

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

**June 27, 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. CONSENT ITEMS**
  - a. Minutes for approval, May 9, 2019
  - b. Minutes for approval, June 13, 2019
- 5.. NEW BUSINESS**
  - A. Appeal Hearings in:
    - i. L17-0230, Fong v. Tenants
    - ii. T16-0549, Beasley v. Horejsi
    - iii. T17-0523, Beasley v. Horejsi
    - iv. T18-0430, Beasley v. Horejsi
  - B. Report by Deputy City Attorney Regarding Cases Appealed to Superior Court and Disposition
- 6. Formulation of Ad Hoc Committee**
  - A. Presentation by Deputy City Attorney regarding requirements for this committee, membership, duration, and subject matter to be considered by the committee
- 7. SCHEDULING AND REPORTS**
- 8. ADJOURNMENT**

**Accessibility.** The meeting is held in a wheelchair accessible facility. Contact the office of the City Clerk, City Hall, One Frank Ogawa Plaza, or call (510) 238-3611 (voice) or (510) 839-6451 (TTY) to arrange for the following services: 1) Sign interpreters; 2) Phone ear hearing device for the hearing impaired; 3) Large print, Braille, or cassette tape text for the visually impaired. The City of Oakland complies with applicable City, State and Federal disability related laws and regulations protecting the civil rights of persons with environmental illness/multiple chemical sensitivities (EI/MCS). Auxiliary aids and services and alternative formats are available by calling (510) 238-3716 at least 72 hours prior to this event.

**Foreign language interpreters** may be available from the Equal Access Office (510) 239-2368. Contact them for availability. Please refrain from wearing **strongly scented products** to this meeting.

**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 services animals or emotional support animals.

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

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

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

**CITY OF OAKLAND  
HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD  
Full Board Meeting  
May 9, 2019  
7:00 p.m.  
City Hall, Hearing Room #1  
One Frank H. Ogawa Plaza, Oakland, CA**

**MINUTES**

**1. CALL TO ORDER**

The HRRRB was called to order at 7:15 p.m. by Board Chair Jessie Warner

**2. ROLL CALL**

MEMBER	STATUS	PRESENT	ABSENT	EXCUSED
T. Hall	Tenant	X		
H. Flanery	Tenant Alt.			X
E. Lai	Homeowner Alt.	X		
R. Stone	Homeowner	X		
J. Warner	Homeowner	X		
K. Friedman	Landlord	X		
B. Scott	Landlord Alt.			X
T. Williams	Landlord	X		

Staff Present

Ubaldo Fernandez     Deputy City Attorney  
 Chanee Franklin Minor     Program Manager  
 Barbara Kong-Brown     Senior Hearing Officer  
 Kelly Rush     Program Analyst 1

**3. CONSENT ITEMS**

a. Approval of Minutes from April 25, 2019.

J. Warner moved to approve the minutes with changes to reflect E. Lai's votes, and Mr. Stone's request to schedule a future report regarding the status of cases decided by the Rent Board and appealed to the Superior Court. The motion was seconded by R. Stone.

The Board voted as follows:

Aye: T. Hall, R. Stone, J. Warner, T. Williams, E. Lai

Nay: 0  
Abstain: K. Friedman

The motion carried.

4. OPEN FORUM SPEAKERS

None

5. OLD BUSINESS

None

6. NEW BUSINESS

A. Appeal Hearings

T18-0328, Amberg v. Rockridge Real Estate

R. Stone recused himself from this appeal.

Appearances: Stanley Amberg Tenant Appellant Representative  
Ray McFadden Owner Appellee Representative

The tenant filed an appeal from the hearing decision. She claimed a rent increase over the CPI, that there was no RAP notice, decreased housing services, that she had received a rent increase in the last 12 months, and the exemption granted was due to fraud or mistake. The hearing officer dismissed the tenant's petition in an administrative decision, took official notice of a decision which found that she had received the RAP notice in 2012, and the challenge to the 2017 rent increase was untimely. The hearing officer also found that the owner rescinded the 2018 rent increase and refunded any overpayments. The hearing officer also denied the tenant claim of failure to provide a resident manager, on the grounds that it was a discrete act and was time barred.

The tenant filed the appeal on the grounds that the decision is inconsistent with the ordinance, regulations state, federal and local law, is not supported by substantial evidence, and she was denied the opportunity to present her claim. The owner's failure to provide an onsite manager is an ongoing decrease in services, not a discrete act, and the claim should not have been barred. The administrative decision deprived the tenant of the opportunity to present evidence, including evidence of a leak at the property.

The tenant representative contended she was denied due process of law because she was precluded from introducing evidence about the decreased housing service claim. The owner has continued deliberately to have no onsite manager live in the apartment house. This is not a discrete problem. It is like having a roof that leaks. Every day that it leaks the tenant is deprived of a dry apartment. The absence of an onsite manager means

that the tenant is deprived on a daily basis of an onsite manager, which is required by California law. Because there was no resident manager there was no one to make necessary repairs.

The owner representative of the current owner, Mandana Properties (purchased property in November 2018), contends this is a red herring. There is a resident manager, and there has been one for the last six months. There was a gap in 2017 and part of 2018. The former resident manager moved out, and there has been a resident manager for several months. The representative states that he is the property manager, and the tenants have his phone number. The tenants know who the resident manager is. This increase is about a banked C.P.I. increase. The tenant's rent started at \$1,215 in 2011, and she has not had a C.P.I. increase in several years, until 2018.

On rebuttal the tenant representative contends that the tenant has paid the C.P.I. increase every year, and that she has not paid the overpayment by the prior owner.

