

HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD

PANEL MEETING

March 21, 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. OPEN FORUM
4. NEW BUSINESS
 - i. Appeal Hearing in Cases:
 - a.T17-0477, Dobble v. Marshall
 - b.T17-0577, Patrick v. Um et al.
 - c.T17-0418, Jackson v. Barnaby
5. 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.

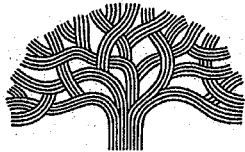
Service animals and emotional support animals must be trained to behave properly in public. An animal that behaves in an unreasonably disruptive or aggressive

CHRONOLOGICAL CASE REPORT

Case No.: T17-0477
Case Name: Dobble v. Marshall
Property Address: 5556 Taft Ave., Oakland, CA
Parties: Roel Dobbe (Tenant)
Rosalie Marshall (Owner)
Dennis Whipp (Owner Representative)

OWNER APPEAL:

| <u>Activity</u> | <u>Date</u> |
|-------------------------|-------------------|
| Tenant Petition filed | August 16, 2017 |
| Owner Response filed | December 14, 2017 |
| Hearing Decision issued | May 22, 2018 |
| Owner Appeal filed | June 7, 2018 |



CITY OF OAKLAND

**CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM**

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

For date stamp
RECEIVED
AUG 16 2017
OAKLAND RENT ADJUSTMENT
TENANT PETITION

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

Please print legibly

T17-0477 MS/SK

| | | |
|---|--|--|
| Your Name <i>Roel Dobbe</i> | Rental Address (with zip code) <i>5556 TAFT AVE OAKLAND, CA 946181519</i> | Telephone: <i>510 684 5310</i> |
| Your Representative's Name <i>N.A.</i> | Mailing Address (with zip code) | E-mail: <i>roeldobbe@gmail.com</i> |
| Property Owner(s) name(s) <i>Rosalie Marshall</i> | Mailing Address (with zip code) <i>9 ALTA AVE PIEDMONT, CA 94611</i> | Telephone: <i>510 499 0586</i> |
| Property Manager or Management Co. (if applicable) | Mailing Address (with zip code) | Email: <i>rosaliemarshall@comcast.net</i> |

Number of units on the property: 2

| | | | |
|---|--------------------------------|--------------------------------------|---|
| Type of unit you rent (check one) | <input type="checkbox"/> House | <input type="checkbox"/> Condominium | <input checked="" type="checkbox"/> Apartment, Room, or Live-Work |
| Are you current on your rent? (check one) | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <i>It's a duplex with two units, that have their own house number</i> |

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 checked="" type="checkbox"/> | (g) The increase I am contesting is the second increase in my rent in a 12-month period. |
| <input checked="" type="checkbox"/> | (h) There is a current health, safety, fire, or building code violation in my unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance. (Complete Section III on following page) |
| <input type="checkbox"/> | (i) The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner. (OMC 8.22.070(F): A decrease in housing services is considered an increase in rent. A tenant may petition for a rent adjustment based on a decrease in housing services.) (Complete Section III on following page) |
| <input type="checkbox"/> | (j) My rent was not reduced after a prior rent increase period for a Capital Improvement had expired. |
| <input type="checkbox"/> | (k) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014). |
| <input type="checkbox"/> | (l) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake. (OMC 8.22, Article I) |
| <input checked="" 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: January¹⁶, 2015 Initial Rent: \$ 2850 /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 | | |
| 7/29/2016 | 9/1/2016 | \$ 2850 | \$ 2950 | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| 5/7/2017 | 6/1/2017 | \$ 2950 | \$ 3100 | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| 8/4/2017 | 9/1/2017 | \$ 3100 | \$ 3250 | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| | | \$ | \$ | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | | \$ | \$ | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | | \$ | \$ | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No |

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

Have you ever filed a petition for this rental unit?

- Yes
 No

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

III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:

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

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

If you answered "Yes" to any of the above, 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).

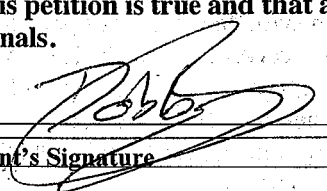
Please attach documentary evidence if available.

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

Aug 8, 2017


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

August 8, 2017

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 (UC BERKELEY)
- ____ Sign on bus or bus shelter
- ____ Rent Adjustment Program web site
- ____ Other (describe): _____

Attachments:

1. Bathroom Problem
 - a. Explanation
 - b. Email threads for Bathroom Problem
2. All Lease Agreements
 - a. January 2015 – Initial Lease
 - b. September 2016 – Lease Extension
 - c. June 2017 – New Lease
3. Correspondence around Rent Increases
 - a. September 2016 – Lease Extension with Rent Increase
 - b. June 2017 – New Lease with Rent Increase
 - c. August 2017 – Proposed Rent Increase

① a. Explanation Bathroom Problem

August 8, 2017

Description of problem for Rent Petition

1) State of the bathroom - leakage and mold formation: caulk around the bathtub and its surrounding walls has worn over time and water is leaking into walls and onto floor. This creates issues of slippery floors and may lead to structural damage of the walls. Lastly, the leaking water contributes to humidity which is a source for mold formation that has shown up on the ceiling.

It may also be the case that the bathroom has insufficient ventilation. There is no forced ventilation. The bathroom window and door are always open to ensure natural ventilation, but this is not enough to prevent mold formation.

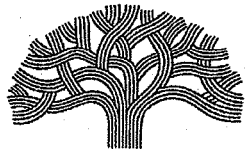
2 and 3) See attachments:

- May 31, 2017 - first notice of problem after personal inspection and notification to landlord.
- No response until a reminder on June 20, 2017. Landlord promises to address issue after July 4, 2017, due to health issue.
- No action, reminders sent on July 10, 2017 and July 24, 2017.
- On July 24, 2017, landlord responds that she will come by with caulking material and "I will demonstrate [caulking] and give them [caulking material] to you when I see you", implying that we should fix it ourselves. After a visit, no materials are brought and instead landlord starts blaming tenants for the situation.
- On August 4, 2017, landlord proposes a rent increase claiming that "there is more "wear and tear" on the premises".

4) Dollar value for recaulking:

- 2 hours of plumbing service at \$100 per hour.
 - \$50 of materials.
 - Dollar value of improving ventilation: we do not know what is needed and how much it would cost.
-
-

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CITY OF OAKLAND

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

For date stamp.

Revd. by RAP
Dec. 14, 2017

PROPERTY OWNER
RESPONSE

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

CASE NUMBER T17-0477

| | | |
|--|--|--|
| Your Name <i>Rosalie Marshall</i> | Complete Address (with zip code) <i>9 Alta Ave. Piedmont CA. 94611</i> | Telephone: <i>(510) 499-0586</i> |
| | | Email: <i>rosaliemarshall@comcast.net</i> |
| Your Representative's Name (if any) | Complete Address (with zip code) | Telephone: |
| | | Email: |
| Tenant(s) Name(s) <i>Roel Dobbe</i> | Complete Address (with zip code) <i>5556 Taft Ave. Oakland, CA. 94618</i> | |
| Property Address (If the property has more than one address, list all addresses) | | Total number of units on property <i>2</i> |

Have you paid for your Oakland Business License? Yes No Lic. Number: 00037411
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: 0037412
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: ___/___/___.

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

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

Rev. 3/28/17

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

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

| Date of Contested Increase | Banking (deferred annual increases) | Increased Housing Service Costs | Capital Improvements | Uninsured Repair Costs | Debt Service | Fair Return |
|----------------------------|-------------------------------------|-------------------------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|
| 7/29/2016 | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 9/1/2016 | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 9/1/2016 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 8/31/2017 | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 5/31/2017 | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 5/31/2018 | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

False →

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.

| Date Notice Given (mo./day/year) | Date Increase Effective | Rent Increased | | Did you provide the "RAP NOTICE" with the notice of rent increase? |
|----------------------------------|-------------------------|----------------|----------|---|
| | | From | To | |
| 5/15/2017 | 5/31/2018 | \$ New Lease | \$ 3,100 | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| 9/1/2016 | 8/31/2017 | \$ 2,850 | \$ 2,950 | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| 1/16/2015 | 8/31/2016 | \$ New Lease | \$ 2,850 | <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 |

See: EXHIBIT A for details

Note: I was not asked for "RAP Notice"

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.

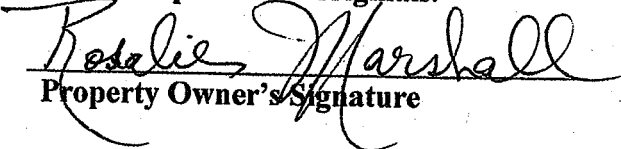
The unit is located in a building with three or fewer units. The owner occupies one of the units continuously as his or her principal residence and has done so for at least one year.

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

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.

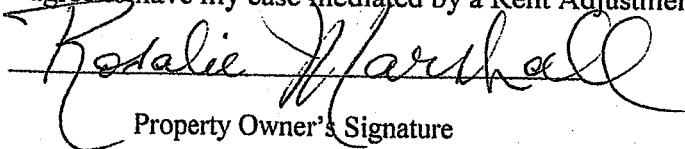
Mediation Program

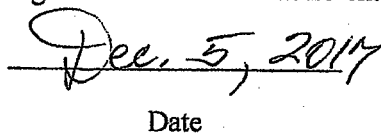
Mediation is an entirely voluntary process to assist you in reaching an agreement with your tenant. In mediation, the parties discuss the situation with someone not involved in the dispute, discuss the relative strengths and weaknesses of the parties' case, and consider their needs in the situation. 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

To: City of Oakland, Hearing Officer

From: Rosalie Marshall, landlord.

RE: Case Number: T17-0477

filed by Roel Dobbe, tenant.

December 5, 2017

Landlord Responses to Tenant's "Grounds for Petition"

I Issues Regarding Rent Increases.

Correct Rent History per Leases.

Tenant claims that rent was increased in 2 months, July 29, 2016-Sept. 1, 2016 from \$2,850-\$2,950 is False and information on other increases are Not Accurate.

(1) **Jan. 16, 2015-August 31, 2016** ___ \$2,850/mo. Rent of \$2,850 stayed the same for 18 months, not 2 months. Tenants were: Roel Dobbe & Britt Moller.

(2) **Sept. 1, 2016-Aug. 31, 2017** _____ \$2,950/mo. Tenants were: Roel Dobbe & Britt Moller. Increase by \$100 or 3.5% increasing rent from \$2,850-\$2,950/mo. was calculated from:

a. ___ 2.0% CPI increase for the year 2016-2017.

b. ___ .85% ~~Banking/CPI deferred 8 months annual increase from~~
January 2016-August 31, 2016.

c. ___ .65% Capital Improvement: deferred cost of new Stove for \$850.00

(3) **May 31, 2017-May 31, 2018** _____ \$3,100/mo. Market Value for 2Bd in Rockridge area increased by 6.8%. Therefore, a New Lease with potential new tenants was established to reflect the new Market Value at \$3,350. I had tenants,

000014

Meghan Timothy Bruss, who offered me **\$3,350**. See enclosed documentation. Since Roel begged me to start the New Lease for him and his new roommates, and assured me they would be excellent tenants, I executed a new Lease for Roel and his new roommates Taryn Elliott and Jonathan Lee, at **below Market Value of \$3,100/mo.** That has been a loss of \$200/mo. (or \$2,400 for the year) to me, than had I rented to the potential tenants Meghan and Timothy Bruss for \$3,350/mo.

Rent for Roel and his roommates was set at and still is \$3,100. The \$150 or 3.4% rent increase from \$2,950-\$3,100/mo. was calculated from:

- a. 3% which is less than the Market Value increase of 6.8%, New Lease increase for the year 2016-2017.
- b. .4% Increase Housing Service Costs: Increase in Property Taxes by \$293.26 from \$9,153.56-\$9,446.82 and increase in RAP increase by \$76 from \$60-\$136.

(3) Aug. 4, 2017-Sept. 1, 2017 _____ Tenant's claim that the rent was raised to **\$3,250/mo. is FALSE**, as such **increase was never implemented**. The fact is that due to tenant's breach of Contract, that is, the addition of a new Tenant, Ariel, Roel's girlfriend, who is not on the Lease, I addressed the issue of possibly raising the rent to \$3,250. Though, Ariel personally told me she was living at the premises, Roel denied the fact. As I was ill, I told Roel that I would address this issue later, but in the meantime the rent would **stay the same at \$3,100**.

In conclusion, the rent remained the same and it was never raised to **\$3,250/mo.**

See: Emails dated August 4, 2017 and August 8, 2017

EXHIBIT A

II Issues Regarding Serious Health, Safety, Fire, or Building Violation Serious Problem(s) with the Condition of Apartment, p. 2 of Form; and Attached Tenant's Description of "State of the Bathroom: Leakage, Mold, Worn Walls Over Time".

Regarding Bathroom Problems, Tenant's claims are FALSE:

Bathroom was completely reframed, re-plastered, retiled and repainted in August of 2013, due to some dry rot discovered in the enclosed shower walls. Both

interior shower walls and its exterior wall facing driveway were fully opened to access, reframe, re-plaster, and retile the bathroom. Exterior wall was closed, re-stucco, and repainted. Documentation of materials and contractor, Carlos Beltran, bills are enclosed as part of EXHIBIT B. Tenants at the time were Anne and Curtis Poff; they can be contacted at (510)229-7965, for on-sight verification. For further information of my character as a landlord, please contact the current tenants in Upper Unit, Norren and Shaun McInnis, at (415)913-9695.

The tenant's claim that the "bathtub shower walls have worn over time and water is leaking onto floor...creating slippery floors...structural damage of the walls" is **FALSE**. Its reconstruction was done only 3 and 1/2 years ago, in August of 2013, of which the tenant himself has been the occupant for the last 2 years. If the reconstructed bathroom is in as dilapidated condition as he claims, then I will hold the **tenant, and his roommates, liable for all its damages in the span of only 2 years!** Aside from his claims, making accusations to depict a conscientious landlord as "slum landlord" is not only ethically wrong but the accusations are lawful grounds for a lawsuit, for defamation of character.

For the records, I, as the landlord, brought up the issue of the importance of maintaining the bathroom clean, upon a personal inspection on April 18, 2017, not May 31, 2017 as claimed by tenant; then I followed up with a reminder email, dated May 9, 2017, which is enclosed in EXHIBIT B. I reminded Roel and his roommates that they must maintain the bathroom as clean as I rented to them, and restore it in its original condition. Therefore, I urged them to remove the accumulated mold in between the tiles and open the bathroom window to allow moisture to exit. I added, to let me know if they did not wish to do the cleaning, so I would arrange for a housekeeper to clean it, at their cost. The conversation is re-iterated in my email of May 9, 2017. Unfortunately, the tenant has twisted a "tenant responsibility housekeeping issue" into a "landlord exaggerated mold issue and structural damage to the walls" which does not exist!

See Email, May 9, 2017

EXHIBIT B

III Tenants Claims of Landlord's Lack of Response regarding Bathroom Problems are FALSE.

List of Contractors at the Premise for Repairs:

(1) Bathroom:

Superior Plumbing made necessary repairs on April 18, April 19, and June 6.

April 18, 2017: Bathroom toilet was unclogged.

April 19, 2017: Bathroom shower was fixed.

June 6, 2017: Bathroom Leaking faucet was repaired.

See Attached Documentation, Superior Plumbing” _____ **EXHIBIT C**

(2) Main Door:

August 1, 2017: Door Lock Realigned by handyman, Andrea Salvadei.

See Attached copy of Check dated August 1, 2017 _____ **EXHIBIT C.**

(3) Kitchen Fixture;

August 1, 2017: Kitchen Fixture was replaced by handyman, Andrea Salvadei.

See Attached copy of Check dated August 1, 2017 _____ **EXHIBIT C**

(4) New Screen Door:

New Screen Door replaced by handyman, Peter Shaper.

See Attached copy of check dated August 24, 2017 _____ **EXHIBIT C.**

(5) New Laundry Room Fixture replaced by Andrea Salvadei.

(6) New Lamps replaced in Bathroom.

(7) Dishwasher was in working condition, but Tenant did not know how to operate it.

(8) Filler, Paint, Caulking provided to tenant to repair holes in walls, caused by tenant.

Items #5, #6, #7 are all covered in **Email dated July 24, 2017.**

See: _____ **EXHIBIT C**

IV Landlord's Claim of Money Owed from Tenant.

(1) Tenant owes Landlord **\$620 in late rent penalties**, as specified by Contract, dated May 31, 2017, item #6A, p.2. Rent due July 1, 2017 was not deposited by July 5th, but was deposited late. Rent due on December 1, 2017 was not deposited on Dec. 5th, and has not been received yet, as of Dec. 11th. According to Lease Contract, rent deposited after the 5th of the month, incurs a penalty of \$310 for each month rent is paid late.

(2) Tenant owes Landlord **\$134.79 in utility reimbursement**, which was due on July 4, 2017.

See: _____ **EXHIBIT D**

Total Owed to Landlord is \$754.79, due Feb. 1, 2018.

CITY OF OAKLAND

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



Housing and Community Development Department
Rent Adjustment Program

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

HEARING DECISION

CASE NUMBER: T17-0477, Dobbe v. Marshall
PROPERTY ADDRESS: 5556 Taft Avenue, Oakland, CA
DATE OF HEARING: March 26, 2018
DATE OF INSPECTION: March 26, 2018
DATE OF DECISION: May 1, 2018
APPEARANCES: Roel Dobbe, Tenant
Rosalie Marshall, Owner
Dennis Whipp, Owner Representative

SUMMARY OF DECISION

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

CONTENTIONS OF THE PARTIES

Tenant Dobbe filed a petition on August 16, 2017, contesting a rent increase from \$3,100 to \$3,250, effective September 1, 2017, which he claimed violated the Rent Adjustment Ordinance (Ordinance) on the following grounds:

1. The increase exceeds the CPI Adjustment and is unjustified or is greater than 10%;
 2. He received the rent increase notice before the owner received approval from the Rent Adjustment Program (RAP) for such an increase;
 3. No written notice of the Rent Program (*RAP Notice*) was given together with the notice of increase;
-

4. No *RAP Notice* was given to him at least six months before the effective date of the increase;
5. This is the second rent increase in a 12 month period; and,
6. The owner did not give him a summary of justifications despite his written request.

The tenant also contested all prior rent increases given since he moved into the unit and claimed he had never received the *RAP Notice*.

Additionally, the tenant claimed decreased housing services relating to leakage and mold formation in the bathroom.

The owner filed a late response to the tenant petition on December 14, 2017, in which the owner claimed banking, capital improvements and increased housing service costs as justifications for the rent increases. The owner did not respond to the questions about the *RAP Notice* in her response. Additionally, the owner denied the tenant's claims of decreased housing services.

THE ISSUES

1. Was there good cause for the failure of the owner to timely respond to the tenant petition?
2. When, if ever, was the tenant provided the *RAP Notice*?
3. Were the rent increases valid and what is the base rent?
4. Have the tenant's housing services decreased?
5. Can the owner split utilities?
6. What, if any, restitution is owed to the tenant and how does it affect the rent?

EVIDENCE

Owner Response: The owner testified that she had serious medical problems in the summer and fall of 2017 which resulted in two hospitalizations and surgeries. She was not able to keep up with her mail during this time. At some point during her illness, in approximately November of 2017, her daughter found the mail and she saw that there was a letter from the Rent Adjustment Program. The owner responded to the tenant petition as soon as she was able after getting out of the hospital.

Rental History: The tenant testified that he moved into the rental unit in January of 2015 at an initial rent of \$2,850 a month. He moved in with Britt Moller. They were not served the *RAP Notice* when they moved in, or at any time over the course of his tenancy until after January of 2018, when a mediation was held in this case. Their lease was provided, with no *RAP Notice* attached.¹ The lease was for a period of 18 months.

¹ Exhibit 1, pages 1-8. All Exhibits referred to in this Hearing Decision were admitted into evidence without objection.

In the summer of 2016, the tenant and the owner had several communications about the rent as the lease period was coming to an end. The parties agreed to a rent of \$2,950 a month, after the owner proposed a higher increase. A *Lease Extension Addendum* was signed by the parties in July of 2016, extending the lease through August 31, 2017, and starting the new rent as of September of 2016.²

In April of 2017, Britt Moller moved out of the unit and the tenant began to look for a new roommate. Both Mr. Moller and the tenant notified the owner that Mr. Dobbe intended to stay and find a new roommate, but the owner listed the unit on Craigslist as a new rental that same month. Ms. Marshall showed the unit to several people during this time period. On May 1, 2017, the tenant informed Ms. Marshall that he found new roommates. The owner sent a letter purporting to nullify the September 2016 lease amendment and informed the tenant that he should move out of the unit as of May 31, 2017.³

A series of phone and email communications occurred between the tenant and the owner, and ultimately Ms. Marshall agreed that the tenant could stay on with two new roommates as long as he agreed to a rent of \$3,100 a month effective June of 2017. A new lease was prepared by the owner for Dobbe, Taryn Elliott and Jonathan Lee (his new roommates).⁴ The tenant has been paying \$3,100 monthly since then and will continue to do so until he gets a Hearing Decision in this matter.

The tenant further testified that on August 4, 2017, Ms. Marshall sent him an email purporting to increase the rent to \$3,250 a month based on the mistaken belief that Dobbe's girlfriend was also living in the unit.⁵ The tenant did not pay that rent increase.

The owner testified that no *RAP Notice* was given when the tenants moved in or at any time before January of 2018. She did not know about the requirement to serve a *RAP Notice* on her tenants.

