

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

March 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

i. T17-0599, Clements v. Vick Enterprises

T17-0600, Brown v. Vick Enterprises

ii. T17-0572, Hetelson v. Cleveland Properties

iii. T17-0413, Piceno v. Hernandez

T17-0414, Avalos et al. v. Hernandez

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 or call (510) 238-3715 or California relay service at 711 at least five working days before the meeting. Please refrain from wearing scented products to this meeting as a courtesy to attendees with chemical sensitivities.

Esta reunión es accesible para sillas de ruedas. Si desea solicitar adaptaciones relacionadas con discapacidades, o para pedir un intérprete de en español,

Cantones, Mandarín o de lenguaje de señas (ASL) por favor envíe un correo electrónico a sshannon@oaklandnet.com o llame al (510) 238-3715 o 711 por lo menos cinco días hábiles antes de la reunión. Se le pide de favor que no use perfumes a esta reunión como cortesía para los que tienen sensibilidad a los productos químicos. Gracias.

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

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

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

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

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

CONSOLIDATED CHRONOLOGICAL CASE REPORT

Case Nos. & Names: T17-0599, Clements v. Vick Enterprise LLC
T17-0600, Brown v. Vick Enterprise LLC

Property Address: 3408 66th Avenue, Unit B, Oakland, CA

Parties: Darryl L. Clements (Tenant)
Tammy Brown (Tenant)
Donald H. Toomer (Owner)
Roberta Toomer (Witness for Owner)

** Both tenants live in same unit

OWNER APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed (Case T17-0599)	October 30, 2017
Tenant Petition filed (Case T17-0600)	October 30, 2017
Owner Response filed (Case T17-0599)	January 20, 2019
Owner Response filed (Case T17-0600)	January 20, 2019
Owner Response filed (Case T17-0600)	May 9, 2019
Hearing Decision mailed	July 18, 2018
Owner Appeal filed	July 26, 2018
Tenant Response to Owner Appeal	August 27, 2018



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RENT ADJUSTMENT PROGRAM
OAKLAND

Staff Dashboard

T17-0599 KM/SK

Home → T17-1096 → Submitted Petition Form

Petition type

Tenant

Applicant and Property Information

Applicant Info

Darryl Clements,
3408 66th Avenue, Apt B
Oakland, California 94605
T 5104249165
dclements1975@gmail.com

Property owner

Dr. Donald Toomer,
Vick Enterprise, LLC,
1191 Solano Ave #6560,,
Albany, California 94706
T 510 282-3712

Property manager

Dr. Donald Toomer,
Vick Enterprise, LLC,
1191 Solano Ave #6560,,
Albany, California 94706
T 510 282-3712

Number of units

4

Approximate range of units in the building

2-4 Units (Duplex, Triplex, or 4 Unit Building)

Type of unit you rent

Apartment, Room or Live-work

Are you current on your rent?

Yes

Grounds for Petition

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.

Rent Increases

Initial monthly rent

\$1200

Did the property owner provide you with a RAP Notice, a written notice of the existence of the Rent Adjustment Program?

No

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

No

Have you ever filed a petition for your rental unit?

No

Description of loss of service and problems

The housing services I am being provided have decreased.

Yes

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

Yes

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

0

Reduced Service description

You cannot put a price on not having a complete and function bathroom.

Date loss of this service began

2017/7/29

Loss of service documentary evidence

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

Yes

What is the estimated dollar value of the lost service?

3870

Problem description

My landlord has been trying to fix the bathroom since July he's been putting subcontractors in or people without license to do this work that should have been contracted by like seeing people I have pictures photos I don't know how to send all this to you it's confusing and I don't know if you can put a price tag on that

Date problem(s) began

2017/7/29

Problem documentary evidence

Additional Documentation

File name

⊕ 20171006_205104.jpg

CAI Ocea

Permit/Complaint History ≈ 1987 - Current

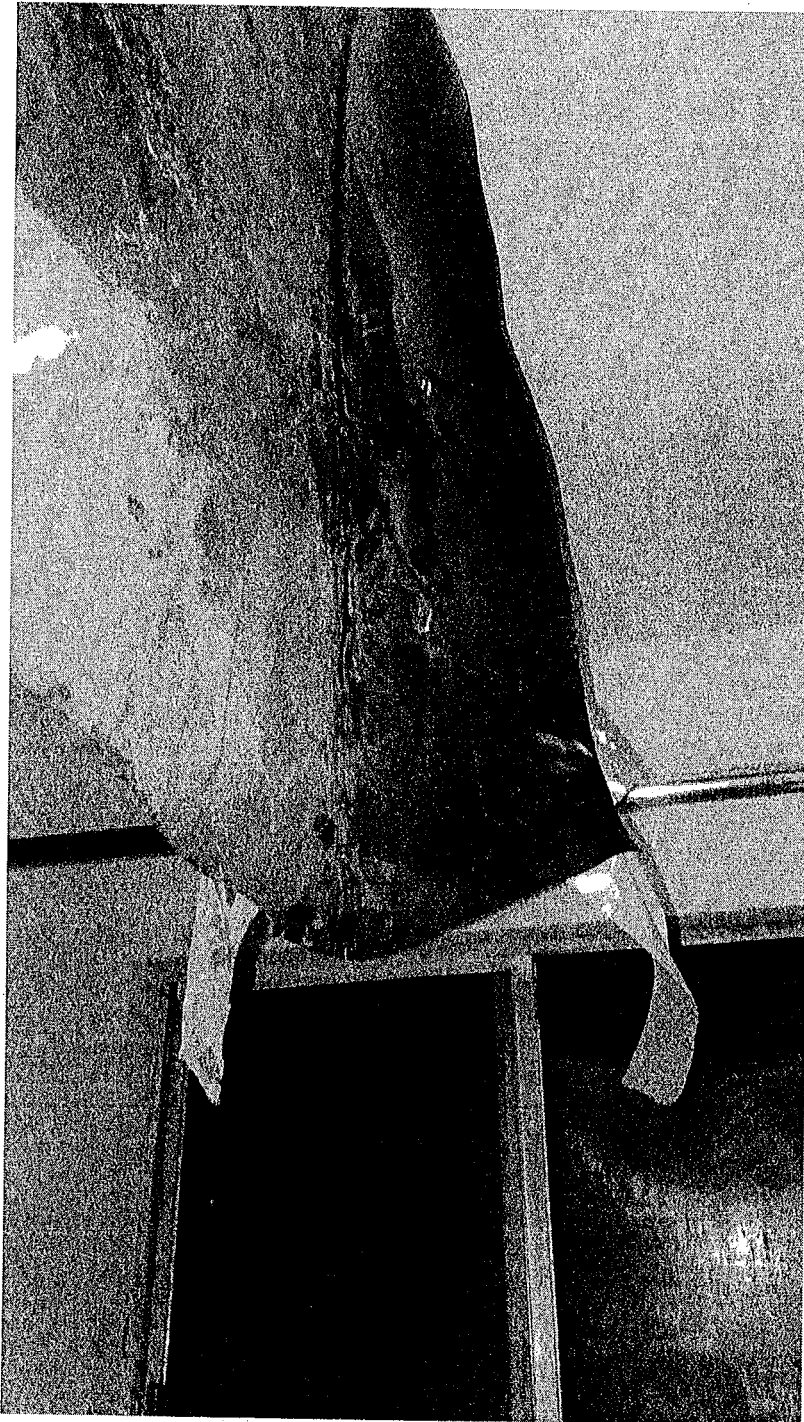
Address	Record #	Status	Filed Date	Status Date	Description
257 ATHOL AVE	1704427	Violation Verified	10/10/2017	10/11/2017	FRONT DOOR LOCK IS BROKEN AND DOESN'T LOCK OR CLOSE, EXPOSED ELECTRICAL WIRING, EXTERIOR STAIRWAYS CONCRETE IS CRUMBLING, EXIT DOORS DO NOT OPEN AND CLOSE PROPERLY CAUSING RAIN TO COME INTO THE BUILDING, WALKWAYS ARE UNSTABLE.
257 ATHOL AVE	SSR150975	Open Retrofit Required	7/20/2015	7/20/2015	Soft Story Retrofit Validation
257 ATHOL AVE	2013 1302463	Open	5/7/2013		HABITABILITY ISSUE - REPEATED URINATION INSIDE ELEVATOR
257 ATHOL AVE	2011 1103672	Abated	5/17/2011	5/18/2011	INSECT INFESTATION
257 ATHOL AVE	1104460	Abated	5/17/2011	6/9/2011	TENANT COMPLAINT - INSECT INFESTATION
257 ATHOL AVE	1103628	Abated	5/13/2011	7/7/2011	PROPERTY HAS OVERGROWN VEGETATION.
257 ATHOL AVE	SS110662	Expired	5/11/2011	1/17/2012	EXEMPTED - ENGINEERING DETERMINATION
257 ATHOL AVE	3 2010 1005225	Abated	8/2/2010	9/3/2010	THE CEILING LIGHT IN THE HALLWAY IS NOT WORKING.
257 ATHOL AVE	2009 1004468	Closed	6/30/2010	6/30/2010	ELEVATOR DIRTY AND SMELLS LIKE URINE
257 ATHOL AVE	2010 1002275	Abated	4/14/2010	4/23/2010	TRASH, DEBRIS, OVERGROWN VEGETATION & PEELING PAINT. COMPLEX IS UNSECURED.
257 ATHOL AVE	901833	Abated	4/3/2009	6/16/2008	8 THIS CONDITION IS ALSO ATTRACTING VERMIN.
257 ATHOL AVE	2 600296	No Violation Found	1/23/2006	2/1/2006	MOLD & MILDEW UNDER WINDOWS, IN CARPETS, LEAKAGE IN BATHRM, MOLD GOING UNDER THE FURNITURE
257 ATHOL AVE	2 506898	No Violation Found	12/15/2005	1/10/2006	TRASH, DEBRIS, WEEDS, INOPERABLE VEHICLES, SECURITY GATE BROKEN LOCK, HEATERS NOT WORKING, PLUMBING PROBLEMS, MOLD, ROACHES ETC.
257 ATHOL AVE	2 505082	Abated	9/7/2005	9/8/2005	MOLD AND MILDEW TILES ARE COMING UP FLOOR IS SINKING THE PLUMBING YOU CAN SMELL THE SEWAGE
257 ATHOL AVE	300404	No Violation Found	1/21/2003	2/7/2003	10 PEOPLE LIVING IN A TWO BEDROOM UNIT/INADEQUATE GARBAGE SERVICE
257 ATHOL AVE	106873	Abated	8/8/2001	9/5/2001	REMOVE DISCARDED CHAIR IN BUSHES, CLEAN FRONT OF BUILDING OF OVERGROWN WEEDS, TRASH & LITTER
257 ATHOL AVE	#10 106692	Abated	8/2/2001	8/28/2001	BALCONY FLOORING IS UNSTABLE AND DETERIORATED. REPAIR USING PROPER WEATHER AND SLIP PROOF MATERIALS. REPAIR GARAGE DOOR & PROVIDE LIGHT.
257 ATHOL AVE	2 9911747	Open	11/4/1999		HEATERS NOT WORKING PROPERLY.
257 ATHOL AVE	10 9910183	Abated	9/16/1999	10/29/1999	BATHROOM MOLD/WALLBOARD DAMAGED, TILE BROKEN, IN KITCHEN, LEAKING REFRIGERATOR

XUS

Records.oakland.net.com

Permit/Complaint History ≈ 1987 - Current

Address	Record #	Status	Filed Date	Status Date	Description
257 ATHOL AVE #10	9905802	Abated	6/9/1999	8/2/1999	AUTOMATIC GARAGE DOOR DOES NOT CLOSE - ELEVATOR IS NOT WORKING - KITCHEN TILE IS UP CAUSING A TRIPPING HAZARD - MILDEW BATH WALLS
257 ATHOL AVE	9902402	Closed	3/29/1999	11/17/2000	ELEVATOR CONSTANTLY GETS STUCK BETWEEN FLOORS, GARAGE DOOR DOES NOT WORK; GATE DOES NOT COME DOWN EVER, INTERCOM IN APT. 10 NOT WORKING
257 ATHOL AVE #10	9900828	Abated	2/11/1999	3/9/1999	INTERCOM DOESNT WORK, RAILING IS BROKE, ELEVATOR IS BROKE, GARAGE SYSTEM DOESNT WORK PROPERLY
257 ATHOL AVE #7	9900416	Open	1/25/1999		GARAGE NEEDS TO BE FIXED & GATE
257 ATHOL AVE	L004381	Lien Created	3/11/1998	3/11/1998	
257 ATHOL AVE	L004341	Lien Created	3/6/1998	3/6/1998	
257 ATHOL AVE #10	9800188	Closed	1/14/1998	2/18/1998	BATHTUB NEEDS TO BE RESTAINED, OUTSIDE INTERCOM DOES NOT WORK
257 ATHOL AVE	9707290	Closed	10/29/1997	11/12/1997	GARBAGE AND TRASH, SCATTERED IN THE GARABGE, SERVICE IS NOT ADQEQUATE
257 ATHOL AVE	9603903	Closed	7/17/1996	7/18/1996	BEAT HEALTH: 07-18-96 THURSDAY 12:00NN
257 ATHOL AVE	9603672	No Violation Found	7/8/1996		FRONT SECURITY DOOR NOT OPERATING PROPERLY PHONE NOT WORKING, GARAGE AREA IS KEPT FILTHY GARBAGE, TRASH AND DEBRIS.
257 ATHOL AVE #4	9506645	Closed	11/15/1995	5/20/1996	CEILING IN BATHROOM IS CAVING IN, MILDEW IN ROOMS. WATER FROM UPSTAIRLEAKS IN BATHROOM ON CEILINGS. PAINT CHIPPED IN BATHROOM







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OCT 30 2017

RENT ADJUSTMENT PROGRAM
OAKLAND

Staff Dashboard

T17-0600 KM / SK

Home → T17-1097 → Submitted Petition Form

Petition type

Tenant

Applicant and Property Information

Applicant Info

Tammy Brown,

3408 66th Avenue, Apt. B,
Oakland, California 94605
T 5108278658
Fullofluvx3@aol.com

Property owner

Donald Toomer,
Vick Enterprise, LLC,
1191 Solano Avenue, #6560, ,
Albany, California 94706
T (510) 282-3712

Property manager

Donald Toomer,
Vick Enterprise, LLC,
1191 Solano Avenue, #6560, ,
Albany, California 94706
T (510) 282-3712

Number of units

4

Type of unit you rent

Apartment, Room or Live-work

Are you current on your rent? Yes

Grounds for Petition

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.