The tenants have filed five petitions and request a mediation of all the pending tenant petitions with Ms. Kong-Brown. She mediated one of the disputes four years ago and they would like her to mediate these disputes.

On rebuttal, the owner representative stated that there was a gap regarding resident manager but no loss of decreased housing services and the repair issues were dealt with. The claim was dismissed based on timeliness and should be upheld.

Ms. Amberg's rent was increased to \$1,215 in June 2011. This was her last rent increase for several years until the 2017 rent increase.

After the parties' arguments, questions and Board discussion, J. Warner moved to remand the hearing decision to the hearing officer to hear the issue of absence of an on site resident manager being a continuing decreased housing service and have this decision trail the current proceeding scheduled to determine whether the building is exempt from the Rent Adjustment Program and will proceed only if the rent program has jurisdiction. E. Lai seconded.

E. Lai offered a friendly amendment, which was accepted, to eliminate the language to instruct the hearing officer that this is an ongoing decreased housing service and to determine after hearing the evidence whether the absence of an onsite resident manager is a discrete act or ongoing decreased service as well as the other issues in the ultimate decision.

The Board voted as follows:

Aye: E. Lai, J. Warner, K. Friedman

Nay: T. Williams

Abstain: T. Hall

The motion carried.

ii. T18-0089, Billingsley v. Marr

Appearances: Rosemary Marr            Owner Appellant  
                  Joseph Billingsley        Tenant Appellee

This is an owner appeal of a tenant petition. The tenant claimed unlawful increases, no RAP notice and decreased housing services. The tenant claimed that window bars do not open, and there was mold and water damage. The tenant moved out after filing the petition but before the hearing. The hearing officer awarded \$2,070 rent reduction for failure to repair.

The owner filed an appeal on the grounds that the decision violates, federal, state or local law, and is not supported by substantial evidence, and questioned the tenant's testimony of prior complaints to the prior owner.

The owner contended she served the RAP notice 60 days before the petition and the tenant should not get restitution for three years. She should not be penalized for the prior owner's failure to address the mold and tenant should have continued to complain to the prior owner. She also raised a defense about the legality of placing bars on windows that don't open and whether they were legal at the time they were installed.

The owner argued that the tenant petition was incomplete, that the tenant did not check the box for decreased housing services on his petition, there was no description of the alleged decreased housing services on the petition and there was nothing for her to respond to. When she went to the hearing she did not have any information for her to respond to.

The tenant contended that there were decreased housing services. Although he did not check the box on the petition he also filed a declaration with his petition about the decreased housing services. The owner did not raise any of these due process issues with the hearing officer.

After arguments made by the parties, questions and Board discussion, J. Warner moved to affirm the hearing decision based on substantial evidence. T. Hall seconded.

The Board voted as follows:

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

The motion carried.

The Board took a short break and resumed the meeting.

iii. L17-0233, Udinsky v. Tenant  
L17-0236, Udinsky v. Tenants

Appearances: George Shafazand, Owner Appellant Representative

Xavier Johnson, Tenant Appellees Representative

The owner filed a petition for a rent increase based on capital improvements for a roof, sewer lateral, solar panel, paint, and structural work. The petition was granted in part. The structural work was disallowed due to dry rot resulting from deferred maintenance. Other repairs were deemed as priority 1 or priority 2 and could not be passed through to the tenants.

The owner appealed the hearing decision on the grounds that it is not supported by substantial evidence.

The owner representative contended that the work that was denied should be allowed. There are four buildings on this parcel. One of the buildings is built on a slope. Earth moves and there was ground movement. They installed a shear wall to strengthen this building totaling \$77,708.00 and requests that this item be reconsidered. This was not deferred maintenance or a priority 1 or 2 condition. This was nothing the owner could have prevented.

The tenant representative contended that the owner is limited to what is stated in his appeal. The owner did not meet its evidentiary burden. Much of the work was done due to dry rot. Dry rot constitutes deferred maintenance and priority 1 or 2 conditions. The owner failed to provide invoices and receipts for all the work performed.

After arguments made by the parties, questions and Board discussion, R. Stone moved to affirm the hearing decision based on substantial evidence. T. Williams seconded.

The Board voted as follows:

Aye: R. Stone, J. Warner, E. Lai, T. Williams, K. Friedman, T. Hall

Nay: 0

Abstain: 0

The motion was approved by consensus.

**B. ESTABLISHMENT OF A POLICY COMMITTEE**

The Board discussed the formation of the policy committee, members of the committee, staffing, and generation of a list of issues regarding drafting updates to the regulations or to provide clarity of issues seen in cases. They discussed rotating participation of board members on the committee based on issues and inviting all stakeholders to participate in a discussion to identify issues.

The Board discussed availability of personnel to staff the committee and the goal is at the end of 2019 or by beginning of 2020.

The program manager suggested the possibility of a peer review or hiring a consultant to assist with regulation revisions.

The program manager informed the Board that starting in August 2019 the City Attorney will work with staff to present more robust appeal decision recommendations and options.

J. Warner moved to extend the Board meeting past 10:00 p.m. E. Lai seconded.

The Board voted as follows:

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

The motion carried.

The Board identified the following issues for future discussion:

1. Information about the Building Code and intersection with the Regulations; e.g. window bars-there is a code that applies to this.
2. Should dry rot be treated differently from other deferred maintenance items?
3. Clarification of deferred maintenance v. items that benefit tenants?
4. Ambiguous terms in the the regulations and in the Ordinance;
5. How is the value of the Decreased Housing Services determined?
6. What constitutes a burden of proof regarding expenses for capital improvements?

The policy committee shall be a standing item on the Board Agenda in order to provide an opportunity to raise issues at a Board meeting.

