

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

March 14, 2019

7:00 P.M.

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

AGENDA

1. CALL TO ORDER
2. ROLL CALL
- 3.. CONSENT ITEMS
 - i. Approval of Minutes
 - a. February 28, 2019
4. OPEN FORUM
5. NEW BUSINESS
 - A. Appeal Hearings in:
 - i. L17-0062, Kahan v. Tenants
 - ii. L17-0212, Shen v. Tenants
 - iii. L17-0155, Fox v. Tenants
 - B. Board Officer Elections
 - C. Staff Recommendation re Board Attendance Policy
 - D. Request for fee increase for RAP
 - E. RAP Annual Report
6. SCHEDULING AND REPORTS
7. ADJOURNMENT

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

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

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

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

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

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

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

**CITY OF OAKLAND
HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD
Regular Board Meeting
February 28, 2019
7:00 p.m.
City Hall, Hearing Room #1
One Frank H. Ogawa Plaza, Oakland, CA**

MINUTES

1. CALL TO ORDER

The HRRRB was called to order at 7:10 p.m. by Board Chair Jessie Warner.

2. ROLL CALL

MEMBER	STATUS	PRESENT	ABSENT	EXCUSED
D. Mesaros	Tenant			X
T. Hall	Tenant	X		
E. Lai	Homeowner Alt.			X
R. Stone	Homeowner	X		
M. Cook	Homeowner	X		
J. Warner	Homeowner	X		
K. Friedman	Owner	X		
B. Scott	Owner Alt.			X
T. Williams	Owner	X		

Staff Present

Ubaldo Fernandez	Deputy City Attorney
Chanee Franklin Minor	Program Manager
Barbara Kong-Brown	Senior Hearing Officer

3. CONSENT ITEMS

- i. Approval of Minutes
 - a. January 24, 2019
 - b. February 7, 2019

R. Stone moved to approve the minutes. M. Cook seconded. The Board voted as follows:

Aye: R. Stone, T. Hall, T. Williams, M. Cook, J. Warner, K. Friedman
 Nay: 0
 Abstain: 0

The motion was approved by consensus.

4. OPEN FORUM SPEAKERS

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5. NEW BUSINESS

A. Appeals Hearings

- a. 1. L17-0124. Bellinger v. Tenants
2. T17-0546, Madrigale v. Bellinger
3. C17-0030, Madrigale v. Bellinger

Appearances:

Larry Bellinger,	Owner Appellant
Paige Barce-Beery	Tenant Representative
Ora Prochovnick	Tenant Representative

The owner appealed a denial of rent increase based on his failure to provide the tenant with the RAP notice. He contended that the decision is not supported by substantial evidence and denies him a fair rate of return on his investment and other grounds not recognized as grounds for appeal.

The Owner contends that in December 2016 he was notified that 2 of the tenants would move out in June 2017 which occurred. The agreement with the prior tenants terminated when the two tenants left. He told the tenant that her new rent would be \$2,000.00 as the sole tenant. The tenant began to pay the new rent and would not sign a new lease. To date the tenant has not returned a signed rental agreement. In June 2017 two persons were living in the unit and the owner was not informed of the new occupants. The tenant said she would not sign anything pending outcome of the rent petition. The tenant has rented the unit to two new persons who are not authorized by the owner. There is no background regarding them and the owner has no information about them. She has become the landlord without the owner's knowledge. She has violated the rental agreement.

The tenant representative contends the appeal does not have merit. The lease did not terminate. It continued on a month to month basis. There are 3 prior decisions regarding this case. The owner has never served the RAP notice so he cannot increase the tenant's rent. The tenants are not unapproved subtenants. He continues to accept rent from the tenant.

After questions to the parties and Board discussion R. Stone moved to affirm the hearing decision based on substantial evidence that the owner did not provide the RAP notice to the tenant. K. Friedman seconded.

The Board voted as follows:

Aye: R. Stone, T. Hall, T. Williams, J. Warner, M. Cook, K. Friedman
Nay: 0
Abstain: 0

The motion was approved by consensus.

b. L17-0183, Westlake Partner LLC v. Tenants

Appearances:	Doug Brien	Owner Appellant
	Jackie Zaneri	Tenant Appellee Representative
	Clara Garzon	Spanish Interpreter

The owner appealed from a hearing decision which partly granted a capital improvement increase. Regarding disallowed costs 1) the owner did not provide evidence that the work had been completed with proper permits; there was no proof of payment of some invoices; 2) some of the work did not qualify because it did not benefit the tenants; 3) some of the costs were outside the 24-month period; 4) some costs had already been passed through in a prior capital improvement pass-through and the owner could not differentiate those costs from current costs.

The owner contended that the prior property manager that appeared at the hearing was not fully versed and could not differentiate the expenses. The owner was not aware that appropriate documents were not submitted within a certain time frame. Some of the documents were in the packet for the hearing. The work was paid for and permitted. The work for the alarm system was permitted. Other permits have been submitted for this Appeal hearing.

The tenant representative contended that the owner did not meet his burden of proof for passing through the capital improvement costs. He did not provide a finalized permit for the work that required a finalized permit at the hearing. He did not provide sufficient documentation seven days prior to the hearing. The owner could have provided the required documentation at the hearing and there is no good cause for him to submit new evidence at this appeal hearing. She also questioned the new documents submitted by the owner for the appeal hearing.

After arguments made by the owner, questions and Board discussion, R. Stone moved to affirm the hearing decision based on substantial evidence. T. Williams seconded. The Board voted as follows:

Aye: R. Stone, T. Hall, T. Williams, J. Warner, M. Cook, K. Friedman
Nay: 0
Abstain: 0

The motion was approved by consensus.

6. SCHEDULING & REPORTS

a. Staff presentations were made to Ubaldo Fernandez for his service to the Rent Board and to Karen Friedman for Best Attendance.

7. ADJOURNMENT

The meeting was adjourned by consensus at 8:30 p.m.

CHRONOLOGICAL CASE REPORT

Case No.: L17-0062
Case Name: Kahan v. Tenants
Property Address: 2642 35th Ave., Oakland, CA
Parties: Irma Galvez (Owner Representative)
No appearance by the tenants

OWNER APPEAL:

<u>Activity</u>	<u>Date</u>
Owner Petition filed	March 29, 2017
No Tenant Responses filed	-----
Hearing Decision issued	May 9, 2018
Owner Appeal filed	May 29, 2018

RECEIVED

RECEIVED

<p>CITY OF OAKLAND RENT ADJUSTMENT PROGRAM 250 Frank M. Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721</p>	<p>For date stamp. CITY OF OAKLAND RENT ADJUSTMENT PROGRAM 2017 MAR 29 AM 10:52</p> <p align="center"><u>LANDLORD PETITION</u> <u>FOR CERTIFICATE OF EXEMPTION</u> (OMC §8.22.030.B)</p>
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Please Fill Out This Form Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed. Attach to this petition copies of the documents that prove your claim. Before completing this petition, please read the Rent Adjustment Ordinance, section 8.22.030. A hearing is required in all cases even if uncontested or irrefutable.