Rent Increases

Initial monthly rent \$1200

Did the property owner provide you with a RAP Notice, a written notice of the existence of the Rent Adjustment Program? Yes

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

Did you receive a RAP Notice with the notice of rent increase? No

Monthly rent increase \$22

Date increase effective 7/1/2017

Are you contesting this increase in this petition? No

Did you receive a RAP Notice with the notice of rent increase? No

Monthly rent increase \$57

Date increase effective 4/1/2016

Are you contesting this increase in this petition? No

Have you ever filed a petition for your rental unit? No

Description of loss of service and problems

The housing services I am being provided have decreased. Yes

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

What is the estimated dollar value of the lost service or problem? 3873

Reduced Service description

As of July 28, 2017, we didn't have a functional bathroom. We didn't have a sink, countertop, floor tile, half a bathroom wall, half a bathroom ceiling, and no bathroom mirror. My bathroom had to be repaired because the ceiling kept leaking over my toilet and tub because the neighbors toilet and tub kept leaking. We were also told that there was mold, mildew, and asbestos in the bathroom. The electrical wall socket needs to be up to code. The bathroom light needs to be set right. As of today (October 30, 2017), we still don't have a bathroom toilet up to code, bathroom sink, bathroom countertop, bathroom floor tile, bathroom tile border around the window to prevent mold from the shower, and the walls aren't painted. We can't take a bath because when the workers

installed the new tub, they didn't adjust something to prevent the water from leaving the tub. There's some kind of paper lining coming out of the plastic wall board in the tub that needs to be cut and sealed. There's still a hole under the kitchen sink that needs to be closed up. The kitchen faucet is backwards and it hasn't been fixed. As of October 20, 2017 at 7:45am, I called the landlord and told him the chain in the toilet broke. He said he was going to come the next day to look at it. He couldn't come over that day because he had to work. So in the mean time, we put wire in the toilet so we could flush it. He came the next day, looked inside the toilet, and all he said is he had to go to work. He never did anything as of today (October 30, 2017). The landlord is trying to put linoleum on the bathroom floor, but one of the contractors told the landlord wife it wasn't a good idea because in time it will get mold under the linoleum from the sweating of the shower. They should put tile down. The landlord wife also wants to install the old bathroom countertop, but I told her that the inside of the cabinet had rotted apart and that her husband tore the inside wood out and just put a thin piece of plywood in there.

Date loss of this service began

2017/7/27

Loss of service documentary evidence

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

Yes

What is the estimated dollar value of the lost service?

50

Problem description

These issues has been problems for me and my health. I am a heart patient, with a defibrillator, I have asthma, and I also suffer from depression. Since I've been dealing with these issues, I went to to the ER because I was stressed out. There was also 2 machines in my bathroom for a

month and a half that was plugged in my electrical socket. They were on and pulling my PG&E the whole time they were in my bathroom. I was never compensated for my electricity.

Date problem(s) began

2017/8/1

Problem documentary evidence

Additional Documentation



Staff Dashboard

Home → T17-0599 → Submitted Owner Response

Applicant and property information

Case number	T17-0599
Applicant Info	Donald Toomer 3408 66th Ave. Oakland California 94605 Tel: (510) 282-3712 Email :
Have you paid your business license	Yes
Business license number	0015226
Have you paid the Rent Adjustment Program Service Fee (\$68 per unit)?	Yes
Date of which you aquired the building	5/31/2012
Total number of units	4
Is there more than one street address on the parcel?	No

Rental property

Type of unit Apartment, Room or Live-work

Tenant's names Darryl Clements

Rental property 3408 66th Ave, Apt. B
Oakland , California ,94605

Rent history

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

Is the tenant current on the rent? Yes

Is the contested increase a capital improvements increase? No

Did you submit a petition for rent increase for capital improvements? No

Did you submit a copy of the Enhanced Notice to the RAP office within 10 days of serving the tenant? No

Decreased housing services

Your position regarding the tenant's claim(s) of decreased housing services

File name

Exemptions

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:

No

Did the prior tenant leave after being given a notice to quit (Civil Code Section 1946)?

No

2. Did the prior tenant leave after being given a notice of rent increase (Civil Code Section 827)?

No

3. Was the prior tenant evicted for cause?

No

4. Are there any outstanding violations of building housing, fire or safety codes in the unit or building?

No

5. Is the unit a single family dwelling or condominium that can be sold separately?

No

6. Did the petitioning tenant have roommates when he/she moved in?

No

7. If the unit is a condominium, did you purchase it?

No

8. From whom did you purchase it?

9. Did you purchase the entire building? No

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. No

The unit was newly constructed and a certificate of occupancy was issued for it on or after January 1, 1983. No

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. Yes

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. No

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. No

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. No

Additional Documentation

File name

⊕ IMG_1356.jpg

Petition No.: T17-0600

Date: 1/19/2018

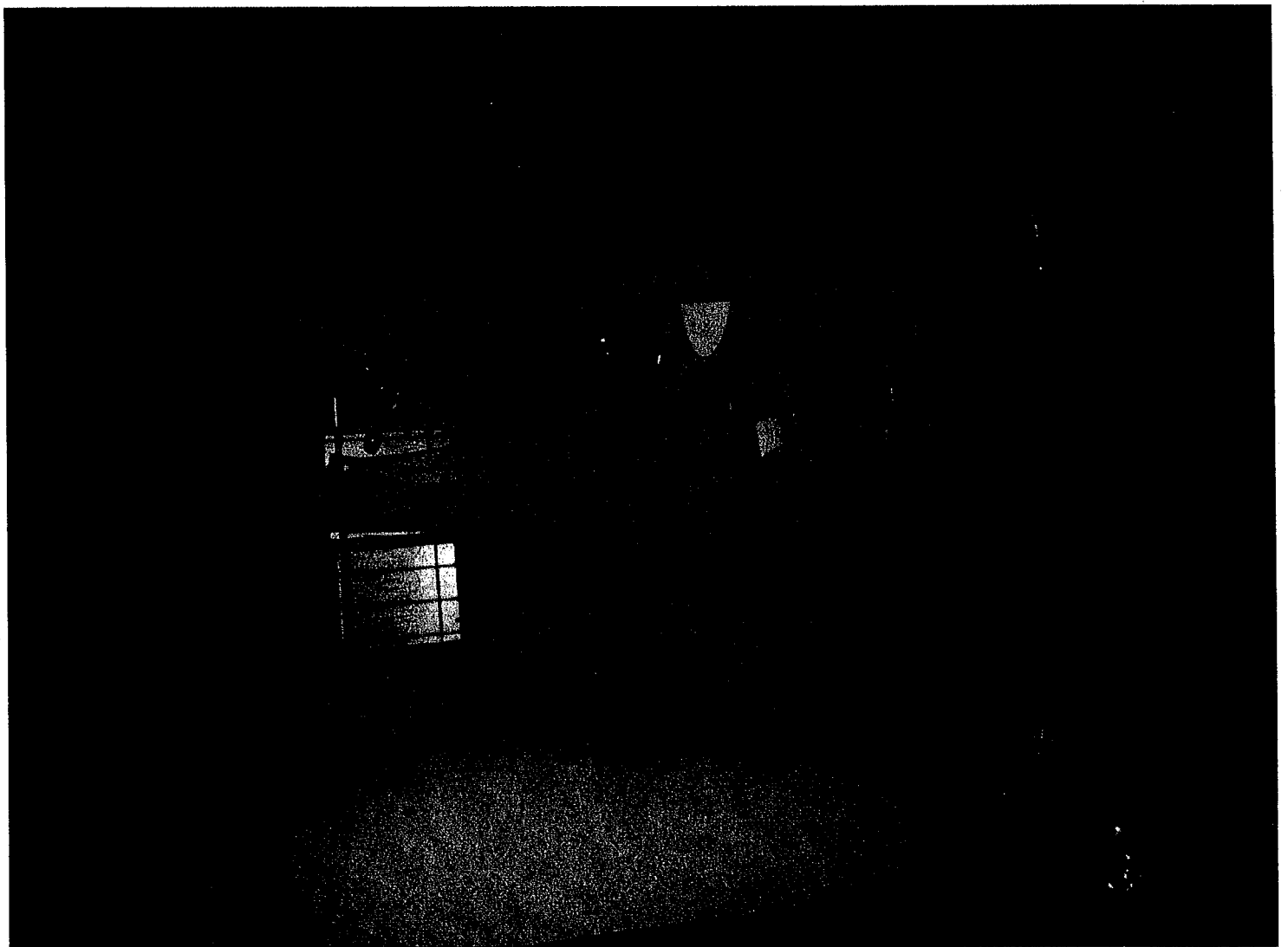
The tenant in her description of her "loss of service" failed to state the before and after condition of the bathroom. The bathroom underwent a major remodeling due to water damage after the tenant brought it to our attention.

By July 29th the insurance company had assessed the problem and authorized a contractor to test for asbestos, lead and mold. They abated the bathroom and did a final air sample which passed the test. The tenant was housed in a hotel for the month of August and part of September during the abatement and while the sewer system for the entire building was rebuilt. During any of these times the tenant's bathroom was not complete but she was living in a hotel.

October was a month of difficult scheduling and coordination with the insurance company. The bathroom in the upper unit had to be completed first since it was the cause of the problem. One contractor quit the job and no one else was able to schedule our project. There was no intension to keep the bathroom in its current state. We simply needed time so we resorted to Taskrabbit.com, our maintenance man, and others to help us complete the work.

In November the bathroom was complete with a toilet up to code, a new shower, a new bathroom vanity with a sink, a new subfloor, a vinyl floor covering, and a GPI socket. The choice of materials to put in the remodel is up to the owner not the tenant.

All the tenants were informed as we progressed through this remodel and others were helpful by making sure we had assess to their units.



000022



Staff Dashboard

Home → T17-0600 → Submitted Owner Response

Applicant and property information

Case number T17-0600

Applicant Info Donald Toomer
3408 66th Ave.

Oakland California 94605
Tel: (510) 282-3712
Email :

Have you paid your business license Yes

Business license number 0015226

Have you paid the Rent Adjustment Program Service Fee (\$68 per unit)? Yes

Date of which you aquired the building 5/31/2012

Total number of units 4

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

Rental property

Type of unit Apartment, Room or Live-work

Tenant's names Tammy Brown

Rental property 3408 66th Ave., Apt B
Oakland , California ,94605

Rent history

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

Is the tenant current on the rent? No

Is the contested increase a capital improvements increase? No

Did you submit a petition for rent increase for capital improvements? No

Did you submit a copy of the Enhanced Notice to the RAP office within 10 days of serving the tenant? No

Decreased housing services

Your position regarding the tenant's claim(s) of decreased housing services

File name

Exemptions

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: No

Did the prior tenant leave after being given a notice to quit (Civil Code Section 1946)? No

2. Did the prior tenant leave after being given a notice of rent increase (Civil Code Section 827)? No

3. Was the prior tenant evicted for cause? No

4. Are there any outstanding violations of building housing, fire or safety codes in the unit or building? No

5. Is the unit a single family dwelling or condominium that can be sold separately? No

6. Did the petitioning tenant have roommates when he/she moved in? No

7. If the unit is a condominium, did you purchase it? No

8. From whom did you purchase it?

9. Did you purchase the entire building? No

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. No

The unit was newly constructed and a certificate of occupancy was issued for it on or after January 1, 1983. No

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. Yes

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. No

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. No

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. No

Additional Documentation

File name

⊕ IMG_1356.jpg

City of Oakland
Rent Adjustment Program

KM

Case T17-0600

Property Address

Owner Donald Toomer
Vick Enterprise, LLC
1191 Solano Ave., 6560
Albany, CA 94706
(510) 282-3712

Tenant Tammy Brown
3408 66th Ave., Apt. B
Oakland, CA 94605
5108278658
fullofluvx3@aol.com

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Date of which you aquired the building 5-31-2012

Total Number of Units 4

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

Type of Unit Apartment,
Room or Live-work

Is the contested increase a capital improvements increase? No

City of Oakland
Rent Adjustment Program

Case T17-0600

Property Address

Rent History

The tenant moved into the rental unit on

Initial monthly rent 1200

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? I don't know

On what date was the notice first given?

Is the tenant current on the rent? Yes

Rent Increase

City of Oakland
Rent Adjustment Program

Case T17-0600

Property Address

Exemption

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: No

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. No

The unit was newly constructed and a certificate of occupancy was issued for it on or after January 1, 1983. No

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. Yes

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. No

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. No

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. No



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 NUMBERS: T17-0599, Clements v. Vick Enterprise, LLC &
T17-0060, Brown v. Vick Enterprise, LLC

PROPERTY ADDRESS: 3408 - 60th Ave., #B, Oakland, CA

DATE OF HEARING: May 16, 2018

DATE OF DECISION: July 6, 2018

APPEARANCES: Darryl L. Clements (Tenant)
Donald H. Toomer (Owner)
Roberta Toomer (Witness for Owner)

SUMMARY OF DECISION

The tenants' petitions are granted.