## 7. SCHEDULING AND REPORTS

a. RAP staffed the second outreach event on May 9, 2019, at Bike to Workday and started Listserve and distributed Landlord and Tenant packets.

b. The Board requested a report about cases that have been decided by the Board and been appealed to Superior Court in the past two to three years, the disposition, and which cases are pending

## 8. ADJOURNMENT

The Board meeting was adjourned by consensus at 10:00 p.m.



**CITY OF OAKLAND  
HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD  
Full Board Meeting  
June 13, 2019  
7:00 p.m.  
City Hall, Hearing Room #1  
One Frank H. Ogawa Plaza, Oakland, CA**

**MINUTES**

**1. CALL TO ORDER**

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

**2. ROLL CALL**

MEMBER	STATUS	PRESENT	ABSENT	EXCUSED
T. Hall	Tenant	X		
A. Rose	Tenant			X
A. Graham	Homeowner	X		
R. Stone	Homeowner	X		
J. Warner	Homeowner	X		
K. Friedman	Landlord	X		
T. Williams	Landlord			X

Staff Present

Ubaldo Fernandez      Deputy City Attorney  
 Chaneé Franklin Minor      Rent Program Manager  
 Barbara Cohen      Hearing Officer  
 Kelly Rush      Program Analyst 1

Ardis Graham was welcomed to his first Board meeting.

**3. CONSENT ITEMS**

- a. Board Minutes for approval      May 9, 2019 and May 23, 2019

On Bate stamped page 8, the Board corrected the word "membes" to "members". Additionally, a motion was made by K. Friedman that the minutes for the May 9, 2019, meeting be presented to them again at the next full Board meeting with more clarity as to the substance of the discussion. The motion was passed by consensus.

The Board approved the May 23, 2019, minutes.

4. OPEN FORUM SPEAKERS

James Vann

5. OLD BUSINESS

See item 7, Standing Policy Committee. Ed Lai, Board alternate, presented a letter he had written on behalf of the Board to be sent to the City Council after Board approval. The Board discussed the letter and agreed that Board member K. Friedman would work with E. Lai to update the letter to reflect the concerns of the Board members. J. Warner requested that the letter be from the Rent Board, rather than over her signature. The Board requested that the letter be brought back for further consideration at the next Board meeting.

6. NEW BUSINESS

a. Appeal Hearing

- i. L17-0062, Kahan v. Tenants.

No parties appeared for this case.

J. Warner moved to dismiss the appeal pending a showing of good cause. T. Hall seconded.

The Board voted as follows:

Aye: T. Hall, A. Graham, J. Warner, R. Stone, K. Friedman  
Nay: 0  
Abstain: 0

The motion was approved by consensus.

- ii. T17-0577, Patrick v. Um et al

Appearances: Tom Um Owner Appellant Representative  
Shaleigh Hilton Owner  
Heidi Patrick Tenant

The tenant filed a petition contesting a rent increase from \$1,000 to \$1,300. A Hearing was held on July 21, 2018, and the owner did not appear. The Hearing

Decision granted the tenant petition and set the rent at \$1,000 a month and granted restitution of \$258.

Owner Appeal

The owner filed an appeal on the grounds that she did not appear at the Hearing because she believed she and the tenant had reached a decision about the valid rent.

Appeal Decision

After questions to the parties and Board discussion R. Stone moved to deny the owner appeal on the grounds that there is substantial evidence to support the Hearing Decision and because the owner did not provide good cause for failing to attend the underlying Hearing. T. Hall seconded.

The Board voted as follows:

Aye:	T. Hall, A. Graham, J. Warner, R. Stone, K. Friedman
Nay:	0
Abstain:	0

The motion carried by consensus.

**7. Standing Policy Committee**

See discussion in (5) above.

**8. SCHEDULING & REPORTS**

**A. Board Attendance Policy Recommendations**

The Board requested that this set of policy recommendations be reconciled with the Regulations to ensure that there are no conflicts; to add that Board members would notify staff about prospective absences at least one week prior to a meeting so an alternate can be arranged; to remove the language that the Board is the party that grants permission for absences of other Board members; that it be clarified what happens when a regular Board member appears at a Panel meeting; and that more clarity be provided as to what happens if a Board member misses meetings. Further, this policy needs to be coordinated with the Efficiency Ordinance currently under consideration. At U. Fernandez' recommendation, the Board requested that the Efficiency Ordinance and the Board Attendance Policy Recommendations be brought back to the Board together when the Efficiency Ordinance is ready to be presented to the Board and on that

day, that only two Hearings be scheduled so that there will be enough time to discuss the Efficiency Ordinance.

Chaneé Franklin Minor informed the Board that it is the Board's decision and prerogative whether or not to adopt an attendance policy and that the Efficiency Ordinance can be brought to the Board on July 25, 2019.

- B. Report of Cases Appealed to Superior Court and Disposition: this matter was delayed to the following full Board meeting.
- C. The Board made a scheduling request that at the next full Board meeting (June 27, 2019) that the option to formulate an Ad Hoc policy committee be added to the agenda; that a presentation be made by counsel as to what the requirements are for such a committee; the membership of the committee and that the duration and precise subject matter of the Ad Hoc committee or committees be considered.
- D. Further scheduling issues: The Board will be on vacation in August of 2019.

## **9. ADJOURNMENT**

The meeting was adjourned by consensus at 9:15 p.m.

