish language.
22. Petition T17-0044 (Maciel) is partly granted.
23. The Base Rent is \$765 per month.
24. Because of the current decrease in housing services, the rent is reduced by 3%, being \$22.95 per month, to \$742.05 per month. This rent decrease will remain in effect until a door knob and lock are installed in the bathroom door.
25. The tenant has overpaid a total of \$3,214.70. This overpayment is ordered repaid over a period of 12 months. The current rent of \$742.05 per month is temporarily reduced by \$267.89



per month, to \$474.16 per month, beginning with the rent payment in June 2018 and ending with the rent payment in May 2019.

26. In June 2019, the rent will increase to \$824.50 per month.

27. When a door knob and lock are installed in the bathroom door, the owner may increase the rent by \$22.95 per month, after giving notice in accordance with Civil Code Section 827 and the Rent Adjustment Ordinance.

28. The owner may otherwise be eligible for a rent increase, with an effective date not less than 6 months after the tenants are given a RAP Notice in the Spanish language.

29. Petition T17-0045 (Gloria Lopez) is partly granted.

30. The Base Rent is \$945 per month.

31. Because of ongoing decreased housing services, the rent, before a temporary reduction due to past decreased housing services, is \$878.85 per month.

32. The tenant has overpaid \$5,380.50. This overpayment is ordered repaid over a period of 12 months.<sup>1</sup> The current rent of \$878.85 per month is temporarily reduced by \$448.37 per month, to \$430.48 per month, beginning with the rent payment in June 2018 and ending with the rent payment in May 2019.

33. In June 2019, the rent will increase to \$878.85 per month.

34. When the living room window is restored, the owner may increase the rent by \$47.50 per month. When the wood surface under the kitchen sink is replaced, the owner may increase the rent by \$18.90 per month. These rents may be increased after giving notice in accordance with Civil Code Section 827 and the Rent Adjustment Ordinance.

35. The owner may otherwise be eligible for a rent increase, with an effective date not less than 6 months after the tenants are given a RAP Notice in the Spanish language.

36. Petition T17-0078 (Ortiz) is partly granted.

37. The Base Rent is \$900 per month.

38. The tenant has overpaid a total of \$1,440. This overpayment is ordered repaid over a period of 12 months. The current rent of \$900 per month is temporarily reduced by \$120 per month, to \$780 per month, beginning with the rent payment in June 2018 and ending with the rent payment in May 2019.

39. In June 2019, the rent will increase to \$900 per month.

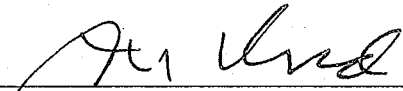
---

<sup>1</sup> Regulations, Section 8.22.110(F)

40. The owner may otherwise be eligible for a rent increase, with an effective date not less than 6 months after the tenants are given a RAP Notice in the Spanish language.