CONTENTIONS OF THE PARTIES

The tenants, who live in the same rental unit, filed petitions on October 30, 2017. The petition of tenant Clements states that he has never received the form Notice to Tenants (RAP Notice). The petition of tenant Brown states that she has received the RAP Notice. The petitions state that their housing services have been decreased due to problems in the bathroom and with the kitchen sink. The owner filed responses to the petitions, which deny that the tenants' housing services have been decreased.

THE ISSUES

- (1) When, if ever, did the tenants receive the RAP Notice?
- (2) Have the tenants' housing services been decreased and, if so, by what percentage of the total housing services that are provided by the owner?

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EVIDENCE

RAP Notice: At the Hearing, the owner's witness testified that she mailed a RAP Notice to the tenants together with all rent increase notices. However, she did not submit copies of any of these documents prior to the Hearing, nor did she have any of these documents at the Hearing. Mr. Clements ("the tenant") at first testified that he has never received the RAP Notice. However, when questioned by the owner, the tenant testified that he received the RAP Notice in or about the year 2014.

Rent History: The parties agreed that the tenants have paid rent of \$1,290 per month since the Spring of 2017.

Decreased Housing Services:

Bathroom: The tenant testified that in May 2017, water began to enter his bathroom from the unit above. He and Ms. Brown immediately telephoned the owner. The owner inspected the bathroom and then hired workers to try to correct the problem; their efforts were not successful. Beginning in late July, the tenants moved to a succession of hotel rooms that were chosen and paid for by the owner. However, the tenants' unit has 3 bedrooms which accommodated the 3 adults living in the unit, whereas the single hotel rooms chosen by the owner were quite uncomfortable for these 3 adults.

In mid-August, the owner told the tenants that the bathroom was repaired, and they should return to their unit. However, when the tenants did return, the bathroom did not have a sink, the floor was a bare sub-floor, and portions of the walls had been removed. The shower could not be used until late September. In late September or early October flooring was put down, and in early November a sink was installed. From mid-August until early November, the tenants washed their hands and faces in the kitchen sink. There has been only one problem since that time, which was repaired within a reasonable time.

The tenants submitted the following photographs of the bathroom:

- (1) Two photos that were taken in May 2017, which depict large holes in the ceiling;¹
- (2) A photo of a bulb in an uncovered electrical outlet in an area over the sink where a portion of the wall had been removed. The photo was taken in mid-September;²
- (3) Photos that were taken in early August which depict plywood on the bathroom floor;³
- (4) A photo that was taken the first week of October, which depicts a bathtub, toilet, and tile flooring and plumbing pipes protruding from a wall;⁴

¹ Exhibit Nos 1 & 2. These Exhibits, and all others to which reference is made in this Decision, were admitted into evidence without objection, unless otherwise noted.

² Exhibit No. 3. The owner objected to the admission of this photo into evidence because he did not know where the photo was taken and it has nothing to do with flooding. The objection was overruled, and the photo was admitted into evidence.

³ Exhibit Nos. 5 & 7. The owner objected to the admission of Exhibit No. 7 into evidence because it does not depict the entire bathroom. The objection was overruled, and the photo was admitted into evidence.

⁴ Exhibit No. 6

Kitchen Sink: The tenant withdrew this claim at the Hearing.

The owner testified that the delay in repairing the bathroom was due to his insurance company not approving payment for the work. Further, on August 1, he received a Notice of Violation from the City Inspection Services agency which ordered him to stop work because no Building Permits had been obtained. He obtained a Plumbing Permit on August 18, and a Building Permit on August 21. Work resumed in late August, and in late October or early November a sink and vanity were installed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

RAP Notice: Based upon the testimony of the parties, it is found that the tenants received the RAP Notice in or about the year 2014.

Decreased Housing Services: Under the Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent⁵ and may be corrected by a rent adjustment.⁶ 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.

There is also 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. If the decreased housing service is for a condition that is ongoing (e.g., a leaking roof), the tenant may file a petition at any point while the condition is ongoing, but is limited in restitution for 90 days before the petition is filed.⁷

The tenants first received the RAP Notice in the year 2014, far more than 90 days before filing their petitions on October 30, 2017. Therefore, the tenants can only be granted relief on their claim for decreased housing services beginning 90 days before the date on which they filed their petitions. Allowable claims of decreased housing services therefore begin on July 30, 2017.

The plumbing problem should reasonably have been resolved, and the tenants' bathroom restored, within one month after notice, being July 1. Instead, the tenants were compelled to live in uncomfortable hotel rooms, and then in a unit with a totally substandard bathroom, until early November. An owner has a duty to make necessary repairs, and this duty does not depend upon whether an owner has a responsive insurance company, an unresponsive company, or no insurance company at all. Further, everyone is presumed to know the law, and it is similarly not an excuse that the project was delayed because necessary Building Permits were not obtained.

⁵ O.M.C. Section 8.22.070(F)

⁶ O.M.C. Section 8.22.110(E)

⁷ O.M.C. Section 8.22.090(A)(3)

The tenants were unreasonably deprived of the use of their residence, and then the full use of their bathroom, from July 30 through late October 2017. This reduced their housing services by an average of 75% per month for these 3 months. The tenants therefore overpaid rent of \$967.50 per month, a total of \$2,902.50. The overpayment is ordered repaid over a period of 12 months.⁸ The rent is temporarily reduced by \$241.88 per month, to \$1,048.12 per month, beginning with the rent payment in August 2018 and ending with the rent payment in July 2019.

ORDER

1. Petitions T17-0599 & T17-0600 are granted.
2. The Base Rent is \$1,290 per month.
3. Because of past decreased housing services, the tenants overpaid rent in the amount of \$2,902.50. This overpayment is adjusted by a rent reduction for 12 months.
4. The rent is temporarily reduced by \$241.88 per month, to \$1,048.12 per month, beginning with the rent payment in August 2018 and ending with the rent payment in July 2019.
5. In August 2019, the rent will increase to \$1,290 per month.

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 6, 2018



Stephen Kasdin
Hearing Officer
Rent Adjustment Program

⁸ Regulations, Section 8.22.110(F)

PROOF OF SERVICE

Case Numbers: T17-0599 (Clements v. Vick Enterprise, LLC) & T17-0600 (Brown v. Vick Enterprise, LLC)

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

Today, I served the attached **Hearing Decision** by placing a true copy of it in a sealed envelope in 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:

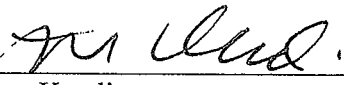
Darryl Clements
Tammy Brown
3408 - 66th Ave., #B
Oakland, CA 94605

Vick Enterprise, LLC / Donald Toomer
1191 Solano Ave., #6560
Albany, CA 94706

Donald Toomer
3408 - 66th Ave.
Oakland, CA 94605

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.

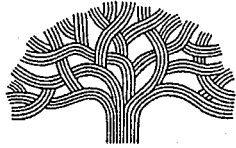
I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on July 18, 2018 in Oakland, California.



Stephen Kasdin
Oakland Rent Adjustment Program

000034

CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM



CITY OF OAKLAND

**CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM**

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

For date stamp: JUL 26 PM 2:14

APPEAL

Appellant's Name <i>Vick Enterprise, LLC, Donald H. Toomer</i>		<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant	
Property Address (Include Unit Number) <i>3408 66th Ave., Unit B, Oakland, CA 94605</i>			
Appellant's Mailing Address (For receipt of notices) <i>1191 Solano Ave., #6560 Albany, CA 94706</i>		Case Number <i>T17-0599 & T17-0060</i>	
		Date of Decision appealed <i>7/6/2018, Service Date: 7/18/2018</i>	
Name of Representative (if any)		Representative's Mailing Address (For notices)	

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

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

For more information phone (510) 238-3721.

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

Submissions to the Board 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: 3.

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

Name	Brown, Tammy & Clements, Darryl C.
Address	3408 66th Ave. Unit B
City, State Zip	Oakland, CA 94605
Name	
Address	
City, State Zip	

<u>M. Donald H Toomer</u>	<u>7/26/2018</u>
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

For more information phone (510) 238-3721.

VICK ENTERPRISE, LLC

DONALD H. TOOMER
1191 SOLANO AVE., #6560
ALBANY, CA 94706
PHONE: 510 525-1917
E-MAIL: VICKENTERPRISE@ICLOUD.COM

DATE: 07/26/2018

CASE NUMBERS: T17-0599, Clements v. Vick Enterprise, LLC &
T17-0060, Brown v. Vick Enterprise, LLC

PROPERTY ADDRESS: 3408 66th Ave., Unit B, Oakland, CA

DECISION DATE: JULY 6, 2018

APPEAL OF DECISION: JULY 26, 2018

ISSUE 1: RAP Notice

In sworn testimony, Tammy Brown, stated that she had received a RAP notice.

ISSUE 2: Housing Service decrease percentage.

The reduction of housing services was due to rebuilding of the bathroom so I will show that the tenant had more than 25% use of a bathroom. The tenant had 100% of the remaining rooms in the unit.

The tenant in Unit B was housed in hotels until August 26th and returned to a bathroom with a toilet and a NEW WORKABLE shower/tub. The abated walls and floor did not prevent the tenant from using the bathroom. Upon their return 2/3's of the bathroom was usable. The vanity installed in late October was the other functional 1/3 of the bathroom. The floor and sheet rock were also installed at that time.

All during the repair period the tenant had free access to the unit and it was utilized.

The reduction of 75% of their housing services assumes that they did not have more than 25% access to a bathroom. And in fact the tenant had 100% use of a bathroom in hotels and 67% of bathroom use upon returning to the unit.

There was also a complaint about comfort in the hotels and the demand for a 2nd room for an adult family member/s. The tenant specified that they needed hotels close to their apartment which limited our hotel search. And when the tenant was uncomfortable with a hotel we moved the tenant to one more to their liking but each was at least a several star hotel with breakfast provided.

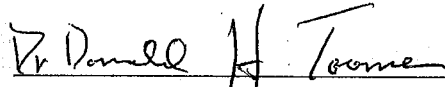
000037

Even though the tenant's unit had 3 bedrooms only one person's name is on the contract rental agreement but we made sure each hotel room had 2 double beds.

In summary it must be noted that the tenant is paying 1/3 of the market value for a large 3 bedroom apartment with a NEW rebuilt bathroom, a garage space, off street parking, on site washer and dryer, and water and waste disposal paid by the owner.

A 75% decrease in housing service is obsessive and unfair.

Date: July 26. 2018



Vice Enterprise/ Donald H Toomer
Onwer

PROOF OF SERVICE

Case Numbers: T17-0599 (Clements v. Vick Enterprise, LLC) & T17-0600 (Brown v. Vick Enterprise, LLC)

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

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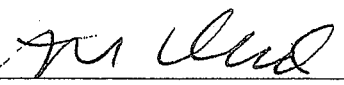
Darryl Clements
Tammy Brown
3408 - 66th Ave., #B
Oakland, CA 94605

Vick Enterprise, LLC / Donald Toomer
1191 Solano Ave., #6560
Albany, CA 94706

Donald Toomer
3408 - 66th Ave.
Oakland, CA 94605

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 18, 2018 in Oakland, California.



Stephen Kasdin
Oakland Rent Adjustment Program

000039

Tammy Louise Brown
3408 66th Avenue, Apt. B
Oakland, Ca. 94605
Home: (510) 638-0767
Cell: (510) 827-8658
August 22, 2018

RECEIVED

AUG 27 2018

RENT ADJUSTMENT PROGRAM
OAKLAND

City of Oakland
Housing and Community Development Department Rent Adjustment Program
250 Frank Ogawa Plaza
Oakland, Ca. 94612
Telephone: (510) 238-3721
Fax: (510) 238-6181

Donald Toomer
1191 Solano Ave., #6560
Albany, Ca. 94706
Home: (510) 525-1917
Cell: (510) 282-3712

Re: Case # T17-0599 (Clements vs. Vick Enterprise, LLC)
Case # T17-0600 (Brown vs. Vick Enterprise, LLC)

City Of Housing and Community Assignment,

I paid Donald Toomer a check (#2552) by mail in the amount of \$1,048.12 on August 1, 2018 to pay for the rent that the court duly assigned as a judgment against the defendant on July 6, 2018.

Mr. Toomer showed up at my door unexpectedly frightening me, handing me back the check that I mailed him on August 1, 2018,. Violating the judgment of the court!

I would like a response within thirty days.

P.S.: I included an Invoice dated July 24, 2018 that Mr. Toomer mailed me showing the charge of \$1,420.10 that he charged me for August 2018 rent.

Sincerely,
Tammy Louise Brown

Tammy Louise Brown

CC: Retain

000040

VICK ENTERPRISE, LLC

DONALD H. TOOMER
1191 SOLANO AVE., #6560
ALBANY, CA 94706
PHONE: 510 525-1917
E-MAIL: VICKENTERPRISE@ICLOUD.COM

INVOICE

Bill To

Tammy Louise Brown
3408 66th Ave., Apt. B
Oakland, CA 94605

INV. Date: 07/24/18

Amount Due: \$1,541.60

Date	Description	Amount	Balance
05/31/18	Balance forward		1,412.50
06/04/18	PMT #2550	-1,291.00	121.50
06/19/18	INV #Jul18-B Due 07/01/18. --- Unit B Rent \$1,420.10	1,420.10	1,541.60
07/03/18	PMT #2551	-1,420.10	121.50
07/24/18	INV #Aug18-B Due 08/01/18. --- Unit B Rent \$1,420.10	1,420.10	1,541.60

1-30 Days
Past Due

\$0.00

31-60 Days
Past Due

\$0.00

61-90 Days
Past Due

\$0.00

OVER 90 Days
Past Due

\$121.50

Amount Due

\$1,541.60

000041

Tammy Louise Brown
3408 66th Avenue, Apt. B
Oakland, Ca. 94605
Home: (510) 638-0767
Cell: (510) 827-8658
August 22, 2018

RECEIVED

AUG 27 2018

RENT ADJUSTMENT PROGRAM
GARLAND

City of Oakland
Housing and Community Development Department Rent Adjustment Program
250 Frank Ogawa Plaza
Oakland, Ca. 94612
Telephone: (510) 238-3721
Fax: (510) 238-6181

Donald Toomer
1191 Solano Ave., #6560
Albany, Ca. 94706
Home: (510) 525-1917
Cell: (510) 282-3712

Re: **Case # T17-0599 (Clements vs. Vick Enterprise, LLC)**
Case # T17-0600 (Brown vs. Vick Enterprise, LLC)

City Of Housing and Community Assignment,

I am enclosing a letter that I mailed to Mr. Donald Toomer on February 16, 2018. The letter is in regards to the paint job that was done in my bathroom regarding the bathroom work for this case. I also include the Invoice dated July 24, 2018 that Mr. Toomer mailed me showing the charge of \$121.50 that he still charging me.