**CHRONOLOGICAL CASE REPORT**

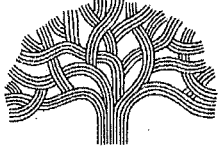
Case Nos.: L17-0230  
Case Name: Fong v. Tenants  
Property Address: 7022, 7026, 7028 Lacey Ave., Oakland, CA  
Parties: May Fong (Owner)  
No Appearance by any Tenant

**TENANT APPEAL:**

<u>Activity</u>	<u>Date</u>
Owner Petition filed	October 18, 2017
No Tenant Response(s) filed	-----
Hearing Decision issued	August 10, 2018
Tenant Appeal filed	August 30, 2018
Appeal Brief for Tenant submitted	September 14, 2018

L17-0230 RC/MA

RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM

 CITY OF OAKLAND	<b>CITY OF OAKLAND</b> <b>RENT ADJUSTMENT PROGRAM</b> P.O. Box 70243 Oakland, CA 94612-0243 (510) 238-3721	For date stamp 2017 OCT 18 PM 4:41
	<b><u>PROPERTY OWNER</u></b> <b><u>PETITION FOR</u></b> <b><u>APPROVAL OF RENT</u></b> <b><u>INCREASE</u></b>	

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

Your Name May Fong	Complete Address (with zip code) 358 Cerro Court Daly City, Ca 94015	Daytime Telephone: 415-812-9908
		E-mail: mayfong@pacbell.net
Your Representative's Name (if any)	Complete Address (with zip code)	Daytime Telephone: 415-812-9908
		E-mail: mayfong@pacbell.net
Property Address (If the property has more than one address, list all addresses) 7022, 7026, 7028 Lacey Avenue, Oakland, Ca 94605		

Total number of units on property: 4

Date on which you acquired the building: 8/7/13

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

Have you (or a previous Owner) given the City of Oakland's form entitled Notice to Tenants of Residential Rent Adjustment Program ("RAP Notice") to the tenants in each unit affected by the petition?	<input checked="" type="radio"/> Yes	<input type="radio"/> No
On what date was the RAP Notice first given?	10/23/13	
Have you paid your Oakland Business License? The property owner must have a current Oakland Business License. If it is not current, an Owner Petition may not be considered in a Rent Adjustment proceeding. (Provide proof of payment.)	<input checked="" type="radio"/> Yes	<input type="radio"/> No
Oakland Business License number.	00161448	

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

**REASON(S) FOR PETITION**

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

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

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

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

Have you ever filed a petition for this property?

- Yes
- No

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

T17-0466

*Please merge this case with this petition*

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

Address	Unit #	Tenant Name(s)	Phone	E-mail	Current Rent
7026 Lacey		Alan LeBlanc	510-575-1929	alanleblanc@yahoo.com	\$865



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

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

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

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

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

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

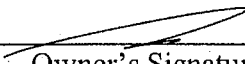
- If your petition contains capital improvements for which permits are first issued on or after February 1, 2017, capital improvements will be amortized according to an amortization schedule (attached at the end of this form).
- If the petition includes only work where permits were issued before February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

<b>Building-Wide Capital Improvements</b> CATEGORY (attach separate sheet if needed)	TOTAL COSTS	DATE COMPLETED	DATE PAID FOR
DEMO DRYROTTED GARAGE AND INSTA	\$5810	11/5/16	11/5/16
REMOVE AND DISPOSE ASBESTOS FLU	\$900	6/30/17	6/30/17
<b>SUBTOTAL:</b>	6710		

<b>Unit-Specific Capital Improvements</b> CATEGORY (attach separate sheet if needed)	TOTAL COSTS	DATE COMPLETED	DATE PAID FOR	AFFECTED UNITS
REPLACE SHOWER VALVES	900	10-Oct-17	10-Oct-17	7026
REPLACED SHOWER HEAD	145	30-Jan-17	2/5/17	7026
SNAKE SINK AND REPLACE PTRAP IN	126	17-May-17	6/1/17	7026
<b>SUBTOTAL:</b>	\$1171			

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

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

  
\_\_\_\_\_  
Owner's Signature

10/17/17

\_\_\_\_\_  
Date

\_\_\_\_\_  
Owner's Signature

\_\_\_\_\_  
Date

**File Review**

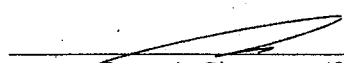
Your tenant(s) will be required to file a response to this petition within 35 days of notification by the Rent Adjustment Program. **You will be sent a copy of the Tenant's Response. Copies of attachments submitted with the Response form are not sent, out, but can be reviewed in person at the Rent Adjustment Program office by calling (510) 238-3721 to schedule a file review.** 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.

**Mediation Program**

If you are interested in submitting your dispute to mediation, please read the following information carefully. To request mediation, all petitioners must sign the form that follows. Voluntary mediation of rent disputes is available to all parties involved in Rent Adjustment proceedings. Mediation is an entirely voluntary process to assist you in reaching an agreement with your tenant. Mediation will be scheduled only if both you and your tenant(s) agree and after both a petition and a response have been filed with the Rent Adjustment Program. You may elect to use a Rent Adjustment Program staff Hearing Officer acting as mediator or an outside mediator. Staff Hearing Officers are available to conduct mediation free of charge. 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. If you are unable to resolve your dispute after a good faith attempt at mediation, you will be given a priority hearing presided by a Hearing Officer other than your mediator.

**IF YOU WANT TO SUBMIT YOUR CASE TO MEDIATION, PLEASE CHECK THE APPROPRIATE BOX AND SIGN.**

- I agree to have my case mediated by a Rent Adjustment Program staff Hearing Officer (no charge).
- I agree to have my case mediated by an outside mediator (fees to be paid by the parties).