Section 1. Basic Information

L17-0062 KM/MA

Your Name Tobias Kahan	Complete Address (with zip code) 2501 Channing Way Berkeley, CA 94704	Telephone Day: (510) 8414228
Your Representative's Name	Complete Address (with zip code)	Telephone Day:
Property Address 2642 35th Ave, Oakland, CA 94619		Total number of units in bldg or parcel. 4
Type of units (circle one)	Single Family Residence (SFR)	Condominium
If an SFR or condominium, can the unit be sold and deeded separately from all other units on the property?		Apartment or Room No

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

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

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

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

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

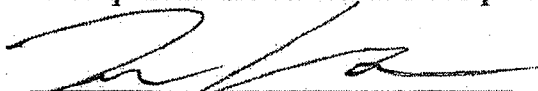
1. Did the prior tenant leave after being given a notice to quit (Civil Code Section 1946)?
2. Did the prior tenant leave after being a notice of rent increase under Civil Code Section 827?
3. Was the prior tenant evicted for cause?
4. Are there any outstanding violations of building, housing, fire,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

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

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

Section 4. Verification Each petitioner must sign this section.

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


Owner's Signature

9 March 2017
Date

Owner's Signature

Date

Important Information

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

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

3/29/17

RE:

2642 35th Ave, Oakland 94619

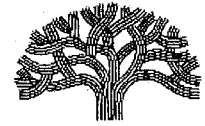
TENANT

Khalilah El-Amin 2642 35th, Ave #A

Katrina Jenkins 2642 35th #B

Tynesha Staten 2642 35th #C

Carrie Golston 2642 35th #D



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

CITY OF OAKLAND

Department of Housing and Community Development
Rent Adjustment Program

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

HEARING DECISION

CASE NUMBER: L17-0062, Kahan v. Tenants
PROPERTY ADDRESS: 2642 35th Avenue, Oakland, CA
DATE OF HEARING: January 29, 2018
DATE OF DECISION: April 30, 2018
APPEARANCES: Irma Galvez, Owner Representative

SUMMARY OF DECISION

The owner's petition is denied. The units in the subject building are not exempt from the Rent Adjustment Ordinance.

CONTENTIONS OF THE PARTIES

The owner filed a petition on March 29, 2017, for a Certificate of Exemption on the grounds that the subject building was "substantially rehabilitated," pursuant to Oakland Municipal Code (O.M.C.) Section 8.22 and Rent Adjustment Program Regulations. No tenant filed a response to the owner's petition.

THE ISSUE

Is the subject building exempt from the Rent Adjustment Ordinance as being a "substantially rehabilitated" building?

EVIDENCE

At the Hearing, the owner representative testified that the owner, Tobias Kahan, purchased the subject property in November of 2015. At the time, the property was vacant and uninhabitable due to fire damage. Shortly after purchasing the property, the

000011

owner began construction to restore and renovate the entire four-unit building. The owner representative testified that the renovation project began in January of 2016, and construction was completed by October of 2016. The owner contracted with Clovis Management, a construction management company owned by Mr. Kahan's mother, Gail Giffen, and her partner Christopher Pisarra, to do the construction. The owner representative testified that Mr. Kahan made a verbal agreement with his mother, whereby Clovis Management would manage and pay for the entire renovation, and Mr. Kahan would repay Clovis Management in two years, after the construction was complete and he was able to get a refinancing loan for the property. On January 16, 2018, Mr. Kahan repaid Clovis Management with a one-time lump sum payment totaling \$316,218.00. The owner representative submitted the following documents regarding the building:

- (1) A Final Invoice from Clovis Management dated January 18, 2017, totaling \$316,218.00 in construction costs for the restoration and renovation project.¹ This document includes an itemized list of construction expenses for the renovation project.
- (2) A check dated January 16, 2018, in the amount of \$316,218.00 issued to Clovis Management from the Tobias Kahan 2010 Living Trust.²
- (3) A Permit Inspection Record and Permits issued by the City of Oakland.³ The Permit Inspection Record states that the permit was issued on January 6, 2016, and "finalized" on October 12, 2016. The work listed on this document includes fire repair to unit #3; remodel kitchens & bathroom for 4-plex; replace 25 windows with retrofits.
- (4) Receipts for payment of permit fees totaling \$5,549.15.⁴
- (5) A Compliance Certificate for Private Sewer Lateral dated May 3, 2016.⁵
- (6) Credit card statements of Christopher Pisarra, owner of Clovis Management, showing purchases at Home Depot.⁶ Highlighted portions of these statements indicate purchases made at Home Depot from February 2016 through May 2016.
- (7) Photographs of the subject property before and after the restoration and renovation project.⁷
- (8) An Incident Report dated March 13, 2015, for a fire on the property.⁸

FINDINGS OF FACT AND CONCLUSIONS OF LAW

O.M.C. § 8.22.030(A)(6) states that dwelling units located in "substantially rehabilitated buildings" are not "covered units" under the Rent Ordinance. Additionally, the Ordinance states that:

¹ Exhibit No. 1

² Exhibit No. 2

³ Exhibit No. 3

⁴ Exhibit No. 4

⁵ Exhibit No. 5

⁶ Exhibit No. 6

⁷ Exhibit No. 7

⁸ Exhibit No. 8

- a. "In order to obtain an exemption based on substantial rehabilitation, an owner must have spent a minimum of fifty (50) percent of the average basic cost for new construction for a rehabilitation project and performed substantial work on each of the units in the building.
- b. The average basic cost for new construction shall be determined using tables issued by the chief building inspector applicable for the time period when the substantial rehabilitation was completed.
- c. An Owner seeking to exempt a property on the basis of substantial rehabilitation must first obtain a certificate of exemption after completion of all work and obtaining a certificate of occupancy. If no certificate of occupancy was required to be issued for the property, in lieu of the certificate of occupancy an owner may provide the last finalized permit. For any property that has a certificate of occupancy issued on or before the date of enactment of this subparagraph O.M.C. 8.22.30B.2.c. for which an Owner claims exemption as substantially rehabilitated, the Owner must apply for such exemption not later than June 30, 2017 or such exemption will be deemed vacated."⁹

Here, the owner is seeking an exemption from the City of Oakland's Rent Adjustment Ordinance. The general rule of law about exemptions is that they are to be "strictly construed." See *DaVinci v. San Francisco Residential Rent Board*, (1992) 5 Cal. App. 4th 24, 27. In *DaVinci* the Court cited *Barnes v. Chamberlain* (1983) 147 Cal. App. 3rd 762 in stating that:

"In interpreting exceptions to the general statute courts include only those circumstances which are within the words and reason of the exception. ... One seeking to be excluded from the sweep of the general statute must establish that the exception applies."

