

**HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD
REGULAR MEETING
MARCH 12, 2020
7:00 P.M.
CITY HALL, HEARING ROOM #1
ONE FRANK H. OGAWA PLAZA
OAKLAND, CA**

AGENDA

1. CALL TO ORDER
2. ROLL CALL
3. CONSENT ITEMS
 - a) Review of Board Minutes from January 16, 2020
 - b) Review of Board Minutes from February 20, 2020
4. OPEN FORUM
5. APPEALS*
 - a) T18-0414 & T18-0472, Martin et al v. Zalabak
 - b) T18-0018, Sund v. Vernon Street Apartments, LP aka Flynn Family Holdings, LLC
 - c) T19-0096, Cabansagan v. Shamrock Real Estate Co.
6. ACTION ITEMS
 - a) Formation of additional ad hoc committees, membership and review of issues identified in May 9, 2019, Board meeting (see attached list on page 3)
7. INFORMATION AND ANNOUNCEMENTS
 - a) Rent Adjustment Program Updates (C. Franklin Minor)
 - b) Legislative Updates (Office of the City Attorney)
 - c) Report regarding RAP Notice and other Jurisdictions (Office of the City Attorney)
8. COMMITTEE REPORTS AND SCHEDULING
 - a) Report from Ad Hoc Committee – Deferred Maintenance v. Capital Improvement of Dry Rot
9. ADJOURNMENT

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

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

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

會場有適合輪椅出入設施。需要殘障輔助設施, 手語, 西班牙語,

粵語或國語翻譯服務, 請在會議前五個工作天電郵 sshannon@oaklandca.gov 或致電 (510) 238-3715 或 711 California relay service.

請避免塗搽香氛產品, 參加者可能對化學成分敏感。

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

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

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

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

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

Procedural Background

On June 12, 2018, tenants Maria Amezcuita and Luis Ayala Cervantes filed a petition contesting rent increases and claiming code violations and decreased housing services. The contested rent increases included the following:

- 4/26/18-from \$1,200 to \$1,400
- 10/3/17-from \$945 to \$1,200
- 9/5/17-from \$945 to \$1,233

The decreased housing claims included (1) malfunctioning electrical wiring, (2) windows not closing or installed properly, (3) mold in the bathroom, (4) kitchen drawers do not open properly and (5) splitting of utilities.

Staff mailed a copy of the tenant petition and owner response form to the owners on August 17, 2018. The owners filed untimely Owner Responses on November 18, 2018, and November 27, 2018.

The owner appealed from a Hearing Decision, denying the rent increases in the 2017 lease (\$1,233 for the first three months, \$1,400 thereafter) on the grounds that the owners did not seek prior approval from the Rent Adjustment Program of increases more than CPI or banking, and stating that the tenants' base rent remains \$945.00.

The Decision ordered restitution for rent overpayment and past decreased housing services in the amount of \$6,965.25 (\$6,729 for rent paid 9/1/17 to 11/1/17 and 12/1/17 to 10/1/19; \$236.25 for problems with electrical outlets, windows, and drawers, 3/1/18 to 7/1/18), amortized over 24 months. Finally, the Decision denied the remaining decreased housing services claims.

The Decision did not address the Costa Hawkins issue of whether the 2017 lease constituted a new tenancy.

Grounds for Appeal

The owners filed an appeal on October 9, 2019, on the following grounds:

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

Specifically, the owner contended that:

- (1) The Hearing Officer calculated the rent incorrectly, which is \$1,400.00 per the signed lease, not \$945.00;

- (2) Regarding the decreased housing claim, the electrical outlet issue was caused by the tenants' overloading appliances and overcrowding of the 1 bedroom unit, the restitution period was incorrectly calculated from March 2018 to July 2018, and the owners were not advised of any problems until May 2018 and made repairs by June 1, 2018;
- (3) The Hearing Decision violates California Civil Code Section Article 2, Rental Agreement, §798.15-798.23.5. The original tenant was Nazana Nevarez, who sublet his unit to the tenant without the owner's prior written consent. The lease provides that the rent for the unit may be raised to market rates when the last original tenant moves from the premises. The original tenant moved out and the owner raised the monthly rent to \$1,400.00;
- (4) The decision is not supported by substantial evidence because the tenants' claims are not supported with documents;
- (5) While the tenants did not receive the RAP notice until they signed the new lease, the RAP notice was sent to the original tenant.

Appeal Decision

After questions to the parties and Board discussion, R. Stone moved to remand the Hearing Decision to the Hearing Officer to address when the tenancy commenced, and state the reasoning as to when the tenancy commenced, and restate the monthly base rent, disregarding any evidence presented on appeal. K. Sims seconded the motion.

The Board panel voted as follows:

Aye: R. Stone, K. Sims
Nay: H. Flanery
Abstain: 0

The motion carried.

b. T19-0214, Coleman v. Lee

Appearances: Robert Coleman Tenant Appellant
Claudene Hileman Owner Appellee Representative

Procedural Background

On March 8, 2019, tenant Robert Coleman filed a petition contesting a rent increase and claiming decreased housing services, code violations or other serious problems with the condition of the unit, and that the rent was not reduced upon \

expiration of a rent increase period for a Capital Improvement. He did not provide any information about the rental history, contested rent increase, or claims.

On September 3, 2019, staff sent the tenant a deficiency notice, instructing the tenant that provision of rental history and a written description in support of his claims was required and that such missing information must be provided within 10 days or his petition would be dismissed. The tenant did not respond to the deficiency.

On September 24, 2019, the Hearing Officer issued an Administrative Decision dismissing the tenant's petition for failure to respond to the deficiency letter.

Grounds for Appeal

The tenant filed a timely appeal on October 15, 2019, on the grounds that he was denied a sufficient opportunity to present his claim. Specifically, he contended that (1) he did not get the Administrative Decision, (2) the repairs cited by the City were not made, (3) he received the deficiency letter late and contacted Mr. Mason which took several days because he was not in the office, (4) he had an office doctor's visit which left him unable to drive until October 15, 2019, (5) Mr. Mason was not available when he visited the City office, (6) Elder abuse, (7) management and the Fire Department broke into his unit to fight fire, destroyed his chair, and never painted the smoke damage, (8) management has not painted the unit in the forty years that he has lived in the unit, (9) management had a private eye follow him and tried to have him evicted for sub-leasing, which the Court denied, and (10) harassment.

Appeal Decision

After questions to the parties and Board discussion panel chair R. Stone moved to allow the tenant ten days, to January 27, 2020, based on good cause because the tenant stated that he did not receive the deficiency letter, to respond to the deficiency letter so that the Hearing Officer may consider the substance of the tenant's petition. H. Flanery seconded the motion.

The Board panel voted as follows:

Aye: R. Stone, H. Flanery

Nay: K. Sims

Abstain: 0

The motion carried.

c. L18-0173, Merritt on 3rd KW Lake Merritt LLC. v. Tenants

Appearances Josie Seldon Tenant Appellant Representative for Robert
Lieberman

James Vann Tenant Appellant Representative for All Tenants
Sid Rosenberg Owner Appellee Representative

Procedural Background

On September 27, 2018, the owner, Merritt on 3rd KW Lake Merritt LLC, filed a petition for approval of a rent increase based on capital improvements. The petition listed \$411,393.48 in costs for 34 one bedroom units and \$2,468,360.90 in costs for 136 two bedroom units. The capital improvement costs were for window replacements.

During the hearing, the Hearing Officer disallowed tenants' exhibit 24, which was a quote for a window replacement from Home Depot. After the hearing, upon receipt of an email from Mr. Vann, the Hearing Officer admitted tenant exhibit 24 into evidence but did not allow the tenant representative to testify about the window replacements.

On November 1, 2019, the Hearing Officer issued a Hearing Decision granting the owner \$2,574,730 in allowable cost for the capital improvements. The allowable monthly amortized costs for the one bedroom apartments was \$73.20 for 120 months. The allowable monthly costs for the two bedroom apartments was \$109.80 for 120 months except for 20 units, which amounts were reduced based on their base rents.

Grounds for Appeal

The following tenants filed an appeal:

1. Robert Lieberman, Unit 1305, November 25, 2019

Tenant Lieberman filed his appeal on November 25, 2019. The proof of service of mailing for the Hearing Decision was on November 1, 2019, which would make his appeal untimely. However, the tenant claimed that the appeal is timely because the postmark on the metered postage states that the decision was mailed on November 4, 2019.

The tenant also claimed that there are mathematical/clerical errors in the calculations, based on applying the imputed interest rate as a simple percentage of the allowable pass through, and that the amortized monthly cost for the two bedroom units is \$97.52, not \$109.80.

2. Chun Yu, Unit 302, November 15, 2019

- The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board;
- The decision raises a new policy issue that has not been decided by the Board;

- He was denied a sufficient opportunity to present his claim or respond to the petitioner' claim;
- Other.

The tenant attached an appeal filed by James Vann described below.

3. James Vann, on behalf of all Tenants, November 2019

Mr. Vann filed an appeal on the following grounds:

- The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board;
- The decision violates federal, state, or local law;
- He was denied a sufficient opportunity to present his claim or respond to the petitioner's claim;
- Other.

Specifically, he contended the following:

- a. The tenants raised the issue of "gold plating" but the Hearing Officer did not allow the tenants' exhibit on "gold plating" and there was no discussion or consideration of the "gold plating" issue;
- b. Not permitting a discussion of "gold plating" in a capital improvements case is a violation of local law;
- c. Tenant Yu was unable to attend the hearing on July 16, 2019, and the Hearing Officer did not permit Mr. Vann, the tenant representative, to testify regarding the "gold plating" issue;

Mr. Vann further contended that, while the owner of the building did not attend the Hearing and the case for the owner was presented by the owner's attorney, Mr. Vann was permitted to represent the case for the tenant petitioners but was not allowed to serve as the tenant representative regarding the issue of "gold plating," which he asserts was one-sided and prejudicial. Mr. Vann states that the denial differs from the procedure of many hearings where sometimes only the representative is present.

On November 22, 2019, Mr. Vann filed an addendum to the tenants' appeal, stating that the existing windows performed satisfactorily and the increase in the quality of the new windows was an over improvement and should not be passed on to the tenants, there is no building code requirement to have dual pane windows, the old windows were single pane but the tenant pay their own energy bills, the windows did not need to be replaced because a newer model is provided with a "limiting" device, the existing windows had screens, the new windows do not have screens, resulting in an increase in infestation of bugs, and the new windows have poorer circulation, mold and increased moisture concentration.

Mr. Vann also asserts that the Hearing Officer's initial rejection of the

tenants' exhibit 24, a quote for equitable window replacement, and her statement that "the original decision to not allow Exhibit 24 (tenants' gold plating exhibit) into evidence was incorrect" does nothing to advance due process.

Finally, Mr. Vann contended that there was preponderance of evidence regarding mold and non-replacement of screens, and questions why the tenants did not receive a credit for decreased housing services.

Appeal Decision

After hearing party arguments, rebuttal, questions to the parties, and Board discussion, H. Flanery moved to remand the Hearing Decision to the Hearing Officer to hear Mr. Vann's testimony. There was no second and the motion failed.

R. Stone moved to remand the Hearing Decision to the Hearing Officer to allow Mr. Vann to testify about what he learned at Home Depot, limited to the Home Depot estimate and then require the Hearing Officer to issue a new hearing decision or affirm the Hearing Decision. There was no second to the motion and the motion failed.

R. Stone moved to affirm the Hearing Decision based on substantial evidence. K. Sims seconded the motion.

The Board panel voted as follows:

Aye: R. Stone, K. Sims
Nay: H. Flanery
Abstain: 0

The motion carried.

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

BOARD PANEL MEETING

February 20, 2020

7:00 p.m.

City Hall, Hearing Room #1

One Frank H. Ogawa Plaza, Oakland, CA

MINUTES

1. CALL TO ORDER

The Board waited until 7:20 p.m. for a quorum. There was no quorum and the Board Chair, Robert Stone, cancelled the Board meeting at 7:20 p.m. due to lack of a quorum.

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CONSOLIDATED CHRONOLOGICAL CASE REPORT

Case No.: T18-0414 & T18-0472

Case Name: Martin et al v. Zalabak

Property Address: 5553 Kales Ave., Oakland, CA


Parties: Chester Martin (Tenant)
Kristen Ponger (Tenant)
Sherry Zalabak (Owner)
Lisa Giampaoli (Attorney for Tenant)
Alana Grice Conner (Attorney for Owner)

TENANT APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petitions filed	August 3, 2018 (T18-0414) November 9, 2018 (T18-0472)
Owner Responses filed	December 5, 2018 (T18-0414) February 15, 2019 (T18-0472)
Property Owner filed Submission Of Tangible Evidence	February 15, 2019
Property Owner's filed Supplemental Statement	April 11, 2019
Hearing Decision mailed	June 7, 2019
Tenant Appeal filed in both cases	June 27, 2019
Tenant Attorney Brief filed	January 14, 2020

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T18-0414 RE/EL

 CITY OF OAKLAND	CITY OF OAKLAND RENT ADJUSTMENT PROGRAM P.O. Box 70243 Oakland, CA 94612-0243 (510) 238-3721	For date stamp 2018 AUG -5 10:41
	TENANT PETITION	

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

Please print legibly

Your Name CHESTER "CHASE" MARTIN KRISTEN PONGER	Rental Address (with zip code) 5553 KALES AVENUE OAKLAND, CA 94618	Telephone: _____ E-mail: _____
Your Representative's Name	Mailing Address (with zip code)	Telephone: _____ Email: _____
Property Owner(s) name(s) SHERRY ZALABAK	Mailing Address (with zip code) 402 VERMONT AVENUE BERKELEY, CA 94707	Telephone: _____ Email: _____
Property Manager or Management Co. (if applicable)	Mailing Address (with zip code)	Telephone: _____ Email: _____

Number of units on the property: 2

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

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

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

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

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

Date you moved into the Unit: NOV. 24, 2014 Initial Rent: \$ 2,600 /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		
06/05/18	08/01/18	\$2,652	\$ 4,500	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
12/1/16	1/1/17	\$2,600	\$ 2,652	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

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

Have you ever filed a petition for this rental unit?

- Yes
 No

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

III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:

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

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

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

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

Please attach documentary evidence if available.

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

IV. VERIFICATION: The tenant must sign:

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

Tenant's Signature

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).

C. Mark
Tenant's Signature

8/2/18
Date

VI. IMPORTANT INFORMATION:

Time to File

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

File Review

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

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

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

Chester Martin & Kristen Ponger
5553 Kales Avenue
Oakland, CA 94618
August 3, 2018

Rent Adjustment Program (RAP)
City of Oakland, CA
Re: Tenant Petition

To Whom it May Concern:

Chester "Chase" Martin & Kristen Ponger, "Tenants"
Sherry Zalabak, "Landlord"
Rental Property Address: 5553 Kales Ave, Oakland, CA 94618

On June 5th, 2018 Landlord dropped off "Sixty Day Notice of Change in Terms of Tenancy" [Attachment A] raising tenants' rent 70% from \$2,652/month to \$4,500/month as of August 5th, 2018. Landlord's behavior has been erratic and contradictory over the past 6 months, and no justification for the rent increase has been provided. Tenants Martin & Ponger are choosing to proactively contest the increase via this petition on the following grounds.

1. Increase exceeds the CPI Adjustment and is greater than 10% without RAP approval
2. Tenants have never received notice of RAP
3. Wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud

Key Points:

- 5553 Kales Avenue is publicly listed as a Single-Family Residence, but has been rented as a duplex with two separate units since before current tenants Kristen & Chase signed a lease for front 1-BR unit in 2014 [Attachment B]
- Tenants entered lease for front unit in November 2014; no RAP notice provided [Attachment C]
 - a. Previous tenants were Holly and Steve
- Since 2014, the back unit has had two different sets of tenants paying rent under own respective leases
 - a. Mike and LeAnne Devol (maiden name Fowlkes); \$1,100/month
 - b. Lindsay Byrd and Isabel Avellan [Attachment D]; \$1,400/month
- Landlord raised both front & rear units' respective rents by 2% in January 2017 with no RAP notice [Attachment E]
- On March 28, 2018 Landlord states that tenants must vacate the property by July 1, 2018, so that she can make improvements to prepare for sale [Attachment F]
- On April 25, 2018, Landlord urged tenants repeatedly to sign agreement to terminate lease [Attachment G], misrepresenting document as "extension of tenancy" [Attachment H]

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- Tenants do not have access to back unit but it is currently vacant. Landlord has told tenants as recently as July 2018 that they are restricted from back unit and yard, as those are a separate unit.
- Tenants have always paid rent on time, cared for the property, maintained and performed minor upgrades and repairs at their own financial expense. Landlord stated in February 2018 that Martin & Ponger were "the best tenants she's ever had"

Glossary of Attachments:

Tenants are providing the following attached documentation outlining our historical rental agreement and series of events that led to this petition.

- **Attachment A:** Sixty-Day Notice of Change in Terms of Tenancy (Rent Increase)
- **Attachment B:** E-mail to back unit tenants announcing vacancy in front unit
- **Attachment C:** Martin & Ponger Lease Agreement
- **Attachment D:** Byrd & Avellan Lease Agreement
- **Attachment E:** Increase in rent for both units without RAP Notice, Jan. 2017
- **Attachment F:** Landlord states tenants must leave property to prepare for sale
- **Attachment G:** Landlord-Tenant Agreement to Terminate Lease
- **Attachment H:** Urging tenants to vacate and sign lease termination, misrepresenting document as an "extension"
- **Attachment J:** Offer of sale-of-property with Landlord's description of secondary unit

Background:

In February 2018, landlords of the 5553 Kales Avenue rental property, Sherry and John Zalabak, invited the tenants, Chase Martin & Kristen Ponger, over to their home in the Berkeley Hills to discuss the potential purchase of their Kales Ave rental property. The property at 5553 Kales includes two separate units: the 1-BR front house that Kristen & Chase have rented since November 2014, and the rear standalone studio cottage which the landlord refers to as a "Golden Duplex".

After tenants shared the news with the landlords that they were expecting their first child in July, both parties left the February meeting in agreement that there was no rush to action necessary and to reconvene in the Fall of 2018 to discuss further.

On Sunday, March 25th at 9am Landlord Sherry showed up to tenant's home unannounced to with a realtor friend named Julie Durkee. Landlord proceeded to barge into the house for an impromptu appraisal of the front unit, while accosting the tenants with questions on whether they were interested in buying another house down the street to move-in before baby arrives on July 9.

On March 27th, Tenants (Kristen & Chase) received an email and physical note from landlord (Sherry) apologizing for her unannounced visit the previous weekend. E-mail stated that circumstances had changed in respect to her husband's health, and tenants must vacate the unit by July 1, 2018 [Attachment F] in order to prepare the property for sale. Alternatively, landlord gave the tenants 30 days to make an offer to purchase the property. Landlord stated that tenants must make an offer or move out by July 1st.

On March 28th, Tenants Kristen & Chase replied to Landlord's email confirming interest in purchasing the property, but could not make an offer without the landlord first providing an asking price. Tenants also requested that landlord would reconsider the July 1st vacancy timeline since their baby was due that week.

On March 29th, Landlord dropped off a handwritten note [Attachment J] offering the property "as is" for \$1.3M through a private sale. At this point tenants took it upon themselves to contact a real estate agent to conduct a comparable evaluation of the property who also referred tenants to a lawyer, Jean Shrem.

On April 25th, Landlord begins to repeatedly urge tenants to sign a "Landlord-Tenant Agreement to Terminate Lease" document [Attachment G] without cause. Landlord misrepresents this as an "extension" [Attachment H] of lease and her offer of sale.

On May 25th, Tenants email Landlord with a purchase offer while giving notice of their refusal to sign "Termination of Lease" document.

On June 5th, 2018 Landlord shows up unannounced to drop off "Sixty Day Notice of Change in Terms of Tenancy" [Attachment A], raising tenants rent 70%, from \$2,652 to \$4,500 effective August 5, 2018. Tenant Chase Martin was present at the time and approached Landlord Sherry to discuss the legality of the notice, but was rebuffed by the landlord. Tenant verbally informed Landlord of intention to file with Rent Board if issue could not be resolved amicably in private, but as of August 1st no reply received from Landlord.



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

For date stamp.
 CITY OF OAKLAND
 RENT ADJUSTMENT PROGRAM
 2019 DEC -5 PM 4: 24
PROPERTY OWNER
RESPONSE

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

CASE NUMBER T 18-0414

Your Name Sherry Zalabak	Complete Address (with zip code) 402 Vermont Avenue Berkeley, CA 94707	Telephone: ---
		Email: ---
Your Representative's Name (if any) Alana Grice Conner Fried & Williams LLP	Complete Address (with zip code) 1901 Harrison Street, 14th Floor Oakland, CA 94612	Telephone: ---
		Email: ---
Tenant(s) Name(s) Chester "Chase" Martin Kristen Ponger	Complete Address (with zip code) 5553 Kales Avenue Oakland, CA 94618	Telephone: ---
		Email: ---
Property Address (If the property has more than one address, list all addresses) 5553 Kales Avenue, Oakland, CA 94618		Total number of units on property Single Family Residence

Have you paid for your Oakland Business License? Yes No Lic. Number: 00182031
 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: 48A-7043-40
 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: 10/07/10

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.

CITY OF OAKLAND
RENT ARBITRATION

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 November 24, 2014

The tenant's initial rent including all services provided was: \$ 2,600.00 / month.

Have you (or a previous Owner) given the City of Oakland's form entitled "NOTICE TO TENANTS OF RESIDENTIAL RENT ADJUSTMENT PROGRAM" ("RAP Notice") to all of the petitioning tenants?

Yes X No _____ I don't know _____

If yes, on what date was the Notice first given? October 10, 2018 but unit is exempt

Is the tenant current on the rent? Yes X 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>	
10/10/18	12/15/18	\$ 2,652.00	\$ 4,500.00	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
12/1/16	1/1/17	\$ 2,600.00	\$ 2,652.00	<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:

2018 DEC -5 PM 4:24

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

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

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

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

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

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

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


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

IV. DECREASED HOUSING SERVICES


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

V. VERIFICATION

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



Property Owner's Signature



Date

Landlord Narrative

2018 DEC 5 10:21 AM
CITY OF LOS ANGELES
RENT ARBITRATION BOARD

The Tenants' petition must be dismissed because the Rent Adjustment Program does not have jurisdiction. The rental unit is exempt from rent control because it is a single-family residence exempted by the Costa-Hawkins Rental Housing Act (California Civil Code §1954.50 et seq.). See Attachment A, Property Assessment Information. Furthermore, the Tenants' petition is incomplete because the Tenants failed to sign the verification under penalty of perjury which is required. Nonetheless, if the hearing officer seeks to further review the petition, Landlord responds as follows:

To address the issues raised by Tenant in section I. Grounds for Petition, Landlord responds as follows:

(b) The rental unit is exempt from rent control because it is a single-family residence exempted by the Costa-Hawkins Rental Housing Act (California Civil Code 1954.50). The CPI Adjustment does not apply to the rental unit.

(c) The rental unit is exempt from rent control because it is a single-family residence exempted by the Costa-Hawkins Rental Housing Act (California Civil Code 1954.50). The property owner is not required to receive approval from the Rent Adjustment Program for the contested rent increase.

(d) The rental unit is exempt from rent control because it is a single-family residence exempted by the Costa-Hawkins Rental Housing Act (California Civil Code 1954.50). The property owner is not required to provide the Notice of the Rent Adjustment Program (RAP Notice) form.

(e) The rental unit is exempt from rent control because it is a single-family residence exempted by the Costa-Hawkins Rental Housing Act (California Civil Code 1954.50). The property owner is not required to provide the Notice of the Rent Adjustment Program (RAP Notice) form.

(k) The rental unit is exempt from rent control because it is a single-family residence exempted by the Costa-Hawkins Rental Housing Act (California Civil Code 1954.50). The limit for rent increases over 30% over a 5-year period does not apply to the rental unit.

(i) This exemption is based on a State law and there is no fraud or mistake.

I. Justification for Rent Increase

Date of Contested Rent Increase: 10/10/18 effective 12/15/18
Justification: Single Family Home exemption

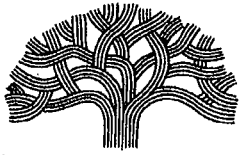
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CITY OF OAKLAND
RENT ARBITRATION PROGRAM

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III. Exemption Attachment

1. Did the prior tenant leave after being given a notice to quit (Civil Code Section 1946)?
No
2. Did the prior tenant leave after being given a notice of rent increase (Civil Code Section 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?
Yes
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**
If so: 1) from whom? **N/A** 2) Did you purchase the entire building? **N/A**

T18-0472 Ref EL

 CITY OF OAKLAND	CITY OF OAKLAND RENT ADJUSTMENT PROGRAM P.O. Box 70243 Oakland, CA 94612-0243 (510) 238-3721	For date stamp 2018 NOV -9 PM 3:26
	TENANT PETITION	

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

Please print legibly

Your Name CHESTER "CHASE" MARTIN KRISTEN PONGER	Rental Address (with zip code) 5553 KALES AVENUE OAKLAND, CA 94618	Telephone: E-mail:
Your Representative's Name	Mailing Address (with zip code)	Telephone: Email:
Property Owner(s) name(s) SHERRY ZALABAK	Mailing Address (with zip code) 402 VERMONT AVENUE BERKELEY, CA 94707	Telephone: Email:
Property Manager or Management Co. (if applicable)	Mailing Address (with zip code)	Telephone: Email:

Number of units on the property: _____.

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

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

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

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

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

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

Date you moved into the Unit: NOVEMBER 24, 2014 Initial Rent: \$ 2,600 /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: November 4, 2018. 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		
11/4/18	01/03/19	\$2,652	\$4,500	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
06/05/18	08/01/18	\$2,652	\$4,500	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
12/1/16	01/01/17	\$2,600	\$2,652	<input type="checkbox"/> Yes <input checked="" 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:

T18-0414 Martin et al v. Zalabak

III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:

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

Are you being charged for services originally paid by the owner?

Yes No

Have you lost services originally provided by the owner or have the conditions changed?

Yes No

Are you claiming any serious problem(s) with the condition of your rental unit?

Yes No

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

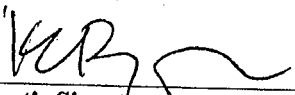
- 1) a list of the lost housing service(s) or problem(s);
- 2) the date the loss(es) or problem(s) began or the date you began paying for the service(s)
- 3) when you notified the owner of the problem(s); and
- 4) how you calculate the dollar value of lost service(s) or problem(s).

Please attach documentary evidence if available.

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

IV. VERIFICATION: The tenant must sign:

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



Tenant's Signature

11/9/18

Date

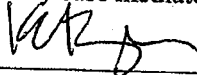
V. MEDIATION AVAILABLE: Mediation is an entirely voluntary process to assist you in reaching an agreement with the owner. If both parties agree, you have the option to mediate your complaints before a hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal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

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

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

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

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



Tenant's Signature

11/9/18
Date

VI. IMPORTANT INFORMATION:

Time to File

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

File Review

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

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

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

Chester Martin & Kristen Ponger
5553 Kales Avenue
Oakland, CA 94618
November 7, 2018

Housing and Community Development Department
Rent Adjustment Program (RAP)
City of Oakland, CA

Re: Addition to RAP Case no. T18-0414 Martin et al v. Zalabak

Chester "Chase" Martin & Kristen Ponger, "Tenants"
Sherry Zalabak, "Landlord"
Rental Property Address: 5553 Kales Ave, Oakland, CA 94618

To Whom it May Concern:

Tenants are filing an additional petition to add to the existing case number T18-0414, filed August 3rd. Tenants are filing current petition to contest Landlord's second notification of a rent increase of 70%, raising the rent from \$2,652/mo. to \$4,500/mo [Attachment AA].

Tenants Martin and Ponger are contesting the increase on the following grounds:

1. The increase exceeds the CPI Adjustment and is unjustified and greater than 10%.
2. 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.
3. The proposed rent increase would exceed an overall increase of 30% in 5 years.
4. **I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake.**

Key Points:

- 5553 Kales Avenue has been rented as a multi-unit property, with two dwelling units with separate leases since before current tenants Kristen and Chase signed a lease for Unit A in 2014
- Tenants entered into a lease agreement in 2014 based on the fact that the property was a duplex and protected under rent control
- Upon signing the lease in 2014, Unit B of the duplex was already leased to Tenants LeAnne (Fowlkes) and Mike Devol on a separate lease agreement (2011-2017)
- Since 2014, Unit B has had two different sets of tenants paying rent under their own respective leases
 - 2011-2017: LeAnne (Fowlkes) and Mike Devol [Attachment FF]; \$1,070/month
 - 2017-2018: Lindsay Byrd and Isabel Avellan [Attachment D]; \$1,400/month

000029

Since the original petition was filed on August 3rd, the following has occurred:

On Monday, August 6th, Tenants Chester Martin and Kristen Ponger notified Landlord Sherry Zalabak of filed RAP petition [Attachment BB]. On August 8th, 2018 Tenants Chester Martin and Kristen Ponger received an email from distressed landlord Sherry Zalabak about the filed RAP petition, acknowledging the second unit on the property [Attachment CC]. Landlord proceeded to show up at the tenant's house unannounced the following day, emotionally pleading that tenants withdraw the petition and handle this without legal involvement. Tenant Chester Martin agreed and filed to withdraw the petition in-person at office of the City of Oakland Rent Program later that week [Attachment DD]. Unbeknownst to Martin the withdrawal was never processed. In September, Tenants proceeded to proactively and voluntarily pay the legal CPI rent increase of 3.4%, as they believed this was a fair resolution.

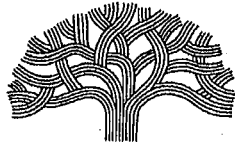
Despite Landlord's request for Tenants not to take legal action, on November 4, 2018 Tenants Chester Martin and Kristen Ponger received two letters from Alana Grice Conner of Fried & Williams Attorneys at Law [Attachment AA, EE]. The first letter notified the tenants that the landlord is rescinding the original Sixty-Day Notice of Change to Terms of Tenancy [Attachment EE] and Pre-Move Out Negotiations Disclosure Form, which the tenants refused to accept. The second letter was a new Sixty-Day Notice of Change to Terms of Tenancy [Attachment AA].

Glossary of Attachments:

Tenants are providing the following attached documentation outlining our historical rental agreement and series of events that led to this petition.

- **Attachment AA:** Sixty-Day Notice of Change to Terms of Tenancy
- **Attachment BB:** E-mail from Tenant notifying Landlord of filed RAP Petition
- **Attachment CC:** E-mail from Landlord acknowledging second unit on property
- **Attachment DD:** E-mail from Tenant to Landlord stating the withdrawal of RAP petition
- **Attachment EE:** Rescinding Sixty-Day Notice of Change to Terms of Tenancy from June 5, 2018
- **Attachment FF:** LeAnne Devol's Bank Statement with proof of rent payment to Sherry Zalabak

*Please see original petition, case no. T18-0414, Martin et al v. Zalabak for complete background story and additional information.



CITY OF OAKLAND

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

For file stamp
CITY OF OAKLAND
ARBITRATION PROGRAM

2019 FEB 15 PM 3:52

PROPERTY OWNER
RESPONSE

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

CASE NUMBER T 18-0472

Your Name Sherry Zalabak	Complete Address (with zip code) 402 Vermont Avenue Berkeley, CA 94707	Telephone:
		Email:
Your Representative's Name (if any) Alana Grice Conner Fried & Williams LLP	Complete Address (with zip code) 1901 Harrison Street, 14th Floor Oakland, CA 94612	Telephone:
		Email:
Tenant(s) Name(s) Chester "Chase" Martin Kristen Ponger	Complete Address (with zip code) 5553 Kales Avenue Oakland, CA 94618	Telephone:
		Email:
Property Address (If the property has more than one address, list all addresses) 5553 Kales Avenue, Oakland, CA 94618		Total number of units on property Single Family Residence

Have you paid for your Oakland Business License? Yes No Lic. Number: 00182031
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: 48A-7043-40
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: 10/07/10

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 November 24, 2014.

The tenant's initial rent including all services provided was: \$ 2,600.00 / month.

Have you (or a previous Owner) given the City of Oakland's form entitled "NOTICE TO TENANTS OF RESIDENTIAL RENT ADJUSTMENT PROGRAM" ("RAP Notice") to all of the petitioning tenants?

Yes No I don't know

If yes, on what date was the Notice first given? October 10, 2018 but unit is exempt

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>	
10/10/18	12/15/18	\$ 2,652.00	\$ 4,500.00	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
06/05/18	08/01/18	\$ 2,652.00	\$4,500.00(Rescinded)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
12/1/16	1/1/17	\$ 2,600.00	\$ 2,652.00	<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.

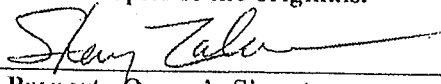
The unit is located in a building with three or fewer units. The owner occupies one of the units continuously as his or her principal residence and has done so for at least one year.

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.



Property Owner's Signature

February 15, 2019

Date

Landlord Narrative

The Tenants' petition must be dismissed because the Rent Adjustment Program doesn't have jurisdiction. The rental unit is exempt from rent control because it is a single-family residence exempted by the Costa-Hawkins Rental Housing Act (California Civil Code §1954.50 et seq.). See Attachment A, Property Assessment Information. Furthermore, the Tenants' petition is incomplete because the Tenants failed to sign the verification under penalty of perjury which is required. Nonetheless, if the hearing officer seeks to further review the petition, Landlord responds as follows:

To address the issues raised by Tenant in section I. Grounds for Petition, Landlord responds as follows:

(b) The rental unit is exempt from rent control because it is a single-family residence exempted by the Costa-Hawkins Rental Housing Act (California Civil Code 1954.50). The CPI Adjustment does not apply to the rental unit.

(c) The rental unit is exempt from rent control because it is a single-family residence exempted by the Costa-Hawkins Rental Housing Act (California Civil Code 1954.50). The property owner is not required to receive approval from the Rent Adjustment Program for the contested rent increase.

(e) The rental unit is exempt from rent control because it is a single-family residence exempted by the Costa-Hawkins Rental Housing Act (California Civil Code 1954.50). The property owner is not required to provide the Notice of the Rent Adjustment Program (RAP Notice) form.

(k) The rental unit is exempt from rent control because it is a single-family residence exempted by the Costa-Hawkins Rental Housing Act (California Civil Code 1954.50). The limit for rent increases over 30% over a 5-year period does not apply to the rental unit.

(i) This exemption is based on a State law and there is no fraud or mistake.

I. Justification for Rent Increase

Date of Contested Rent Increase: 10/10/18 effective 12/15/18

Justification: Single Family Home exemption

III. Exemption Attachment

1. Did the prior tenant leave after being given a notice to quit (Civil Code Section 1946)?
No
2. Did the prior tenant leave after being given a notice of rent increase (Civil Code Section 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?
Yes
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**
If so: 1) from whom? **N/A** 2) Did you purchase the entire building? **N/A**

000035

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CITY OF OAKLAND
RENT ARBITRATION PROGRAM

2019 FEB 15 PM 3:52

1 Alana Grice Conner, SBN 182676
2 Fried & Williams LLP
3 1901 Harrison Street
4 Oakland, CA 94612
5 Phone: (510) 625-0100
6 Fax: (510) 550-3621
7 aconner@friedwilliams.com

8 Attorneys for Respondent and Owner
9 Sherry Zalabak

10 **DEPARTMENT OF HOUSING & COMMUNITY DEVELOPMENT AGENCY**
11 **RENT ADJUSTMENT PROGRAM**
12 **CITY OF OAKLAND**

13 CHESTER "CHASE" MARTIN;
14 KRISTEN PONGER;

15 Petitioner/Tenants,

16 v.

17 SHERRY ZALABAK;

18 Respondent/Owner.

CASE NO.: T18-0472

**PROPERTY OWNER'S SUBMISSION OF
TANGIBLE EVIDENCE**

HEARING DATE: MARCH 5, 2019
TIME: 10:00 A.M.

PLACE: 250 FRANK H. OGAWA PLAZA, STE.
5313, OAKLAND, CA 94612

19 **I. INTRODUCTION**

20 Respondent Sherry Zalabak ("Respondent") is the owner of the real property commonly known as
21 5553 Kales Avenue, Oakland, CA 94618 (the "Premises"), having acquired it in October 2010
22 following her brother, Stephen Lage's death. A true and correct copy of the Declaration Re Death of
23 Life Tenant is attached hereto as Exhibit A. Prior to Mr. Lage's death, he converted the detached garage
24 for use as an office and residential studio. In 2010, Stephen was living in the house and Respondent was
25 providing full time care and using the studio. After Stephen passed, Respondent rented the house and
26 moved back home with her husband and rented the studio.

27 On or around November 24, 2014 Respondent rented the Premises to Chester "Chase" Martin and
28 Kristen Ponger ("Petitioners"). A true and correct copy of the lease is attached hereto as Exhibit B. The
"studio" was occupied at the time the Petitioners moved in. Respondent discovered the unit was an

1 unpermitted unit in early 2018. Upon discovering the studio was only permitted for use as an office
2 space, Respondent pulled a permit and restored the garage to use as an office.

3 Respondent served a rent increase notice with the Notice to Tenants of the Residential Rent
4 Adjustment Program attached in 3 languages (English, Spanish, Chinese) on October 10, 2018. A true
5 and correct copy of the Notice of Change to Terms of Tenancy is attached hereto as Exhibit C.

6 On November 9, 2018, Petitioners filed this petition contesting a rent increase on the basis 1) The
7 increase exceeds the CPI Adjustment and is unjustified or is greater than 10%; 2) The Petitioner
8 received a rent increase notice before the property owner received approval from the Rent Adjustment
9 Program for such an increase and the rent increase exceeds the CPI Adjustment and the available
10 banked rent increase; 3) The Respondent did not give the Petitioners the required form "Notice of Rent
11 Adjustment Program: at least 6 months before the effective date of the rent increase; 4) the proposed
12 rent increase would exceed an overall increase of 30% in 5 years and; 5) Petitioners wish to contest an
13 exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake.

14 **II. LEGAL ARGUMENT**

15 **1. The increase exceeds the CPI Adjustment and is unjustified or is greater than 10%**

16 The CPI Adjustment does not apply to the rental unit. The rental unit is exempt from rent control
17 because it is a single-family residence exempted by the Costa-Hawkins Rental Housing Act (California
18 Civil Code 1654.50). A true and correct copy of the Alameda County Property Assessment Information
19 previously submitted to the City of Oakland Rent Adjustment Program is attached hereto as Exhibit D.
20 True and correct copies of photographs exhibiting the property is a single-family residence is attached
21 hereto as Exhibit E. True and correct copies of the Assessor's Map 48A exhibiting the property as a
22 single-family residence is attached hereto as Exhibit F.

23 **2. The Petitioner received a rent increase notice before the property owner received approval** 24 **from the Rent Adjustment Program for such an increase and the rent increase exceeds the CPI** 25 **Adjustment and the available banked rent increase**

26 No approval was required, and no banking was requested. The rental unit is exempt from rent
27 control because it is a single-family residence exempted by the Costa-Hawkins Rental Housing Act
28 (California Civil Code 1654.50 A true and correct copy of the Alameda County Property Assessment

1 Information previously submitted to the City of Oakland Rent Adjustment Program is attached hereto as
2 Exhibit D. True and correct copies of photographs exhibiting the property is a single-family residence is
3 attached hereto as Exhibit E. True and correct copies of the Assessor's Map 48A exhibiting the property
4 as a single-family residence is attached hereto as Exhibit F.

5 **3. The Respondent did not give the Petitioners the required form "Notice of Rent Adjustment**
6 **Program: at least 6 months before the effective date of the rent increase.**

7 Respondent is not required to provide the Notice of the Rent Adjustment Program (RAP Notice)
8 form. The rental unit is exempt from rent control because it is a single-family residence exempted by the
9 Costa-Hawkins Rental Housing Act (California Civil Code 1654.50). A true and correct copy of the
10 Alameda County Property Assessment Information previously submitted to the City of Oakland Rent
11 Adjustment Program is attached hereto as Exhibit D. True and correct copies of photographs exhibiting
12 the property is a single-family residence is attached hereto as Exhibit E. True and correct copies of the
13 Assessor's Map 48A exhibiting the property as a single-family residence is attached hereto as Exhibit F.

14 **4. The proposed rent increase would exceed an overall increase of 30% in 5 years**

15 The limit for rent increases over 30% over a 5-year period does not apply to the rental unit. The
16 rental unit is exempt from rent control because it is a single-family residence exempted by the Costa-
17 Hawkins Rental Housing Act (California Civil Code 1654.50). A true and correct copy of the Alameda
18 County Property Assessment Information previously submitted to the City of Oakland Rent Adjustment
19 Program is attached hereto as Exhibit D. True and correct copies of photographs exhibiting the property
20 is a single-family residence is attached hereto as Exhibit E. True and correct copies of the Assessor's
21 Map 48A exhibiting the property as a single-family residence is attached hereto as Exhibit F.