The owner's testimony as to the rent increases was substantially the same as the tenant's testimony. She believed she was entitled to an increase greater than the CPI based on banking. She provided no documentary support for either her claim of capital improvements or increased housing service costs. She increased the rent to \$2,950 in September of 2016, and the parties signed the lease addendum.

The owner testified that when Britt Moller moved out of the unit, Dobbe informed her he wanted to stay in the unit and get a new roommate. Before he found the new roommates, she listed the unit for rent on *Craigslist* because she felt that she had to have the unit rented if Dobbe didn't find a roommate.⁶ She further testified that in her mind the lease with Dobbe and Moller was null, because Moller moved out.

² Exhibit 1

³ Exhibit 2

⁴ Exhibit 3

⁵ Exhibit 4b, page 21

⁶ Exhibit 8 is the *Craigslist* listing for the property.

She further testified that she found someone who was willing to rent the unit for \$3,350 a month and believed that she could tell Dobbe he had to move out, because she found someone who would rent the unit at a higher rent.⁷ Dobbe never informed her that he wanted to move out. She testified that she informed him “to find a tenant or I have to rent it to someone else.” Tape recording at 44:00-44:14.

However, she negotiated with Dobbe when he found Elliot and Lee, and a new contract was written effective June 1, 2017. She increased the rent to \$3,100 a month, based on banking and her belief that because there were new roommates, a new lease was required.

She further testified that the rent increase to \$3,250 was just “in the air” and she proposed the increase because she believed that Dobbe’s girlfriend was living in the unit and causing more wear and tear on the unit. Dobbe never paid this amount and the owner did not pursue it because Dobbe assured her that his girlfriend was not living in the unit.

Decreased Housing Services:

Bathroom: The tenant testified when he moved in, the bathroom was in good condition. In May of 2017, before Elliot and Lee moved into the unit with him, the owner pointed out to him some staining and mold in the bathroom tile that she wanted him to clean or she would charge him to have it cleaned. He took action and cleaned those areas, but noticed that there was an ongoing problem with the caulking around the bathtub enclosure, where there is a hole and water leaks out when the shower is in use. He pointed out this problem to the owner, who suggested he fix it himself.⁸

The tenant further testified that he did not feel capable of doing the job himself, and informed the owner.

The owner testified that in August of 2013, before Dobbe moved in, she had the bathroom remodeled down to the studs. When she visited the property in May of 2017, she saw that there was mold in the bathroom. She informed Dobbe by email that it was his responsibility to remove the mold, as this was not present when she rented the unit to him. If he did not clean it, she would send someone to do it and charge him for the work.⁹ The owner testified she was never informed about a hole in the caulk.

The Hearing Officer inspected the unit on March 26, 2018. At the Inspection, an approximate one inch hole in the caulk was present between the tub and the rail for the sliding glass door. When the shower was turned on briefly, water accumulated on the outside of the bathtub. It is likely that had the water continued to run, the water would have leaked onto the floor.

⁷ Exhibit 9 is the application to rent that the owner received after her *Craigslist* posting, while Dobbe was a tenant.

⁸ See email dated May 31, 2017, in which tenant wrote “there are several places where the caulk has worn down...”

Exhibit 4 (a) page 1.

⁹ Exhibit 6, page 1

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Was there good cause for the failure of the owner to timely respond to the tenant petition?

The Rent Adjustment Ordinance requires an owner to file a response to a tenant petition within 35 days after service of a notice by the Rent Adjustment Program (RAP) that a tenant petition was filed.¹⁰ "If a tenant files a petition and if the owner wishes to contest the petition, the owner must respond . . ."¹¹ The file in this case shows that the *Tenant Petition* and accompanying documents were served on the owner on September 28, 2017. The owner responded to the petition on December 14, 2017.

The owner acknowledged receiving the *Tenant Petition*. However, she was in the hospital on two occasions in the spring and fall of 2017 and had two surgeries. There was good cause for the owner's late filing of a response. The owner was allowed to fully participate at the Hearing.

When, if ever, was the tenant first served with the RAP Notice?

The Rent Adjustment Ordinance (Ordinance) requires an owner to serve the *RAP Notice* at the start of a tenancy¹² and together with any notice of rent increase or change in the terms of a tenancy.¹³ 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.¹⁴

It is uncontested that the tenant did not received the *RAP Notice* until January of 2018. Not only did tenant Dobbe testify that he never received it, but the Owner admitted at the Hearing that she did not know about the *RAP Notice* until after the *Tenant Petition* was filed. Therefore, all rent increases given to the tenant were invalid.

No rent increase or notice to change the terms of the tenancy can be given to the tenants with an effective date any earlier than six months after the tenants are first given the *RAP Notice*.

Were the rent increases valid and what is the base rent?

As noted above, all rent increase notices must be served with a *RAP Notice*. Therefore, all the rent increases given were invalid. This is true even though the owner had the tenant sign a new lease with each rent increase. Parties cannot agree to violate a rent

¹⁰ O.M.C. § 8.22.090(B)

¹¹ O.M.C. § 8.22.070(C)(2)

¹² O.M.C. § 8.22.060(A)

¹³ O.M.C. § 8.22.070(H)(1)(A)

¹⁴ O.M.C. § 8.22.060 (C)

control ordinance.¹⁵ Nor can parties agree to violate a law established for a public reason.¹⁶

Additionally, the rent may only be increased once in every twelve month period. O.M.C. § 8.22.070(A)(1). The addition of new tenants does not alter the original tenant's rights to rent increases limited by the Ordinance. Until all original tenants move out, the owner may not increase the rent to market rate.

The tenant's base rent is \$2,850 a month, the initial rent when he moved in. He is entitled to restitution as noted in the chart below.

It is not necessary to discuss the owner's claim of banking, since all rent increases were served without the *RAP Notice*.¹⁷

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 rent¹⁸ and may be corrected by a rent adjustment.¹⁹ 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.

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, where no *RAP Notice* was ever provided, the tenant can contest any decrease in services.²⁰

The tenant claimed that there is an ongoing problem with the caulking in his bathroom. This is a changed condition from when he moved in. The tenant established that there is a small hole in caulking and that he notified the owner about the caulking. While the owner denies knowing that there was a "hole," the evidence shows that the tenant complained about the caulking throughout the bathroom. Once on notice, it was the owner's responsibility to inspect. The hole causes water to accumulate on the bathtub and it is more likely than not that this water would leak onto the floor, causing a **potential dangerous condition**.

¹⁵ *Gombiner v. Swartz*, 167 Cal. App. 4th 1365 (2008)

¹⁶ A law established for a public reason cannot be contravened by a private agreement. *Gruzen v. Henry*, 84 Cal. App. 3rd 515 (1978)

¹⁷ The owner also claimed increased housing service costs and capital improvements on her petition, but at the Hearing, her only claimed justification was banking. No evidence to support either an increased housing service costs or capital improvements was filed by the owner. Additionally, effective February 1, 2017, for any rent increase that exceeds the CPI or banked increases, an owner had to file an *Owner Petition* with the Rent Adjustment Program and seek approval prior to increasing the rent.

¹⁸ O.M.C. § 8.22.070(F)

¹⁹ O.M.C. § 8.22.110(E)

²⁰ O.M.C. § 8.22.090(A)(3)(a)(ii)

Nonetheless, this is a minor defect; therefore, the tenant is entitled to an ongoing rent decrease of 1% of the rent, until the problem is repaired. Additionally, the tenant is entitled to restitution of overpaid rent for this condition beginning in June of 2017, one month after he informed the owner about the problem. See chart below.

What, if any, restitution is owed to the tenant and how does it affect the rent?

The tenant is entitled to restitution of all overpaid rent, beginning with the rent increase that began in September of 2016. The tenant's rent, before consideration of restitution and decreased services is \$2,850 a month. Due to the finding of decreased services, the tenant is entitled to an ongoing rent decrease of 1% (\$28.50) until the repair to the bathroom caulking is made. Therefore, the current legal rent, before consideration of restitution, is \$2,821.50 a month.²¹

Additionally, as noted on the chart below, the tenant has overpaid rent of \$4,242 which includes the rent overpayments of \$3,900 and the overpayment associated with the decreased services claim of \$342.

| VALUE OF LOST SERVICES | | | | | | | |
|----------------------------|----------|-----------|-------------------|------------------|-----------------------|---|--------------------|
| Service Lost | From | To | Rent | % Rent Decrease | Decrease /month | No. Months | Overpaid |
| Bathroom caulking | 1-Jun-17 | 31-May-18 | \$2,850 | 1% | \$ 28.50 | 12 | \$ 342.00 |
| TOTAL LOST SERVICES | | | | | | | \$ 342.00 |
| OVERPAID RENT | | | | | | | |
| | From | To | Monthly Rent paid | Max Monthly Rent | Difference per month | No. Months | Sub-total |
| | 1-Sep-16 | 31-May-17 | \$2,950 | \$2,850 | \$ 100.00 | 9 | \$ 900.00 |
| | 1-Jun-17 | 31-May-18 | \$3,100 | \$2,850 | \$ 250.00 | 12 | \$ 3,000.00 |
| TOTAL OVERPAID RENT | | | | | | | \$ 3,900.00 |
| RESTITUTION | | | | | | | |
| | | | | | | MONTHLY RENT | \$2,850 |
| | | | | | | TOTAL TO BE REPAID TO TENANT | \$ 4,242.00 |
| | | | | | | TOTAL AS PERCENT OF MONTHLY RENT | 149% |
| AMORTIZED OVER | | | | 12 | MO. BY REG. IS | | \$ 353.50 |

An overpayment of this size is normally adjusted over a period of 12 months.²² For now \$353.50 a month is subtracted from the current legal rent of \$2,821.50 for a total rent of

²¹ At the Inspection, the owner said she would repair the caulk. If she did already do the repair, the tenant is entitled to the ongoing rent decrease until the owner serves the rent increase notice as noted below.

²² Regulations, Section 8.22.110(F)

\$2,468 a month. From June of 2018 through May of 2019, the tenant's rent is \$2,468 a month.

If the owner repairs the bathroom caulking, she can increase the rent by \$28.50 a month, after giving proper notice pursuant to Civil Code § 827.

The owner may otherwise be entitled to a rent increase, if it is served with an effective date at least six months after the tenant was served with a copy of the *RAP Notice* and is served according to the State law and the Rent Ordinance. If such a rent increase notice is served during the course of the restitution order, the tenant's monthly restitution should be deducted from the new base rent.

If the owner wishes to, the owner can pay the restitution owed to the tenant in one lump sum. If she does so, the tenant must stop deducting the restitution.

ORDER

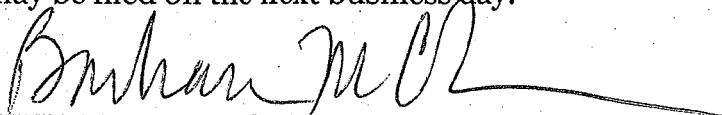
1. Petition T17-0477 is granted.
 2. The tenant was not served with the *RAP Notice* until January of 2018. All rent increases are invalid.
 3. The tenant's base rent is \$2,850 a month.
 4. The tenant is entitled to an ongoing rent decrease of 1% due to the hole in the bathroom caulking. The current legal rent, before consideration of restitution is therefore \$2,821.50.
 5. The owner owes restitution to the tenant of \$4,242 for rent overpayments and for decreased services. This overpayment is adjusted by a rent decrease for the next 12 months in the amount of \$353.50 a month.
 6. The tenant's rent for the months of June 2018 through May 2019 is \$2,468 per month. The rent reverts to \$2,821.50 a month in June of 2019 (if the repair has not been made and/or a rent increase notice has not been sent).

 7. If the owner wishes to, she can repay the restitution owed to the tenant at any time. If she does so, the monthly decrease for restitution ends at the time the tenant is provided restitution.
 8. If the owner repairs the bathroom caulking, she can increase the rent by \$28.50 a month, providing she serves the rent increase notice pursuant to Civil Code § 827.
 9. The owner may otherwise be entitled to a rent increase, if it is served with an effective date at least six months after the tenant was served with a copy of the *RAP Notice* and is served according to the State law and the Rent Ordinance. If such a rent increase notice
-

is served during the course of the restitution order, the tenant's monthly restitution should be deducted from the new base rent.

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

Dated: May 1, 2018



Barbara M. Cohen
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE

Case Number T17-0477

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

Rosalie Marshall
9 Alta Ave
Piedmont, CA 94611

Owner Representative

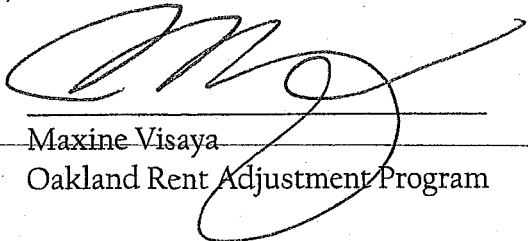
Dennis Whipp
519 San Pedro Cove
San Rafael, CA 94901

Tenant

Roel Dobbe
5556 Taft Ave
Oakland, CA 94618

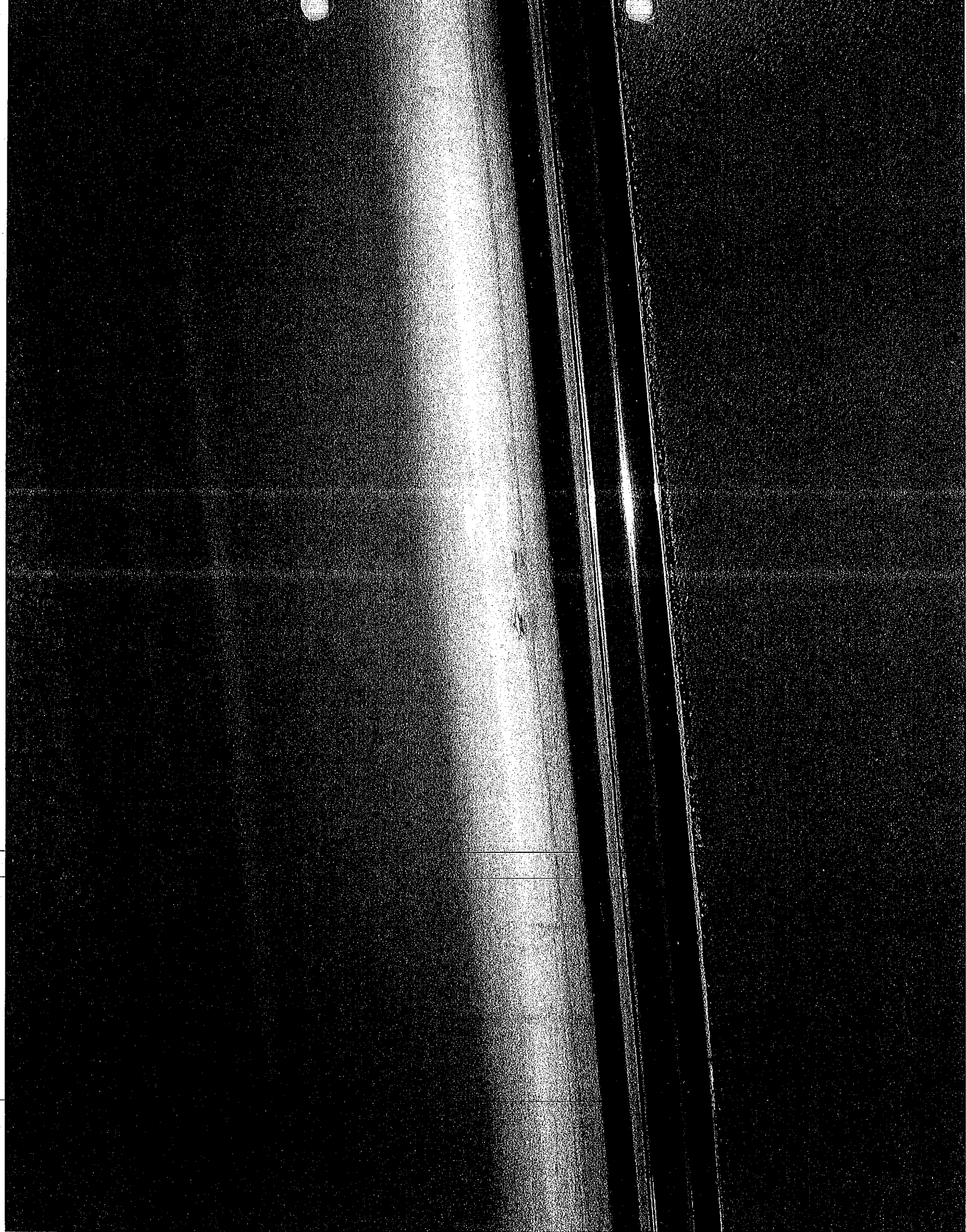
~~I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with 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 May 22, 2018 in Oakland, CA.



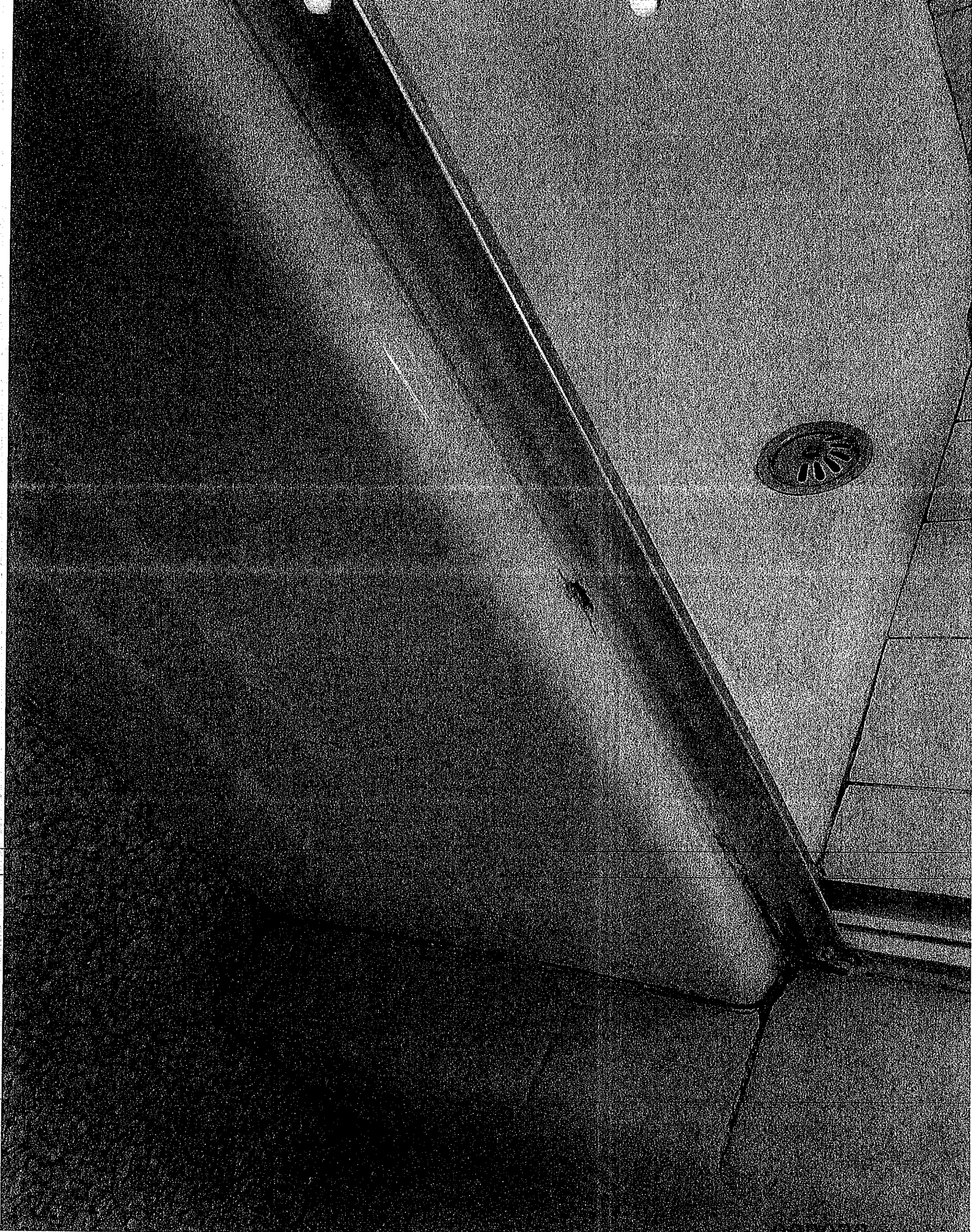
Maxine Visaya
Oakland Rent Adjustment Program