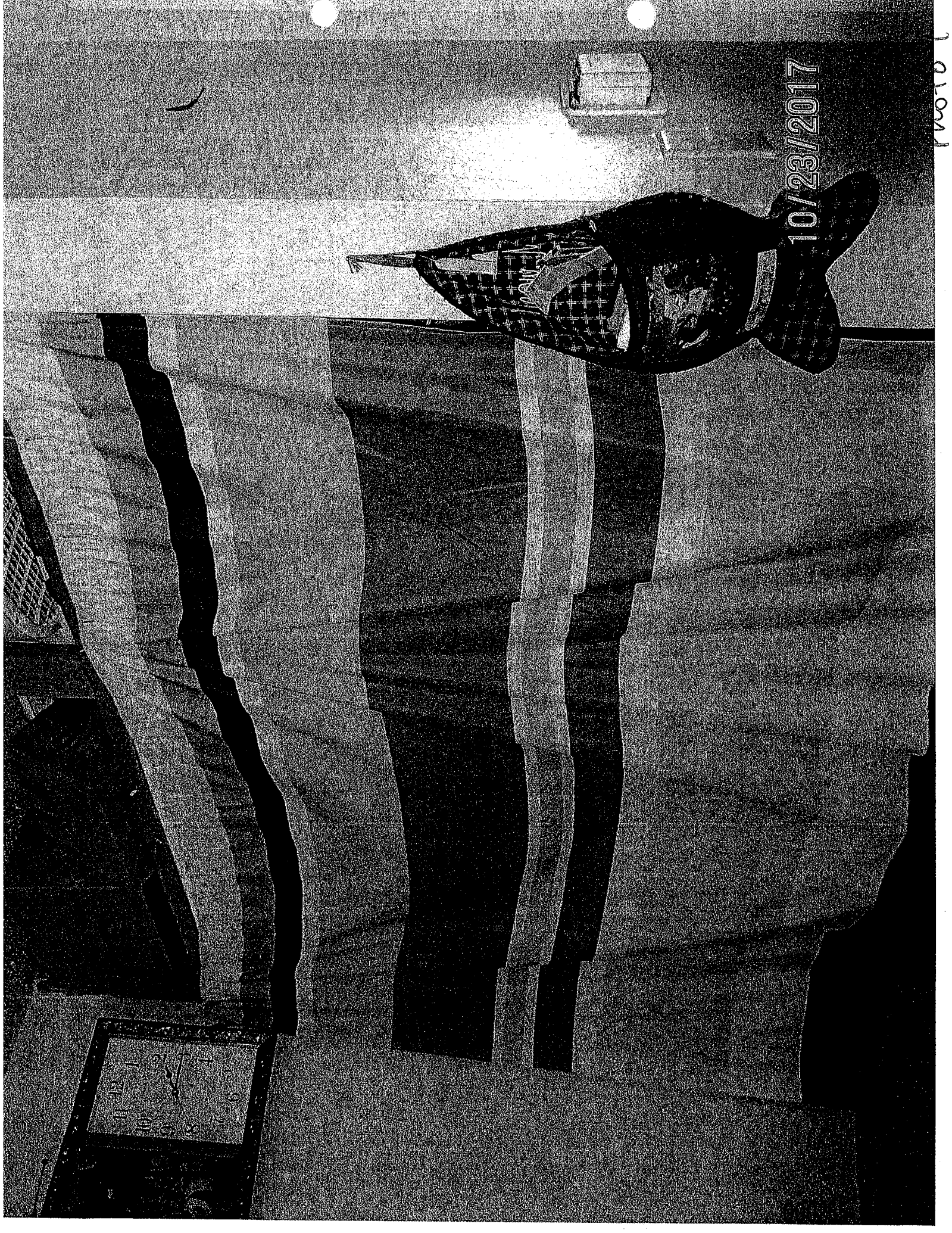
41. Right to Appeal: **This decision is the final decision of the Rent Adjustment Program Staff.** Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within twenty (20) calendar days after service 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: July 12, 2018