22 **5. Exemption based on fraud or mistake**

23 The Petitioners allege Respondent's claim for exemption from rent control is based on fraud or
24 mistake and wish to contest an exemption. Respondent denies the Petitioner's claim. This exemption is
25 based on a State law and there is no fraud or mistake.

26 Respondent became aware of the unpermitted studio being used for residential purposes and stopped
27 using it, restoring the Premise to a single-family residence by pulling a permit over the counter and
28 removing the stove in the unpermitted studio. True and correct copies of the Permit Application


1 Worksheet and Record Details exhibiting the removal of the stove and conversion of the studio to an
2 office is attached hereto as Exhibit G.

3 **III. CONCLUSION**

4 Respondent has provided enough evidence to prove the Premises is a single-family residence and
5 thus any challenge to the rent increase moot. The Rent Adjustment Program does not have jurisdiction
6 over single-family homes exempted by the Costa-Hawkins Rental Housing Act, therefore Petitioner's
7 petition should be dismissed.

8 Dated: February 15, 2019

FRIED & WILLIAMS LLP



By: Alana Grice Conner
Attorneys for Respondent and Owner
Sherry Zalabak

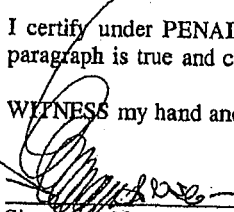
Acknowledgement of Notary Public

State of California
County of Contra Costa

On October 4, 2010 before me, F. Michael Hanson, a Notary Public, personally appeared SHERRY DIANE ZALABAK, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature, Notary Public for the State of California



Legal Description

Beginning at a point on the Southern Line of Kales Avenue distant thereon Westerly 166.66 feet from the intersection thereof with the Western line of Broadway as said avenue and Broadway are shown on the Map hereinafter referred to; running thence Westerly along said line of Kales Avenue, 40 feet; thence at right angles Southerly 65 feet; thence at right angles Easterly 40 feet; and thence at right angles Northerly 65 feet to the point of beginning.

Being a portion of Lots 168 and 169, "Map of Woodlawn Park", filed June 28, 1905, Map Book 20, Page 48, Alameda County Records.

SUBJECT TO all covenants, conditions, restrictions, easements, rights of way, exceptions, reservations, servitudes, limitations, uses, licenses, rights, agreements, and other matters of record.

Recorded at the request of:

F. MICHAEL HANSON, Esq.

When recorded return to:

Sherry Diane Zalabak
402 Vermont Avenue
Berkeley, California 94707



2010293555

10/07/2010 02:56 PM

OFFICIAL RECORDS OF ALAMEDA COUNTY
PATRICK O'CONNELL
RECORDING FEE: 21.00



3 PGS

ZALABAK,SA

DECLARATION RE DEATH OF LIFE TENANT

I, Sherry Diane Zalabak, declare as follows:

I am of legal age (18 years or older). The decedent described in the attached certified copy of Certificate of Death as Stephen Allen Lage is the same person as Stephen Allen Lage who is named as a party in that Gift Grant Deed dated July 21, 2010 executed by Stephen Allen Lage, an unmarried man, to Sherry D. Zalabak, a married woman as her separate property, which Gift Grant Deed also reserved a life estate to Stephen Allen Lage, and which Gift Grant Deed was recorded as Document Number 2010201664 on July 21, 2010, in the official records of Alameda County, California, and concerns the real property situated in the City of Oakland, County of Alameda, State of California, more particularly described as follows:

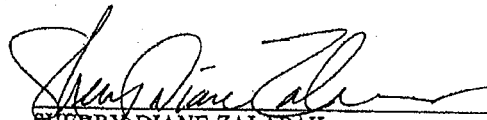
See the **Legal Description** section commencing on the following page, the contents of which are incorporated herein by this reference.

(commonly known as 5553 Kales Avenue, Oakland, California)

APN: 048A-7043-040

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

Dated: October 4, 2010


SHERRY DIANE ZALABAK

Mail Tax Statements To:

Sherry D. Zalabak
402 Vermont Avenue
Berkeley, California 94707

000041

RC MS/SK
EL

2019 APR 11 PM 2:01

Alana Grice Conner, SBN 182676
Fried & Williams LLP
1901 Harrison Street
Oakland, CA 94612
Phone: (510) 625-0100
Fax: (510) 550-3621
aconner@friedwilliams.com

Attorneys for Respondent and Owner
Sherry Zalabak

DEPARTMENT OF HOUSING & COMMUNITY DEVELOPMENT AGENCY
RENT ADJUSTMENT PROGRAM
CITY OF OAKLAND

CHESTER "CHASE" MARTIN;
KRISTEN PONGER;

Petitioner/Tenants,

v.

SHERRY ZALABAK;

Respondent/Owner.

CASE NO.: T18-0114 & T18-0472

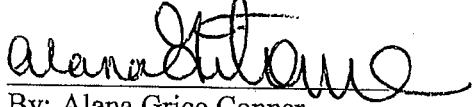
PROPERTY OWNER'S SUPPLEMENTAL STATEMENT

HEARING DATE: APRIL 22, 2019
TIME: 10:00 A.M.
PLACE: 250 FRANK H. OGAWA PLAZA, STE. 5313, OAKLAND, CA 94612

Sherry Zalabak ("Respondent") is the owner of the real property commonly known as 5553 Kales Avenue, Oakland, CA 94618 (the "Premises"). Owner responds to the hearing officer's request regarding the back unit/office and evidence of new construction. The back unit/office is not new construction. That phrase is defined by O.M.C. 8.22.030 Exemptions, "Dwelling units which were newly constructed and received a certificate of occupancy on or after January 1, 1983..." While work on the office was done in or around 2009, no certificate of occupancy was ever issued. Therefore, the office is not "new construction".

Dated: April 11, 2019

FRIED & WILLIAMS LLP



By: Alana Grice Conner
Attorneys for Respondent and Owner
Sherry Zalabak

PROOF OF SERVICE BY FIRST-CLASS MAIL

2019 APR 11 PM 2:01

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

On April 11, 2019, I served the attached, concerning the action known as *Martin, et al. v. Zalabak*, City of Oakland Rent Adjustment Program case no. T18-0114 & T18-0472:

PROPERTY OWNER'S SUPPLEMENTAL STATEMENT

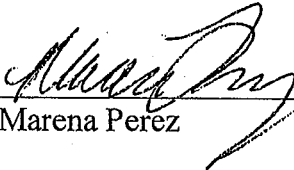
on the parties herein in said action, by placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for mailing with the United States Postal Service. On the same day that correspondence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

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

Chester Martin a.k.a. Chase Martin
5553 Kales Avenue
Oakland, CA 94618

Kristen Ponger
5553 Kales Avenue
Oakland, CA 94618

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and this declaration was executed on April 11, 2019, at Oakland, California.


Marena Perez

* 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

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FEB 22 2019

List case number(s) of all Petition(s) you have ever filed for this rental unit and all other related petitions. RENT ADJUSTMENT PROGRAM OAKLAND

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?
Have you lost services originally provided by the owner or have the conditions changed?
Are you claiming any serious problem(s) with the condition of your rental unit?

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

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

Please attach documentary evidence if available.

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

IV. VERIFICATION: The tenant must sign:

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

Tenant's Signature (Handwritten signature)

Date (Handwritten: 2/16/18)

Empty rectangular box for additional information or notes.

Empty rectangular box for additional information or notes.

RECEIVED
CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM
2019 FEB 15 PM 3:52

1 Alana Grice Conner, SBN 182676
2 Fried & Williams LLP
3 1901 Harrison Street
4 Oakland, CA 94612
5 Phone: (510) 625-0100
6 Fax: (510) 550-3621
7 aconner@friedwilliams.com

8 Attorneys for Respondent and Owner
9 Sherry Zalabak

10 **DEPARTMENT OF HOUSING & COMMUNITY DEVELOPMENT AGENCY**
11 **RENT ADJUSTMENT PROGRAM**
12 **CITY OF OAKLAND**

13 CHESTER "CHASE" MARTIN;
14 KRISTEN PONGER;

15 Petitioner/Tenants,

16 v.

17 SHERRY ZALABAK;

18 Respondent/Owner.

CASE NO.: T18-0414

**PROPERTY OWNER'S SUBMISSION OF
TANGIBLE EVIDENCE**

HEARING DATE: MARCH 5, 2019
TIME: 10:00 A.M.

PLACE: 250 FRANK H. OGAWA PLAZA, STE.
5313, OAKLAND, CA 94612

19 **I. INTRODUCTION**

20 Respondent Sherry Zalabak ("Respondent") is the owner of the real property commonly known as
21 5553 Kales Avenue, Oakland, CA 94618 (the "Premises"), having acquired it in October 2010
22 following her brother, Stephen Lage's death. A true and correct copy of the Declaration Re Death of
23 Life Tenant is attached hereto as Exhibit A. Prior to Mr. Lage's death, he converted the detached garage
24 for use as an office and residential studio. In 2010, Stephen was living in the house and Respondent was
25 providing full time care and using the studio. After Stephen passed, Respondent rented the house and
26 moved back home with her husband and rented the studio. On or around November 24, 2014
27 Respondent rented the Premises to Chester "Chase" Martin and Kristen Ponger ("Petitioners"). A true
28 and correct copy of the lease is attached hereto as Exhibit B. The "studio" was occupied at the time the
Petitioners moved in. Respondent discovered the unit was an unpermitted unit in early 2018. Upon

1 discovering the studio was only permitted for use as an office space, Respondent stopped renting the
2 unit for residential use moving forward.

3 On or about June 5, 2018, Respondent served a rent increase notice on the Petitioners, under the
4 impression the Premises is a single-family residence. A true and correct copy of the 60 Day Notice of
5 Change in Terms of Tenancy is attached hereto as Exhibit C.

6 On August 3, 2018 Petitioners filed this petition contesting a rent increase on the basis 1) The
7 increase exceeds the CPI Adjustment and is unjustified or is greater than 10%; 2) The Petitioner
8 received a rent increase notice before the property owner received approval from the Rent Adjustment
9 Program for such an increase and the rent increase exceeds the CPI Adjustment and the available
10 banked rent increase; 3) No written notice of Rent Program was given to the Petitioners with the notice
11 of increase contested; 4) The Respondent did not give the Petitioners the required form "Notice of Rent
12 Adjustment Program: at least 6 months before the effective date of the rent increase; 5) the proposed
13 rent increase would exceed an overall increase of 30% in 5 years and; 6) Petitioners wish to contest an
14 exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake.

15 **II. PETITIONER'S PETITION SHOULD BE DENIED**

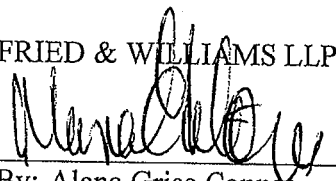
16 On October 10, 2018, Respondent rescinded the Notice of Change to Terms of Tenancy served on
17 Petitioners and refunded Petitioners for overpayment by giving a rent credit in the amount of \$360.00. A
18 true and correct copy of the rescission letter and image of the check are attached hereto as Exhibit D.

19 **III. CONCLUSION**

20 Respondent has rescinded the rent increase making any challenge to the rent increase moot. Thus,
21 Petitioner's petition should be dismissed.

22
23 Dated: February 15, 2019

FRIED & WILLIAMS LLP



24
25 By: Alana Grice Conner
26 Attorneys for Respondent and Owner
27 Sherry Zalabac
28

CITY OF OAKLAND



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

Housing and Community Development Department
Rent Adjustment Program

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

HEARING DECISION

CASE NUMBERS: T18-0414, Martin et. al. v. Zalabak
T18-0472, Martin et al. v. Zalabak

PROPERTY ADDRESS: 5553 Kales Avenue, Oakland, CA

DATES OF HEARING: March 5, 2019
April 22, 2019

DATE OF DECISION: April 30, 2019

APPEARANCES: Chester Martin, Tenant
Kristen Ponger, Tenant
Sherry Zalabak, Owner
Alana Grice Conner, Attorney for Owner

SUMMARY OF DECISION

The Tenant's petitions are dismissed.

INTRODUCTION

The tenant filed the initial petition on August 3, 2018, T18-0414, which contests a rent increase effective August 1, 2108, raising their rent from \$2,652.00 to \$4,500.00, on the following grounds:

- Rent Increase Exceeds CPI or more than 10%;
- No Pre-Approval of Increase;
- No Concurrent RAP Notice;
- No RAP Notice 6 Months prior to the effective date of the increase;
- Rent Increase exceeds an overall increase of 30% in 5 years.

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The tenant filed a second petition on November 9, 2018, T18-0472, which contests a rent increase effective December 15, 2108, raising their rent from \$2,652.00 to \$4,500.00, on the following grounds:

- Rent Increase Exceeds CPI or more than 10%;
- No Pre-Approval of Increase;
- No RAP Notice 6 Months prior to the effective date of the increase;
- Rent Increase exceeds an overall increase of 30% in 5 years.

The owner filed a timely response in T18-0414 and an untimely response in T18-0472. The owner attended the hearing and was represented. The matter proceeded to hearing on March 5, 2019. Subsequently, the undersigned re-opened the matter for further hearing on the construction of the back unit, including but not limited to whether the second unit is new construction under the ordinance.

ISSUE(S) PRESENTED

1. Is the subject unit exempt from the Rent Adjustment Ordinance?

EVIDENCE

March 5, 2019

Rental History

The tenants moved into the unit November 24, 2014, for \$2600.00 per month. At the inception of their tenancy, it was a multi-unit property. The front unit and the back unit were rented out to separate tenants, with separate leases.¹

In January 2017, their rent was increased by the CPI, 2%, to \$2652.00. They believe the back unit was raised by the same amount. They received a notice of rent increase indicating the rent would be \$4,500.00, effective January 3, 2019. They have paid the uncontested portion of their rent, 2652.00 per month, pending the outcome of their petition.

The tenants were first given a RAP Notice on November 4, 2018. They live in a house; they dispute the designation as a single-family residence. When they moved

¹ The owner property response acknowledges that the owner had an unpermitted use of the second unit.

in, there was a unit in the back. Subsequently, they removed the stove from the other unit and applied for a permit to use it as a non-residential space. The stove is currently being stored in the basement. The tenant claims the owner will put it back in the unit when she lists the property for sale.

In 2018, the tenants in the rear unit moved. The back unit is unoccupied, but they do not have access to it.

The owner testified that she received the property as an inheritance in 2010. Her property is assessed as a single-family residence.² At the time she inherited the property, the back unit was occupied. In June 2018, she served a rent increase notice. The petitioners filed a petition with the Rent Adjustment Program. The owner retained counsel to respond to the petition. Subsequently, she became aware that the studio unit was impermissible, which was confirmed with the permit department.

After finding out that the space was permitted for an office, she returned the space to non-residential use and removed the stove.³

The owner testified that she does have the original permit for creating the office space but did not bring it to the hearing.

The tenants argued that they rented what was by all intents and purposes a rent-controlled unit and that the owner's unilateral change to comply with the law was motivated by bad faith.

The property owner argued that by the removal of the illegal unit restored the single-family residence to its proper use and therefore restored its status as an exempt unit.

April 22, 2019

The undersigned re-opened the hearing to determine if the second unit qualified as new construction under the ordinance. At the hearing, the tenant provided documentation from the City of Oakland, which established that there was a second structure on the property, which was a garage in the 1930s.⁴

² Exhibit A, March Hearing. This Exhibit, and all other Exhibits to which reference is made in this Decision, were admitted into evidence.

³ Exhibit 11, March Hearing.

⁴ Exhibit A, April Hearing.

The tenant testified that there was no permit to convert the garage structure to an office. The records indicated that in 1993, the new amp circuits went out to the garage.⁵

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Exemption

Costa-Hawkins: The Costa-Hawkins Rental Housing Act⁶ provides that a dwelling or unit which is separately alienable from any other dwelling or unit is exempt from local rent control, except under certain circumstances. The Oakland Rent Adjustment Ordinance specifically states that if a unit is covered under Costa-Hawkins, it is exempt from the Ordinance.⁷

Exceptions to the Application of Costa-Hawkins:

A single-family residence is exempt from local rent control laws unless one or more of the following situations applies:

- (1) The tenancy began before January 1, 1996
- (3) The prior tenant was evicted for no cause
- (4) The prior tenant vacated after being given a notice of rent increase
- (5) There were serious health, safety, fire or building code violations for which the owner was cited, and which were not corrected for six months before the start of the current tenancy.

The tenants' testimony that she initially rented a multi-unit property and that the tenant in the back unit moved out and that the owner has not allowed subsequent illegal residential use is credited. Accordingly, the subject unit has been restored to a single-family residence. Therefore, the house is exempt from the application of the Oakland Rent Adjustment Ordinance. Because the subject unit is exempt from the Ordinance, no other issues raised in the tenant petition can be addressed.

//

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⁵ Exhibit B, April Hearing.

⁶ Civil Code Section 1954.52(a)(3)

⁷ O.M.C. Section 8.22.030(A)(7)

ORDER

1. Petitions T18-0414 and T18-0472 are denied.
2. The subject unit is exempt from the Rent Adjustment Ordinance pursuant to Civil Code §1954.52(a)(3).
3. The unit is not exempt from payment of the Rent Adjustment Service fee.
4. A Certificate of Exemption for the subject unit will be issued when this Decision becomes final.

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

Dated: May 31, 2019



Élan Consuella Lambert
Hearing Officer
Rent Adjustment Program

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PROOF OF SERVICE
Case Number T18-0414

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

Documents Included
Hearing Decision

Owner
Sherry Zalabak
402 Vermont Avenue
Berkeley, CA 94707

Owner Representative
Alana Grice Conner, Fried & Williams LLP
1901 Harrison Street 14th Floor
Oakland, CA 94612

Tenant
Chester Martin
5553 Kales Avenue
Oakland, CA 94618

Tenant
Kristen Ponger
5553 Kales Avenue
Oakland, CA 94618

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 07, 2019** in Oakland, CA.



Brittni Lothlen

Oakland Rent Adjustment Program

000052

PROOF OF SERVICE
Case Number T18-0472

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

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

Documents Included

Hearing Decision

Owner

Sherry Zalabak
402 Vermont Avenue
Berkeley, CA 94707

Owner Representative

Alana Grice Conner,
Fried & Williams, LLP
1901 Harrison Street 14th Floor
Oakland, CA 94612

Tenant

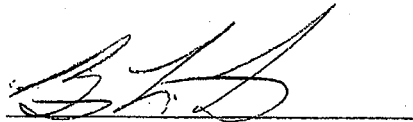
Chester Martin
5553 Kales Avenue
Oakland, CA 94618

Tenant

Kristen Ponger
5553 Kales Avenue
Oakland, CA 94618

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **June 07, 2019** in Oakland, CA.




Brittni Lothlen

Oakland Rent Adjustment Program

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RC/ECL

RECEIVED
CITY OF OAKLAND
RENT ARBITRATION PROGRAM

 CITY OF OAKLAND CITY OF OAKLAND	CITY OF OAKLAND RENT ADJUSTMENT PROGRAM 250 Frank Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721	2019 JUN 27 PM 2:06
	<u>APPEAL</u>	

Appellant's Name		<input type="checkbox"/> Owner <input checked="" type="checkbox"/> Tenant	
Chester Martin & Kristen Ponger			
Property Address (Include Unit Number)			
5553 Kales Ave Oakland CA 94618			
Appellant's Mailing Address (For receipt of notices)		Case Number	
5553 Kales Ave		T18-0414; T18-0472	
Oakland, CA 94618		Date of Decision appealed	
		4.30.2019	
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: _____.

• 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 June 27, 2019, 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>	Sherry Zalabak
<u>Address</u>	402 Vermont Ave
<u>City, State Zip</u>	Berkeley, CA 94707
<u>Name</u>	Alana Crice Corner
<u>Address</u>	1901 Harrison Street, 14th floor
<u>City, State Zip</u>	Oakland, CA 94612

<u>Signature</u> C. Math	<u>Signature</u> K. Payne	<u>Date</u> 6.27.2019
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE		DATE

For more information phone (510) 238-3721.

Chester Martin & Kristen Ponger
5553 Kales Avenue
Oakland, CA 94618
June 27, 2019

Rent Adjustment Program (RAP)
City of Oakland, CA
Re: Appeal

Case Number(s):

T18-0414

T18-0472

Tenant(s):

Chester "Chase" Martin
Kristen Ponger

Landlord:

Sherry Zalabak

Rental Property Address: 5553 Kales Avenue, Oakland, CA 94618

Tenants Cause for Appeal:

We are appealing the decision on the following grounds:

1. (a) The decision is inconsistent with OMC Chapter 8.22.060
 - A. Notice at the Commencement of Tenancy
 - C. Failing to Give Notice
2. (c) The decision raises a new policy issue that has not been decided by the Board
3. (e) The decision is not supported by substantial evidence

Key Points:

1. (a) The decision is inconsistent with OMC Chapter 8.22.060:

- As stated in Case T18-0414, Tenants never received notice of RAP at the commencement of our tenancy or 6 months prior to rent increase notice (OMC 8.22.060). The property was then being rented as a multi-unit property (confirmed by landlord). The first RAP notice was provided on November 4, 2018.

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

- If an owner can remove an illegal unit from the rental market in order to restore their property's status to exempt for the purposes of evading OMC Chapter 8:22, so that the owner can then raise the remaining tenant's rent 70%, how does that foster the fair housing purpose of the program?

3. (e) The decision is not supported by substantial evidence:

- Hearing Decision Summary from March 5th hearing includes assessments contradictory to factual evidence filed in tenant petition
 - There is no evidence that the back unit was occupied when the owner inherited the property. No proof of occupancy was submitted for time prior to 2012
 - There is no evidence that the owner was unaware of the legal status of the back unit. The evidence shows the opposite. Owner claims that she had no knowledge of the legality of the unit until tenants filed a petition. As you can see in Exhibit H [attached] from T18-0414 petition, which is dated May 25th, 2018 discussion of the legality of the unit had been raised at this point. This had been discussed between landlord and tenant on many occasions.
 - There is no original permit for the "office", therefore the owner's application for a permit to "restore to office use" is invalid and the unit is still deemed a residential structure. Hearing officer accepted a verbal confirmation from the landlord who claimed to have permit at home. She accepted this as evidence despite the hard evidence provided by tenants proving there is no evidence or record of such permit. Records obtained from the City of Oakland.

In Summary

The landlord has strategically used certain tactics such as removal of the stove to evade rent control (The stove remains in the laundry room with the intention of reinstalling it to the back unit). This remains a bad faith rent increase and an attempt to force tenants out of the home. A single-family dwelling is not exempt and is considered a two-unit building if there is another residential structure on the same lot, regardless of the legality of the unit. Owners application for permit to "restore to office use" is invalid as there is no original permit. Therefore, the property remains as a two-unit property.

2020 JAN 14 PM 5:42

1 Lisa Giampaoli, SBN 291234
Giampaoli Law
2 100 Pine Street, Suite 1250
San Francisco, CA 94111
3 Telephone: (415) 890-6529
4 Attorneys for Tenants/Appellants
Chester Martin & Kristen Ponger
5
6
7

OAKLAND RENT ADJUSTMENT BOARD
CITY OF OAKLAND

10 RE: 5553 Kales Ave.
11 CHESTER MARTIN & KRISTEN PONGER
12 Tenant-Appellants,
13 v.
14 SHERRY ZALABAK,
15 Landlord-Respondent.
16

Consolidated petitions: T18-0414, T18-0472

MEMORANDUM IN SUPPORT OF
APPEAL OF TENANT-APPELLANTS
CHESTER "CHASE" MARTIN AND
KRISTEN PONGER

Hearing Date: TBD

INTRODUCTION

20 Tenants appeal the dismissal of their petition for unlawful rent increase and the decision
21 that the Subject Property was exempt from the RAP as a single family residence at the time the
22 rent increase was noticed. Tenants contend that their unit did not qualify as a SFR because at the
23 time they entered into the rental agreement for their unit, and throughout their tenancy, the
24 Landlord was collecting rents for two separate dwelling units at the property pursuant to two
25 separate rental agreements; Landlord never removed the rear cottages from use as living space;
26 Landlord never provided Tenants with access to, or use of, the entirety of the property as SFR; and
27 Landlord failed to provide any credible evidence that would lead a reasonable person to conclude
28

1 Landlord had permanently removed the rear cottages from use as a dwelling space. Tenants further
2 contend Landlord's claim of exemption is nothing more than an attempt to evade the RAP and Just
3 Cause for Eviction protections by raising the rent so high it would force Tenants to vacate,
4 allowing the Landlord to sell the property vacant, as she had repeatedly told them she wanted to
5 do. The issue at stake here is whether Landlord, based on nothing more than her own unreliable
6 testimony, can unilaterally claim a SFR exemption from the RAP for a property that Landlord
7 admits she has rented out as multiple units for years. The answer should be a resounding "no."
8

9 **STATEMENT OF FACTS**

10 5553 Kales Ave. ("Subject Property") is located in the Rockridge neighborhood. The
11 property contains three structures: a Craftsman style cottage with one bedroom, living room,
12 kitchen and bathroom; a rear studio cottage with a living area, bathroom, and kitchen; and a
13 second ~100 sq. ft. rear cottage with hardwood floors, windows, a loft, baseboard heater and an
14 interior locking deadbolt. (See: 3/5/19 Hearing Exh.1: Photos of interiors of rear cottages at
15 5553 Kales Ave.) In 2014 Tenant-Appellants ("Tenants") entered into a two year written rental
16 agreement with Landlord-Respondent ("Landlord") for the one bedroom Craftsman cottage
17 (hereinafter "subject premises") for a monthly rent of \$2600. (See: 3/5/19 Hearing Exh. 3:
18 Rental Agreement between Sherry Zalabak and Chester Martin & Kristen Ponger.) At the
19 time that Tenants entered into the agreement for the Subject Premises, the two rear cottages ("rear
20 cottages"), were being rented as a single dwelling unit by Landlord to Leanne Fowlkes and Mike
21 Devol, leading Tenants to understand and believe that the Subject Premises was part of multi-unit
22 property protected by rent control. (3/5/19 RAP Hearing, Part 1: 23:30-23:47; 56:15- 56:23.) A
23 2% rent increase imposed on both units by Landlord in 2017 was in line with the allowable CPI
24 and substantiated Tenants' belief that their unit was covered by the RAP. (3/5/19 RAP Hearing,
25 Part 1: 23:47-23:55.) Additionally, Tenants did not have use or access to the rear cottages and
26 were not permitted to use the rear yard. (3/5/19 RAP Hearing, Part 1: 56: 56:34-56:40.) When
27
28

1 Ms. Fowlkes and Mr. Devol vacated the rear units in June 2017, Landlord immediately re-rented
2 the rear cottages to another couple, Lindsay Byrd and Isabel Avellan. (See: **3/5/19 Hearing Exh.**
3 **4: July, 2017 lease agreement between Sherry & John Zalabak and Lindsay Byrd & Isabel**
4 **Avellan.**) On November 14, 2017, Landlord asked Tenants if they would be interested in
5 purchasing the Subject Property, stating Tenants could rent out the "rear cottages" for income.
6 (See: **3/5/19 Hearing Exh. 9: November 14, 2017 email from Sherry Zalabak to Kristen**
7 **Ponger.**) On or around February 28, 2018, Lindsay Byrd & Isabel Avellan vacated the rear
8 cottages. (**3/5/19 RAP Hearing, Part 1: 55:08-55:23.**) On March 28, 2018, Landlord gave
9 Tenants a letter stating her intent to sell the Subject Property and demanded Tenants vacate by
10 July 1, 2018. (See: **3/5/19 Hearing Exh. 10: March 28, 2018 letter from Sherry Zalabak to**
11 **Kristen Ponger and Chase Martin.**) On April 25, 2018, Landlord sent a document to Tenants
12 which Landlord represented as a "lease extension," but which was entitled "Landlord-Tenant
13 Agreement to Terminate Lease." (**3/5/19 RAP Hearing, Part 1: 46:05.-46:12.**)¹ Tenants would
14 not sign it. On June 5, 2018, Landlord served Tenants a 60 day notice of a rent increase to \$4500.
15 (See: **Tenant Petition T18-0414, Exh. A.**)² On August 3, 2018 Tenants filed Tenant petition T18-
16 0414 for unlawful rent increase. After they filed the petition, Landlord came to Tenants' home
17 pleading for them to rescind petition T18-0414, offering to make a new agreement and causing
18 Tenants to feel bad for landlord and agree to rescind the petition. (**3/5/19 RAP Hearing, Part 1:**
19 **52:28-52:44.**) However, for reasons unknown, the RAP failed to dismiss petition T18-0414.
20 (**3/5/19 RAP Hearing, Part 1: 2:28-2:40.**) At the end of September 2018 Tenants discovered the
21
22
23
24

25 _____
26 ¹ Tenants offered the document as evidence in support of their petition at the March 5, 2019 hearing, but though
there was no objection from Landlord, hearing officer Lambert did not enter the document into the record and
provided no reason for failing to do so.

27 _____
28 ² Tenants provided a copy of the 60-day notice in their petition/response, but hearing officer Lambert did not enter it
into the record as an exhibit.

1 stove from the rear cottage had been placed in the basement laundry room of the Subject Property.
2 **(3/5/19 RAP Hearing recording, Part 1: 27:56-28:00) (See also: 3/5/19 Hearing Exh. 1, p. 3,**
3 **photo of stove in laundry room.)** Shortly thereafter tenants received from Landlord a new 60
4 Day Notice of change in terms of tenancy increasing the rent from \$2652 to \$4500. The new
5 notice was dated October 10, 2018, less than two weeks after the stove had been removed from the
6 rear cottage. Tenants filed petition T18-0472 for unlawful rent increase. Landlord then filed a
7 response contending that the Subject Premises was a single family residence exempt from the
8 RAP under the state Costa Hawkins Act.
9

10 PROCEDURAL HISTORY

11 The first RAP hearing on Tenants' petitions was held March 5, 2019 with hearing officer
12 Elan Consuela Lambert ("Lambert"). Tenants, Landlord and Landlord's counsel were present.
13 Mike Devol, former tenant of the rear cottages initially attended with the intent to testify as a
14 witness for Tenants, but had to leave before having the opportunity to do so.³ Tenants did not have
15 legal representation. Tenant Petitions T18-0414 and T18-0472 were based on two separate rent
16 increase notices but only the second rent increase notice was still in effect at the time of the
17 hearing.⁴
18

19 Lambert confirmed that Tenants were not served a RAP notice upon commencement of
20 their tenancy. **(3/5/19 Hearing, Part 1: 17:19-7:29.)** Tenants testified that Landlord rented the
21 rear cottages separately from the subject premises throughout Tenants' possession of the subject
22 premises, offering as evidence photos of the interiors of the rear cottages,⁵ a copy of a 2017 lease
23 agreement for the rear cottages between Landlord and tenants Lindsey Byrd & Isabel Avellan,⁶
24
25

26 ³ The March 5, 2019 Hearing Sign In Sheet is in the RAP record.

27 ⁴ Both Tenant Petitions and Landlord responses included copies of the Rent Increase Notices, but for
28 reasons unknown, they were not entered into the hearing record.

⁵ See March 5, 2019 Hearing Exhibit 1.

⁶ See March 5, 2019 Hearing Exhibit 2.

1 and communications from Landlord stating Tenants could rent out the rear cottages for income if
2 they bought the subject property.⁷ (3/5/19 Hearing, Part 1: 24:46-34:15.)

3 Tenants further testified that on February 28, 2018 the rear cottages became vacant and on
4 March 28, 2018 Landlord sent them a letter stating they would have to move out because she
5 wanted to sell the subject property. (3/5/19 Hearing, Part 1: 39:27-40:11; 55:08.) When Tenants
6 testified that they believed Landlord sought a 70% rent increase to force them out and sell the
7 property vacant for maximum profit, Lambert asked Tenant if there was anything in the law that
8 prevents that. (3/5/19 Hearing, Part 1: 40:12.) Tenants testified that Landlord had repeatedly
9 made it clear she wanted them out so she could sell the Property vacant, and that landlord had only
10 removed the stove from the rear cottage in order to claim it was no longer a dwelling unit and
11 therefore exempt from the RAP. Tenants further testified that the stove was still in the laundry
12 room at the subject property and they believed she planned to simply put in back in the rear unit
13 when it benefited her. (3/5/19 RAP Hearing, Part 1: 56:05- 57:15.) Tenants contended that
14 Landlord's decision to stop renting out the rear cottages was an action over which they had no
15 control and which should not change their status under the RAP.
16
17

18 Landlord freely admitted that she rented out the rear cottages for residential use from the
19 time she inherited the Subject Property in 2010 until February 2018. (3/5/19 RAP Hearing
20 recording, Part 2: 4:05-4:19.) Landlord, a long-time Bay Area property owner and landlord,
21 alleged that she did not know that the rear cottages were not legal until after Tenants filed their
22 first RAP petition (T18-0414). (3/5/19 Hearing, Part 2: 6:55- 7:09 and 13:17-13:32.) Landlord
23 testified that upon learning that the rear cottages were illegal, she sought to remove them from use
24 as dwelling units, offering as evidence a permit application worksheet she had filled out herself
25 and allegedly submitted to the City of Oakland Planning and Building Department. (3/5/19
26

27
28 ⁷ See: March 5, 2019 Hearing Exhibit 9; also see March 5, 2019 Hearing Exhibit 5 located in the RAP file folder.

1 **Hearing, Part 2: 19:28-19:48.)** The application worksheet identified the subject property as 2
2 existing residential units that Landlord was proposing to reduce to 1 unit, and states the purpose is
3 to “return from habitable space to office space.” (See: 3/5/19 Hearing Exh. 11: Zalabak Permit
4 **Application Worksheet.**) Landlord testified that the rear cottage was permitted for use as an
5 office and she had reverted it back to that use. (3/5/19 Hearing, Part 2: 19:37-19:49.) When
6 Tenant asked Landlord if she had the original permit stating that rear unit was an office space,
7 Landlord said she did, and then referred back to the Permit Application Worksheet she had filled
8 out herself. (3/5/19 Hearing, Part 2: 19:58-20:03.) Lambert then referenced the repeated use of
9 the term “returned” in Landlord’s Permit Application Worksheet as evidence that the rear unit had
10 been permitted for use as an office.⁸ (3/5/19 Hearing, Part 2: 20:20-21:49.) When Tenant noted
11 that the application had been filled out by the Landlord who was only surmising the unit had been
12 permitted for use as an office, Lambert stated “No, [Landlord] testified that there was a permit for
13 it to be an office originally.” (3/5/19 Hearing, Part 2: 21:44-21:56.) When Tenant again asked if
14 the Landlord actually had the permit, Landlord’s counsel stated Landlord was not responsible for
15 pulling the permit, telling Tenant that if he wanted a copy of the permit, he could get it from the
16 city. (3/5/19 Hearing, Part 2: 21:57-22:07.) Landlord then stated she did have the permit, but that
17 she did not bring it to the hearing. (3/5/19 Hearing, Part 2: 22:07-22:10.)

20 Lambert later reiterated that “[the permit application worksheet] goes to show that [the rear
21 cottage] is no longer a residential unit. It’s an office space...it’s officially with the city an office
22 space.” (3/5/19 Hearing, Part 2: 30:19-30:32.) At no time did Lambert issue an order or
23 otherwise require Landlord to provide a copy of the alleged office space permit.
24

25 Tenants argued that removing the stove from the rear cottage and placing it in the laundry
26 room was not evidence that Landlord had removed the cottage from use as a dwelling unit, but
27 simply a temporary step to evade rent control. (3/5/19 Hearing, Part 1: 57:00-57:09.)

28 ⁸ “Returned” as in reverted.

1 Landlord claimed that upon restoring the rear cottages to non-habitable space, they were no
2 longer rentable units, and that allowing the continued rental of illegal units was against public
3 policy because it would put tenants at risk. (3/5/19 Hearing, Part 2: 39:39- 40:10.) Landlord
4 admitted she had rented out the illegal cottages in violation of the law, but argued that by ceasing
5 her illegal conduct, the property reverted back to a single family home. (3/5/19 Hearing, Part 2:
6 41:12-41:27.) Landlord went on to claim that the property was now being used as a single family
7 home by Tenants,⁹ but did not provide any evidence that Tenants had access or use of the entire
8 property. (3/5/19 Hearing, Part 2: 41:51-42:19.)
9

10 When Tenants argued that Landlord had temporarily stopped renting the rear unit solely to
11 circumvent rent control and the Just Cause ordinance, Lambert told Tenants that Landlord's
12 motivation for complying with the law was not at issue, saying violation of Just Cause was not a
13 subject for the hearing. (3/5/19 Hearing, Part 2: 45:00-45:37.) Tenants reiterated that Landlord
14 was well aware that the rear cottages were illegal for at least ten months and did not take any
15 action to comply with the law until after Tenants filed their first petition at the RAP. (3/5/19
16 Hearing, Part 2: 46:50-47:16.)
17

18 At no time did Lambert require Landlord to provide any evidence other than Landlord's
19 own testimony that Landlord had actually removed the rear cottages from residential use or that
20 the rear cottages were permitted for use as an office.

21 On April 22, 2019, a "good cause" hearing took place at the order of Lambert to ascertain
22 whether the subject property might be subject to a new construction exemption. (4/22/19 Hearing,
23 1:30-1:47.) Tenants submitted as evidence a 1940's parcel map they obtained from the Oakland
24 Building Department which showed two structures existed on the Subject Property. (4/22/19
25
26

27 _____
28 ⁹ I.e. suggesting that Tenants had been given use of the entire Subject Property, which was not the case.

1 **Hearing, 3:15-3:38.) (See: 4/22/19 Hearing Exh. A- 1940's Parcel Map of the 5500 block of**
2 **Kales Ave.)** Tenants testified that they learned from the building records that the larger rear
3 cottage had existed as a garage since the 1940's. (4/22/19 Hearing, 5:37-5:39.) Tenants further
4 testified that they obtained from the Building Department the entire permit history for the Subject
5 Property going back to the 1940's, and that there was no record of a permit to use the garage as an
6 office space. (4/22/19 Hearing, 9:25-10:00.) Tenants submitted copies of all the building records
7 as evidence. (See: 4/22/19 Hearing Exh. B- Building Records for 5553 Kales Ave. from 1940's
8 to 2019.) Tenants pointed out that Landlord had testified under oath that she had a permit for use
9 of the rear cottage as an office, but since no such permit existed, Landlord's credibility was at
10 issue. (4/22/19 Hearing, 10:00-10:32.) Lambert and Landlord did not dispute the discrepancy, but
11 Lambert said she did not know that the Landlord's [lying under oath] had any impact. (4/22/19
12 Hearing, 11:42-11:46.) When Tenant made another layman's attempt to put Landlord's
13 credibility at issue, Lambert obfuscated on the topic, turning it into a personal joke without
14 formally addressing Tenants' request for notice of Landlord's lack of credibility. (4/22/19
15 Hearing, 12:10-12:24.)

16
17
18 Landlord's counsel later stated several times the previous owner of the subject property
19 was Landlord's brother and that it was the "brother" that created and initially rented out the rear
20 cottages; Landlord's counsel offered to have Landlord testify in support of her claims. (4/22/19
21 Hearing, 17:56-18:32.) Lambert said the Landlord's testimony was not necessary. (4/22/19
22 Hearing, 19:00-19:10.) When Tenants then sought to have the Landlord state under oath that she
23 was claiming the former owner of the property was Landlord's brother, Lambert would not allow
24 Tenan to ask the Landlord the question. (4/22/19 Hearing, 21:45-21:59.) Tenants informed
25 Lambert that the former owner was not the Landlord's brother, and when Lambert asked how
26
27 Tenants knew that, Tenants provided a copy of the obituary of the former owner, Stephen Lage,
28 which mentioned the names of family members, including sister Deborah Lage, but made no

1 mention of Sherry Zalabak. (4/22/19 Hearing, 22:06-22:20). Lambert acknowledged the obituary,
2 but then asked Tenants why it mattered.¹¹ (4/22/19 Hearing, 22:22-22:24). Tenants responded
3 that it mattered because it showed Landlord had repeatedly lied and lacked all credibility. (4/22/19
4 Hearing, 2:24-22:46.) Lambert said she understood the argument Tenants were “attempting to
5 make,” but that there was nothing about Landlord’s testimony that would contradict the “operative
6 facts” of the case. (4/22/19 Hearing, 22:47-24:24). Lambert went on to state that the removal of
7 the stove from the rear cottages was also not an operative fact but a detail used to show Landlord
8 had removed the rear cottages from illegal use, not “the thing which allows [Landlord] to raise
9 [Tenants’] rent.” (4/22/19 Hearing, 31:10- 31:43.) Lambert concluded the hearing with an
10 explanation that the presence of a stove is not an operative fact for determination of a dwelling
11 unit, but rather the residential use of a structure that mattered.¹² (4/22/19 Hearing, 31:53-32:30.)