Additionally, the Court in *DaVinci* stated that the rules regarding the interpretation of a municipal ordinance are the same rules as those that govern the construction of statutes. *DaVinci* at 27, citing *City of Los Angeles v. Los Olivos Mobile Home Park* (1989) 213 Cal. App. 3^d 1427, 1433. In other words, an owner has the burden to prove an exemption, and any attempt to exempt a property from the Ordinance must be strictly construed.

It is well established that an owner cannot seek a substantial rehabilitation exemption until the work has been completed and paid for. The record reflects that the invoice from Clovis Management was dated January 18, 2017, and the check for the payment issued to Clovis Management was dated January 16, 2018. Therefore, the renovation project was not completed and paid for until January 16, 2018, almost a year after the petition filing date of March 29, 2017, and mere days before the hearing date.

⁹ O.M.C. § 8.22.030(B)(2)(a-c)

The regulations clearly require that all work be completed and paid for prior to filing for an exemption based on substantial rehabilitation.


In addition, the owner only submitted a final invoice listing a summary of construction expenses and failed to submit contracts, invoices/receipts, or proof of payments to substantiate the breakdown of construction expenses listed in the final invoice. The owner also failed to provide evidence of the square footage of the subject property. The owner has failed to sustain his burden of proof for an exemption based on substantial rehabilitation and the owner petition is denied.

ORDER

1. Petition L17-0062 is denied. The subject property is not exempt from the Rent Adjustment Ordinance.

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

Dated: April 30, 2018



Maimoona Ahmad
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE
Case Number L17-0062

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

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

Documents Included
Hearing Decision

Owner

Tobias Kahan
2501 Channing Way
Berkeley, CA 94704

Tenants

Carrie Golston
2642 35th Ave #D
Oakland, CA 94619

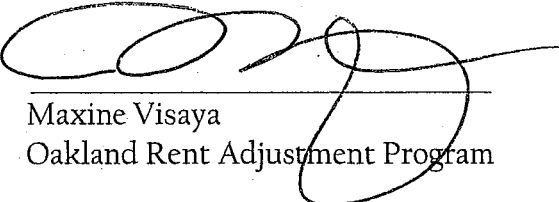
Katrina Jenkins
2642 35th Ave #B
Oakland, CA 94619

Khalilah El-Amin
2642 35th Ave #A
Oakland, CA 94619

Tynesha Staten
2642 35th Ave #C
Oakland, CA 94619

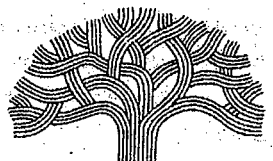
I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on May 9, 2018 in Oakland, CA.



Maxine Visaya
Oakland Rent Adjustment Program

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CITY OF OAKLAND

**CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM**

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

For date stamp.

JUN 22 11:23

APPEAL

Appellant's Name TOBIAS KAHAN		<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant	
Property Address (Include Unit Number) 2642 - 35TH AVENUE, OAKLAND, CA			
Appellant's Mailing Address (For receipt of notices) 2501 CHANNING WAY BERKELEY, CA 94704		Case Number L17-0062	Date of Decision appealed APRIL 30, 2018
Name of Representative (if any) MARK E. RUBKE		Representative's Mailing Address (For notices) 1999 HARRISON, SUITE 1800 OAKLAND, CA 94612	

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

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

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

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

For more information phone (510) 238-3721.

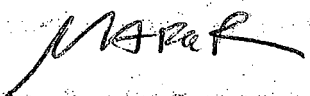
- f) I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. (In your explanation, you must describe how you were denied the chance to defend your claims and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue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

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

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

I declare under penalty of perjury under the laws of the State of California that on 5/29, 2018, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

Name	SEE ATTACHED MAILING LIST
Address	
City, State/Zip	
Name	
Address	
City, State/Zip	

	5/29/2018
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SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE **DATE**

For more information phone (510) 238-3721.

IMPORTANT INFORMATION:

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

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

For more information phone (510) 238-3721.

MAILING LIST

THURSDAY, APR 24 1997

Tenants:

Carrie Golston
2642 35th Ave #D
Oakland, CA 94619

Katrina Jenkins
2642 35th Ave #B
Oakland, CA 94619

Khalilah El-Amin
2642 35th Ave #A
Oakland, CA 94619

Tynsha Staten
2642 35th Ave #C
Oakland, CA 94619

EXPLANATION RE APPEAL

L17-0062

Kahan v Tenants

This appeal is based on the grounds that the underlying decision is inconsistent with the OMC, Chapter 8.22 and the Rent Board Regulations.

Owner contends the evidence submitted at the hearing on January 29, 2018 constituted substantial evidence of exemption based on substantial rehabilitation contrary to the finding(s) of the hearing officer.

It should be emphasized at the outset that not one of one of the four (4) tenants filed any opposition to the owners petition.

It should be further noted that the evidence at the hearing established that the subject property was vacant and uninhabitable due to fire damage.

In establishing and implementing the Residential Rent Adjustment Program the City of Oakland found that a shortage of housing existed in Oakland, that the welfare of all persons who live and/or work in Oakland depend, in part, on attracting persons who are willing to invest in residential rental property in Oakland, and that the City of Oakland take action that encourages investment in residential housing. See OMC, Section 8.22.010, et seq.

Here, the uncontradicted evidence established that the subject property, which was vacant and uninhabitable, was purchased in November, 2015, that construction began in January, 2016, and was completed in October 2016, when the permit was finalized by the City. The project was paid for by owner's agent, Clovis Management in the sum of \$316,218.

In its first finding, the Hearing Officer found that the project was not completed and paid for until January 16, 2018, the date the management company was reimbursed by the owner, yet the uncontested evidence established that the project was completed and paid for by owner's

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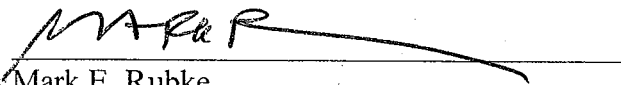
agent on October 12, 2016, when it was signed off by the City. The fact that the agent was not reimbursed until some time later does not comport with the OMC as to project completion. The Code defines project completion as the date of “finalized permit.” OMC, 8.22.030 (B)(2)c Thus, the project was completed prior to the filing for exemption.

In its next finding, the hearing officer found that the owner “only submitted a final invoice...and failed to submit contracts...or proof of payments to substantiate the breakdown of construction expenses...” As to contracts, the uncontradicted evidence established that the contract between owner and agent was verbal. Next, despite the finding of the hearing officer, the uncontested evidence offered “an itemized list of construction expenses for the renovation project.” (See Exhibit #1)

Finally, in its third finding, the officer stated that the owner failed to provide evidence of square footage of the property, however a careful reading of both the OMC and the Regulations does not bar an exemption based on failure to submit square footage figures.