I feel he is intimating me over this charge. Please response within thirty days. Thank you.

Sincerely,
Tammy Louise Brown

Tammy Louise Brown

CC: Retain
Donald Toomer

000042

Tammy Louise Brown
3408 66th Avenue, Apt. B
Oakland, Ca. 94605
February 16, 2018

Vick Enterprise, LLC
Donald H. Toomer
1191 Solano Avenue, #6560
Albany, Ca. 94706

Dear Mr. Donald Toomer,

I am writing this letter in regards to the letter dated January 14, 2018 along with the invoice dated February 12, 2018, that you hand delivered to me on February 13, 2018. I already mailed the February rent check to you. I am enclosing the \$35 late fee for the month of February 2018 along with this letter.

Per my previous conversation with you in regards to you charging me \$121.50 (Paint: \$46.50 and Labor: \$75) for the paint in the bathroom. You only painted the bathroom with a greenish color paint and then you put primer over the paint. The green paint started bleeding through the primer. You told me to write a letter stating what still needs to be done to the bathroom and so I did. First you told me to give the letter to the maintenance man and then you told me to give the letter to you instead. Then you told me to tell the maintenance man what was on the list that needed to be completed. You never said if you did or didn't approve it. The maintenance guy did exactly what was on the list. I am not responsible for the additional paint that was put on the bathroom walls.

Robert (Rob) Walker from the City of Oakland – Planning and Building Department came by on January 24, 2018 to review the work that was done. While you and Robert was outside, I told him the situation about you putting primer on the walls after you painted the bathroom and was going to leave it like that, and that the maintenance guy painted it and that you were charging me for the paint. He replied that you are suppose to paint it after the primer was put on and to take that up with The Rent Control Board.

Sincerely,
Tammy Louise Brown

Tammy Louise Brown

000043

CHRONOLOGICAL CASE REPORT

Case No.: T17-0572
Case Name: Hetelson v. Cleveland
Property Addresses: 882 Cleveland Street, Unit 48, Oakland, CA
Parties: Lee Hetelson (Tenant)
James L. Lewis (Owner)

OWNER APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	October 17, 2017
Owner Response filed	December 12, 2017
Hearing Decision mailed	June 13, 2018
Tenant Appeal filed	June 29, 2018
Owner Response to Appeal filed	July 30, 2018



RECEIVED

OCT 17 2017

RENT ADJUSTMENT PROGRAM
OAKLAND

Staff Dashboard

T17-0572 RC/SK

Home → T17-1088 → Submitted Petition Form

Petition type

Tenant

Applicant and Property Information

Applicant Info

Lee Hetelson,

882 cleveland street #48,
Oakland, California 94606
T 5106124800
hitleelee@gmail.com

Property owner

james lewis,
cleveland properties,
1035 underhills road, ,
Oakland, California 94610
T 5104520386

Property manager

james lewis,
cleveland properties,
1035 underhills road, ,
Oakland, California 94610
T 5104520386

Approximate range of units in the
building

20 to 49 Units

Type of unit you rent

Apartment, Room or Live-work

Are you current on your rent?

Yes

Grounds for Petition

d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.)

e) The property owner did not give me the required form "Notice of the Rent Adjustment Program" at least 6 months before the effective date of the rent increase(s).

f) The rent increase notice(s) was (were) not given to me in compliance with State law.

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.

i) My property owner is providing me with fewer housing services than I previously received or is charging me for services originally paid by the owner. (OMC 8.22.070(F): A decrease in housing services is considered an increase in rent. A tenant may petition for a rent adjustment based on a decrease in housing services.)

m) The owner did not give me justification(s) for the rent increase(s) despite my written request.

Rent Increases

When did you move into the unit?

9/16/2012

Initial monthly rent

\$1145

When did the property owner first provide you with a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program (RAP NOTICE)?

9/7/2017

Did the property owner provide you with a RAP Notice, a written notice of the

Yes

existence of the Rent Adjustmer.
Program?

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

No

Did you receive a RAP Notice with the
notice of rent increase?

No

Monthly rent increase

\$23

Date increase effective

12/1/2014

Are you contesting this increase in this
petition?

Yes

Did you receive a RAP Notice with the
notice of rent increase?

No

Monthly rent increase

\$21

Date increase effective

12/1/2015

Are you contesting this increase in this
petition?

Yes

Did you receive a RAP Notice with the
notice of rent increase?

No

Monthly rent increase

\$31

Date increase effective

2/1/2018

Are you contesting this increase in this
petition?

Yes

Did you receive a RAP Notice with the notice of rent increase? No

Monthly rent increase \$26

Date increase effective 12/1/2016

Are you contesting this increase in this petition? Yes

Did you receive a RAP Notice with the notice of rent increase? No

Monthly rent increase \$31

Date increase effective 12/1/2017

Are you contesting this increase in this petition? No

Did you receive a RAP Notice with the notice of rent increase? No

Monthly rent increase \$31

Date increase effective 2/1/2018

Are you contesting this increase in this petition? Yes

Have you ever filed a petition for your rental unit? No

Description of loss of service and problems

The housing services I am being provided have decreased.

Yes

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

Yes

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

100

Reduced Service description

The Elevator work 75 percent of the time. Many times it doesn't work through the whole weekend. It gets stuck on the fourth floor daily!!! I don't know how to value this, but I know that I wouldn't have moved onto the fourth floor if the elevator was going to be this way. It was fine for many years, but has been a problem for at least 5 years now. The permit in the elevator has been expired since December 2016, and before that it was also expired and operating for more than 1.5 years!!! The landlord continually ignores that it needs a permanent fix.

Date loss of this service began

2012/9/2

Loss of service documentary evidence

IMG_6369.jpg

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

No

Problem documentary evidence

Additional Documentation

File name

⊕ IMG_5228.JPG

THREE DAY NOTICE TO PAY RENT OR QUIT

TO: Lee Hetelson
882 Cleveland Street, Apt. 48
Oakland, CA 94606

DATE: September 6, 2017

AND TO ANY AND ALL OTHER PERSONS IN POSSESSION OF THE PREMISES.

NOTICE IS HEREBY GIVEN that pursuant to the rent agreement/lease by which you hold possession of the premises described above, there is now due and unpaid rent in the following amounts:

<u>MONTH</u>	<u>AMOUNT</u>
July, 2017	\$ 80.00
August, 2017	\$1303.00
September 2017	\$1303.00

TOTAL AMOUNT DUE: \$2686.00

DEMAND IS HEREBY MADE that within three (3) days after service of this notice on you, you either: pay the total amount due stated above, or deliver possession of the premises to the owner or his authorized agent stated below. If you fail to do either within the three (3) day period, you will be guilty of unlawful detainer and legal proceedings will be commenced against you to regain possession of said premises, together with rents, damages, attorney fees, and such other costs as allowed by law. The owner/agent elects to declare a forfeiture of the lease/rental agreement by which you hold possession of said premises. An unlawful detainer action against you could adversely affect your credit. Should legal proceedings be instituted, you may have defenses to present.

Make the rental payment or surrender the keys to the premises, 24 hours a day to: James Lewis 1035 Underhills Road, Oakland, CA 94610 510 452-0386

IF THE TENANCY TERMINATES PURSUANT TO THIS THREE DAY NOTICE, you have the legal right to request an initial inspection of your unit and be present during the inspection. The purpose of this inspection is to allow you the opportunity to correct any deficiencies in the unit in order to avoid deductions from the security deposit. Please contact the owner or manager to request an initial inspection.

This notice is given in good faith, and with no ulterior motive pursuant to Section 6 A(1) of Oakland's Just Cause for Eviction Ordinance. Advice is available from the Oakland Rent Board located at 250 Frank J. Ogawa Plaza, Suite 5813, Oakland, CA 94612 (510) 238-3501

Date

James Lewis
James L. Lewis

000050



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

RECEIVED
 CITY OF OAKLAND
 RENT ADJUSTMENT PROGRAM
 2017 DEC 12 PM 4:26

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- 0572

Your Name James Lewis and/or J. Hickingbotham	Complete Address (with zip code) 1035 Underhills Road Oakland, CA 94610	Telephone: 510-452-0386 Email: ivyhillproperties@yahoo.com
Your Representative's Name (if any)	Complete Address (with zip code)	Telephone: Email:
Tenant(s) Name(s) Lee Heteleson	Complete Address (with zip code) 882 Cleveland St., #48 Oakland, CA 94606	
Property Address (If the property has more than one address, list all addresses) 882 Cleveland St., Oakland CA 94606		Total number of units on property 27

Have you paid for your Oakland Business License? Yes No Lic. Number: **00062347**
 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: **023-0404-017-00**
 The property owner must be current on payment of the RAP Service Fee. If the fee is not current, an Owner Petition or Response may not be considered in a Rent Adjustment proceeding. **Please provide proof of payment.**

Date on which you acquired the building: **4 / 9 / 2004**

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 9/16/2006

The tenant's initial rent including all services provided was: \$ 1195 / 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? 9/16/2006

Is the tenant current on the rent? Yes No

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

Date Notice Given (mo./day/year)	Date Increase Effective	Rent Increased		Did you provide the "RAP NOTICE" with the notice of rent increase?
		From	To	
9/21/2017	12/1/2017	\$ 1302	\$ 1331	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
10/24/2016	12/1/2016	\$ 1277	\$ 1302	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
10/15/2015	12/1/2015	\$ 1256	\$ 1277	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
10/15/2014	12/1/2014	\$ 1233	\$ 1256	<input checked="" 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

Please see attached addendum #01

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.

James Lewis
Property Owner's Signature

12-6-17
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.

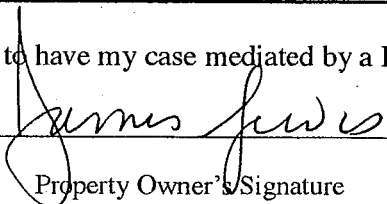
Mediation Program

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

12-6-17

Date

City of Oakland
Rent Adjustment Program
Case Number T17-0572

Addendum #01

1. Response to item d on Grounds for Petition: We have always provided our tenants with the "NOTICE TO TENANTS OF THE RESIDENTIAL RENT ADJUSTMENT PROGRAM" at the time they initially sign their lease and with each rental increase notice. In addition we reference this in our rent increase notices. We have attached the email and service that our attorney handled in 2013. This rent increase servicing included the RAP form and was received by the City of Oakland RAP office on May 29, 2013.
2. Response to item e on Grounds for Petition: We feel that this does not apply since we give the "NOTICE TO TENANTS OF THE RESIDENTIAL RENT ADJUSTMENT PROGRAM" as stated above in item #1.
3. Response to item f on Grounds for Petition: We provide all of our rent increases with proper notice as required by the state and Oakland. You can see that we provided that to him in 2013 with the attorney serviced documents.
4. Response to item h on Grounds for Petition: As of today's date we have not received any verbal or written requests for any repair items from this tenant. If there are any code violations in the tenants unit, then we will take care of those items.
5. Response to item i on Grounds for Petition: The tenant has the same services as they have had when they initially moved in. With regard to the elevator, we have applied for our updated permit when the old one expired. Currently the State is backed up on their inspections to complete the application process. On November 14, 2017 we had the inspection from the State inspector and he stated we should have the permit within a few weeks and/or Preliminary Order requesting any work. On that day he required work to be done on the elevator. We had Paramount Elevator out that day to correct the item and send the required form to the State. In addition, we are on a monthly service with Paramount Elevator to maintain then elevator. If there is ever a request for service we call them and they will be out in less than 24hrs. At this property we cannot operate it without an elevator since we have some disabled tenants.
6. Response to item m on Grounds for Petition: We have not received any written request to justify any of the allowable rent increases that we have given to the tenant.

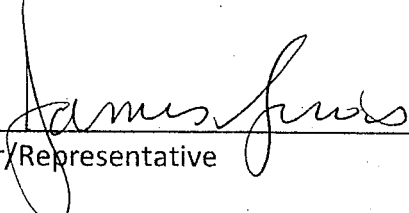
We have been in property management for 37 years and have managed this building for approximately 13 years. We have never had and issues with rent board forms when renting newly available units and/or rent increases.

Attached with the City of Oakland Rent Adjustment Program Property Owner Response:

- Current Business License
- City of Oakland – 2017 Rent Adjustment Program Payment form (paid on 1/3/17)

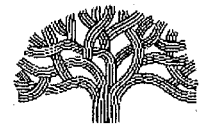
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- Letter to Lee Hetelson dated 11/27/17 with copy of letter from 11/18/17 with both proof of services.
- Letter to Lee Hetelson dated 11/27/17 with regard to the work items.
- Letter from Lee Hetelson dated 12/5/17
- Letter to Lee Hetelson dated 12/6/17 in response to his letter on 12/5/17
- State Order for the Elevator and subsequent compliance Form sent to State that work has been completed on the same date (11/14/17).
- Email from our Attorney, Panos Lagos, on May 29, 2013 with regard to their servicing on May 24, 2013 that included the rent increase servicing with the RAP form.