12
13 Lambert then proceeded to issue a decision based on Landlord’s testimony that she had
14 removed the rear cottages from residential use, despite the absolute lack of evidence from
15 Landlord that she had done so, and despite the substantial evidence that Landlord had no
16 compunction about providing false testimony under oath.

17
18 **I. THE RAP HAS JURISDICTION TO HEAR THE APPEAL**

19 The final decision in the underlying petitions was served by mail on June 7, 2019.
20 Appellants timely filed their appeal on June 27, 2019 pursuant to O.M.C. 8.22.120.

21 The RAP can and must consider this appeal because “[i]n general, a party must exhaust
22 administrative remedies before resorting to the courts.” (*Coachella Valley Mosquito and Vector*
23 *Control Dist. v. California Public Employment Relations Bd.* (2005) 35 Cal.4th 1072, 1080.)
24 “[A]n administrative remedy is exhausted only upon ‘termination of all available, nonduplicative
25

26
27 ¹¹ Though she acknowledged the information in the obituary, Lambert did not enter the obituary into the
record.

28 ¹² Thereby implying that Landlord’s removal of the stove was not sufficient to remove the unit from
residential use.

1 administrative review procedures.” *Id.* (citing to *California Correctional Peace Officers Assn. v.*
2 *State Personnel Bd.* (1995) 10 Cal.4th 1133, 1151.)

3 Here the RAP has issued a decision for which Tenants have ample grounds to appeal.
4 Tenants must exhaust all administrative remedies before resorting to the courts. Tenants must
5 therefore be afforded the opportunity to exhaust all administrative remedies before filing a writ.

6 **A. Landlord’s Arguments that the RAP Does Not Have Authority to Hear the**
7 **Appeal are Moot.**

8 Landlord argues that the Rent Adjustment Board does not have jurisdiction to hear this
9 appeal because: 1) the Subject Property is a single family residence exempt from the RAP; and 2)
10 Tenants have vacated the Subject Property. Both of these arguments fail.

11 Landlord’s claim that the Rent Board lacks jurisdiction to hear an appeal of an exemption
12 because the unit is exempt is ridiculously circular. More to the point, RAP regulation
13 8.22.030(C)(1)(c) specifically entitles Tenants to appeal a decision granting an exemption. While a
14 SFR exemption pursuant to Costa Hawkins might make sense where the landlord represented, and
15 the tenants believed, that the rental agreement was for a single family home, this is not that
16 situation. Here the landlord, by her own admission, has profited for years from renting multiple
17 units at the subject property. A property’s legal designation as a single family residence does not
18 create an unappealable blanket exemption where the landlord knowingly rented out the property as
19 a multi-unit dwelling any more than a commercial space knowingly rented out by the landlord for
20 residential use is automatically exempt and unappealable. (See *Wofsy v. Tenant* L12-0051; Also
21 see *Rose v. Polanski*, T05-0233.)

22 As for moving out-Tenants could and would have maintained possession of the unit if they
23 had not been faced with the risk of owing many months of a huge rent differential while waiting
24 for the RAP hearings and decision. They filed their petition November 2018, and the decision was
25 issued at the end of May 2019. Though they filed their appeal in June, they knew it would be
26
27
28

1 months before their appeal was heard, and they simply could not afford risking the possibility of
2 owing a year or more of rent differential if they lost the appeal.

3 Tenants filed a timely appeal citing valid grounds while still in possession of the subject
4 premises. Tenants should not be forced to choose between exercising their legal rights or risking a
5 major financial burden as a result of scheduling matters outside their control. Tenants have done
6 their due diligence and ask that the Rent Board do the same by hearing their appeal.
7

8 **II. GROUNDS FOR APPEAL**

9 Tenants submit their appeal pursuant to RAP Regulation 8.22.120(B)(3-5), and O.M.C.
10 8.22.030(B)(1)(B) (exemption based on fraud or mistake.)

11 **A. O.M.C. 8.22.120(B)(3) The Decision Raises a New Policy Issue That Has Not** 12 **Previously Been Decided by the Board**

13 The RAP acknowledged that this is a new issue not previously decided by the Board
14 when it rescheduled the appeal hearing in this matter to have it heard by the full board. This issue
15 is of significant importance to Oakland Tenants, as there are likely thousands of tenants living in
16 properties recorded as single family homes but which actually have one or more illegal units.
17

18 The rental of illegal units is commonplace in the Bay Area, including Oakland. And the
19 RAP, the Just Cause for Eviction ordinance, and the Tenant Protection Ordinance all recognize
20 and provide protection for tenants living in illegal units, as evidenced by the definition of "covered
21 units" under O.M.C. 8.22.020:

22 "Covered Unit" means any dwelling unit, including joint living and work quarters,
23 and all housing services located in Oakland and used or occupied in consideration
24 of payment of rent with the exception of those units designated in Section 8.22.030
A. as exempt."

25 Oakland Planning Code §17.09.040 defines "dwelling unit" as:

26 ...a room or suite of rooms including only one kitchen, except as otherwise
27 provided in Section 17.102.270, and designed or occupied as separate living
quarters for one person or family; [reference to boarding house omitted.]
28

1 A review of the exemptions under 8.22.030 makes no mention of illegal or unpermitted
2 units. Yet when illegal units are located in a property recorded as a Single Family Property, such
3 is the case here, all tenants in the property are at risk each time one unit becomes vacant, as the
4 landlord can simply claim exemption under Costa Hawkins and impose a huge rent increase for
5 the remaining tenants, which often results in pushing out the existing tenants, allowing the
6 landlord to re-rent the units at new, market rents, or sell the property vacant. The failure to uphold
7 the RAP in these situations gives landlords a loophole to circumvent both the RAP and Just Cause.
8

9 Recognizing this problem, San Francisco amended its planning code in 2016 to require a
10 landlord to legalize an illegal dwelling unit whenever feasible.¹³ The effect of the amendment has
11 been to hold landlords accountable and protect tenants from losing their housing. San Francisco
12 also amended its Tenant Harassment Ordinance in 2018 to include rent increases imposed in bad
13 faith on tenants in units exempt from rent control but covered by the Just Cause Ordinance.¹⁴
14

15 That said, while these additional protections have not yet been enacted in Oakland, the
16 present case need not rely on them because landlord has not provided substantial, or any, evidence
17 that she has removed the rear cottages or ceased renting them out. In fact, when Tenants vacated
18 the property, the rear studios appeared to be exactly the same as they had throughout Tenants' 5
19 year tenancy and there is no reason to believe Landlord did not simply re-rent the units once
20 Tenants vacated.

21 **B. O.M.C. 8.22.120(B)(4) The Decision Violates Federal, State, or Local Law**

22 The Oakland Rent Adjustment Ordinance states: "[a]mong the purposes of this Chapter
23 are providing relief to residential tenants in Oakland *by limiting rent increases for existing*
24 *tenants;*" O.M.C. 8.22.010(C). Tenants rented a cottage in a multi-unit property. When Landlord
25 decided not to re-rent the rear cottages, whatever her motive, it did not change Tenants status as
26 "existing tenants." Nowhere in the RAP, or in the Costa Hawkins Act, is there a provision

27
28 ¹³ See San Francisco Planning Code §317.

¹⁴ See San Francisco Administrative Code §37.10A(i.)

1 allowing a Landlord to unilaterally change the status of an existing tenancy in order to claim an
2 exemption where one did not previously exist. In fact, an attempt by a landlord to do just that was
3 shot down by the California Court of Appeals in *Burien v. Wiley* (2014) 230 Cal. App. 4th 1039. In
4 *Burien* a rent controlled apartment building was converted to condominiums and the owner then
5 claimed that the property was exempt from rent control under Costa Hawkins, first as
6 condominium, and when that failed, as new construction. In analyzing the legislative history of the
7 Costa Hawkins Act, the Court noted the Act had been amended in 2002 specifically to close a
8 loophole abused by landlords who had been applying for condo conversion permit simply to claim
9 an exemption from rent control, and then never going through with the conversion. *Id.* at 1046-
10 1047. The Court also found that the landlord's claim for new construction exemption based on the
11 issuance of a new certificate of occupancy for a pre-existing unit did nothing to further the purpose
12 for which the new construction exemption was created, i.e. to encourage the creation of new
13 housing, and therefore landlord's request for exemption should be denied. *Id.* at 1049.

14
15
16
17 While the situation in the present case is distinguishable, the principle is the same- in
18 order to claim an exemption, the purpose of the exemption should be met. Here it is not. The
19 exemption for single family homes under both the Oakland RAP and Costa Hawkins was meant to
20 preserve "mom and pop" investments, not to protect a landlord that rents out illegal units, and then
21 when caught, uses the exemption to her advantage to impose a giant rent increase on the Tenants
22 who caught her.

23
24 Similarly, in *DaVinci Group v. SF Rent Board* (1992) 5 Cal.App. 4th 24, landlord
25 sought a new construction exemption for a building that had been tenant occupied prior to the
26 issuance of a certificate of occupancy. The court affirmed a decision of the Rent Board denying
27 the landlord's petition to exempt his property from the Rent Ordinance, stating that the
28 Ordinance's "explicit mandate is to protect tenants, especially from excessive rent increases"

1 (citing *Fox v. San Francisco Rent etc. Bd.* (1985) 169 Cal. App.3d at p. 656) to such an extent that
2 a policy which removes such protection from tenants already in occupancy is contraindicated. *Id.*
3 at 31. While this case is also distinguishable in that it deals with a new construction exemption
4 rather than an exemption for a single family residence, the basic tenet applies- tenants already in
5 place and protected by rent control ordinances should not be divested of such protections by a
6 landlord's unilateral decision to claim a new status for the property. In citing to the rent board
7 decision they upheld, the Court reiterated: "To permit landlords to rent out illegal units but to
8 avoid the obligations imposed by the Ordinance is contrary to the purpose and intent of the
9 Ordinance." *Id.* at 31. This could not be more true than in the present case where Landlord has
10 rented out an illegal unit for 8 or more years, and now when confronted with her wrongdoing,
11 seeks to have protections for tenants removed so that she can profit further; an exemption under
12 these circumstances "is contrary to the purpose and intent of the Ordinance."
13

14 **C. O.M.C. 8.22.120(B)(5) The Decision is Not Supported by Substantial Evidence**

15 Hearing decisions must be supported by substantial evidence. (RAP Hearing Officer
16 Policies and Procedures Manual, p. 7.) "Substantial evidence means that the evidence must be of
17 ponderable legal significance...It must be reasonable in nature, credible, and of solid value; it must
18 actually be substantial proof of the essentials that the law requires in a particular case." *Id.*
19 paraphrasing *In Re Alcala*, 222 Cal. App. 3d 345.
20

21 Landlord provided no evidence of ponderable legal significance to support her
22 contention that she has ceased renting the rear cottages for residential use. The only
23 documentation Landlord offered as evidence was a permit application she had filled out herself, in
24 which she claimed she planned to revert the rear cottage to its "legal use" as an office.¹⁵ Having
25 filled it out herself, the application was self-serving and of no solid value or legal significance.
26

27
28 ¹⁵ The application also only claims to revert a single structure, though Landlord has been renting out both rear cottages for residential use.

1 Landlord's only other evidence was her testimony, which, as Tenants demonstrated with records
2 from the building department, was not in the least bit credible.¹⁶ Tenants also provided tangible
3 evidence to show that Landlord lied about her relationship to the former owner, evidence which
4 the hearing officer then failed to enter into the record.¹⁷ While Landlord's relationship with the
5 former owner may not have substantive relevance to the matter at hand, the fact that Landlord lied
6 about the relationship is relevant to show she lacks credibility.

7
8 And finally, hearing officer herself stated that the absence of a stove was not
9 determinative of residential use of a unit,¹⁸ therefore the mere fact that Landlord placed the stove
10 from the rear cottage in the laundry room of the Subject Property is no more persuasive of
11 Landlord's intent to cease residential use of the rear cottages than it is of her intent to simply place
12 it back in the cottages, as Tenants have argued.

13 Landlord's lack of documentary evidence of legal significance or solid value coupled
14 with her false testimony would lead a reasonable person to conclude that Landlord lacked
15 credibility, making it unreasonable for the hearing officer to accept as true Landlord's testimony
16 that she had removed the rear cottages from residential use.

17
18 With nothing but unreliable testimony to support her position, Landlord has failed to
19 provide any substantial evidence that would lead a reasonable person to believe she had
20 permanently ceased renting out the rear cottages for residential use.

21 **D. O.M.C. 8.22.120(B)(6) The Hearing Officer Made a Procedural Error That**
22 **Denied Tenants Sufficient Opportunity to Adequately Respond to the**
23 **Opposing Party.**

24 The hearing officer failed to give Tenants the opportunity to impeach Landlord with
25 her false testimony despite Tenants' repeated protestations about Landlord's false statements made

26
27 ¹⁶ See: 4/22/19 Hearing, Exh. B- Building Records for 5553 Kales Ave. from 1940's to 2019; and
4/22/19 Hearing: 9:25-10:00.

28 ¹⁷ 4/22/19 Hearing, 22:06-22:20

¹⁸ 4/22/19 Hearing, 31:53-32:30

1 under oath. Hearing officer then made a decision that relied almost entirely on Landlord's
2 unreliable testimony.

3 Hearing officer also permitted Landlord to submit as evidence a permit application
4 Landlord had filled out herself, though Tenants attempted to object to the submission by pointing
5 out the application proved nothing other than Landlord had filled out a form.

6 When Tenants sought to show that Landlord did not possess the permit she alleged she
7 had, hearing officer stated Landlord's testimony was sufficient to prove she had the permit and did
8 not require Landlord to produce it.¹⁹ When Tenants later showed no permit existed, hearing officer
9 said existence of the permit was not material to the case, though hearing officer had repeatedly
10 referred to the permit application as evidence that Landlord had removed the rear cottages from
11 residential use.²⁰ When Tenants provided the obituary of former property owner Stephen Lage to
12 impeach Landlord on her claim that Mr. Lage was her brother, hearing officer acknowledged on
13 the record that she was reviewing something from Tenant, but never stated what she was
14 reviewing and never entered the obituary into the record.²¹

15
16
17 No matter what the Landlord said, hearing officer justified it. When Tenants tried to
18 impeach Landlord and demonstrate she lacked credibility, their attempts were ignored, dismissed
19 or denied.

20 The RAP is meant to make to make the system more accessible to Oakland residents
21 that do not have the means to obtain legal counsel. Tenants, who have no legal experience and
22 were not represented by counsel, did their best to have their laymen's objections acknowledged
23 and demonstrate Landlord lacked credibility. But instead of acknowledging and allowing Tenants'
24 objections and impeachment examination, hearing officer instead lectured them on legal
25
26

27 ¹⁹ 3/5/19 Hearing, Part 2: 21:57-22:10.

28 ²⁰ 3/5/19 Hearing, Part 2: 20:20-21:49

²¹ 4/22/19 Hearing, 22:06-22:24

1 terminology while ignoring the substance of Tenants' arguments. In doing so, hearing officer
2 denied Tenants sufficient opportunity to respond to opposing party

3
4 **E. O.M.C. 8.22.030(B)(1)(b) (exemption based on fraud or mistake.)**

5 Tenants submit that the Landlord's claim for exemption was based on fraud. Landlord
6 claimed that the rear cottages were not legal or habitable, and therefore she had removed them
7 from residential use. However, after Tenants moved out, Landlord advertised the Subject
8 Property for rent. In the ads (listed on numerous websites), she referred to the rear cottages as
9 "outside bedrooms" and a "guest retreat." While this may constitute "new evidence," the fact
10 that Landlord claimed she had removed the units from use as dwelling space, and then
11 subsequently advertised the cottages as dwelling space is evidence that the Landlord lied in the
12 hearing when she said she had removed the rear cottages from residential use.
13

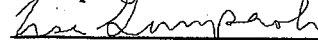
14 Tenants have the right to contest the exemption based on Fraud or Mistake after the fact.
15 (*Sherman v. Michelsen* T16-0258.) Here it is only logical that post facto evidence be provided,
16 as Landlord was clearly not going to rent out the rear cottages before the RAP decision was
17 issued, as doing so would jeopardize her case.

18 **CONCLUSION**

19 Pursuant to the foregoing, there is no basis for a finding the subject property was exempt
20 from the RAP while Tenants were still in possession. For the reasons above, Tenants respectfully
21 request that Landlord's request for exemption from the Rent Adjustment Program be denied and
22 Tenant Petitioners' petitions for unlawful rent increases be granted or remanded for further
23 consideration.
24

25 Dated: January 13, 2020
26

27 Giampaoli Law

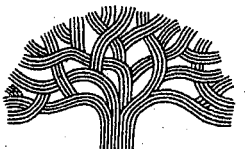


LISA GIAMPAOLI

Attorney for Tenants/Petitioners
28

RC/EOL

RECEIVED
CITY OF OAKLAND
RENT ARBITRATION PROGRAM

 CITY OF OAKLAND	CITY OF OAKLAND RENT ADJUSTMENT PROGRAM 250 Frank Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721	2019 JUN 27 PM 2:06
	<u>APPEAL</u>	

Appellant's Name Chester Martin & Kristen Ponger		<input type="checkbox"/> Owner <input checked="" type="checkbox"/> Tenant
Property Address (Include Unit Number) 5553 Kales Ave Oakland CA 94618		
Appellant's Mailing Address (For receipt of notices) 5553 Kales Ave Oakland, CA 94618		Case Number TB-0414; TB-0472
		Date of Decision appealed 4.30.2019
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.)*


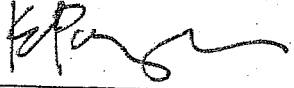
For more information phone (510) 238-3721.

- 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: _____.

• 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 June 27, 2019, 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>	Shery Zalabak
<u>Address</u>	402 Vermont Ave
<u>City, State Zip</u>	Berkeley, CA 94707
<u>Name</u>	Alana Grice Corner
<u>Address</u>	1901 Harrison Street, 14th floor
<u>City, State Zip</u>	Oakland, CA 94612

<u>Signature</u>	<u>Date</u>
 	6.27.2019
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

For more information phone (510) 238-3721.

Chester Martin & Kristen Ponger
5553 Kales Avenue
Oakland, CA 94618
June 27, 2019

Rent Adjustment Program (RAP)
City of Oakland, CA
Re: Appeal

Case Number(s):

T18-0414

T18-0472

Tenant(s):

Chester "Chase" Martin
Kristen Ponger

Landlord:

Sherry Zalabak

Rental Property Address: 5553 Kales Avenue, Oakland, CA 94618

Tenants Cause for Appeal:

We are appealing the decision on the following grounds:

1. (a) The decision is inconsistent with OMC Chapter 8.22.060
 - A. Notice at the Commencement of Tenancy
 - C. Failing to Give Notice
2. (c) The decision raises a new policy issue that has not been decided by the Board
3. (e) The decision is not supported by substantial evidence

Key Points:

1. (a) **The decision is inconsistent with OMC Chapter 8.22.060:**
 - As stated in Case T18-0414, Tenants never received notice of RAP at the commencement of our tenancy or 6 months prior to rent increase notice (OMC 8.22.060). The property was then being rented as a multi-unit property (confirmed by landlord). The first RAP notice was provided on November 4, 2018.

000078

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

- If an owner can remove an illegal unit from the rental market in order to restore their property's status to exempt for the purposes of evading OMC Chapter 8.22, so that the owner can then raise the remaining tenant's rent 70%, how does that foster the fair housing purpose of the program?

3. (e) The decision is not supported by substantial evidence:

- Hearing Decision Summary from March 5th hearing includes assessments contradictory to factual evidence filed in tenant petition
 - There is no evidence that the back unit was occupied when the owner inherited the property. No proof of occupancy was submitted for time prior to 2012
 - There is no evidence that the owner was unaware of the legal status of the back unit. The evidence shows the opposite. Owner claims that she had no knowledge of the legality of the unit until tenants filed a petition. As you can see in Exhibit H [attached] from T18-0414 petition, which is dated May 25th, 2018 discussion of the legality of the unit had been raised at this point. This had been discussed between landlord and tenant on many occasions.
 - There is no original permit for the "office", therefore the owner's application for a permit to "restore to office use" is invalid and the unit is still deemed a residential structure. Hearing officer accepted a verbal confirmation from the landlord who claimed to have permit at home. She accepted this as evidence despite the hard evidence provided by tenants proving there is no evidence or record of such permit. Records obtained from the City of Oakland.

In Summary

The landlord has strategically used certain tactics such as removal of the stove to evade rent control (The stove remains in the laundry room with the intention of reinstalling it to the back unit). This remains a bad faith rent increase and an attempt to force tenants out of the home. A single-family dwelling is not exempt and is considered a two-unit building if there is another residential structure on the same lot, regardless of the legality of the unit. Owners application for permit to "restore to office use" is invalid as there is no original permit. Therefore, the property remains as a two-unit property.



Chase Martin <chasemartin5@gmail.com>

Print Kales Ave. Fwd: Lease Expiration and Offer to Purchase

2 messages

Kristen Ponger

To: Chase Martin

Mon, Jul 23, 2018 at 11:53 AM

----- Forwarded message -----

From: Chase Martin
 Date: Fri, May 25, 2018 at 2:08 PM
 Subject: Re: Lease Expiration and Offer to Purchase
 To: Sherry Zalabak
 Cc: kristen Ponger

Hi Sherry,

We have been thinking about you guys and really hope that John is hanging in there. I am sure you all are doing everything you can to make the best out of a difficult situation. We are hoping for the best.

We appreciate you getting that stained leaf glass back to us, it was a gift with sentimental value to us. You can leave it in our mailbox anytime. The weed whacker you saw was the Black & Decker one that our neighbor loaned us, but the one we are missing is a nice (also orange) STIHL whacker that Ron gifted to me when we move into Kales, and it's still missing. Can you please follow up with Maco about this? Thank you!

As far as planning for the future, I know you are eager to know where we stand on the house. Kristen and I absolutely love the Kales house and have cared for it as if it was our own the past 3.5 years. We are very interested in our collective dream of a mutually-beneficial purchasing agreement between the four of us. With that said, we had our realtor evaluate the house and give us comps on updated/renovated 1Br/1Baths in our neighborhood, which we would be happy to share with you. Our realtor's professional review of 17 comps in the area shows a current fair market value of 750K.

Based on this, knowing the ins and outs of the house, recognizing that this would be a direct sale for you without realtor and other fees, we would like to purchase the house "as is," without inspection at 750K. This is taking the current condition of the house into consideration, knowing that it needs major repairs, as well as the fact that the unit in the back is not legal and from a realtor's point-of-view is considered a liability, rather than an asset. We cannot go higher than this and don't have room for negotiation. But, we are very flexible to alternative financing arrangements that we've spoken about before such as a down-payment then renting to buy.

Our baby is due to arrive on July 9th, and as you can imagine we are entirely focused on preparations for the birth. Of course, settling on an agreement for the Kales house is also a major priority. Our apologies for not getting back to you sooner regarding the termination of lease agreement you dropped off. We wanted to let you know that we don't plan on signing this, but will do our best to work with you through the details of buying Kales.

We look forward to hearing your thoughts on this. We'd be happy to meet in person to talk more specifically about the details.

All the best,

Chase & Kristen

On Thu, May 10, 2018 at 8:13 AM, Sherry Zalabak <sherZ@comcast.net> wrote:

Hi Chase,

I assumed that the stained glass leaf was left by the tenant. Yes, I have it here and will return it. Re. the two garden tools you described—I did see them during our work days there and Maco did use your red rake but we did not take them. Did you look in the basement crawl space? When I went back to water the plants a week after Maco and I finished I saw the weed-wacker. It was sitting to the left of the crawl-space door in the laundry room. I remember this as



CITY OF OAKLAND

**CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM**

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

For date stamp.

CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM

2018 DEC -5 PM 4: 24

PROPERTY OWNER
RESPONSE

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

CASE NUMBER T 18-0414

Your Name Sherry Zalabak	Complete Address (with zip code) 402 Vermont Avenue Berkeley, CA 94707	Telephone:
		Email:
Your Representative's Name (if any) Alana Grice Conner Fried & Williams LLP	Complete Address (with zip code) 1901 Harrison Street, 14th Floor Oakland, CA 94612	Telephone: (510) 625-0100
		Email: aconner@friedwilliams.com
Tenant(s) Name(s) Chester "Chase" Martin Kristen Ponger	Complete Address (with zip code) 5553 Kales Avenue Oakland, CA 94618	Telephone:
		Email:
Property Address (If the property has more than one address, list all addresses) 5553 Kales Avenue, Oakland, CA 94618		Total number of units on property Single Family Residence

Have you paid for your Oakland Business License? Yes No Lic. Number: 00182031
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: 48A-7043-40
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: 10/07/10

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 November 24, 2014

The tenant's initial rent including all services provided was: \$ 2,600.00 / month.

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

If yes, on what date was the Notice first given? October 10, 2018 but unit is exempt

Is the tenant current on the rent? Yes X 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>	
10/10/18	12/15/18	\$ 2,652.00	\$ 4,500.00	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
12/1/16	1/1/17	\$ 2,600.00	\$ 2,652.00	<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:

2018 DEC -5 PM 4: 24

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

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

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

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

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

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

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

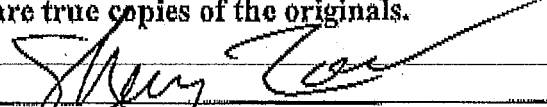
The unit is located in a building with three or fewer units. The owner occupies one of the units continuously as his or her principal residence and has done so for at least one year.

IV. DECREASED HOUSING SERVICES

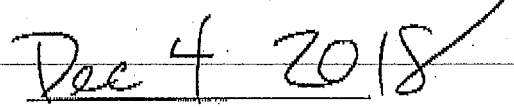
If the petition filed by your tenant claims Decreased Housing Services, state your position regarding the tenant's claim(s) of decreased housing services. If you need more space attach a separate sheet. Submit any documents, photographs or other tangible evidence that supports your position.

V. VERIFICATION

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



Property Owner's Signature



Date

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CITY OF LOS ANGELES
RENT ADJUSTMENT PROGRAM
2019 DEC 5 5 24 PM '19

Landlord Narrative

The Tenants' petition must be dismissed because the Rent Adjustment Program does not have jurisdiction. The rental unit is exempt from rent control because it is a single-family residence exempted by the Costa-Hawkins Rental Housing Act (California Civil Code §1954.50 et seq.). See Attachment A, Property Assessment Information. Furthermore, the Tenants' petition is incomplete because the Tenants failed to sign the verification under penalty of perjury which is required. Nonetheless, if the hearing officer seeks to further review the petition, Landlord responds as follows:

To address the issues raised by Tenant in section I. Grounds for Petition, Landlord responds as follows:

(b) The rental unit is exempt from rent control because it is a single-family residence exempted by the Costa-Hawkins Rental Housing Act (California Civil Code 1954.50). The CPI Adjustment does not apply to the rental unit.

(c) The rental unit is exempt from rent control because it is a single-family residence exempted by the Costa-Hawkins Rental Housing Act (California Civil Code 1954.50). The property owner is not required to receive approval from the Rent Adjustment Program for the contested rent increase.

(d) The rental unit is exempt from rent control because it is a single-family residence exempted by the Costa-Hawkins Rental Housing Act (California Civil Code 1954.50). The property owner is not required to provide the Notice of the Rent Adjustment Program (RAP Notice) form.

(e) The rental unit is exempt from rent control because it is a single-family residence exempted by the Costa-Hawkins Rental Housing Act (California Civil Code 1954.50). The property owner is not required to provide the Notice of the Rent Adjustment Program (RAP Notice) form.

(k) The rental unit is exempt from rent control because it is a single-family residence exempted by the Costa-Hawkins Rental Housing Act (California Civil Code 1954.50). The limit for rent increases over 30% over a 5-year period does not apply to the rental unit.

(i) This exemption is based on a State law and there is no fraud or mistake.

ATTACHMENT A

ONLINE SERVICES

Assessor's Office | Treasurer-Tax Collector | New Query

PROPERTY ASSESSMENT INFORMATION

ASSESSOR'S OFFICE

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CITY OF ALAMEDA
RIGHT ARBITRATION
2018-11-15 PM 4:24

2018 - 2019 Assessment Information

■ Parcel Number:	48A-7043-40
■ Assessor's Map: (Map image is not to scale)	Map Disclaimer
■ Use Code:	1100
■ Description	Single family residential homes used as such
■ Land	\$152,004.00
■ Improvements	\$354,677.00
■ Fixtures	0
■ Household Personal Property	0
■ Business Personal Property	0
■ Total Taxable Value	\$506,681.00
Exemptions	
■ Homeowner	0
■ Other	0
■ Total Net Taxable Value	\$506,681.00

[Additional Assessment Information](#) | [Property Tax Information](#)

Adobe Acrobat Reader is required to view the maps. Click [here](#) to download.



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2018

File 2017 only 24 00
2018 DEC -5

BUSINESS TAX RENEWAL
510-238-3704

2018 RENEWAL TAX


Renew & Pay Online @ [HTTPS://LTSS.OAKLANDNET.COM](https://ltss.oaklandnet.com)

KALES

Delinquent if paid/postmarked after March 1, 2018

SECTION I - BUSINESS INFORMATION

1. ACCOUNT NUMBER: **00182031** 2. TAX RATE: **\$13.95 per \$1,000** 3. INDUSTRY CODE: **M**

4. Mailing Address:

**ZALABAK SHERRY D
 402 VERMONT AVE
 BERKELEY, CA 94707-1722**

5. Business Name: **ZALABAK SHERRY D**

6. Business Location: **5553 KALES AVE, OAKLAND, CA 94618-1506**

7. Business Phone Number: **(510) 292-8628** 8. Email Address: **SHERZ@COMCAST.NET**

9. State Contractor's License Number: 10. Ownership Type: **Sole Proprietorship**

11. 1st Owner's Name: **Sherry D Zalabak** 12. 2nd Owner's Name:

Check the following applicable box(es):

4a. If you are making changes to Lines 4-12, see enclosed instructions.

4b. Claiming a Small Business Exemption: total gross receipts must be \$3,100 or less and you MUST submit a Form 4506T <http://irs.gov/pub/irs-pdf/f4506t.pdf>. Note: This exemption must be claimed on or before March 1, 2018 to qualify.

4c. If you discontinued/sold your business or rental property in 2017 or 2018: Complete Sections II and III. Return signed declaration with total payment.

4d. Requesting apportionment of your gross receipts: Complete worksheet in the enclosed instruction #13 (only Industry Codes A, B, C, D, E, F, G, I, T & Z may apply)

SECTION II - CALCULATE THE 2018 TAXES DUE: Please include dollars and cents (e.g. \$1,000.00)

13. 2018 TAX BASE (2017 Gross Rental Income)	13. \$	30,000.00
14. 2018 TAX DUE (Multiply Line 13 by .01395 OR enter \$13.95, whichever is greater)	14. \$	418.50
15. PENALTY DUE (see box at right if paying after 3/1/2018)	15. \$	
16. INTEREST DUE (see box at right if paying after 3/1/2018)	16. \$	
17. PRIOR AMOUNT DUE (Go to HTTPS://LTSS.OAKLANDNET.COM for the most current balance due)	17. \$	670.18
18. RECORDATION AND TECHNOLOGY FEE	18. \$	2.00
19. State Mandated Disability Access and Education Revolving Fund	19. \$	4.00
20. TOTAL AMOUNT DUE (Add Lines 14-19)	20. \$	

IF PAID AFTER MARCH 1, 2018.

Penalty (on tax):
 ADD 10% (if paid between 3/2/2018 and 5/1/2018) OR
 ADD 25% (if paid after 5/1/2018)

Plus:
Interest (on tax + penalty):
 ADD 1% per month (on tax + penalty) from 3/2/2018 until paid

Failure to file this declaration shall subject you to a \$50 Failure to File Fee

PAYMENT OPTIONS - YOU CAN NOW PAY ONLINE !

ONLINE: VISA, MasterCard, Discover or eCheck at [HTTPS://LTSS.OAKLANDNET.COM](https://ltss.oaklandnet.com)
 Enter your account number: **00182031** and your personalized PIN: **775859**

BY MAIL: Send one check per account made payable to "Oakland Business Tax." DO NOT SEND CASH.

IN PERSON: Cash, Check or VISA, MasterCard or Discover (see reverse for hours & holidays).

PO 424.50
2/21/18 # 723
W.F

SECTION III - HOW TO CLOSE YOUR ACCOUNT:

Was this business or rental property sold or the activity permanently discontinued?

To close your account, complete Section II and remit any applicable payment due. Check Box 4c (above) and complete Line 1 or 2 (below):

1. Business or Rental Property in Oakland was discontinued on: / /

To close the account, this declaration must be completed, signed and returned, with any payment that is due, on or before March 1, 2018.

If you would like to opt out of paper correspondence please check the box and update your email address on Line 8 above.

I hereby declare, under penalty of perjury, that the information contained herein is to the best of my knowledge, true and complete.

Signed: _____ Phone: _____ Date: _____

Renew & Pay online @ [HTTPS://LTSS.OAKLANDNET.COM](https://ltss.oaklandnet.com)

office visit by Sherry ZALABAK 2/21/18

Skip to main content
Check Details

2018 DEC -5 PM 4:24

Check Number

723

Date Posted

02/23/18

Check Amount

\$424.50

JOHN ZALABAK
SHERI ZALABAK

723

Feb 21 2018
Date

Pay to the
Order of City of OAKLAND \$ 424⁵⁰


four hundred & twenty-four & ⁵⁰/₁₀₀ Dollars

WELLS FARGO Wells Fargo Bank, N.A.
Call Form: wfsfargo.com

For 00182031

Micro
SAFE
Deposit
Daily on back

For your security, information like account numbers, signatures, and the ability to view the backs of checks have been removed from the images. You can see full or partial fronts and backs of the images by using the link at the top of the window.

 Equal Housing Lender

Skip to main content
Check Details

2018 DEC -5 PM 4:24

Check Number	722
Date Posted	02/26/18
Check Amount	\$68.00

Company Pack

JOHN ZALABAK
SHERI ZALABAK

722

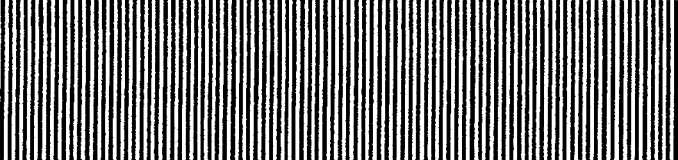
Feb 21 2018
Date

Pay to the Order of CITY OF OAKLAND \$ 68⁰⁰


Sixty-eight dollars Dollars

WELLS FARGO
Wells Fargo Bank, N.A.
California
wellsfargo.com

For 00182032



For your security, information like account numbers, signatures, and the ability to view the backs of checks have been removed from the images. You can see full or partial fronts and backs of the images by using the link at the top of the window.

 Equal Housing Lender

I. Justification for Rent Increase

Date of Contested Rent Increase: 10/10/18 effective 12/15/18

Justification: Single Family Home exemption


RECEIVED
CITY OF SAN FRANCISCO
RENT ARBITRATION DEPARTMENT

2018 DEC -5 PM 4: 24

III. Exemption Attachment

1. Did the prior tenant leave after being given a notice to quit (Civil Code Section 1946)?
No
2. Did the prior tenant leave after being given a notice of rent increase (Civil Code Section 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?
Yes
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**
If so: 1) from whom? N/A 2) Did you purchase the entire building? N/A

T18-0414 RE/EL

 CITY OF OAKLAND	CITY OF OAKLAND RENT ADJUSTMENT PROGRAM P.O. Box 70243 Oakland, CA 94612-0243 (510) 238-3721	For date stamp. AUG-3 11:10:41
	<u>TENANT PETITION</u>	

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

Please print legibly

Your Name CHESTER "CHASE" MARTIN KRISTEN PONGER	Rental Address (with zip code) 5553 KALES AVENUE OAKLAND, CA 94618	Telephone: 510-555-
		E-mail:
Your Representative's Name	Mailing Address (with zip code)	Telephone:
		Email:
Property Owner(s) name(s) SHERRY ZALABAK	Mailing Address (with zip code) 402 VERMONT AVENUE BERKELEY, CA 94707	Telephone:
		Email:
Property Manager or Management Co. (if applicable)	Mailing Address (with zip code)	Telephone:
		Email:

Number of units on the property: 2

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

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

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

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

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

Date you moved into the Unit: NOV. 24, 2014 Initial Rent: \$ 2,600 /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		
06/05/18	08/01/18	\$2,652	\$ 4,500	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
12/1/16	1/1/17	\$2,600	\$ 2,652	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

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

Have you ever filed a petition for this rental unit?

- Yes
 No

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

III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:

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

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

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

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

Please attach documentary evidence if available.

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

IV. VERIFICATION: The tenant must sign:

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

Tenant's Signature _____

Date _____

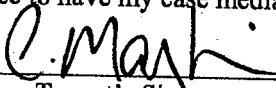
V. MEDIATION AVAILABLE: Mediation is an entirely voluntary process to assist you in reaching an agreement with the owner. If both parties agree, you have the option to mediate your complaints before a hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal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

8/2/18
Date

VI. IMPORTANT INFORMATION:

Time to File

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

File Review

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

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

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

Chester Martin & Kristen Ponger

August 3, 2018

Rent Adjustment Program (RAP)
City of Oakland, CA
Re: Tenant Petition

To Whom it May Concern:

Chester "Chase" Martin & Kristen Ponger, "Tenants"
Sherry Zalabak, "Landlord"
Rental Property Address: 5553 Kales Ave, Oakland, CA 94618

On June 5th, 2018 Landlord dropped off "Sixty Day Notice of Change in Terms of Tenancy" [Attachment A] raising tenants' rent 70% from \$2,652/month to \$4,500/month as of August 5th, 2018. Landlord's behavior has been erratic and contradictory over the past 6 months, and no justification for the rent increase has been provided. Tenants Martin & Ponger are choosing to proactively contest the increase via this petition on the following grounds.

1. Increase exceeds the CPI Adjustment and is greater than 10% without RAP approval
2. Tenants have never received notice of RAP
3. Wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud

Key Points:

- 5553 Kales Avenue is publicly listed as a Single-Family Residence, but has been rented as a duplex with two separate units since before current tenants Kristen & Chase signed a lease for front 1-BR unit in 2014 [Attachment B]
- Tenants entered lease for front unit in November 2014; no RAP notice provided [Attachment C]
 - a. Previous tenants were Holly and Steve
- Since 2014, the back unit has had two different sets of tenants paying rent under own respective leases
 - a. Mike and LeAnne Devol (maiden name Fowlkes); \$1,100/month
 - b. Lindsay Byrd and Isabel Avellan [Attachment D]; \$1,400/month
- Landlord raised both front & rear units' respective rents by 2% in January 2017 with no RAP notice [Attachment E]
- On March 28, 2018 Landlord states that tenants must vacate the property by July 1, 2018, so that she can make improvements to prepare for sale [Attachment F]
- On April 25, 2018, Landlord urged tenants repeatedly to sign agreement to terminate lease [Attachment G], misrepresenting document as "extension of tenancy" [Attachment H]

000094

- Tenants do not have access to back unit but it is currently vacant. Landlord has told tenants as recently as July 2018 that they are restricted from back unit and yard, as those are a separate unit.
- Tenants have always paid rent on time, cared for the property, maintained and performed minor upgrades and repairs at their own financial expense. Landlord stated in February 2018 that Martin & Ponger were "the best tenants she's ever had"

Glossary of Attachments:

Tenants are providing the following attached documentation outlining our historical rental agreement and series of events that led to this petition.

- **Attachment A:** Sixty-Day Notice of Change in Terms of Tenancy (Rent Increase)
- **Attachment B:** E-mail to back unit tenants announcing vacancy in front unit
- **Attachment C:** Martin & Ponger Lease Agreement
- **Attachment D:** Byrd & Avellan Lease Agreement
- **Attachment E:** Increase in rent for both units without RAP Notice, Jan. 2017
- **Attachment F:** Landlord states tenants must leave property to prepare for sale
- **Attachment G:** Landlord-Tenant Agreement to Terminate Lease
- **Attachment H:** Urging tenants to vacate and sign lease termination, misrepresenting document as an "extension"
- **Attachment J:** Offer of sale-of-property with Landlord's description of secondary unit

Background:

In February 2018, landlords of the 5553 Kales Avenue rental property, Sherry and John Zalabak, invited the tenants, Chase Martin & Kristen Ponger, over to their home in the Berkeley Hills to discuss the potential purchase of their Kales Ave rental property. The property at 5553 Kales includes two separate units: the 1-BR front house that Kristen & Chase have rented since November 2014, and the rear standalone studio cottage which the landlord refers to as a "Golden Duplex".