  
\_\_\_\_\_  
Owner's Signature (for mediation request)

10/17/17  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Owner's Signature (for mediation request)

\_\_\_\_\_  
Date

EXHIBIT A

City of Oakland Capital Improvements Calculator Worksheet

**IMPROVEMENTS BENEFITING ALL UNITS BUILDING WIDE**

Effective Date of Rent Increase  
1-Mar-18

Number of Residential Units  
4

IMPROVEMENT OR REPAIR	DATE COMPLETED	FULL COST	Amortizable Cost (70%)	# of Units	Allowable Cost per Unit (Pre Amortization)	Date Validation (2 years ago: max)
DEMO DRYROTTED GARAGE ANI	5-Nov-17	\$5,810.00	\$4,067.00	4	\$1,016.75	OK
REMOVE AND DISPOSE ASBESTO	30-Jun-17	\$900.00	\$630.00	4	\$157.50	OK
Subtotal			\$4,697.00		\$1,174.25	
Place X in box if property is mixed use.						
Residential square footage		2750				
Other use square footage						
Percent residential use						
Total Cost Per Unit Allocated to Residential Units			\$1,174.25			

**IMPROVEMENTS LIMITED TO SPECIFIC UNITS**

Total Allowable Unit Specific Pass-through (Column D)								\$857.50
IMPROVEMENT OR REPAIR	DATE COMPLETED	FULL COST	AMORTIZABLE COST (70%)	# UNITS	ALLOWABLE COST PER UNIT (PRE-AMORTIZATION)	APPLIES TO UNITS	DATE VALIDATION (2 YEARS AGO MAX)	
REPLACE SHOWER VALVES	10-Oct-17	\$900.00	\$630.00	1	\$630.00	7026	OK	
REPLACED SHOWER HEAD	30-Jan-17	\$145.00	\$101.50	1	\$101.50	7026	OK	
SNAKE SINK AND REPLACE PTRAI	17-May-17	\$180.00	\$126.00	1	\$126.00	7026	OK	
<b>Totals</b>								\$857.50

**AMORTIZATION**

Sum of Unit Specific Costs (Column D below)								\$857.50
Unit	Current Rent	Building Wide Pass-through	Unit Specific Pass-through	Total Pass-through on Unit	Years to Amortize (5 yrs min)	Allowable Increase \$	Increase % (must be 10% or less)	
7026 LACEY	\$865.00	\$1,174.25	\$630.00	\$1,804.25	5	\$30.07	3.48%	
7026 LACEY	\$865.00	\$1,174.25	\$101.50	\$1,275.75	5	\$18.64	2.15%	
7026 LACEY	\$865.00	\$1,174.25	\$126.00	\$1,300.25	5	\$21.67	2.51%	

Unit Specific Data Entry is Complete

Totals	\$857,50
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# City of Oakland Capital Improvements Calculator Worksheet

## IMPROVEMENTS BENEFITING ALL UNITS BUILDING WIDE

Effective Date of Rent Increase  
Number of Residential Units

1-Jan-18  
4

IMPROVEMENT OR REPAIR	DATE COMPLETED	FULL COST	Amortizable Cost (70%)	# of Units	Allowable Cost per Unit (Pre Amortization)	Date Validation (2 years ago max)
DEMO DRYROTTED GARAGE A	5-Nov-16	\$5,810.00	\$4,067.00	4	\$1,016.75	OK
REMOVE AND DISPOSE ASBES	30-Jun-17	\$900.00	\$630.00	4	\$157.50	OK
Subtotal			\$4,697.00		\$1,174.25	
Place X in box if property is mixed use.						
Residential square footage		2,750				
Other use square footage						
Percent residential use						
Total Cost Per Unit Allocated to Residential Units			\$1,174.25			

L17-0230



**IMPROVEMENTS LIMITED TO SPECIFIC UNITS**

Total Allowable Unit-Specific Pass-through (Column D)							
IMPROVEMENT OR REPAIR	DATE COMPLETED	FULL COST	Amortizable Cost (70%)	# Units	Allowable Cost per Unit: (Pre-Amortization)	APPLIES TO UNITS	Date Validation (2 years ago max)
REPLACE VALVES, FAUCET ANI	14-May-17	\$435.00	\$304.50	1	\$304.50	1	OK
<b>Totals</b>			\$304.50				

**AMORTIZATION**

Sum of Unit Specific Costs (Column D below)							
Unit Specific Data Entry is Complete	Current Rent	Building Wide Pass-through	Unit Specific Pass-through	Total Pass-through on Unit	Years to Amortize (5 yrs min)	Allowable Increase \$	Increase % (must be 10% or less)
7028	\$1,070.00	\$1,174.25	\$304.50	\$1,478.75	5	\$24.65	2.30%

7028 CAPITAL IMPROVEMENTS  
CASE NO: L17-0230

Totals	\$304,50
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000026



## CITY OF OAKLAND

250 FRANK H. 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:** L17-0230, Fong v. Tenants  
**PROPERTY ADDRESS:** 7022, 7026, 7028, Lacey Avenue, Oakland, CA  
**DATE OF HEARING:** March 27, 2018  
**DATE OF DECISION:** July 20, 2018  
**APPEARANCES:** May Fong, Owner  
No Appearance by any Tenant

### SUMMARY OF DECISION

The owner petition is partially granted.

### CONTENTIONS OF THE PARTIES

On October 18, 2017, the owner filed a Petition for Approval of a Rent Increase based on capital improvements.

The tenants did not file a response or appear for the hearing.

### THE ISSUES

Are the rent increases justified by Capital Improvement costs and, if so, in what amounts?

### EVIDENCE

#### Background

At the hearing, the owner testified that the subject property is a four-unit building, but only two units will be affected by the proposed rent increase, units 7026 and 7028. The current rent for unit 7026 is \$865.00 and the current rent for unit 7028 is \$1,070.00.