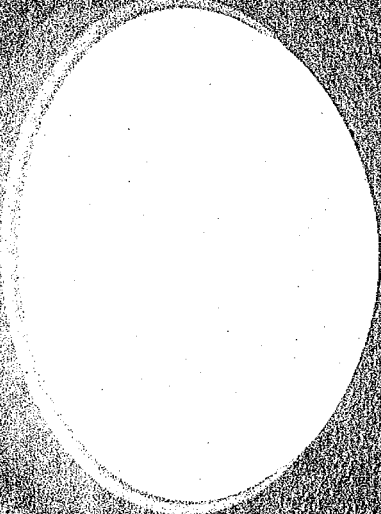
---

Stephen Kasdin  
Hearing Officer  
Rent Adjustment Program



10/23/2017

10/23/2017



10/23/2017

WETA-TV



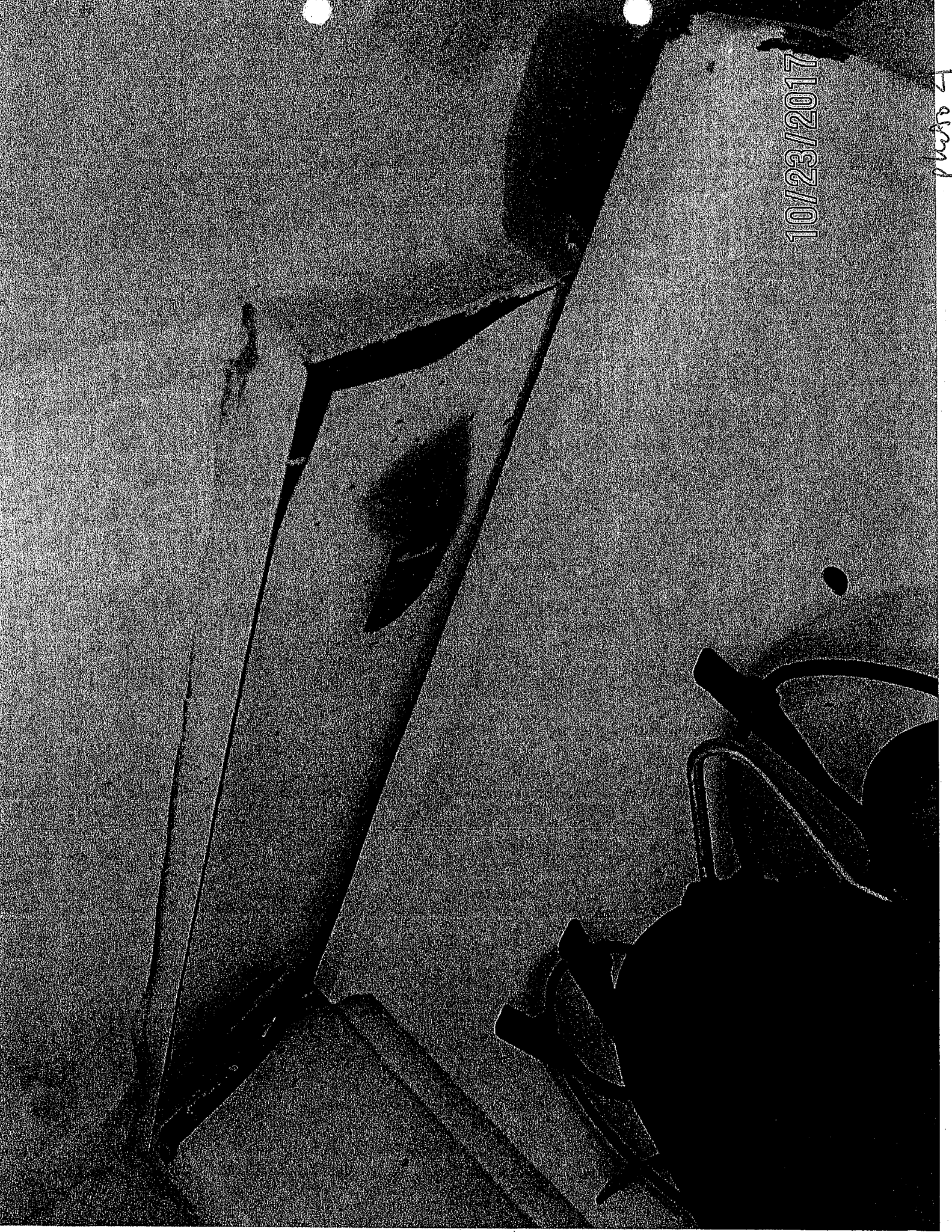
10/23/2017

Photo 3

00051

10/23/2017

photo 4





10/23/2017

10/23/2017







10/23/2017

photo 7



10/23/2017

DLSTO X

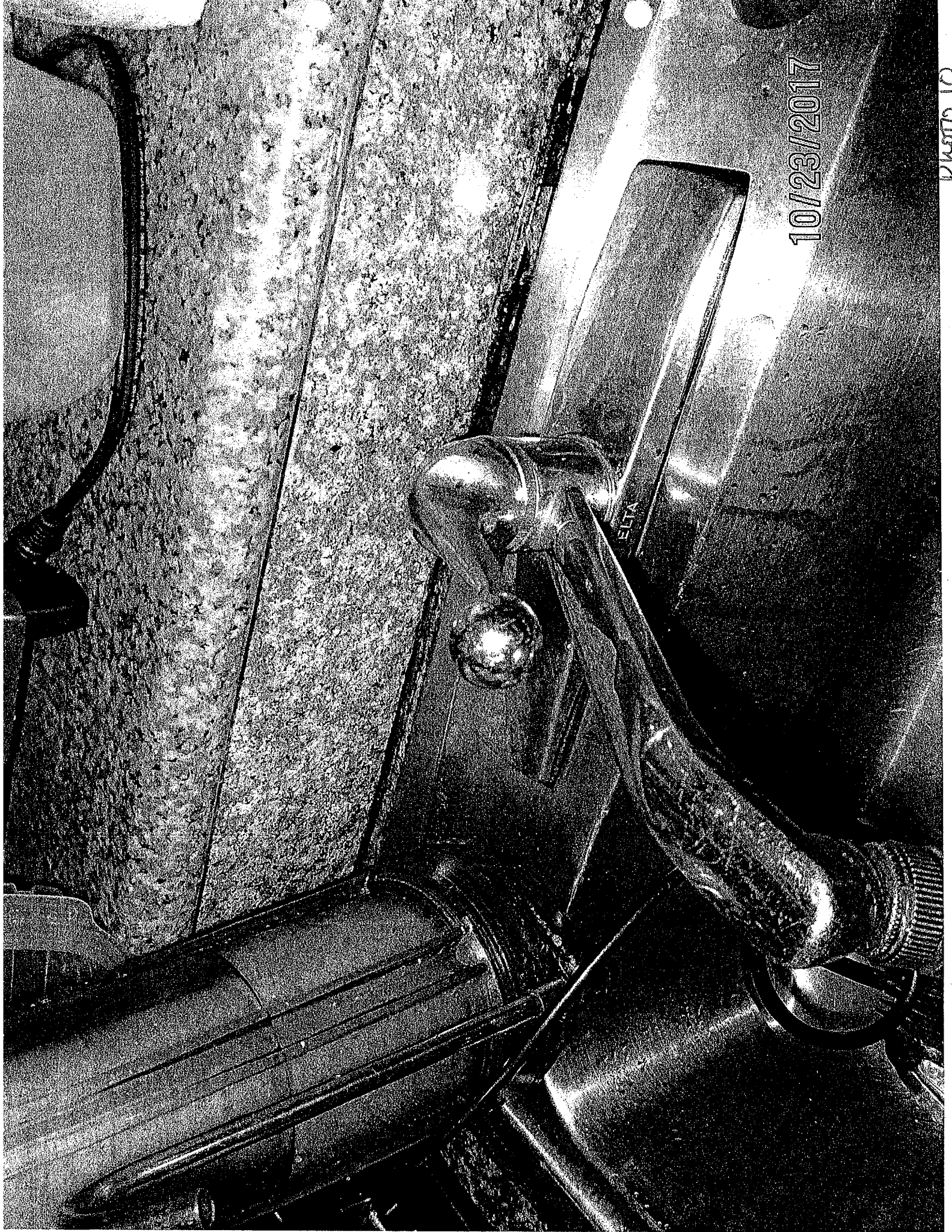


UNRECORDED HERE  
10/23/2017  
10/23/2017

10/23/2017

Photo 9



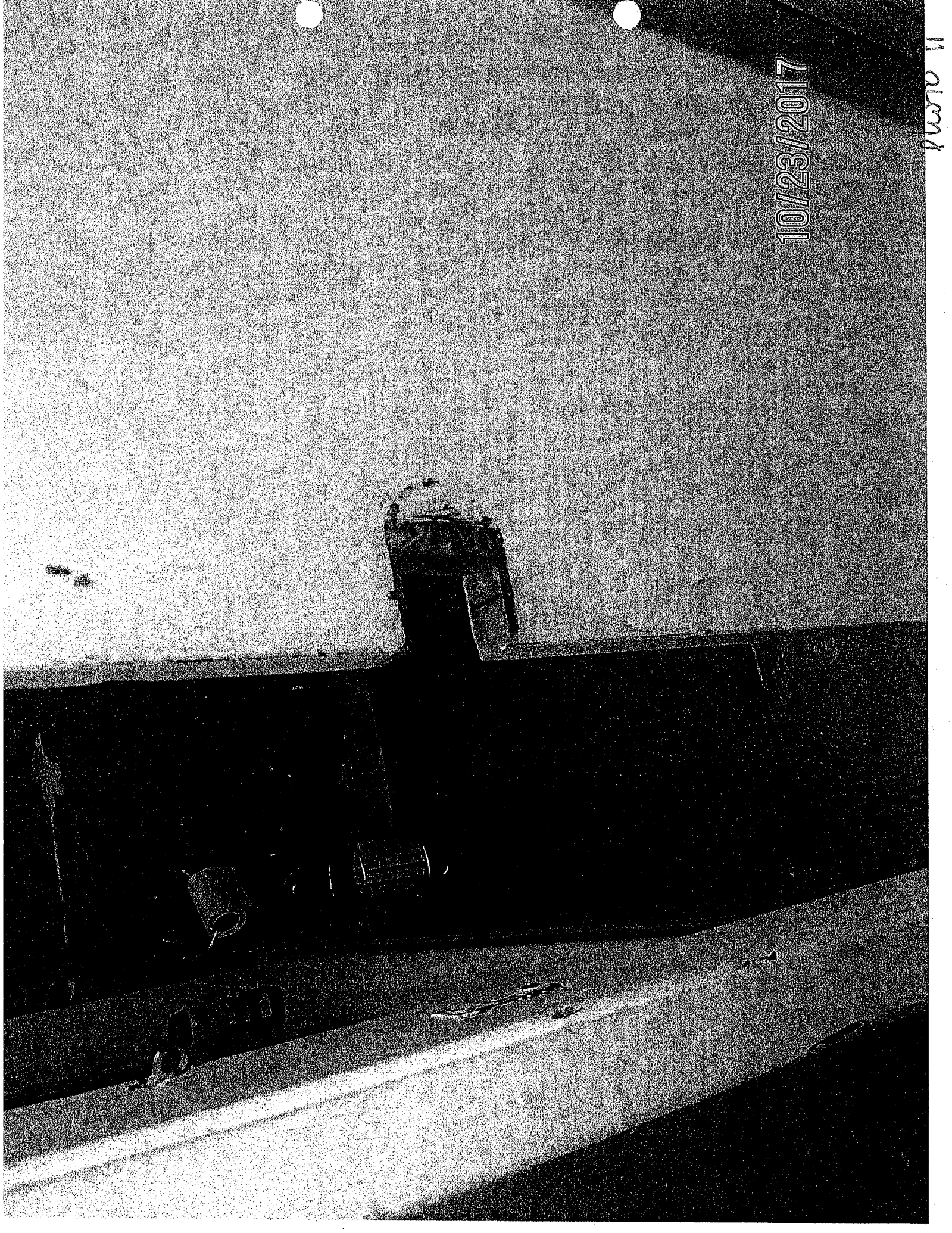


10/23/2017

PHOTO 10

10/23/2017

PHOTO 11



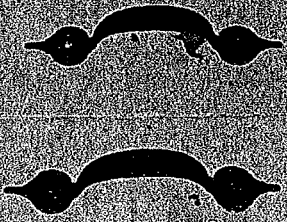




Faint, illegible text at the top of the page, possibly a header or page number.

10/23/2017

Photo 17.

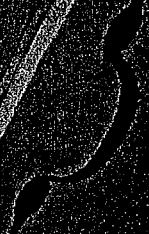