May 29, 2018

Respectively Submitted,


Mark E. Rubke
Attorney for Tobias Kahan,
Owner

000021

CHRONOLOGICAL CASE REPORT

Case No.: L17-0212
Case Name: Shen v. Tenants
Property Address: 3672 39th Ave., Oakland, CA
Parties: Ling Jean Shen (Owner)
Quan Phan (Property Manager)
No appearance by the tenants

TENANT APPEAL:

<u>Activity</u>	<u>Date</u>
Owner Petition filed	September 11, 2017
Tenant Responses filed for Unit #s 4 & 5	October 23, 2017 October 24, 2017
Hearing Decision issued	April 17, 2018
Tenant Appeal filed (Unit #6)	May 7, 2018

CITY OF OAKLAND RENT ADJUSTMENT PROGRAM 250 Frank H. Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721	For date stamp. RENT ADJUSTMENT PROGRAM 2017 SEP 11 AM 11:13 <p style="text-align: center;"><u>LANDLORD PETITION</u> <u>FOR CERTIFICATE OF EXEMPTION</u> (OMC §8.22.030.B)</p>
---	---

Please Fill Out This Form Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed. Attach to this petition copies of the documents that prove your claim. Before completing this petition, please read the Rent Adjustment Ordinance, section 8.22.030. A hearing is required in all cases even if uncontested or irrefutable.

Section 1. Basic Information

L17-0212 KM/LM

Your Name LING JEAN SHEN		Complete Address (with zip code) 3291 MADISON ST ALAMEDA, CA 94501	Telephone Day: (510) 748-9625
Your Representative's Name GBA Realty / Quan Phan		Complete Address (with zip code) 1592 Yosemite Ave San Francisco, CA 94124	Telephone Day: 415-829-7711
Property Address 3672 39th Ave, Oakland, CA 94619			Total number of units in bldg or parcel. 6
Type of units (circle one)	Single Family Residence (SFR)	Condominium	<input checked="" type="checkbox"/> Apartment or Room
If an SFR or condominium, can the unit be sold and deeded separately from all other units on the property?		Yes	No
Assessor's Parcel No.			30-1925-10

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

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

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

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

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


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

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

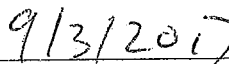
<input checked="" type="checkbox"/>	New Construction
<input type="checkbox"/>	Substantial Rehabilitation
<input type="checkbox"/>	Single Family Residence or Condominium (Costa-Hawkins)

Section 4. Verification Each petitioner must sign this section.

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



Owner's Signature



Date

Owner's Signature

Date

Important Information

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

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



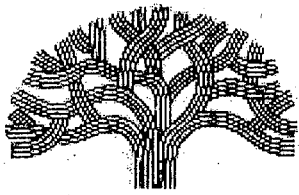
Current Tenants

As of 9/7/2017, 3672 39th Ave

Prepared By: GBA Realty
1592 Yosemite Ave
San Francisco, CA 94124
<https://gbarealty.managebuilding.com>
<http://www.gbarproperties.com>

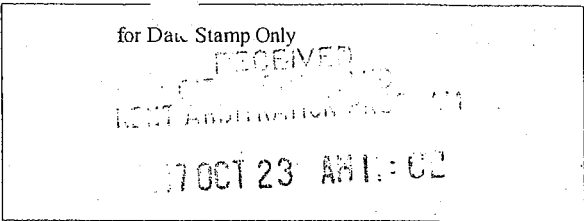
3672 39th Ave

Unit	Name	Mailing Address
1	Tai Tran	3672 39th Ave - 1 Oakland, CA 94619
2	Josephine Majorana	3672 39th Ave - 2 Oakland, CA 94619
2	Alexis Wright	3672 39th Ave - 2 Oakland, CA 94619
2	Francesca Muscolo-Arlt	3672 39th Ave - 2 Oakland, CA 94619
2	Sarah Taylor	3672 39th Ave - 2 Oakland, CA 94619
3	Tina Tran	3672 39th Ave - 3 Oakland, CA 94619
4	Tracy Nguyen	3672 39th Ave - 4 Oakland, CA 94619
5	Ngoc Mai	3672 39th Ave - 5 Oakland, CA 94619
6	Lourdes Garcia	3672 39th Ave - 6 Oakland, CA 94619



**CITY OF OAKLAND
RENT ADJUSTMENT
PROGRAM**

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



CASE NUMBER L17-0212

TENANT RESPONSE TO
CLAIM OF PERMANENT EXEMPTION

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

Your Name <i>ngoc mai</i>	Complete Address (with Zip Code) <i>3672-39th AVE #5 OAKLAND: CA 94619</i>	Telephone <i>510 336-0782</i>
Your Representative's Name	Complete Address (with Zip Code)	Telephone

Number of Units on the parcel: The unit I rent is: a house an apartment a condo

Rental History:

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

Are you current on your rent? Yes No Lawfully Withholding Rent

If you are lawfully withholding rent, attach a written explanation of the circumstances.

Exemption Contested

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

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

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

The property owner has the burden of proving the right to exemption for the unit. Explain below why you believe your landlord's claim that your unit is exempt is incorrect.

The property was built in 1980-1985

please provide Vietnamese interpreter

Please list the date you first received the Notice to Tenants of the Residential Rent Adjustment Program (RAP Notice):

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

Date Notice Given (Mo/Day/Yr)	Date Increase Effective	Rent Increased		Did you receive a NOTICE TO TENANTS with the notice of rent increase?
		From	To	
10/13/2017	1/1/2018	\$ 1,050	\$ 1,400	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	2017	\$ 1,050	\$ 1,050	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	2016	\$ 850	\$ 950	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	2015	\$ 750	\$ 850	<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

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.

Ngoc Mai
 Tenant's Signature

10-23-2017
 Date

 Tenant's Signature

 Date

Important Information

This form must be received at the Rent Adjustment Offices by the date and time limits prescribed by Oakland Municipal Code, Chapter 8.22. The offices are located at City of Oakland, Rent Adjustment Program, Dalziel Building, 250 Frank H. Ogawa Plaza Suite 5313, Oakland, CA 94612. The mailing address is PO Box 70243, Oakland, CA 94612-0243. For more information, please call: 510-238-

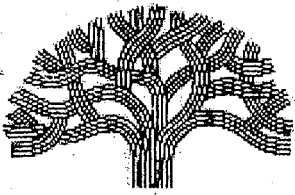
You cannot get an extension of time to file your Response by telephone.