000027

She further testified that the RAP notice was first provided to all tenants on October 23, 2013, right after she purchased the property.

At the hearing, the owner testified that the capital improvements consisted of building-wide and unit-specific improvements. She testified that the building-wide improvements included demolition of the dry-rotted garages and installation of a new concrete carport with six parking spaces, and the removal and disposal of two asbestos containing water heater flue pipes. The demolition and installation of the new carport began on November 5, 2016, and the work was completed and paid for by December 29, 2016 at a total cost of \$9,310. The removal of water heater flue pipes for asbestos abatement was completed and paid for on June 30, 2017, at a cost of \$900.00.

The owner further testified that she was claiming unit specific capital improvements to unit 7026 and 7028. The capital improvements to unit 7026 included running a snake through the kitchen sink to clear the line, replacement of showerhead in bathroom, and replacement of bathroom faucet and valves. The work began in January of 2017, and was completed and paid for by October of 2017 at a total cost of \$1,225.00. The capital improvements to unit 7028 included replacement of bathtub valve, replacement of bathroom sink faucet, and replacement of toilet seat. The work was completed and paid for on May 14, 2017.

The owner submitted the following documents in support of her petition:

1a. A letter from Lopez Handyman, dated November 5, 2016, with an estimate for the demolition of dry-rotted garages, removal of old garage foundation, and installation of a new concrete carport.<sup>1</sup> The letter estimates that the total cost of the project will be \$7,000.00 for labor and is stamped "paid".

b. A bank statement verifying payments to Lopez Handyman in the total amount of \$7,870.<sup>2</sup> The statement shows that the first payment was made on November 14, 2016, and the last payment was made on December 29, 2016.

2. Four invoices from Dan Braudrick Services, Inc., for delivery of debris bins to collect debris due to the garage demolition and carport installation, totaling \$2,310.00.<sup>3</sup> The first invoice is dated December 14, 2016, and the last invoice is dated December 20, 2016. All four invoices indicate that payments were made and the balance due is \$0.00.

3. Photographs of the garage demolition.<sup>4</sup>

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<sup>1</sup> Exhibit No. 1a

<sup>2</sup> Exhibit No. 1b

<sup>3</sup> Exhibit No. 2

<sup>4</sup> Exhibit No. 3

4. An invoice from Quality Asbestos Control Inc., dated June 30, 2017, for removal and disposal of two asbestos containing water heater flue pipes, totaling \$900.00.<sup>5</sup>

5. A receipt verifying payment of \$900.00 to Quality Asbestos Control, dated June 30, 2017.<sup>6</sup>

6. An invoice from Plumbing for Less, dated October 10, 2017, totaling \$900.00, for replacement of bathroom sink faucet, bathtub valves, and showerhead in unit 7026.<sup>7</sup> The invoice is stamped "paid in full".

7. An invoice from Plumbing for Less, dated January 30, 2017, totaling \$145.00, for replacement of showerhead in unit 7026.<sup>8</sup> The invoice is stamped "paid in full".

8. An invoice from Plumbing for Less, dated May 17, 2017, totaling \$180.00, for running snake through kitchen sink to clear the line in unit 7026.<sup>9</sup> The invoice is stamped "paid in full".

9. An invoice from Plumbing for Less, dated May 14, 2017, totaling \$435.00, for replacement of bathroom sink faucet, bathtub valve, and toilet seat in unit 7028.<sup>10</sup> The invoice is stamped "paid in full".

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

### **Capital Improvements**

A rent increase in excess of the C.P.I. Rent Adjustment may be justified by capital improvement costs.<sup>11</sup> Capital improvement costs are those improvements which materially add to the value of the property and appreciably prolong its useful life or adapt it to new building codes. Normal routine maintenance and repair is not a capital improvement cost, but a housing service cost.<sup>12</sup>

The improvements must primarily benefit the tenant rather than the owner. Capital improvement costs are to be amortized over a period of five years, divided equally among the units which benefited from the improvement. The reimbursement of capital expense must be discontinued at the end of the 60-month amortization period.<sup>13</sup>

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<sup>5</sup> Exhibit No. 4

<sup>6</sup> Exhibit No. 5

<sup>7</sup> Exhibit No. 6

<sup>8</sup> Exhibit No. 7

<sup>9</sup> Exhibit No. 8

<sup>10</sup> Exhibit No. 9

<sup>11</sup> O.M.C. Section 8.22.070(C)

<sup>12</sup> Regulations, Appendix, Section 10.2.2(5)

<sup>13</sup> Regulations Appendix, Section 10.2

Effective August 1, 2014, the amendments to the Rent Adjustment Program Regulations allowed a capital improvements pass-through of seventy percent (70%) of the total capital Improvement costs.<sup>14</sup>

Some of the work done by the owner qualifies as a capital improvement. The removal of dry-rotted garages to install a new concrete carport qualifies as a capital improvement because it primarily benefits the tenants, and the new carport is safer and more accessible than traditional garages. It also makes the property appear well-maintained and cared for.