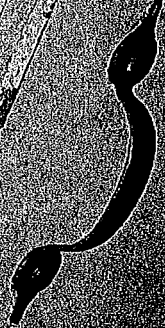
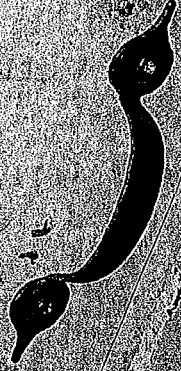
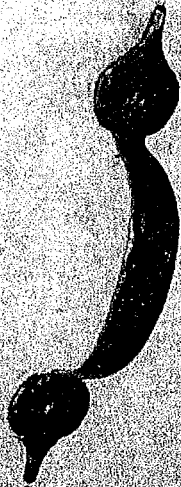


Faint, illegible text at the bottom of the page, possibly a footer or page number.

0002668

10/23/2017

1/23/17



PROOF OF SERVICE

Case Numbers

T17-0040, T17-0041, T17-0042, T17-0043, T17-0044, T17-0044, T17-0045, T17-0078

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**

Second Amended Hearing Decision

Owner

Daniel & Vivian Leon  
30 Sky Terr  
Danville, CA 94526

Tenants

Andrea Gonzalez & Feliciano Lopez  
3020 E. 18th St #2  
Oakland, CA 94601

Adriana Miranda  
3020 E. 18th St #4  
Oakland, CA 94601

Laura Coneles  
3020 E. 18th St #8  
Oakland, CA 94601

Martina De La Torre  
3020 E. 18th St #12  
Oakland, CA 94601

Liliana Maciel  
3020 E. 18th St #11  
Oakland, CA 94601

Gloria Lopez  
3020 E. 18th St #13  
Oakland, CA 94601

Marvin Ortiz  
3020 E 18th St #5  
Oakland, CA 94601

Tenant Representative

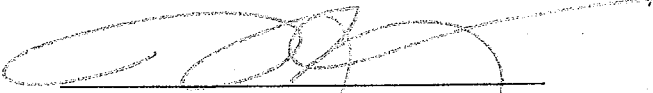
Centro Legal de la Raza  
Martina Cucullo Lim/Sarah Winfield  
3022 International Blvd. Ste 410  
Oakland, CA 94601

000268



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.

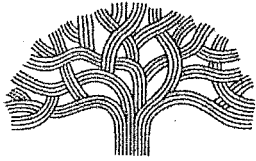
I declare under penalty of perjury under the laws of the State of California that the above is true and correct.  
Executed on July 16, 2018 in Oakland, CA.