File Review

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

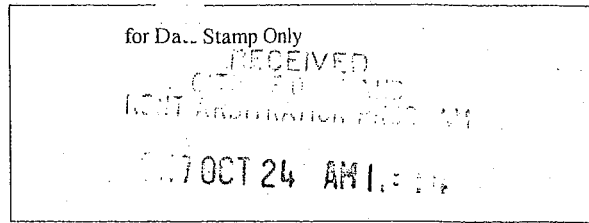
For an appointment to review a file call (510) 238-3721.

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



**CITY OF OAKLAND
RENT ADJUSTMENT
PROGRAM**

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



CASE NUMBER L17-0212

TENANT RESPONSE TO
CLAIM OF PERMANENT EXEMPTION

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

Your Name <i>Tracy Nguyen</i>	Complete Address (with Zip Code) <i>3672 39th Ave #4 Oakland, CA 94619</i>	Telephone <i>(510) 856-6922</i>
Your Representative's Name	Complete Address (with Zip Code)	Telephone

Number of Units on the parcel:

The unit I rent is:

a house

an apartment

a condo

Rental History:

Date you entered into the Rental Agreement for this unit:

Date you moved into this unit:

Are you current on your rent? Yes No Lawfully Withholding Rent

If you are lawfully withholding rent, attach a written explanation of the circumstances.

Exemption Contested

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

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

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

The property owner has the burden of proving the right to exemption for the unit. Explain below why you believe your landlord's claim that your unit is exempt is incorrect.

Please list the date you first received the Notice to Tenants of the Residential Rent Adjustment Program (RAP Notice):

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

Date Notice Given (Mo/Day/Yr)	Date Increase Effective	Rent Increased		Did you receive a NOTICE TO TENANTS with the notice of rent increase?
		From	To	
8/15/14	12/1/14	\$ 930	\$ 1000	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
10/31/15	1/1/16	\$ 1000	\$ 1100	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
10/24/16	1/1/17	\$ 1100	\$ 1150	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
10/18/17	1/1/18	\$ 1150	\$ 1600	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No

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.

Tracy Nguyen
 Tenant's Signature

10/19/17
 Date

 Tenant's Signature

 Date

Important Information

This form must be received at the Rent Adjustment Offices by the date and time limits prescribed by Oakland Municipal Code, Chapter 8.22. The offices are located at City of Oakland, Rent Adjustment Program, Dalziel Building, 250 Frank H. Ogawa Plaza Suite 5313, Oakland, CA 94612. The mailing address is PO Box 70243, Oakland, CA 94612-0243. For more information, please call: 510-238-

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

File Review

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

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

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

PROOF OF SERVICE

Case Number L17-0212

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 Tenant Notification of Landlord Petition and Tenant Response Form, Copy of Landlord Petition for a Certificate of Exemption and Notice of Hearing by placing a true copy of it in a sealed envelope in a City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California, addressed to:

Tenants

Alexis Wright
3672 39th Ave #2
Oakland, CA 94619

Francesca Muscolo-Arlt
3672 39th Ave #2
Oakland, CA 94619

Josephine Majorana
3672 39th Ave #2
Oakland, CA 94619

Lourdes Garcia
3672 39th Ave #6
Oakland, CA 94619

Ngoc Mai
3672 39th Ave #5
Oakland, CA 94619

Sarah Taylor
3672 39th Ave #2
Oakland, CA 94619

Tai Tran
3672 39th Ave #1
Oakland, CA 94619

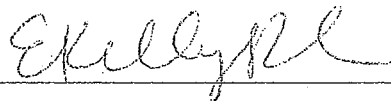
Tina Tran
3672 39th Ave #3
Oakland, CA 94619

000030

Tracy Nguyen
3672 39th Ave #4
Oakland, CA 94619

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 October 11, 2017 in Oakland, CA.



Esther K. Rush

Oakland Rent Adjustment Program

000031



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

CITY OF OAKLAND

Housing and Community Development Department
Rent Adjustment Program

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

HEARING DECISION

CASE NUMBER: L17-0212, Shen v. Tenants
PROPERTY ADDRESS: 3672 39th Ave, Oakland, CA
DATE OF HEARING: March 1, 2018
DATE OF DECISION: April 12, 2018
APPEARANCES: Ling Jean Shen, Owner
Quan Phan, Property Manager

SUMMARY OF DECISION

The Landlord Petition for Certificate of Exemption is granted. The subject property is exempt from the Rent Adjustment Program as new construction.

CONTENTIONS OF THE PARTIES

On September 11, 2017, the owner filed a Landlord Petition for Certificate of Exemption, alleging that the subject property is exempt from the Rent Adjustment Program (RAP) as newly constructed after January 1, 1983.

On October 23, 2017, tenant Mai (Unit #5) filed a timely response to owner's petition, alleging the property was built in 1980-1985 and listing the rent increases in 2015, 2016, 2017 and 2018. The tenant did not appear for the hearing.

On October 24, 2017, tenant Nguyen (Unit #4) filed a timely response to owner's petition, listing the rent increases in 2014, 2016, 2017 and 2018. The tenant did not appear for the hearing.

ISSUE

(1) Is the subject unit exempt from the jurisdiction of the Rent Adjustment Program?

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EVIDENCE

The subject property is a residential dwelling, consisting of six (6) residential units. The owner testified that she and her husband purchased an empty lot in 1986 and her husband, who was the builder-contractor at that time, built the entire property after they purchased it. The building was completed in 1988.

The owner submitted the following documents into evidence:

1. The City of Oakland Certificate of Occupancy, issued on January 15, 1988, showing the final inspection and completion date of January 5, 1988, for a "6 Unit Apartment House" at 3672 395h Ave.;¹ and
2. Grant Deed, dated January 14, 1986, recorded January 23, 1986, showing Kuo Hui Shen and Ling Jean Shen, husband and wife, as grantees of the property described as "Lots 13, 14, 15 and 16" and the Assessor's Parcel Number 30-1925-10.²

Notice to all tenants

The owner's petition included a list names and unit numbers for all tenants as of September 7, 2017.

On October 11, 2017, a Notice of Hearing and the Tenant Notification of the Landlord Petition for Certificate of Exemption was mailed to the tenants in all six units with a proof of service. The mail was not returned as non-delivered. The tenants in units 4 and 5 filed responses but did not appear at the hearing. No tenants appeared for the hearing. The tenants in all units were properly notified of the owner's petition and the Hearing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Exemption

The Rent Ordinance exempts certain dwelling units which were newly constructed and received a certificate of occupancy on or after January 1, 1983. To qualify as a newly constructed dwelling unit, the unit must be entirely newly constructed or created from space that was formerly entirely non-residential.³

The entire six-unit dwelling was built on an empty lot which was purchased by the current owners in 1986. The building was entirely newly constructed by the husband who was the contractor. The building was completed and inspected on January 5, 1988. The Certificate of Occupancy was issued on January 15, 1988, which is after

¹ Exhibit A

² Exhibit B

³ O.M.C. §8.22.030(A)(5)


January 1, 1983. Therefore, the owners have met the requirements of the Rent Adjustment Ordinance, and the subject unit is exempt from the Ordinance.