After tenants shared the news with the landlords that they were expecting their first child in July, both parties left the February meeting in agreement that there was no rush to action necessary and to reconvene in the Fall of 2018 to discuss further.

On Sunday, March 25th at 9am Landlord Sherry showed up to tenant's home unannounced to with a realtor friend named Julie Durkee. Landlord proceeded to barge into the house for an impromptu appraisal of the front unit, while accosting the tenants with questions on whether they were interested in buying another house down the street to move-in before baby arrives on July 9.

On March 27th, Tenants (Kristen & Chase) received an email and physical note from landlord (Sherry) apologizing for her unannounced visit the previous weekend. E-mail stated that circumstances had changed in respect to her husband's health, and tenants must vacate the unit by July 1, 2018 [Attachment F] in order to prepare the property for sale. Alternatively, landlord gave the tenants 30 days to make an offer to purchase the property. Landlord stated that tenants must make an offer or move out by July 1st.

On March 28th, Tenants Kristen & Chase replied to Landlord's email confirming interest in purchasing the property, but could not make an offer without the landlord first providing an asking price. Tenants also requested that landlord would reconsider the July 1st vacancy timeline since their baby was due that week.

On March 29th, Landlord dropped off a handwritten note [Attachment J] offering the property "as is" for \$1.3M through a private sale. At this point tenants took it upon themselves to contact a real estate agent to conduct a comparable evaluation of the property who also referred tenants to a lawyer, Jean Shrem.

On April 25th, Landlord begins to repeatedly urge tenants to sign a "Landlord-Tenant Agreement to Terminate Lease" document [Attachment G] without cause. Landlord misrepresents this as an "extension" [Attachment H] of lease and her offer of sale.

On May 25th, Tenants email Landlord with a purchase offer while giving notice of their refusal to sign "Termination of Lease" document.

On June 5th, 2018 Landlord shows up unannounced to drop off "Sixty Day Notice of Change in Terms of Tenancy" [Attachment A], raising tenants rent 70%, from \$2,652 to \$4,500 effective August 5, 2018. Tenant Chase Martin was present at the time and approached Landlord Sherry to discuss the legality of the notice, but was rebuffed by the landlord. Tenant verbally informed Landlord of intention to file with Rent Board if issue could not be resolved amicably in private, but as of August 1st no reply received from Landlord.

SIXTY DAY NOTICE OF CHANGE IN TERMS OF TENANCY

[Civil Code Section 827]

TO: CHASE MARTIN, KRISTEN PONGER,
and all other persons claiming a right to possession of the premises described below

PREMISES 5553 Kales Avenue
Oakland, CA 94618
(hereinafter the "Subject Premises.")

YOU ARE HEREBY NOTIFIED that 60 days following service of this Notice on you, the terms of your tenancy for the Subject Premises will be changed, pursuant to California Civil Code Section 827, as follows:

NEW MONTHLY RENT SHALL BE: \$ 4,500

This new monthly rent represents the fair market rental value of the premises. Your new monthly rent shall be due and payable as of **August 5, 2018**.

Please continue to make your monthly rent payments to your Landlord according to the terms of your lease agreement.

Dated: 6/5/2018

Sherry Zalabak
Sherry Zalabak, Landlord

A

To: Kristen + Chase,

March 28, 2018

I'm NOT SURE if you got this e-mail
so I'm leaving here on the door.

Sherry Zalabak

Hi Kristen and Chase,

I'm sorry if I created any upset on Saturday as the timing of our ongoing discussions was intended to be leisurely.

We always planned to give you as much time as you needed to evaluate buying Kales. Recent events have changed our time line.

John's health is forcing us to make some unintended and difficult choices. I know that both of our lives are in a period of drastic change, both good and bad (just like real life). We would love for you to have the house. Just knowing that folks we like are there is comforting to me.

The upsetting reality is that we will need to prepare the house for sale by July 1 '18. As you can imagine I am emotionally attached to Kales and the neighborhood, as I know you are, which is why I thought you might want to see the other Kales house. I was there to verify comps, as a comp on the same street is the ideal comp. Julie Durkee contacted me late Friday night when she found about comp. But in retrospect I realize that my inviting you guys may have been upsetting and I apologize.

Let's see if we can work something out among us. Please get back to me within 30 days with an offer or let me know if you are not going to pursue one by then; April 27th, 2018.

I am trying to give you as much lead time as possible but need to let you know that I will need to have the house empty by July 1, 2018.

Please feel free to call me or e-mail me anytime with your questions.

Fondly, Sherry Zalabak

F

Tenants must
leave property
per landlord:
to prepare for
sale of house

000098

Landlord-Tenant Agreement to Terminate Lease

Landlord: SHERRY ZALABAK + JOHN ZALABAK and
Tenant: CHESTER "CHASE" MARTIN and KRISTEN PONGER

agree that the lease they entered into for the time period of November 24, 2014
to November 24, 2015, for premises at 5553 KALES AVE.
OAKLAND, CALIFORNIA 94618

will terminate on NOVEMBER 1 2018 (AND NOT ON JULY 1 2018)

Additional conditions for cancellation of lease: TENANTS HAVE THE OPTION
TO PURCHASE PROPERTY and OWNER - FINANCE
WILL BE CONSIDERED (UNTIL JUNE 1 2018) (6/1/18) (SZ)

Sherry Zalabak
Landlord's signature

APRIL 25, 2018
Date

SHERRY ZALABAK
Print name

Tenant 1's signature

Date

Print name

Tenant 2's signature

Date

Print name

Tenant 3's signature

Date

Print name

CHRONOLOGICAL CASE REPORT

Case No.: T18-0018
Case Name: Sund v Vernon Street Apartments
Property Address: 633 Alma Ave., #5, Oakland, CA

Parties:

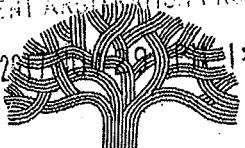
Jessica Sund	(Tenant)
Paul Kranz	(Attorney for Tenant)
Kim Rohrbach	(Paralegal for Petitioner)
Greg McConnell	(Owner Representative)
JR McConnell	(Owner Representative)
Don MacRitchie	(Witness for Owner)
Ursula Morales	(Property Manager)
Jessica Vernaglia	(Property Supervisor)
Dave Wasserman	(Owner Representative)
Lucky Stewart	(Agent for Owner)

TENANT APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	November 29, 2017
Owner Response filed	April 2, 2018
Hearing Decision mailed	December 20, 2018
Tenant Appeal filed	January 9, 2019
Tenant filed Brief in Support of Appeal	January 24, 2019
Attorney for Tenant filed "Notice of Errata And Amended Submission in Support of Appeal of Hearing Officer's Decision"	January 29, 2019

000100

T18-0018 RC/MA

 <p>CITY OF OAKLAND</p>	<p>CITY OF OAKLAND RENT ADJUSTMENT PROGRAM P.O. Box 70243 Oakland, CA 94612-0243 (510) 238-3721</p>	<p>For date stamp.</p>
	<p>TENANT PETITION</p>	

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

Please print legibly

Your Name Jessica Sund	Rental Address (with zip code) 633 Alma Avenue, #5 Oakland, CA 94610	Telephone: E-mail:
Your Representative's Name Paul Kranz	Mailing Address (with zip code) 639 San Gabriel Avenue Albany CA 94706	Telephone: Email:
Property Owner(s) name(s) Vernon Street Apartments, LP aka Flynn Family Holdings, LLC	Mailing Address (with zip code) C/O Russell B. Flynn 1717 Powell Street, Suite 300 San Francisco, CA 94133	Telephone: Email:
Property Manager or Management Co. (if applicable) Ursula Morales, Resident Manager	Mailing Address (with zip code) 633 Alma Avenue Oakland, CA 94619	Telephone: Email:

Number of units on the property: 18 → Thomas Preston, Property Supervisor; 411

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

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

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

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

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

* See Notice of Change to Terms of Tenancy (Attachment 1)

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

Date you moved into the Unit: 7/10/08 Initial Rent: \$ 895.00 /month

When did the owner first provide you with the RAP NOTICE, a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program? Date: No later than . If never provided, enter "Never."
2014-2015 or thereabout

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		
On or about	12/1/17	\$ 908.67	\$ 2095.00	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
9/6/17		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

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

Have you ever filed a petition for this rental unit?

- Yes
 No

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

III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:

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

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

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

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

Please attach documentary evidence if available.

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.

Ground
Tenant's Signature

11/29/17
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 Rent Adjustment Program ("RAP") within the time limit for filing a petition set out in the Rent Adjustment Ordinance (Oakland Municipal Code, Chapter 8.22). RAP staff cannot grant an extension of time by phone to file your petition. **Ways to Submit. Mail to:** Oakland Rent Adjustment Program, P.O. Box 70243, Oakland, CA 94612; **In person:** Date stamp and deposit in Rent Adjustment Drop-Box, Housing Assistance Center, Dalziel Building, 250 Frank H. Ogawa Plaza, 6th Floor, Oakland; **RAP Online Petitioning System:** <http://rapwp.oaklandnet.com/petition-forms/>. For more information, please call: (510) 238-3721.

File Review

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

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



Printed form provided by the owner

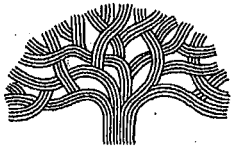
____ Pamphlet distributed by the Rent Adjustment Program

____ Legal services or community organization

____ Sign on bus or bus shelter

____ Rent Adjustment Program web site

____ Other (describe): _____



CITY OF OAKLAND

**CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM**

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

For date stamp, RECEIVED
CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM
2018 APR -2 PM 4:04

PROPERTY OWNER
RESPONSE

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

CASE NUMBER T 18-0018

Your Name Lucky Stewart Ursula Morales Alma Apartments, LP	Complete Address (with zip code) 1717 Powell St. #300 San Francisco, CA 94133	Telephone: _____ Email:
Your Representative's Name (if any) Gregory McConnell JR McConnell The McConnell Group	Complete Address (with zip code) 300 Frank Ogawa Plaza #460 Oakland, CA 94607	Telephone: _____ Email:
Tenant(s) Name(s) Jessica Sund	Complete Address (with zip code) 633 Alma Ave. #5 Oakland, CA 94610	
Property Address (If the property has more than one address, list all addresses) 633 Alma Ave., Oakland, CA 94610		Total number of units on property 18

Have you paid for your Oakland Business License? Yes No Lic. Number: 00197907
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.**

** Documentation will be submitted prior to hearing

Have you paid the current year's Rent Program Service Fee (\$68 per unit)? Yes No APN: 23-467-5
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.**

** Documentation will be submitted prior to hearing

Date on which you acquired the building: 06/ / 17.

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>
12/1/17	** <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

** Costa - Hawkins. Please see attachment
If you are justifying additional contested increases, please attach a separate sheet.

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

The tenant moved into the rental unit on _____.

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

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

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

Is the tenant current on the rent? Yes _____ No _____

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

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

III. EXEMPTION

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

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

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

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

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

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

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

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

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

IV. DECREASED HOUSING SERVICES

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

V. VERIFICATION

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

Property Owner's Signature

4/2/18

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.

T18-0018 Sund v. Vernon St. Apartments (Alma Apartments, LP)

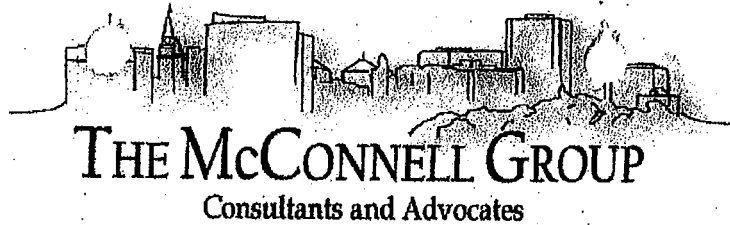
Attachment A

The owner contests the tenant petition and respectfully responds by saying that the tenant is entitled to no relief under the petition.

This is a Costa-Hawkins rent increase. The original occupant no longer maintains this unit as their primary place of residence.

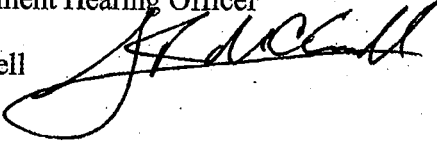
Owner denies all allegations in the petition and Owner reserves the right to supplement this response with testimony at hearing and evidentiary documentation prior to hearing, per RAP regulations.

RECEIVED
2018 APR -2 PM 4:04



2018 MAY 22 PM 1:03

Memorandum

To: Rent Adjustment Hearing Officer
From: JR McConnell 
Date: 5/22/2018
Subject: Additional documentation re: T18-0018

Please find the following additional evidentiary documentation in support of Owner position:

Item	Page #
1. Investigator's Report - Jessica Sund	1
2. Investigator's Report - Cory Hamrick	53
3. Declaration of Onsite Manager	64
4. Notice of Increase - 11/6/17	65
5. Lease	68
6. Estoppel	86
7. Estoppel -amended	87
8. Correspondence with Tennant	
i) Letter to Sund - 8/22/17	89
ii) Email from Sund	90
iii) Voicemail from Sund	91
iv) Letter to Sund - 8/28/17	92
9. Proofs of Payment	
i) Business License	93
ii) RAP fee	94

Thank you.

May 20, 2018

Re: Sund, Jessica Maggie - 633 Alma #5

DATA SEARCHES RE: JESSICA MAGGIE SUND

DOB:

SSN. [redacted] issued in California in 1985.

CONCLUSIONS:

It is known to the landlord, and not contested in this matter, that Tenant, Jessica M. Sund had a child in late 2017 with her partner, Cory Hamrick. Evidence of this fact is also found in the findings of this report. In light of this uncontested fact and the findings contained in this report, a preponderance of the evidence supports a conclusion that Jessica Sund's permanent place of residence is not the subject property, 633 Alma Avenue, Apt. 5, Oakland, CA, but rather is 3024 California Street, Oakland, CA 94602. Specific evidence supporting this conclusion includes the following:

- 1) A review of findings in three Address History databases for Ms. Sund identified 3024 California Street, Oakland, CA 94602 as Ms. Sund's only current address. California St. is reported as recently as 5/18/2018, while the most recent reporting date for Alma Avenue in any of the databases is 12/5/2017. Further, the August, 2017 initial reporting date for California Street is much more recent than the 8/28/2008 initial reporting date for Alma Avenue indicating Ms. Sund's residency at California St. is a much more recent development, and therefore more likely her current residence (Pages 9-15).
- 2) A baby registry – the bump.com – identified Ms. Sund as expecting a child with a due date of Oct 25, 2017, location - Oakland, CA. . A link at the page, present in December , 2017, but no longer present - – jgt/gifts/baby-girl-hamrick – associated the child with Cory Hamrick. The due date of Ms. Sund's and Mr. Hamrick's child is consistent with the September/October initial reporting dates for Ms. Sund at 3024 California Street, Oakland, CA in Address History databases (Pages 35-36).
- 3) A Residence History Database for 3024 California Street, Oakland, CA 94602 reported Cory T. Hamrick, reported dates of 05/04/1999-12/05/2017 and Jessica M. Sund, reported dates of 07/01/2017-07/01/2017 as current tenants (Pages 51-53).
- 4) That Jessica Sund's partner, and the father of her child, Mr. Cory T. Hamrick's current principle place of residence 3024 California Street, Oakland, CA 94602 is evidenced by the following: Address History Databases identify 3024 California Street, Oakland, CA 94602 as Mr. Hamrick's sole current address, with reporting dates 4/1999 – 3/27/2018; Cory Hamrick is the current owner of the property, a Homestead Exemption is on file and the Tax Assessor's mailing address of record is the same as the property address - 3024 California St., Oakland, CA 94602; Mr. Hamrick is currently registered to vote at 3024 California St., Oakland, CA 94602 (see attached Cory Hamrick Datasearches Report).

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SUMMARY:

ADDRESS HISTORY

Address History Databases identify 3024 California Street, Oakland, CA 94602 as Ms. Sund's current address. Three different Address Databases were reviewed on 12/5/2017 and again on 5/18/2018. Findings on the two dates were as follows:

Database #1:

12/5/2017: Two current addresses were reported: The subject address, 633 Alma Avenue, Apt. 5, Oakland, CA, reporting dates – 9/25/2011 and 10/2/2005 -11/03/2017; and a second address – 3024 California Street, Oakland, CA 94602, reporting dates - 08/31/2017-12/05/2017.

5/18/18: One current addresses was reported: 3024 California Street, Oakland, CA 94602, reporting dates – 10/2005-5/182018. The reporting dates for the subject address, 633 Alma Avenue, Apt. 5, Oakland, CA, were 10/2/2005 -11/03/2017. NOTE: The sudden appearance of an identical initial reporting date of 10/2005 for both addresses in the 5/18/18 datasearch indicates that this 10/2005 initial reporting date for both properties is due to a database error, and the original initial reporting dates identified on 12/5/2017 of 9/25/2011 for 633 Alma Avenue and 08/31/2017 for 3024 California Street are the more reliable dates.

Database #2:

12/5/2017: One current addresses was reported: The subject address, 633 Alma Avenue, Apt. 5, Oakland, CA, reporting dates – 9/2017.

5/18/18: Two addresses were reported: The subject address, 633 Alma Avenue, Apt. 5, Oakland, CA, reporting dates – 9/2017 and a second address – 3024 California Street, Oakland, CA 94602, reporting dates, 9/2017

Database #3:

12/5/2017: One current addresses was reported: The subject address, 633 Alma Avenue, Apt. 5, Oakland, CA, reporting dates – 8/28/2008 – 12/5/2017.

5/18/2018: One current addresses was reported: 3024 California Street, Oakland, CA 94602, reporting dates – 8/31/2017-5/19/2018. The reporting dates for the subject address, 633 Alma Avenue, Apt. 5, Oakland, CA, remained the same as on 15/5/2017 – 8/28/2008 – 12/5/2017.

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-000112

The following findings from the above database records indicate Ms. Sund has transitioned from her residency at the subject address to a current residence at 3024 California Street, Oakland, CA 94602:

- **Initial Reporting Dates** - The initial reporting dates for 3024 California Street, Oakland, CA 94602 are August and September, 2017, while initial reporting dates for the subject property date back to 8/28/2008. The much more recent initial reporting dates for 3024 California Street, Oakland, CA 94602 document Ms. Sund's residency at the address as a much more recent development, and therefore more likely her current residence. **NOTE:** See above discussion of the multiple initial reporting dates for both properties in Database #1.

- **Current Reporting Dates** - Two of the three databases report 3024 California Street, Oakland, CA 94602 as recently as 5/18/2018, while the most recent reporting date for 633 Alma Avenue, Apt. 5, Oakland, CA in any of the databases is 12/5/2017.

- **The reporting of 3024 California Street, Oakland, CA 94602 in only one database during the initial searches of 12/5/2017 and the subsequent reporting of the address in all three databases during the searches of 5/18/2018 is also consistent with the appearance of new addresses in the Address History Databases.** The databases are derived in chief from the three major credit bureaus (Equifax, Experian and TransUnion). New or updated address information is received by the clients of the bureaus - credit granting businesses, who in turn report periodically to the bureaus. Reporting periods vary between business from as little as 30 days to upwards of six months. Thus there is always a lag time in the reporting between the initial gathering of the information by the client companies and their periodic reporting to the bureaus. The gradual appearance of the California St. address in only one database in December, 2017 and subsequently in all three bureaus in May, 2018 is consistent with the appearance of newly reported addresses in this process.

(See pages 9-15)

TELEPHONE NUMBER DATABASES

Online contact of the Directory Assistance (411) on December 7, 2017 identified no listings under Jessica Sund in Oakland, CA.

On 12/5/2017 a cell number - (510) 206-5436, was identified in an undated database record as associated with Jessica Sund at the 6138 Park Avenue, Richmond, CA, 633 Alma Avenue, Apt. 5, Oakland, CA and 886 Cleveland Street, Apt. 11, Oakland, CA address (Phones Plus 1 -3). An online search of the 411 Directory Assistance found no information available for that number.

(See pages 15-16)

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UTILITIES

Utilities databases identified no account associated with Jessica Sund.

REAL PROPERTY OWNERSHIP RECORDS

A search of California real property ownership records statewide, and jurisdictions available on-line nationwide, identified no records of property ownership associated with Jessica Sund. On March 27, 2018, a telephone contact of the Alameda County Assessor's office identified Cory Hamrick as the property owner of 3024 California Street, Oakland, CA (see also Cory Hamrick Datasearch Report). The Assessor found no property records were found under Jessica Sund.

ALAMEDA COUNTY RECORDER INDEXES:

A search of Alameda County Recorder's indexes, identified no recordings under Jessica Sund.

CALIFORNIA DMV RECORDS:

A search of California Department of Motor Vehicle driving records identified a current California license for Jessica Maggie Sund, issued 01/03/2013, expiration – 01/06/2023. One violation was noted, a 10/12/2016 - Driving while using wireless telephone. The citation was issued while driving vehicle license plate - 3JBL110 (Record #1).

An inquiry of California DMV vehicle registration records keyed to the subject address identified a 1994 Toyota – license plate 3JBL110 registered to Jessica Sund at 633 Alma Avenue, Oakland, CA (Record #2). A record keyed to 3024 California Street, Oakland, CA identified no vehicle registered to Jessica Sund (Record #3). NOTE: The current registration expiration date for Ms. Sund's 1994 Toyota is 6/2/2108, indicating that the vehicle was renewed on 6/2/2017.

(See pages 16-18)

VEHICLE SIGHTINGS:

A nationwide search of the license plates keyed to abovementioned license plate numbers identified eight sightings of license plate 3JBL110 between February 28, 2011 and October 18, 2015. One sighting was in El Sobrante, CA on October 18, 2015 (Record #1); one sighting was in Alameda, CA on August 1, 2013 (Record #4); three sightings were in Oakland, CA between February 28, 2012 and October 31, 2013 (Records #3, 6 & 8); and the remaining three sightings were in the immediate vicinity of 633 Alma

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Avenue, Oakland, CA between March 11, 2013 and March 20, 2014. The sightings were between the hours of 10:31pm and 12:21 am (Records #2, 5 & 7).

(See pages 18-23)

VOTER REGISTRATION:

On December 7, 2017, an online search of Alameda Voter Registration records keyed to Date of Birth: 01/XX/1976 and Last 4 SSN: XXXX; identified no records (Record #1).

On December 7, 2017, an online search of Contra Costa County Voter Registration records keyed to First Name: Jessica; Last Name: Sund and Date of Birth: 01/XX/1976; identified no record (Record #2).

Archived database records identified two voter registrations for Jessica Sund: At 633 Alma Avenue, Apt. 5, Oakland, CA. Date of registration was 10/01/2008 and (Record #3) At 6138 Park Avenue, Richmond, CA. No date of registration was available, however the address is reported in Address History databases for Ms. Sund from 2005 to 2011. (Record #4).

(See pages 24-27)

BUSINESS ENTITIES/EMPLOYMENT RECORDS:

A search of California Secretary of State Corporation, LLC, and Limited Partnership records, California Fictitious Business Name (FBN) Records, California Board of Equalization Records, Employment and Corporate Affiliation Databases, California Department of Consumer Affairs Professional License Records – including the State Contractors Licensing Board and Uniform Commercial Code (UCC) identified two Employment Association records: 1) An undated record associating Ms. Sund with Stem2Bloom, 633 Alma Ave., Apt 5, Oakland, CA 94610; and 7/31/2012 record associating Ms. s/und with Prudential Penfed Realty, Clarkesville, TN.

(See pages 27-28)

LIENS & JUDGMENTS:

No record of any judgments or liens recorded against Jessica Sund were identified in liens and judgment databases.

CALIFORNIA SUPERIOR COURT CIVIL RECORDS:

A search of California Superior Court Civil indexes, available on-line, including Jessica Sund's known counties of residence Alameda County and Contra Costa County identified one record in Alameda County – Case Number: RG16842109, Title: Sund v City of Oakland, Filing Date: 12/12/2016. A PI/PD/WD claim that is continuing as status is "Hearing Reset to Civil Pre-Trial Settlement Conference 01/24/2019 09:00 AM"

(See pages 28-33)

CALIFORNIA SUPERIOR COURT CRIMINAL RECORDS:

A search of California Superior Court Criminal indexes, available on-line identified no records. NOTE: Alameda County and Contra Costa Criminal Court filings are not available online.

ARIZONA SUPERIOR COURT CIVIL & CRIMINAL RECORDS:

A search of Arizona Superior Court Civil & Criminal indexes, available on-line, including Jessica Sund's known county of residence – Maricopa County, identified no records.

NATIONWIDE FEDERAL BANKRUPTCY, CIVIL AND CRIMINAL COURT RECORDS:

A search of on-line Federal Bankruptcy, Civil, and Criminal court records nationwide identified one record under Jessica Sund. The record was eliminated through non-matching social security number, spouse, address, other identifier or as having been filed in a jurisdiction remote from Jessica Sund's known address history.

INTERNET SEARCHES:

Online search engine inquiries and searches of social and professional networking websites identified the following records re: Jessica Sund:

Record #1: A baby registry – the bump.com - for Jessica Sund identified a due date: Oct 25, 2017 and the location as Oakland, CA. A link at the page, present in December of 2017, but no longer present associated the child with Cory Hamrick – [jgt/gifts/baby-girl-hamrick](#). The link is highlighted in the below record. **Record #1:** A baby registry – the bump.com - for Jessica Sund identified a due date: Oct 25, 2017 and the location as Oakland, CA. A link at the page, present in December of 2017, but no longer present associated the child with Cory Hamrick – [jgt/gifts/baby-girl-hamrick](#). The link is highlighted in the below record.

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Record #2: An undated Nuwber website listing identifying a number for Jessica M. Sund – (510) 306-5436 with an address of 633 Alma Avenue, Oakland, CA. The site identifies Ms. Sund’s previous location as Richmond, CA 94801.

Record #3: A LinkedIn page for Jessica Sund which identified herself as an Intervention Specialist at American Indian Model School in Oakland, CA from July 2016 – Present. The Experience section also identifies here as “Owner & Founder, STEM2Bloom.com, Dec 2015 – Present...San Francisco Bay Area”.

Record #4 & 4A: The website for Stem2Bloom for which Ms. Sund is “Owner & Founder” per her LinkedIn page. The site promotes a Preschool through 3rd grade curriculum developed by Ms. Sund. In a bio page at the site Ms. Sund “I have developed and taught science and nutrition curriculum for the University of CA Agriculture and Natural Resource Division in conjunction with Oakland Unified School District State Preschools and Child Development Centers for their Sustainable Nutrition Urban Garden Program as well as for De Colores Head Start... I’ve taught middle and high school students in math, helping them reach their goals and move beyond limitations. ... I also integrate my extensive classical training from Oakland Ballet into my lessons as a way to inspire children to build somatic connections to the subject matter, using creative movement as a catalyst...” No residence information is referenced. A Google site map at the website has a pin placement for the business location at 2640 College Ave., Berkeley, CA 94704, the location of the Berkeley Playhouse.

Record #5: The website for American Indian Model Schools. Ms. Sund’s LinkedIn page states that she is an “Intervention Specialist at American Indian Model School in Oakland, CA from July 2016 – Present”. A search of the Staff page at the site found no reference to Ms. Sund. The entity is addressed at 171 12th St., Oakland, CA 94607.

(See pages 34-43)

RESIDENT HISTORY FOR 633 ALMA AVENUE, #5, OAKLAND, CA 94610:

A search keyed to 633 Alma Avenue, #5, Oakland, CA 94610 identified three residents currently associated with the address.

John S. Schonborn with reported dates of 08/1986-12/05/2017
Therese Karlsson with reported dates of 02/13/2007-12/05/2017
Jessica Sund with reported dates of 10/2005-12/05/2017
Irma Lee Fink with reported dates of 12/1996-12/2017

(See pages 44-49)

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RESIDENT HISTORY FOR 3024 CALIFORNIA STREET, OAKLAND, CA 94602:

A search keyed to 3024 California Street, Oakland, CA identified three residents currently associated with the address:

Cory T. Hamrick with reported dates of 05/04/1999-12/05/2017

Erica Winn with reported dates of 11/05/2012-11/28/2017

Jessica M. Sund with reported dates of 07/01/2017-07/01/2017

No evidence a relationship, or bearing on the nature of an association, between Cory T. Hamrick, DOB 1/7/1967, and Ms. Sund was identified in social media, or other sources.

(See pages 50-52)

SUBJECT INFO:

Name: Jessica Maggie Sund
DOB: 01/XX/1976
SSN: 556-83-XXXX issued in California in 1985.

ADDRESS HISTORY

Address History Databases identify 3024 California Street, Oakland, CA 94602 as Ms. Sund's current address. Three different Address Databases were reviewed on 12/5/2017 and again on 5/18/2018. Findings on the two dates were as follows:

Database #1:

12/5/2017: Two current addresses were reported: The subject address, 633 Alma Avenue, Apt. 5, Oakland, CA, reporting dates – 9/25/2011 and 10/2/2005 -11/03/2017; and a second address – 3024 California Street, Oakland, CA 94602, reporting dates - 08/31/2017-12/05/2017.

5/18/18: One current addresses was reported: 3024 California Street, Oakland, CA 94602, reporting dates – 10/2005-5/182018. The reporting dates for the subject address, 633 Alma Avenue, Apt. 5, Oakland, CA, were 10/2/2005 -11/03/2017. **NOTE:** The sudden appearance of an identical initial reporting date of 10/2005 for both addresses in the 5/18/18 datasearch indicates that this 10/2005 initial reporting date for both properties is due to a database error, and the original initial reporting dates identified on 12/5/2017 of 9/25/2011 for 633 Alma Avenue and 08/31/2017 for 3024 California Street are the more reliable dates.

Database #2:

12/5/2017: One current addresses was reported: The subject address, 633 Alma Avenue, Apt. 5, Oakland, CA, reporting dates – 9/2017.

5/18/18: Two addresses were reported: The subject address, 633 Alma Avenue, Apt. 5, Oakland, CA, reporting dates – 9/2017 and a second address – 3024 California Street, Oakland, CA 94602, reporting dates, 9/2017

Database #3:

12/5/2017: One current addresses was reported: The subject address, 633 Alma Avenue, Apt. 5, Oakland, CA, reporting dates – 8/28/2008 – 12/5/2017.

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5/18/2018: One current addresses was reported: 3024 California Street, Oakland, CA 94602, reporting dates – 8/31/2017-5/19/2018. The reporting dates for the subject address, 633 Alma Avenue, Apt. 5, Oakland, CA, remained the same as on 15/5/2017 – 8/28/2008 – 12/5/2017.

The following findings from the above database records indicate Ms. Sund has transitioned from her residency at the subject address to a current residence at 3024 California Street, Oakland, CA 94602:

- Initial Reporting Dates - The initial reporting dates for 3024 California Street, Oakland, CA 94602 are August and September, 2017, while initial reporting dates for the subject property date back to 8/28/2008. The much more recent initial reporting dates for 3024 California Street, Oakland, CA 94602 document Ms. Sund's residency at the address as a much more recent development, and therefore more likely her current residence. NOTE: See above discussion of the multiple initial reporting dates for both properties in Database #1.

- Current Reporting Dates – Two of the three databases report 3024 California Street, Oakland, CA 94602 as recently as 5/18/2018, while the most recent reporting date for 633 Alma Avenue, Apt. 5, Oakland, CA in any of the databases is 12/5/2017.

- The reporting of 3024 California Street, Oakland, CA 94602 in only one database during the initial searches of 12/5/2017 and the subsequent reporting of the address in all three databases during the searches of 5/18/2018 is also consistent with the appearance of new addresses in the Address History Databases. The databases are derived in chief from the three major credit bureaus (Equifax, Experian and TransUnion). New or updated address information is received by the clients of the bureaus – credit granting businesses, who in turn report periodically to the bureaus. Reporting periods vary between business from as little as 30 days to upwards of six months. Thus there is always a lag time in the reporting between the initial gathering of the information by the client companies and their periodic reporting to the bureaus. The gradual appearance of the California St. address in only one database in December, 2017 and t subsequent in all three bureaus in May, 2018 is consistent with the appearance of newly reported addresses in this process.

DECEMBER 5, 2017 DATABASE SEARCHES:

Database #1

633 ALMA AVE APT 5, OAKLAND, CA 94610-3857 (ALAMEDA COUNTY) (10/2005 to 11/03/2017)

633 ALMA AVE, OAKLAND, CA 94610-3853 (ALAMEDA COUNTY) (09/25/2011 to 09/25/2011)

3024 CALIFORNIA ST, OAKLAND, CA 94602-3908 (ALAMEDA COUNTY) (08/31/2017 to 12/05/2017)

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6138 PARK AVE # 11, RICHMOND, CA 94805-1229 (CONTRA COSTA COUNTY) (05/09/2005 to 10/2011)

6138 PARK AVE, RICHMOND, CA 94805-1229 (CONTRA COSTA COUNTY) (05/10/2005 to 10/2005)

PO BOX 11634, OAKLAND, CA 94611-0634 (ALAMEDA COUNTY) (06/2008 to 08/06/2008)

822 59TH ST # 11, EMERYVILLE, CA 94608-1408 (ALAMEDA COUNTY) (02/2004 to 06/2005)

822 59TH ST, EMERYVILLE, CA 94608-1408 (ALAMEDA COUNTY) (01/23/2004 to 05/10/2005)

886 CLEVELAND ST APT 11, OAKLAND, CA 94606-1536 (ALAMEDA COUNTY) (12/15/1998 to 12/2003)

886 CLEVELAND ST, OAKLAND, CA 94606-1568 (ALAMEDA COUNTY) (02/1999 to 01/23/2003)

PO BOX 9045, OAKLAND, CA 94613-0001 (ALAMEDA COUNTY) (11/14/1997 to 01/23/2003)

3445 PIERSON ST, OAKLAND, CA 94619-3425 (ALAMEDA COUNTY) (08/1991 to 01/23/2003)

20022 N 31ST AVE, PHOENIX, AZ 85027-3900 (MARICOPA COUNTY) (03/13/2000 to 03/13/2000)

5000 MACARTHUR BLVD, OAKLAND, CA 94613-1301 (ALAMEDA COUNTY) (10/15/1997 to 10/15/1997)

Database #2

633 ALMA AVE APT 5, OAKLAND, CA 94610-3857, ALAMEDA COUNTY (Sep 2017)

6138 PARK AVE, RICHMOND, CA 94805-1229, CONTRA COSTA COUNTY (Mar 2005 - May 2005)

822 59TH ST, EMERYVILLE, CA 94608-1408, ALAMEDA COUNTY (Feb 2004 - May 2005)

PO BOX 9045, OAKLAND, CA 94613-0045, ALAMEDA COUNTY (Mar 1998 - Sep 2001)

886 CLEVELAND ST, OAKLAND, CA 94606-1568, ALAMEDA COUNTY (Feb 1999)

3445 PIERSON ST, OAKLAND, CA 94619-3425, ALAMEDA COUNTY (Aug 1991 - Mar 1993)

Database #3

Name	Address	SSN / DOB	Phone
SUND JESSICA M	4x 633 ALMA AVE 5 OAKLAND, CA 94610-3857 Reported: 08/28/2008 - 12/05/2017 County: ALAMEDA	556-83-XXXX Issued: 1985 in CA DOB: 01/XX/1976 Age: 41	Cell: (510)206-5436 Cell: (510)306-5436 Landline: (510)836-0705
SUND JESSICA M	4x PO BOX 11634 OAKLAND CA 94611-0634 Reported: 06/20/2008 - 09/12/2008 County: ALAMEDA	556-83-XXXX Issued: 1985 in CA DOB: 01/XX/1976 Age: 41	

NEILSON AND MACRITCHIE
INVESTIGATORS
SINCE 1953

SUND JESSICA M AKA: SUND, J M	7x6138 PARK AV RICHMOND CA 94805-1229 Reported: 03/01/2005 - 06/19/2008 County: CONTRA COSTA	556-83-XXXX Issued: 1985 in CA DOB: 01/XX/1976 Age: 41	
SUND JESSICA M AKA: SUND, J M	4x822 59TH ST OAKLAND CA 94608-1408 Reported: 01/27/2004 - 04/01/2005 County: ALAMEDA	556-83-XXXX Issued: 1985 in CA DOB: 01/XX/1976 Age: 41	Landline: (510)420-1595 Landline: (510)834-9440
SUND JESSICA M	4x822 59TH ST EMERYVILLE CA 94608-1408 Reported: 04/25/2004 - 09/01/2004 County: ALAMEDA	556-83-XXXX Issued: 1985 in CA DOB: 01/XX/1976 Age: 41	Landline: (510)420-1595
SUND JESSICA M	10x886 CLEVELAND ST OAKLAND CA 94606-1568 Reported: 12/15/1998 - 07/01/2003 County: ALAMEDA	556-83-XXXX Issued: 1985 in CA DOB: 01/XX/1976 Age: 41	Landline: (510)834-9440
SUND JESSICA M	7x3445 PIERSON ST OAKLAND CA 94619-3425 Reported: 06/01/1994 - 11/13/2000 County: ALAMEDA	556-83-XXXX Issued: 1985 in CA DOB: 01/XX/1976 Age: 41	
SUND JESSICA M	1x3445 PEARSON ST OAKLAND CA 94619 Reported: 11/13/2000 - 11/13/2000 County: ALAMEDA	556-83-XXXX Issued: 1985 in CA	
SUND JESSICA M	1x PO BOX OAKLAND CA 94613 Reported: 11/14/1997 - 01/31/1999 County: ALAMEDA	556-83-XXXX Issued: 1985 in CA DOB: 01/XX/1976 Age: 41	
SUND JESSICA M	1x CARDINAL RIDGE AP OAKLAND CA 94613 Reported: 10/01/1998 - 10/01/1998 County: ALAMEDA	556-83-XXXX Issued: 1985 in CA DOB: 01/XX/1976 Age: 41	
SUND JESSICA M	6x POB 9045 OAKLAND CA 94613-0045 Reported: 03/01/1998 - 03/01/1998 County: ALAMEDA	556-83-XXXX Issued: 1985 in CA DOB: 01/XX/1976 Age: 41	
SUND JESSICA M	2x5000 MACARTHUR BLVD OAKLAND CA 94613-1301	556-83-XXXX Issued: 1985 in CA DOB: 01/XX/1976 Age: 41	

NEILSON AND MACRITCHIE
INVESTIGATORS
SINCE 1953

Reported: 10/15/1997 - 10/15/1997		
County: ALAMEDA		

MAY 18, 2018 DATABASE SEARCHES:

Database #1:

3024 CALIFORNIA ST, OAKLAND, CA 94602-3908 (ALAMEDA COUNTY) (10/2005 to 05/18/2018)

633 ALMA AVE APT 5, OAKLAND, CA 94610-3857 (ALAMEDA COUNTY) (10/2005 to 11/03/2017)

633 ALMA AVE, OAKLAND, CA 94610-3853 (ALAMEDA COUNTY) (09/25/2011 to 09/25/2011)
6138 PARK AVE # 11, RICHMOND, CA 94805-1229 (CONTRA COSTA COUNTY) (05/09/2005 to 10/2011)
6138 PARK AVE, RICHMOND, CA 94805-1229 (CONTRA COSTA COUNTY) (05/10/2005 to 05/24/2005)
3707 MALVERN RD, KINGSFORD HEIGHTS, IN 46346-3355 (LA PORTE COUNTY) (10/2008 to 10/2008)
PO BOX 11634, OAKLAND, CA 94611-0634 (ALAMEDA COUNTY) (06/2008 to 08/06/2008)
822 59TH ST # 11, EMERYVILLE, CA 94608-1408 (ALAMEDA COUNTY) (02/2004 to 06/2005)
822 59TH ST, EMERYVILLE, CA 94608-1408 (ALAMEDA COUNTY) (01/23/2004 to 05/10/2005)
886 CLEVELAND ST APT 11, OAKLAND, CA 94606-1536 (ALAMEDA COUNTY) (12/15/1998 to 12/2003)
886 CLEVELAND ST, OAKLAND, CA 94606-1568 (ALAMEDA COUNTY) (02/1999 to 01/23/2003)
PO BOX 9045, OAKLAND, CA 94613-0001 (ALAMEDA COUNTY) (11/14/1997 to 01/23/2003)
3445 PIERSON ST, OAKLAND, CA 94619-3425 (ALAMEDA COUNTY) (08/1991 to 01/23/2003)
20022 N 31ST AVE, PHOENIX, AZ 85027-3900 (MARICOPA COUNTY) (03/13/2000 to 03/13/2000)
5000 MACARTHUR BLVD, OAKLAND, CA 94613-1301 (ALAMEDA COUNTY) (10/15/1997 to 10/15/1997)

Database #2:

3024 CALIFORNIA ST, OAKLAND, CA 94602-3908, ALAMEDA COUNTY (Sep 2017)

633 ALMA AVE APT 5, OAKLAND, CA 94610-3857, ALAMEDA COUNTY (Sep 2017)

6138 PARK AVE, RICHMOND, CA 94805-1229, CONTRA COSTA COUNTY (Mar 2005 - May 2005)
822 59TH ST, EMERYVILLE, CA 94608-1408, ALAMEDA COUNTY (Feb 2004 - May 2005)
PO BOX 9045, OAKLAND, CA 94613-0045, ALAMEDA COUNTY (Mar 1998 - Sep 2001)

NEILSON AND MACRITCHIE
INVESTIGATORS
SINCE 1953



CITY OF OAKLAND

250 FRANK OGAWA PLAZA, SUITE 5313, OAKLAND, CA 94612-2043

Housing and Community Development Department
Rent Adjustment Program

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

HEARING DECISION

CASE NUMBER: T18-0018 Sund v. Vernon Street Apartments, LP

PROPERTY ADDRESS: 633 Alma Avenue, Unit 5, Oakland, CA

HEARING DATE: May 30, 2018
June 4, 2018

SITE INSPECTION : June 4, 2018

DECISION DATE: December 20, 2018

APPEARANCES:	Jessica Sund	Petitioner
	Paul Kranz	Attorney for Petitioner
	Kim Rohrbach	Paralegal for Petitioner
	Greg McConnell	Owner Representative
	JR. McConnell	Owner Representative
	Don MacRitchie	Witness for Owner
	Ursula Morales	Property Manager
	Jessica Vernaglia	Property Supervisor
	Dave Wasserman	Owner Representative
	Lucky Stewart	Agent for Owner

SUMMARY OF DECISION

The petitioner's petition is DENIED.