Owner/Representative

12-6-17
Date



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

CITY OF OAKLAND

Department of Housing and Community Development
Rent Adjustment Program

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

HEARING DECISION

CASE NUMBER: T17-0572, *Hetelson v. Cleveland Properties*

PROPERTY ADDRESS: 882 Cleveland St., #48, Oakland, CA

DATE OF HEARING: April 3, 2018

DATE OF DECISION: June 13, 2018

APPEARANCES: Lee Hetelson (Tenant)
James L. Lewis (Owner)
J. Hickingbotham (Witness for Owner)

SUMMARY OF DECISION

The tenant's petition is dismissed.

CONTENTIONS OF THE PARTIES

The tenant filed a petition on October 17, 2017, which alleges that a proposed rent increase from \$1,302 to \$1,331 per month, effective December 1, 2017, and rent increases in prior years, exceed the CPI Adjustment and are unjustified or is greater than 10%; that he first received the form Notice to Tenants (RAP Notice) on September 7, 2017; and that his housing services have been decreased due to repeated loss of elevator service.

The owners filed a response to the petition, which states that the tenant is not current on his rent, alleges that the tenant was first given a RAP Notice on September 16, 2006, and denies that the tenant's housing services have been decreased. The response does not state a justification for any contested rent increase.

THE ISSUES

- (1) Was the tenant current on his rent or legally withholding his rent when he filed his petition?
- (2) When did the tenant receive the RAP Notice?

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- (3) Is there a justification for the current contested rent increase?
- (4) Have the tenant's housing services been decreased and, if so, by what percentage of the total housing services that are provided by the owner?

EVIDENCE

RAP Notice: The owner submitted copies of the following documents:

1. A rent increase notice addressed to the tenant, dated May 24, 2013. The last sentence of this this document states: "A copy of the City of Oakland Notice to Tenants of Residential Rent Adjustment Program is included with this Notice;"
2. A RAP Notice; and
3. A Proof of Service regarding service of the rent increase notice on the tenant and others on May 29, 2013."¹

At the Hearing the tenant testified that is possible that he received or did not receive these documents. The owner testified that he had hired a lawyer and process server to serve the rent increase notice in 2013 because the tenant had denied receiving rent increase notices in prior years.

The owner also submitted copies of rent increase notices from himself to the tenant with dates in the years 2014, 2015, and 2016.² Each of these notices contains the language "I have included the Rent Program Form." The owner testified that the tenant was given a RAP Notice together with each of these rent increase notices. The tenant testified that he received each of these rent increase notices.

Current Rent Increase Notice: The owner submitted a copy of a rent increase notice addressed to the tenant, which states that the rent would be increased from \$1,302 to \$1,331 per month, effective December 1, 2017.³ The tenant testified that he was contesting this rent increase.

Rent History: The tenant testified that he has paid rent of \$1,233 each month since October 2017. The owner agreed with this testimony.

Decreased Housing Services: The tenant testified that he lives on the 4th floor of the subject building, in which there is one elevator. He further testified that here have been two problems with the elevator. First, it has become stuck on different floors many times. This problem began in 2013 or 2014. It sometimes takes "a couple of days" for the elevator to be repaired. The longest delay in repair was over a 4-day weekend in the year 2016.

The tenant submitted a photo of the elevator permit that was posted in the subject elevator in October 2017.⁴ This permit states the expiration date as December 10, 2016. He also submitted

¹ Exhibit Nos. 2A through 2C. These documents, and all others to which reference is made in this Decision, were admitted into evidence without objection.

² Exhibit Nos. 3, 4, & 5

³ Exhibit No. 1

⁴ Exhibit No. 6

a copy of a document entitled "Order Prohibiting Use" issued by the State Division of Occupational Safety and Health on November 14, 2017, regarding the subject elevator.⁵ The writing on the first page of this document states: "Alarm bell shall work as intended."

Mr. Hickingbotham testified that he has been the off-site rental and maintenance manager for the subject building since June 2017, and that he knows of no complaint regarding the elevator. He further testified that the building's owner has a monthly service contract with Paramount Elevator, which company checks the elevator and elevator doors on all floors as part of its contract. He was present on November 14, 2017, at the time of the State inspection. The inspector told him that he was there for a regular inspection as part of the permit process. Mr. Hickingbotham asked the inspector why a new permit had not been issued, and the inspector replied that the process is very backed up.

Mr. Hickingbotham further testified that later that day he called Paramount Elevator, and the alarm bell was repaired that afternoon. The owner submitted a document entitled "State of California Notice of Conveyance Compliance Form."⁶ This document was signed on November 14, 2017, by Leah Broom, East Bay Compliance Specialist of Paramount Elevator Corporation. The document states: "The emergency alarm bell has been repaired. It operates as intended."

On questioning by the tenant, Mr. Hickingbotham testified that, in fact, he had received one complaint from the tenant regarding the elevator, and that the elevator has gotten stuck.

The owner testified that he had received calls from the tenant regarding the elevator before Mr. Hickingbotham began working for him. He further testified that the elevator sometimes malfunctions because it is old.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

RAP Notice: Considering the owner's documentary evidence and the tenant's equivocal testimony, the owner has sustained its burden of proof by a preponderance of the evidence. It is found that the tenant received the RAP Notice in the year 2013 and subsequent years.

Tenant's Challenge to Rent Increases: Notice and Filing Requirements: 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.⁷ Since the tenant received the RAP Notice as early as 2013, his challenge to rent increases in prior years was not timely, and these claims are denied.

The Current Rent Increase: "A tenant may file a petition . . . contesting any rent increase which exceeds the CPI Rent Adjustment."⁸ The current rent increase is 2.3% of the existing rent of \$1,302 per month, which does not exceed the CPI Rent Adjustment. The rent increase to \$1,331

⁵ Exhibit No. 7A

⁶ Exhibit No 7B

⁷ O.M.C. Section 8.22.090 (A)(2)

⁸ O.M.C. Section 8.22.070(C)(1)

per month cannot be challenged. Therefore, before considering the tenant's claim of decreased housing services, the rent is \$1,331 per month, effective December 1, 2017.

Decreased Housing Services: Under the Oakland Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent⁹ and may be corrected by a rent adjustment.¹⁰ 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.

A tenant has the burden of proof with respect to each decreased services claim. Further, a tenant must give an owner notice of a problem and the owner is allowed a reasonable period of time after such notice to make repairs.

All elevators break down from time to time. It is found that the owner has always acted reasonably with regard to elevator malfunctions, and has a monthly contract with an elevator maintenance company. The tenant's suggestion that the owner did not properly maintain the elevator because the State permit had expired is not well founded. The explanation of the owner's witness that the State was behind in inspections was credible. The citation introduced by the tenant was for the alarm bell, which is unrelated to the functioning of the elevator, and the problem was corrected the same day. Therefore, the claim of decreased housing services is denied.

Current on the Rent: If a tenant is not either current on the rent, or legally justified in withholding rent, he or she does not have standing to file a petition, and the petition must be dismissed.¹¹

A tenant may exercise the option not to pay rent, or to pay a lesser amount, when a unit's condition is in breach of the implied warranty of habitability. The statutory authority for rent withholding is Code of Civil Procedure Section 1174.2. It provides that a substantial breach of the implied warranty of habitability may be raised as a defense to an unlawful detainer action. To confer standing to file a Rent Adjustment petition, a tenant must show that he or she might prevail in court in a claim for a habitability breach, that is, the tenant must present a prima facie case that he or she is withholding the rent legally. For the reasons stated above, there was not a substantial breach of the warranty of habitability. Therefore, the tenant was not justified in paying less than the full rent amount.

The current rent increase notice states that the tenant's then-current rent was \$1,302 per month. The tenant testified that he paid rent of \$1,233 in October 2017, when he filed his petition. It is found that the tenant was not current on his rent, or legally justified in paying a lesser amount, when his petition was filed. Therefore, the tenant's petition is dismissed.

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⁹ O.M.C. Section 8.22.070(F)

¹⁰ O.M.C. Section 8.22.110(E)

¹¹ O.M.C. 8, 22.090.A.3.B

ORDER

1. Petition T17-0572 is dismissed.
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: June 13, 2018



Stephen Kasdin
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE

Case Number T17-0572

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

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

Tenant


Lee Hetelson
882 Cleveland St #48
Oakland, CA 94606

Owner

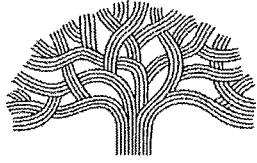
Cleveland Properties/James Lewis
1035 Underhills Rd
Oakland, CA 94610

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 13, 2018 in Oakland, CA.



Stephen Kasdin



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 JUN 29 AM 11:32

APPEAL

Appellant's Name Lee Hetelson		<input type="checkbox"/> Owner <input checked="" type="checkbox"/> Tenant	
Property Address (Include Unit Number) 882 cleveland street #48			
Appellant's Mailing Address (For receipt of notices) 882 Cleveland street #48		Case Number T17-0572	Date of Decision appealed June 13, 2018
Name of Representative (if any)		Representative's Mailing Address (For notices)	

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

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

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

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


For more information phone (510) 238-3721.

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

Submissions to the Board 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.

• 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 29, 2018, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<u>Name</u>	James Lewis
<u>Address</u>	1035 Underhills Road
<u>City, State Zip</u>	Oakland, Ca. 94606 94610 2.25
<u>Name</u>	
<u>Address</u>	
<u>City, State Zip</u>	

	July 29, 18
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

For more information phone (510) 238-3721.

IMPORTANT INFORMATION:

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

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

For more information phone (510) 238-3721.

Appeal Request for Case #T17-0572

Lee Hetelson
882 Cleveland Street #48
Oakland, Ca.94606

I humbly ask for an appeal so that I may be given a chance to bring witnesses from my building! The owner and myself agreed to meet for a mediation through your online petition process. I read everything carefully and believed that the "hearing" was a mediation. I did not have anyone from the building with me to provide testimony about the continued failure of the elevator. If I had known that we were not meeting to mediate, I would have brought witnesses, prepared a stronger case, and been prepared to make a final statement that would show a decrease in services at my place of residence.

I told Mr. Kasdin about the mediation and he disregarded my correct assertion that we were supposed to mediate. How can one be prepared with witnesses for a hearing when misdirected and misguided by the process. The online petition clearly stated that we would be having a mediation before anything else. Stephen Kasdin was completely unorganized and caught off guard by this. He then asked the owner if he wanted to mediate and when the owner said "no" I was forced to present my case. I was completely unprepared for that event and misled as to the nature of our April 3 meeting. I stated for the record that this wasn't fair, right, or organized. It should be on the recording. James Lewis and Cleveland properties agreed to have a mediation and I believed this first "hearing" was supposed to be a mediation. The record will show that both Jim and myself signed the documents for a mediation before our case would have to get to a hearing officer!

Of course I wouldn't bring my witnesses to a mediation and thus I had no one to show Mr. Kasdin the severity and length of the elevator problem. I am 48 years old, have a bad back, bad knee, and a three year old baby. I carry 40lb drums to my jobs and having the elevator is not a luxury it is a necessity. I wouldn't have moved in to the fourth floor and paid 1145.00 a month if there wasn't a reliable elevator.

I also want to say that I filed the petition because the landlord had accepted my 1233.00 dollar rent since 2013 without any complaint or indication that it was partial rent! When J Hickingbotham took over I was then notified and threatened with eviction for a large sum of "back rent". It was in October of 2017 that I was given this threat and I then turned to the rent board. I don't see this addressed anywhere in the case decision.

James Lewis stated at the hearing that we had talked about me owing back rent, but this is a lie. We only had discussions about this after he decided to apply my July 2017 rent payment to this so called back rent!!! Is it legal to accept rent for three years and then say that a tenant owes "back rent". If so I will be amazed as I was never sent a legal notice of this for more than three years between 2013 and 2017!

Furthermore, I have to challenge Mr. Kasdin's memory and interpretation of the hearing as he states on page 2 of the decision: "The tenant testified that he received each of these rent increase notices" (from 2014, 2015, 2106) I have an excellent memory and there should be a recording of the hearing, and I also told the truth, which is that I did not receive notices in 2014 or 2015, but that I did receive one in 2016. This would be consistent with how the landlord skipped raising my rent for two previous years 2011 and 2012, and then raised for three years in 2013. I beseech you to listen to the hearing recording, Mr. Kasdin certainly made a mistake or has impartially sided with the owner. I did not receive a RAP notice until 2016, and by then the landlord was already decreasing the services in the building! I have been complaining about the elevator for years and the landlord has not cared to fix it!

Third, the Decision states that J. Hickingbotham was a witness for the owner. But this is not true. J has taken over and is not a witness but part of the Cleveland Properties team. How Mr. Kasdin calls J credible and a witness is dumfounding.

On page 4 of the decision Mr. Kasdin writes:

"The tenant's suggestion that the owner did not properly maintain the elevator because the state permit had expired is not well founded. The explanation of the owners witness that the state was behind in inspections was credible."

This is disgustingly impartial!!! I showed that the elevator hadn't been properly permitted for more that 2 years, and before that permit it was also not permitted for many years. Does it take a state inspection 2 years to come and look. The landlord had plenty of time to permit the elevator, and that is what I was

000066

demonstrating; Owner neglect. Should I have to hire an elevator company to provide Mr. Kasdin with credible evidence of an elevator that constantly malfunctions.

If I knew that I was having our case on April 3 I would have brought many other tenants to add credence to my assertion: The Landlord wants to get his legal rent increases without maintaining the services of the building!! (As of today we have been without a working elevator for more than 5 Weeks;(I am happy to provide proof!!!)

Mr. Kasdin writes "All elevators break down from time to time" We have been without a consistent elevator for more than 3 years now, and as I already stated, it is now 5 Weeks without any elevator Service at all. I deserve a chance to put forth witnesses and to show that this is not a "time to time" breakdown.