ORDER

1. The Landlord Petition L17-0212 is granted.
2. The subject property is exempt from the Rent Adjustment Program as new construction.
3. The subject property is not exempt from the Rent Adjustment Program Service fee because it was built before January 1, 1995.
4. A Certificate of Exemption shall be issued upon expiration of the appeal period.

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

Dated: April 12, 2018



Linda M. Moroz
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE
Case Number L17-0212

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

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

Documents Included
Hearing Decision

Owner

Ling Shen
3291 Madison St
Alameda, CA 94501

Owner Representative

Quan Phan/GBA Realty
1592 Yosemite Ave
San Francisco, CA 94124

Tenants

Alexis Wright
3672 39th Ave #2
Oakland, CA 94619

Francesca Muscolo-Arlt
3672 39th Ave #2
Oakland, CA 94619

Josephine Majorana
3672 39th Ave #2
Oakland, CA 94619

Lourdes Garcia
3672 39th Ave #6
Oakland, CA 94619

Ngoc Mai
3672 39th Ave #5
Oakland, CA 94619

Sarah Taylor
3672 39th Ave #2
Oakland, CA 94619

000035

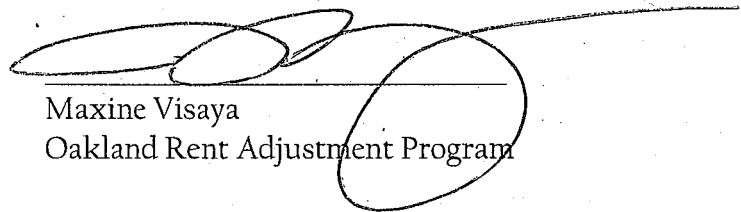
Tai Tran
3672 39th Ave #1
Oakland, CA 94619

Tina Tran
3672 39th Ave #3
Oakland, CA 94619

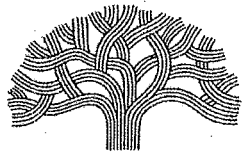
Tracy Nguyen
3672 39th Ave #4
Oakland, CA 94619

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 Apr 17, 2018 in Oakland, CA.



Maxine Visaya
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 file stamp **RECEIVED**

MAY -7 2010

RENT ADJUSTMENT PROGRAM
OAKLAND APPEAL

Appellant's Name Julie Helm		<input type="checkbox"/> Owner <input checked="" type="checkbox"/> Tenant	
Property Address (Include Unit Number) 3672 39th AVE APT 6 OAKLAND CA 94619			
Appellant's Mailing Address (For receipt of notices) 3672 39th AVE APT. 6 OAKLAND CA 94619		Case Number L17-0212	
		Date of Decision appealed 04/12/18	
Name of Representative (if any)		Representative's Mailing Address (For notices)	

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

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

For more information phone (510) 238-3721.

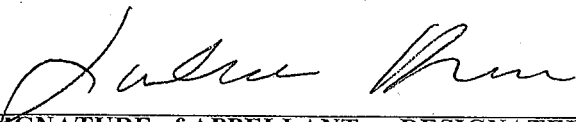
- f) I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. (In your explanation, you must describe how you were denied the chance to defend your claims and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue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

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

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

I declare under penalty of perjury under the laws of the State of California that on 05/01, 2018, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

Name	Ling Jean Shen
Address	3291 Madison St.
City, State Zip	Alameda CA 94501
Name	GBA Realty / Quan Phan
Address	1592 Yosemite Ave
City, State Zip	San Francisco, CA 94124

	05/01/2018
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

For more information phone (510) 238-3721.

IMPORTANT INFORMATION:

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

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

For more information phone (510) 238-3721.

Appeal Response to Case L17-0212

Response 1:

- In 2017, Owner Shen raised rent 40% in Unit 2 within a 12 month period, which exceeds the legal CPI adjustments. This caused the family living in that unit to no longer be able to afford housing in the complex. The owner asked for this increase before they had been granted any certificate for exemption. The current rent cost of Unit 2 with new occupance is now 50% higher than previously. This is in violation of rent increases following vacancy under OMC 8.22.080, because the terms by which the previous tenants had to leave were not legal:

2. Change of Terms of Tenancy or Rent Increase Not Permitted by This chapter. The previous tenancy was terminated following a notice of a rent increase not permitted by this chapter. ("The previous tenancy ... has been terminated upon a change in the terms of the tenancy pursuant to [California Civil Code §] 827, except a change permitted by law in the amount of rent or fees.") (California Civil Code § 1954.53(a)(1)).

According to the original petition response form, this corresponds with :

(n) The rent was raised illegally after the unit was vacated as set forth under OMC 8.22.080

The owner is currently asking for significant increases in rent from multiple units, which exceed the CPI adjustment of 10% increases. If they are granted permanent exemption, most families and people in the complex will no longer be able to sustainably afford or live at the apartment complex. This will further put a strain on housing in the Oakland area and long term contribute to more people in the area living in poverty and homelessness.

Response 2:

- Since management has shifted to GBA Realty, they have been withholding of maintenance and services, by claiming they will charge us fees.

According to the original petition response form, this corresponds with :

(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)

Response 3:

- The Owner Shen, has units on the property lot that were built and occupied in previous to 1983, and were not included in the evidence submitted at previous hearing.

CHRONOLOGICAL CASE REPORT

Case No.: L17-0155

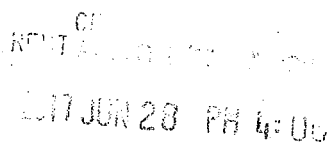
Case Name: Fox v. Tenants

Property Address: 318 & 320 Lester Ave., Oakland, CA

Parties: John Fox (Owner)
Gregory McConnell (Owner Representative)
JR McConnell (Owner Representative)

OWNER APPEAL:

<u>Activity</u>	<u>Date</u>
Owner Petition filed	June 28, 2017
No Tenant Responses filed	-----
Hearing Decision issued	May 7, 2018
Owner Appeal filed	May 25, 2018

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

Section 1. Basic Information L17-0155 RC/LM

Your Name John Fox		Complete Address (with zip code) P.O. Box 13220 Oakland, CA 94661		Telephone Day: 415-497-4001
Your Representative's Name Greg McConnell JR McConnell The McConnell Group		Complete Address (with zip code) 300 Frank H. Ogawa Plaza Suite 460 Oakland, CA 94612		Telephone Day: 510-834-0400 x2
Property Address 318 & 320 Lester Ave. Oakland, CA 94606			Total number of units in bldg or parcel. 2	
Type of units (circle one)	Single Family Residence (SFR)	Condominium	Apartment or Room	
If an SFR or condominium, can the unit be sold and deeded separately from all other units on the property?		Yes	No	
Assessor's Parcel No.	021 022803100			

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

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

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

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

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

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

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

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

Section 4. Verification Each petitioner must sign this section.