000028

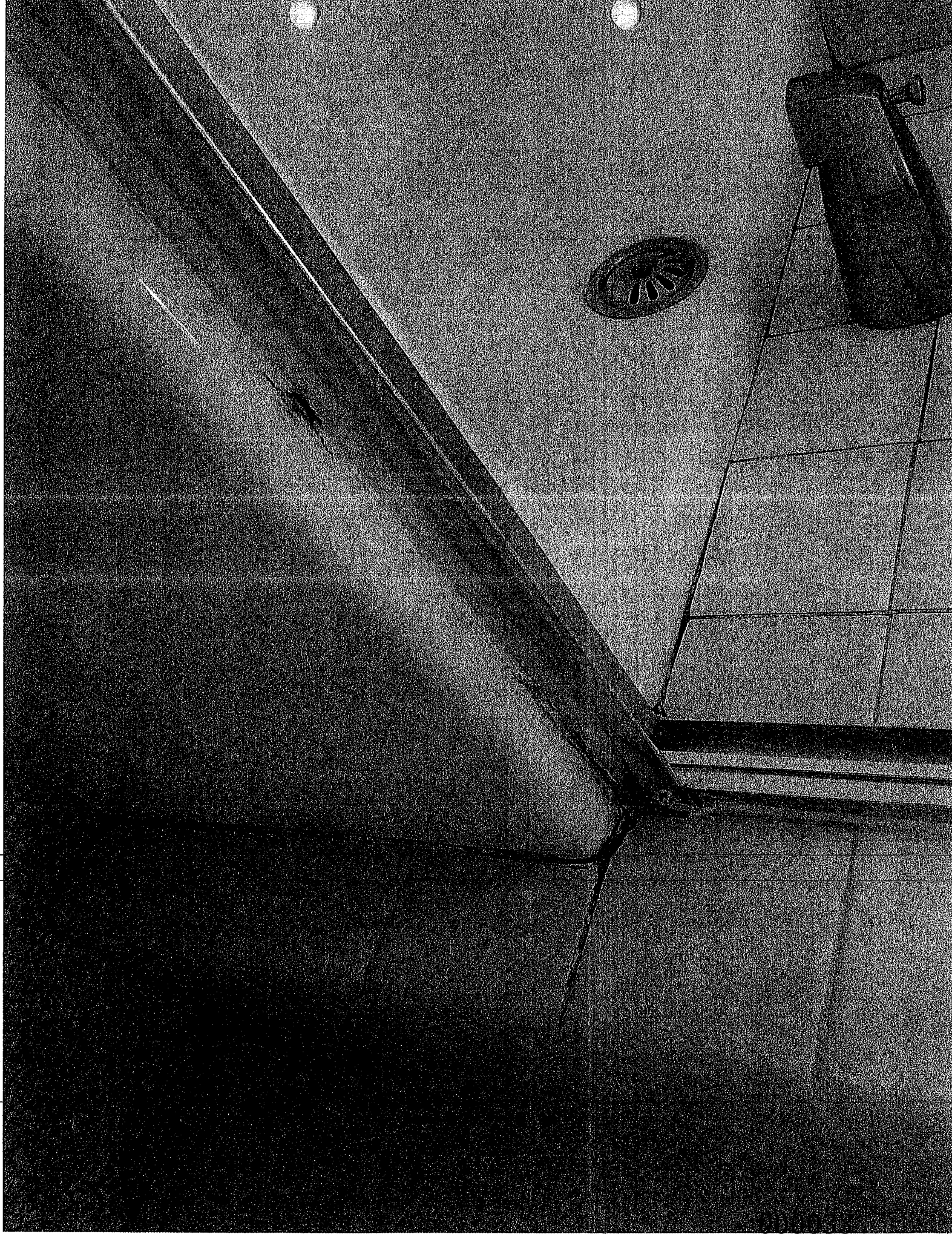


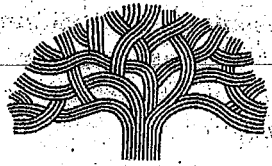


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CITY OF OAKLAND

**CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM**

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

RECEIVED
For Date Stamp: OAKLAND
RENT ADJUSTMENT PROGRAM

2018 JUN -7 PM 3:41

APPEAL

| | | | |
|--|--|---|--|
| Appellant's Name <i>Rosalie Marshall</i> | | <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant | |
| Property Address (Include Unit Number) <i>5556 Taft Ave., Oakland, CA. 94618</i> | | | |
| Appellant's Mailing Address (For receipt of notices) <i>9 Alta Ave., Piedmont CA. 94611</i> | | Case Number <i>T 17-0477</i> | |
| | | Date of Decision appealed <i>June 7, 2018</i> | |
| Name of Representative (if any) | | Representative's Mailing Address (For notices) | |

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

- 1) There are math/clerical errors that require the Hearing Decision to be updated. *(Please clearly explain the math/clerical errors.)*
- 2) Appealing the decision for one of the grounds below (required):
 - a) The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board. *(In your explanation, you must identify the Ordinance section, regulation or prior Board decision(s) and describe how the description is inconsistent.) See: Appeal #1, Attached Letter*
 - 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.) See: Appeal #3, Attached Letter*
 - 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.) See: Appeal #2, Attached Letter*

For more information phone (510) 238-3721.

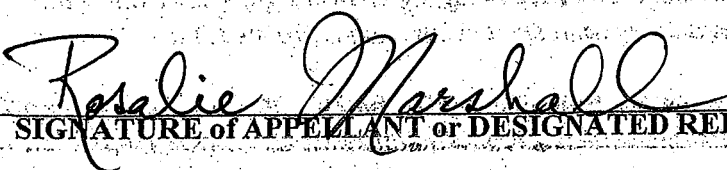
- f) I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. (In your explanation, you must describe how you were denied the chance to defend your claims and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue 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 June 7, 2018, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

| | |
|------------------------|---|
| <u>Name</u> | Roel Dobbe (petitioner) |
| <u>Address</u> | *Note: Roel Dobbe has left the premises. |
| <u>City, State Zip</u> | Despite my requests to provide me with his new employment and personal information, |
| <u>Name</u> | Roel Dobbe has not provided it to me yet. |
| <u>Address</u> | My only way to provide him with a copy of my "Appeal" was to send it to his personal email: roeldobbe@gmail.com |
| <u>City, State Zip</u> | "Proof of Service" by email is attached. |

| | |
|--|----------|
|  | 6/7/2018 |
| 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.

6/7/2018

Xfinity Connect URGENT ATTENTION APPEAL to ORDERS Printout

Proof of Service to Petitioner

ROSALIE MARSHALL <rosaliemarshall@comcast.net>

6/7/2018 2:24 PM

URGENT ATTENTION!...APPEAL to ORDERS

To Roel Dobbe <roeldobbe@gmail.com>

Dear Roel,

Please read the attached documents: (1) Appeal Form and (2) "APPEAL to ORDERS" Letter, so that you may be up to date with the status of the issues. Thank you for your attention.

Rosali Marshall

- Taft, Letter of APPEAL to City of Oakland.docx (28 KB)
- Appeal Form page 1.pdf (868 KB)
- Appeal Form, page 2.pdf (944 KB)
- Appeal Form, page 3.pdf (526 KB)

Rosalie Marshall

9 Alta Ave.

Piedmont, CA 94611

To: City of Oakland

From: Rosalie Marshall, landlord

RE: Case No. T17-0477, Dobbe vs. Marshall

Appeal of Decision of Rent Adjustment Program

June 5, 2018

APPEAL OF ORDERS

(1) ORDER THAT THE TENANT'S BASE RENT IS \$2,850/MO.

The order that starting June 1, 2018 the base rent should be \$2,850/mo. is no longer valid. The rent of \$2,850/mo. was established with the original Tenant/Petitioner, Roel Dobbe, on January 1, 2015. On **June 1, 2017** the rent was established at **\$2,950/mo.** with Roel Dobbe, as the master tenant, and his new 2 roommates, Jonathan Lee and Taryn Elliott. Since Roel Dobbe **left the premises in May 2018**, the remaining tenants are **not** entitled to a rent of \$2,850/mo. which was established three and one-half years before they moved in the premises. I have consulted Mr. Clifford Fried, a real estate attorney whose expertise is landlord and tenant issues, who assured me that the current tenants' base rent is based on the June 1, 2017 lease of \$2,950/mo., which is when they came in as tenants, plus the 2018 CPI increase to a total rent of **\$3,018/mo. starting June 1, 2018**. He asserted that a **"landlord has no obligation to reduce the rent to a date that was paid in the past"**. See attached letter, page 2. His statement is supported by the ordinance Code 8.22.080, part G, which states:

"An owner may not set an initial Rent to a Tenant that is more than the lawful Rent that had been charged to the previous Tenant on the date that Tenant vacated, plus any allowable CPI rent adjustment."

Though at the Hearing, Roel Dobbe did say on the recorded tape that he was "moving to New York in May", I am assuming that the Hearing Officer, Ms. Cohen,

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inadvertently made an error and assumed that Roel Dobbe was staying as the master tenant and therefore the rent would revert back to his original rent of 2015.

As of June 2018, the current Tenants, Jonathan Lee and Taryn Elliott, have disregarded the above Code 8.22.080, part G, and deliberately reverted the rent to that which was paid by Roel Dobbe in 2015. Since Roel Dobbe left the premises, I would appreciate your **revision** that the base rent be rightfully set at \$2,950/mo. + CPI increase, which is a total of **\$3,018/mo. starting June 1, 2018**, as confirmed by Mr. Fried and the Ordinance Code.

(2) DECREASE in HOUSING SERVICES:

The decrease in housing services is **false**. The minor defect, referred by the tenant as a “small hole in the caulking” was never reported to me via text or email or phone call by the tenant, until the day of the meeting with the Hearing Officer, Ms. Cohen, on March 26, 2018. The “small hole in the caulking” was **repaired** soon after. Attached is the copy of the payment made to the handyman on April 13, 2018. This confirms that the “small hole in the caulking” was a very temporary condition and that it didn’t last a year. Roel Dobbe’s own taped comment at the meeting that “Ms. Marshall has always been a good and conscientious landlord” affirms my prompt attention to repairs. Furthermore, a “small hole in the caulking” does **not** meet the City of Oakland code criteria as a “loss of a service that seriously affects the habitability of a unit”. Therefore, due to the preceding reasons, the decrease of housing services **not qualify** for re-imbursement of \$342 to tenant and should be totally removed as a penalty to the landlord.

The current tenants, Jonathan Lee and Taryn Elliott, disregard this fact and have deducted the proportioned amount from their June rent.

(3) RESTITUTION of RENT:

The restitution in rents to the tenant, Roel Dobbe, from 2015-2018 which totals the huge sum of \$3,900 is a **violation** of the “Due Process Clause” in the California Constitution, Article I, section 1, and a **violation** of the “Due Process Clause” in the United States Constitution, 14th Amendment.

It is true that due to lack of knowledge, I failed to provide the tenant, Roel Dobbe, with a RAP Notice in 3 languages. However, since the City of Oakland has **never**

informed me, or other paying member, of the mandatory RAP Form, I believe it should take some responsibility and alleviate such a severe penalty assessed to the landlord. After all, if the landlord is legally bound to pay the annual RAP fee to the City, is not the City simultaneously legally bound to its members to simply **include** a RAP Notice with the Annual RAP Fee Statement mailing, to inform its members of the severe consequences of this ordinance?

In light of the facts that (1) the ordinance is extremely unreasonable and punitive to the landlord, and (2) the City takes **no** responsibility to keep its paying members well informed, I would appreciate your consideration to make the landlord's penalty less severe; that is, at least 1/2 of \$3,900 or **\$1,900**.

The current Tenants, Jonathan Lee and Taryn Elliott, have totally disregarded the fact that any and all reimbursements go to the petitioner, Roel Dobbe, and **not** directly to them, so that they may benefit from a lower rent. Consequently, once again they have deducted the proportioned amounts set by the Hearing Officer, who mistakenly thought that Roel Dobbe was still residing on the property, and made a direct deposit to my account in the sum of **\$2,468** as the **June rent**. I informed them that the amount was not acceptable, but they refused to co-operate.

In addition, they have allowed the residence of a subleasee, Eric Parsonnet, into the premises, without my approval, while disregarding my decision that he is not a financially qualified subtenant, based on his very weak income.

I deeply appreciate your efforts in reviewing my appeals and reconsidering the penalties. The outcome will also help get the records straight for the current tenants, Jonathan Lee and Taryn Elliott, who have disregard for the ordinances, assume they can benefit from the reimbursements which are only due to Roel Dobbe, and assume all the power to take over my premises by allowing a subleasee without my approval; in essence, they are violating the Lease. I appreciate your help in a resolution to these issues as soon as possible.

Thank you for your attention.

Sincerely,

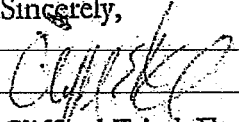


Rosalie Marshall

Lastly, I would like to make it clear that should you decide to continue to reside at the premises, Ms. Marshall has declined your requests to: (1) waive her rights to annual CPI increases which she is entitled to; (2) waive any late payment fees; (3) reduce the rent to a date that was paid in the past, as she has no obligation to do so. Therefore, your rent would be based on the May 7, 2017 lease plus the CPI increase to a total rent of \$3,018/mo. as of June 1, 2018.

If you decide to vacate when your lease terminates on May 31, 2018, let Ms. Marshall know by the end of April, so that you can schedule a pre-move out inspection concerning your security deposit. Thank you.

Sincerely,



Clifford Fried, Esq.

cc: Rosalie Marshall

1901 Harrison Street, 14th Floor, Oakland, CA 94612
Tel 510-625-0100 Fax 510-550-3621

625 Market Street, 4th Floor, San Francisco, CA 94105
Tel 415-421-0100 Fax 415-762-5435

www.friedwilliams.com

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
Skip to main content
Check Details

| | |
|--------------|----------|
| Check Number | 2767 |
| Date Posted | 04/16/18 |
| Check Amount | \$125.00 |

ROSALIE M MARSHALL 2767
 8 ALTA AVE
 PIEDMONT, GA 30611-3401

April 13, 2018
Date

Pay to the Order of Salvador Sotelo \$ 125.00
One Hundred & Twenty-Five and 00/100 Dollars

 Wells Fargo Bank, N.A.
 California
 wells.fargo.com

For: *repairs for "Tape"*

Photo Link to verify this check

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

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CHRONOLOGICAL CASE REPORT

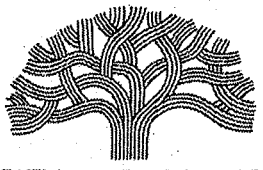
Case No.: T17-0577
Case Name: Patrick v. Um et al
Property Address: 6248 'A' Bromley Ave., Oakland, CA
Parties: Heidi Patrick (Tenant)

OWNER APPEAL:

| <u>Activity</u> | <u>Date</u> |
|-------------------------|------------------|
| Tenant Petition filed | October 18, 2017 |
| Owner Response filed | December 1, 2017 |
| Hearing Decision issued | August 3, 2018 |
| Owner Appeal filed | August 15, 2018 |

T17-0577 LM/MA

RECEIVED CITY OF OAKLAND ARBITRATION PROGRAM

| | | |
|--|--|--|
|  CITY OF OAKLAND | CITY OF OAKLAND RENT ADJUSTMENT PROGRAM P.O. Box 70243 Oakland, CA 94612-0243 (510) 238-3721 | For date stamp: 017 OCT 18 PM 2:51 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 <i>Heidi Patrick</i> | Rental Address (with zip code) <i>6248-A Bromley Ave OAKLAND, Ca 94621</i> | Telephone: <i>510 638-3007 Home</i> E-mail: <i>PATRICKHEIDI@ATT.NET</i> |
| Your Representative's Name | Mailing Address (with zip code) | Telephone: Email: |
| Property Owner(s) name(s) <i>Tom Uhl Kong Indg Hous</i> | Mailing Address (with zip code) <i>6248 Bromley Ave OAKLAND, Ca 94621</i> | Telephone: <i>510-969-4848 Home</i> Email: <i>510 677-8585 LM</i> |
| Property Manager or Management Co. (if applicable) <i>Shaleigh Hilton</i> | Mailing Address (with zip code) <i>77 8th St Suite 205 OAKLAND, Ca 94607</i> | Telephone: <i>510 969-4848</i> Email: |

Number of units on the property: 5

| | | | |
|---|---|--------------------------------------|---|
| 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 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 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 type="checkbox"/> | (k) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014). |
| <input type="checkbox"/> | (l) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake. (OMC 8.22, Article I) |
| <input type="checkbox"/> | (m) The owner did not give me a summary of the justification(s) for the increase despite my written request. |
| <input type="checkbox"/> | (n) The rent was raised <u>illegally</u> after the unit was vacated as set forth under OMC 8.22.080. |

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

Date you moved into the Unit: 2009 Initial Rent: \$ _____ /month

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

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

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

| Date you received the notice (mo/day/year) | Date increase goes into effect (mo/day/year) | Monthly rent increase | | Are you Contesting this Increase in this Petition?* | Did You Receive a Rent Program Notice With the Notice Of Increase? |
|--|--|-----------------------|-------------------|---|---|
| | | From | To | | |
| <u>10-16-17</u> | <u>1-1-18</u> | <u>\$ 1000.00</u> | <u>\$ 1300.00</u> | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| | | \$ | \$ | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | | \$ | \$ | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | | \$ | \$ | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | | \$ | \$ | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | | \$ | \$ | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No |

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).

Harold Patrick

Tenant's Signature

10-17-17

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): _____

* 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:

unk 2014 with Tom Um

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.

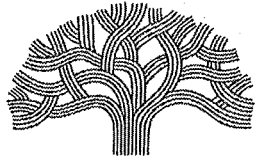
Heidi Patrick
Tenant's Signature

10-17-17
Date

[Empty rectangular box]

[Empty rectangular box]

RECEIVED 14



CITY OF OAKLAND

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

For date stamp.

DEC 01 2017

RENT ADJUSTMENT PROGRAM
OAKLAND

**PROPERTY OWNER
RESPONSE**

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

CASE NUMBER T17-0577

| | | |
|--|--|--|
| Your Name SHALEIGH HILLTON | Complete Address (with zip code) 6248 BROMLEY AVE. OAKLAND, CA 94621 | Telephone: 510-969-4848 |
| | | Email: SHALEIGHHILLTON@YAHOO.COM |
| Your Representative's Name (if any) | Complete Address (with zip code) | Telephone: |
| | | Email: |
| Tenant(s) Name(s) | Complete Address (with zip code) | |
| Property Address (If the property has more than one address, list all addresses) 6242 - 6244 - 6246 - 6248A - 6248A BROMLEY ave. OAKland, CA 94621 | | Total number of units on property 5 |

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

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

Date on which you acquired the building: 11/20/2015

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> |
|-----------------------------------|--|--|-----------------------------|---|--------------------------|-------------------------------------|
| 10/17 | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> Planned to Remodel to 500sqm. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

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 signed lease on 1/1/2016. (Existing Tenants from previous owner)

The tenant's initial rent including all services provided was: \$ 1000.00 / month.

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

Yes _____ No _____ I don't know

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

Is the tenant current on the rent? Yes No _____

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> | |
| 10/16/17 | 1/1/18 | \$ 1000.00 | \$ 1300.00 | <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 |
| | | \$ | \$ | <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.

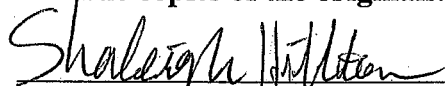
The unit is located in a building with three or fewer units. The owner occupies one of the units continuously as his or her principal residence and has done so for at least one year.

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

11/15/17
Date

IMPORTANT INFORMATION:

Time to File

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

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

File Review

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

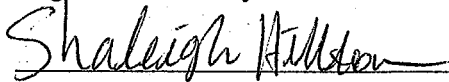
Mediation Program

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

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

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

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

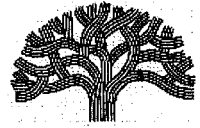


Property Owner's Signature

11/15/17

Date

CITY OF OAKLAND



P.O. BOX 70243, 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: T17-0577, Patrick v. Um et al
PROPERTY ADDRESS: 6248 A Bromley Avenue, Oakland, CA
DATE OF HEARING: March 29, 2018
DATE OF DECISION: July 21, 2018
APPEARANCES: Heidi Patrick, Tenant

SUMMARY OF DECISION

The tenant petition is granted.

INTRODUCTION

The tenant filed a petition on October 18, 2017, which contests a monthly rent increase from \$1,000.00 to \$1,300.00 effective January 1, 2018.

The basis for the tenant's petition includes the following:

-
- The rent increase exceeds the CPI Adjustment and is unjustified or is greater than 10%; and
 - No written notice of Rent Program was given to me together with the notice of increase I am contesting.

The owner filed a timely response but failed to appear at the hearing.

ISSUE

1. Is the rent increase valid?

000052

EVIDENCE

The tenant testified that she moved into the subject property in 2008, at an initial monthly rent of \$1,300.00. In 2010, her rent was lowered to \$900.00 by the prior owner. On October 16, 2017, she received a notice of rent increase, which proposed to increase the monthly rent from \$1,000.00 to \$1,300.00, effective January 1, 2018.¹ She immediately filed a petition contesting the rent increase. At the hearing, she testified that on November 18, 2017, she met with the owner and both parties agreed to a rent increase of \$1,043.00 based on the banked CPI for the prior two years. On February 19, 2018, the owner gave the tenant a new one-year lease at a monthly rent of \$1,043.00. The tenant refused to sign the new lease because the terms stated that the new rental amount would be retroactive to January 1, 2018. She testified that she wanted the new lease to be effective as of March 1, 2018, and she also wanted to change other terms in the new lease. The tenant submitted a copy of the lease into evidence.² To date, she has refused to sign the new lease. The tenant testified that in March of 2018, she began paying \$1,043.00 in rent. Prior to that she was paying \$1,000.00 in rent monthly.

The tenant stated on her petition and testified at the hearing that she first received the notice of the existence of the Rent Adjustment Program (RAP Notice) in 2014 but she did not receive the RAP Notice with the contested rent increase.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Invalid Rent Increase

The Rent Adjustment Ordinance states that an owner seeking a rent increase in excess of the CPI Rent Adjustment or available banking must first petition the Rent Adjustment Program and receive approval for the rent increase before the rent increase can be imposed³.

The owner did not receive approval from the Rent Adjustment Program before raising the rent for the subject property from \$1,000.00 to \$1,300.00 monthly, effective January 1, 2018. Therefore, the contested rent increase is invalid and the tenant's rent remains \$1,000.00. ~~Since the tenant has been paying \$1,043.00 in rent monthly as of March 1, 2018, she is owed restitution for overpayment of rent in the amount of \$258.00 (\$43.00 x 6 months).~~

The Rent Adjustment Program's jurisdiction is limited to the issues raised in the tenant petition. The only issue listed in the tenant petition is the proposed rent increase from \$1,000.00 to \$1,300.00. Therefore, the Rent Adjustment Program does not have jurisdiction to address the other issues raised by the tenant at the hearing.