Costs allowed and used in the Calculation

The following expenses qualify as capital improvements and will be used in the calculation pass-through:

Building-Wide Improvements

Labor for demolition of garages and installation of carport	\$7,000.00
Cost of debris bins during demolition and construction	<u>\$2,310.00</u>
Total:	\$9,310.00

Costs disallowed and excluded from the Calculation

The following expenses are not allowed as capital improvements and are not included in the capital improvement calculation pass-through:

Building-Wide Improvements

Payments to Lopez Handyman	\$870.00
-the estimate from Lopez Handyman was only for \$7000.00; no invoices or receipts for materials were submitted for the additional \$870.00 payment	
Removal of two asbestos containing water heater flue pipes	<u>\$900.00</u>
-asbestos abatement is a repair, not a capital improvement	
Total:	\$1,770

Unit 7026

Replacement of bathroom faucet, valves, and showerhead	\$900.00
Replacement of showerhead	\$145.00
Running snake through kitchen sink to clear the line	<u>\$180.00</u>
-these items are repairs, not capital improvements	
Total:	\$1,225.00

Unit 7028

Replacement of bathroom faucet, valve, and toilet seat	<u>\$435.00</u>
-these items are repairs, not capital improvements	
Total:	\$435.00

<sup>14</sup> City Council Resolution No. 84936

The attached Table sets forth the proper calculation for rent increases based upon these capital improvement expenses.

**ORDER**

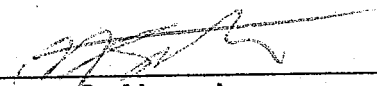
1. Owner Petition for Approval of Rent Increase L17-0230 is partially granted.
2. The maximum approved amount per month for an increase based on the capital improvements for each unit is as follows:

Unit 7026: \$29.29 for 60-month amortization period;  
Unit 7028: \$29.29 for 60-month amortization period.

3. The increase will be effective thirty (30) days after the owner serves the rent increase notice, together with the notice of the Rent Adjustment Program (the RAP Notice), and the attached Decision Summary. If the rent increase is served by mail, it will be effective thirty-five (35) days after the service.

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

Dated: July 20, 2018

  
\_\_\_\_\_  
**Maimoona S. Ahmad**  
Hearing Officer  
Rent Adjustment Program







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

CITY OF OAKLAND

Department of Housing and Community Development  
Rent Adjustment Program

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

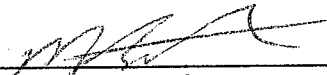
## **DECISION SUMMARY**

**CASE NUMBER:** L17-0230, Fong v. Tenants  
**PROPERTY ADDRESS:** 7022, 7026, 7028, Lacey Avenue, Oakland, CA  
**DATE OF HEARING:** March 27, 2018  
**DATE OF DECISION:** July 20, 2018

1. Petition L17-0230 is partially granted.
2. The maximum approved amount per month for an increase based on the capital improvements for each unit is as follows:  

Unit 7026: \$29.29 for 60-month amortization period;  
Unit 7028: \$29.29 for 60-month amortization period.
3. The rent increase will be effective thirty (30) days after the owner serves the rent increase notice, together with a RAP Notice, and this Decision Summary. If the rent increase is served by mail, it will be effective thirty-five (35) days after the service.
4. The rent increase will expire sixty (60) months after it goes into effect.

Dated: July 20, 2018

  
\_\_\_\_\_  
**Maimoona Ahmad**  
Hearing Officer  
Rent Adjustment Program

000033

**PROOF OF SERVICE**  
**Case Number L17-0230**

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  
Decision Summary

**Owner**  
May Fong  
358 Cerro Ct  
Daly City, CA 94015

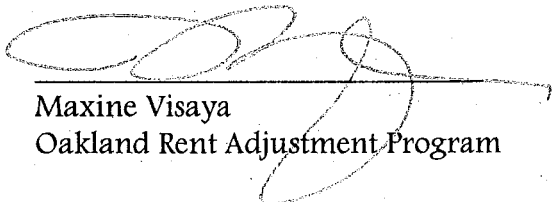
**Tenants**  
Alan LeBlanc  
7026 Lacey Ave  
Oakland, CA 94605

Resident  
7028 Lacey Ave  
Oakland, CA 94605

Resident  
7022 Lacey Ave  
Oakland, CA 94605

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


I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on August 10, 2018 in Oakland, CA.

  
\_\_\_\_\_  
Maxine Visaya  
Oakland Rent Adjustment Program

**000034**

original

RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM

 CITY OF OAKLAND	<b>CITY OF OAKLAND</b> <b>RENT ADJUSTMENT PROGRAM</b> 250 Frank Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721	For date stamp: 2018 AUG 30 PM 4:43
	<b><u>APPEAL</u></b>	

<b>Appellant's Name</b> Alan LeBlanc		<input type="checkbox"/> Owner <input checked="" type="checkbox"/> Tenant	
<b>Property Address (Include Unit Number)</b> 7026 Lacey Avenue, Oakland, CA 94608			
<b>Appellant's Mailing Address (For receipt of notices)</b> 7026 Lacey Ave., Oakland, CA 94608		<b>Case Number</b> L17-0230, Fong v. Tenants	
		<b>Date of Decision appealed</b> July 20, 2018	
<b>Name of Representative (if any)</b>		<b>Representative's Mailing Address (For notices)</b>	

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

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


For more information phone (510) 238-3721.

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

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

• You must serve a copy of your appeal on the opposing parties or your appeal may be dismissed. •  
 I declare under penalty of perjury under the laws of the State of California that on August 30, 2018, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<b>Name</b>	May Fong
<b>Address</b>	358 Cerro Court
<b>City, State Zip</b>	Daly City, CA 94015
<b>Name</b>	
<b>Address</b>	
<b>City, State Zip</b>	

	8/30/18
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

For more information phone (510) 238-3721.