Also, it seems as though Mr. Kasdin has determined that I received the RAP notice in 2013 and that my "challenge to rent increases in prior years was not timely, and these claims are denied"...this is a total lack of comprehension of the case. I said I received a notice in 2013 and thus I then paid a rent increase of three back years!!! My rent went from 1145 to 1233. I stated for the record and under oath that I did not get a RAP notice in 2014 or 2015, and then in 2016 I acknowledged that I received one. The Landlord has been fine receiving my 1233.00 dollar rent since 2013, it is only since taking on J Hickingbotham that he decided I should have to pay back rent increases from 2014, 2015, and 2016! Mr. Kasdin's finding of facts was grossly erroneous. Please listen to the "hearing" How can I pay a rent increase in 2013 but then be punished because I didn't receive it in 2014. Sounds like Mr. Kasdin was confused as to the testimony.

Lastly, the "Current on Rent" section written by Stephen Kasdin claims that my case must be dismissed as I wasn't current on rent, but his whole explanation is convoluted. I was paying my rent and it was accepted by the landlord without issue. It is Mr. Kasdin's determination that the elevator repair isn't necessary that deems me in breach of the warranty of habitability. I would have been happy to pay the landlord a legal rent increase until the determination of the court, but the Landlord was asking for 3 years back rent!! This isn't legal.

I am also unsure whether or not I am supposed to present a more documented argument here in this appeal letter or simply request the appeal as I have done. Please grant me an appeal as this is not just, and your program can do better than this!

Thank you,

Lee Hetelson

000067

July 30, 2018

City of Oakland
Rent Adjustment Program
Case Number T17-0572

RECEIVED
JUL 30 2018
RENT ADJUSTMENT PROGRAM
OAKLAND

To Whom it May Concern:

This is a letter in response to the appeal by Lee Hetelson made June 29, 2018.

We are in receipt of the response and feel that there is no need for an appeal. During the process of the original petition from Lee Hetelson we were able to provide all of the documentation that was requested.

During the hearing we discovered that Lee Hetelson did state that he had received at least one of the Oakland RAP forms after 2013. This showed us and Mr. Kasdin that Lee Hetelson's claim that he has not received one since 2013 was false.

Secondly in the hearing we did discuss the elevator. As we all discussed with Mr. Kasdin all elevators need servicing. We have a service contract with Paramount Elevator and we have included the service record card to show dates of service/repair. Even when you service an elevator, whether it is new or old, it is difficult to know when a significant part may need to be replaced or repaired. Recently we did have a part that needed to be replaced. The part was no longer made, so Paramount Elevator had to source a company on the East Coast that was able to read the data from our old part and install it on to the new part. Unfortunately, this process was long even with paying an additional fee to have it expedited. Due to the timing of this we have recently thanked our tenants for their patience with a \$100 cash gift.

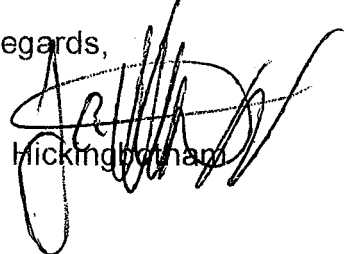
Since the decision in our favor, we have spoken with Lee Hetelson and offered him in good faith a few options to get caught up on the back rent. As of the date of this letter we have not had any response from him with regard to that.

We have attached the following:

1. Current Elevator Permit
2. Elevator Inspection Card for 2017-2018
3. Original response to the Initial Petition from Lee Hetelson. (this is for information purposes incase Mr. Kasdin is not reviewing this Appeal)
4. A picture of the property for your reference purposes

Thank you for your time and cooperation in this matter.

Regards,


J. Hickingbotham

000068



Oakland Distr. Office
1515 Clay Street, Suite 1301
Oakland, CA 94612

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH

RETURN SERVICE REQUESTED

PERMIT TO OPERATE A CONVEYANCE

CONVEYANCE PERMIT

CLEVELAND PROPERTIES
ATTN: JIM LEWIS
1035 UNDERHILLS RD
OAKLAND CA 94610-2528

Conveyance Number: 015542

Permit Expires: 11/14/2018

Inspection Date: 11/14/2017

Location: 882 CLEVELAND
OAKLAND CA 94606

Issue Date: 05/24/2018

Owners ID: EV

California law requires that all conveyances shall have a valid permit posted conspicuously on the conveyance. (Labor Code Sections 7300-7324). Please detach your new permit at the dotted line and post on the conveyance. Retain this portion for your records.

STATE OF CALIFORNIA
Department of Industrial Relations
Division of Occupational Safety & Health

INSPECTION: 015542
Conveyance Number

11/14/2017
Date of Inspection

11/14/2018
Date Permit Expires

LOCATION: 882 CLEVELAND
Street Address

OAKLAND
City or Town

LOAD PERMISSIBLE: 1,200
Pounds



8
Persons

TF427
Inspector

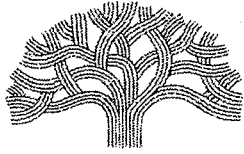
DESCRIPTION: Passenger
Type of conveyance

EV
Owner's ID

AC 1 and 2 spd
Power

Overhead Tract
Type of Machine

THIS PERMIT SHALL BE POSTED ON THE CONVEYANCE



CITY OF OAKLAND

**CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM**

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

For date stamp:
RENT ADJUSTMENT PROGRAM

2018 JUL 30 PM 3:11

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 T17-0572

Your Name James Lewis and/or J. Hickingbotham	Complete Address (with zip code) 1035 Underhills Road, Oakland CA 94610	Telephone: 510-452-0386
		Email: ivyhillproperties@yahoo.com
Your Representative's Name (if any)	Complete Address (with zip code)	Telephone: Email:
Tenant(s) Name(s) Lee Hetelson	Complete Address (with zip code) 882 Cleveland Street #48 Oakland, CA 94606	
Property Address (If the property has more than one address, list all addresses) 882 Cleveland Street Oakland, CA 94606		Total number of units on property 27

Have you paid for your Oakland Business License? Yes No Lic. Number: 00062347
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: 023-0404-017-00
The property owner must be current on payment of the RAP Service Fee. If the fee is not current, an Owner Petition or Response may not be considered in a Rent Adjustment proceeding. **Please provide proof of payment.**

Date on which you acquired the building: 4/9/2004

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 9/16/2006

The tenant's initial rent including all services provided was: \$ 1195 / 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? 9/16/2006

Is the tenant current on the rent? Yes No

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

<u>Date Notice Given (mo./day/year)</u>	<u>Date Increase Effective</u>	<u>Rent Increased</u>		<u>Did you provide the "RAP NOTICE" with the notice of rent increase?</u>
		<u>From</u>	<u>To</u>	
9/21/2017	12/1/2017	\$ 1302	\$ 1331	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
10/24/2016	12/1/2016	\$ 1277	\$ 1302	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
10/15/2015	12/1/2015	\$ 1256	\$ 1277	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
10/15/2014	12/1/2014	\$ 1233	\$ 1256	<input checked="" 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.

James Lewis
Property Owner's Signature

7-30-18
Date

IMPORTANT INFORMATION:

Time to File

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

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

File Review

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

Mediation Program

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

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

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

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

Property Owner's Signature

Date

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

City of Oakland
Rent Adjustment Program
Case Number T17-0572

Addendum #01

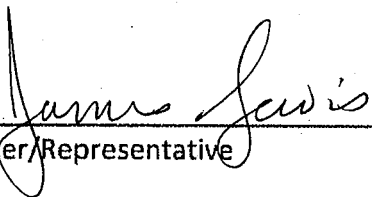
1. Response to item d on Grounds for Petition: We have always provided our tenants with the "NOTICE TO TENANTS OF THE RESIDENTIAL RENT ADJUSTMENT PROGRAM" at the time they initially sign their lease and with each rental increase notice. In addition we reference this in our rent increase notices. We have attached the email and service that our attorney handled in 2013. This rent increase servicing included the RAP form and was received by the City of Oakland RAP office on May 29, 2013. All of this Lee Hetelson received and has been complying with the rent increase stated in the serviced documents.
2. Response to item e on Grounds for Petition: We feel that this does not apply since we give the "NOTICE TO TENANTS OF THE RESIDENTIAL RENT ADJUSTMENT PROGRAM" as stated above in item #1.
3. Response to item f on Grounds for Petition: We provide all of our rent increases with proper notice as required by the state and Oakland. You can see that we provided that to him in 2013 with the attorney serviced documents.
4. Response to item h on Grounds for Petition: As of today's date we have not received any verbal or written requests for any repair items from this tenant. If there are any code violations in the tenants unit, then we will take care of those items.
5. Response to item i on Grounds for Petition: The tenant has the same services as they have had when they initially moved in. With regard to the elevator, we have applied for our updated permit when the old one expired. Currently the State is backed up on their inspections to complete the application process. On November 14, 2017 we had the inspection from the State inspector and he stated we should have the permit within a few weeks and/or Preliminary Order requesting any work. On that day he required work to be done on the elevator. We had Paramount Elevator out that day to correct the item and send the required form to the State. In addition, we are on a monthly service with Paramount Elevator to maintain then elevator. If there is ever a request for service we call them and they will be out in less than 24hrs. At this property we cannot operate it without an elevator since we have some disabled tenants.
6. Response to item m on Grounds for Petition: We have not received any written request to justify any of the allowable rent increases that we have given to the tenant.

We have been in property management for 37 years and have managed this building for approximately 13 years. We have never had and issues with rent board forms when renting newly available units and/or rent increases.

Attached with the City of Oakland Rent Adjustment Program Property Owner Response:
- Current Business License

000075

- City of Oakland – 2017 Rent Adjustment Program Payment form (paid on 1/3/17)
- Letter to Lee Hetelson dated 11/27/17 with copy of letter from 11/18/17 with both proof of services.
- Letter to Lee Hetelson dated 11/27/17 with regard to the work items.
- Letter from Lee Hetelson dated 12/5/17
- Letter to Lee Hetelson dated 12/6/17 in response to his letter on 12/5/17
- State Order for the Elevator and subsequent compliance Form sent to State that work has been completed on the same date (11/14/17).
- Email from our Attorney, Panos Lagos, on May 29, 2013 with regard to their servicing on May 24, 2013 that included the rent increase servicing with the RAP form.
- Letter from another tenant in the building dated Decemeber 1st, 2017. It talks about our management and elevator servicing.



Owner/Representative

12/1/17

Date

CONSOLIDATED CHRONOLOGICAL CASE REPORT

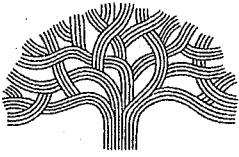
Case Nos. & Names: T17-0413, Piceno v. Hernandez
T17-0414, Avalos et al. v. Hernandez

Property Address: 9714 Cherry Street, Unit E, Oakland, CA
9714 Cherry Street, Unit F, Oakland, CA

Parties: Irene Piceno (Tenant)
Ana Alejo (Tenant)
Martin Hernandez (Property Owner)

OWNER APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed (Case T17-0413)	July 13, 2017
Tenant Petition filed (Case T17-0414)	July 13, 2017
Owner Response filed (Case T17-0413)	September 26, 2017
Owner Response filed (Case T17-0414)	September 26, 2017
Hearing Decision mailed	June 28, 2018
Owner Appeal filed	July 17, 2018



CITY OF OAKLAND

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

RECEIVED
CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM

2017 JUL 13 AM 11:01

TENANT PETITION

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

Please print legibly

T17-0413 KM/SK

Your Name Irene Piceno	Rental Address (with zip code) 9714 Cherry St. Apt. #E Oakland, CA 94603	Telephone: (510) 632-0759 E-mail:
Your Representative's Name Leah Simon-Weisberg	Mailing Address (with zip code) Centro Legal de la Raza 3022 International Blvd. #410 Oakland, CA 94601	Telephone: (510) 827-1170 Email: lsimonweisberg@centrolegal.org
Property Owner(s) name(s) Martin Hernandez	Mailing Address (with zip code) 9231 Walnut St. Oakland, CA 94603	Telephone: Email:
Property Manager or Management Co. (if applicable)	Mailing Address (with zip code)	Telephone: Email:

Number of units on the property: 7

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

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

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

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

	rent increase.
<input 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) The property owner did not give me the required form "Notice of the Rent Adjustment Program" at least 6 months before the effective date of the rent increase(s).
<input checked="" type="checkbox"/>	(f) The rent increase notice(s) was (were) not given to me in compliance with State law.
<input checked="" type="checkbox"/>	(g) The increase I am contesting is the second increase in my rent in a 12-month period.
	(h) There is a current health, safety, fire, or building code violation in my unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance. (Complete Section III on following page)
	(i) The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner. (OMC 8.22.070(F): A decrease in housing services is considered an increase in rent. A tenant may petition for a rent adjustment based on a decrease in housing services.) (Complete Section III on following page)
	(j) My rent was not reduced after a prior rent increase period for a Capital Improvement had expired.
<input checked="" 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).
	(l) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake (OMC 8.22, Article I)
	(m) The owner did not give me a summary of the justification(s) for the increase despite my written request.
	(n) The rent was raised <u>illegally</u> after the unit was vacated as set forth under OMC 8.22.080.

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

Date you moved into the Unit: 1996 Initial Rent: \$550 /month

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

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

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

Date you received the notice (mo/day/year)	Date increase goes into effect (mo/day/year)	Monthly rent increase		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
5/01/2017	5/01/2017	\$ 900	\$ 1,200	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
8/01/2016	8/01/2016	\$ 700	\$ 900	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
6/01/2013	6/01/2013	\$ 550	\$ 700	<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

* 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, ^{See last page} or if you checked box (h) or (i) on page 2, please attach a separate sheet listing a description of the reduced service(s) and problem(s). Be sure to include the following:

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

Please attach documentary evidence if available.