¹ Exhibit 1

² Exhibit 2

³ O.M.C. §8.22.065(A)

ORDER

1. Petition T17-0577 is granted. The tenant's rent remains \$1,000.00.
2. The tenant is entitled to restitution for overpayment of rent in the amount of \$258.00. The restitution is amortized over six (6) months. Therefore, the tenant's rent will be \$957.00 from September 1, 2018, through February 1, 2019. In March of 2019 the rent will revert to \$1,000.00

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 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.

Date: July 21, 2018



Maimoona Sahi Ahmad, Esq.
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE
Case Number T17-0577

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

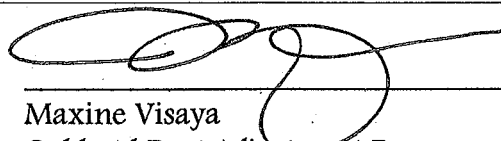
Owner
Tom Um & Kong Ing Houn
6248 Bromley Ave
Oakland, CA 94621

Owner Representative
Shaleigh Hilton
77 8th St Suite 205
Oakland, CA 94607

Tenant
Heidi Patrick
6248 A Bromley Ave
Oakland, CA 94621

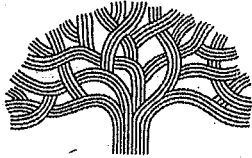
I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first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



Maxine Visaya
Oakland Rent Adjustment Program

000055



CITY OF OAKLAND

CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM
250 Frank Ogawa Plaza, Suite 310
Oakland, CA 94612
(510) 238-3721

RENT ADJUSTMENT PROGRAM
OAKLAND

RECEIVED
Ar ~~AUG 15 2018~~ Program
RENT ADJUSTMENT PROGRAM
2018 OAKLAND APPEAL

| | | | |
|--|--|---|---|
| Appellant's Name SNALEIGH HILLTON | | <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant | |
| Property Address (Include Unit Number) 6248A BROMLEY AVE, OAKLAND, CA 94621 | | | |
| Appellant's Mailing Address (For receipt of notices) 6248 BROMLEY AVE, OAKLAND, CA 94621 | | Case Number T17-0577 | Date of Decision appealed July 21, 2018 |
| Name of Representative (if any) | | Representative's Mailing Address (For notices) | |

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

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

For more information phone (510) 238-3721.

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

h) Other. (In your explanation, you must attach a detailed explanation of your grounds for appeal.)
we got verbal agreement with tenant in the amount of \$1043.00 (see copy check attached)

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: 1.

• 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 Aug 14, 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 | <i>Heidi Patrick</i> |
| Address | <i>6248A Beomley ave</i> |
| City, State Zip | <i>OAKLAND, CA 94621</i> |
| Name | |
| Address | |
| City, State Zip | |

| | |
|---|-----------------|
| <i>Shaleen Hillton</i> | <i>08/14/18</i> |
| 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.

RECEIVED
CITY OF OAKLAND
RENT ARBITRATION PROGRAM

2018 AUG 15 AM 10:57

SHALEIGH HILLTON

AKA

KONG INGHOON

6248 Bromley Avenue

Oakland, CA 94621

Tel: (510) 969-4848

August 14, 18

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

RE: case number: T17-0577


Dear Sir/Madam:

The reason for this appeal is the Tenant agreed to pay rent increase from \$1000.00 to \$1043.00 (see copy check) starting from 03/01/2018 and I accepted it that why I did not appear at the hearing due to it was mutual settled.

Tenant have requested to sign a new lease sometime in January 2018 but I was delayed due to I formed a corporation on my property and took sometime to completed it, However, In March 2018, I gave her a new lease but she did not give it back due to she said she need time to read it, but in fact she went to attend hearing and wait for this decision without let me know, which is not fair to me.

However, I would like to appeal on this decision to have a fair hearing in this matter.

The above statement is true to the best of my knowledge. Thank you.


Shaleigh Hillton aka Kong Ing Houn

000059

Application for Employer Identification Number

(For use by employers, corporations, partnerships, trusts, estates, churches, government agencies, Indian tribal entities, certain individuals, and others.)

▶ Go to www.irs.gov/FormSS4 for instructions and the latest information.

▶ See separate instructions for each line. ▶ Keep a copy for your records.

EIN

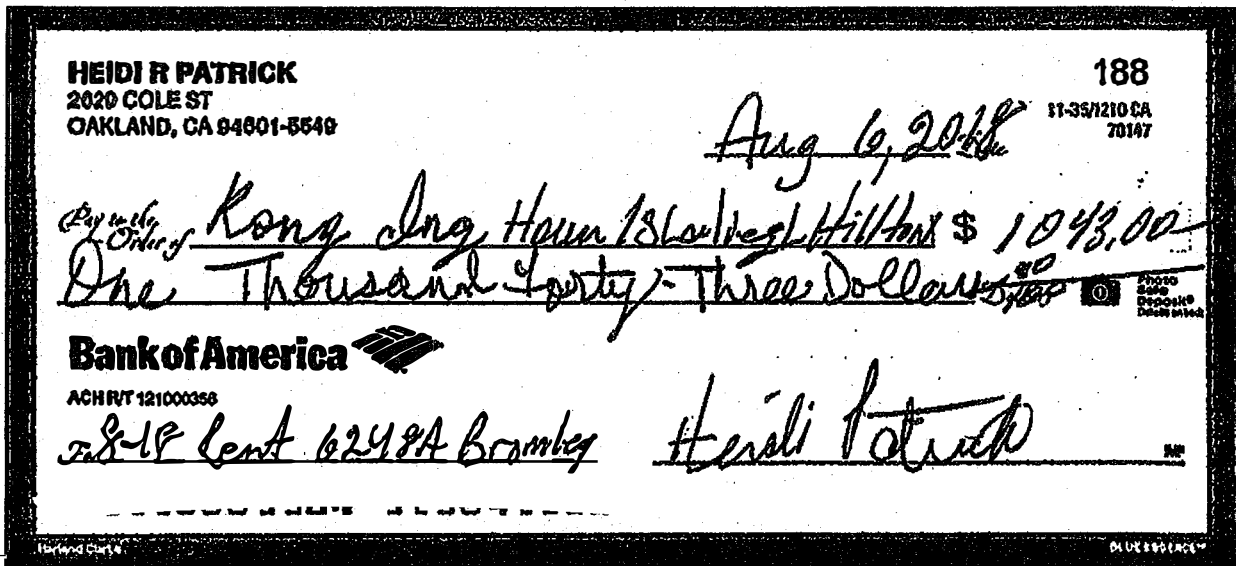
| | | | | | | | | |
|--|--|--|-------|---|---|---|--|--|
| Type or print clearly. | 1 Legal name of entity (or individual) for whom the EIN is being requested GOLDEN TWO DRAGONS, INC. | | | | | | | |
| | 2 Trade name of business (if different from name on line 1) | 3 Executor, administrator, trustee, "care of" name | | | | | | |
| | 4a Mailing address (room, apt., suite no. and street, or P.O. box) 3225 MCLEOD DR, STE 100 | 5a Street address (if different) (Do not enter a P.O. box.) 4778 DEWEY DR | | | | | | |
| | 4b City, state, and ZIP code (if foreign, see instructions) LAS VEGAS, NV 89121 | 5b City, state, and ZIP code (if foreign, see instructions) FAIR OAKS, CA 95628 | | | | | | |
| | 6 County and state where principal business is located SACRAMENTO COUNTY, CALIFORNIA | | | | | | | |
| | 7a Name of responsible party SHALEIGH HILLTON | 7b SSN, ITIN, or EIN | | | | | | |
| 8a Is this application for a limited liability company (LLC) (or a foreign equivalent)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | 8b If 8a is "Yes," enter the number of LLC members ▶ | | | | | | | |
| 8c If 8a is "Yes," was the LLC organized in the United States? <input type="checkbox"/> Yes <input type="checkbox"/> No | | | | | | | | |
| 9a Type of entity (check only one box). Caution. If 8a is "Yes," see the instructions for the correct box to check. | | | | | | | | |
| <input type="checkbox"/> Sole proprietor (SSN) _____ <input type="checkbox"/> Partnership _____ <input checked="" type="checkbox"/> Corporation (enter form number to be filed) ▶ 1120 <input type="checkbox"/> Personal service corporation _____ <input type="checkbox"/> Church or church-controlled organization _____ <input type="checkbox"/> Other nonprofit organization (specify) ▶ _____ <input type="checkbox"/> Other (specify) ▶ _____ | | | | | | | | |
| <input type="checkbox"/> Estate (SSN of decedent) _____ <input type="checkbox"/> Plan administrator (TIN) _____ <input type="checkbox"/> Trust (TIN of grantor) _____ <input type="checkbox"/> Military/National Guard <input type="checkbox"/> State/local government <input type="checkbox"/> Farmers' cooperative <input type="checkbox"/> Federal government <input type="checkbox"/> REMIC <input type="checkbox"/> Indian tribal governments/enterprises Group Exemption Number (GEN) if any ▶ _____ | | | | | | | | |
| 9b If a corporation, name the state or foreign country (if applicable) where incorporated | State CALIFORNIA | Foreign country | | | | | | |
| 10 Reason for applying (check only one box) | | | | | | | | |
| <input checked="" type="checkbox"/> Started new business (specify type) ▶ _____ CAPITAL DEVELOPMENT <input type="checkbox"/> Hired employees (Check the box and see line 13.) <input type="checkbox"/> Compliance with IRS withholding regulations <input type="checkbox"/> Other (specify) ▶ _____ | | | | | | | | |
| <input type="checkbox"/> Banking purpose (specify purpose) ▶ _____ <input type="checkbox"/> Changed type of organization (specify new type) ▶ _____ <input type="checkbox"/> Purchased going business <input type="checkbox"/> Created a trust (specify type) ▶ _____ <input type="checkbox"/> Created a pension plan (specify type) ▶ _____ | | | | | | | | |
| 11 Date business started or acquired (month, day, year). See instructions. 03/16/2018 | 12 Closing month of accounting year SEPTEMBER | | | | | | | |
| 13 Highest number of employees expected in the next 12 months (enter -0- if none). If no employees expected, skip line 14. | 14 If you expect your employment tax liability to be \$1,000 or less in a full calendar year and want to file Form 944 annually instead of Forms 941 quarterly, check here. (Your employment tax liability generally will be \$1,000 or less if you expect to pay \$4,000 or less in total wages.) If you do not check this box, you must file Form 941 for every quarter. <input type="checkbox"/> | | | | | | | |
| <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;">Agricultural</td> <td style="width:33%;">Household</td> <td style="width:33%;">Other</td> </tr> <tr> <td style="text-align: center;">0</td> <td style="text-align: center;">0</td> <td style="text-align: center;">0</td> </tr> </table> | Agricultural | Household | Other | 0 | 0 | 0 | | |
| Agricultural | Household | Other | | | | | | |
| 0 | 0 | 0 | | | | | | |
| 15 First date wages or annuities were paid (month, day, year). Note: If applicant is a withholding agent, enter date income will first be paid to nonresident alien (month, day, year) ▶ | | | | | | | | |
| 16 Check one box that best describes the principal activity of your business. | | | | | | | | |
| <input type="checkbox"/> Construction <input type="checkbox"/> Rental & leasing <input type="checkbox"/> Transportation & warehousing <input type="checkbox"/> Accommodation & food service <input type="checkbox"/> Wholesale-agent/broker <input type="checkbox"/> Real estate <input type="checkbox"/> Manufacturing <input type="checkbox"/> Finance & insurance <input checked="" type="checkbox"/> Other (specify) ▶ CAPITAL DEVELOPMENT | | | | | | | | |
| 17 Indicate principal line of merchandise sold, specific construction work done, products produced, or services provided. ASSET MANAGEMENT | | | | | | | | |
| 18 Has the applicant entity shown on line 1 ever applied for and received an EIN? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "Yes," write previous EIN here ▶ | | | | | | | | |
| Third Party Designee | Complete this section only if you want to authorize the named individual to receive the entity's EIN and answer questions about the completion of this form. | | | | | | | |
| | Designee's name CHARLEEN GALLETINE | Designee's telephone number (include area code) 800-706-4741 | | | | | | |
| | Address and ZIP code 3225 MCLEOD DR, STE 100, LAS VEGAS, NV 89121 | Designee's fax number (include area code) 702-805-0869 | | | | | | |
| | Applicant's telephone number (include area code) | | | | | | | |
| Under penalties of perjury, I declare that I have examined this application, and to the best of my knowledge and belief, it is true, correct, and complete. | | Applicant's telephone number (include area code) | | | | | | |
| Name and title (type or print clearly) ▶ SHALEIGH HILLTON, PRESIDENT | | Applicant's fax number (include area code) | | | | | | |
| Signature ▶ _____ | | Date ▶ _____ | | | | | | |



Deposit Overview

| Post date | Total deposit amount | # of checks deposited |
|--------------|----------------------|-----------------------|
| Aug 13, 2018 | \$1,043.00 | 1 |

Check



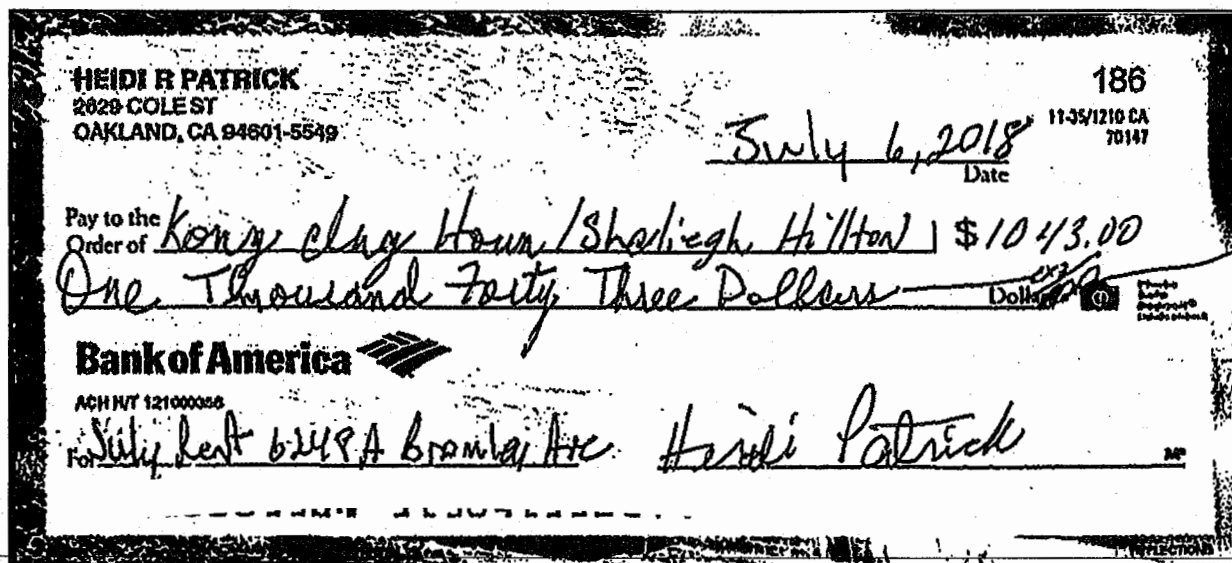
| Check # | Check amount | Account # | Routing # |
|---------|--------------|------------|------------|
| 188 | \$1,043.00 | [REDACTED] | [REDACTED] |



Deposit Overview

| Post date | Total deposit amount | # of checks deposited |
|-------------|----------------------|-----------------------|
| Jul 9, 2018 | \$1,043.00 | 1 |

Check



| Check # | Check amount | Account # | Routing # |
|---------|--------------|------------|------------|
| 186 | \$1,043.00 | [REDACTED] | [REDACTED] |



Deposit Overview

| Post date | Total deposit amount | # of checks deposited |
|--------------|----------------------|-----------------------|
| Jun 11, 2018 | \$1,043.00 | 1 |

Check

HEIDI R PATRICK
2629 COLE ST
OAKLAND, CA 94601-5549

183
11-35/1210 CA
70147

June 6, 2018
Date

Pay to the Order of *Kong Inn Houn* \$ *1043.00*

One Thousand Forty-Three Dollars ⁰⁰/₁₀₀ Dollars

Bank of America
ACH R/T 121000358

For *June Rent 2018* *Heidi Patrick*

Harland Clarke AMERICA THE BEAUTIFUL

| Check # | Check amount | Account # | Routing # |
|---------|--------------|------------|------------|
| 183 | \$1,043.00 | [REDACTED] | [REDACTED] |

JPMorgan Chase Bank, N.A. Member FDIC

©2018 JPMorgan Chase & Co.

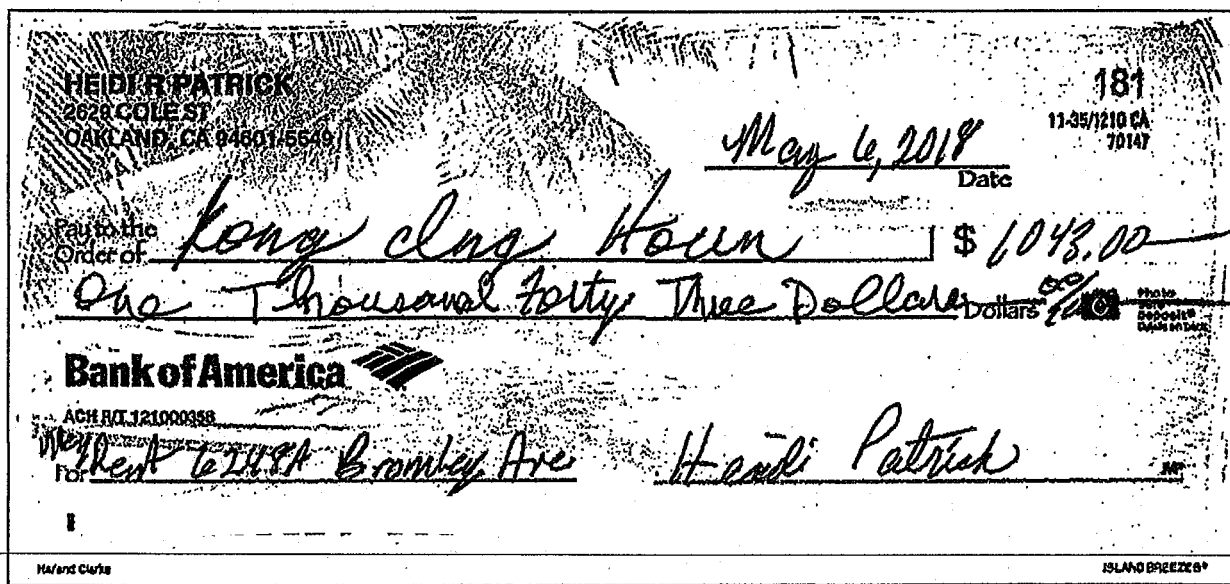
Equal Opportunity Lender



Deposit Overview

| Post date | Total deposit amount | # of checks deposited |
|-------------|----------------------|-----------------------|
| May 8, 2018 | \$1,043.00 | 1 |

Check



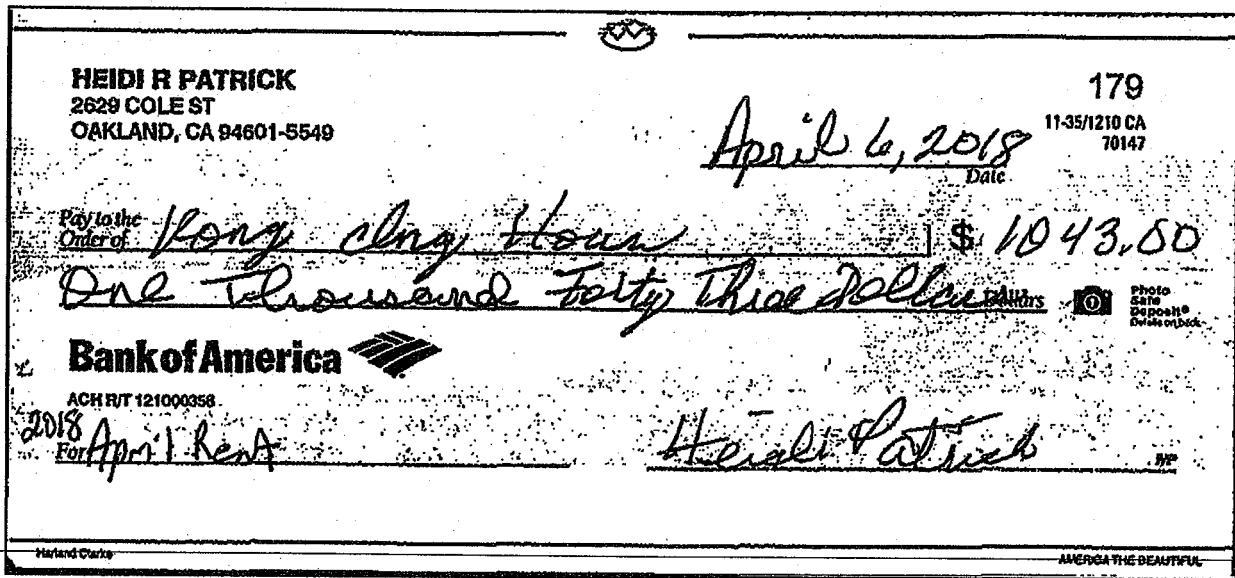
| Check # | Check amount | Account # | Routing # |
|---------|--------------|------------|------------|
| 181 | \$1,043.00 | [REDACTED] | [REDACTED] |