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



Owner's Signature

6/21/17

Date

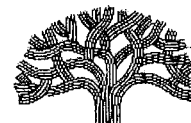
Owner's Signature

Date

Important Information

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

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



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

CITY OF OAKLAND

Department of Housing and Community Development
Rent Adjustment Program

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

HEARING DECISION

CASE NUMBER: L17-0155, Fox v. Tenants
PROPERTY ADDRESS: 318 and 320 Lester Ave., Oakland, CA
DATE OF HEARING: November 30, 2017
DATE OF DECISION: March 12, 2018
APPEARANCES: John Fox, Owner
Gregory McConnell, Representative for the Owner
JR McConnell, Representative for the Owner

SUMMARY OF DECISION

The Landlord Petition for Certificate of Exemption is denied. The subject property is not exempt from the Rent Adjustment Program.

CONTENTIONS OF THE PARTIES

On June 28, 2017, the owner filed a petition for Certificate of Exemption on the ground of substantial rehabilitation.

No responses to the owner's petition were filed and no tenants appeared for the hearing.

ISSUES

1. Did the owner have to have a "finalized" building permit before submitting his Petition?
2. If not, is the property exempt from the Rent Adjustment Program?

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EVIDENCE

Background

The subject property is a two-story residential dwelling consisting of two (2) residential units. The owner testified that the building was vacant, dilapidated and uninhabitable for about 30 years before he acquired the property in 2014. He started the rehabilitation project in October of 2014 and completed it in February of 2017.

Both units were vacant when the owner filed his petition and at the time of the hearing. On February 21, 2017, a notice of the owner petition and a notice of hearing was mailed to the "residents" in both units 318 and 320 Lester Ave. with a proof of service. The mail was not returned as non-delivered. The notices were properly served. No response to the owner's petition was filed and no tenant appeared for the hearing.

Rehabilitation Project

The owner submitted three volumes of documents (3 manila folders, each about 2 inches wide). The hearing officer reviewed all documents submitted.

Volume I contained property information relating to square footage, summary of cost and calculation, building record, copies of contracts with the main contractors for the project, photographs and bank statements.¹

Volumes II and III contain copies of checks and invoices relating to expenses paid for the rehabilitation project.²

The subject property was completely rebuilt. The rehabilitation project consisted of complete replacement of foundation, building new walls, new electrical and plumbing, including tearing down the back porch and staircase and building new back porch, new deck and staircase, remodel bathrooms, installing new windows and doors. The owner submitted photographs of the subject property before and during construction.³

Building Permits

The owner submitted the City of Oakland Report of Building Record listing the building permits for the subject property.⁴ Some of the permits have been issued and finalized and some of the permits were expired but re-issued and finalized. There is a permit to replace perimeter foundation for duplex – Permit #RB1401568 – which was finalized on 10/13/2014. There are two other permits that have been finalized in April of

¹ Exhibit A (Vol. 1, Tabs 1-10 of Owner's packet)

² Exhibit B (Vol. II and Vol. III of Owner's packet)

³ Exhibit A (Vol. 1 Tabs 7, 8, 9 of Owner's packet)

⁴ Exhibit A (Vol. 1, Tab 1 of Owner's packet)

2014 but those relate to sewer permit to repair/replace lateral and excavation permit to repair/replace lateral in public right of way.

The following permits have expired in 2015 but have been re-issued: RP1401067 (plumbing); RB1401569 (building) and RE1400916 (electrical). The remaining permits have been issued in 2015 and 2016 but not finalized: RM1602082 (mechanical); RE1602838 (electrical); RP1602125 (plumbing); and RB1500521 (building).

The owner testified at the hearing that the general building permit has not been finalized. He explained that in order for the general building permit to be finalized, the electrical, plumbing and mechanical permits must also be finalized. As of the time of the hearing, the owner was waiting for the electrical permit to be finalized. He testified that he was waiting for PG&E to approve the connection line running from the power pole outside to the power boxes on the building. He has been waiting for this approval since the completion of the project. Until PG&E approves the electrical connection, that owner cannot obtain the final electrical permit and ultimately cannot obtain the final building permit.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Requirement of “finalized” permit before Petition is filed

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

- a. “In order to obtain an exemption based on substantial rehabilitation, an owner must have spent a minimum of fifty (50) percent of the average basic cost for new construction for a rehabilitation project and performed substantial work on each of the units in the building.
- b. The average basic cost for new construction shall be determined using tables issued by the chief building inspector applicable for the time period when the substantial rehabilitation was completed.
- c. An Owner seeking to exempt a property on the basis of substantial rehabilitation must first obtain a certificate of exemption after completion of all work and obtaining a certificate of occupancy. If no certificate of occupancy was required to be issued for the property, in lieu of the certificate of occupancy an owner may provide the last finalized permit. For any property that has a certificate of occupancy issued on or before the date of enactment of this subparagraph O.M.C. 8.22.30B.2.c. for which an Owner claims exemption as substantially rehabilitated, the Owner must apply for such exemption not later than June 30, 2017 or such exemption will be deemed vacated.”⁵

⁵ O.M.C. § 8.22.030(B)(2)(a-c)

Subparagraph (c) to the Ordinance was enacted on February 7, 2017. Other than that addition, the Ordinance enacted on February 7, 2017, is not different than the previous version of the Ordinance. The owner filed his petition in this case on June 28, 2017.

Both the 2017 and the 2014 versions of the Rent Adjustment Regulations relevant to substantial rehabilitation state:

“(a) In order to qualify for the substantial rehabilitation exemption, the rehabilitation work must be completed within a two (2) year period after the issuance of the building permit for the work unless the Owner demonstrates good cause for the work exceeding two (2) years.

(b) For the substantial rehabilitation exemption, the entire building must qualify for the exemption and not just individual units.” O.M.C. Regulations § 8.22.030(B)(3).

Here, the owner is seeking an exemption from the City of Oakland’s Rent Adjustment Ordinance. The general rule of law about exemptions is that they are to be “strictly construed.” See *DaVinci v. San Francisco Residential Rent Board*, (1992) 5 Cal. App. 4th 24, 27. In *DaVinci* the Court cited *Barnes v. Chamberlain* (1983) 147 Cal. App. 3rd 762 in stating that:

“In interpreting exceptions to the general statute courts include only those circumstances which are within the words and reason of the exception. ... One seeking to be excluded from the sweep of the general statute must establish that the exception applies.”