---

Maxine Visaya  
Oakland Rent Adjustment Program

2018 AUG -6 PM 2:38



CITY OF OAKLAND

**CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM**

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

Appellant's Name <i>Vivian Leon</i>		<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant	
Property Address (Include Unit Number) <i>3020 E. 18th St Oakland, CA Units 2, 4, 5, 8, 11, 12, 13</i>			
Appellant's Mailing Address (For receipt of notices) <i>30 Sky Ter Danville, CA 94526</i>		Case Number <i>T17-0040, et al.</i>	Date of Decision appealed <i>June 4, 2018</i>
Name of Representative (if any) <i>Daniel Leon</i>		Representative's Mailing Address (For notices) <i>P.O. Box 1247 Danville, CA 94526</i>	

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.

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

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

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

For more information phone (510) 238-3721.

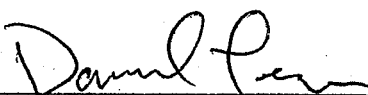
- f)  I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. (In your explanation, you must describe how you were denied the chance to defend your claims and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue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

Submissions to the Board must *not* exceed 25 pages from each party, and they must be received by the Rent Adjustment Program with a proof of service on opposing party within 15 days of filing the appeal. Only the first 25 pages of submissions from each party will be considered by the Board, subject to Regulations 8.22.010(A)(5). Please number attached pages consecutively. Number of pages attached: 9.

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

I declare under penalty of perjury under the laws of the State of California that on August 6, 2018, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<b>Name</b>	Andrea Gonzalez Feliciano Lopez	Adriana Miranda	Laura Concks
<b>Address</b>	3020 E. 18th St #2	3020 E. 18th St #4	3020 E. 18th St #8
<b>City, State Zip</b>	Oakland, CA 94601	Oakland, CA 94601	Oakland, CA 94601
<b>Name</b>	Martina DeLatorre	Liliana Maciel	Gloria Lopez
<b>Address</b>	3020 E. 18th St #12	3020 E. 18th St #11	3020 E. 18th St #13
<b>City, State Zip</b>	Oakland, CA 94601	Oakland, CA 94601	Oakland, CA 94601

 SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	<u>8/6/18</u> DATE
--	-----------------------


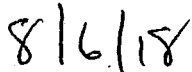
For more information phone (510) 238-3721.

Number of pages attached: 9

**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 August 6, 2018, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<b><u>Name</u></b>	Marvin Ortiz
<b><u>Address</u></b>	3020 E 18th St #5
<b><u>City, State Zip</u></b>	Oakland, CA 94601
<b><u>Name</u></b>	Centro Legal de la Raza Marting Cullio Lim / Sarah Winfield
<b><u>Address</u></b>	3022 International Blvd Ste 410
<b><u>City, State Zip</u></b>	Oakland, CA 94601

	
<b>SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE</b>	<b>DATE</b>

For more information phone (510) 238-3721.

3 X

Appeal 1) There are math/clerical errors that require the Hearing Decision to be updated.  
Math/Clerical errors need to be corrected.

Miranda (case no. t17-0041) base rent should be \$850.00 as stated in settlement agreement and dismissal.

Rent increase is from \$850.00 to \$935.00, effective 1/31/17 see evidence

Delatorre (case no. T17-0043) base rent should be \$850.00 as stated in settlement agreement and dismissal.

Rent increase is from \$850.00 to \$935.00, effective 1/31/17 see evidence

Maciel (subtenant)(case no. T17-0044) base rent should be \$850.00 as stated in settlement agreement and dismissal.

Rent increase is from \$850.00 to \$935.00, effective 1/31/17 see evidence

Gloria Lopez (case no. T17-0045) base rent should be \$1050.00 as stated in Evidence page 10 under rent history and in settlement agreement and dismissal

Rent increase is from \$1050. to \$1155.00, effective 1/31/17 see evidence

Canales (subtenant)base rent is \$900. See tenant petition. She testified she lived with her son in his apartment who speaks English and negotiated in English. Per her testimony/evidence and took over his apartment/lease.

The tenants should not be given any overpaid rent. All claims should be dismissed. Also, testified her lease is in Spanish. She has no evidence to prove or sustain burden of proof. Rent increase is effective 1/13/17. See evidence.

Ortiz (case no. T17-0078)

Decision refers to Marvin Ortiz as she on page 12 many times, it should be he.

Decision refers to Javier Leon as the late Javier Leon. Not true, He is still alive.

Please correct all math/ clerical errors, and have the Hearing officer issue an updated corrected decision. And have mailed to me at my address of record.