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

IV. VERIFICATION: The tenant must sign:

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

Irene P. Alvarez
Tenant's Signature

6/14/17
Date

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

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

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

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

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

Tenant's Signature

Date

VI. IMPORTANT INFORMATION:

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

File Review

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

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

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

While tenant is contending that there are serious problems with the condition of their rental unit, tenant is not asking to file a petition with regard to its conditions.



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

RECEIVED
 CITY OF OAKLAND
 RENT ADJUSTMENT PROGRAM
 For date stamp.
 2017 JUL 13 AM 11:01

TENANT PETITION

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

Please print legibly

T17-0414 KM/SK

Your Name Martin Avalos Ana Alejo	Rental Address (with zip code) 9714 Cherry St. Apt. #F Oakland, CA 94603	Telephone: (510) 904-8047
		E-mail:
Your Representative's Name Leah Simon-Weisberg	Mailing Address (with zip code) Centro Legal de la Raza 3022 International Blvd. #410 Oakland, CA 94601	Telephone: (510) 827-1170
		Email: lsimonweisberg@centrolegal.org
Property Owner(s) name(s) Martin Hernandez	Mailing Address (with zip code) 9231 Walnut St. Oakland, CA 94603	Telephone:
		Email:
Property Manager or Management Co. (if applicable)	Mailing Address (with zip code)	Telephone:
		Email:

Number of units on the property: 7

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

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

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

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

	rent increase.
<input 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) The property owner did not give me the required form "Notice of the Rent Adjustment Program" at least 6 months before the effective date of the rent increase(s).
<input checked="" type="checkbox"/>	(f) The rent increase notice(s) was (were) not given to me in compliance with State law.
	(g) The increase I am contesting is the second increase in my rent in a 12-month period.
	(h) There is a current health, safety, fire, or building code violation in my unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance. (Complete Section III on following page)
	(i) The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner. (OMC 8.22.070(F): A decrease in housing services is considered an increase in rent. A tenant may petition for a rent adjustment based on a decrease in housing services.) (Complete Section III on following page)
	(j) My rent was not reduced after a prior rent increase period for a Capital Improvement had expired.
<input checked="" 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).
	(l) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake (OMC 8.22, Article I)
	(m) The owner did not give me a summary of the justification(s) for the increase despite my written request.
	(n) The rent was raised <u>illegally</u> after the unit was vacated as set forth under OMC 8.22.080.

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

Date you moved into the Unit: April 2006 Initial Rent: \$850 /month

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

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

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

Date you received the notice (mo/day/year)	Date increase goes into effect (mo/day/year)	Monthly rent increase		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
5/01/2017	5/01/2017	\$ 900	\$ 1,200	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
7/01/2015	7/01/2015	\$ 800	\$ 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
		\$	\$	<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

see last page.

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

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

Please attach documentary evidence if available.

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

IV. VERIFICATION: The tenant must sign:

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

Ana Alejo
Tenant's Signature

6/14/17
Date

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

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

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

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

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

Tenant's Signature

Date

VI. IMPORTANT INFORMATION:

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

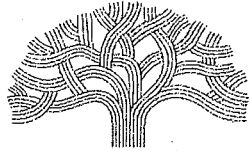
File Review

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

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

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

While tenant is contending that there are serious problems with the condition of their rental unit, tenant is not asking to file a petition with regard to its conditions.



CITY OF OAKLAND

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

For date stamp.

SEP 26 PM 1:00

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 T17-0413

Your Name MARTIN Hernandez	Complete Address (with zip code) 9231 Walnut St. Oakland, Ca 94603	Telephone: 510-414-6407 Email:
Your Representative's Name (if any)	Complete Address (with zip code)	Telephone: Email:
Tenant(s) Name(s) Irene Piceno	Complete Address (with zip code) 9714 Cherry St #E Oakland, Ca 94603	
Property Address (If the property has more than one address, list all addresses) 9714 Cherry St. Oakland, Ca 94603		Total number of units on property 7

Have you paid for your Oakland Business License? Yes No Lic. Number: **00048274**
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: **46-5448-22**
The property owner must be current on payment of the RAP Service Fee. If the fee is not current, an Owner Petition or Response may not be considered in a Rent Adjustment proceeding. **Please provide proof of payment.**

Date on which you acquired the building: **10/22/96**

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>
5-1-17	<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"/>

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 10-22-96.

The tenant's initial rent including all services provided was: \$ 550 / 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>	
5-1-17	5-1-17	\$ 900	\$ 1200	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
8-1-16	8-1-16	\$ 700	\$ 900	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
6-1-13	6-1-13	\$ 550	\$ 700	<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

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.

X Martín Hernandez
Property Owner's Signature

X 9-21-17
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.

II. RENT HISTORY

When I acquired the property in 10/22/96, Irene Piceno was the original tenant.

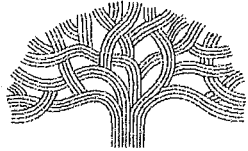
When I received the letter I requested assistance in this matter. We used the current CPI rate to determine the amount of percentage to raise the rent on unit #E. I was very unaware of due process in the rent increase, CPI, RAP etc.

I agree with the current CPI and banking calculator that there is no allowable rate increase on this unit at this time based on the date of May 1, 2017 rate increase date.

I am requesting that the tenant agrees to submit a Rental Application and Rental Agreement to me.

IV. DECREASED HOUSING SERVICES

I have not been notified of any lost housing services or problems.



CITY OF OAKLAND

**CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM**

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

For date stamp.

SEP 26 PM 1:00

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 T17-0414

Your Name MARTIN Hernandez	Complete Address (with zip code) 9231 Walnut St Oakland, Ca 94603	Telephone: 510-414-6407
		Email:
Your Representative's Name (if any)	Complete Address (with zip code)	Telephone:
		Email:
Tenant(s) Name(s) MARTIN AVALOS ANA ALEJO	Complete Address (with zip code) 9714 Cherry St #F Oakland, Ca 94603	
Property Address (If the property has more than one address, list all addresses) 9714 Cherry St. Oakland, Ca 94603		Total number of units on property 7

Have you paid for your Oakland Business License? Yes No Lic. Number: **00048274**
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: **46-5448-22**
The property owner must be current on payment of the RAP Service Fee. If the fee is not current, an Owner Petition or Response may not be considered in a Rent Adjustment proceeding. **Please provide proof of payment.**

Date on which you acquired the building: **10/22/96**

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>
5-1-17	<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"/>

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

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

The tenant moved into the rental unit on April 1, 2006.

The tenant's initial rent including all services provided was: \$ 850 / 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.

Date Notice Given (mo./day/year)	Date Increase Effective	Rent Increased		Did you provide the "RAP NOTICE" with the notice of rent increase?
		From	To	
5-1-17	5-1-17	\$ 900	\$ 1200	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
7-1-15	7-1-15	\$ 850	\$ 900	<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

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.

X Marten Hernandez
Property Owner's Signature

X 9-21-17
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

II. RENT HISTORY

When I acquired the property in 10/22/96, Martin Avalos & Ana Alejo, were not the original tenants. I do not have a rental contract with tenants.

When I received the letter I requested assistance in this matter. We used the current CPI rate to determine the amount of percentage to raise the rent on unit #F. I was very unaware of due process in the rent increase, CPI, RAP etc.

I agree with the allowable increase of 2.0% as of May 1, 2017, raising the rent to \$918.00 monthly, and along with this increase I am requesting that the tenant agrees to submit a Rental Application and Rental Agreement to me.

IV. DECREASED HOUSING SERVICES

I have not been notified of any lost housing services or problems.



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: T17-0409, Alejo, et al. v. Hernandez;
T17-0411, Alejo v. Hernandez;
T17-0413, Piceno v. Hernandez;
T17-0414, Avalos, et al. v. Hernandez

PROPERTY ADDRESS: 9714 Cherry St., Units B, D, E, & F, Oakland, CA

DATE OF HEARING: April 6, 2018

DATE OF DECISION: June 8, 2018

APPEARANCES: Juan Alejo (Tenant, Unit B)
David Figueroa (Tenant, Unit D)
Irene Piceno (Tenant, Unit E)
Ana Alejo (Tenant, Unit F)
Micaela L. Alvarez (Attorney for Tenants)
Tulio Ospina (Tenant Representative)
Martin Hernandez (Owner)
Paul Hernandez (Interpreter)

SUMMARY OF DECISION

Petition T17-0409 (Alejo, et al. v. Hernandez) is granted. Petition T17-0411 (Alejo v. Hernandez) is granted. Petition T17-0413 (Piceno v. Hernandez) is granted. Petition T17-0414 (Avalos, et al. v. Hernandez) is granted.

CONTENTIONS OF THE PARTIES

Tenants Juan Alejo & Carmen Avelos (Unit B) filed a petition on July 13, 2017, which alleges that a current proposed rent increase from \$600 to \$850 per month, effective January 1, 2017, and a rent increase from \$580 to \$650 per month, effective June 1, 2013, exceed the CPI

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Adjustment and are unjustified or are greater than 10%, and that they have never received the form Notice to Tenants (RAP Notice). The owner filed a response to the petition, which states that the tenants were never given the RAP Notice, and that the 2017 proposed rent increase is justified by Banking and Increased Housing Service Costs.

Tenant David Figueroa Alejo (Unit D) filed a petition on July 13, 2017, which alleges that a current proposed rent increase from \$800 to \$1,050 per month, effective May 1, 2017, and a rent increase from \$700 to \$800 per month, effective July 1, 2015, exceed the CPI Adjustment and are unjustified or are greater than 10%, and that he has never received the form Notice to Tenants (RAP Notice). The owner filed a response to the petition, which states that the tenant was never given the RAP Notice, and that the 2017 proposed rent increase is justified by Banking and Increased Housing Service Costs.

Tenant Irene Piceno (Unit E) filed a petition on July 13, 2017, which alleges that a current proposed rent increase from \$900 to \$1,200 per month, effective May 1, 2017, a rent increase from \$700 to \$900 per month, effective August 1, 2016, and a rent increase from \$550 to \$700 per month, effective June 1, 2013, exceed the CPI Adjustment and are unjustified or are greater than 10%, and that she has never received the form Notice to Tenants (RAP Notice). The owner filed a response to the petition, which states that the tenant was never given the RAP Notice, and that the 2017 proposed rent increase is justified by Banking and Increased Housing Service Costs.

Tenants Martin Avalos and Ana Alejo (Unit F) filed a petition on July 13, 2017, which alleges that a current proposed rent increase from \$900 to \$1,200 per month, effective May 1, 2017, and a rent increase from \$800 to \$900 per month, effective July 1, 2015, exceed the CPI Adjustment and are unjustified or are greater than 10%, and that they have never received the form Notice to Tenants (RAP Notice). The owner filed a response to the petition, which states that the tenants were never given the RAP Notice, and that the 2017 proposed rent increase is justified by Banking and Increased Housing Service Costs.

THE ISSUES

- (1) When, if ever, did the tenants receive the RAP Notice?
- (2) Are rent increases for any of the tenants justified and, if so, in what amounts?
- (3) Have the tenants overpaid rent and, if so, what restitution is appropriate?

EVIDENCE

TENANTS JUAN ALEJO & CARMEN AVELOLOS (Unit B)

RAP Notice: At the Hearing, the parties agreed that the tenants have never received the RAP Notice.

Rent History: The tenants testified that they did not want to challenge the prior rent increase which increased the rent to \$600 per month. However, they are challenging the proposed current rent increase. They have continued to pay rent of \$600 per month.

TENANT DAVID FIGUEROA ALEJO (Unit D)

RAP Notice: At the Hearing, the parties agreed that the tenant has never received the RAP Notice.

Rent History: The parties agreed that the tenant's initial rent was \$700 per month, and that he has paid \$800 per month since July 1, 2015.

TENANT IRENE PICENO (Unit E)

RAP Notice: At the Hearing, the parties agreed that the tenant has never received the RAP Notice.

Rent History: The tenant testified that her initial rent in the year 1996 was \$550 per month. She further testified that her rent was increased to \$700 per month on June 1, 2013, and she was served with a rent increase notice increasing her rent to \$900 per month in July 2016. She has paid rent of \$900 per month since that time. The tenant submitted photocopies of several rent receipts from the year 1999, which reflect rent payments of \$550 per month.¹ The owner first testified that he did not recall the tenant's initial rent, but that she began paying \$700 per month more than 3 years ago, and has paid \$900 each month since the year 2016. After looking at the rent receipts described above, the owner testified that the tenant's initial rent was \$550 per month.

TENANTS MARTIN AVALOS & ANA ALEJO (Unit F)

RAP Notice: At the Hearing, the parties agreed that the tenants have never received the RAP Notice.

Rent History: The tenants testified that when they moved into his unit in the year 2006, their rent was \$850 per month. On February 1, 2007, the rent was reduced to \$800 per month. They continued paying \$800 per month until July 1, 2015, when the rent was increased to \$900 per month. They have continued paying \$900 per month. The owner agreed with this testimony.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

TENANTS JUAN ALEJO & CARMEN AVELOS (Unit B)

RAP Notice: It is found that the tenants have never received the RAP Notice.

Notice and Filing Requirements: The Rent Adjustment Ordinance requires an owner to serve the RAP Notice at the start of a tenancy² and together with any notice of rent increase or change in terms of a tenancy.³ 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

¹ Exhibit No. 1, which was admitted into evidence without objection.

² O.M.C. Section 8.22.060(A)

³ O.M.C. Section 8.22.070(H)(1)(A)

months after a tenant first receives the required RAP notice.⁴ 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.⁵

Since the tenants have never received the RAP Notice, the contested rent increase of the year 2017 is invalid and the tenants' base rent is \$600 per month. Because the tenants have not paid more than \$600 per month, they have not overpaid rent.

TENANT DAVID FIGUEROA ALEJO (Unit D)

RAP Notice: It is found that the tenant has never received the RAP Notice.