Deposit Overview

| Post date | Total deposit amount | # of checks deposited |
|--------------|----------------------|-----------------------|
| Apr 17, 2018 | \$1,043.00 | 1 |

Check



| Check # | Check amount | Account # | Routing # |
|---------|--------------|------------|------------|
| 179 | \$1,043.00 | [REDACTED] | [REDACTED] |

JPMorgan Chase Bank, N.A. Member FDIC

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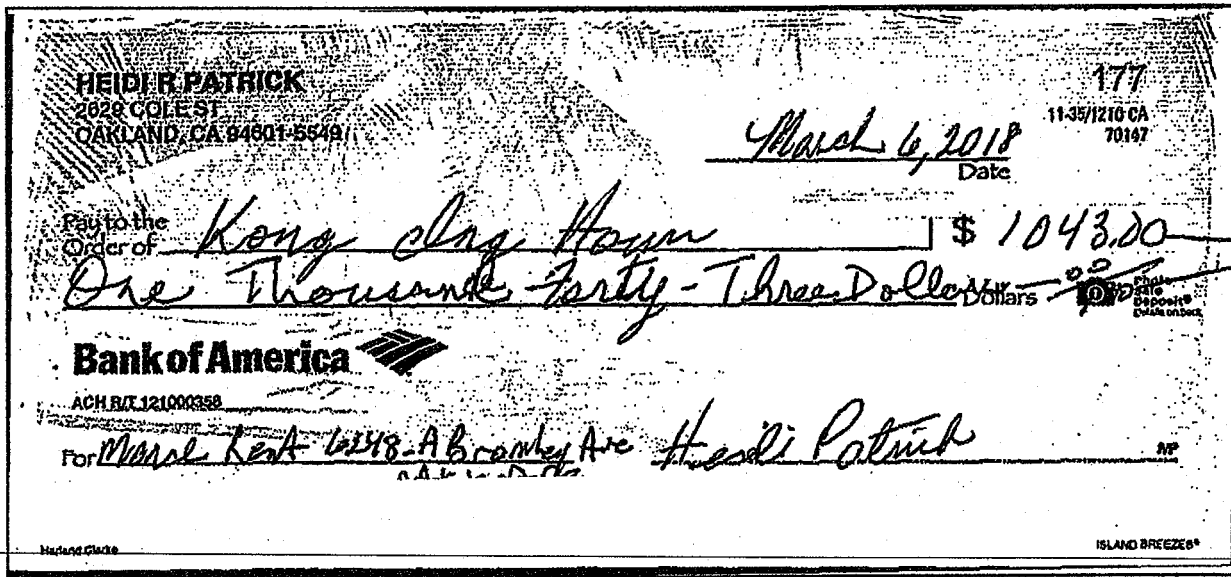
Equal Opportunity Lender



Deposit Overview

| Post date | Total deposit amount | # of checks deposited |
|--------------|----------------------|-----------------------|
| Mar 12, 2018 | \$1,043.00 | 1 |

Check



| Check # | Check amount | Account # | Routing # |
|---------|--------------|------------|------------|
| 177 | \$1,043.00 | [REDACTED] | [REDACTED] |

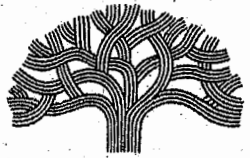
CHRONOLOGICAL CASE REPORT

Case No.: T17-0418
Case Name: Jackson v. Barnaby
Property Address: 4640 Steele Street, Apt. #4, Oakland, CA
Parties: Nakisha Jackson (Tenant)
Mercedes Gavin (Tenant Attorney)
Jill Broadhurst (Owner Representative)

OWNER APPEAL:

| <u>Activity</u> | <u>Date</u> |
|---------------------------------|-------------------|
| Tenant Petition filed | July 17, 2017 |
| Owner Response filed | November 30, 2017 |
| Hearing Decision issued | June 20, 2018 |
| Owner Appeal filed | July 10, 2018 |
| Tenant Response to Appeal filed | August 15, 2018 |

T17-0418 MB/BC



CITY OF OAKLAND

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

RENT

RECEIVED
 CITY OF OAKLAND
 RENT ADJUSTMENT PROGRAM
 For date stamp

2017 JUL 17 PM 3:18

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 <i>Nakisha L.P. Jackson</i> | Rental Address (with zip code) <i>4640 Steele St. #4 Oakland, CA 94619</i> | Telephone: <i>(510) 531-1668 (510) 379-8729</i> |
| Your Representative's Name <i>Mercedes Gavin</i> | Mailing Address (with zip code) <i>145 Town Center #593 Corte Madera CA 94925</i> | E-mail: <i>marjanayah@gmail.com</i> Telephone: <i>(415) 497-1493</i> Email: <i>mgavinlaw@aol.com</i> |
| Property Owner(s) name(s) <i>Eskhan Barnaby</i> | Mailing Address (with zip code) <i>P.O. Box 10425 Oakland, CA 94610</i> | Telephone: <i>(510) 593-3605</i> Email: <i>eeb96@aol.com</i> |
| Property Manager or Management Co. (if applicable) <i>N/A</i> | Mailing Address (with zip code) <i>N/A</i> | Telephone: <i>N/A</i> Email: <i>N/A</i> |

Number of units on the property: 4

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

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

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

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

Rev. 2/10/17

For more information phone (510) 238-3721.

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| | |
|---|--|
| | rent increase. |
| X | (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.) |
| X | (e) The property owner did not give me the required form "Notice of the Rent Adjustment Program" at least 6 months before the effective date of the rent increase(s). |
| | (f) The rent increase notice(s) was (were) not given to me in compliance with State law. |
| | (g) The increase I am contesting is the second increase in my rent in a 12-month period. |
| X | (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) |
| X | (i) The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner. (OMC 8.22.070(F): A decrease in housing services is considered an increase in rent. A tenant may petition for a rent adjustment based on a decrease in housing services.) (Complete Section III on following page) |
| | (j) My rent was not reduced after a prior rent increase period for a Capital Improvement had expired. |
| | (k) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014). |
| | (l) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake (OMC 8.22, Article I) |
| | (m) The owner did not give me a summary of the justification(s) for the increase despite my written request. |
| | (n) The rent was raised <u>illegally</u> after the unit was vacated as set forth under OMC 8.22.080. |

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

Date you moved into the Unit: 1/14/2012 Initial Rent: \$ 1400.⁰⁰ /month

When did the owner first provide you with the RAP NOTICE, a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program? Date: 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 | | Yes | No |
| May 2014 | June 2014 | \$ 1400 | \$ 1472 | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| May 2015 | June 2015 | \$ 1472 | \$ 1505 | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| June 2016 | July 2016 | \$ 1525 | \$ 1555 | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| | | \$ | \$ | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| | | \$ | \$ | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| | | \$ | \$ | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

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

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

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

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

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

Tenant's Signature

Date

VI. IMPORTANT INFORMATION:

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

File Review

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

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

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

* 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:

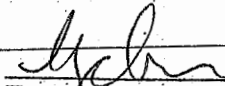
- 1) a list of the lost housing service(s) or problem(s);
- 2) the date the loss(es) or problem(s) began or the date you began paying for the service(s)
- 3) when you notified the owner of the problem(s); and
- 4) how you calculate the dollar value of lost service(s) or problem(s).

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

7/7/2017
Date

 cotenant

June 6, 2017

Mercedes A. Gavin
Law Offices of Mercedes A. Gavin
145 Town Center #593
Corte Madera, CA 94925

Today, June 6, 2017, I informed the owner of 4640 Steele Street, Oakland, CA 94619 , Esteban Barnaby, of the mold and mildew that has grown back on the walls and ceiling in my bedroom and bathroom at 4640 Steele Street, Apt. 4, Oakland, CA 94619.

I asked Mr. Barnaby to come and view the mold and mildew that had grown back from the first time he had his maintenance man, Cesar, come to clean the walls and paint both rooms to get rid of the mold and mildew. Mr. Barnaby stated to me that Cesar had informed him of the situation from when I had shown Cesar the regrowth of the mold and mildew, March 2017. Mr. Barnaby said that he did not need to see it because he trusted Cesar's judgement and because Cesar was a professional. I insisted that he come in to see it for himself anyway and he agreed.

Upon entry to my bedroom and seeing for himself that the mold and mildew had infact grown back. Mr. Barnaby stated that Cesar's professional opinion was that I do not clean thoroughly, that the room was too cluttered, that I had my furniture against the walls, that I should not use the heater during the winter months because of the building's age and because the building is not insulated, and that the walls are that way because they are on the exterior of the building. He also stated that he would have Cesar come back to do what he did before and that he and I would agree that he would come into my apartment every 60 days to monitor the walls to see if the mold and mildew grows back again. I did rebut the information that Mr. Barnaby was giving me because Cesar had stated to me that the dry wall needed to be replaced and that the mold and mildew would continue to grow back. I did show Mr. Barnaby that my furniture was not against the walls and that items in the bedroom were not against the walls and that I had infact already been scrubbing the walls and it was not helping to stop the regrowth.

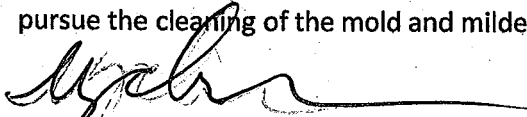
I explained to Mr. Barnaby that I had a friend who had the same issues and that she had professionals come into her home and that they confirmed to rid the home of the mold they needed to tear out the original dry wall, treat the mold and mildew, insulate the walls and then put up new dry wall. Mr. Barnaby then stated to me that, "I know you are not asking me to tear out my walls". He also stated, "I would sell first" because of the cost. He also stated that if we were not willing to stay if the mold and mildew keeps coming back with the fix he was willing to pay for that we might want to move to a new apartment because new apartments do not have this problem. He also said that we are the only tenants to have this problem out of all of his properties and that the other tenants in our building have not had this problem. He also said that the tenant that lived in apartment four before us did not have

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this problem and that tenant lived here for 5 years. I do not know of the tenant who lived here prior to 2011, but I do know that the tenant that lived in my apartment just before we moved in did not live here for 5 years and the tenant who just moved out of apartment two did have mold in her apartment because I asked her if she had experienced mold growing her apartment and she said that it was minimal and confined to the windows.

Entering the bathroom I showed Mr. Barnaby the mold and mildew had grown back from the two 24 hour leaks we experienced from the bathtub's faucet (hot water knob would not turn off) that needed replacing, but was only repaired the first time. The second leak that occurred with the hot water Cesar was able to replace the faucet using his own discretion because Mr. Barnaby was out of town, but the damage had been done, as far as, the mold and mildew. I explained to Mr. Barnaby that I already scrub the shower tiles to clean the mold and mildew, but Mr. Barnaby suggested that the ceiling and the walls were dirty and just needed cleaning with a sponge because it came from us taking showers.

I explained to Mr. Barnaby that I have cleaned the mold and mildew on the walls, that it is hard work and time consuming. I also explained to Mr. Barnaby that I would continuously be scrubbing the walls because it keeps regrowing and it is not all removed with cleaning. I also explained to him that the windows in the bedrooms and bathroom are open year round to keep the air circulating. This did not deter him from his earlier recommendations and he did not reconsider his stance on how he would pursue the cleaning of the mold and mildew.



Nakisha Jackson

4640 Steele Street, Apt. 4
Oakland, CA 94619
510-379-8729
510-531-1668
marjaniayah@gmail.com

List of Habitability Issues at 4640 Steele St. #4, Oakland

Premise Inspection Date & Time: 7/11/17 at 1:30 pm

Individual who Conducted Premise Inspection: Attorney Mercedes Gavin SBN 164575 Telephone (415) 497-1493

Kitchen

- Cabinet left of stove broken
- Two front burners broken (left one intermittent)
- Fan above stove doesn't work properly
- Three drawers right of stove broken
- Refrigerator not cold (seal on fridge not sealing properly), no handles on fridge, leaks fluids
- Kitchen faucet spraying water near nozzle
- Mold on rim of single pane window

Entrance

- Baseboard is loose

Living Room

- Broken, peeling paint on face of furnace
- No working key for gate to balcony (safety issue as means of fire escape)
- No working carbon monoxide filter
- Lot of mold on rim of windows + sliding glass door

Bathroom

- Leaking faucet with irregular water pressure
- Bubbles in tile
- Mold on rim of windows
- Mold on ceiling
- Tub needs to be re-caulked
- Towel bar broken
- Toilet handle broken
- Left cabinet door below sink falls off

Bedroom (Master)

- Light switch missing
- Mold on interior of walls that are on exterior of building (to left and right of dresser)
- Mold on window frame at the base
- Closet has mold

Outside and Common Areas

- Light outside door missing casing
 - Loose cable hanging in walkway to unit
 - Large cracks in walkway to unit (tripping hazard)
 - Broken mailbox
-

000074



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

For date stamp.

PROPERTY OWNER
RESPONSE

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

CASE NUMBER T - 17-0418

| | | |
|---|--|---|
| Your Name Esteban Barnaby | Complete Address (with zip code) P.O. Box 10425 Oakland CA 94610 | Telephone: 510-593-3605 |
| | | Email: EBB96@aol.com |
| Your Representative's Name (if any) N/A | Complete Address (with zip code) | Telephone: |
| | | Email: |
| Tenant(s) Name(s) Nakisha Jackson | Complete Address (with zip code) 4640 Steele St Apt 4 Oakland CA 94619 | |
| Property Address (If the property has more than one address, list all addresses) 4640 Steele St. Apt 4 Oakland CA 94619 | | Total number of units on property 4 |

Have you paid for your Oakland Business License? Yes No Lic. Number: **00071309**
 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. **Exhibit 1**

Have you paid the current year's Rent Program Service Fee (\$68 per unit)? Yes No APN: **037 254701710**
 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. **Exhibit 2**

Date on which you acquired the building: **10/1/07**

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> |
|-----------------------------------|--|--|-----------------------------|-------------------------------|--------------------------|--------------------------|
| 4-28-14 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 5-28-15 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 7-28-16 | <input checked="" 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 1-12-12.

The tenant's initial rent including all services provided was: \$ 1400⁰⁰ / month.

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

If yes, on what date was the Notice first given? 1-12-12

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> | |
| 4-28-14 | 6-1-14 | \$ 1400 ⁰⁰ | \$ 1472 ⁰⁰ | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 5-28-15 | 7-1-15 | \$ 1472 ⁰⁰ | \$ 1525 ⁰⁰ | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 7-28-16 | 9-1-16 | \$ 1525 ⁰⁰ | \$ 1555 ⁰⁰ | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| | | \$ | \$ | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | | \$ | \$ | <input type="checkbox"/> Yes <input type="checkbox"/> No |

III. EXEMPTION

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

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

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

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

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

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

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

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

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

IV. DECREASED HOUSING SERVICES

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

see exhibit 3

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.

Esther Bandy
Property Owner's Signature

11-28-17
Date

IMPORTANT INFORMATION:

Time to File

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

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

File Review

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

Mediation Program

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

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

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

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

Erlita Bandy

11-28-17

Property Owner's Signature

Date

PROPERTY OWNER RESPONSE TO TENANT PETITION

Avery and Nakisha Jackson signed a lease and moved in to 4060 Steele St Apt. #4 in January of 2012. During the tenancy proper notices were given for rent increases in accordance with the City of Oakland Rent Adjustment Program Guidelines. Rent increase notices were served on 4/28/14, 5/28/15 and 7/28/16. No objections to these increases was ever presented by the tenants until the date of this petition in July of 2017. See attached notices.

During June 2016, Ms. Jackson reported accumulation of surface mold on her bedroom and bathroom walls. Upon inspection of the unit it was noted that Ms. Jackson maintained large dark plastic bags with clothing around the walls of the bedroom and closet. It was also noted that the head board of Ms. Jackson's bed was in direct contact with the bedroom walls. I asked Ms. Jackson to remove the bags from the bedroom walls and to leave some space between the head board of her bed and the wall. I also recommended that she periodically open the bedroom and bathroom windows. I asked Ms. Jackson to follow the recommendations on the mold disclosure statement which was provided to her with her lease when she moved in during January of 2012. I explained to Ms. Jackson that in 12 years of owning the property I never had this problem in any of the units and felt it was a direct result of living conditions and poor ventilation. I instructed my worker to remove the surface mold from the bedroom and bathroom and to paint both rooms.

During July of 2017, Ms. Jackson informed me that the surface mold had returned. Upon visiting and inspecting the unit I noted that the same conditions that I asked Ms. Jackson to correct one year earlier persisted. I once again asked Ms. Jackson to open her windows periodically for proper ventilation and to remove dark plastic bags and head board from direct contact with the walls.

I first became aware of the habitability issues listed by Ms. Jackson in July, 2017 when I received the Tenant Rent Board Petition. Upon review I noted that most of these were cosmetic and maintenance issues. Additionally Ms. Jackson had been in the unit for four years and it was not until June of 2016,

she reached out regarding surface mold issues in the unit. After several entry denials and delays in gaining access we were finally allowed entry. All maintenance repairs and removal of surface mold was completed on 8/5 and 8/6/17. No communication was been received from Ms. Jackson regarding the matter in question since the repairs were completed.

The following supporting documents are attached to this letter;

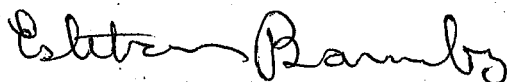
Executed RAP notice signed with lease on 1/12/12

Mold Notification Addendum signed with lease on 1/12/12

30 Day Rent Increase Notice and RAP dated 4/28/14

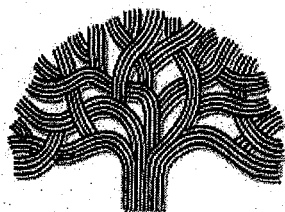
30 Day Rent Increase Notice and RAP dated 5/28/15

30 Day Rent Increase Notice and RAP dated 7/28/16

 11-28-17
Esteban Barnaby

P.O. Box 10425
Oakland CA 94610
510-593-3605

000080



CITY OF OAKLAND

Record Detail with Comments

▼ **Record ID: 1702709**

▼ **Description: INFESTATION OF MOLD IN EVERY ROOM OF THE HOUSE, STOVE IS NOT WORKING PROPERLY AND THE REFRIGERATOR IS NOT WORKING PROPERLY. WATER PRESSURE IN THE FAUCET IS NOT WORKING PROPERLY.**

▼ **APN: 037 254701710**

▼ **Address: 4640 STEELE ST**

▼ **Unit #:**

▼ **Date Opened: 6/19/2017**

▼ **Record Status: Abated**

▼ **Record Status Date: 9/26/2017**

▼ **Job Value: \$0.00**

▼ **Requestor:**

▼ **: NAKIESHA JACKSON**

▼ **Business Name:**

▼ **License #:**

| Comment Date ▲ | Commenter | Comment |
|-----------------------|-------------|---|
| 7/7/2017 11:41:53 AM | THA | 7-7-2017 Tenant 1702709 # 1702709 |
| 7/12/2017 10:10:03 AM | THA | 7-10-2017 Site visit. Verified violation: Unsanitary condition in the bedroom and bathroom walls. Notice of violation to come. |
| 8/8/2017 4:40:15 PM | THA | 8-8-2017 Submitted notice of violation. Re-inspection scheduled for 9-26-2017. |
| 8/14/2017 1:05:05 PM | ASRODRIGUEZ | Ownership verified through County Assessor. NOV mailed reg & cert with appeal form and blight brochures on 8/10/17 cert # 7017 1450 0000 8773 1580. Re-inspection Deadline: 9/26/17 |
| 9/27/2017 10:27:02 AM | THA | 9-26-2017 Abated. Received owner cert. along with photos. owner indicated tub faucet was repair not replacement. |

CITY OF OAKLAND

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



Housing and Community Development Department
Rent Adjustment Program

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

HEARING DECISION

CASE NUMBER: T17-0418, Jackson v. Barnaby
PROPERTY ADDRESS: 4640 Steele Street, Apt 4, Oakland, CA
DATE OF HEARING: March 23, 2018
DATE OF INSPECTION: March 27, 2018
DATE OF DECISION: June 18, 2018
APPEARANCES: Nakisha Jackson, Tenant
Robert White, Witness for Tenant
Mercedes Gavin, Attorney for Tenant
Alex Reckas, Witness for Tenant
Jill Broadhurst, Owner Representative

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 July 17, 2017, contesting a rent increase from \$1,525 to \$1,555, effective July 2016, on the ground that no written notice of the Rent Program (*RAP Notice*) had been served with the rent increase. Additionally, the tenant contested multiple other rent increases given in prior years on the same ground.

The tenant also alleged that there is a current health, safety, fire or building code violation in her unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance and that the owner is

providing her with fewer housing services that she received previously. Her list of decreased services includes the following:

Kitchen: cabinet left of stove broken; two front burners broken; fan broken; three drawers broken; refrigerator has no handles, leaks fluid and is not cold; kitchen faucet leaks; mold on rim of single pane window.

Entrance: Baseboard is loose.

Living Room: broken peeling paint on furnace; no working key for balcony gate; no working carbon monoxide filter; mold on rim of windows and sliding glass door.

Bathroom: Leaking faucet with irregular water pressure; bubbles in tile; mold on rim of windows; mold on ceiling; tub needs to be recaulked; towel bar broken; toilet handle broken; left cabinet door below sink falls off.

Bedroom (master): light switch missing; mold on interior walls, window frame and in closet.

Outside and common areas: light outside door missing casing; loose cable hanging in walkway to unit; large cracks in walkway to unit (tripping hazard); and broken mailbox.

The owner filed an untimely *Owner Response* to the tenant petition in which he denied the claims made by the tenant and alleged that he had served the tenant the *RAP Notice* with when she moved into the unit and with the rent increases.