4

Reason for appeal. 2) a) e) the decision is inconsistent with OMC Chapter 8.22 and prior decisions.

Case No. T06-0154 Soriano, et al. V. western Mgt. Properties.

Does not apply because Tenant petitioners are on month to month leases are not protected by civil code statute 1632.

Decision based on OMC chapter 8.22.060 (a) does not apply.

1. Nowhere does it state Rap notice needs to be delivered in Spanish
2. Are leases are in English, negotiated in English and signed in English.

There is no substantial evidence to support this finding. The evidence/testimony shows this finding in error. We ask that all claims be dismissed and thrown out.

Reason for appeal 2) d). The decision violates federal, state or local law.

Tenant petitioners have month to month leases. Civil code 1632 does not apply. This would be a violation under Civil code 1632.

The translation requirement applies to residential leases for more than a month and other consumer contracts specified in California Civil Code §1632. Translation copies are not required for:

residential rentals that are month to month or for less than a month; or commercial leases.

See 1632 (3) (b) (3).

(3) A lease, sublease, rental contract or agreement, or other term of tenancy contract or agreement, for a period of longer than one month, covering a dwelling, an apartment, or mobilehome, or other dwelling unit normally occupied as a residence.

1632.

(a) The Legislature hereby finds and declares all of the following:

(1) This section was enacted in 1976 to increase consumer information and protections for the state's sizeable and growing Spanish-speaking population.

(2) Since 1976, the state's population has become increasingly diverse and the number of Californians who speak languages other than English as their primary language at home has increased dramatically.

(3) According to data from the American Community Survey, which has replaced the decennial census for detailed socioeconomic information about United States residents, approximately 15.2 million Californians speak a language other than English at home, based on data from combined years 2009 through 2011. This compares to approximately 19.6 million people who speak only English at home. Among the Californians who speak a language other than English at home, approximately 8.4 million speak English very well, and another 3 million speak English well. The remaining 3.8 million Californians surveyed do not speak English well or do not speak English at all. Among this group, the five languages other than English that are most widely spoken at home are Spanish, Chinese, Tagalog, Vietnamese, and Korean. These five languages

5

000274

are spoken at home by approximately 3.5 million of the 3.8 million Californians with limited or no English proficiency, who speak a language other than English at home.

(b) Any person engaged in a trade or business who negotiates primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean, orally or in writing, in the course of entering into any of the following, shall deliver to the other party to the contract or agreement and prior to the execution thereof, a translation of the contract or agreement in the language in which the contract or agreement was negotiated, that includes a translation of every term and condition in that contract or agreement:

(1) A contract or agreement subject to the provisions of Title 2 (commencing with Section 1801) of, and Chapter 2b (commencing with Section 2981) and Chapter 2d (commencing with Section 2985.7) of Title 14 of, Part 4 of Division 3.

(2) A loan or extension of credit secured other than by real property, or unsecured, for use primarily for personal, family, or household purposes.

(3) A lease, sublease, rental contract or agreement, or other term of tenancy contract or agreement, for a period of longer than one month, covering a dwelling, an apartment, or mobilehome, or other dwelling unit normally occupied as a residence.

6

Reason for Appeal, 2) f) I was denied a sufficient opportunity to respond to petitioner's claim of New Items.

New items were introduced

1. Tenants don't speak English.
2. That leases were negotiated in Spanish. All lease are in English, negotiated in English and signed in English.

Nowhere in Tenant's Petition did it include the following claims, thus I was not prepared to submit evidence, nor prepare testimony and request the following to items to be dismissed. I would have submitted evidence of leases, addendum, text messages, voice mails and hand written notices they gave to me in English.

Reason for appeal, 2) f). I was denied a sufficient opportunity to present my claim because my evidence was missing.

1. Evidence is/was missing during hearing and review prior to hearing. Barbara Kong Brown told Mr. Kasdin he couldn't hold hearing and he disregarded which is a due process violation. Mr. Kasdin also stated he would allow me to submit the missing evidence, but he never did.

I would have presented all the missing evidence of leases, addendum, handwritten notices and photos.