INTRODUCTION

Petitioner Jessica Sund filed a tenant petition on November 29, 2017, which contests a proposed monthly rent increase from \$908.67 to \$2,095.00 effective December 1, 2017 on the following grounds:

1. The increase exceeds the CPI Adjustment and is unjustified or is greater than 10%;
2. The proposed rent increase would exceed an overall increase of 30% in 5 years; and
3. I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake.

The owner filed a timely response to the petition and contends that the contested rent increase is a Costa Hawkins rent increase. The petitioner, who was the original occupant, no longer resides at the subject property as her primary place of residence.

ISSUES PRESENTED

1. Is the contested rent increase limited by the Rent Adjustment Ordinance?

EVIDENCE

Petitioner's Status as a Tenant

Testimony of Jessica Sund - Petitioner

The petitioner testified that she moved into the subject unit in July 2008, at an initial monthly rent of \$895.00. She testified that on September 6, 2017, she was served a rent increase notice proposing to increase her rent from \$908.67 to \$2,095.00 monthly.¹ She further testified that she is currently paying \$908.67 in rent monthly and has continued to pay that amount since the effective date of the rent increase.

Ms. Sund testified that on August 24, 2017, she emailed the property supervisor at the time, Thomas Preston, to notify him that her boyfriend, Cory Hamrick, would be moving in with her the following weekend, and that they were expecting a baby in October of 2017.² In response to her email, she received a letter from Thomas Preston, dated August 28, 2017, stating that her lease had a "no subletting/no assignment clause", and a "use/occupancy" provision, therefore, her request to sublet the unit to her boyfriend was denied.³ The letter also stated that if her boyfriend did move in, her lease and tenancy would be terminated for unlawful subletting. She testified that she received this letter in early September, around the same time as the rent increase notice dated September 6, 2017.

¹ Exhibit 1

² Exhibit 2

³ Exhibit 3

Ms. Sund testified that because the property manager refused to allow her boyfriend to move in with her, and instead issued an exorbitant rent increase, she decided to stay with her boyfriend temporarily, who resides at 3024 California Street in Oakland, California. She moved to the California street address in early October, 2017, right before the birth of her daughter on October 24, 2017.⁴ She testified that she moved because she believed that if she continued to reside at the Alma street apartment, she would have to pay the rent increase, and she could not afford it. She also moved because she wanted the support of her boyfriend to care for her newborn child, who had medical issues requiring full time care. She also did not want to deal with the stress of being in an adversarial relationship with her landlord. Ms. Sund testified that as of the date of the hearing, she was still residing primarily at the California street address. She testified that she visits the Alma street apartment once or twice a week to check on her plants, and the apartment generally, but is staying at the California street address with her boyfriend and baby for now.

On cross examination, Ms. Sund testified that she has not moved back into the Alma street apartment because of excessive construction noise that began in November of 2017 and is still ongoing. She submitted copies of construction notices issued by the property manager.⁵ She further testified that her carpet was damaged when the property manager replaced her refrigerator and the dirty carpet is another reason she has not moved back into the Alma street unit. Finally, she testified that she has been receiving mail at the California street address since October of 2017.

Testimony of Lucky Stewart – Agent for Owner

Lucky Stewart is an agent for the owner. He testified that he is employed by an ownership group that acquires different properties in the bay area and he acts as an asset manager for the ownership group. He is tasked with managing the takeover of properties and overseeing general operations. He testified that he acquired the subject property, 633 Alma Street, in June of 2017.

Shortly after he acquired the subject property, he received reports from other tenants in the building that the petitioner was subletting her unit. Specifically, he was told that there were strangers going in and out of the petitioner's unit freely and had possession of keys to the unit but the petitioner was no longer there. He also personally observed an international couple, with luggage, coming out of the petitioner's unit, sometime in early August. Both individuals were tall, blonde, and speaking a foreign language, and when he attempted to speak to them, they ignored him. Based on the reports from other tenants, and his own observations, he decided to investigate the petitioner's whereabouts. He did an internet search and asked his attorney, Dave

⁴ Exhibit 4

⁵ Exhibit 5

Wasserman, to do a LexisNexis search to see if the petitioner was still living in the Alma street apartment. His own internet search revealed a baby registry under the petitioner and her boyfriend Cory Hamrick's name, as well as couch surfing listings placed by Cory Hamrick, the petitioner's boyfriend, advertising an unspecified unit as available for rent. Mr. Stewart testified that he was advised by his attorney that the LexisNexis search revealed two addresses linked to the petitioner, the 633 Alma street address and the 3024 California street address, and that the petitioner was likely no longer living at the 633 Alma street address.

Based on his findings, he issued a warning letter to the petitioner on August 22, 2017, which was posted on the door of the petitioner's unit and mailed to the petitioner.⁶ In the letter, he informed her that he had "received complaints regarding an overwhelming amount of random visitors coming and going from unit 5 at 633 Alma street. The visitors seem to have access and keys to come and go freely, yet you are not around. What is also troubling is that some of them have been disturbing your neighbors and this is their home."⁷ The letter went on to warn the petitioner that the lease was in her name only and that her lease did not allow for her to sublet or assign any part of the premises. A copy of the lease with the provision prohibiting subletting and assignment was received into evidence.⁸ The petitioner denied ever receiving the August 22, 2017, letter.

After he issued the warning letter, on August 24, 2017, the property supervisor at the time, Thomas Preston, received the email from the petitioner announcing that she was pregnant and that her boyfriend would be moving in the next day. Mr. Stewart testified that he viewed the petitioner's email as a demand and not a request to sublet. He also believed that the petitioner was using the request to sublet to her boyfriend as ruse so she could continue renting out the unit to short-term tenants. He testified that he directed the property supervisor to respond by issuing the letter dated August 28, 2017, which denied the petitioner's request to sublet to her boyfriend and informed her that if her boyfriend did move in her lease and tenancy would be terminated for unlawful subletting. The letter further stated that "if the petitioner had made a reasonable and proper request well in advance of the move-in date, instead of unilaterally stating that her boyfriend was moving in, the landlord would have been amendable to accommodating her request...and... if the tenant wished to revisit this issue down the road in a more appropriate fashion, then management may be more receptive".⁹ This letter was posted on the petitioner's door and mailed on August 28, 2017. Mr. Stewart testified that the petitioner never followed up her request to sublet to her boyfriend, and to his knowledge, Cory Hamrick, the petitioner's boyfriend, never moved into the Alma street unit.

⁶ Exhibit 12

⁷ Exhibit 12

⁸ Exhibit 11

⁹ Exhibit 2

After this letter was sent, the tenants in unit 1 reported that strangers were still coming and going from the petitioner's unit. This prompted the property management to issue a Costa Hawkins rent increase. On September 6, 2017, the property management issued a notice of rent increase to Jessica Sund and all subtenants in possession of the subject unit, stating that the original occupant, Jessica Sund, was no longer permanently residing in the unit and the rent was being increased pursuant to California Civil Code Section 1954.50, *et seq.* (Costa Hawkins Rental Housing Act).¹⁰ Finally, Mr. Stewart testified that since the Costa Hawkins rent increase, he has not received reports of anyone entering or leaving the petitioner's unit.

Testimony of Property Manager – Ursula Morales

Ursula Morales is the onsite property manager for 633 Alma Street. She has held that position since October 1, 2017. She testified that she knows all the tenants in the building and she has never met or seen the petitioner before. She testified that she lives in unit 11, which is directly above the petitioner's unit and she has never heard a baby cry in the petitioner's unit. She further testified that sometime in November or December of 2017, she received a complaint about strangers coming in and out of the petitioner's unit as well as noise and smoke coming from the petitioner's unit. She testified that these complaints were made by the tenant in unit 6, Marissa Williams. Ms. Williams is the tenant in the unit directly across from the petitioner's unit. In response to these complaints, she went to the hallway downstairs to check on the petitioner's unit. She heard some noise, but nothing out of the ordinary, just the sound of television. Finally, she testified that she has never personally observed anyone, including the petitioner, coming in and out of the petitioner's unit.

Testimony of Don MacRitchie - Private Investigator

Don MacRitchie testified that he was retained to investigate the tenancy of the petitioner. He is a licensed private investigator who is licensed to gather this type of information for administrative proceedings and the data he obtains originates with the original consumer. His investigation encompassed searches of various address history databases, social media outlets, voter registration records and other public records. He has performed this type of investigation thousands of times and has been qualified to testify as an expert in court proceedings regarding false testimony about where people live and has testified as an expert in over seventy matters before the San Francisco Rent Board. He has also testified as an expert in prior proceedings before the Rent Adjustment Program.¹¹

Mr. MacRitchie testified that during his investigation, he completed two database searches, one in December of 2017, and one in May of 2018. He

¹⁰ Exhibit 1

¹¹ T16-0707 *Brown v. Wasserman*

prepared two Investigator Reports based on his findings, one for the petitioner, Jessica Sund, and one for her boyfriend, Cory Hamrick.¹²

His investigation of the petitioner, Jessica Sund, indicated that she first reported 633 Alma Street, Unit 5, as her current address on August 28, 2008. The database searches show that she subsequently reported 3024 California Street as her current address for the first time on July 1, 2017, and again in August of 2017. The California street address continued to be reported as her current address as recently as May 2018. On the other hand, the most recent reporting date for the Alma street address in any of the databases was December 5, 2017.

His investigation of Cory Hamrick indicated that Mr. Hamrick's current place of residence is 3024 California Street. Mr. Hamrick first reported the California street address as his address in April of 1999. The California street address continued to be reported as his sole current address as recently as March 27, 2018. Mr. Hamrick is the current owner of the California street property. The property is a two bedroom, one bathroom, single family home. Mr. Hamrick also claims a Homestead Exemption for the property. Mr. MacRitchie testified that a Homestead Exemption applies if the property is the owner's principal place of residence, and it allows the owner to claim a property tax deduction. The Tax Assessor's office also confirmed that the mailing address of record for the property is the California street address. His investigation also indicates that Mr. Hamrick is currently registered to vote at 3024 California Street. Finally, the database searches did not show any reports of the Alma street address as being associated with Mr. Hamrick.

In addition to the database searches, Mr. MacRitchie testified that he also interviewed other tenants at 633 Alma street. He interviewed the tenants after the first day of hearing in this case, and prior to the second day of hearing. He testified that he spoke to four tenants, three of them were current tenants, and one was a former tenant. The current tenants were the tenants in unit 3, 4, and 6 who all believed the petitioner had lived elsewhere for quite a while. The former tenant was also the former property manager, Kathy Espinoza, who also believed the petitioner had been living elsewhere for quite some time.

Based on his investigation Mr. MacRitchie opined that a preponderance of the evidence supports a conclusion that Jessica Sund's permanent place of residence is not the subject property, 633 Alma Street, Unit 5, but rather 3024 California Street.

Site Inspection

The Hearing Officer conducted a site inspection on June 4, 2018. She noted that the unit was a studio apartment, consisting of one large room, a

¹² Exhibits 7 and 8

kitchen, bathroom, and a closet. There was one queen size bed in the unit and a portable rock and play. There was no crib in the unit. The Hearing Officer did not observe any toys in the unit. There were two diapers, one baby lotion bottle, and a onesie laid out on a counter. The refrigerator and closets were empty.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Petitioner's Status as a Tenant

The owner has established by a preponderance of the evidence that the petitioner no longer permanently resides at 633 Alma street, Unit 5, in Oakland but rather, 3024 California street.

The agent of the owner, Lucky Stewart, testified credibly that shortly after acquiring the Alma street property in June of 2017, he received multiple complaints from tenants about strangers going in and out of the petitioner's unit freely, with keys to the unit, while the petitioner herself was nowhere to be seen. He also personally observed a blonde couple exiting the petitioner's unit with luggage, speaking a foreign language, and ignoring his attempts to communicate. Based on this information, he did an internet search that revealed a baby registry for the petitioner and her boyfriend, Cory Hamrick, as well as listings by Mr. Hamrick, purporting to rent out an unspecified unit on couch surfing sites. He testified that this search further fueled his suspicions that the petitioner did not reside in the subject unit and that instead, the petitioner was unlawfully subletting her unit to short-term tenants. This testimony is corroborated by the investigator, Don MacRitchie, who testified that records show the tenant first began listing the California street address as her current address on July 1, 2017. Based on this evidence, it is more likely than not that the petitioner was no longer permanently residing at the Alma street address since at least July 1, 2017.

The petitioner's testimony that she temporarily moved from the Alma street address to the California street address in October of 2017, after her request to have her boyfriend move into her unit was denied, is simply not credible. The Hearing Officer finds it implausible that the petitioner's boyfriend, Cory Hamrick, would leave his two-bedroom house, that he owns and claims a homestead exemption for, to move into the petitioner's studio apartment, especially considering that the couple was expecting a baby in October of 2017. Choosing to move in together into a small studio apartment in anticipation of a newborn baby when the option of a two-bedroom house was readily available does not seem reasonable.

The tenant herself testified that she has been staying at the California street address since October of 2017, and has no immediate plans to move back into the Alma street apartment. She further testified that she only visits the Alma street apartment once or twice a week, to water the plants and check on the

apartment, but she does not carry out daily living activities in the Alma street unit. She does not sleep there, or cook there on a regular basis. Although it is undisputed that the petitioner has been paying her rent for the Alma street apartment, paying rent alone is not sufficient to establish that the unit is being occupied as a permanent residence.

The owner argued that the petitioner has no intention of occupying the unit as her primary residence. She is holding on to the unit at a below market rate so she can rent it out to short-term tenants. He further argued that the petitioner's boyfriend never intended to move into the Alma street address and instead the request by the petitioner to have her boyfriend move in was merely a ruse to allow her to continue renting out her unit to short-term tenants for her own financial advantage. The Hearing Officer finds this argument persuasive.

Additionally, the testimony of Don MacRitchie, the investigator, is substantial evidence of the fact that the petitioner has not occupied 633 Alma Street, Unit 5, as her permanent place of residence since July 1, 2017.

Finally, the Hearing Officer's onsite inspection of the Alma street apartment indicates that the petitioner does not live there. The apartment was sparse and the closet and refrigerator were empty. In addition, the apartment did not have any evidence of a child residing in the unit, aside from the rock and play and some diapers strategically laid out on a counter. The apartment did not have toys or any other children's furniture.

Based on the evidence and testimony, it is more likely than not that the petitioner has not occupied the subject unit as her primary residence since at least July 1, 2017.

Costa-Hawkins

California Civil Code Section 1954.53(d) states in part:

(2) If the original occupant or occupants who took possession of the dwelling or unit pursuant to the rental agreement with the owner no longer permanently reside there, an owner may increase by any amount allowed by this section to a lawful sublessee or assignee who did not reside at the dwelling or unit prior to January 1, 1996.

(3) This subdivision does not apply to partial changes in occupancy of a dwelling or unit where one or more of the occupants of the premises, pursuant to the agreement with the owner provided for above, remains an occupant in lawful possession of the dwelling or unit....

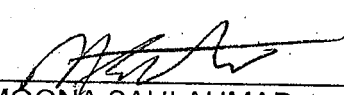
The testimony and documentary evidence constitute substantial evidence that the petitioner no longer permanently resides in the subject unit and therefore lacks standing to file this petition.

ORDER

1. The petitioner lacks standing to file this petition because she no longer resides at 633 Alma Street, Unit 5, Oakland, California, and has not resided at this address since July of 2017.
2. Petition T18-0018 is DENIED.

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

Dated: December 20, 2018



MAIMOONA SAHI AHMAD
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE

Case Number T18-0018

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

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

Documents Included

Hearing Decision

Manager

Thomas Preston
633 Alma Avenue
Oakland, CA 94619

Manager

Ursula Morales
633 Alma Avenue
Oakland, CA 94619

Owner

Vernon Street Apartments, LP aka Flynn Family Holdings, LLC
1717 Powell Street #300 c/o Russell B. Flynn
San Francisco, CA 94133

Owner Representative

Gregory McConnell, The McConnell Group
300 Frank Ogawa Plaza Suite # 460
Oakland, CA 94607

Owner Representative

JR McConnell, The McConnell Group
300 Frank Ogawa Plaza Suite #460
Oakland, CA 94607

Tenant

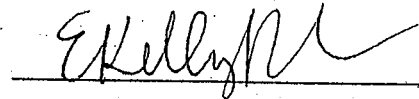
Jessica Sund
633 Alma Avenue #5
Oakland, CA 94610

000133

Tenant Representative
Paul Kranz
639 San Gabriel Avenue
Albany, CA 94706

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 December 20, 2018 in Oakland, CA.

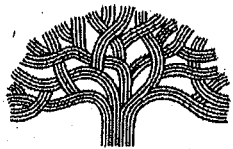


Esther K. Rush

Oakland Rent Adjustment Program

000134

CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM



CITY OF OAKLAND

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

For date stamp

RECEIVED

JAN 09 2019

RENT ADJUSTMENT PROGRAM
OAKLAND APPEAL

Appellant's Name Jessica Sund		<input type="checkbox"/> Owner <input checked="" type="checkbox"/> Tenant	
Property Address (Include Unit Number) 633 Alma Avenue # 5 Oakland, California 94610			
Appellant's Mailing Address (For receipt of notices) 633 Alma Avenue # 5 Oakland, California 94610		Case Number T18-0018	Date of Decision appealed 12/20/2018
Name of Representative (if any) Paul Kranz, Esq.	Representative's Mailing Address (For notices) 639 San Gabriel Avenue Albany, California 94706		

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: _____. Please see attachments

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

I declare under penalty of perjury under the laws of the State of California that on _____, 20____, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows: Please see Proof of Service separately enclosed

Name	
Address	
City, State Zip	
Name	
Address	
City, State Zip	

Paul L. Kenz	01/09/2019
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

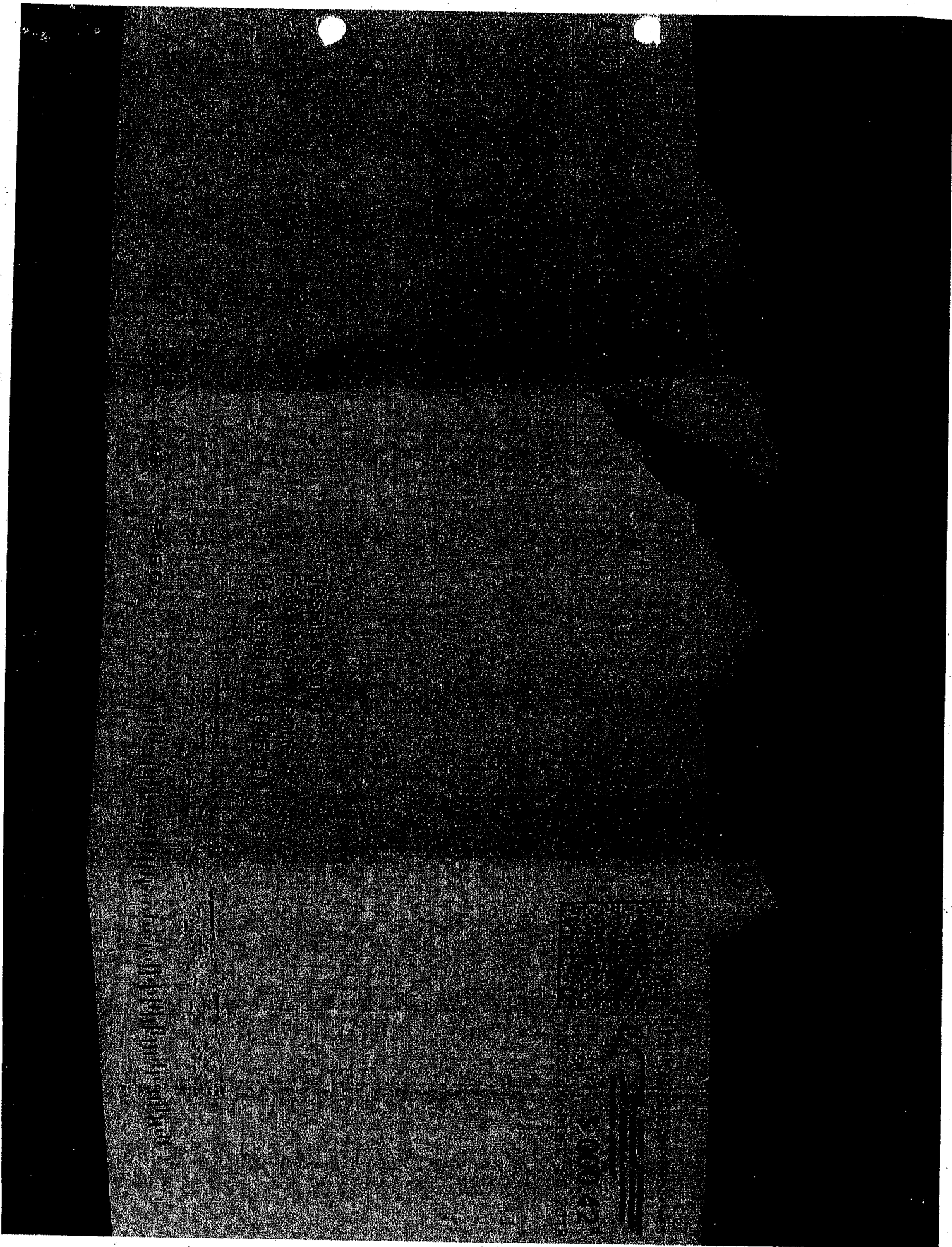
For more information phone (510) 238-3721.

ATTACHMENT 1

Petitioner will further submit a brief not to exceed twenty-five (25) pages.

Petitioner also does not waive her right to contest the time lines for her appeal on the ground that the date indicated on the proof of service (December 20, 2018) attached to the subject Hearing Decision is inaccurate. The dates stamped by the postage meter on each of the envelopes in which the Hearing Decision was separately and respectively mailed to Petitioner and to her attorney show that postage was affixed on December 26, 2018—not six days earlier, on December 20, 2018, as declared on the proof of service. Copies of the envelope received by Petitioner and of the envelope received by her attorney are attached as Attachment 2.

ATTACHMENT 2



CITY OF OAKLAND



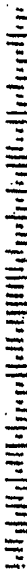
HOUSING & COMMUNITY DEVELOPMENT DEPARTMENT
RENT ADJUSTMENT PROGRAM
250 FRANK H. OGAWA PLAZA
SUITE 5313
OAKLAND, CA 94612-0234

Paul Kranz
639 San Gabriel Avenue
Albany, CA 94706

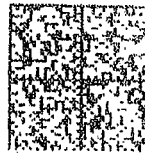
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PROOF OF SERVICE
Case Number T18-0018

I, the undersigned, certify and attest as follows:

I am over the age of eighteen years and am not a party to the cause within. My business address is 639 San Gabriel Avenue, Albany, California 94706.

On January 9, 2019, I caused the within:

CITY OF OAKLAND RENT ADJUSTMENT-APPEAL

to be served by first class mail, postage prepaid, on Respondent's representatives. addressed as follows:

c/o Russell B. Flynn
Vernon Street Apartments, LP, aka Flynn Family Holdings, LLC
1717 Powell Street # 300
San Francisco, California 94133

Gregory McConnell
The McConnell Group
300 Frank Ogawa Plaza Suite # 460
Oakland, California 94607

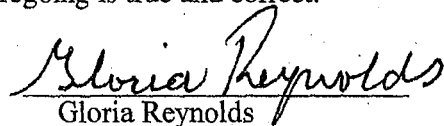
JR McConnell, The McConnell Group
300 Frank Ogawa Plaza Suite # 460
Oakland, California 94607

Thomas Preston
633 Alma Avenue
Oakland, California 94619

Ursula Morales
633 Alma Avenue
Oakland, California 94619

Executed Albany, California on January 9, 2019.

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


Gloria Reynolds

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LAW OFFICES
Paul L. Kranz
639 San Gabriel Avenue
Albany, California 94706
Telephone (510) 549-5900

RECEIVED

JUL 12 2019

**RENT ADJUSTMENT PROGRAM
OAKLAND**

July 5, 2019

Ms. Barbara Kong-Brown
Senior Hearing Officer
Rent Adjustment Program
250 Frank Ogawa Plaza, 5th Floor
Oakland, California 94612

Re: *Sund v. Vernon Street Apartments LP, et al*
Case No. T18-0018

Dear Ms. Barbara Kong-Brown

Thank you for your response about the correct ordinance on which the 25 page limit is based. However, the subsection immediately following that subsection states that the 25 page limit may be modified or waived for good cause. I already stated to you that our brief is only 14 pages, if you exclude exhibits. I am at a loss to understand your failure to acknowledge this subsection permitting submissions longer than 25 pages, as well as to apply that provision to our appeal, since the exhibits consist only of either documents submitted as evidence at the hearing, thus already in the program files, or verbatim descriptions of sworn testimony presented at the hearing. Review of the hearing officer's decision shows the extent to which that decision purports to rely on testimony from the hearing. Therefore, the transcribed testimony is essential for a fair adjudication of the appeal. There clearly is good cause for the length of our submission. All of this was explained in my previous letter to you. I also note that the program's on-line appeal cites a wrong or non-existent ordinance in support of a 25 page limit. And it also fails to state that permission for a submission longer than 25 pages may be granted.

Your rules also state that a program goal is for appeal^d hearings to be heard within 30 days of being filed. Our appeal form was filed on January 9, 2019 and our appeal still has not been heard. Our brief was filed on January 24, 2019. A Notice of Errata was filed on January 29, 2019. However, the hearing was not scheduled because the program claimed the appeal had not been served on the other party even though a proof of service was attached to the appeal. Then after a hearing was scheduled, it was delayed when the opposing party asked for more time to respond to the appeal. But as of this date, the opposing party has not provided any response to the appeal. Also, the original petition was filed in November 2017. The hearing on the petition was not held until May 30 and June 4, 2018.

The programs's time delays and failures to provide accurate information has substantially prejudiced our client. In general, these failures prejudice tenants far more than property owners because the majority of tenants represent themselves since they do not have the resources to afford to pay an attorney.

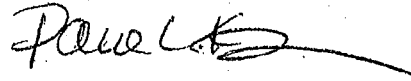
I look forward to hearing from you about these matters.

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Ms. Barbara Kong-Brown
Senior Hearing Officer
Rent Adjustment Program
July 5, 2019
Page 2

Thank you for your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "Paul L. Kranz", with a long horizontal flourish extending to the right.

Paul L. Kranz

PLK:gr

000143

Kong-Brown, Barbara

From: Kong-Brown, Barbara
Sent: Monday, July 15, 2019 4:01 PM
To: Paul Kranz
Subject: Response to your letter dated July 5, 2019

Mr. Krantz: In response to your letter received July 12, 2019, as stated in my previous communication, your appeal submission is limited to 25 pages, and there is no good cause for you to submit an additional 49 pages of hearing transcript.

The goal of the Rent Adjustment Program is to hear appeals within 30 days and there has been a substantial appeals backlog. We have made substantial progress in reducing the backlog from approximately 75 cases to 30 and continue to work towards further reduction in the backlog.

The goal of the Rent Adjustment Program is to hear a petition within 60 days of the original petition filing date. Due to staffing issues there has been a delay in scheduling cases for hearing and we hope to reduce this backlog by 2020.

BARBARA KONG-BROWN
SENIOR HEARING OFFICER
RENT ADJUSTMENT PROGRAM
250 FRANK OGAWA PLAZA, 5TH FLOOR
OAKLAND, CA 94612
T. 510-238-3721
F. 510-238-6181

Jessica Sund v. Vernon Street
Apartments, LP

T18-0018
633 Alma Street
#5

Petitioner Jessica Sund appeals from the decision of Hearing Officer Maimoona Sah Ahmad. Petitioner notes for the record that her petition was filed on November 29, 2018. The hearing commenced six months later, on May 30, 2018, and concluded on June 4, 2018. The decision was not issued for more than six months, on December 20, 2018. According to the proof of service, it was mailed on December 20, 2018, but the envelope containing has a December 26, 2018 postmark.

Petitioner also notes for the record that the attachments hereto (other than the attachments which are excerpts from the witnesses' testimony on May 30th and June 4th, 2018) were submitted at the hearing, either by her counsel or Respondent's counsel or both, but have been renumbered for expediency's sake. As for the excerpts from the witnesses' testimony are concerned, these are marked according to where each begins and ends in the audio recording on the initial day of testimony, May 30th.

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INTRODUCTION

Petitioner Jessica Sund brought the petition because, within days of notifying her landlord that she was pregnant and that her boyfriend and father of her child would begin to stay in the unit, her landlord served her with notice that her rent was being more than doubled. Unable to pay the increased rent, and after consulting with an attorney, she filed this petition and then began to stay in her boyfriend's residence.

Because Ms. Sund's newborn daughter had serious health conditions requiring 24-hour monitoring, it was necessary for her and the baby's father's to live together; moreover, the necessity for monitoring was ongoing. It was absolutely unreasonable for Ms. Sund to consider residing in her apartment under these conditions. Ms. Sund testified on the first day of the hearing that she did and does not know whether the relationship with her daughter's father would be permanent. For this reason, staying with at her boyfriend's home with their child has been intended as "temporary".

The landlord did not present any evidence to contradict these facts. The landlord contrived the story that Ms. Sund was residing with her boyfriend because she was subletting her unit in order to take advantage of its below-market rent and make a profit. But the landlord did not present an iota of credible and competent evidence to support its claim. With the exception of a single claimed sighting by the landlord's "asset manager"—who claimed he once saw a

Petitioner's Brief in Support of Appeal
000145

tall, blonde couple speaking German exiting her unit with luggage—the landlord had no other evidence to support subletting. Indeed, the decision relies heavily on this purported sighting by the asset manager, Lucky Stewart. But Mr. Stewart also testified that this alleged one-time sighting was not the cause of the attempted rent increase. He said it was later sightings, observed by property managers he never identified, and by certain tenants, none of whom testified. Nonetheless, the tenants reported nobody coming and going from Ms. Sund's unit, according to testimony of the landlord's private investigator who had interviewed them. And the only property manager who testified—the landlord's own 24/7 on site property manager—stated that she *never* saw any other persons using Ms. Sund's unit and knew of no evidence of subletting. Finally, the private investigator, who the landlord (and the hearing officer) characterized as a qualified "expert" on such matters, opined that Ms. Sund was *not* subletting; i.e., that there was not evidence to support his client's contention.

That a hearing officer could find that Ms. Sund's pregnancy, and her request for her baby and her baby's father to be able to stay in her unit, was "merely a ruse to allow her to continue renting¹ out her unit to short-term rentals for her own financial advantage", is simply incredulous and offensive, and in blatant disregard of the evidence.

STATEMENT OF FACTS

Jessica Sund is a 41-year old single woman. She has lived at the subject premises, 663 Alma Street #5, since 2008. She has worked as an elementary and middle school science teacher, and is currently earning a graduate degree in water resource management. On Friday, August 24, 2017, she notified her landlord by written email that she was expecting a baby in October and that her boyfriend and father of her expected newborn, as well as the newborn, would be staying in her unit. (See Attachment 1.) In a letter dated August 28, 2017, which Ms. Sund actually received about a week later (it was postmarked September 7), property manager Thomas Preston rejected her request because it had been "couched as a "demand". (See Attachment 2.) Per Mr. Preston, any request had to be made "well in advance of the requested move-in date, and thereafter providing necessary information to and documentation to

¹The landlord's "asset manager", Lucky Stewart, testified that the [alleged] subletting stopped shortly after Ms. Sund received the rent increase notice in early September, 2017

management.” (*Ibid.*) On that same day and on the following day, August 29, 2017, Ms. Sund called Preston three times to further discuss her request. (See Attachment 5, pp. 1–2.) Neither Preston or anyone else on behalf of the landlord responded; Preston did not return her phone messages; he did not respond by email or by letter. (See *ibid.*) Instead, the next communication Ms. Sund received from the landlord was on or about September 6, 2017, when the landlord personally served Ms. Sund with a Notice of Change Terms of Tenancy-Rent Increase Notice [Costa-Hawkins], increasing her rent from \$908.67 to \$2,095, and stating that “Jessica Maggie Sund no longer resides at the Premises and that all current occupants are subsequent occupants and subleases” (See Attachment 3; Attachment 5, p. 3.) In fact, there were no other current or subsequent occupants and subleases (Ms. Sund testimony cite) at the subject premises and Ms. Sund still resided there by herself (See Attachment 5, p. 2.)

Ms. Sund’s reaction to the notice was “fear” because she could not afford that rent and was about to have a baby. (See Exhibit 5, p. 4.) Around that time, she began staying with her boyfriend. (See Exhibit 5, pp. 7, 11–12.) She believed that if she continued to stay at the subject premises, she would have to pay the increased rent, and she also wanted the support of her boyfriend and father of her expected newborn. (See Exhibit 5, pp. 4, 6, 7.) She was 41 years old and this was going to be her first birth. She also retained counsel and the subject petition was filed.

Ms. Sund also continued to stay with her boyfriend after the baby was born because of medical issues the baby suffered that required 24-hour monitoring. (See Exhibit 5, P. 4.) These were serious medical problems; potentially life-threatening. (See *ibid.*)

The Hearing Officer’s Decision and Findings

The hearing officer’s decision relies on testimony from the landlord’s “asset manager” Lucky Stewart stating that: the subject property was acquired by his employer in June 2017; that shortly thereafter, he received reports from tenants that Ms. Sund was subletting and strangers with keys to her unit were entering the unit and the Ms. Sund was no longer there²; that he personally observed a tall blond couple with luggage coming out of the unit, speaking a foreign

²See Exhibit 6, pp. 1–2

language, who ignored him when he tried to speak to them³; that, based on this information, he had counsel conduct an investigation involving LexisNexis, which identified a second address (the California Street address) "linked to" Ms. Sund and which prompted his attorney to say, "Yeah, she's no longer living there."⁴ He also testified this led to an internet search and to him locating a baby registry connected to Ms. Sund and Cory Hamrich, her boyfriend⁵; as well as to him locating on-line "couchsurfing[.com]" listings "from them renting out apartments in, under her or Cory's name."⁶ And that, based on this information, he issued a letter dated August 22, 2017, warning her not to sublet.

In the August 22 letter, signed "The Management," Mr. Stewart claimed that property managers had noticed and received complaints of an "overwhelming amount of random visitors coming and going from [her] unit, and with keys to the unit." (See Attachment 4.) Ms. Sund testified that she never received the letter. (See Attachment 5, p. 10.) With the exception of Lucky Stewart's testimony that he had personally observed what he believed to be an "international" couple (tall, blonder, speaking a foreign language), nothing else he testified to was supported by admissible evidence. There was no admissible evidence of any internet search conducted by him or the landlord's attorney; no evidence of "managers" noticing any suspected sublessees⁷; no evidence of an "overwhelming amount of random visitors." (Cite basically all attachments consisting of the owner's testimony.) As for the "couchsurfing"⁸ posts, Stewart later

³See Attachment 6, p. 2

⁴See Attachment 6, pp. 2-3

⁵See Attachment 6, pp. 3, 24,

⁶See Attachment 6, p. 3; see also pp. 10-11, 7-8

⁷Lucky Stewart was the only "manager" who claimed to have seen any potential sublessees, and he only claimed to have seen on one occasion the German or "international" couple. Moreover, the landlord called the on-site property manager, who testified that she is on site about "24/7", and had never seen *any* such sublessees connected to Ms. Sund's unit.

⁸A couchsurfing profile for Cory Hamrich remains available at <https://www.couchsurfing.com/people/coryhamrick> . It indicates Mr. Hamrick has not even logged into his account for about three years; i.e., since around 2016.

changed his testimony, saying that he didn't recall or see any reference to any specific address; that the listings don't typically refer to any specific address. (See Attachment 6, pp. 8–10.) He further testified that he saw no couchsurfing listing pertaining to Ms. Sund. (See Attachment 6, pp. 7–8.) The couchsurfing testimony was also hearsay.

Stewart characterized the August 22nd letter, sent after his claimed "international" couple sighting, as a "warning". (See Exhibit 6, pp. 4, 7.) Stewart went on to explain, "Then when we saw that it [subletting and/or assignment] was still continuing, and it was observed that there were still people coming and going and not the tenant, we resorted to serving the Costa-Hawkins." (See *id.*, p. 4.) Not only were there no documents or declarations or notes (including the landlord's private investigator's reports) to support any subletting (persons "coming and going" from Ms. Sund's unit) after August 22 or at any time, but there were *no firsthand accounts of any person(s) coming and going whatsoever*, other than the "international" couple Mr. Stewart claimed he'd seen. (See Attachments 6–7, inclusive.) The only property manager who testified—the landlord's 24/7 on-site property manager Ursula Morales—stated that *she never saw anyone coming and going from Ms. Sund's unit, either*. (See Attachment 7, p. 7.) Yet, the lack of evidence of anybody coming and going is nowhere cited or acknowledge in the hearing officer's decision.

Also, after initially testifying that she'd been informed of "strangers coming in and out of" Ms. Sund's unit, Ms. Morales later testified that she'd received just one such complaint from a single tenant, in around November or December 2017. (See Attachment 7, inclusive.) The complaining tenant had reported "smoke and noise," apparently attributed to Ms. Sund's unit. (See Attachment *id.*, p. 2.) When Ms. Morales went downstairs to investigate, she found "nothing out of the ordinary" and just some TV noise. (See Attachment *id.*, p. 3.) The purported single-tenant complaint is inadmissible; it's hearsay. Although Morales testified that it was sent to her by email (See Attachment *id.*, p. 5), no email was offered as evidence. And on cross-examination, Morales testified that the complaint was "more about" noise than anything else. (See Attachment 7, p. 5.) Finally, when asked by the hearing officer if it amounted to "just that one complaint over the holidays about the smoke and noise, Ms. Morales replied, "M-hm" (See *id.*, p. 6.). None of these inconsistencies or lapses in the testimony are cited or acknowledged in the hearing officer's decision.

Thus, between the time that the August 22 "warning" letter was purportedly sent and September 6, when the Costa-Hawkins rent increase notice issued, *nothing new had happened—except that, on August 24th, the owner was notified by Ms. Sund that she was pregnant, and that Mr. Hamrick, the baby's father, would be moving in.*

Here it should also be noted that the hearing officer in her decision incorrectly quotes the landlord's responsive letter dated August 28th as stating: "[I]f [you] had made a reasonable and proper request well in advance of the move-in date, instead of unilaterally stating that [your] boyfriend was moving in, the landlord would have been amenable to accommodating [your] request...and...if the [you wish] to revisit this issue down the road in a more appropriate fashion, then management may be more receptive". The letter does not say that. (See Attachment 4.) It says that the landlord is *typically* "amenable" and that "down the road...management *may* be more receptive" [emphasis added]. Hardly reassuring to a soon-to-be new mother expecting a baby in the 4–6 weeks, whose phone calls to further discuss the issue are ignored, and who then receives a rent increase she cannot afford.