THE ISSUES

1. Did the owner establish good cause for the failure to file a timely response to the *Tenant Petition*? If not, what is the consequence?
2. Is the tenant's documentary evidence admissible into evidence?
3. When, if ever, was the tenant served with written notice of the RAP Program (*RAP Notice*)?
4. Can the tenant contest a rent increase that was not listed on her petition?
5. What rent increases did the tenant contest and are her claims timely filed?
6. What is the allowable rent?
7. Have the tenant's housing services decreased and if yes, in what amount?
8. What, if any, restitution is owed between the parties and how does it affect the rent?

EVIDENCE

Tenant's Documents: Alexander Rekas testified that he is a paralegal in the law offices of Mercedes Gavin and a process server. In December of 2017, he mailed to the Rent Adjustment Program (RAP) a packet of exhibits for the upcoming Hearing in this case which was originally set for Hearing on December 7, 2017. These included all documents found in the Petitioner's Hearing Brief, which was handed to the Hearing

Officer and the Owner Representative at the beginning of the Hearing, except for Exhibit 5, which was not provided to the tenant's attorney until March 14, 2018. Again on March 14, 2018, these documents were again mailed to the RAP, this time including the Exhibit 5.

At the time of the Hearing these documents were not in the file, nor were they in possession of the RAP.

At the Hearing the owner objected to the admission of these documents. The owner representative was given an opportunity to choose between requesting a continuance to review the documents or taking a break to review the documents and continuing with the Hearing on the same day. The owner representative chose to take a break to review the documents and proceed with the Hearing.

Owner Response: Official Notice is taken of the file in this case. There is a proof of service in the file dated September 1, 2017, stating that the tenant petition was mailed to the owner on September 1, 2017, along with a letter stating "You must file a written response to the attached tenant petition(s) within thirty-five (35) days from the date of mailing on this notice or a decision may be made against you. The response must be filed on the proper form and must be received at the City of Oakland's Rent Adjustment Program on or before the due date." The Owner Response was filed on November 30, 2017, and signed by the owner on November 28, 2017.

The owner representative did not know the owner response was filed late until the time of the Hearing and had no explanation for why it was filed late. (Additionally, any testimony regarding why the documents were filed late would have had to come from the owner, since he was the one who filed the documents.) The owner produced with his *Owner Response* a City of Oakland Record Detail from the Housing Inspections Department showing that a violation was issued in July of 2017 for "unsanitary condition in the bedroom and bathroom walls."

Rental History: The tenant testified that she moved into the subject rental unit on January 14, 2012, at an initial rent of \$1,400. Mr. Barnaby was the owner when she moved in and is still the owner. She was given the *Notice to Tenants of the Residential Rent Adjustment Program (RAP Notice)* when she moved in¹, but has not gotten it with any rent increase. She was served with rent increases as follows: in 2014, when the rent was increased to \$1,472 a month; in 2015, when the rent was increased to \$1,525 a month; in 2016, when the rent was increased to \$1,555; and in August of 2017 she was served with a rent increase effective September of 2017, increasing the rent to \$1,590 a month. The tenant has been paying the \$1,590 a month since September of \$1,590 a month and will continue to do so until she receives a Hearing Decision in this matter.

¹ Exhibit 2. The tenant's attorney objected to the admission of this document because it was not the original. Her objection was overruled. All other exhibits referred to in this Hearing Decision were admitted into evidence without objection. Note that the owner objected to the admission of all the tenant's exhibits based on the fact that they were not in the file prior to the Hearing. See discussion below on "Is the tenant's documentary evidence admissible into evidence?"

Decreased Housing Services:

Testimony of Robert White: Mr. White testified that he works for PSI, which is a global testing firm that does environmental assessments of property, including testing and consulting related to asbestos, lead and mold. He was hired by Ms. Gavin to investigate the tenant's home in this case. He went there on July 13, 2017. The photographs marked as Exhibit 1 were taken by Ms. Gavin, on July 11, 2017. Mr. White testified that the photographs show conditions substantially similar to what he viewed when he was present two days later.

Photograph 1² depicts the lower corner of the master bedroom with mold growth. He did not test the area for mold, but he testified that in his opinion the dark spots in the photographs are mold. The source of the mold is caused by a condensation related problem (except for the mold in the closet), where a cold surface interacts with warm air. The apartment is sheltered from sunlight because the area is surrounded by trees and limited light gets through. The walls were cold to the touch. While the walls were not damp when he was present, he expects that the walls are regularly damp because of the warmth on the inside and the cold on the outside. The windows are single pane, which effects the insulation.

Photographs 2 and 7 depict the living room patio doors with mold buildup on the doors.

Photograph 3 depicts a window in the kitchen with primarily mold buildup with some dirt.

Photographs 4, 5, and 9 depict the master bedroom window with mold growth along the window sill.³

Photographs 6 and 8 depict the bathroom window with mold on the framing and the window slider itself.

Photograph 10 depicts a shelving unit and the master bedroom wall and discoloration and mold growth on the wall. The mold growth is apparent on the exterior wall, while the back wall is an interior wall and there is no mold growth apparent. White testified that installing more insulation and double pane windows would remediate this problem because the insulation is inadequate.

Photograph 11 and 16 depict the master bedroom where in photo 11, both walls are exterior facing walls and there is severe mold growth on both windows and in photo 16 the exterior wall is covered with mold.

Photograph 12 depicts the heater in the living room with no mold growth associated with it. This is the only heater in the unit.

² The photographs were entered into evidence as Exhibit 1.

³ On cross-examination White testified that there is no dirt depicted on photograph 4.

Photograph 13 depicts the stove.

Photograph 14 depicts the bathroom vanity.

Photograph 15 depicts the closet in the master bathroom.

Photograph 17 depicts the second bedroom window sill with mold growth on the window and the sill and damage to the sill.

Based on his observations, White testified that with mold conditions this severe, it goes beyond the skill set of the average person to clean the mold because it is embedded in the wall. When you clean with bleach, it just solves the surface problem. In order to solve the problem, the interiors have to be cleaned, and then painted with antifungal agents to retard mold growth. Then you have to stop the moisture transfer by swapping out the windows with double pane windows and adding insulation to the walls. Without solving the problem that causes the moisture in the first place, the conditions will just return.

With respect to the tenant's own actions, White testified that even with the venetian blinds open, the rooms in the tenant's unit do not get much light. It is best for a person to keep their personal possessions at least 1 foot away from the walls. But in this unit, there is mold growth where there was no furniture, so the growth is not caused by the tenant's actions. He did look behind a large heavy dresser that the tenant owns, but the conditions behind that dresser are not worse than the surrounding areas. In this unit, there is not a forced ventilation system in the bathroom, there is just a window. So anytime you shower, it increases the moisture from condensation. The tenant indicates that she opens the windows after showers are taken in the home.

White testified that the mold was not tested because mold can be determined visually, and it is only important to test for mold when you are trying to determine if there is a personal injury or allergy associated with a particular kind of mold. He also testified that there is no difference between mold and mildew; they are two words that describe the same situation.

On cross-examination White testified that he did not see any black plastic bags in the unit when he visited and if black plastic bags were stored in the unit up against the wall it can worsen the situation. The same is true if the windows are not open, because it decreases ventilation.

White further testified that neither single pane windows or no insulation is unusual for a building of this age in California. As for the maintenance of the unit, there are both owner and tenant responsibilities.

Testimony of Tenant: The tenant testified that in early summer of 2017, an inspector from the City of Oakland came to her unit about the mold problem throughout

her unit and inspected.⁴ Additionally, she testified about the following decreased services and provided evidence that in July of 2017 a series of communications occurred from her attorney to the owner about the conditions in her unit.⁵

Kitchen:

Cabinet left of stove broken and three drawers broken: The tenant testified that there are four pull-out drawers, one to the left of the stove and three to the right of the stove, that were in good condition when she moved in, that broke over time because the wood rotted. She informed Barnaby of the problem in 2015 by phone. He sent the maintenance person Cesar to fix them, and he attempted a repair but they broke again. She complained again in the summer of 2016, because the back and bottoms of the drawers had fallen out. She called Barnaby and Barnaby said he would contact Cesar. Cesar did not contact her and no action was taken until after she filed her petition. In August of 2017, the drawers were fixed and they work except for a staple that continues to protrude.

At the inspection by this Hearing Officer the drawers in the kitchen were working. There was one nail protruding out of the left side drawer that appears to be a safety concern because it is sharp. (See Inspection photo #1).

Two front burners broken: The tenant testified that all four burners were working when she moved into the unit. The front burner stopped working in 2016. She called Cesar, who repaired it. New problems occurred where one burner wasn't working at all and one was intermittent. In March of 2017, she contacted Cesar about the stove and no repairs were made. The stove was repaired in August of 2017, after the petition was filed, and has worked since.

At the inspection by this Hearing Officer the stove was working.

Fan broken: When she moved in, the kitchen fan above the stove was not working properly and made loud noises. Before she moved in, Barnaby had informed her if there were any problems in the unit to let him know and repairs would be made. She informed him about the fan in the first three months after she moved in, but no repairs were made until after her petition was filed.

Refrigerator has no handles, leaks fluid and is not cold: The tenant complained about this problem about three months after moved in. It leaks from the bottom of the refrigerator and she has a puddle of water every single day. While there were some repairs before March of 2017 that gave her temporary relief, by that time the freezer was not working, and the refrigerator was leaking. She complained continuously about this problem. In August of 2017, after her petition was filed, she was provided a working used refrigerator was provided.

⁴ The owner provided evidence that a *Notice of Violation* was issued regarding mold and was abated. This document was not admitted into evidence since the Owner did not have the right to provide affirmative testimony or evidence. See below.

⁵ See Exhibit 3

Kitchen faucet leaks: The kitchen faucet worked when she moved in. Over time there were some repairs because of leaks, but it broke again in early 2017 and she complained to Cesar in March of 2017. No action was taken until after her petition was filed. This was repaired in August of 2017.

Mold on rim of single pane window: When she moved in, there was no mold on this window. The mold appeared in 2014, and she complained in 2015 to Barnaby. She was told to wipe it down. After she filed her petition, Barnaby had Cesar clean the kitchen window in August of 2017.

At the Inspection by this Hearing Officer there were signs of mold on the window and ledge in the kitchen. See Inspection Photos 4-6.

Entrance way:

Baseboard: The tenant testified that when she moved in this baseboard was loose. She complained to Barnaby in 2015 (when he was coming to clean for mold). He pushed it back in place but it popped out of place and fell on the floor. There were protruding nails and it was a tripping hazard. She complained again but no action was taken until after her petition was filed in August of 2017.

Living Room:

Broken peeling paint on furnace: The tenant testified that the wall heater in the living room has had peeling paint since she moved in. She has not complained about this problem.

No working key for balcony gate: The tenant testified that there is a sliding glass door to her balcony with a security gate. She was given a key to the security gate but she was only able to open it three times. This is the only exit to her unit other than the front door. She notified Cesar and Barnaby several years ago and no action has been taken.

At the Inspection by this Hearing Officer, the keys provided by the tenant did not open the security gate.⁶

No working carbon monoxide filter: There was no carbon monoxide filter when the tenant moved in. There was one installed in 2015, but it did not work properly. She informed Barnaby. No working carbon monoxide filter was provided until August of 2017, after her petition was filed.

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⁶ After the Hearing, Ms. Broadhurst attempted to provide information about the security gate key by email regarding conversations she had with the owner about this gate. This evidence was not admitted or considered. Firstly, Barnaby was not permitted to testify because of the late filed Owner Response. Secondly, email communication to the Hearing Officer after the Hearing is closed is not permitted, nor is any ex parte communication.

Mold on rim of windows and sliding glass door: The tenant testified that there was no mold present in the living room when she moved in. She noticed it in 2014, and she informed Barnaby in 2014. He took no action on this problem. She would regularly wipe it down with bleach, usually once a week. After she filed her petition, Barnaby had the windows cleaned in August of 2017. By December of 2017, mold started to grow back.

At the Inspection by this Hearing Officer, there were signs of mold on the living room sliding glass doors that appeared to be primarily on the exterior of the windows. See Inspection photos 12-13.

Bathroom:

Leaking faucet with irregular water pressure: The tenant testified that this condition did not exist when she moved in. She complained after it started because the faucet was dripping and there was almost no water pressure. She complained between 2012 and early 2017. At some point new washers were installed which improved the condition but the low water pressure returned and there was a continued leak and she complained to Cesar in March of 2017. No action was done to repair until August of 2017, after she filed her petition in this matter.

Bubbles in tile: When she moved in there were bubbles in the tile on the bathroom floor. The surface of the floor is unbalanced but it is not a tripping hazard because it is between the bathtub and the toilet (which is a small space.) She never complained about this before filing her petition.

Mold on rim of windows and on ceiling: The tenant testified that there was mold on the rim of the windows when she moved into the unit but not on the ceiling. Barnaby told her before she moved in that he would take care of this problem before she got there, but he did not, so the tenant cleaned it herself when she got there. The mold on the windows soon returned and she complained. Mold also appeared on the ceiling. In 2015, Barnaby had Cesar clean this mold and repaint, but the mold returned by late 2016. The winter months cause the mold to worsen. In March of 2017 she again complained to Cesar about mold throughout the bathroom. Cesar told her that he would let Barnaby know.

In June of 2017, she saw Barnaby and asked him to come look at the mold growth. At first he refused, but returned two hours later, when she showed him this mold as well as the mold throughout the unit. He told her that her furniture was too close to the walls. No action was taken until after her petition was filed. In August of 2017, Cesar washed the walls. The owner offered to repaint but Ms. Jackson's attorney asked to know what kind of paint would be used, to ensure that it was mold inhibiting paint. Barnaby did not respond so no painting has occurred.

At the Inspection by this Hearing Officer there was mold in various places throughout the bathroom. See Inspection photos 14-19.

Tub needs to be recaulked: When she moved into the unit, the tub caulking was fine. The caulking began to crack and peel, probably from the bleach she has to use to keep the mold at bay, in 2015. Cesar never repaired the caulking, even though she complained. At the Inspection by this Hearing Officer the tub caulking seemed to be reasonably clean and well maintained. See Inspection photo # 20.

Towel bar broken: When she moved in to her unit the towel bar in the bathroom was broken, but Barnaby assured her that it would be replaced. He did not do it until August of 2017, until after the petition was filed.

Toilet handle broken: The toilet handle was broken and hanging off, and the tenant and her husband repaired it themselves. Over time, it wore down again, and became difficult, but not impossible, to operate. She complained to the owner about this and another toilet problem, and he told her to take care of it herself.⁷ This was repaired by the owner in August of 2017, after the tenant petition was filed.

Left cabinet door below sink falls off: There is a vanity in the bathroom with three doors. In 2016, one of the doors became unhinged. (See Exhibit 1, page 14). She complained to Barnaby in 2016, who said he'd tell Cesar. It was not repaired until August of 2017, after the tenant petition was filed.

Bedroom (master):

Light switch missing: There was a dimmer switch on her bedroom light that was working on move in, which fell off after two years. She did not complain about this problem because she doesn't usually turn on this light, she uses the lamps by her bed. It was repaired in August of 2017, after her petition was filed.

Mold on interior walls, window frame and closet: The tenant testified that when she moved in her bedroom had no mold. She first noticed mold in December of 2014. She complained to Barnaby in early 2015. The summer of 2015, Cesar came in, washed down the mold and painted the areas. In December of 2016, the mold returned. She first started washing it down with bleach and water, and then complained to Cesar in March of 2017. He did not take any action because he said he could not because it was still raining.

When asked if Barnaby ever complained to her about her housekeeping or the way she kept her house, she replied that he told her that she kept her unit too warm and that other tenants left their windows open, so she should keep her windows and doors open more. She informed him that she kept those windows open that felt safe to keep open but did not feel that the front windows could be kept open for safety reasons. She also informed him that this was not the cause of the problem because she kept her bedroom windows open when it was nice outside.

⁷ The tenant was asked when this happened but did not respond.

She does not use black plastic garbage bags, and does not know why there has been any reference to her keeping things in black bags, because there are none in her house. Her garbage bags are white. In June of 2017, Barnaby did come into her unit (as noted above) and suggested that her furniture might be too close to her walls. But she informed him that her dresser, nightstand and bed were all not touching the walls, because she was concerned that the mold would come onto her furniture. As noted above, some action was taken by the owner in August of 2017 to clean the mold, but the room has not been painted. The mold condition has returned.

With respect to the closet, there was a roof leak in 2013, in 2016 or 2017, and again on January 5, 2018, causing water entry in the closet. She put him on notice on all occasions. The water entry caused mold growth on the ceiling. She believes repairs have been made to the roof, but nothing has been done to correct the large patch of mold on the bedroom ceiling. She received a *Notice of Intent to Enter* in March of 2018, but she asked him not to do the work until she could confirm whether or not there was asbestos in the ceiling tile. An asbestos report was obtained showing that there is asbestos in the ceiling⁸ so the tenant is concerned that the work done to correct the mold must be done by someone who knows how to work with asbestos so as not to make health matters worse.

At the Inspection by this Hearing Officer there was mold present in various places in the master bedroom, including the wall, the window sill and the window frames. There is also a large patch of mold present in the ceiling of the master bedroom closet. See Inspection photos # 21-26.

Outside and common areas:

Light outside door missing casing: The tenant testified she did not complain about this problem prior to filing her petition.

Loose cable hanging in walkway to unit: The tenant testified she did not complain about this problem prior to filing her petition.

Large cracks in walkway to unit (tripping hazard): The tenant testified she did not complain about this problem prior to filing her petition. At the inspection no large cracks were visible that amounted to any kind of tripping hazard.

Broken mailbox: The tenant testified she did not complain about this problem prior to filing her petition.

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⁸ This document was not admitted into evidence because asbestos as a stand-alone claim was not made. However, it does show that there is a reasonable concern by the tenant that the work not be done in the bedroom ceiling without the correct professional

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Did the owner establish good cause for the failure to file a timely response to the *Tenant Petition*? If not, what is the consequence?

The Rent Adjustment Ordinance requires an owner to file a response to a tenant petition within 35 days after service of a notice by the Rent Adjustment Program (RAP) that a tenant petition was filed.⁹ "If a tenant files a petition and if the owner wishes to contest the petition, the owner must respond . . ."¹⁰ The file in this case shows that the *Tenant Petition* and accompanying documents were served on the owner on September 1, 2017. The owner responded to the petition on November 30, 2017, and the owner indicated on his response that it was signed on November 28, 2017.

The owner was not present to testify as to whether or not there was any good cause for the late filed response. The owner representative did not have any comment as to why the response was late filed. Therefore, no good cause was established by the owner and the owner's participation at the Hearing was limited to cross-examination and providing a summation.¹¹

Is the tenant's documentary evidence admissible into evidence?

The Notice of Hearing specifies that all documentary evidence must be submitted to the RAP seven days prior to the Hearing. At the day of the Hearing, prior to the arrival of the parties, no documents were present in the file other than the initial filing documents.

However, the paralegal for the tenant's attorney testified credibly that he served the documentary evidence the tenant wanted to submit on the RAP in December of 2017, several days before the Hearing was first set to occur. While this evidence was not in the file, the fact that it had been mailed to the RAP in December was good cause for allowing the tenant to submit the evidence at the Hearing, even though it was not in the file.

Additionally, in order to prevent any prejudice to the owner, the owner representative was given an opportunity to request a continuance and have the matter heard on a different day or to take a break to review the documents. While the owner representative objected to the admission of the documents, these documents were clearly relevant to the case at hand. Additionally, the owner was given an opportunity for a continuance, to insure that the owner representative had an opportunity to review the documents. The owner representative chose to go forward on the day of the Hearing, but asked for a break to review the documents. She was granted the break she requested and the hearing proceeded after the break. There was good cause to admit the tenant's documentary evidence.¹²

⁹ O.M.C. § 8.22.090(B)

¹⁰ O.M.C. § 8.22.070(C)(2)

¹¹ Board Decision in *Santiago v. Vega, HRRRB, T02-0404*.

¹² This ruling applied to all documents other than the March 14, 2018, asbestos report. This document was not admitted because the tenant did not claim asbestos exposure in her *Tenant Petition* or accompanying documents and

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

The Rent Adjustment Ordinance requires an owner to serve the *RAP Notice* at the start of a tenancy¹³ and together with any notice of rent increase or change in the terms of a tenancy.¹⁴

The tenant testified that she was provided the *RAP Notice* when she moved into her unit. She was not provided the *RAP Notice* with her rent increase notices. There was no contrary testimony.

It is found that the tenant received the *RAP Notice* in January of 2012, and at no other time.

Can the tenant contest a rent increase that was not listed on her petition?

At the Hearing, the tenant sought to contest a rent increase that was served on her in August of 2017, one month after her petition was filed. In order to contest a rent increase, a tenant must file a petition contesting that rent increase. O.M.C. § 8.22.090(A)(2). Due process requires that a person be given notice of any claim made against him or her. The tenant gave no notice of this claim. The tenant did not contest the August 2017 rent increase in this petition, and the RAP does not have jurisdiction of this claim without a valid petition.

What rent increases did the tenant contest and are her claims timely filed?

The tenant sought to contest a series of rent increases served without *RAP Notices* in 2014, 2015 and 2016. Once a tenant has been given the *RAP Notice*, a tenant has 120 days to file a petition contesting a rent increase that was served without a *RAP Notice*. O.M.C. § 8.22.090 (A)(2)(a). Since the tenant was given the *RAP Notice* in 2012, she had 120 days from the date each of these rent increase notices were served to file her petition.¹⁵

The tenant's petition was filed on July 17, 2017, far longer than 120 days after she received notice of any of these rent increases. Therefore, she cannot contest these increases.

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because that document was obviously not served in December of 2017 because it was not in existence until March of 2018. While the tenant may have had good cause for the late filing because it was not provided to her until March 14, 2018, with no claim for asbestos exposure it was irrelevant.