Reason for appeal 2) h) other violations

Other/ unfair/bias/arbitrary/unethical and suspect discretion

1. Main items of contention and decision are based on new items.
2. Hearing officer has little to none of my evidence or testimony in decision.
3. Hearing officers line of questioning is bias/suspect. He only asked me if my father spoke Spanish. Why wouldn't he care to know that he's an American businessman that speaks English? Why is there no reference to my testimony that Javier Leon speaks English and are leases are in English and negotiated in English.
4. Clarification requested for how he finds Mr. Higgins' testimony that he does not even know if Javier Leon spoke Spanish untrue, and the rest of his testimony suspect.
5. Tenants petitions and testimony is confusing, contradictory and untrue. See evidence/petitions and listen to audio.
6. Tenant Canales( who is a subtenant, assumed her sons apartment) testified she lived with her son in a different apartment. And that her sons and daughter speak English. She does, too. She also testified her lease is in English and later stated in Spanish. She also answered several questions without the Interpreter . And stated I could make it last year, but I was asked to join this year.

7

000276



7. All tenants answered questions without interpretation and tenants attorney waved/gestured at them. I made my objection on the audio. It appears as if Hearing Officer disregarded this action/violation in his decision.
8. Hearing Officer refused/denied to acknowledge the Jan. 11, 2017 anniversary date on settlement agreement and dismissal. When asking about rental payment history. It is stated on landlord petition that All tenants are behind in rent. And evidence shows they are behind. Therefore these tenant petitions should be dismissed.

8

000277

Appealing the decision on the grounds 2) e) h) The decision is not supported by substantial evidence, other evidence/testimony on record.

Miranda Fan hood Claim

Other/ Evidence shows that the stove hood fan was replaced within 30 days of notification. Tenant petition states, "I am notifying LL through this petition. Landlord response and testimony shows already replaced March 2017. This claim should have been denied based off evidence/ landlord petition and testimony. And Per site inspection by Barbara Cohen.

Canales (subtenant) Bathroom door

Other/evidence/testimony shows that the bathroom does have a lock. Tenant petition claim is bathroom door not functioning, it makes no reference to lock only that frame is missing. Landlord response and testimony is the door is functioning and has a doorknob and lock. The tenant did not allow entry for inspection, therefore all claims should be dismissed and her testimony should be considered with distrust per, evidence code, section 412. States a common sense principle: If weaker and less satisfactory evidence is offered when it was within the power of the party to produce stronger and more satisfactory evidence, the evidence offered should be viewed with distrust.

She is (subtenant) viewed with distrust and gave contradicting testimony therefore all her claims should be dismissed.

Maciel (subtenant) bathroom door

Other/evidence/testimony

Hearing officers finding is not true and confusing. The door is a pocket door as shown in photo 11 and Tenant petition states the landlord took off the lock in Nov. 2013. Tenant didn't live there then. She's not a tenant on lease. She's testified that the on site manager removed. Which was refuted by the landlord in testimony, and that one of the tenants removed/damaged the lock on the pocket door and needs to repair or replace. An owner is not responsible for damage caused by a tenant, and the claim should be denied. Her testimony is confusing and she (subtenant) should be viewed with distrust All her claims should be dismissed

Lopez living room window and kitchen floor board Other/evidence/testimony These items were part of the 2015 petition.

" because this was an issue in the above discussed Mediation Agreement, the claims should have been denied. This is inconsistent with Hearing Officers own ruling with Maciel case t17-0044 closet doors.

Also Tenant refused/ did not allow entry for site inspection.

evidence code, section 412. States a common sense principle: If weaker and less satisfactory evidence is offered when it was within the power of the party to produce stronger and more satisfactory evidence, the evidence offered should be viewed with distrust.

Her testimony is confusing and she should be viewed with distrust All her claims should be dismissed

All are leases are in English, negotiated in English, signed in English All tenants should be viewed with distrust and all claims dismissed.

Tenants, Canales and Maciel are subtenants, landlord testimony and tenants testimony supports this claim. Hearing Officer disregarded in decision.

9)

**Sullivan, Margaret**

RECEIVED  
CITY OF OAKLAND  
HEALTH DEPARTMENT

**From:** daniel leon <dlrespm@yahoo.com>  
**Sent:** Wednesday, June 20, 2018 9:19 AM  
**To:** Sullivan, Margaret  
**Subject:** Extension of time

2018 JUN 20 AM 11: 24

Dear Margaret,

I respectfully request an extension to file my appeal for case # T17-0040 and others on the grounds that the decision issued does not contain all documentation referenced for analysis.

The City's decision references 'Following her inspection, Ms. Cohen prepared a Declaration, a copy of which is attached as Exhibit "A" (page 5, second paragraph). The referenced document did not accompany the decision received, thus I cannot prepare an accurate analysis with missing documentation to review and prepare my appeal.

Please mail a copy of "Exhibit A", as reference in the decision, to my address of record and provide a new date to file the appeal.

Regards,

Daniel