/ / /

Returning to Mr. Stewart's testimony, it should be noted that there are surveillance cameras at the property. According to Stewart's testimony, at the time of the hearing there were about five cameras total. (See Attachment 6, p. 18.) These included a camera at the back of the first floor, where Ms. Sund's unit is located, near an emergency exit. (See *ibid.*) Also, there were multiple cameras in front of the building. (See *ibid.*) Mr. Stewart further testified that he never checked any cameras for recordings of the people he'd claimed have keys to Ms. Sund's apartment. (See Attachment 6, pp. 21–21.) When asked why, his incredible answer was, "If I thought it was an important issue, I would have produced the footage." (See *id.*, p. 21.) The hearing officer omits in her decision *any reference to the fact that there were cameras, and to the fact that no footage was produced at all.*

Apart from the hearing officer's misplaced reliance on Mr. Stewart's testimony, she also relied on the testimony Don MacRitchie, the private investigator hired by the owner through counsel. Her summary of this testimony concludes, "MacRitchie opined that a preponderance of the evidence supports a conclusion that Ms. Sund's permanent place of residence is not the

subject property . . . [.]”⁴ (See Hearing Decision (“Decision”), p. 6.)

“Permanent place of residence” in the context of Costa-Hawkins is a legal issue, and an expert is prohibited from testifying as to a legal conclusion. “There are limits to expert testimony, not the least of which is the prohibition against admission of an expert’s opinion on a question of law. This limitation was recognized by this court in *Ferreira v. Workmen’s Comp. Appeals Bd.* (1974) 38 Cal.App.3d 120 [112 Cal. Rptr. 232].” (*Summers v. A.L. Gilbert Co.* (1999) Cal. App. 4th 1155, 1178.) What the hearing officer’s decision failed to cite or even mention is that the *landlord’s expert, MacRitchie—who’d conducted extensive data-base searches in the course of investigating Ms. Sund’s status— testified that he was unable to identify a single individual who’d ever sublet Ms. Sund’s unit. (27: 13-). And he admitted that he knew of no evidence that she was subletting. Therefore, his opinion was Ms. Sund was not subletting.*

After the first day of testimony, MacRitchie was asked to interview four tenants from the subject premises. (The first day of testimony was Friday, May 30th.) He did so. None of them knowledge of any other persons associated with Ms. Sund’s unit, according to his testimony as follows:

MR. KRANZ: DID ANY OF THEM TELL YOU THAT PERSONS OTHER THAN MS. SUND WERE STAYING THERE?

MACRITCHIE: THEY DIDN’T. THEY THOUGHT IT POSSIBLE.

MR. KRANZ: OKAY. AND WHICH PERSONS TOLD YOU THEY THOUGHT IT POSSIBLE?

MACRITCHIE: ALL DIDN’T HAVE DEFINITE KNOWLEDGE, AND THEY ALL WERE AWARE THAT THERE WERE PEOPLE THAT WERE THERE IN THE BUILDING THAT WEREN’T ASSOCIATED WITH APARTMENTS, AND THEY DIDN’T KNOW FOR CERTAIN WHICH APARTMENT THEY WERE ASSOCIATED WITH. SO THEY THOUGHT THEY WERE SOME TYPE OF SUBTENANTS, BUT THEY COULD NOT DEFINITELY ASSOCIATE WITH MS. SUND’S APARTMENT.

⁴This opinion was offered in Mr. MacRitchie’s investigative report on Ms. Sund, rather than during testimony.

MR. KRANZ: AND DID YOU ASK THEM FOR — IF THEY HAD ANY INFORMATION ABOUT THESE ALLEGED SUBTENANTS ?

MACRITCHIE: YES.

MR. KRANZ: AND WHAT DID THEY TELL YOU ?

MACRITCHIE: WHAT I JUST TOLD YOU.

ARGUMENT

I. There Was Not Substantial Evidence To Support the Decision.

Substantial evidence means more than a mere scintilla; it means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. (See *Richardson v. Perales* (1971) 402 U.S. 389, 401; *Gebhart v. SEC*, 595 F.3d 1034, 1043 (9th Cir. 2010); *Howard ex rel. Wolff v. Barnhart* (Howard) (9th Cir. 2003) 341 F. 3d 1006, 1011.) The records as a whole must be considered, weighing both the evidence that supports and the evidence that detracts from the agency's decision. (See *Mayes v. Massanari* (9th Cir. 2001) 276 F.3d 453, 459; see also *Int'l Union of Painter & Allied Trades v. J & R Flooring, Inc.* (9th Cir. 2011) 656 F.3d 860, 865; *Hawaii Stevedores, Inc. v. Ogawa*, (9th Cir. 2010) 608 F.3d 642, 652 ("The ALJ is expected to consider the record as a whole, including all witness testimony and each medical report, before entering findings"). The court must affirm where there is such relevant evidence as reasonable minds might accept as adequate to support a conclusion, even if it is possible to draw contrary conclusions from the evidence. (See *Howard*, 341 F.3d at 1011.)

When the record as a whole is reviewed, reasonable minds cannot find that there was adequate evidence to support the conclusions of the hearing officer. Reasonable minds could not differ as to whether the conclusions drawn by the hearing officer were justified by the evidence, because they were not. The decision was not supported by substantial evidence.

II. The Decision Constitutes An Abuse of Discretion.

An abuse of discretion is a plain error, discretion exercised to an end not justified by the evidence, a judgment that is clearly against the logic and effect of the facts as are found. (*Rabkin v. Oregon Health Sciences Univ.* (9th Cir. 2003) 350 F.3d 967, 977 (citation and internal quotation marks omitted); see also *In re Korean Air Lines Co., Ltd.* (9th Cir. 2011) 642 F.3d 685, 698 n.11.)

Under the abuse of discretion standard, a reviewing court cannot reverse absent a definite and firm conviction that the district court committed a clear error of judgment in the conclusion it reached upon a weighing of relevant factors. (See *McCullough v. Johnson, Rodenburg & Lauinger, LLC* (9th Cir. 2011) 637 F.3d 939, 953; *Valdivia v. Schwarzenegger* (9th Cir. 2010) 599 F.3d 984, 988 (citing *SEC v. Coldicutt* (9th Cir. 2001) 258 F.3d 939, 941.

The hearing officer's exercise of discretion reflects judgement that was clearly against the logic and effect of the facts. Her selective use of evidence, mischaracterization and misstatement of other of evidence, and patent lack of objectivity, as evinced in her decision, demonstrates a judgement inconsistent with logic and the facts. She consistently relies on evidence that was inadmissible, while at the same entirely ignoring other evidence (much of which was submitted by the Respondent).

The decision thus reflects an abuse of discretion, all of which in Respondent's favor, and demonstrates a lack of objectivity and a prejudice towards Petitioner.

III. In Disregard of the Evidence, the Hearing Officer Arrived at the Unwarranted Conclusion, "The Petitioner's Testimony that She Temporarily Moved from the Alma Street Address to the California Street Address in October of 2017, After Her Request to Have Her Boyfriend Move Into Her Unit Was Denied, is Simply Not Credible"

This conclusion was at best misguided, as was her ancillary conclusion, "It is implausible that the petitioner's boyfriend, Cory Hamrick, would leave his two-bedroom house, that he owns and claims a homestead exemption for, to move into the Ms. Sund's one-bedroom apartment." (See Decision (Statement of Facts and Conclusions) at p. 7.)

Ms. Sund testified that she and her boyfriend had been together just two years; that were not married and that she did not know if the relationship would be permanent. (KR note 36.) For these reasons, she was not certain about where she would continue to live. She also testified that her baby was born with and still suffered from a serious, even potentially life-threatening condition that required around-the-clock monitoring, a circumstance that required her to live with her boyfriend.

This evidence was, further, undisputed.

The phenomena of single women choosing to have children is commonplace in our society, and hardly novel. This is reflected in the fact that it is now illegal to discriminate based

on familial status. In addition, the phenomena of children splitting their time between parents who live in different locations is ubiquitous in our society. Therefore, the hearing officer's above conclusions are unsupported by evidence, tone-deaf to contemporary realities, and inconsistent with the evidence that was submitted. Each was altogether unwarranted.

IV. Under CACI No. 203, The "Evidence" Respondent's Submitted and Cited in the Decision the Decision Deserved To Be Viewed With Distrust and Rejected.

CACI No. 203, entitled *Party Having Power to Produce Better Evidence*, provides as follows:

You may consider the ability of each party to provide evidence. If a party provided weaker evidence when it could have provided stronger evidence, you may distrust the weaker evidence.

Examples of Respondent's failure to provide stronger evidence when it could have or ostensibly could have produced stronger evidences are numerous and have been recounted above. They include Respondent's failure to produce employees claimed to have relevant information, and failure to produce declarations, documents, video footage, etc.. Indeed, testimony from Respondent's own witnesses was sufficient to defeat, and should have defeated, its claims. Respondent called three witnesses. Each offered significant evidence contradicting or inconsistent with Respondent's claims.

Its asset manager testified that the siting of the "international" couple was *not* itself the cause of the rent increase.

Respondent's 24/7 on-site property manager testified that she never saw a possible a sublessee and in effect had no evidence that Respondent ever sublet. And Respondent's private investigator, who Respondent and the hearing officer insisted was an expert, found no evidence of subletting.

Also, Respondent offered no explanation for why it never responded the emails and phone calls Ms. Sund made to discuss her boyfriend and their baby staying in her unit. Moreover, Respondent never explained why its August 28th letter stated that it would be "amenable" to considering Ms. Sund's request when it allegedly already believed and was allegedly already investigating—and had received information that—Ms. Sund was subletting in

violation of her lease. Either the August 28th letter was disingenuous, or the landlord did not believe that Petitioner was subletting—if not *both*.

Ms. Sund testified on the first day of the hearing that she never received an August 22nd letter warning her about subletting. The letter was anonymously signed, "The Management." And why didn't Stewart, who said he wrote the letter, testify that *he* posted and mailed it? (KR note 48.) Also, given the weight Respondent places on that letter, why didn't its private investigator interview Mr. Stewart about the details it contained? Why wasn't a declaration from Mr. Stewart presented, at least by the second day of the hearing, five days later?

V. The Residential Rental Adjustment Program and Appeals Board Are Authorized Under Costa-Hawkins to Regulate or Monitor the Grounds for Eviction.

In August 1995, California enacted Civil Code sections 1954.50 through 1954.535, the Costa-Hawkins Rental Housing Act (Costa-Hawkins), which established "what is known among landlord-tenant specialists as 'vacancy decontrol,' declaring that '[n]otwithstanding any other provision of law,' all residential landlords may, except in specified situations, 'establish the initial rental rate for a dwelling or unit.'" (*DeZerega v. Meggs* (2000) 83 Cal. App. 4th 28, 41, 99 Cal. Rptr. 2d 366; see Civ.Code § 1954.53, subd. (a).) The effect of this provision was to permit landlords "to impose whatever rent they choose at the commencement of a tenancy." (*Cobb v. San Francisco Residential Rent Stabilization and Arbitration Bd.* (2002) 98 Cal.App.4th 345, 351, 119 Cal. Rptr. 2d 741.) However, the Legislature was well aware, however, that such vacancy decontrol gave landlords an incentive to evict tenants that were paying rents below market rates. (*Bullard v. San Francisco Residential Rent Stabilization Bd.* (2003) 106 Cal. App. 4th 488, 492, 130 Cal. Rptr. 2d 819). Accordingly, the Costa Hawkins statute expressly preserved the authority of local governments "to regulate or monitor the grounds for eviction." (Civ.Code § 1954.53, subd. (e).)

A. The Evidence Establishes a Case of Constructive Eviction.

The evidence here establishes a constructive eviction of Ms. Sund because the rent increase Respondent sought meant that Ms. Sund would no longer be able to reside in her unit. She testified she cannot afford a more than doubling of her rent. The rent board cannot meaningfully monitor or regulate the grounds of this eviction without examining the reasons for

it. Petitioner contends that the reason was her request that her boyfriend and baby's father, and later their child, be able to reside in her unit.

Ms. Sund had a right to have the father of her expected child and their daughter move in with her. This right accrued when she notified the landlord of as much. It was improper and offensive for the landlord to insist that Ms. Sund had to wait to "revisit this issue down the road," and it violated her rights. Further, her immediate subsequent phone calls to do just that were ignored by the landlord, until the landlord served her with the Notice of Change of Terms-Rent Increase.

It is illegal to discriminate in housing based on pregnancy or family status, under both state (FEHA, DFEH) and federal (FHA, HUD) law and agency regulations. The landlord cannot impose conditions on Petitioner's exercise of that right. That Respondent ignored the phone calls Petitioner made in an effort to exercise that right was unreasonable—especially after it had stated that it would consider her request, i.e., that it would "revisit this issue". The landlord never responded except by way of a notice of rent increase. This was despite the fact that it had already independently verified that Petitioner was pregnant and who the father was. (KR note 53.) Respondent never asked for any additional information. This evidence establishes an attempted illegal eviction.

B. The Evidence Establishes a Case of Retaliation.

It was within days of Petitioner's request that the Respondent served her with a notice of rent increase. That this occurred within days after Petitioner sought to exercise certain rights provided to her by law. This is undeniable. The *only* response or communication Petitioner *ever* received after seeking to exercise these rights was the notice of rent increase. This was retaliation. Therefore, the rent increase being sought is impermissible.

C. The City of Oakland's Prohibition Against Discrimination and Harassment, as Embodied in OMC Chapter 8.22, Provided the Hearing Officer With the Authority to Consider the Evident Discrimination and Harassment in This Case.

The laws of the State of California and the Housing Element of the General Plan of the City of Oakland prohibit arbitrary discrimination by landlords." (OMC § 8.22.300.) Basic fairness requires that a landlord must not terminate the tenancy of a residential tenant without

good, just, non-arbitrary, non-discriminatory reasons. (*Ibid.*) The rising market demand for rental housing in Oakland creates an incentive for some landlords to engage in harassing behavior, including:

[R]epeated acts or omissions of such significance as to substantially interfere with or disturb the comfort, repose, peace or quiet of any person lawfully entitled to occupancy of such dwelling unit and that cause, are likely to cause, or are intended to cause any person lawfully entitled to occupancy of a dwelling unit to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy

(See OMC § 8.22.610E, .8.22.640A(15).)

In other short, the purposes of Chapter 8.22 plainly include preventing discrimination and harassment. It is *impossible* to fulfill these purposes without considering evidence of either discrimination or of harassment when there is such evidence. Yet, the hearing officer made it clear during the initial May 30 hearing in this matter that she would not consider evidence of discrimination. Petitioner did not seek to have this evidence considered for the purpose of monetary damages or other affirmative relief. It was offered as a defense to the respondent's attempt to increase her rent [and to thereby effectively evict her]. The hearing officer's refusal to consider this evidence was error.

VII. Petitioner's Unit Is Not Exempt Under Costa Hawkins Since the Vacancy De-Control is Inapplicable Here.

The effect of section 1954.53, subdivision (a)⁵ of Costa-Hawkins is to permit landlords "to impose whatever rent they choose at the commencement of a tenancy." (See *Cobb v. San Francisco Residential Rent Stabilization and Arbitration Bd.* (2002) 98 Cal. App. 4th 345, 351.) Section 1954.53, subdivision (d)(2) further provides,

⁵Subdivision (a) in relevant part provides that an owner of residential real property may establish the initial rental rate for a dwelling or unit.

If the original occupant or occupants who took possession of the dwelling or unit pursuant to the rental agreement with the owner no longer permanently reside there, an owner may increase the rent by any amount allowed by this section to a lawful sublessee or assignee [emphasis added].

That Ms. Sund is the original occupant in lawful possession of the subject unit is in uncontested. There is no claim that at any time she notified the owner any intent to vacate or terminate her tenancy.⁶ The dispute here revolves whether or not Ms. Sund has continued to permanently reside in her unit.

The word "permanently" is undefined in Costa-Hawkins *except* with reference to subletting and assignment. (See *ibid*; see also §1954.51.) Yet, implicit in the statutory language is that a rent increase is unwarranted absent the creation of a new tenancy. (See § 1954.53 subd. (a) & (d)(2).)

Here, there was no new tenancy: Contrary to the owner's theory of this case and the hearing officer's decision, there is no substantial or admissible evidence that Ms. Sund sublet or assigned the unit at any time since the inception of her tenancy in July, 2008. For the above reasons, subdivision (d)(2) is inapplicable.

Submitted 1/24/19

Paul Kranz
Paul Kranz,
Esq

⁶ Indeed, as she testified on May 30th and as was earlier stated, she continues to retain personal possessions at 633 Alma Street, receive certain items of mail there, use the shower, occasionally eat, take care of her plants, and so forth.

Attachment 1



Unread

Update

1 message

[Redacted]

Fri, Aug 24, 2017 at 10:10 AM

[Redacted]@gmail.com

August 24, 2017

Jessica Sund
633 Aliso Ave #9
Costa Mesa, CA 92626
jessica@jessicasund.com

Thomas Preston, Property Supervisor
Janae Apartments LP
633 Aliso Ave
Costa Mesa, CA 92626
(714) 775-1007
t.preston@janaproperties.com

Dear Mr. Preston,

Please accept this email as written notice that my apartment unit will be moving into my apartment at 633 Aliso Ave #9, Costa Mesa, CA 92626 this weekend, on August 25th or 26th, 2017. Also, I am pregnant and my baby is expected in October 2017. I am sending this one to you because I do not have a mailing address for you.

Thank you

Sincerely,
Jessica Sund

8/24/17 T. Preston sent email (above) No reply

8/28/17 T. Preston left message re: did you receive email sent 8/24/17? No reply

8/29/17 T. Preston left message re: " No reply

Attachment 2

000161

Alma Apartments LP

633 Alma
Oakland, CA

Jessica Sund
633 Alma # 5
Oakland, Ca

August 26, 2017

RE: 633 Alma #5 demand.

Dear Ms. Sund:

Thank you for your email and voicemail.

The fundamental problem with your "request" is that it has been couched as a demand. As you know, the operative lease has a "no subletting/no assignment" clause and a "use/occupancy" provision. Nevertheless, this landlord is typically amenable to accommodate tenants who, in good faith, approach the landlord with a particular need which may justify a relaxation or a suspension of a lease covenant. However, you did everything but make a reasonable and proper request. Rather, instead of making a request well in advance of the requested move-in date, and thereafter providing necessary information and documentation to management, you unilaterally stated that you, as the tenant, will be moving in the next day.

Please be advised that if he does move in, or has already moved in, your lease and tenancy will be terminated for unlawful subletting. If you would like to resolve this issue down the road to a more appropriate request, then management may be more receptive. Additionally, however, the "no subletting" clause in the lease will not be waived and shall be strictly enforced.

This is written confirmation that your request has been denied. Should you have any further questions, please review the lease in which you signed and abide by it in its entirety.

Sincerely,



Thomas Preston

Property Supervisor

000162

ENGLAND 04 016

07 SEP 2017 01:11

Jessica Mayja Sund
All-time Champion
683 Alameda Street
Oakland, CA 94610

000163

Attachment 3

THIS NOTICE TO CHANGE TERMS OF TENANCY HEREBY SUPERSEDES AND REPLACES ANY OTHER NOTICE TO CHANGE TERMS OF TENANCY AND/OR ANY OTHER RENT INCREASE NOTICE(S) PREVIOUSLY SERVED UPON YOU.

NOTICE TO CHANGE TERMS OF TENANCY
-RENT INCREASE NOTICE-

To **Jessica Maggie Sund (original occupant), AND ALL SUBTENANTS IN POSSESSION, name(s) unknown**, as well as any other occupant(s) claiming the right to possession of the following residential rental premises:

633 Alma Street, Unit Number 5
City of Oakland, County of Alameda, State of California 94610
--including all associated housing privileges-- (the "Premises")

You are hereby notified that, effective **December 1, 2017**, not less than sixty (60) days after service of this notice is completed upon you, the terms of your tenancy of the Premises will be changed as follows:

The monthly rental thereof will be changed from \$908.67 per month to two thousand ninety five dollars (\$2,095) per month, payable in the advance of the first day each and every month you continue to hold possession of the Premises.

All other terms of the tenancy will remain unchanged.

You are further notified that a negative credit report reflecting on your credit history may be submitted to a credit-reporting agency if you fail to fulfill the terms of your credit obligations.

You are hereby notified that, pursuant to California Civil Code Section 1954.50, *et seq.* (Costa-Hawkins Rental Housing Act), the Premises and/or your tenancy therein are not subject to the City of Oakland's Rent Adjustment Program (Chapter 8.22 of the Oakland Municipal Code) for purposes of this rent increase. The landlord and owner of the Premises contends that the last original occupant, Jessica Maggie Sund, no longer permanently resides at the Premises, and that all current occupants are subsequent occupants and sublessees who commenced occupancy of the Premises on or after January 1, 1996.

Pursuant to the Costa-Hawkins Rental Housing Act (Civil Code Sections 1954.50, et seq.), please note as follows:

Conditions for Establishing the Initial Rental Rate Upon Sublet or Assignment:

(A) Where the original occupant or occupants who took possession of the dwelling or unit pursuant to the rental agreement with the owner no longer permanently reside there, an owner

Costa-Hawkins Rent Increase for 633 Alma Street, Unit Number 5, Oakland, CA

may increase the rent by any amount allowed by this section to a lawful sublessee or assignee who did not reside at the dwelling or unit prior to January 1, 1996. However, such a rent increase shall not be permitted while:

(i) The dwelling or unit has been cited in an inspection report by the appropriate governmental agency as containing serious health, safety, fire, or building code violations, as defined by Section 17920.3 of the California Health and Safety Code, excluding any violation caused by a disaster; and,

(ii) The citation was issued at least 60 days prior to the date of the vacancy; and,

(iii) The cited violation had not been abated when the prior tenant vacated and had remained unabated for 60 days or for a longer period of time. However, the 60-day time period may be extended by the appropriate governmental agency that issued the citation.

(B) This provision shall not apply to partial changes in occupancy of a dwelling or unit where one or more of the occupants of the premises, pursuant to the agreement with the owner, remains an occupant in lawful possession of the dwelling or unit, or where a lawful sublessee or assignee who resided at the dwelling or unit prior to January 1, 1996, remains in possession of the dwelling or unit.

(C) Acceptance of rent by the owner shall not operate as a waiver or otherwise prevent enforcement of a covenant prohibiting sublease or assignment or as a waiver of an owner's rights to establish the initial rental rate unless the owner has received written notice from the tenant that is party to the agreement and thereafter accepted rent.

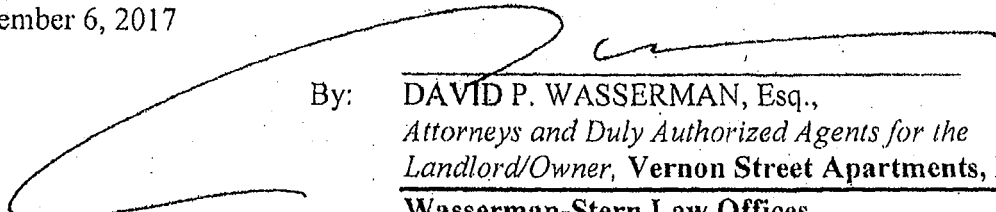
Information regarding this NOTICE may be obtained from the City of Oakland's Rent Adjustment Program. Parties seeking legal advice concerning evictions should consult with an attorney. The Rent Program is located at 250 Frank H. Ogawa Plaza, Suite 5313, Oakland, California 94612, 510.238.3721, website: www.oaklandnet.com. Please refer to the attached City of Oakland Rent Adjustment Program *Notice to Tenants of Residential Rent Adjustment Program*.

Rent increases imposed pursuant to the Costa-Hawkins Rental Housing Act are effective upon the expiration of the notice period prescribed by California Civil Code section 827 and are not governed by the Rent Adjustment Program.

Questions about this NOTICE may be directed to the undersigned, who is the agent for the landlord and owner.

Dated: September 6, 2017

WASSERMAN-STERN

By:  **DAVID P. WASSERMAN, Esq.,**
*Attorneys and Duly Authorized Agents for the
Landlord/Owner, Vernon Street Apartments, LP*

Wasserman-Stern Law Offices

2960 Van Ness Avenue

San Francisco, CA 94109

Tel. No.: (415) 567-9600

Fax. No.: (415) 567-9696

Email: dwasserman@wassermanstern.com

CITY OF OAKLAND



P.O. BOX 70243, OAKLAND, CA 94612-2043
Department of Housing and Community Development
Rent Adjustment Program

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

NOTICE TO TENANTS OF THE RESIDENTIAL RENT ADJUSTMENT PROGRAM

- Oakland has a Rent Adjustment Program ("RAP") that limits rent increases (Chapter 8.22 of the Oakland Municipal Code) and covers most residential rental units built before 1983. For more information on which units are covered, contact the RAP office.
- Starting on February 1, 2017, an owner must petition the RAP for any rent increase that is more than the annual general rent increase ("CPI increase") or allowed "banked" rent increases. These include capital improvements and operating expense increases. For these types of rent increases, the owner may raise your rent only after a hearing officer has approved the increase. No annual rent increase may exceed 10%. You have a right to contest the proposed rent increase by responding to the owner's petition. You do not have to file your own petition.
- **Contesting a Rent Increase:** You can file a petition with the RAP to contest unlawful rent increases or decreased housing services. To contest a rent increase, you must file a petition (1) within ninety (90) days of the notice of rent increase if the owner also provided this Notice to Tenants with the notice of rent increase; or (2) within 120 days of the notice of rent increase if this Notice to Tenants was not given with the notice of rent increase. If the owner did not give this Notice to Tenants at the beginning of your tenancy, you must file a petition within ninety (90) days of first receiving this Notice to Tenants. Information and the petition forms are available from the RAP drop-in office at the Housing Assistance Center: 250 Frank H. Ogawa Plaza, 6th Floor, Oakland and at: <http://www2.oaklandnet.com/Government/o/hcd/o/RentAdjustment>.
- If you contest a rent increase, you must pay your rent with the contested increase until you file a petition. If the increase is approved and you did not pay the increase, you will owe the amount of the increase retroactive to the effective date of increase.
- Oakland has eviction controls (the Just Cause for Eviction Ordinance and Regulations, O.M.C. 8.22) which limit the grounds for evictions in covered units. For more information contact the RAP office.
- Oakland charges owners a Rent Program Service Fee per unit per year. If the fee is paid on time, the owner is entitled to get half of the fee from you. Tenants in subsidized units are not required to pay the tenant portion of the fee.
- Oakland has a Tenant Protection Ordinance ("TPO") to deter harassing behaviors by landlords and to give tenants legal recourse in instances where they are subjected to harassing behavior by landlords (O.M.C. 8.22.600). (City Council Ordinance No. 13265 C.M.S.)
- The owner ___ is ___ is not permitted to set the initial rent on this unit without limitations (such as pursuant to the Costa-Hawkins Act). If the owner is not permitted to set the initial rent without limitation, the rent in effect when the prior tenant vacated was _____.

TENANTS' SMOKING POLICY DISCLOSURE

- Smoking (circle one) IS or IS NOT permitted in Unit _____, the unit you intend to rent.
- Smoking (circle one) IS or IS NOT permitted in other units of your building. (If both smoking and non-smoking units exist in tenant's building, attach a list of units in which smoking is permitted.)
- There (circle one) IS or IS NOT a designated outdoor smoking area. It is located at _____.

I received a copy of this notice on _____
(Date) (Tenant's signature)

此份屋崙(奧克蘭)市租客權利通知書附有中文版本。請致電(510) 238-3721 索取副本。
La Notificación del Derecho del Inquilino está disponible en español. Si desea una copia, llame al (510) 238-3721.

DAVID P. WASSERMAN, ESQ. (171923)
WASSERMAN-STERN LAW OFFICES
2960 Van Ness Avenue, Suite B
San Francisco, California 94109

(415) 567-9600

Attorneys for: 633 ALMA STREET
Insert name of court, judicial district and branch court, if any:

Ref. No. Or File No.
W2683460

Plaintiff:
633 ALMA STREET

Defendant:
JESSICA MAGGIE SUND (original occupant)

POS BY MAIL

Hearing Date:

Time:

Dept/Div:

Case Number:

At the time of service I was at least 18 years of age and not a party to this action.
On September 6, 2017, I served the within:

NOTICE TO CHANGE TERMS OF TENANCY - RENT INCREASE NOTICE; NOTICE TO TENANTS OF THE RESIDENTIAL RENT ADJUSTMENT PROGRAM

on the defendant in the within action by placing a true copy in a sealed envelope with postage fully prepaid for first class in the United States mail at San Francisco, California, addressed as follows:

JESSICA MAGGIE SUND (original occupant); ANY/ALL UNNAMED OCCUPANTS
633 Alma Avenue, Unit 5
Oakland, CA 94610

Person serving:
Scott Lane
Wheels of Justice, Inc.
52 Second Street, Third Floor
San Francisco, California 94105
Phone: (415) 546-6000

a. Fee for service:
d. Registered California Process Server
(1) Employee or independent contractor
(2) Registration No.: 1126
(3) County: San Francisco

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

Date: September 6, 2017

Signature: _____
Scott Lane



Attachment 4

Alma Apartments
633 Alma
Oakland, CA 94610

August 22, 2017

Jessica Sund
633 Alma Apt. 5
Oakland, CA 94610

Dear Jessica Sund,

In the short time that we have taken over the management and ownership of the building, our managers have noticed and received complaints regarding an overabundance of visitors coming and going from unit 5. These visitors seem to be coming and going freely, yet you are not around. What is also troubling is that some of these visitors are disturbing your neighbors and this is their home.

Your neighbors and your landlord require cooperation and respect. This lease is in your name only. Your lease does not allow for subletting of the premise.

Please review section 11. USE/OCCUPANCY and SUBLETTING in your lease as we believe this is in violation of the days.

Thank you in advance
Sincerely yours,

Management

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PROOF OF SERVICE
Case Number T18-0018

I, the undersigned, certify and attest as follows:

I am over the age of eighteen years and am not a party to the cause within. My business address is 639 San Gabriel Avenue, Albany, California 94706.

On January 24, 2019, I caused the within:

RESIDENTIAL RENT ADJUSTMENT PROGRAM—
PETITIONER JESSICA SUND'S BRIEF IN SUPPORT OF APPEAL;
ATTACHMENTS TO APPEAL

to be served by first class mail, postage prepaid, on Respondent's representatives. addressed as follows:

c/o Russell B. Flynn
Vernon Street Apartments, LP, aka Flynn Family Holdings, LLC
1717 Powell Street # 300
San Francisco, California 94133

Gregory McConnell
The McConnell Group
300 Frank Ogawa Plaza Suite # 460
Oakland, California 94607

Executed in Albany in the County of Alameda, California, on January 24, 2019.

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

Gloria Reynolds

Gloria Reynolds

000171

CITY OF OAKLAND RENT ADJUSTMENT PROGRAM

**Notice Of Errata and Amended Submission In Support
Of Appeal of Hearing Officer's Decision**

CASE NO. T18-0018

JESSICA SUND,
Petitioner and Tenant

v.

**VERNON STREET APARTMENTS, LP, AKA FLYNN FAMILY HOLDINGS,
LLC.,**
Owner and Respondent.

LAW OFFICES OF PAUL L. KRANZ
PAUL L. KRANZ (BAR NO. 114999)
639 SAN GABRIEL AVENUE
ALBANY CA 94706
(510) 549-5900
kranzlaw@sbcglobal.net

ATTORNEYS FOR PETITIONER
JESSICA SUND

RECEIVED
CITY OF OAKLAND
RENT ARBITRATION PROGRAM
2019 JAN 29 AM 11:25

000172

NOTICE OF ERRATA

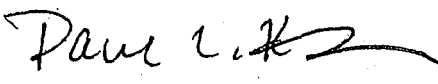
Petitioner submits this Notice of Errata and the attached amended submission in support of her appeal in case no. T18-0018. The attached submission is substantially the same as her submission filed on January 24, 2019, and primarily differs from the submission filed on January 24, 2019 by containing certain format changes, correction of typographical errors, and the inclusion of certain limited additional portions of the testimony at the subject hearing.

For the following reasons, Petitioner also asserts that this submission should be considered and that it should not be considered late. First, as stated in and evidenced by Petitioner's previous filings, the hearing officer's decision was not served by mail until December 26, 2018, as evidenced by the postmarks on the envelopes in which the hearing officer's decision was mailed and received by both Petitioner and her attorney. An appellant is permitted 35 days from the date of mail service to file a notice of appeal and any submissions in support of the appeal (20 days to file the notice of appeal and 15 days thereafter to file submissions). Thirty five days from the date the decision was mailed is January 30, 2019.

Therefore, this submission should be considered timely. Second, Petitioner's attorney Paul L. Kranz has been out of his office and out of state because of the recent very serious illness of an immediate family member. For this reason, he was out of his office, from December 21, 2018 to January 6, 2019 and again from January 21, 2019 to January 25, 2019. Therefore, Petitioner's attorney's very limited availability during this period when the appeal had to be prepared and finalized constitutes good cause to permit this amended submission.

Dated: January 28, 2019

Respectfully submitted,

By: 
Paul L. Kranz

000173

Petitioner Jessica Sund appeals from the decision of Hearing Officer Maimoona Sah Ahmad. Petitioner notes for the record that her petition was filed on November 29, 2018. The hearing commenced six months later, on May 30, 2018, and concluded on June 4, 2018. The decision did not issue for more than six months, on December 20, 2018. According to the proof of service attached to it, it was mailed on December 20, 2018, but the envelopes in which it was contained were postmarked December 26, 2018.

Petitioner also notes for the record that the attachments hereto (other than the attachments which are excerpts from the witnesses' testimony on May 30th and June 4th, 2018) were submitted at the hearing, either by her counsel or Respondent's counsel or both, but have been renumbered for expediency's sake. As for witnesses' testimony, they are marked according to where each excerpt begins and ends in the audio recordings of each day of testimony.

INTRODUCTION

Petitioner Jessica Sund brought the petition because, within days of notifying her landlord that she was pregnant and that her boyfriend and father of her child would begin to stay with her in her apartment, her landlord served her with notice that her rent was being more than doubled. Unable to pay the increased rent, and after consulting with an attorney, she filed this petition and then began to stay in her boyfriend's residence.

Because Ms. Sund's newborn daughter had serious health conditions requiring 24-hour monitoring, it was necessary for her and the baby's father's to live together; moreover, the necessity for monitoring was ongoing. It was absolutely unreasonable for Ms. Sund to consider residing in her apartment under these conditions. Ms. Sund testified on the first day of the hearing that she did and does not know whether the relationship with her daughter's father would be permanent. For this reason, staying with at her boyfriend's home with their child has been intended as "temporary".

The landlord did not present any evidence to contradict these facts. Instead, the landlord contrived the story that Ms. Sund was residing with her boyfriend because she was subletting her unit in order to take advantage of its below-market rent and make a profit. But the landlord did not present an iota of credible and competent evidence to support its claim. With the exception

Of a single claimed sighting by the landlord's "asset manager"—who claimed he once saw a tall, blonde couple speaking German exiting her unit with a luggage—the landlord had no other evidence to support subletting. Indeed, the hearing officer's decision relies heavily on this purported sighting by the asset manager, Lucky Stewart. But Mr. Stewart also testified that this alleged one-time sighting was not the cause of the attempted rent increase. He said it was later sightings, observed by property managers, but who he never identified, and by certain tenants, none of whom testified at the hearing. Nonetheless, the tenants reported nobody coming and going from Ms. Sund's unit, according to testimony of the landlord's private investigator, based on having interviewed them. And the only property manager who did testify—the landlord's own 24/7 on site property manager—stated that she *never* saw any other persons using Ms. Sund's unit and knew of no evidence of subletting. Finally, the private investigator, who the landlord (and the hearing officer) characterized as a qualified "expert" on such matters, opined that Ms. Sund was *not* subletting; i.e., that there was not evidence to support his client's contention.

In light of the evidence, that the hearing officer could find that Ms. Sund's pregnancy, and her request for her baby and her baby's father to be able to stay in her unit, was "merely a ruse to allow her to continue renting¹ out her unit to short-term rentals for her own financial advantage," is simply incredulous..

STATEMENT OF FACTS

Jessica Sund is a 41-year old single woman. She has lived at the subject premises, 663 Alma Street #5, since 2008. She has worked as an elementary and middle school science teacher, and is currently earning a graduate degree in water resource management. On Friday, August 24, 2017, she notified her landlord by written email that she was expecting a baby in October and that her boyfriend and father of her expected newborn, as well as the newborn, would be staying in her unit. (See Attachment 1; Attachment 5 at 1.) In a letter dated August 28, 2017, which Ms. Sund actually received about a week later (it was postmarked September 7), property manager Thomas Preston rejected her request because it had been "couched as a "demand". (See

¹The landlord's "asset manager", Lucky Stewart, testified that the [alleged] subletting stopped shortly after Ms. Sund received the rent increase notice in early September, 2017

Attachment 2.) Per Mr. Preston, any request had to be made “well in advance of the requested move-in date, and thereafter providing necessary information and documentation to management.” (*Ibid.*) On the same day Ms. Sund made her request, and on the following day, August 29, 2017, Ms. Sund called Preston three times to further discuss her request. (See Attachment 5 at 1–2; Attachment 1.) Neither Preston nor anyone else responded on behalf of the landlord; Preston did not return her phone messages; and, he did not respond by email or by letter. (See *ibid.*) Instead, the very next communication Ms. Sund received from the landlord was on or about September 6, 2017, when the landlord personally served Ms. Sund with a Notice of Change Terms of Tenancy-Rent Increase Notice [Costa-Hawkins], increasing her rent from \$908.67 to \$2,095, and stating that “Jessica Maggie Sund no longer resides at the Premises and that all current occupants are subsequent occupants and subleases” (See Attachment 3; Attachment 5 at 3.) In fact, there were no other current or subsequent occupants and subleases at the subject premises and Ms. Sund still resided there by herself (See Attachment 5 at 2.)

Ms. Sund’s reaction to the rent increase was “fear” because she could not afford more than twice the rent and was about to have a baby. (See Attachment 5 at 4.) Around that time, she began staying with her boyfriend. (See Attachment 5 at 7, 11–12.) She believed that if she continued to stay at the subject premises, including with her boyfriend and then her baby, she would have to pay the increased rent, and she needed the support of her boyfriend, the father of her expected newborn. (See Attachment 5 at 4, 6, 7.) Ms. Sund was 41 years old and this was going to be her first child. She retained counsel and the subject petition was filed.

Ms. Sund also continued to stay with her boyfriend after the baby was born because of medical issues the baby suffered that required 24-hour monitoring. (See Attachment 5 at 4–6.) These were serious medical problems; potentially life-threatening for her newborn daughter. (See *id.* at 6.)

The Hearing Officer’s Decision and Findings

The hearing officer’s decision relies on testimony from the landlord’s “asset manager” Lucky Stewart stating that the subject property was acquired by his employer in June 2017; that shortly thereafter, he received reports from tenants that Ms. Sund was subletting and that there

were strangers with keys to her unit and that Ms. Sund was no longer there²; that he personally observed a tall blond couple with luggage coming out of the unit speaking a foreign language, who ignored him when he tried to speak to them³; and that, based on this information, he had attorney conduct an investigation involving LexisNexis, which identified a second address (the California Street address) "linked to" Ms. Sund and which prompted his attorney to say, "Yeah, she's no longer living there."⁴ He also testified this led him to conduct an internet search in which he located a baby registry connected to Ms. Sund and her boyfriend, Cory Hamrich⁵; and that he also located on-line "couchsurfing[.com]" listings "from them renting out apartments in, under her or Cory's name."⁶ And that, based on this information, he issued a letter dated August 22, 2017, warning Ms. Sund not to sublet.

The August 22 warning letter, signed "The Management," stated that property managers had noticed and received complaints of an "overwhelming amount of random visitors coming and going from [her] unit, and with keys to the unit." (See Attachment 4.) Ms. Sund testified that she never received the letter. (See Attachment 5 at 10.) With the exception of Lucky Stewart's testimony that he had personally observed what he believed to be an "international" couple (tall, blonder, speaking a foreign language), nothing else he testified to was supported by admissible evidence. There was no evidence of any internet search conducted by him or by the landlord's attorney; no evidence of "managers" noticing any suspected sublessees⁷; no evidence of an "overwhelming amount of random visitors." (See Attachments 6-8, inclusive.) As for the

²See Attachment 6 at 1-2

³See Attachment 6 at 2, 15

⁴See Attachment 6 at 2-3

⁵See Attachment 6 at 3, 24,

⁶See Attachment 6 at 3; see also *id.* at 10-11, 7-8

⁷Lucky Stewart was the only "manager" who claimed to have seen any potential sublessees, and he only claimed to have seen on one occasion the German or "international" couple. Moreover, the landlord called the on-site property manager, who testified that she is on site about "24/7", and had never seen *any* such sublessees connected to Ms. Sund's unit.

"couchsurfing"⁸ posts (unsupported by any evidence), Stewart later changed his testimony, saying that he didn't recall or see any reference to any specific address. (See Attachment 6 at 9–10.) He also changed his testimony and said that he did not couchsurfing listing pertaining to Ms. Sund. (See Attachment 6 at 7–8.) The couchsurfing testimony was also hearsay.