¹³ O.M.C. § 8.22.060(A)

¹⁴ O.M.C. § 8.22.070(H)(1)(A)

¹⁵ Note that previously, the rule required that a tenant had 90 days to contest a tenant petition served with no *RAP Notice*. Since this petition was not filed timely under the 120 day analysis, it is unnecessary to determine when the law changed because in all circumstances, these claims are untimely.

What is the allowable rent before consideration of restitution?

The tenant's base rent, before consideration of restitution, is \$1,590 a month. This is the new rent since September of 2017.

Have the tenant's housing services decreased and if yes, in what amount? What, if any, restitution is owed between the parties and how does it affect the rent?

Under the Oakland Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent¹⁶ and may be corrected by a rent adjustment.¹⁷ 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 a tenant must establish that she has given the owner notice of the problems and the opportunity to fix the problems before she is 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, if it is a continuing problem, the tenant can file at any time, but is only entitled to restitution beginning 90 days before the petition is filed and to the period of time the owner knew or should have known about the condition.¹⁸

Since the tenant was served with the *RAP Notice* in 2012, her claim begins 90 days before her petition was filed, or April 18, 2017.

Kitchen:

Cabinet left of stove broken and three drawers broken: The kitchen cabinets were in working condition when the tenant moved in, and their deterioration is a decrease in housing services. Therefore, the tenant is entitled to restitution of 2% of the rent for the period of time between April 18, 2017 and August of 2017, when the repair was made. Additionally, there is an ongoing dangerous condition since the repair was made with the left sided drawer in that there is a sharp nail protruding from the drawer. The tenant is entitled to an ongoing 1% rent decrease until this condition is repaired and restitution of overpaid rent from September of 2017 through June of 2018, because of this condition. (Note that on the chart below the restitution amount changes depending on the rent at the time of restitution order. For example, through August of 2017, the rent was \$1,555 a month. Since September of 2017, the rent is \$1,590 a month. The different rent amounts are listed on the corresponding chart.)

¹⁶ O.M.C. § 8.22.070(F)

¹⁷ O.M.C. § 8.22.110(E)

¹⁸ O.M.C. § 8.22.090(A)(3)(b)

Two front burners broken: The broken burners are a changed condition and the tenant is entitled to restitution of 2% of the rent from April 18, 2017, until the repair was made in August of 2017.

Fan broken: The tenant was assured the fan would be fixed, so she is entitled to restitution of 1% of the rent for this problem from April 18, 2017, until the repair was made in August of 2017.

Refrigerator has no handles, leaks fluid and is not cold: A working refrigerator is a habitability issue and leaking and not keeping food cold is a concern that should have been repaired. The tenant is entitled to restitution of 3% of the rent from April 18, 2017, until August of 2017, when a working refrigerator was provided.

Kitchen faucet leaks: The leaking faucet was a changed condition that should have been repaired. The tenant is entitled to restitution of 1% of the rent for this condition from April 18, 2017, until August of 2017, when a repair was made.

Mold on rim of single pane window: All of the mold issues are discussed below.

Entrance way:

Baseboard: The protruding nails from the baseboard were unsafe and should have been repaired once the tenant notified the owner in 2015. The tenant is entitled to restitution of 3% of rent for this condition from April 18, 2017, through August of 2017, when it was repaired.

Living Room:

Broken peeling paint on furnace: The tenant did not complain about this matter, and it is cosmetic only and not a changed condition. This claim is denied.

No working key for balcony gate: The lack of a working key for this balcony gate is a dangerous condition and a habitability problem. The tenant must have the ability to open this security gate. Therefore, the tenant is entitled to an ongoing rent decrease of 5% of the rent for this condition, until she is provided a working key, and confirmation is made by the owner that the key can open the gate with ease, since there are children in the home who need to be able to open the gate in an emergency. Additionally, the tenant is entitled to compensation for this condition from April 18, 2017, through June 30, 2018.

No working carbon monoxide filter: A working carbon monoxide filter is required by California law and is a lifesaving device. The tenant is entitled to restitution of 5% of the rent for the failure to provide this from April 18, 2017, through August of 2017, when it was provided.

Mold on rim of windows and sliding glass door: See discussion of mold, below.

Bathroom:

Leaking faucet with irregular water pressure: Lack of water pressure in the bathroom is a changed condition and should have been repaired when the tenant complained in March of 2017. Therefore the tenant is entitled to restitution of 3% of the rent from April 18, 2017 through August of 2017 when the repair was made.

Bubbles in tile: The tenant did not complain about this problem and it is cosmetic only. This claim is denied.

Mold on rim of windows and on ceiling: See discussion of mold, below.

Tub needs to be recaulked: At the Inspection by this Hearing Officer the tub caulking seemed to be reasonably clean and well maintained. This claim is denied.

Towel bar broken: Since the owner promised a working towel bar, failure to provide it is a decrease in housing services. The tenant is entitled to restitution of 1% of the rent from April 18, 2017 through August of 2017 when the repair was made.

Toilet handle broken: The tenant testified that she was always able to flush the toilet; therefore this was a minor inconvenience. This claim is denied.

Left cabinet door below sink falls off: The broken vanity door was a changed condition and a decrease in services. The tenant is entitled to restitution of 2% of the rent from April 18, 2017 through August of 2017, when the repair was made.

Bedroom (master):

Light switch missing: The tenant did not complain about this condition. Therefore, her claim is denied.

Mold throughout unit, on kitchen window, bathroom walls, windows and ceiling and master bedroom walls, window frame and closet: Clearly there is a significant problem with mold in this unit. The tenant has established that there is a constant mold condition that comes back quickly no matter how often she cleans. However, other than the master bedroom closet, which is discussed below, the tenant has established that the mold conditions are caused by the preexisting manner in which this apartment was built, and the preexisting external conditions related to the lack of light in the unit. Her expert witness testified that there are no leaks (other than the closet) and that the mold is caused by the dampness created by a combination of factors including single pane windows, lack of insulation in the walls, and lack of sunlight (the unit is surrounded by trees). All these conditions existed before the tenant moved into the unit.

The RAP does not have jurisdiction to require an owner to install new windows or to blow insulation into the walls.

On the other hand, it is clear that the vast amount of mold in this unit is a habitability violation even in the absence of a leak. The owner was issued a *Notice of Violation*, which, while not in evidence, proof of that fact was produced with the owner response form. Mold is an unsanitary and unhealthy condition. The tenant has established that her practices are not the source of this mold and that she does everything she can do to hold it at bay.

Additionally, the tenant has established that the mold in the master bedroom closet is caused by the multiple roof leaks in that area. No action was taken by the owner to repair the mold condition until long after the petition in this case was filed. While the owner did serve a *Notice to Enter* to repair this condition in March of 2018, the tenant is reasonably concerned regarding asbestos in the ceiling, and the owner is obligated to only take action to insure that the asbestos is not disturbed, or that proper precautions for the tenants safety are taken. There has been no proof that this standard has been met.

While the owner took some action in the past, it is clear that in March of 2017 the tenant showed Cesar the mold conditions and no action was taken until after the *Notice of Violation* was issued and the tenant filed her petition. Additionally, the tenant showed Barnaby the conditions in June of 2017. The owner had an obligation to clean the mold and at least repaint with mold inhibiting paint. Therefore, the tenant is entitled to an ongoing rent decrease of 15% of the rent until the owner has all the mold conditions cleaned, and repaints the areas with mold inhibiting paint. With respect to the mold in the master bedroom closet, the owner must provide the tenant with proof that the work will be done by someone who is an expert in asbestos remediation. Additionally, the tenant is entitled to restitution of overpaid rent for these conditions beginning on April 18, 2017, through June of 2018.

Outside and common areas:

Light outside door missing casing: Because the tenant did not complain, and because there is no proof that this is a dangerous condition about which the owner knew or should have known, this claim is denied.

Loose cable hanging in walkway to unit: Because the tenant did not complain, and because there is no proof that this is a dangerous condition about which the owner knew or should have known, this claim is denied.

Large cracks in walkway to unit (tripping hazard): Because the tenant did not complain, and because there is no proof that this is a dangerous condition about which the owner knew or should have known, this claim is denied.

Broken mailbox: Because the tenant did not complain, this claim is denied.

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

The tenant's base rent is \$1,590 a month, effective September 1, 2017. As noted above, the tenant is entitled to an ongoing rent decrease of 1% for the protruding nail in the kitchen drawer (\$15.90), 5% for the balcony gate key (\$79.50); and 15% for the mold (\$238.50), for a total of 21%, or \$333.90 a month. Therefore, the tenant's current legal rent, before consideration of restitution is \$1,256.10, effective July 1, 2018.

Additionally, as noted on the chart below, the tenant is entitled to restitution of \$6,682.25 for these conditions (through June 30, 2018). An overpayment of this size is normally adjusted over a period of 12 months.¹⁹ For now \$556.85 a month is subtracted from the current legal rent of \$1,256.10 for a total rent of \$699.25 a month. From July of 2018 through June of 2019, the tenant's rent is \$699.25 a month.

However, should the owner fix the protruding nail in the drawer, the owner can increase the rent by 1% (\$15.90 a month); if the owner provides the tenant a working key to the balcony security gate, the owner can increase the rent by 5% (\$77.75 a month); and, if the owner abates the mold conditions throughout the unit and paints with mold inhibiting paint, and insures that the closet work is performed by an expert in asbestos remediation, the owner can increase the rent by 15% (\$238.50 a month). **In order to increase the rent after repairs the owner must provide the necessary notice pursuant to Civil Code § 827.**

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

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¹⁹ Regulations, Section 8.22.110(F)

| Service Lost | VALUE OF LOST SERVICES | | | | | No. Months | Overpaid |
|----------------------------|------------------------|-----------|---------|-----------------|-----------------|----------------------------------|--------------------|
| | From | To | Rent | % Rent Decrease | Decrease /month | | |
| Kitchen cabinets | 18-Apr-17 | 31-Aug-17 | \$1,555 | 2% | \$ 31.10 | 5 | \$ 155.50 |
| Nail in cabinet | 1-Sep-17 | 30-Jun-18 | \$1,590 | 1% | \$ 15.90 | 10 | \$ 159.00 |
| Stove | 18-Apr-17 | 31-Aug-17 | \$1,555 | 2% | \$ 31.10 | 5 | \$ 155.50 |
| Kitchen Fan | 18-Apr-17 | 31-Aug-17 | \$1,555 | 1% | \$ 15.55 | 5 | \$ 77.75 |
| Refrigerator | 18-Apr-17 | 31-Aug-17 | \$1,555 | 3% | \$ 46.65 | 5 | \$ 233.25 |
| Kitchen faucet | 18-Apr-17 | 31-Aug-17 | \$1,555 | 1% | \$ 15.55 | 5 | \$ 77.75 |
| Baseboard | 18-Apr-17 | 31-Aug-17 | \$1,555 | 3% | \$ 46.65 | 5 | \$ 233.25 |
| Balcony Gate | 18-Apr-17 | 31-Aug-17 | \$1,555 | 5% | \$ 77.75 | 5 | \$ 388.75 |
| Balcony Gate | 1-Sep-17 | 30-Jun-18 | \$1,590 | 5% | \$ 79.50 | 10 | \$ 795.00 |
| Carbon Monoxide | 18-Apr-17 | 31-Aug-17 | \$1,555 | 5% | \$ 77.75 | 5 | \$ 388.75 |
| Bathroom faucet | 18-Apr-17 | 31-Aug-17 | \$1,555 | 3% | \$ 46.65 | 5 | \$ 233.25 |
| Towel bar | 18-Apr-17 | 31-Aug-17 | \$1,555 | 1% | \$ 15.55 | 5 | \$ 77.75 |
| Bathroom cabinet | 18-Apr-17 | 31-Aug-17 | \$1,555 | 2% | \$ 31.10 | 5 | \$ 155.50 |
| Mold | 18-Apr-17 | 31-Aug-17 | \$1,555 | 15% | \$ 233.25 | 5 | \$ 1,166.25 |
| Mold | 1-Sep-17 | 30-Jun-18 | \$1,590 | 15% | \$ 238.50 | 10 | \$ 2,385.00 |
| TOTAL LOST SERVICES | | | | | | | \$ 6,682.25 |
| RESTITUTION | | | | | | | |
| | | | | | | MONTHLY RENT | \$1,590 |
| | | | | | | TOTAL TO BE REPAYED TO TENANT | \$ 6,682.25 |
| | | | | | | TOTAL AS PERCENT OF MONTHLY RENT | 420% |
| AMORTIZED OVER | | | | 12 | MO. BY REG. IS | \$ | 556.85 |

ORDER

1. Petition T17-0418 is granted in part.
2. The tenant's base rent is \$1,590 a month.
3. Due to ongoing conditions, the tenant is entitled to a 21% rent decrease. The tenant's current legal rent, effective July 1, 2018, before consideration of restitution, is \$1,256.10 a month.
4. Due to past decreased services, the tenant is owed restitution of \$6,682.25. This overpayment is adjusted by a rent decrease for the next 12 months in the amount of \$556.85 a month.

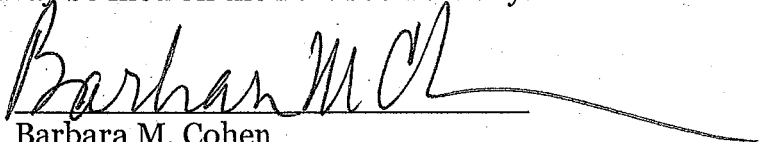
5. The tenant's rent for the months of July 2018 through June 2019 is \$699.25 per month. The rent reverts to \$1,256.10 a month in July of 2019 (if the repairs have not been completed and/or a rent increase notice has not been sent).

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

7. If the owner repairs the kitchen cabinet so that there is no longer a protruding nail, he can increase the rent by 1% (\$15.90); if the owner provides the tenant with a working key to the patio security gate, he can increase the rent by 5% (\$77.75); and, if the owner remediates the mold as instructed in the Hearing Decision, he can increase the rent by 15% (\$238.50). **In order to increase the rent after repairs the owner must provide the necessary notice pursuant to Civil Code § 827.**

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

Dated: June 18, 2018


Barbara M. Cohen
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE

Case Number T17-0418

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

Esteban Barnaby
P.O. Box 10425
Oakland, CA 94610

Owner Representative

Jill Broadhurst, Big City Property Group
P.O. Box 13122
Oakland, CA 94661

Tenant

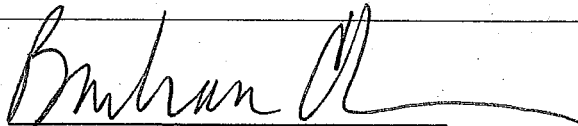
Nakisha L.P. Jackson
4640 Steel St #4
Oakland, CA 94619

Tenant Representative


Mercedes Gavin
145 Town Center #593
Corte Madera, CA 94925

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

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



Barbara Cohen
Oakland Rent Adjustment Program

| | | |
|--|--|--|
|  CITY OF OAKLAND | CITY OF OAKLAND RENT ADJUSTMENT PROGRAM 250 Frank Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721 | 2018 JUL 10 PM 12:49 For date stamp |
| | <u>APPEAL</u> | |

| | | | |
|--|--|---|--|
| Appellant's Name Esteban Barnaby | | <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant | |
| Property Address (Include Unit Number) 4640 Steel Street #4, Oakland, CA 94619 | | | |
| Appellant's Mailing Address (For receipt of notices) P.O. Box 10425 Oakland, CA 94610 | | Case Number T17-0418 | |
| | | Date of Decision appealed June 18, 2018 | |
| Name of Representative (if any) Charles Alfonzo | | Representative's Mailing Address (For notices) Burnham Brown 1901 Harrison Street, 14th Floor Oakland, CA 94612 | |

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

- 1) There are math/clerical errors that require the Hearing Decision to be updated. *(Please clearly explain the math/clerical errors.)*
- 2) Appealing the decision for one of the grounds below (required):

- a) The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board. *(In your explanation, you must identify the Ordinance section, regulation or prior Board decision(s) and describe how the description is inconsistent.)*

- b) The decision is inconsistent with decisions issued by other Hearing Officers. *(In your explanation, you must identify the prior inconsistent decision and explain how the decision is inconsistent.)*
- c) The decision raises a new policy issue that has not been decided by the Board. *(In your explanation, you must provide a detailed statement of the issue and why the issue should be decided in your favor.)*
- d) The decision violates federal, state or local law. *(In your explanation, you must provide a detailed statement as to what law is violated.)*

- e) The decision is not supported by substantial evidence. *(In your explanation, you must explain why the decision is not supported by substantial evidence found in the case record.)*

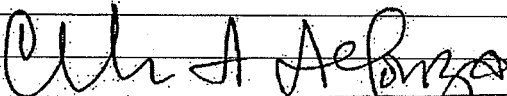
For more information phone (510) 238-3721.

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

Submissions to the Board 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: 19.

• You must serve a copy of your appeal on the opposing parties or your appeal may be dismissed. • I declare under penalty of perjury under the laws of the State of California that on July 10, 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 | Nakisha Jackson |
| Address | 4640 Steel Street #4 |
| City, State Zip | Oakland, CA 94619 |
| Name | Mercedes Gavin |
| Address | 145 Town Center #593 |
| City, State Zip | Corte Madera, CA 94925 |

| | |
|---|---------------|
|  | July 10, 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 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.

Attachment to Appeal
Rent Board Case No. T17-0418
Jackson v. Barnaby
Property Address: 4640 Steel Street Apt 4, Oakland, CA 94619

Owner Esteban Barnaby hereby appeals the decision issued by Rent Board Hearing Officer Barbara M. Cohen and mailed on June 20, 2018.

A. The Decision is Inconsistent with Rent Board Regulations

Regulation 8.22.090(A) and 8.22.090(B)(1)(c) require that the tenant petition and all evidence accompanying the petition be received by the rent board in claims concerning deceased housing services. This requirement was not satisfied. Hearing Officer Cohen admits that none of the exhibits or attachments were received by the rent board prior to the hearing in March 2018. See Decision page 3. Although proof of service by mail is insufficient, no written proof of service was provided when requested. Additionally, owner representative Jill Broadhurst reviewed file prior to hearing and no such documents were present nor were they ever received by Owner. The owner only received the petition with a written list of habitability complaints—no photos (Ex. 2), e-mails (Exs. 3 and 4), or other documents in support of the petition (Asbestos Report Ex. 5). Accordingly, there was no documentary evidence that should have been considered in tenant's petition. However, as is clear from the decision, this documentary evidence was relied upon by Petitioner and Petitioner's expert as well as the hearing officer in rendering decision. The decision provides for retroactive rent abatement primarily for unsubstantiated claims of mold.

Regulation 8.22.010(E)(3)(e) and California Government Code 11513 provide in pertinent part that each party shall have the right to rebut evidence submitted against that party and to submit exhibits. The hearing officer refused to consider any evidence

provided by Owner as exhibits and rebutting claims by Tenant on grounds that response was untimely. This is a violation of Regulations and California Government Code in two aspects: first, evidence to rebut is clearly allowed un 8.22.010(E)(3)(e) and second, it is manifestly unjust and an abuse of due process to allow Tenant to produce evidence admittedly not in the file and not received by Owner and then simultaneously to deny Owner ability to rebut such evidence with that submitted in his response. The record reflects that the rent board received and tenant was provided with Owner's Response in November 2017, 4 months before the hearing actually took place (March 23, 2018) and more than a month before amended notice of hearing for January 4, 2018. Accordingly, there was no prejudice to the hearing officer or tenant in allowing the response to provide evidence in rebuttal to Tenant's claims.

B. The Decision Raises New Policy Issue Not Previously Decided by Board

The decision raises new issue of substantive due process to owners that substantially comply with response time and exhibits when hearing is continued. The record reflects that this matter was continued at request of Petitioner on January 3, 2018 (the day before the hearing was to take place) in order to allow her expert to testify. This request for continuance was made well after receiving the Owner's response and evidence in support thereof in November and well before the actual hearing date of March 23, 2018. Given

~~these circumstances, substantive due process requires that the owner's evidence be~~
considered or alternatively that the Petitioner's similarly late submitted evidence on the day of the actual hearing in March 2018 be excluded. Owner objects to the decision asserting "good cause" for late submitted evidence by the paralegal as the rules require receipt by the Board and Owner and neither occurred prior to the actual hearing. The

testimony of the paralegal witness that the documents excepting exhibit 5 were mailed twice is not credible in that neither made it to the rent board file or Owner. Thus, in order to present a policy both in form and substance of equality between owner and tenant before the board, owner should be provided substantive due process in allowing rebuttal evidence via response and/or excluding petitioner's evidence filed on the date of the hearing.

C. **The Decision Violates Federal, State and Local Law**

The decision violates Federal, State and Local Law concerning due process. The United States Constitution Amendments 5 and 14 provide that no person shall be deprived of life, liberty, or property without due process of law. California State Constitution Section 7 similarly provides that no person shall be denied life, liberty, or property without due process of law nor denied equal protection of the laws. Owner was denied due process by not allowing submission of his rebuttal evidence and denied equal protection by allowing Petitioner's evidence submitted the day of the hearing and refusing to entertain owner's rebuttal evidence submitted several months before. Owner was also denied due process and equal protection in that Owner was not afforded ample opportunity to rebut testimony provided by Petitioner environmental expert.