Additionally, the Court in *DaVinci* stated that the rules regarding the interpretation of a municipal ordinance are the same rules as those that govern the construction of statutes. *DaVinci* at 27, citing *City of Los Angeles v. Los Olivos Mobile Home Park* (1989) 213 Cal. App. 3d 1427, 1433. In other words, an owner has the burden to prove an exemption, and any attempt to exempt a property from the Ordinance must be strictly construed.

Since the regulations require that to qualify for the exemption, the work must be done within two years of a permit being issued, unless a good cause for extension of time exists, it is therefore true that before a building can qualify for the substantial rehabilitation exemption, a permit must be issued. Additionally, even before the Ordinance was amended in February of 2017, and subsection (c) was added, the reference to a “permit” in the regulations is a reference to a “finalized” permit. The City of Oakland requires that permits be taken out to do certain work on property. Any scope of work that could in its totality fall under the definition of substantial rehabilitation would require a permit. Oakland requires that when a permit is taken out, that the work be inspected and then finalized. Since the work is not completed until the permit is finalized, no consideration of whether or not the unit has met the substantial rehabilitation test can be made until a permit is finalized.

An owner cannot seek a substantial rehabilitation exemption until the building permits are signed off or "finaled". One cannot file a petition based on the anticipated approval of a permit. This has been true both before and after the addition of section (c) to the Ordinance.

In this case there is no finaled permit for electrical, plumbing, mechanical and building. The owner testified that he does have a finaled building permit until the utility company (PG&E) inspects and approves the electrical component of the general building permit. Only then can the general building permit be finaled. At the time the owner filed his petition and at the time of the hearing, there was no finaled building permit. Therefore, the owner's petition is denied.

ORDER

1. The petition L17-0155 is denied.
2. The subject property is not exempt from the Rent Adjustment Ordinance.

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

Dated: March 12, 2018



Linda M. Moroz
Hearing Officer
City of Oakland Rent Adjustment Program

PROOF OF SERVICE

Case Number L17-0155

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

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

Documents Included

Hearing Decision

Owner

John Fox
P.O. Box 13220
Oakland, CA 94661

Owner Representative

Greg & JR McConnell/The McConnell Group
300 Frank Ogawa Pl
Oakland, CA 94612

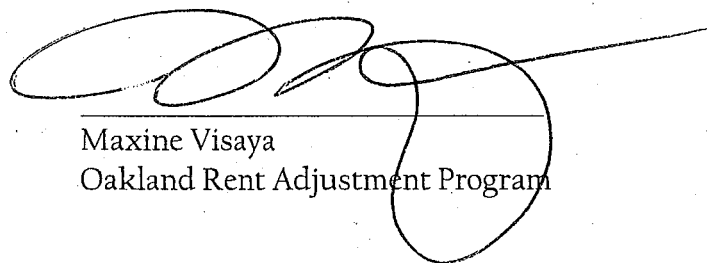
Tenants

Resident
320 Lester Ave
Oakland, CA 94612.

Resident
318 Lester Ave
Oakland, CA 94612

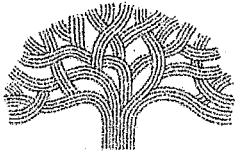
I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on May 7, 2018 in Oakland, CA.



Maxine Visaya
Oakland Rent Adjustment Program

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CITY OF OAKLAND

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

For date stamp.

APPEAL

Appellant's Name John Fox		<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant	
Property Address (Include Unit Number) 317 & 320 Lester Ave. Oakland, CA 94606			
Appellant's Mailing Address (For receipt of notices) P.O. Box 13220 Oakland, CA 94661		Case Number L17-0155	Date of Decision appealed
Name of Representative (if any) Greg McConnell JR McConnell The McConnell Group		Representative's Mailing Address (For notices) 300 Frank H. Ogawa #460 Oakland, CA 94612	

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

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

For more information phone (510) 238-3721.

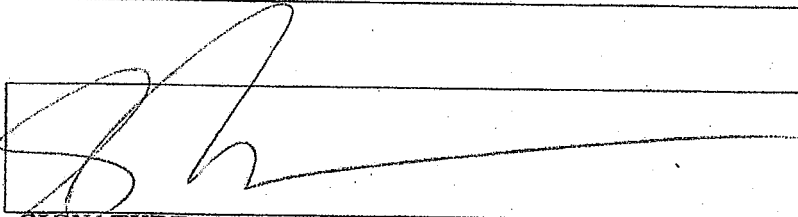
- f) I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. (In your explanation, you must describe how you were denied the chance to defend your claims and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue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

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

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

I declare under penalty of perjury under the laws of the State of California that on _____, 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:

Name	There is no opposing party. Property is vacant and has been vacant since new construction.
Address	
City, State Zip	
Name	
Address	
City, State Zip	

	5/25/2018
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

For more information phone (510) 238-3721.

Attachment to Appeal – L17-0155

This is an attachment to the Appeal in L-17-0155.

- a. We are not aware of whether an appeal of a decision has been filed for facts like the facts established in this case. However, in this case the Hearing Officer denied the petition on the grounds that the owner did not produce evidence of a finalized permit. The owner testified that all the work had been done to prove the owner spent more than 50% of the average basic cost of new construction. However, he was waiting for PGE to take one final action to upgrade the electrical service.

This act is outside the control of the owner and should not deny him the right to prove that sufficient funds were spent to render the property exempt. The owner was forced to file the petition when he did due to changes in the Rent Board Rules on Substantial Rehabilitation, which required that he file his petition before June 30, 2017. See RAP Section 8.22.030 B (2) (c).

It would be a travesty for the Rent Board to apply changes to filing deadlines on matters in process and then punish the owner because the work had not been finalized. We submit that the appropriate recourse is to hold the case in process until the finalized permit is issued.

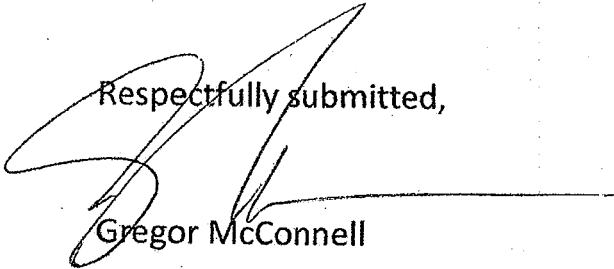
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This is a new policy issue of the appropriateness of creating new filing deadlines on cases that are pending finalization. Moreover, as the Hearing Officer pointed out, the former units had been completely destroyed and the property was rebuilt new from the foundation up. Thus, the property can also be deemed exempt based upon new construction. If the Board is so inclined, we request that the case be remanded for the Hearing Officer

to determine if the property is exempt based upon new construction and the Costa Hawkins Rental Housing Act, or minimally that the owner be allowed to file a new petition on those grounds.

The owner reserves the right to supplement this appeal prior to 15 days before the date of Appeal Hearing.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Gregor McConnell', is written over a horizontal line. The signature is stylized and cursive.

Gregor McConnell

Owner Representative