Stewart characterized the August 22nd letter, sent after his claimed "international" couple sighting, as a "warning". (See Attachment 6 at 4, 7.) Stewart went on to explain, "Then when we saw that it [subletting] was still continuing, and it was observed that there were still people coming and going and not the tenant, we resorted to serving the Costa-Hawkins [rent increase]." (See *id.* at 4.) Not only were there no documents or declarations or notes to support *any* subletting (persons "coming and going" from Ms. Sund's unit) after August 22 or at *any* time, but there were *no firsthand accounts whatsoever of any person(s) coming and going*, other than the "international" couple Mr. Stewart claimed he'd seen. (See Attachments 6–8.) The only property manager who testified—the landlord's 24/7 on-site property manager Ursula Morales—stated that *she never saw anyone coming and going from Ms. Sund's unit, either.* (See Attachment 7 at 7.) Yet, the lack of evidence of anybody coming and going is nowhere cited or acknowledge in the hearing officer's decision.

Also, after initially testifying that she'd been informed of "strangers coming in and out of" Ms. Sund's unit, Ms. Morales later testified that she'd received just *one* such complaint from a single tenant, in around November or December 2017. (See Attachment 7, inclusive.) The complaining tenant had reported "smoke and noise," apparently attributed to Ms. Sund's unit. (See *id.* at 2.) When Ms. Morales went downstairs to investigate, she found "nothing out of the ordinary" and just some TV noise. (See Attachment *id* at 3.) The purported complaint was also inadmissible; plainly hearsay. Although Morales testified that this complaint was sent to her by email (See *id* at p. 5), no email was offered as evidence. And on cross-examination, Morales testified that the complaint was "more about" noise than anything else. (See Attachment 7 at 6.) Finally, when asked by the hearing officer if the extent of the complaint was limited to smoke

⁸A couchsurfing profile for Cory Hamrick remains available at <https://www.couchsurfing.com/people/coryhamrick>. It indicates Mr. Hamrick has not even logged into his account for about three years; i.e., since around 2016.

and noise, Ms. Morales replied, "M-hm" (See *id.* at 7.). However, none of these obvious inconsistencies or lapses in testimony are cited or acknowledged in the hearing officer's decision.

Thus, the evidence demonstrated that between the time that the August 22 "warning" letter was purportedly sent and September 6, when the Costa-Hawkins rent increase notice issued, *nothing new had happened—except that, on August 24th, the owner was notified by Ms. Sund that she was pregnant, and that Mr. Hamrick, the baby's father, would be moving in.*

It should also be noted that the decision incorrectly quotes the landlord's responsive letter dated August 28th as stating that the landlord was agreeable to Ms. Sund's boyfriend and then later their child staying in Ms. Sund's unit: The decision quotes from the letter as follows "[I]f [you] had made a reasonable and proper request well in advance of the move-in date, instead of unilaterally stating that [your] boyfriend was moving in, the landlord *would have been* amendable to accommodating [your] request...and...if the [you wish] to revisit this issue down the road in a more appropriate fashion, then management may be more receptive". (Emphasis added.) The letter does not say that. (See Attachment 4.) It says that the landlord is *typically* "amenable" and that "down the road...management *may be* more receptive" [emphasis added]. Hardly reassuring to a soon-to-be new mother expecting a baby in the 4–6 weeks, whose phone calls and texts to further discuss the issue are ignored, and who then receives a rent increase she cannot afford.

There were also surveillance cameras at the property. According to Stewart's testimony, at the time of the hearing there were about five cameras total. (See Attachment 6 at 18.) These included a camera at the back of the first floor, where Ms. Sund's unit is located. (See *ibid.*) There were also multiple cameras in front of the building. (See *ibid.*) Mr. Stewart testified that he never checked any cameras for recordings of people coming in and out of Ms. Sund's apartment. (See Attachment 6 at 20–21.) When asked why, his incredible answer was, "If I thought it ["whether she's subletting"] was an important issue, I would have presented the footage. We didn't produce the footage." (See *id.* at 21.) Yet, the decision contains *no reference to the landlord's failure to produce any footage, despite the fact that there were multiple recording cameras on the property.*

Apart from the hearing officer's misplaced reliance on Mr. Stewart's testimony, she also

relied on the testimony of Don MacRitchie, a private investigator hired by the owner. The hearing officer's summary of this testimony concludes, "MacRitchie opined that a preponderance of the evidence supports a conclusion that Ms. Sund's permanent place of residence is not the subject property . . . [.]"⁴ (See Hearing Decision ("Decision") at 6.)

"Permanent place of residence" in the context of Costa-Hawkins is a legal issue, and an expert is prohibited from testifying as to a legal conclusion. "There are limits to expert testimony, not the least of which is the prohibition against admission of an expert's opinion on a question of law. (*Ferreira v. Workmen's Comp. Appeals Bd.* (1974) 38 Cal.App.3d 120; *Summers v. A.L. Gilbert Co.* (1999) Cal. App. 4th 1155, 1178.)

More importantly, the landlord's expert, MacRitchie—after testifying that he'd conducted extensive data-base searches in the course of investigating Ms. Sund's status—testified that he was unable to identify a single individual who'd ever sublet Ms. Sund's unit. (See Attachment 8 at 1.) And he stated that *he had not been able to find any evidence that Ms. Sund was subletting.* (See Attachment 8, inclusive.) *Therefore, his opinion was Ms. Sund was not subletting.* Once again, reference to this testimony is omitted from the decision.

Further, after the first day of testimony, at which he was present throughout, MacRitchie was asked to interview four tenants from the subject premises. (The first day of testimony was Friday, May 30th; the second was June 4th.) He did so. And none of them had knowledge of any other persons associated with Ms. Sund's unit, according to his testimony as follows:

MR. KRANZ: DID ANY OF THEM TELL YOU THAT PERSONS OTHER THAN MS. SUND WERE STAYING THERE?

MACRITCHIE: THEY DIDN'T, THEY THOUGHT IT POSSIBLE.

MR. KRANZ: OKAY. AND WHICH PERSONS TOLD YOU THEY THOUGHT IT POSSIBLE?

MACRITCHIE: ALL DIDN'T HAVE DEFINITE KNOWLEDGE, AND THEY ALL WERE AWARE THAT THERE WERE PEOPLE THAT WERE IN THE BUILDING THAT WEREN'T ASSOCIATED WITH APARTMENTS, AND THEY DIDN'T KNOW FOR

⁴This opinion was offered in Mr. MacRitchie's investigative report on Ms. Sund, rather than during testimony.

CERTAIN WHAT APARTMENT THEY WERE ASSOCIATED WITH. SO THEY THOUGHT THEY WERE SOME TYPE OF SUBTENANTS, BUT THEY COULD NOT DEFINITELY ASSOCIATE WITH MS. SUND'S APARTMENT.

MR. KRANZ: AND DID YOU ASK THEM FOR — IF THEY HAD ANY INFORMATION ABOUT THESE ALLEGED SUBTENANTS ?

MACRITCHIE: YES.

MR. KRANZ: AND WHAT DID THEY TELL YOU ?

MACRITCHIE: WHAT I JUST TOLD YOU.

(See *id.* at 1.)

ARGUMENT

I. There Was Not Substantial Evidence To Support the Decision.

Substantial evidence means more than a mere scintilla; it means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. (See *Richardson v. Perales* (1971) 402 U.S. 389, 401; *Gebhart v. SEC*, 595 F.3d 1034, 1043 (9th Cir. 2010); *Howard ex rel. Wolff v. Barnhart* (Howard) (9th Cir. 2003) 341 F. 3d 1006, 1011.) The records as a whole must be considered, weighing both the evidence that supports and the evidence that detracts from the agency's decision. (See *Mayes v. Massanari* (9th Cir. 2001) 276 F.3d 453, 459; see also *Int'l Union of Painter & Allied Trades v. J & R Flooring, Inc.* (9th Cir. 2011) 656 F.3d 860, 865; *Hawaii Stevedores, Inc. v. Ogawa*, (9th Cir. 2010) 608 F.3d 642, 652 ("The ALJ is expected to consider the record as a whole, including all witness testimony and each medical report, before entering findings"). The court must affirm where there is such relevant evidence as reasonable minds might accept as adequate to support a conclusion, even if it is possible to draw contrary conclusions from the evidence. (See *Howard*, *supra*, at 1011.)

When the record as a whole is reviewed in this case, reasonable minds cannot find that there was adequate evidence to support the conclusions of the hearing officer. Reasonable minds could not differ as to whether the conclusions drawn by the hearing officer were justified by the evidence. Therefore, the decision was not supported by substantial evidence.

II. The Decision Constitutes An Abuse of Discretion.

An abuse of discretion is a plain error, discretion exercised to an end not justified by the

evidence, a judgment that is clearly against the logic and effect of the facts as are found. (*Rabkin v. Oregon Health Sciences Univ.* (9th Cir. 2003) 350 F.3d 967, 977; *In re Korean Air Lines Co., Ltd.* (9th Cir. 2011) 642 F.3d 685, 698 n.11.)

Under the abuse of discretion standard, a reviewing court cannot reverse absent a definite and firm conviction that the district court committed a clear error of judgment in the conclusion it reached upon a weighing of relevant factors. (See *McCullough v. Johnson, Rodenburg & Lauinger, LLC* (9th Cir. 2011) 637 F.3d 939, 953; *Valdivia v. Schwarzenegger* (9th Cir. 2010) 599 F.3d 984, 988 (citing *SEC v. Coldicutt* (9th Cir. 2001) 258 F.3d 939, 941).

The hearing officer's exercise of discretion reflects judgment that was clearly against the logic and effect of the facts. The selective use of evidence, the mischaracterizations and misstatements of other of evidence, and the plain lack of objectivity, as evinced by the decision, demonstrates a judgement inconsistent with logic and the facts. The decision consistently relied on evidence that was inadmissible, while at the same entirely ignoring other material; evidence, much of which was submitted on behalf of the Respondent.

The decision thus reflects an abuse of discretion, demonstrates a lack of objectivity and a prejudice towards Petitioner.

III. In Disregard of the Evidence, the Hearing Officer Arrived at the Unwarranted Conclusion That "The Petitioner's Testimony that She Temporarily Moved from the Alma Street Address to the California Street Address in October of 2017, After Her Request to Have Her Boyfriend Move Into Her Unit Was Denied, is Simply Not Credible"

This conclusion was at best misguided, as was her ancillary conclusion, "It is implausible that the petitioner's boyfriend, Cory Hamrick, would leave his two-bedroom house, that he owns and claims a homestead exemption for, to move into the Ms. Sund's one-bedroom apartment." (See Decision (Statement of Facts and Conclusions) at p. 7.)

Ms. Sund testified that she and her boyfriend had been together just two years; that they were not married; that she did not know if the relationship would be permanent. (See Attachment 5 at 13.) For these reasons, she was not certain about where she would live. She also testified that her baby was born with and still suffered from a serious, even potentially life-threatening condition that required around-the-clock monitoring, a circumstance that required her

to live with her boyfriend. (See Attachment 5 at 5.) This evidence was, further, undisputed.

The phenomena of single women choosing to have children is commonplace in our society, and hardly novel. This is reflected in, for example, the fact that it is now illegal to discriminate based on marital or familial status. In addition, the phenomena of children splitting their time between parents who live in different locations is ubiquitous in our society. Therefore, the hearing officer's above conclusions are unsupported by evidence, are tone-deaf to contemporary realities, and are inconsistent with the evidence that was submitted. Each conclusion was altogether unwarranted.

IV. Under CACI No. 203, The "Evidence" Respondent's Submitted and Cited in the Decision Deserved To Be Viewed With Distrust and Rejected.

California Civil Jury Instruction (CACI) No. 203, entitled *Party Having Power to Produce Better Evidence*, provides as follows:

You may consider the ability of each party to provide evidence. If a party provided weaker evidence when it could have provided stronger evidence, you may distrust the weaker evidence.

Examples of Respondent's failures to provide stronger evidence when it could have produced stronger evidence are numerous and have been recounted above. They included, but are not limited to, Respondent's failure to produce employee witnesses claimed to have relevant information; its failure to produce documents, video footage, etc. Indeed, testimony from Respondent's *own* witnesses was sufficient to defeat, and should have defeated, its claims. Respondent called three witnesses. Each offered significant evidence contradicting or inconsistent with Respondent's claims. Some examples are:

Respondent's asset manager testified that the sighting of the "international" couple was *not* itself the cause of the rent increase. Respondent's 24/7 on-site property manager testified that she never saw a possible a sublessee and in effect had no evidence that Respondent ever sublet. And Respondent's private investigator, who Respondent and the hearing officer insisted was an expert, could not find any evidence of subletting.

Also, Respondent offered no explanation for why it never responded to the emails and phone calls Ms. Sund made to discuss her boyfriend and their baby staying in her unit.

Moreover, Respondent never explained why its August 28th letter stated that it would be "amenable" to considering Ms. Sund's request when it allegedly already believed that she was subletting and was allegedly already investigating as much. Either the August 28th letter was disingenuous, or the landlord did not believe that Petitioner was subletting—if not *both*.

Ms. Sund testified on the first day of the hearing that she never received an August 22nd letter warning her about subletting. The letter was anonymously signed, "The Management." And why didn't Stewart, who said he wrote the letter, testify that *he* posted and mailed it? (See Attachment 5 at 3.) Also, given the weight Respondent places on that letter, why didn't its private investigator interview Mr. Stewart about the details it contained? Why wasn't a declaration from Mr. Stewart presented, at least by the second day of the hearing, five days later?

V. The Residential Rental Adjustment Program and Appeals Board Are Authorized Under Costa-Hawkins to Regulate or Monitor the Grounds for Eviction.

In August 1995, California enacted Civil Code sections 1954.50 through 1954.535, the Costa-Hawkins Rental Housing Act (Costa-Hawkins), which established "what is known among landlord-tenant specialists as 'vacancy decontrol,' declaring that '[n]otwithstanding any other provision of law,' all residential landlords may, except in specified situations, 'establish the initial rental rate for a dwelling or unit.'" (*DeZerega v. Meggs* (2000) 83 Cal. App. 4th 28, 41; Civ.Code § 1954.53, subd. (a).) The effect of this provision was to permit landlords "to impose whatever rent they choose at the commencement of a tenancy." (*Cobb v. San Francisco Residential Rent Stabilization and Arbitration Bd.* (2002) 98 Cal.App.4th 345, 351.) However, the Legislature was well aware that such vacancy decontrol gave landlords an incentive to evict tenants that were paying rents below market rates. (*Bullard v. San Francisco Residential Rent Stabilization Bd.* (2003) 106 Cal. App. 4th 488, 492). Accordingly, the Costa Hawkins statute expressly preserved the authority of local governments "to regulate or monitor the grounds for eviction." (Civ.Code § 1954.53, subd. (e).)

A. The Evidence Establishes a Case of Constructive Eviction.

The evidence here establishes a constructive eviction of Ms. Sund because the rent increase Respondent sought meant that Ms. Sund would no longer be able to reside in her unit.

She testified she cannot afford a more than doubling of her rent. The Rent Board cannot meaningfully monitor or regulate the grounds of this eviction without examining the reasons for it. Petitioner contends that the reason was her request that her boyfriend and baby's father, and later their child, be able to reside in her unit.

Ms. Sund had a right to have the father of her expected child and their daughter move in with her. This right accrued when she notified the landlord of as much. It was improper and offensive for the landlord to insist that Ms. Sund had to wait to "revisit this issue down the road," and it violated her rights. Further, her immediate subsequent phone calls to do just that were ignored by the landlord, until the landlord served her with the Notice of Change of Terms-Rent Increase.

It is illegal to discriminate in housing based on pregnancy or family status, under both state (FEHA, DFEH) and federal (FHA, HUD) law and agency regulations. The landlord cannot impose conditions on Petitioner's exercise of that right. That Respondent ignored the phone calls Petitioner made in an effort to exercise that right was unreasonable—especially after it had stated that it would consider her request, i.e., that it would "revisit this issue". The landlord never responded except by way of a notice of rent increase. This was despite the fact that it had already independently verified that Petitioner was pregnant and who the father was. (See Attachment 5 at 6.) Respondent never asked for any additional information. This evidence establishes an attempted illegal eviction.

B. The Evidence Establishes a Case of Retaliation.

It was within days of Petitioner's request that the Respondent served her with a notice of rent increase. That this occurred within days after Petitioner sought to exercise certain rights provided to her by law. This is undeniable. The *only* response or communication Petitioner *ever* received after seeking to exercise these rights was the notice of rent increase. This was retaliation. Therefore, the rent increase being sought is impermissible.

C. The City of Oakland's Prohibition Against Discrimination and Harassment, as Embodied in OMC Chapter 8.22, Provided the Hearing Officer With the Authority to Consider the Evident Discrimination and Harassment in This Case.

The laws of the State of California and the Housing Element of the General Plan of the City of Oakland prohibit arbitrary discrimination by landlords." (OMC § 8.22.300.) Basic fairness requires that a landlord must not terminate the tenancy of a residential tenant without good, just, non-arbitrary, non-discriminatory reasons. (*Ibid.*) The rising market demand for rental housing in Oakland creates an incentive for some landlords to engage in harassing behavior, including:

[R]epeated acts or omissions of such significance as to substantially interfere with or disturb the comfort, repose, peace or quiet of any person lawfully entitled to occupancy of such dwelling unit and that cause, are likely to cause, or are intended to cause any person lawfully entitled to occupancy of a dwelling unit to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy

(See OMC § 8.22.610E, .8.22.640A(15).)

In sum, the purposes of Chapter 8.22 plainly include preventing discrimination and harassment. It is *impossible* to fulfill these purposes without considering evidence of either discrimination or of harassment when there is such evidence. Yet, the hearing officer made it clear during the initial May 30 hearing in this matter that she would not consider evidence of discrimination. Petitioner did not seek to have this evidence considered for the purpose of monetary damages or other affirmative relief. It was offered as a defense to the respondent's attempt to increase her rent and to thereby effectively evict her. The hearing officer's refusal to consider this evidence was error.

VII. Petitioner's Unit Is Not Exempt Under Costa Hawkins Since the Vacancy De-Control is Inapplicable Here.

The effect of section 1954.53, subdivision (a)⁵ of Costa-Hawkins is to permit landlords

⁵Subdivision (a) in relevant part provides that an owner of residential real property may establish the initial rental rate for a dwelling or unit.

"to impose whatever rent they choose at the commencement of a tenancy." (See *Cobb v. San Francisco Residential Rent Stabilization and Arbitration Bd.* (2002) 98 Cal. App. 4th 345, 351.) Section 1954.53, subdivision (d)(2) further provides,

If the original occupant or occupants who took possession of the dwelling or unit pursuant to the rental agreement with the owner no longer permanently reside there, an owner may increase the rent by any amount allowed by this section to a *lawful sublessee or assignee* [emphasis added].

That Ms. Sund is the original occupant in lawful possession of the subject unit is in uncontested. There is no claim that at any time she notified the owner any intent to vacate or terminate her tenancy.⁶ The dispute here revolves whether or not Ms. Sund has continued to permanently reside in her unit.

The word "permanently" is undefined in *Costa-Hawkins* *except* with reference to subletting and assignment. (See *ibid*; see also §1954.51.) Yet, implicit in the statutory language is that a rent increase is unwarranted absent the creation of a new tenancy. (See § 1954.53 subd. (a) & (d)(2).)

Here, there was no new tenancy: Contrary to the owner's theory of this case and the hearing officer's decision, there is no substantial or admissible evidence that Ms. Sund sublet or assigned the unit at any time since the inception of her tenancy in July, 2008. For the above reasons, subdivision (d)(2) is inapplicable.

CONCLUSION

For the foregoing reasons, this appeal should be granted.

Dated: January 28, 2019

Respectfully submitted,

LAW OFFICES OF PAUL L. KRANZ

By: 

Paul L. Kranz

⁶ Indeed, as she testified on May 30th and as was earlier stated, she continues to retain personal possessions at 633 Alma Street, receive certain items of mail there, use the shower, occasionally eat, take care of her plants, and so forth.

PROOF OF SERVICE

(Case Number T18-0018)

I, the undersigned, certify and attest as follows:

I am over the age of eighteen years and am not a party to the cause within. My business address is 639 San Gabriel Avenue, Albany, California 94706.

On January 29, 2019, I caused the within:

**NOTICE OF ERRATA AND AMENDED SUBMISSION IN SUPPORT
OF APPEAL OF HEARING OFFICER'S DECISION**

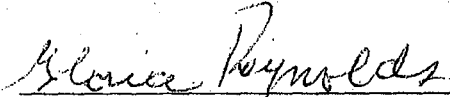
to be served by first class mail, postage prepaid, on Respondent's representatives. addressed as follows:

c/o Russell B. Flynn
Vernon Street Apartments, LP, aka Flynn Family Holdings, LLC
1717 Powell Street # 300
San Francisco, California 94133

Gregory McConnell
The McConnell Group
300 Frank Ogawa Plaza Suite # 460
Oakland, California

Executed Albany, California on January 29, 2019.

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



Gloria Reynolds

000188

Attachment 1

THE NEW YORK PUBLIC LIBRARY

[REDACTED]

[REDACTED]

Department of Education, New York, N.Y. District 18
100th Street, New York, N.Y. 10027

RECEIVED
JAN 21 1971

000190

Attachment 2

Alma Apartments LP

123 Main
City, CA

123 Main
City, CA
12345

RE: Alma Apartments

Dear Sir:

I am writing to you regarding the above.

The enclosed information is for your information.

Please contact me if you have any questions.

Very truly yours,

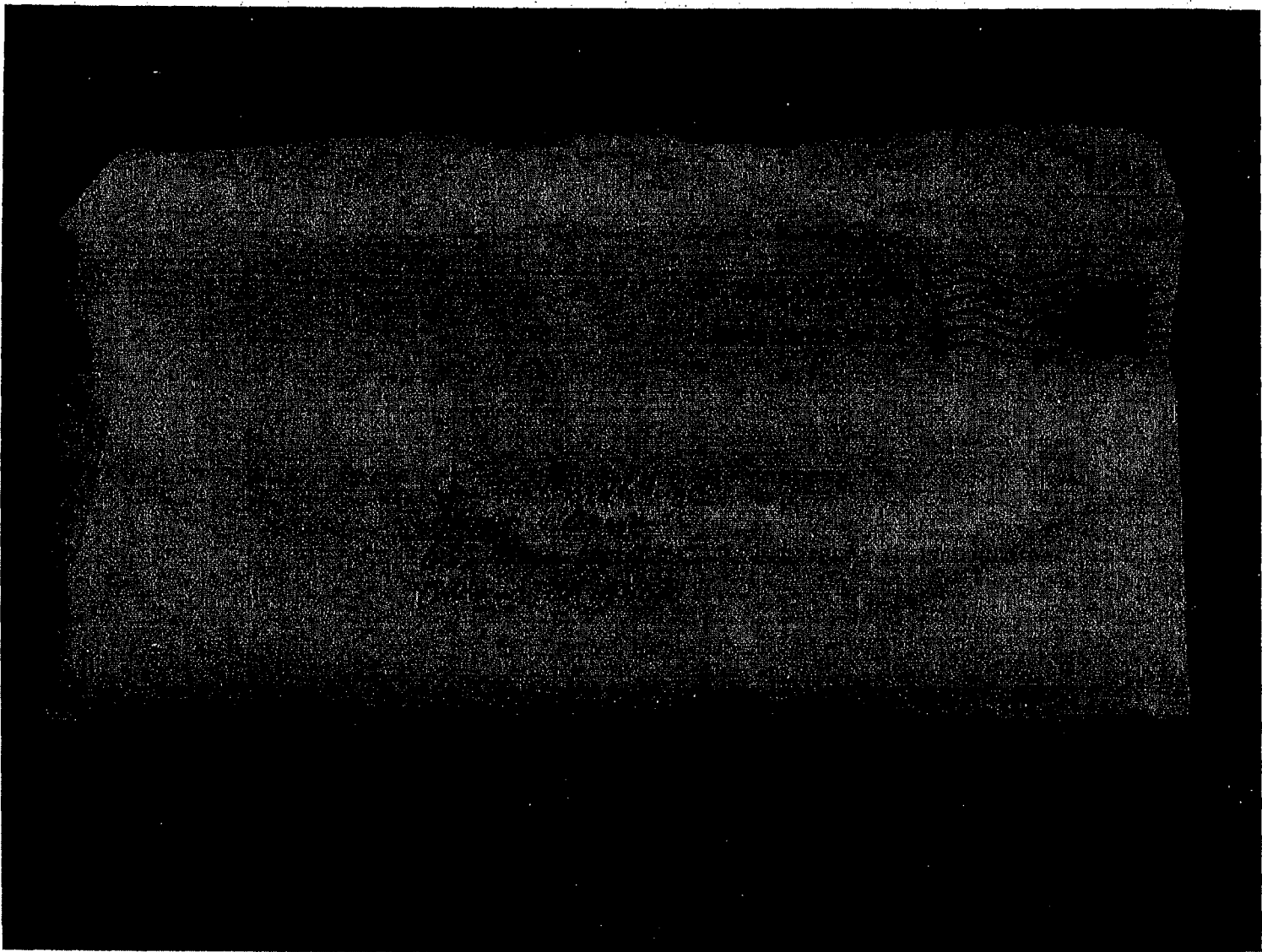
Please review the enclosed information and let me know if you have any questions.

Sincerely,



Thomas Priddy

Property Supervisor



000193

Attachment 3

THIS NOTICE TO CHANGE TERMS OF TENANCY HEREBY SUPERSEDES AND REPLACES ANY OTHER NOTICE TO CHANGE TERMS OF TENANCY AND/OR ANY OTHER RENT INCREASE NOTICE(S) PREVIOUSLY SERVED UPON YOU.

NOTICE TO CHANGE TERMS OF TENANCY
- RENT INCREASE NOTICE -

To Jessica Maggie Sund (original occupant), AND ALL SUBTENANTS IN POSSESSION, name(s) unknown, as well as any other occupant(s) claiming the right to possession of the following residential rental premises:

633 Alma Street, Unit Number 5
City of Oakland, County of Alameda, State of California 94610
including all associated housing privileges-- (the "Premises")

You are hereby notified that, effective December 1, 2017, not less than sixty (60) days after service of this notice is completed upon you, the terms of your tenancy of the Premises will be changed as follows:

The monthly rental thereof will be changed from \$908.67 per month to two thousand ninety five dollars (\$2,095) per month, payable in the advance of the first day each and every month you continue to hold possession of the Premises.

All other terms of the tenancy will remain unchanged.

You are further notified that a negative credit report reflecting on your credit history may be submitted to a credit reporting agency if you fail to fulfill the terms of your credit obligations.

You are hereby notified that, pursuant to California Civil Code Section 1954.50, *et seq.* (Costa-Hawkins Rental Housing Act), the Premises and/or your tenancy therein are not subject to the City of Oakland's Rent Adjustment Program (Chapter 8.22 of the Oakland Municipal Code) for purposes of this rent increase. The landlord and owner of the Premises contends that the last original occupant, Jessica Maggie Sund, no longer permanently resides at the Premises, and that all current occupants are subsequent occupants and sublessees who commenced occupancy of the Premises on or after January 1, 1996.

Pursuant to the Costa-Hawkins Rental Housing Act (Civil Code Sections 1954.50, et seq.), please note as follows:

Conditions for Establishing the Initial Rental Rate Upon Sublet or Assignment:

(A) Where the original occupant or occupants who took possession of the dwelling or unit pursuant to the rental agreement with the owner no longer permanently reside there, an owner

Costa-Hawkins Rent Increase for 633 Alma Street, Unit Number 5, Oakland, CA

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may increase the rent by any amount allowed by this section to a lawful sublessee or assignee who did not reside at the dwelling or unit prior to January 1, 1996. However, such a rent increase shall not be permitted while:

(i) The dwelling or unit has been cited in an inspection report by the appropriate governmental agency as containing serious health, safety, fire, or building code violations, as defined by Section 17920.3 of the California Health and Safety Code, excluding any violation caused by a disaster; and,

(ii) The citation was issued at least 60 days prior to the date of the vacancy; and,

(iii) The cited violation had not been abated when the prior tenant vacated and had remained unabated for 60 days or for a longer period of time. However, the 60-day time period may be extended by the appropriate governmental agency that issued the citation.

(B) This provision shall not apply to partial changes in occupancy of a dwelling or unit where one or more of the occupants of the premises, pursuant to the agreement with the owner, remains an occupant in lawful possession of the dwelling or unit, or where a lawful sublessee or assignee who resided at the dwelling or unit prior to January 1, 1996, remains in possession of the dwelling or unit.

(C) Acceptance of rent by the owner shall not operate as a waiver or otherwise prevent enforcement of a covenant prohibiting sublease or assignment or as a waiver of an owner's rights to establish the initial rental rate unless the owner has received written notice from the tenant that is party to the agreement and thereafter accepted rent.

Information regarding this NOTICE may be obtained from the City of Oakland's Rent Adjustment Program. Parties seeking legal advice concerning evictions should consult with an attorney. The Rent Program is located at 250 Frank H. Ogawa Plaza, Suite 5313, Oakland, California 94612, 510.238.3721, website www.oaklandnet.com. Please refer to the attached City of Oakland Rent Adjustment Program Notice to Tenants of Residential Rent Adjustment Program.

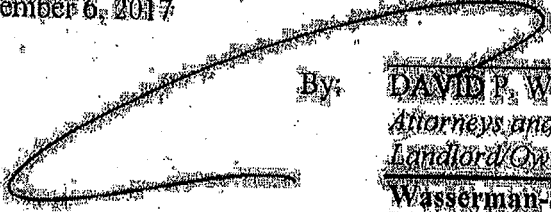
Rent increases imposed pursuant to the Costa-Hawkins Rental Housing Act are effective upon the expiration of the notice period prescribed by California Civil Code section 827 and are not governed by the Rent Adjustment Program.

Questions about this NOTICE may be directed to the undersigned, who is the agent for the landlord and owner.

Dated: September 6, 2017

WASSERMAN STERN

By:


DAVID P. WASSERMAN, Esq.
*Attorneys and Duly Authorized Agents for the
Landlord/Owner, Vernon Street Apartments, LP*
Wasserman-Stern Law Offices
2960 Van Ness Avenue
San Francisco, CA 94109
Tel. No.: (415) 567-9600
Fax No.: (415) 567-9696
Email: dwasserman@wassermanstern.com

Costa-Hawkins Rent Increase for 633 Alma Street, Unit Number 5, Oakland, CA

CITY OF OAKLAND



P.O. BOX 70243, OAKLAND, CA 94612-2043
Department of Housing and Community Development
Rent Adjustment Program

TEL (510) 238-3721
FAX (510) 238-6181
TDD (510) 238-3264

NOTICE TO TENANTS OF THE RESIDENTIAL RENT ADJUSTMENT PROGRAM

- Oakland has a Rent Adjustment Program ("RAP") that limits rent increases (Chapter 8.22 of the Oakland Municipal Code) and covers most residential rental units built before 1983. For more information on which units are covered, contact the RAP office.
- Starting on February 1, 2017, an owner must petition the RAP for any rent increase that is more than the annual general rent increase ("CPI increase") or allowed "banked" rent increases. These include capital improvements and operating expense increases. For these types of rent increases, the owner may raise your rent only after a hearing officer has approved the increase. No annual rent increase may exceed 10%. You have a right to contest the proposed rent increase by responding to the owner's petition. You do not have to file your own petition.
- **Contesting a Rent Increase:** You can file a petition with the RAP to contest unlawful rent increases or decreased housing services. To contest a rent increase, you must file a petition (1) within ninety (90) days of the notice of rent increase if the owner also provided this Notice to Tenants with the notice of rent increase; or (2) within 120 days of the notice of rent increase if this Notice to Tenants was not given with the notice of rent increase. If the owner did not give this Notice to Tenants at the beginning of your tenancy, you must file a petition within ninety (90) days of first receiving this Notice to Tenants. Information and the petition forms are available from the RAP drop-in office at the Housing Assistance Center, 250 Frank H. Ogawa Plaza, 6th Floor, Oakland and at <http://www2.oaklandnet.com/Government/Finance/RentAdjustment>.
- If you contest a rent increase, you must pay your rent with the contested increase until you file a petition. If the increase is approved and you did not pay the increase, you will owe the amount of the increase retroactive to the effective date of increase.
- Oakland has eviction controls (the Just Cause for Eviction Ordinance and Regulations, O.M.C. 8.22) which limit the grounds for evictions in covered units. For more information contact the RAP office.
- Oakland charges owners a Rent Program Service Fee per unit per year. If the fee is paid on time, the owner is entitled to get half of the fee from you. Tenants in subsidized units are not required to pay the tenant portion of the fee.
- Oakland has a Tenant Protection Ordinance ("TPO") to deter harassing behaviors by landlords and to give tenants legal recourse in instances where they are subjected to harassing behavior by landlords (O.M.C. 8.22.600). (City Council Ordinance No. 13265 C.M.S.)
- The owner _____ is _____ is not permitted to set the initial rent on this unit without limitations (such as pursuant to the Costa-Hawkins Act). If the owner is not permitted to set the initial rent without limitation, the rent in effect when the prior tenant vacated was _____.

TENANTS' SMOKING POLICY DISCLOSURE

- Smoking (circle one) IS or IS NOT permitted in Unit _____ the unit you intend to rent.
- Smoking (circle one) IS or IS NOT permitted in other units of your building. (If both smoking and non-smoking units exist in tenant's building, attach a list of units in which smoking is permitted.)
- There (circle one) IS or IS NOT a designated outdoor smoking area. If it is located at _____.

I received a copy of this notice on _____

(Date)

(Tenant's signature)

此份屋脊(奧克蘭)市租客權利通知書附有中文版本。請致電(510) 238-3721 索取副本。
La Notificación del Derecho del Inquilino está disponible en español. Si desea una copia, llame al (510) 238-3721.

Attorney or Party Without Attorney (Name and Address)		Telephone	FOR COURT USE ONLY	
DAVID P. WASSERMAN, ESQ. (171-23) WASSERMAN STERN LAW OFFICES 2960 Van Ness Avenue, Suite B San Francisco, California 94109				
Attorney for: 633 ALMA STREET		RA7607 OF FILING	W2683460	
Insert name of court, judge, district, and branch court, if any.				
Plaintiff:				
633 ALMA STREET				
Defendant:				
JESSICA MAGGIE SUND (original occupant)				
POS BY MAIL	Filed Date	Time	Payment	Case Number

At the time of service, I was at least 18 years of age and not a party to this action.
 On September 6, 2017, I served the within:

NOTICE TO CHANGE TERMS OF TENANCY - RENT INCREASE NOTICE; NOTICE TO TENANTS OF THE RESIDENTIAL RENT ADJUSTMENT PROGRAM

on the defendant in the within action by placing a true copy in a sealed envelope with postage fully prepaid for first class in the United States mail at San Francisco, California, addressed as follows:

JESSICA MAGGIE SUND (original occupant); ANY/ALL UNNAMED OCCUPANTS
633 Alma Avenue, Unit 5
Oakland, CA 94610

Person serving:
 Scott Lane
 Wheels of Justice, Inc.
 52 Second Street, Third Floor
 San Francisco, California 94105
 Phone: (415) 546-6000

a. Fee for service:
 d. Registered California Process Server
 (1) Employee or independent contractor
 (2) Registration No. 1126
 (3) County: San Francisco

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

Date: September 6, 2017

Signature: _____
 Scott Lane



Printed on recycled paper

Judicial Council form, GM 902(9) (23)

000198

CHRONOLOGICAL CASE REPORT

Case No.: T19-0096
Case Name: Cabansagan v. Shamrock Real Estate Co.
Property Address: 226 Athol Avenue, #108, Oakland, CA
Parties: Clarrissa Cabansagan (Tenant)
Julia Bartseva (Owner)
Carl Lee (Property Manager)

OWNER APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	December 31, 2018
Owner Response filed	June 11, 2019
Hearing Decision mailed	November 21, 2019
Owner Appeal filed	December 10, 2019
Tenant Response to Owner Appeal filed	January 15, 2020 January 24, 2020

000199

T19-0096 MS / BC

City of Oakland Rent Adjustment Program
Tenant Petition

RECEIVED

DEC 31 2018

Case **Petition: 10266**
Property Address **226 ATHOL AV**

RENT ADJUSTMENT PROGRAM
OAKLAND

Party	Name	Address	Mailing Address
Representative	n/a		
Tenant	Clarrissa K. Cabansagan (415) 987-8984 clarrissa@gmail.com	226 Athol Ave Apt 108 Oakland, CA 94606	
Manager	Carl Lee (510) 520-4893 happycarlee@yahoo.com	226 Athol Avenue 211 Oakland, CA 94606	
Owner	Julia Bartseva Shamrock Real Estate Co. (415) 359-2400 julia@shamrocksf.com	2655 Van Ness Avenue Suite 2 San Francisco, CA 94109	

Rental Property Information

Number of Units	1
Type of unit you rent	Apartment, Room or Live-work
Are you current on your rent?	Yes

Grounds for Petition

- No Pre Approval of Increase
- No RAP Notice at Inception or 6 Months Prior
- Rent Increase Violates State Law

Rental History

When did you move into the unit?	8/9/2016
Initial monthly rent	1550
When did the property owner first provide you with a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program (RAP NOTICE)?	11/29/2018
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
Have you ever filed a petition for your rental unit?	No

City of Oakland

1/2

City of Oakland Rent Adjustment Program

Tenant Petition

Case Petition: 10266
Property Address 226 ATHOL AV

Rent increases that you want to challenge.

Table with 6 columns: Did you receive a RAP Notice with the notice of rent increase?, Date RAP notice served, Date increase goes into effect, Monthly Rent Increase From, Monthly Rent Increase To, Are you contesting this increase in this petition? Row 1: Yes, 11/29/2018, 1/1/2019, 1550, 1639, Yes

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? No

Have you lost services originally provided by the owner or have the conditions changed? Yes

Are you claiming any serious problem(s) with the condition of your rental unit? No

Mediation

Mediation Requested No

City of Oakland

2 / 2



Clarrissa Cabansagan

226 Athol Avenue Request for Information

1 message

Clarrissa Cabansagan

Wed, Sep 5, 2018 at 8:58 AM

To:

Good Morning, Trent and Janet,

I am a tenant at 226 Athol Avenue in Oakland, the apartment building that was purchased last year and is managed by your real estate firm.

Over the past year I have seen vacant units converted into Airbnbs, and I can only imagine that the next two units will be the same. Similarly, I've experienced the diminished ability to quietly enjoy what used to be my apartment community.

Given these activities, I live under real anxiety and fear that I will lose my home, a place that has been affordable during this unprecedented housing crisis in Oakland. I have extensively voiced these concerns to Carl Lee the building manager over the course of the year, but have received no clear reassurance that I will be able to stay in the long-term.

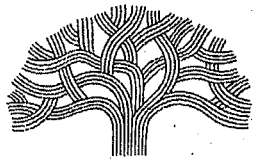
Most of the tenants in this building are non-profit workers, teachers, and people on limited incomes that will absolutely struggle to find rental housing within our budgets, especially since most of us have dogs.

We have received no communications on how the owner or your firm will proceed with this building. I ask that you please give me the contact info of the property owner so I can directly speak to them about this vulnerable housing situation.

Best,
Clarrissa

--
Clarrissa Cabansagan
email
mobile
linkedin www.linkedin.com

MS/Be

 CITY OF OAKLAND	CITY OF OAKLAND RENT ADJUSTMENT PROGRAM P.O. Box 70243 Oakland, CA 94612-0243 (510) 238-3721	For date stamp. RECEIVED CITY OF OAKLAND RENT ARBITRATION PROGRAM 2019 JUN 11 PM 12:50 PROPERTY OWNER RESPONSE
------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------

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

CASE NUMBER T - 19-0096

Your Name <i>Trent Moore</i>	Complete Address (with zip code) <i>2655 VAN NESS Ave Suite 2, San Francisco, CA 94109</i>	Telephone: Email: <i>- - -</i>
Your Representative's Name (if any)	Complete Address (with zip code)	Telephone: Email:
Tenant(s) Name(s) <i>Clarrissa Cabansagan</i>	Complete Address (with zip code) <i>226 Athol Ave # 108 Oakland, CA 94606</i>	
Property Address (If the property has more than one address, list all addresses) <i>226 Athol Ave, Oakland, CA 94606</i>		Total number of units on property <i>24</i>

Have you paid for your Oakland Business License? Yes No Lic. Number: 00201505
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: 21-224-33-2
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: 08/31/17.

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>
11/29/18	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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 8/19/2016.

The tenant's initial rent including all services provided was: \$ 1,550.⁰⁰ / month.