The decision also relies heavily upon testimony of Petitioner's environmental expert concerning purported mold growth. The environmental expert did not test to determine if any substance depicted on photos was in fact mold or microbial growth. California Evidence Code §§720, 801 and 803 govern the admissibility of expert testimony. Section 801, in pertinent part, limits expert opinion to testimony:

(a) Related to a subject that is sufficient beyond common experience that the opinion of an expert would assist a trier of fact; and (b) based on matter ... that is of a type that reasonably may be relied upon by an expert in forming an opinion upon the subject to which his testimony relates... Similarly, §803 provides, in pertinent part, that “the court may, and upon objection shall, exclude testimony in the form of an opinion that is based in whole or in significant part on matter that is not a proper basis for such an opinion . . .” Taken together, §§801(b) and 803 require that all expert testimony be based on matter that provides a reasonable basis for reaching the particular opinion that is offered. If no reasonable basis is offered, the opinion is subject to exclusion because it necessarily reveals that the opinion is based upon a leap of logic, conjecture, or artifice. See Wanland v. Los Gatos Lodge, Inc., 230 Cal. App. 3d 1507, 1518 (1991). Of course, as a preliminary matter, the expert opinion must be relevant. Cal. Evid. Code §350.

Courts have and are obligated to fulfill a “substantial ‘gatekeeping’ responsibility.” Sargon Enterprises v. University of Southern California, 55 Cal. 4th 747 (2012). In order to fulfill this responsibility, a court should conduct a substantive review with strict focus on whether the foundation, factual information and reasoning relied upon by the expert, logically and sufficiently support the expert’s opinion. Sargon is particularly relevant in the instant matter where the issue is of a factual nature rather than a Kelly/Frye “general acceptance” test for admissibility of expert testimony.

Thus, under Evidence Code section 801, the trial court acts as a gatekeeper to exclude speculative or irrelevant expert opinion. As we recently explained, “[T]he expert's opinion may not be based ‘on assumptions of fact without evidentiary support [citation], or on speculative or conjectural factors ... Exclusion of expert opinions that

rest on guess, surmise or conjecture [citation] is an inherent corollary to the foundational predicate for admission of the expert testimony: will the testimony assist the trier of fact to evaluate the issues it must decide? Sargon Enterprises v. University of Southern California, 55 Cal. 4th 747, 770 (2012) (emphasis added).

In this case, Mr. White's opinions on existence of purported mold in the unit, purported cause of mold, and of water intrusion in general are not based on sound science. Petitioner expert clearly did not test to determine if any substance depicted on photos or to which he visually saw in the unit were indeed mold. Good science does not allow one to determine the presence of mold without confirmation of same. Expert's in the field do NOT reasonably rely upon visual observation in matters in which it is necessary to determine actual presence of mold. Similarly, Petitioner's environmental expert testified that he did not observe damp walls during his inspection. However, it is clear from the decision that the hearing officer relied heavily upon Mr. White's testimony both in terms of existence of mold and in what steps are reasonable in remediation. In this regard, it is important to note that the expert based his finding in large part on construction of building in general and not in any steps that Owner failed to take.

D. The Decision Is Not Supported by Substantial Evidence

The decision is not supported by substantial evidence. In addition to the photographs and ~~e-mails which should not have been entered into evidence, there was a dearth of reliable~~ evidence to support actual mold growth in the unit or whether the conditions were caused by the Owner or the Owner's responsibility. Again, visual inspection by expert is insufficient to rely upon to state actual mold growth and visual inspection that does not reveal damp walls is insufficient to establish history of damp walls causing conditions

conducive to mold growth. Further, the Petitioner's expert was unable to point to an issue caused by owner or for which owner is responsible including any construction code violation that lead to mold growth. Finally, there was no evidence allowed to show tenant contributions to conditions which were submitted. Mr. White testified that condensation was central issue and that tenant's failure to open windows and ventilate and placing bags against walls would cause such growth. Moreover, Mr. White testified that condition of single pane windows and lack of insulation were perfectly normal for building of this age. These tenant issues were not considered even though elicited through cross-examination. Accordingly, there is a lack of substantial evidence to support decision.

Finally, in regard to amounts of percentage of decrease related to mold of 15% in two separate discounts, there was no evidence submitted concerning the percentage in decrease related to purported growth or how existence of such growth impacted value of rental. This retroactive rent abatement account for approximately 50% of reduction provided by the hearing officer. Similarly, there was no evidence submitted concerning reductions for other matters and how such matters affected value of rental. There also was no evidence allowed to allow for tenant contributions to issues.

E. **Owner Was Denied Opportunity to Respond to Tenant's Claim**

By allowing tenant to provide evidence on the date of the hearing but not allowing Owner's rebuttal provides months earlier, the hearing officer denied owner ability to contest claims in original petition. If hearing officer would have denied the evidence submitted the day of the hearing, there would not have been documentary evidence in support of petition. However, owner was denied both his ability to rebut the original

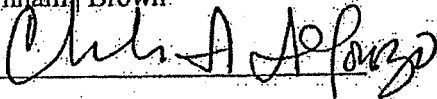
petition even though there was no prejudice to hearing officer or Petitioner and was denied ability to rebut evidence submitted at the date of hearing. Owner representative objected to late filed evidence in total.

For all reasons set forth above, the decision should be overruled and resubmitted for new hearing so that Owner is afforded property opportunity to rebut claims made by petitioner and expert. The decision does not comport with rules and regulations of the rent board; does not comport with federal, state, and local law; is not supported by substantial evidence; and, both procedurally and substantively denied Owner due process of law.

Attached hereto is the only petition provided to Owner which does NOT contain any of the exhibits provided at hearing excepting the list of habitability complaints, owner's response with declaration under oath, and order continuing hearing to March 23, 2018.

Respectfully submitted.

Burnham | Brown



Charles A. Alfonzo

Attorneys for Owner

CITY OF OAKLAND

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

Housing and Community Development Department
Rent Adjustment Program



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

ORDER GRANTING HEARING DATE CHANGE

Case No. T17-0418, Jackson v. Barnaby

Property: 4640 Steele St. Apt 4, Oakland, CA

Background: On December 13, 2017, an *Amended Notice of Hearing* was sent setting the Hearing for January 4, 2018, at 2:00 p.m.

On January 3, 2018, a *Request to Change Date of Proceeding* was filed by the tenant requesting a date change because her expert witness was not available for Hearing until February of 2018.

The Rent Ordinance Regulation 8.22.120(C) sets forth the requirement of "good cause" to change the date of a hearing. Witness unavailability constitutes "good cause."

The owner additionally informed the RAP office that he would be out of town for the month of February-March 15, 2018 for pre-existing travel plans. Pre-existing travel plans, also amount to "good cause."

The Hearing shall take place as follows:

DATE: March 23, 2018

TIME: 10:00 a.m.

PLACE: 250 Frank Ogawa Plaza, Suite 5313, Oakland, CA

The orders set forth in the original *Notice of Hearing* remain in effect.


Dated: January 8, 2018

A handwritten signature in black ink, appearing to read "Barbara M. Cohen".

Barbara M. Cohen
Hearing Officer
Rent Adjustment Program

T17-0418 MS/BC

RECEIVED
CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM

| | | |
|--|--|---|
|  CITY OF OAKLAND | CITY OF OAKLAND RENT ADJUSTMENT PROGRAM P.O. Box 70243 Oakland, CA 94612-0243 (510) 238-3721 | RENT For date stamp 2017 JUL 17 PH 3:18 |
| | 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 Nakisha L. Jackson | Rental Address (with zip code) 4640 Steele St #4 Oakland, CA 94619 | Telephone: (510) 531-1168 (310) 379-8729 |
| Your Representative's Name Mercedes Gavin | Mailing Address (with zip code) 145 Town Center #E93 Corte Madera CA 94925 | Telephone: (415) 497-1493 Email: mgavinlaw@aol.com |
| Property Owner(s) name(s) Esteban Barnaby | Mailing Address (with zip code) P.O. Box 10425 Oakland, CA 94610 | Telephone: (510) 593-3605 Email: reb96@aol.com |
| Property Manager or Management Co. (if applicable) N/A | Mailing Address (with zip code) N/A | Telephone: N/A Email: N/A |

Number of units on the property: 4

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

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

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

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

000113

| | |
|---|--|
| | rent increase. |
| X | (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.) |
| X | (e) The property owner did not give me the required form "Notice of the Rent Adjustment Program" at least 6 months before the effective date of the rent increase(s). |
| | (f) The rent increase notice(s) was (were) not given to me in compliance with State law. |
| | (g) The increase I am contesting is the second increase in my rent in a 12-month period. |
| X | (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) |
| X | (i) The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner. (OMC 8.22.070(F): A decrease in housing services is considered an increase in rent. A tenant may petition for a rent adjustment based on a decrease in housing services.) (Complete Section III on following page) |
| | (j) My rent was not reduced after a prior rent increase period for a Capital Improvement had expired. |
| | (k) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014). |
| | (l) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake (OMC 8.22, Article I) |
| | (m) The owner did not give me a summary of the justification(s) for the increase despite my written request. |
| | (n) The rent was raised illegally 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: 1/14/2012 Initial Rent: \$ 1400⁰⁰ /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 | | |
| May 2014 | June 2014 | \$ 1400 | \$ 1472 | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| May 2015 | June 2015 | \$ 1472 | \$ 1525 | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| June 2016 | July 2016 | \$ 1525 | \$ 1555 | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| | | \$ | \$ | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | | \$ | \$ | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | | \$ | \$ | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No |

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

Have you ever filed a petition for this rental unit?

Yes
 No

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

III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:

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

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

Yes No

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

Yes No

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

Yes No

If you answered "Yes" to any of the above, 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

7/1/2017

Date

 cotenant

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

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

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

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

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

Tenant's Signature

Date

VI. IMPORTANT INFORMATION:

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

File Review

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

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

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

List of Habitability Issues at 4640 Steele St. #4, Oakland

Premise Inspection Date & Time: 7/11/17 at 1:30 pm

Individual who Conducted Premise Inspection: Attorney Mercedes Gavin SBN 164575 Telephone (415) 497-1493

Kitchen

- Cabinet left of stove broken
- Two front burners broken (left one intermittent)
- Fan above stove doesn't work properly
- Three drawers right of stove broken
- Refrigerator not cold (seal on fridge not sealing properly), no handles on fridge, leaks fluids
- Kitchen faucet spraying water near nozzle
- Mold on rim of single pane window

Entrance

- Baseboard is loose

Living Room

- Broken, peeling paint on face of furnace
- No working key for gate to balcony (safety issue as means of fire escape)
- No working carbon monoxide filter
- Lot of mold on rim of windows + sliding glass door

Bathroom

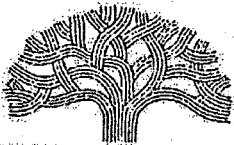
- Leaking faucet with irregular water pressure
- Bubbles in tile
- Mold on rim of windows
- Mold on ceiling
- Tub needs to be re-caulked
- Towel bar broken
- Toilet handle broken
- Left cabinet door below sink falls off

Bedroom (Master)

- Light switch missing
- Mold on interior of walls that are on exterior of building (to left and right of dresser)
- Mold on window frame at the base
- Closet has mold

Outside and Common Areas

- Light outside door missing casing
 - Loose cable hanging in walkway to unit
 - Large cracks in walkway to unit (tripping hazard)
 - Broken mailbox
-



CITY OF OAKLAND

CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM
P.O. Box 702430 PM 3:05
Oakland, CA 94612-0243
(510) 238-3721

For date stamp.

**PROPERTY OWNER
RESPONSE**

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

CASE NUMBER T - 17-0418

| | | |
|---|--|---|
| Your Name Esteban Barnaby | Complete Address (with zip code) P.O. Box 10425 Oakland CA 94610 | Telephone: 510-593-3605 |
| | | Email: EBB96@aol.com |
| Your Representative's Name (if any) N/A | Complete Address (with zip code) | Telephone: |
| | | Email: |
| Tenant(s) Name(s) Nakisha Jackson | Complete Address (with zip code) 4640 Steele St Apt 4 Oakland CA 94619 | |
| Property Address (If the property has more than one address, list all addresses) 4640 Steele St. Apt 4 Oakland CA 94619 | | Total number of units on property 4 |

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

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

Date on which you acquired the building: **10/1/07**

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

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

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

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

| Date of Contested Increase | Banking (deferred annual increases) | Increased Housing Service Costs | Capital Improvements | Uninsured Repair Costs | Debt Service | Fair Return |
|----------------------------|-------------------------------------|---------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| 4-28-14 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 5-28-15 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 7-28-16 | <input checked="" 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 1-12-12

The tenant's initial rent including all services provided was: \$ 1400 / month.

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

If yes, on what date was the Notice first given? 1-12-12

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 | |
| 4-28-14 | 6-1-14 | \$ 1400 ^{wp} | \$ 1472 ^{wp} | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 5-28-15 | 7-1-15 | \$ 1472 ^{wp} | \$ 1525 ^{wp} | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 7-28-16 | 9-1-16 | \$ 1525 ^{wp} | \$ 1555 ^{wp} | <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 |

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

11-28-17
Date



Record Detail with Comments

▼ Record ID: **1702709**

▼ Description: **INFESTATION OF MOLD IN EVERY ROOM OF THE HOUSE, STOVE IS NOT WORKING PROPERLY AND THE REFRIGERATOR IS NOT WORKING PROPERLY. WATER PRESSURE IN THE FAUCET IS NOT WORKING PROPERLY.**

▼ APN: **037 254701710**

▼ Address: **4640 STEELE ST**

▼ Unit #:

▼ Date Opened: **6/19/2017**

▼ Record Status: **Abated**

▼ Record Status Date: **9/26/2017**

▼ Job Value: **\$0.00**

▼ Requestor:

▼ : **NAKIESHA JACKSON**

▼ Business Name:

▼ License #:

| Comment Date ▲ | Commenter | Comment |
|-----------------------|-------------|---|
| 7/7/2017 11:41:53 AM | THA | 7-7-2017 Tenant Notice # 1702709 |
| 7/12/2017 10:10:03 AM | THA | 7-10-2017 Site visit. Verified violation. Unsanitary condition in the bedroom and bathroom walls. Notice of violation to come. |
| 8/8/2017 4:40:15 PM | THA | 8-8-2017 Submitted notice of violation. Re-inspection scheduled for 9-26-2017. |
| 8/14/2017 1:05:05 PM | ASRODRIGUEZ | Ownership verified through County Assessor. NOV mailed reg & cert with appeal form and blight brochures on 8/10/17 cert #...7017 1450 0000 8773 1580... Re-inspection Deadline: 9/26/17 |
| 9/27/2017 10:27:02 AM | THA | 9-26-2017 Abated. Received owner cert. along with photos. owner indicated tub faucet was repair not replacement. |

2017 NOV 28 PM 12:08

PROPERTY OWNER RESPONSE TO TENANT PETITION

Avery and Nakisha Jackson signed a lease and moved in to 4060 Steele St Apt. #4 in January of 2012. During the tenancy proper notices were given for rent increases in accordance with the City of Oakland Rent Adjustment Program Guidelines. Rent increase notices were served on 4/28/14, 5/28/15 and 7/28/16. No objections to these increases was ever presented by the tenants until the date of this petition in July of 2017. See attached notices.

During June 2016, Ms. Jackson reported accumulation of surface mold on her bedroom and bathroom walls. Upon inspection of the unit it was noted that Ms. Jackson maintained large dark plastic bags with clothing around the walls of the bedroom and closet. It was also noted that the head board of Ms. Jackson's bed was in direct contact with the bedroom walls. I asked Ms. Jackson to remove the bags from the bedroom walls and to leave some space between the head board of her bed and the wall. I also recommended that she periodically open the bedroom and bathroom windows. I asked Ms. Jackson to follow the recommendations on the mold disclosure statement which was provided to her with her lease when she moved in during January of 2012. I explained to Ms. Jackson that in 12 years of owning the property I never had this problem in any of the units and felt it was a direct result of living conditions and poor ventilation. I instructed my worker to remove the surface mold from the bedroom and bathroom and to paint both rooms.

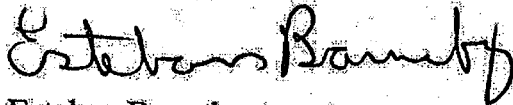
During July of 2017, Ms. Jackson informed me that the surface mold had returned. Upon visiting and inspecting the unit I noted that the same conditions that I asked Ms. Jackson to correct one year earlier persisted. I once again asked Ms. Jackson to open her windows periodically for proper ventilation and to remove dark plastic bags and head board from direct contact with the walls.

I first became aware of the habitability issues listed by Ms. Jackson in July, 2017 when I received the Tenant Rent Board Petition. Upon review I noted that most of these were cosmetic and maintenance issues. Additionally Ms. Jackson had been in the unit for four years and it was not until June of 2016,

she reached out regarding surface mold issues in the unit. After several entry denials and delays in gaining access we were finally allowed entry. All maintenance repairs and removal of surface mold was completed on 8/5 and 8/6/17. No communication was been received from Ms. Jackson regarding the matter in question since the repairs were completed.

The following supporting documents are attached to this letter;

Executed RAP notice signed with lease on 1/12/12
Mold Notification Addendum signed with lease on 1/12/12
30 Day Rent Increase Notice and RAP dated 4/28/14
30 Day Rent Increase Notice and RAP dated 5/28/15
30 Day Rent Increase Notice and RAP dated 7/28/16



Esteban Barnaby

P.O. Box 10425
Oakland CA 94610
510-593-3605

2018 AUG 15 PM 1:32

1 Mercedes A. Gavin SBN 164575
2 LAW OFFICES OF MERCEDES A. GAVIN
3 145 Town Center #593
4 Corte Madera, CA 94925
5 Telephone: (415) 497-1493

6 Attorney for
7 Nakisha Jackson

8 CITY OF OAKLAND
9 RENT ADJUSTMENT PROGRAM

| | | | |
|----|----------------------------|---|---------------------------------------|
| 10 | Nakisha Jackson., |) | Case No.: T17-0418 |
| 11 | |) | |
| 12 | Petitioner and Respondent, |) | |
| 13 | vs. |) | RESPONSE BY NAKISHA JACKSON TO |
| 14 | Esteban Barnaby et. al., |) | APPEAL BY OWNER ESTEBAN |
| 15 | Appellant. |) | BARNABY |
| 16 | |) | |
| 17 | |) | |
| 18 | |) | |
| 19 | |) | |

20
21 **A. OWNER'S EVIDENCE WAS PROPERLY EXCLUDED AS ANY EVIDENCE WAS**
22 **INADMISSIBLE HEARSAY**

23 Throughout the seven page appeal, Appellant Esteban Barnaby makes several arguments that it
24 was improper to exclude his documentary evidence. Rather than address the minutia of these
25 arguments, the simple fact is that Appellant's documentary evidence was all inadmissible because it
26 was hearsay. "Hearsay evidence is evidence of a statement that was made other than by a witness
27 while testifying at the hearing and that is offered to prove the truth of the matter stated". Evidence
28 Code Section 1200. As Appellant failed to attend the rent board hearing, Appellant was not able
testify about the authenticity of the documents that were a part of Appellant's rebuttal evidence so

1 that they could become admissible. Additionally, Appellant was not able to provide any testimony
2 of his own about the issues raised in the rent board hearing. As such, there was no legally
3 admissible evidence brought by Appellant to be considered by Ms. Cohen.

4 **B. OWNER'S ARGUMENTS REGARDING DUE PROCESS ARE FRIVOLOUS**

5 Quite simply, Appellant's numerous arguments regarding due process are frivolous.

6 First and foremost, the hearing was originally scheduled for December 17, 2017. It was
7 continued as a result of the Oakland workers strike. It was thereafter scheduled for January 24,
8 2018. As Mr. White could not attend on that day, Respondent Nakisha Jackson requested a
9 continuance. The hearing was rescheduled for March 23, 2018.

10 As stated above, when the date of the hearing finally came, Appellant failed to attend the rent
11 board hearing. The only individual who appeared was Jill Broadhurst, acting in the capacity as
12 Appellant's advocate. Jill Broadhurst objected to the documentary evidence of Respondent Nakisha
13 Jackson on the basis it was not in the file of the Rent Board at least one week prior to the hearing.

14 Alex Reckas, the paralegal for Ms. Gavin and is also a registered process server, testified that
15 the documentary evidence was indeed mailed on two separate occasions. Ms. Cohen deemed this
16 credible. However, to avoid prejudice to Appellant, Ms. Cohen offered Jill Broadhurst the
17 opportunity to privately review the documents (which include photos of the unit, emails between the
18 parties and an Asbestos Report) for fifteen minutes.

19 When the hearing came back in session, Ms. Cohen offered Ms. Broadhurst the opportunity to
20 continue the hearing in light of the new documents. Ms. Broadhurst, acting on behalf of Appellant,
21 declined the continuance and requested that the hearing go forward (even though Appellant was not
22 in attendance) on March 23, 2018.

23 Quite simply, there are no due process issues because: Appellant was not deprived of the
24 opportunity to attend the hearing, Appellant was not deprived of the right to a representative, and
25 Appellant was given the opportunity to continue the hearing after reviewing the documents and
26 refused. Only now that the decision is unfavorable does Appellant seek a new hearing.

27 **C. THE DECISION WAS SUPPORTED BY SUBSTANTIAL EVIDENCE**

28 Quite simply, the decision was supported by substantial evidence that included the
following: the testimony of Nakisha Jackson, the photos of the premises, emails between the parties,

I declare that:

I work in the county of Marin, California. I am over the age of eighteen years and not a party of the within entitled cause.

On August 15, 2018 I served:

- RESPONSE BY NAKISHA JACKSON TO APPEAL BY OWNER ESTEBAN BARNABY

On the party herein in said cause by mailing by a true and correct copy thereof by US

First Class Mail postage fully prepaid to the following location:

Charles Alfonzo
1901 Harrison Street, 14th Floor
Oakland CA 94612

Esteban Barnaby
P.O. Box 10425
Oakland CA 94610

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



Alex Reckas

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