Rent Overpayments: Because the tenant never received the RAP notice, his rent is first reduced to the initial rent amount of \$700 per month. Further, the tenant has overpaid rent since July 1, 2015. As shown on the Table below, the tenant has overpaid rent in the amount of \$3,600. Repayments are generally made over a period of 12 months. However, since the restitution amount is very large compared to the rent, the overpayment is ordered repaid over a period of 24 months.⁶ The rent is temporarily reduced by \$150 per month, to \$550 per month, beginning with the rent payment in July 2018 and ending with the rent payment in June 2020.

OVERPAID RENT						
From	To	Monthly Rent paid	Max Monthly Rent	Difference per month	No. Months	Sub-total
1-Jul-15	30-Jun-18	\$800	\$700	\$100.00	36	\$3,600.00
TOTAL OVERPAID RENT						\$3,600.00

RESTITUTION		
	MONTHLY RENT	\$3,347
	TOTAL TO BE REPAYED TO TENANT	\$ 3,600.00
	TOTAL AS PERCENT OF MONTHLY RENT	108%
OVER	24 MONTHS BY HRG. OFFICER IS	\$150.00

TENANT IRENE PICENO (Unit E)

RAP Notice: It is found that the tenant has never received the RAP Notice.

Rent Overpayments: Because the tenant never received the RAP notice, her rent is first reduced to the initial rent amount of \$550 per month. Further, the tenant has overpaid rent since June 1, 2013, when she first paid increased rent. However, a tenant's claim for rent overpayments is limited, by Board decision, to three years from the date the petition was filed.⁷ Therefore, the rent overpayments are computed for the period August 1, 2014 through June 30, 2018.

⁴ O.M.C. Section 8.22.060(C)

⁵ O.M.C. Section 8.22.090 (A)(2)

⁶ Regulations, Section 8.22.110(F)

⁷ Chaney-Williams v. Lau, T05-0080; Barajas v. Chu, T06-0051

As shown on the Table below, the tenant has overpaid rent in the amount of \$11,650. Repayments are generally made over a period of 12 months. However, since the restitution amount is extremely large compared to the rent, the overpayment is ordered repaid over a period of 36 months.⁸ The rent is temporarily reduced by \$323.61 per month, to \$226.39 per month, beginning with the rent payment in July 2018 and ending with the rent payment in June 2021.

OVERPAID RENT

From	To	Monthly Rent paid	Max Monthly Rent	Difference per month	No. Months	Sub-total
1-Aug-14	31-Jul-16	\$700	\$550	\$150.00	24	\$3,600.00
1-Aug-16	30-Jun-18	\$900	\$550	\$350.00	23	\$ 8,050.00
TOTAL OVERPAID RENT						\$11,650.00

RESTITUTION

		MONTHLY RENT	\$3,347
		TOTAL TO BE REPAID TO TENANT	\$11,650.00
		TOTAL AS PERCENT OF MONTHLY RENT	348%
OVER	36	MONTHS BY HRG. OFFICER IS	\$323.61

TENANTS MARTIN AVALOS & ANA ALEJO (Unit F)

RAP Notice: It is found that the tenants have never received the RAP Notice.

Rent Overpayments: The tenants' initial rent was \$850 per month, and was then reduced to \$800 per month in February 2007. Therefore, on August 1, 2017 – the first full month after the tenants filed their petition – the base rent was \$800 per month. Because the tenants never received the RAP notice, their rent is first reduced to the applicable base rent amount of \$800 per month. Further, the tenants have overpaid rent since July 1, 2015. As shown on the Table below, the tenants have overpaid rent in the amount of \$3,600. Repayments are generally made over a period of 12 months. However, since the restitution amount is very large compared to the rent, the overpayment is ordered repaid over a period of 24 months.⁹ The rent is temporarily reduced by \$150 per month, to \$650 per month, beginning with the rent payment in July 2018 and ending with the rent payment in June 2020.

OVERPAID RENT

From	To	Monthly Rent paid	Max Monthly Rent	Difference per month	No. Months	Sub-total
1-Jul-15	30-Jun-18	\$900	\$800	\$100.00	36	\$3,600.00
TOTAL OVERPAID RENT						\$3,600.00

RESTITUTION

		MONTHLY RENT	\$3,347
		TOTAL TO BE REPAID TO TENANT	\$3,600.00
		TOTAL AS PERCENT OF MONTHLY RENT	108%
OVER	24	MONTHS BY HRG. OFFICER IS	\$150.00

⁸ Regulations, Section 8.22.110(F)

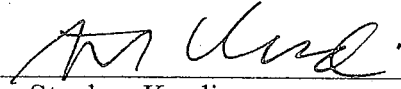
⁹ Regulations, Section 8.22.110(F)

ORDER

1. Petition T17-0409 (Alejo & Avalos v. Hernandez) is granted.
2. The rent is \$600 per month.
3. Petition T17-0411 (David Figueroa Alejo) is granted.
4. The rent, before reduction for overpaid rent due to the lack of a RAP Notice, is \$700 per month.
5. Tenant Alejo has overpaid rent in the amount of \$3,600. This overpayment is adjusted over a period of 24 months.
6. Alejo's rent is temporarily reduced by \$150 per month, to \$550 per month, beginning with the rent payment in July 2018 and ending with the rent payment in June 2020.
7. Petition T17-0413 (Piceno) is granted.
8. The rent, before reduction for overpaid rent due to the lack of a RAP Notice, is \$550 per month.
9. Tenant Piceno has overpaid rent in the amount of \$11,650. This overpayment is adjusted over a period of 36 months.
10. The rent is temporarily reduced by \$323.61 per month, to \$226.39 per month, beginning with the rent payment in July 2018 and ending with the rent payment in June 2021.
11. Petition T17-0414 (Martin Avalos & Ana Alejo) is granted.
12. The rent, before reduction for overpaid rent due to the lack of a RAP Notice, is \$800 per month.
13. Tenants Avalos and Alejo have overpaid rent in the amount of \$3,600. This overpayment is adjusted over a period of 24 months.
14. The rent for tenants Avalos and Alejo is temporarily reduced by \$150 per month, to \$650 per month, beginning with the rent payment in July 2018 and ending with the rent payment in June 2020.
15. The owner may qualify for rent increases. However, any notice of rent increase must have an effective date of at least six months after a tenant first receives notice of the existence and scope of the Rent Adjustment Program.
16. 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 8, 2018



Stephen Kasdin
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE

Case Number T17-0409, T17-0411, T17-0413, & T17-0414

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

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

Tenant

Juan Alejo & Carmen Avalos
9714 Cherry St #B
Oakland, CA 94603

Owner

Martin Hernandez
9231 Walnut St
Oakland, CA 94603

David Figueroa Alejo
9714 Cherry St #D
Oakland, CA 94603

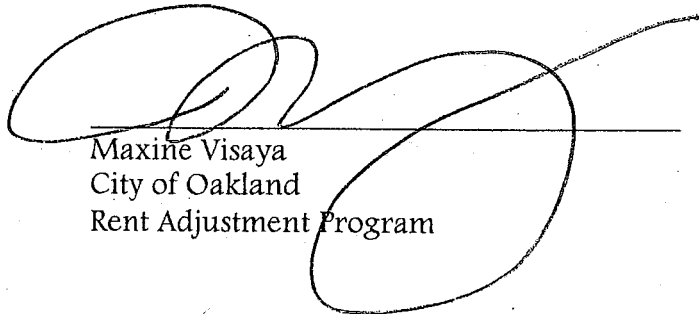
Irene Piceno
9714 Cherry St #E
Oakland, CA 94603

Martin Avalos & Ana Alejo
9714 Cherry St #F
Oakland, CA 94603

Tenant Representative

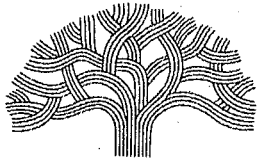
Leah Simon-Weisberg/Centro Legal De La Raza
3022 International Blvd. #410
Oakland, CA 94601

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 28, 2018 in Oakland, CA.



Maxine Visaya
City of Oakland
Rent Adjustment Program

000107



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 17 PM 1:28

APPEAL

Appellant's Name <i>MARTIN HERNANDEZ</i>		<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant	
Property Address (Include Unit Number) <i>9714 Cherry St. # F, Oakland, Ca 94603</i>			
Appellant's Mailing Address (For receipt of notices) <i>9231 Walnut St Oakland, Ca 94603</i>		Case Number <i>717-0411 & 717-0413</i>	Date of Decision appealed <i>6/8/2018</i>
Name of Representative (if any)		Representative's Mailing Address (For notices)	

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

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

For more information phone (510) 238-3721.

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

* Submissions to the Board 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: 4.

* 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 7-17, 2018, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<u>Name</u>	IRENE PICENO
<u>Address</u>	9714 Cherry St. #E
<u>City, State Zip</u>	Oakland, Ca
<u>Name</u>	MARTIN AVAZOS & ANA ALEJO
<u>Address</u>	9714 Cherry St. # F
<u>City, State Zip</u>	Oakland, Ca

<u>Signature of APPELLANT or DESIGNATED REPRESENTATIVE</u> Masten Hernandez	<u>DATE</u> 7-17-18
--	------------------------

For more information phone (510) 238-3721.

IMPORTANT INFORMATION:

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

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

For more information phone (510) 238-3721.

#1 APPEAL UNIT #F

I am appealing the move-in date in 2006 for Martin Avalos & Ms. Ana Alejo. Attached is a copy of the tenant who rented unit #F in January 5, 2006.

Their move-in date was in 2007, with a verbal rental agreement, with rent starting at \$900. I soon after lowered the rent amount to \$850 to assist them to afford their finances. I then once again lowered the rent in 2008 to \$800, due to Mr. Martin Avalos & Ms. Ana Alejo had no employment due to recession. In agreement with unit #F, they were aware that the rent would go to the original rent at move-in once they obtained employment.

THIS AGREEMENT is made and entered into this 01 day of 05, 06 between Master Hernandez (Name and Address of Owner/Agent) "Owner/Agent" and 9231 Walnut St Oakland CA 94603 "Resident."

THE PARTIES AGREE AS FOLLOWS:
Subject to the terms and conditions of this Agreement, Owner/Agent rents to Resident and Resident rents from Owner/Agent, for residential use only,

the premises located at: 9714 Cherry St, Unit # (if applicable) # F, Oakland, CA, 94603

Rent is due in advance on the First day of each and every month, at \$ 900 per month, beginning on 5-01-06, payable at owner will pay Rent Money

If rent is paid after the 5th of the month, there will be a late charge of \$ 50 assessed. Pursuant to California law, if Resident passes a check on insufficient funds, Resident will be liable to Owner/Agent for the amount of the check and a service charge of \$ _____, not to exceed \$25 for the first check passed on insufficient funds, and \$35 for each subsequent check passed on insufficient funds.

Resident shall deposit with Owner/Agent, as a security deposit, the sum of \$ 900. Resident shall not use the security deposit to pay any month's rent. Owner/Agent may withhold from the security deposit only such amounts as are reasonably necessary to remedy Resident defaults including, but not limited to, the following:

- (a) in the payment of rent, or
- (b) to repair damages to the premises caused by Resident, exclusive of ordinary wear and tear, or
- (c) to clean such premises, if necessary, upon termination of the tenancy.

No later than three weeks (21 days) after Owner/Agent has regained possession of the premises, Owner/Agent shall furnish Resident with an itemized written statement of the basis for, and the amount of, any security deposit received and the disposition of such security deposit and shall return any remaining portion of such security deposit to Resident.

The term of this Agreement is for _____, beginning on _____ and ending on _____, at which time this Lease shall terminate without further notice. Any holding over thereafter shall result in Resident being liable to Owner/Agent for "rental damages" at the fair rental value of \$ _____ per day. Daily rental value is prorated using a 30-day month. A "month-to-month" tenancy subject to the terms and conditions of this agreement shall be created only if Owner/Agent accepts rent from Resident thereafter, and if so accepted tenancy may be terminated by either party after service upon the other of a written 30-day Notice of Termination.

Premises shall be occupied only by the following named person(s):

<u>Oscar Almos</u> Name	<u>26 years</u> Birthdate	<u>Monoc-Bex-1 year</u> Name	<u></u> Birthdate
<u>Maribel Rebeca</u> Name	<u>26 years</u> Birthdate	<u></u> Name	<u></u> Birthdate

Without Owner/Agent's prior written permission, as an addendum to this Agreement, no pets, no water beds or liquid-filled furniture or _____ shall be kept or allowed in or about said premises.

Resident shall not violate any criminal or civil law, ordinance or statute in the use and occupancy of premises, commit waste or nuisance, annoy, molest or interfere with any other Resident or neighbor. Any such action may result in the immediate termination of this Agreement as provided herein and by law.

Except as provided by law, no repairs, decorating or alterations shall be done by Resident without Owner/Agent's prior written consent. Resident shall notify Owner/Agent in writing of any repairs or alterations contemplated. Decorations include, but are not limited to, painting and wallpapering. Resident shall hold Owner/Agent harmless and indemnify Owner/Agent as to any mechanics lien recordation or proceeding caused by Resident.

Resident has inspected the premises, furnishings and equipment, and has found them to be satisfactory. All plumbing, heating and electrical systems are operative and deemed satisfactory.

Except as prohibited by law, Resident shall keep the premises and furniture, furnishings and appliances, and fixtures which are rented for Resident's exclusive use in good order and condition. Resident is / is not (circle one) responsible for the upkeep of the yard and landscaping. Resident shall pay Owner/Agent for costs to repair, replace or rebuild any portion of the premises damaged by the Resident, Resident's guests or invitees. Resident's property is not insured by Owner/Agent. Resident is not a co-insured and is expressly excluded from any insurance policy held by Owner/Agent which is now in effect or becomes effective during the term of this Agreement.

Resident shall pay for all utilities, services and charges, if any, made payable by or predicated upon occupancy of Resident, except: _____