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

If yes, on what date was the Notice first given? 11/29/18

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	
11/29/2018	1/1/2019	\$ 1550. ⁰⁰	\$ 1639. ⁰⁰	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No — cancelled
4/18/2019	6/1/2019	\$ 1550. ⁰⁰	\$ 1639. ⁰⁰	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No last increase
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No

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

2/2
 see attached notices
 000206

III. EXEMPTION

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

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

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

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

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

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

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

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

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

IV. DECREASED HOUSING SERVICES

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

V. VERIFICATION

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

*

Property Owner's Signature

*

Date

6/11/19

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.

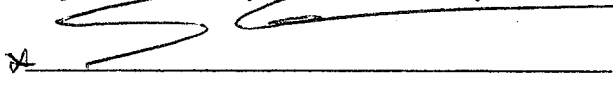
Mediation Program

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.

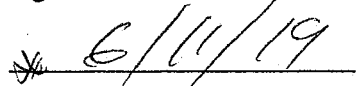
If the tenant did not sign for mediation, you may want to discuss that option with them. You and your tenant may agree to have your case mediated at any time before the hearing by submitted a written request signed by both of you. If you and the tenant agree to a non-staff mediator, please call (510) 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



SHAMROCK REAL ESTATE CO.

2655 Van Ness Ave Suite 2, San Francisco CA 94109

Phone: (415) 359.2400

Fax: (415) 359.2401

June 10, 2019

City of Oakland RAP
P.O. Box 70243
Oakland, CA 94612

Re: case # T19-0096

To Whom It May Concern,


This is a response letter to the tenant petition (case # referenced above) submitted by Clarrissa Cabansagan contesting the rent increase and complaining of decreased housing services.

I would like to inform you that the rent increase serviced on November 29, 2018 for January 1, 2019 was rescinded. After tenant acknowledged the receipt of RAP notice on December 31, 2018, we served a new rent increase notice on April 18, 2019 for June 1, 2019.

As of June 1, 2019, the tenant pays a new rent amount of \$1,639.00 and is no longer contesting the first rent increase. Please see the rent increase notices attached.

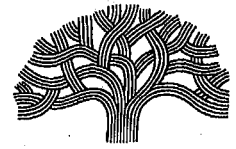
The services provided by the owner and/or conditions have not changed. The landlord completed some improvements to the building since the purchase of the building. This includes – new laundry machines, new lobby furniture, re-roofing with MB technology torch down modified bitumen system, new skylights, major window repairs around the building, landscaping and new woodchips around the building. Please see the pictures and invoices attached. The property is kept in a clean condition, having bi-weekly janitorial services.

Sincerely,



Trent Moore
Property Owner

000209



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

Housing and Community Development Department
Rent Adjustment Program

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

HEARING DECISION

CASE NUMBER: T19-0096, Cabansagan v. Shamrock
PROPERTY ADDRESS: 226 Athol Avenue, #108, Oakland, CA
DATE OF HEARING: July 29, 2019
DATE OF DECISION: November 19, 2019
APPEARANCES: Clarrissa Cabansagan, Tenant
No appearance by Owner

SUMMARY OF DECISION

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

CONTENTIONS OF THE PARTIES

The tenant filed a petition on December 31, 2018, in which she contested a rent increase from \$1,550 to \$1,639 a month, effective January 1, 2019, on the grounds that the property owner did not seek pre-approval for the increase; that no document entitled Notice to Tenants of the Residential Rent Adjustment Program (RAP Notice) was served on the tenant at least six months prior to the rent increase; and that the rent increase notice violates State law. Additionally, the tenant alleged that she is being charged for services originally provided by the owner and that she is experiencing decreased housing services in that vacant units have been converted into Airbnb units and that this has resulted in a decrease in her ability to quietly enjoy her home.

The owner filed a timely response to the tenant petition in which he alleged that the rent increase at issue had been withdrawn and denied any claim of decreased housing services.

THE ISSUES

1. What is the legal rent?
2. When, if ever, was the tenant first served with the RAP Notice?
3. Have the tenant's housing services decreased, and if yes, in what amount?
4. What, if any, restitution is owed and how does it affect the rent?

EVIDENCE

Tenant Cabansagan testified that she moved into the rental unit at 226 Athol Avenue, Unit 108, in August of 2016, at an initial rent of \$1,550 a month. She was not given a RAP Notice when she moved into the unit. In November of 2018, she received a written *Notice of Rent Increase* by mail, dated November 29, 2018, in which the owner purported to increase her rent from \$1,550 to \$1,639 a month, effective January 1, 2019.¹ Attached to this *Notice* was a copy of the RAP Notice in three languages. This was the first time she received the RAP Notice.

After the tenant filed her petition, she received a letter dated March 19, 2019, in which the owner rescinded the rent increase.² The tenant has since received a new rent increase notice that she is not contesting because it was served properly. Her rent, effective June 1, 2019, is \$1,639 a month. The tenant has been paying this amount since June of 2019.

Decreased Services:

The tenant testified that the building has 24 units, 23 of which are studios and one is a two bedroom apartment. The tenant lives in a studio and her unit is on the first floor. When she rented the unit, only one person was permitted to live in each studio apartment. Over the last year the owner has been converted at least five of the rental units in her building into Airbnb units. The tenant testified that the conversion into Airbnb units has increased the noise in her apartment, and decreased both her security and her privacy and otherwise changed her living situation for the worse.

The tenant also complained that with each conversion to an Airbnb unit, the owner has renovated the units, causing water and power shut offs as well as the noise associated with construction. Until the tenant complained about the power and water shut-offs, the owner did not post warnings. Additionally, during these remodeling periods, she has seen the front door left wide open by the construction workers causing security concerns. Prior to the shift to Airbnb, the owner did not remodel the units prior to renting them. Most of the construction into the Airbnb units started in November of 2017 and continued until early to mid-2018. Then in 2019, an additional Airbnb unit was added, causing additional construction noise. By the end of 2018 (the time she filed her petition, the owner already had 4 Airbnb's on the premises.)

The tenant filed a document with her petition which contains screenshots from the Airbnb website which purports to show that at the time she filed her petition there were 4 Airbnb listings in her building.³ Since she filed, another unit was made into an Airbnb listing as well. These units are rented out on a regular basis and often to more than one person at a time. The tenant testified that since the people who rent the units are not

¹ Exhibit 1. All Exhibits referred to in this Hearing Decision were admitted into evidence.

² Exhibit 2

³ Exhibit 4. This Exhibit also contains the tenant's list of decreased services.

long term tenants, they don't have an interest in keeping peace with their neighbors, and often play music and make a lot of noise late into the night and come and go during all hours disturbing her quiet. The first time she complained about noise from an Airbnb renter, someone was playing a bass guitar at three in the morning. She has also had experiences with noisy children in the Airbnb units running up and down the hallway and with Airbnb renters using their cell phones in the common area. The tenant also testified that the addition of the Airbnb renters has also caused an increase in security problems associated with mail theft and bicycle theft on the premises. This is a significantly different experience than she had prior to the Airbnb rentals going on the market. She complained to Carl, the onsite manager, about noise, both by telephone and by text.

The tenant further testified that in January, she met with the owner representatives about the problem she was having with the Airbnb listings and told them that she believed that they were violating Oakland's laws. They refused to take the Airbnb listings off the market. She explained that Oakland's laws require them to rent their units for a minimum of 30 days at a time. They told her that she could not tell them how to run their business.

The tenant further testified that the night before the Hearing she confirmed that the units were still on the market by logging on to Airbnb and trying to rent a unit for a few days. There was no requirement that she only rent one of the Airbnb units for 30 days or longer at a time.

The tenant provided a *Notice of Violation* from the City of Oakland showing that on April 18, 2019, the owner was sent a notice from the Bureau of Building which specified that the owner was "operating a short-term rental under 30 days."⁴ The required action was stated as "discontinue renting any units under 30 days."

Additionally, the tenant provided a text stream between her and Carl, the onsite manager. In the texts she complained to Carl about noise being made in an Airbnb unit; about construction noise; that the owners were not supposed to be renting on Airbnb; and that an Airbnb guest had vomited in front of the apartment house.⁵

FINDINGS OF FACT AND CONCLUSIONS OF LAW

What is the legal rent?

While the tenant contested a rent increase that was to go into effect on January 1, 2019, the owner withdrew that increase. Additionally, the tenant did not contest the new rent increase served in April of 2019, effective June 1, 2019, increasing the rent to \$1,639 a month. The tenant's base rent is therefore, \$1,639 a month, effective June 1, 2019. The tenant's previous rent was \$1,550 a month.

⁴ Exhibit 7. The tenant submitted Exhibits 7 and 8 by submitting them after the Hearing by email, with the Hearing Officer's permission.

⁵ Exhibit 8

When, if ever, was the tenant first served with the RAP Notice?

The Rent Adjustment Ordinance requires an owner to serve the *RAP Notice* at the start of a tenancy⁶ and together with any notice of rent increase or change in the terms of a tenancy.⁷ An owner can cure the failure to give notice at the start of the tenancy, but may not raise the rent until 6 months after the first *RAP Notice* is given.⁸

The owner has the burden of proof to establish that *RAP Notices* have been served.

The tenant credibly testified that she first received the *RAP Notice* in November of 2018. It is found that the tenant did not receive the *RAP Notice* until that date.

Have the tenant's housing services decreased, and if yes, in what amount?

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.

In a decreased housing services case tenants must establish that the tenants had given the owner notice of the problems and the opportunity to fix the problems before they are entitled to relief. Additionally, there is a time limit for claiming decreased housing services. Once the tenant is served with a *RAP Notice*, a tenant petition must be filed within 90 days after the decrease in service begins. However, in this case since no *RAP Notice* was served until November 28, 2019, which is less than 90 days before the tenant's petition was filed, the tenant is entitled to restitution for conditions for up to three years before her petition was filed.¹¹

Construction Noise and Utility shut-offs:

The tenant has two basic complaints. One relates to construction noise and gas and water shut offs which occurred during the times that five other units in her building were remodeled. While construction noise is unpleasant, the California Court of Appeal considered the question of whether repair and replacement of tenant's decks—which resulted in the temporary loss of use of the decks and ventilation from the doorways to the decks—was a decrease in housing services under the San Francisco rent control ordinance. The Court stated:

[A] landlord who undertakes to perform reasonably necessary repair and maintenance work on rental property, which has the effect of temporarily

⁶ O.M.C. § 8.22.060(A)

⁷ O.M.C. § 8.22.070(H)(1)(A)

⁸ O.M.C. § 8.22.060 (C)

⁹ O.M.C. § 8.22.070(F)

¹⁰ O.M.C. § 8.22.110(E)

¹¹ O.M.C. § 8.22.090(A)(3)(a) and *Sherman v. Michelsen*, HRRRB, T12-0332.

interfering with or preventing the tenant's full use of housing services, but does not substantially interfere with the right to occupancy of the premises as a residence, does not effectuate a decrease in housing services within the meaning of the San Francisco rent control ordinance.¹²

While this case interprets the San Francisco rent control ordinance, this principle applies to the present situation. The tenant was forced to live temporarily with occasional gas and power shut offs and with the noise of construction. Since the temporary noise of construction can be expected in an apartment complex, there is no decrease in housing services when the noise does not substantially interfere with the tenant's occupancy.

The Oakland Housing Residential Rent and Relocation Board has adopted the finding in the above case. See *Maxwell v. Krawiec*, T12-0295, wherein the Board approved the finding of the Hearing Officer that a temporary loss of use of a parking space because of construction did not amount to a decrease in housing services. See also *Sardelich v. Vernon Apartments*, T03-0045, wherein the Board found that a temporary loss of electric services because of maintenance in the building was not a decrease in housing services.

The tenant's claim for decreased housing services with respect to construction noise is denied.

Airbnb Rentals:

However, the tenant has established an actionable claim with respect to the change of circumstances in her building from renting with other long term tenants and with renting in a building which has been partially converted into a hotel. The Oakland Municipal Code prohibits the operation of short term rentals in an apartment building. O.M.C. § 17.10.100 et seq. The owner was informed of this by the tenant and by the City of Oakland, and continues to rent the units for under 30 days at a time.

The fact that the owner is violating the laws prohibiting such rentals does not, on its own, entitle the tenant to relief. However, the public policy underlying this Ordinance, that a succession of transient renters adversely affects the character of a neighborhood and a rental building, must be considered. The tenant also established that there is a significant changed condition in her home because of the transient nature of these Airbnb rentals and renters. There is both decreased security and increased noise. The very fact that the renters in these units are transient, means that any complaints the tenant would make to the Airbnb renters about noise effectively falls on deaf ears, because the renters making the noise are not ongoing tenants.

The tenant is entitled to an ongoing rent decrease of 15% of the rent, until the owner stops renting any unit on Airbnb or to anyone for less than 30 days at a time. The tenant

¹² *Golden Gateway Center v. San Francisco Residential Rent Stabilization and Arbitration Board*, (1999) 73 Cal.App. 4th, 1204, 1206.

is also entitled to restitution of overpaid rent, since June of 2018, when the majority of the Airbnb units were in place as noted on the chart below. Note that since the tenant's rent was \$1,550 a month until June of 2019, the chart has two different entries for the value of lost services.

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

As noted above, the tenant's base rent is \$1,639 a month. The tenant is entitled to an ongoing 15% rent decrease because of the ongoing rentals on Airbnb, to \$1,393.15 a month, effective December 1, 2019, before consideration of restitution.

VALUE OF LOST SERVICES							
Service Lost	From	To	Rent	% Rent Decrease	Decrease /month	No. Months	Overpaid
Airbnb Rentals	1-Jun-18	31-May-19	\$1,550	15%	\$ 232.50	12	\$ 2,790.00
Airbnb Rentals	1-Jun-19	30-Nov-19	\$1,639	15%	\$ 245.85	6	\$ 1,475.10
TOTAL LOST SERVICES							\$ 4,265.10

RESTITUTION			
MONTHLY RENT			\$1,639
TOTAL TO BE REPAYED TO TENANT			\$ 4,265.10
TOTAL AS PERCENT OF MONTHLY RENT			260%
AMORTIZED OVER	12	MO. BY REG. IS	\$ 355.43

Additionally, the tenant is entitled to restitution for overpaid rent, as noted on the chart above. The total restitution owed to the tenant is \$4,265.10.

An overpayment of this size is normally adjusted over a period of 12 months.¹³ The restitution deduction is \$355.43 a month. The tenant is entitled to begin to deduct the restitution owed from her rent after this Hearing Decision becomes final. The decision is final if no party has filed an Appeal within 20 days of the date the Hearing Decision is mailed to all parties.

However, should the owner stop renting on Airbnb or to any renter for less than 30 days at a time, the owner can increase the rent by 15% (\$245.85 a month.) In order to increase the rent after the owner has stopped the short term rentals, the owner must provide the necessary notice pursuant to Civil Code § 827.

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

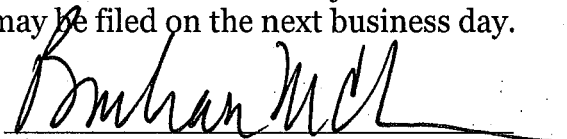
¹³ Regulations, Section 8.22.110(F)

ORDER

1. Petition T19-0096 is granted in part.
2. The tenant's base rent is \$1,639 a month before consideration of restitution and decreased services.
3. Due to ongoing conditions, the tenant is entitled to an ongoing 15% rent decrease. The tenant's current legal rent, effective December 1, 2019, before consideration of restitution, is \$1,393.15 a month.
4. Due to past decreased services, the tenant is owed restitution of \$4,265.10 through November 30, 2019. This overpayment is adjusted by a rent decrease for 12 months in the amount of \$355.43 a month.
5. The tenant is entitled to reduce the rent per the restitution order after the Hearing Decision becomes final.
6. If the owner wishes to, it can repay the restitution owed to the tenant at any time. If it does so, the monthly decrease for restitution ends at the time the tenant is provided restitution.
7. If the owner stops renting units in the building on Airbnb or to any renter for a term shorter than 30 days, then the owner can increase the rent by 15% (\$245.85 a month.) **In order to increase the rent after the owner stops providing short-term rentals, the owner must provide the necessary notice pursuant to Civil Code § 827 and the Rent Adjustment Ordinance.**

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

Dated: November 19, 2019



Barbara M. Cohen
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE
Case Number T19-0096

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

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

Documents Included
Hearing Decision

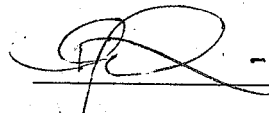
Manager
Carl Lee
226 Athol Avenue 211
Oakland, CA 94606

Owner
Julia Bartseva, Shamrock Real Estate Co.
2655 Van Ness Avenue Suite 2
San Francisco, CA 94109

Tenant
Clarrissa K. Cabansagan
226 Athol Ave Apt 108
Oakland, CA 94606

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **November 21, 2019** in Oakland, CA.



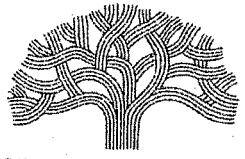
Raven Smith

Oakland Rent Adjustment Program

000217

MS/BL

RECEIVED
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. 2019 DEC 10 PM 2:25
	<u>APPEAL</u>	

Appellant's Name Trent Moore - Carta Moldings LLC		<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant	
Property Address (Include Unit Number) 226 Athol Ave #108, Oakland, CA 94606			
Appellant's Mailing Address (For receipt of notices) 2655 VAN NESS AVE Suite 2 San Francisco, CA 94109		Case Number T19 - 0096	
		Date of Decision appealed	
Name of Representative (if any) N/A		Representative's Mailing Address (For notices) N/A	

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.)*

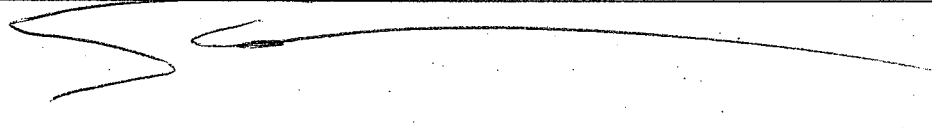
For more information phone (510) 238-3721.

- 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. *See attached.* (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: 7.

• 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 Dec. 10th, 2019.
 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	Trent Moore
Address	2655 VAN NESS AVE, Suite 2
City, State Zip	San Francisco, CA 94109
Name	N/A
Address	
City, State Zip	

	12/10/19
--------------------------------------------------------------------------------------	----------

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.

December 10, 2019

Explanation of Appeal

Re: Case #T19-0096
Rent Adjustment Program
Hearing Office
250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612

To Whom It May Concern,

I, Trent Moore, the owner of the building located at 226 Athol Avenue, am appealing to the hearing decision for Case #T19-0096 on the following grounds:

APPEAL OF AIRBNB SHORT-TERM RENTAL AND REDUCED HOUSING SERVICES

1. The owner completely stopped all Airbnb rentals on the premises as of September 2019. All units have subsequently been rented on a long-term basis. See attached rent roll for the building, as well as the closing statement from Airbnb (copies of lease agreements can be provided upon request).

~~As the owner ceased all Airbnb rentals entirely by September 2019, the restitution fee for 2019 should be recalculated.~~

2. The owner was not aware of Oakland's new law on short-term rentals of less than 30 days until the owner was served the notice of violation from the City of Oakland on April 18th, 2019. The owner was required to honor any previously made Airbnb reservations to avoid financial penalties. However, by June 2019, the owner had rented out one of the former Airbnb units on a long-term basis and rented out the rest of the units by September 2019.
3. In response to claims of reduced housing services in Case #T19-0096, we would like to remind the department of the various extensive building improvements that were completed in this time period, including work to the lobby, building exterior, roof, laundry room, landscaping, and the addition of skylights. The proof of work completed was submitted with the owner petition response to Case #T19-0096

APPEAL OF 15% RENTAL DECREASE

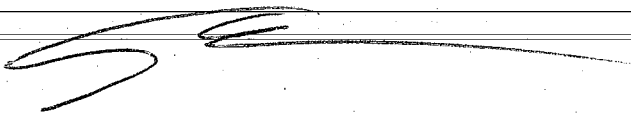
4. The owner questions where the monthly amount of 15% derives and why this number was agreed as an appropriate fee percentage. The owner suggests that 5%-8% is more than generous to compensate for any reduced housing service that the tenant may have experienced.

5. The claim for Case #T19-0096 states that the 15% reduced rental amount becomes the tenant's new *legal rent*, and any future rental increases must be completed pursuant to Civil Code 827. However, due to when the tenant in this case was last given a rental increase, it will mean that the tenant's legal rent cannot be increased until June 2020. With this in mind, the owner is appealing that this reduced rental amount be considered a *rental credit* rather than a new legal rent. This will allow for the owner to stop paying the 15% rental credit as of September 2019, at the time when the owner ceased all AirBnB rentals. As of October 1st, 2019, the tenant will resume paying a monthly rent of \$1,639, as the 15% rental credit will no longer be valid.

The owner should not be liable for paying a 15% rental reduction for the time following when the above issues were rectified.

Please see attached the rent roll for the building, rental advertisings, and the Airbnb account closing email confirmation.

Sincerely,



Trent Moore

Carta Holdings LLC

Rent Roll
Exported On: 12/10/2019 12:26 PM

Properties: Athol Lake Apartments - 226 Athol Avenue Oakland, CA 94606
Units: Active
As of: 12/10/2019

Unit	BD/BA	Tenant	Status	Rent	Lease From	Lease To
Athol Lake Apartments - 226 Athol Avenue Oakland, CA 94606						
101	0/1.00	Ryan Askew	Current	971.00	06/17/2007	06/16/2008
102	0/1.00	Jayden Thurston	Current	1,084.00	07/29/2012	07/28/2013
103	0/1.00	Douglas M. Manofsky	Current	2,195.00	10/02/2019	02/29/2020
104	0/1.00	Michele Williams	Current	767.00	11/16/1992	11/15/1993
105	0/1.00	Stephanie Ngai	Current	1,564.00	04/01/2016	03/31/2017
106	0/1.00	Bethany Herron	Current	999.00	02/01/2012	01/31/2013
107	0/1.00	Emily Yamauchi	Current	998.00	01/01/2013	12/31/2013
108	0/1.00	Clarrissa Cabansagan	Current	1,639.00	08/09/2016	08/08/2017
109	0/1.00	Bella Dona	Current	953.00	11/10/2002	11/09/2003
110	0/1.00	Kendra Adams	Current	985.00	02/01/2009	01/31/2010
111	0/1.00	Nakia White	Current	1,076.00	06/01/2013	05/31/2014
112	2/1.00	Vacant	Current	0.00		
201	0/1.00	Sabaa Shoraka	Current	1,008.00	06/18/2012	06/17/2013
202	0/1.00	Elizabeth Anne Klein	Current	1,792.00	04/15/2017	04/14/2018
203	0/1.00	Marc Whipple	Current	1,006.00	10/01/2013	09/30/2014
204	0/1.00	CYRUS A. VANDENBERGHE	Current	2,195.00	06/18/2019	02/18/2020
205	0/1.00	Phoebe Calef	Current	1,201.00	03/08/2015	03/07/2016
206	0/1.00	Kathleen Marie Andrews	Current	1,006.00	07/01/2013	06/30/2014
207	0/1.00	Chesson Duncan	Current	999.00	04/01/2012	03/31/2013
208	0/1.00	Johnasies McGraw	Current	1,006.00	01/14/2014	01/13/2015
209	0/1.00	Deborah Colón	Current	2,195.00	09/28/2019	09/27/2020
210	0/1.00	Candy K. Tiu	Current	2,195.00	11/18/2019	11/17/2020
211	0/1.00	Carl Lee	Current	975.00	07/01/2013	06/30/2014
212	0/1.00	Alexandra Epple	Current	2,195.00	09/28/2019	09/27/2020
Total 24 Units				100.0% Occupied	31,004.00	

manager



Airbnb Support

SEPTEMBER 18, 2019

**Airbnb Support** 6:07 PM

Hey Janet,

My name is Jared, and I am a case manager with Airbnb. I wanted to reach out and let you know the action I took today.


I was able to cancel all your reservations starting from September 21st with Sarah going forward for all listings. No penalties were applied to you as we discussed.

I would go in and make sure to unlist these properties so no guests can book them again.

You can do so by going to edit listing and scrolling down to the bottom of listing details. Then select listing status and hit edit.

It was my pleasure to assist you. Please don't hesitate to let me know if there's anything else I can help you with.

SEPTEMBER 20, 2019

 This support case is closed. Still need help? Visit our Help Center. <https://www.airbnb.com/help>

7:11 PM

**Airbnb Support**

Help from Airbnb's customer support team.

- 4 -

CL

SF bay area > east bay > housing >

apts/housing for rent

favorite

hide

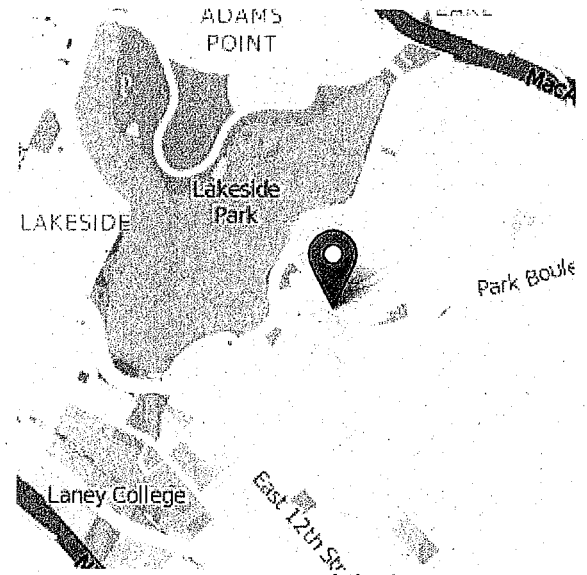
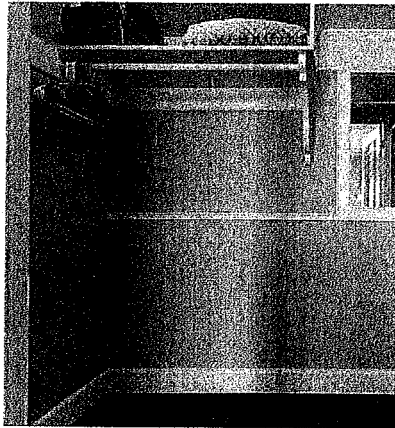


Posted 6 days ago on: 2019-11-21 10:44

Contact Information:

\$2995 / 2br - 850ft² - Modern Fully Furnished 2 Bed/1 Bath - Utilities Included (oakland lake merritt / grand)

image 14 of 23



Athol near wayne

furnished

2BR / 1Ba

850ft²

apartment

laundry on site

CL

• SF bay area > east bay > housing >

• apts/housing for rent

favorite

hide



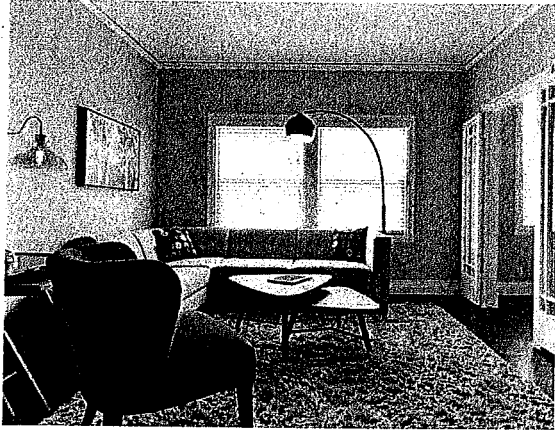
Contact Information:

- 5 -

000225

\$2995 / 2br - 850ft² - Modern Fully Furnished 2 Bed/1 Bath - Utilities Included (oakland lake merritt / grand)

image 1 of 23



Athol near wayne

furnished

2BR / 1Ba

850ft²

apartment

laundry on site

AVAILABLE NOW! UTILITIES INCLUDED! ALL FURNITURE INCLUDED!

QR Code Link to This Post

Remodeled 2 bed / 1 bath unit in a charming building featuring hardwood laminate flooring throughout common areas and cozy carpet in the bedrooms, stainless steel appliances, electrical heat, walk-in closets. Unit is conveniently located less than a block to Lake Merritt

Features:

- Brand New Stainless steel appliances (microwave, fridge, stove, coffee maker)
- Hardwood Floors and carpet
- Walk-In Closet
- Living Room
- All Utilities Included
- Coin-op Laundry onsite

Address: 226 Athol Ave. #112

To make an appointment please call or text Michael @ [show contact info](#)

Michael Bravo

Cell: [show contact info](#)

Fax: [show contact info](#)

San Francisco, CA 94109

- 6 -

000226

Proof of Service

To be filled out by Server AFTER service on Resident is complete

I, the undersigned, being at least 18 years of age, declare that I served this notice, of which this is a true copy, on the 10th day of December (month), 2019 (year), on the above-mentioned resident(s) in possession, in the manner indicated below.

- BY DELIVERING a copy of the Notice to the following resident(s) PERSONALLY: Julia Bartseva
- BY LEAVING a copy for each of the above-named resident(s) with a person of suitable age and discretion at the residence or usual place of business of the resident(s), said resident(s) being absent thereof;
AND MAILING by first class mail on said date a copy to each resident by depositing said copies in the United States Mail, in a sealed envelope, with postage fully prepaid, addressed to the above-named resident(s) at their place of residence.
- BY POSTING a copy for each of the above-named resident(s) in a conspicuous place on the property therein described, there being no person of suitable age or discretion to be found at any known place of residence or business of said resident(s);
AND MAILING by first class mail on the same day as posted, a copy to each resident by depositing said copies in the United States Mail, in a sealed envelope with postage fully prepaid, addressed to the resident(s) at the place where the property is situated.
- BY MAILING by first class mail on said date a copy to each resident by depositing said copies in the United States Mail, in a sealed envelope, with postage fully prepaid, addressed to the above-named resident(s) at their place of residence. (NOTE: SERVICE BY MAIL IS AVAILABLE FOR NOTICE OF CHANGE OF MONTHLY RENT ONLY.)

Place of Mailing: _____ Date of Mailing: _____

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct and if called as a witness to testify thereto, I could do so competently.

Executed this 10th day of December (month), 2019 (year), in San Francisco (city), CA (state).

Julia Bartseva
Name of Declarant (Print)

[Signature]
(Signature of Declarant)



Unauthorized Reproduction
of Blank Forms is Illegal.



- 7 -

000227

MS/OC

January 10, 2020

RECEIVED
CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM
2020 JAN 15 PM 3:33

Ms. Barbara Cohen
City of Oakland
Rent Adjustment Program
250 Frank Ogawa Plaza, Suite 5313
Oakland, CA 94612
bcohen@oaklandca.gov

RE: Response to Owner Appeal to Decision on Case# T19-0096

Dear Hearing Officer Cohen,

I, Clarrissa Cabansagan, the tenant residing at 226 Athol Avenue #108, am writing in response to the notice of appeal I received from Carta Holdings LLC on December 10, 2019.

Below are my responses to the points raised by Trent Moore in his appeal of your decision:

I BELIEVE THE DECISION OFFERS COMPENSATION FOR THE OWNER'S AIRBNB CONSTRUCTION AND OPERATIONS -- IN VIOLATION OF CITY REGULATIONS -- THAT HAVE SUBSTANTIALLY AND DIRECTLY INTERFERED WITH MY RIGHT TO QUIET USE AND ENJOYMENT OF THE RENTAL UNIT.

1. While Carta Holdings has discontinued Airbnb rentals, it is my understanding that your rent reduction calculation is an assessment on what is due to me for enduring conditions of tenant harassment and reduced housing services described in my December 2018 petition and hearing in July 2019 that the owner failed to attend.

As such, I do not agree that a different fee be recalculated based on the date Carta Holdings began abiding by the current short term rental regulations.

It is my understanding that your 15% reduction decision constitutes compensation for the tenant harassment and all associated adverse impacts I've had to endure -- conditions that began quite promptly upon the owner's acquisition of the property in late 2017.

2. The owner claims they were not aware of the Airbnb regulations until they were served notice of the violation in April 2019. **This is absolutely untrue.** I met with Trent Moore, Julia Bartseva, and Carl Lee (property manager) in person on the property a few weeks after I filed my petition. I mentioned they were in specific violation of the City's short-term rental regulations which they quickly shrugged off.

Further, on many and multiple occasions in 2018 I confronted the property manager Carl Lee about the Airbnb violations. Trent Moore was well aware of these conversations and confirmed his knowledge of them in our in-person meeting. These frustrations about the Airbnbs are well documented in the texts with Carl that were submitted to the City as part of my case. In fact, many tenants in the building have complained multiple times to the property owner and property manager about the Airbnb violations prior to April 2019.

Because Carta Holdings refused to abide by the current regulations for Airbnbs, I even helped Michele Williams, my neighbor in Apt #104, pursue code enforcement action on the Airbnb violations in tandem with the other violations she reported to. I provided the code violation documents from Michelle as part of my case.

3. The owner has made building improvements, however my main claims have been with regard to the adverse conditions I have sustained through 5 unit demolitions and renovations, water and utilities shut offs without warning, loss of safety and security in the building, as well as the noise and nuisance of dozens of Airbnb guests.

The listed improvements, which are largely aesthetic or part of responsible building maintenance, do not negate the fact that since late 2017, Carta Holdings LLC has created conditions that have overall reduced my quality of life in the building. For well over 1.5 years, the owner's actions substantially and directly interfered with my right to quiet use and enjoyment of the rental unit.

I OPPOSE THE OWNER'S SUGGESTION TO CHANGE THE RATE OR TERMS OF MY RENT ADJUSTMENT.

4. The rent reduction amount is a tiny penalty for the investment company. A 15% decrease on my current \$1639 rent equates to a monthly discount of \$245.85. **This decrease equates to only 0.79% of the total monthly rent that Carta Holdings collects on the building -- less than 1%.** This decrease is a miniscule fine, when compared to what funds they collect on the property. When the final vacant unit is rented out at the advertised \$2995, my rent decrease constitutes a mere **0.72% of the total rent collected at 226 Athol Avenue.** These calculations are based on numbers provided in rent roll and Craigslist ad for the final unit attached to the appeal letter.

Given the owner's contestation of this decision, I urge the Rent Adjustment Program to consider a decrease that actually penalizes the property owner seeking to skirt City regulation and the Tenant Protection Ordinance.

For example, if the City gave me a decrease that equated to even 1.5% of the total rent collected on this property, it would put more serious demands on Carta Holdings LLC to rethink its approach in doing business in the City of Oakland. Further, this decision means

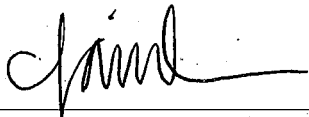
that all tenants in my building could have submitted a similar petition -- I am aware that the vast majority of my neighbors did not. Carta Holdings LLC is effectively already underpaying the penalty for its impacts on quality of life for tenants at 226 Athol Avenue.

5. The Rent Adjustment Program has assessed the reduced rental rate based on the evidence provided by both parties at the time of the hearing. This decision is not made on future actions taken by the owner to rectify the issues that were brought up in the hearing. I deserve reparations for what I've had to endure. A rental credit from June 2019 to September 2019 does not adequately compensate me for the reduction in services which started in November 2017.

Thank you in advance for your consideration of these points as you respond to the owner's appeal. Again, I greatly appreciate your decision that upholds city regulation and tenant protections.

I am grateful that the City's process was able to offer some justice at a time where so many of us are vulnerable to the displacement pressures and landlords that do wrong by Oakland residents. I hope that my case enables the City to crack down on those like Carta Holdings LLC who are exacerbating the housing crisis and claiming naivete while blatantly harassing tenants through their actions.

Sincerely,



Clarrissa Cabansagan

cc:

Margaret Sullivan

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: CLARRISSA CABANSAGAN FIRM NAME: STREET ADDRESS: 226 ATHOL AVE #108 CITY: OAKLAND TELEPHONE NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):		STATE BAR NUMBER: STATE: CA ZIP CODE: 94606 FAX NO.:	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY: ZIP CODE: BRANCH NAME:			
PETITIONER/PLAINTIFF: CLARRISSA CABANSAGAN RESPONDENT/DEFENDANT: TRENT MOORE			
PROOF OF SERVICE BY FIRST-CLASS MAIL—CIVIL			CASE NUMBER:

(Do not use this Proof of Service to show service of a Summons and Complaint.)

1. I am over 18 years of age and not a party to this action. I am a resident of or employed in the county where the mailing took place.

2. My residence or business address is:
226 ATHOL AVE. #108
OAKLAND, CA 94606

3. On (date): **1/15/2020** I mailed from (city and state):
the following documents (specify):
RESPONSE TO OWNER APPEAL TO DECISION ON CASE #T19-0096

The documents are listed in the Attachment to Proof of Service by First-Class Mail—Civil (Documents Served) (form POS-030(D)).

4. I served the documents by enclosing them in an envelope and (check one):

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

5. The envelope was addressed and mailed as follows:


- a. Name of person served: **TRENT MOORE**
- b. Address of person served: **2655 VAN NESS AVENUE, SUITE 2**
SAN FRANCISCO, CA 94109

The name and address of each person to whom I mailed the documents is listed in the Attachment to Proof of Service by First-Class Mail—Civil (Persons Served) (POS-030(P)).

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

Date: **1/15/2020**

CLARRISSA CABANSAGAN
(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)


(SIGNATURE OF PERSON COMPLETING THIS FORM)

RENT ADJUSTMENT PROGRAM
2020 JAN 24 AM 10:50

January 23, 2020

Ms. Margaret Sullivan
City of Oakland
Rent Adjustment Program
250 Frank Ogawa Plaza, Suite 5313
Oakland, CA 94612

RE: Additional Response to Owner Appeal to Decision on Case# T19-0096

Dear Ms. Sullivan,

I, Clarrissa Cabansagan, the tenant residing at 226 Athol Avenue #108, am submitting additional points based on new information revealed to me after having obtained a copy of the Hearing Decision on January 23, 2020.

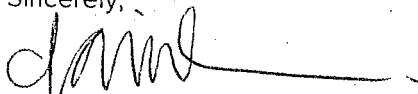
1. My response to the Owner's Appeal served on January 15th was based on limited information I inferred from the Owner's Appeal. Today is the first time I received a copy of the hearing decision. I did not have access to the detailed terms of the decision on my case.
2. Based on the City's November 19, 2019 order, the owner is granted the ability to increase my rent by 15% after the owner stops providing short-term rentals so long as they provide the necessary notice pursuant to Civil Code § 827 and Rent Adjustment Ordinance.

Please clarify these terms, as this conflicts with the newly passed Assembly Bill 1482 (Tenant Protection Act of 2019) that **limits the owner's ability to increase rent by 5%, plus inflation with a maximum cap of 10%.**

- My last rent increase was effective June 1, 2019. The City currently only allows one rent increase per 12-month period. Any rent increase that aims to come into effect prior to June 1, 2020 would constitute a second rent increase on my unit within the 12-month period.
- I ask the City honor that June 1, 2020 is the earliest date that Carta Holdings can collect the next rent increase on my unit.

Thank you for your kind consideration of these points as the City comes to a Final Decision on my case.

Sincerely,


Clarrissa Cabansagan

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: CLARRISSA CABANSAGAN FIRM NAME: STREET ADDRESS: 226 ATHOL AVENUE #108 CITY: OAKLAND TELEPHONE NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	STATE BAR NUMBER: FOR COURT USE ONLY CASE NUMBER: T19-0096
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: CITY OF OAKLAND, RENT ADJUSTMENT BOARD MAILING ADDRESS: 250 FRANK OGAWA PLAZA, SUITE 5313 CITY: OAKLAND BRANCH NAME:	
PETITIONER/PLAINTIFF: CLARRISSA CABANSAGAN RESPONDENT/DEFENDANT: TRENT MOORE	
PROOF OF SERVICE BY FIRST-CLASS MAIL—CIVIL	

(Do not use this Proof of Service to show service of a Summons and Complaint.)

1. I am over 18 years of age and **not a party to this action**. I am a resident of or employed in the county where the mailing took place.
2. My residence or business address is:
226 ATHOL AVE, #108
OAKLAND, CA 94606
3. On (date): 1/24/2020 I mailed from (city and state): OAKLAND, CA the following documents (specify):
ADDITIONAL RESPONSE TO OWNER APPEAL TO DECISION ON CASE# T19-0096

The documents are listed in the *Attachment to Proof of Service by First-Class Mail—Civil (Documents Served)* (form POS-030(D)).

4. I served the documents by enclosing them in an envelope and (check one):

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

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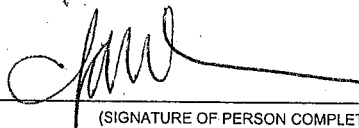
- a. **Name** of person served: TRENT MOORE
- b. **Address** of person served:
2655 VAN NESS AVENUE, SUITE 2
SAN FRANCISCO, CA 94109

The name and address of each person to whom I mailed the documents is listed in the *Attachment to Proof of Service by First-Class Mail—Civil (Persons Served)* (POS-030(P)).

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

Date: 1/23/2020

CLARRISSA CABANSAGAN
(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)


(SIGNATURE OF PERSON COMPLETING THIS FORM)