## **IMPORTANT INFORMATION:**

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

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

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

2018 SEP 14 PM 4:51

Jackie Zaneri  
CENTRO LEGAL DE LA RAZA  
3022 International Blvd., Suite 410  
Oakland, CA 94601  
(51) 437-1554

Attorney for Tenant Alan LeBlanc

**APPEAL BRIEF FOR TENANT-APPELLANT ALAN LeBLANC**

**Case No:** L17-0230

**Case Title:** Fong v. Tenants

**FACTS AND PROCEDURAL HISTORY**

On October 28, 2018, landlord May Fong (“Landlord”) filed a petition with the Oakland Rent Adjustment Program for a rent increase based on capital improvements. On November 1, 2018, tenant Alan LeBlanc (“Tenant”) filed a tenant petition for a reduction in services. Believing he was resolving both petitions, he and the Landlord mediated his petition on January 16, 2018 and reached a settlement agreement. The Landlord alone appeared at the hearing on the capital improvements increase on March 27, 2018. Following the hearing, Hearing Officer Ahmad granted a total building-wide capital improvements pass-through of \$6,517, solely for garage demolition work due to dry rot, and rejected the landlord’s other proposed capital improvements. The pass-through amount granted in the hearing decision is greater than the total requested pass-through on the Landlord’s original petition, which requested a total capital improvements pass-through of only \$5,554.5—\$4,067 of which was for garage demolition work. The Landlord also provided no proof of required demolition permits for any work performed.

Accordingly, Mr. LeBlanc requests that this Decision be reconsidered on appeal based on the following grounds: (1) the approval of an amount greater than noticed on the landlord’s

petitions deprives the tenants of fair notice and due process (2) the Decision is not supported by substantial evidence because the Hearing Officer did not require the Landlord to present demolition permits or consider whether demolition permits were required, and (3) the Decision is not supported by substantial evidence or consistent with prior decisions because the approved capital improvements pass-through for dry rot was deferred maintenance and is therefore not eligible for a capital improvements pass-through.

**1. The Approval of an Amount Greater than the Landlord's Petition Deprives Tenants of Fair Notice and Due Process of Law**

The constitutional principle of due process requires an administrative agency to give an affected individual adequate notice of a hearing, including the interests and costs at stake. As the California Supreme Court has held, “[n]otice reasonably calculated to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections is, of course, an essential element of the right to a hearing.”<sup>1</sup>

Adequate notice includes notice of the costs at stake during the hearing. In *Tafi v. County of Tulare*, the Fifth District Court of Appeal found that a county had violated an individual's due process rights because their enforcement order did not contain adequate notice that an administrative hearing could subject a business owner to increased penalties.<sup>2</sup> For that reason, the court vacated the any penalties above the amount that the party originally reasonably believed he was subject to to per the notice the agency provided.<sup>3</sup> The Rent Adjustment Program has also found on appeal that a capital improvement cost could not be allocated to a tenant with

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<sup>1</sup> *Arrieta v. Mahon*, 31 Cal.3d 381, 389 (1982) (internal quotes and citations omitted); see also Cal. Gov't Code § 11425.10(a)(1).

<sup>2</sup> *Tafi v. County of Tulare*, 198 Cal.App.4th 891, 896–897 (2011).

<sup>3</sup> *Id.* at 902.

no notice prior to the hearing, if the tenant was provided no opportunity to prepare before a hearing.<sup>4</sup>

Mr. LeBlanc received notice of the hearing from Rental Adjustment Program along with the Landlord's petition, which included the Landlord's requested pass-through. However, he was not afforded adequate notice of the full capital improvements pass-through that the Landlord requested at the hearing. Instead, the hearing officer granted a pass-through that was larger than the amount on the Landlord's petition, which is the only notice of potential costs that Mr. LeBlanc ever received. The Landlord's original petition requested a total capital improvements pass-through of only \$5,554.5, \$4,067 of which was for garage demolition work. Following the hearing, Hearing Officer Ahmad granted a total capital improvements pass-through of \$6,517, solely for garage demolition work due to dry rot, and rejected the landlord's other proposed capital improvements. Due process requires that an affected party have the ability to choose whether to participate in a hearing with adequate notice of what is at stake during the hearing. It therefore requires that any pass-through amount allowed for the garage demolition dry rot repair be reduced to \$4,067 to conform to the landlord's original petition.

**2. The Decision is Not Supported by Substantial Evidence because the Hearing Office did not Require the Landlord to Demonstrate Whether she had the Proper Permits for All Work Performed**

In a capital improvements case, a landlord has the burden of proof to demonstrate compliance with all applicable regulations. Where a permit was required in order to perform work for which the landlord seeks a capital improvements pass-through, the landlord must provide proof that they secured all required permits.<sup>5</sup> The permits requirement ensures that the landlord performs all work safely and in compliance with Oakland building and construction

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<sup>4</sup> See T02-0136, Cutts v. Eagle Investment.

<sup>5</sup> T13-0279, Falcon et al. v. Bostrum.



codes. In this case, the Landlord failed to show that she received the required permits for the garage demolition. As such, should any garage demolition costs be allowed as a capital improvement at all, the Board should remand for a consideration of whether the Landlord secured all required permits before any demolition work.

Oakland Municipal Code Section 15.36.020 makes it unlawful to demolish any structure without first obtaining a demolition permit. This serves the purpose of requiring a landlord to conform to applicable regulations, including, for instance, creating a dust control plan during demolition when required; it also allows the city to revoke a demolition permit upon a failure to control or abate dust, smoke, or other air contaminants.<sup>6</sup>

During the hearing, the Landlord showed no evidence that she had received the required permits for the demolition work; in fact, she suggested that she had received no permits. The following exchange occurred between Hearing Officer Ahmad and the Landlord:

Hearing Officer Ahmad: "And were there any permits required for any of that work?"

Landlord: "Um, no. It was just, uh - no."

Hearing Officer Ahmad: "Okay."

Landlord: "It was not."<sup>7</sup>

Should the garage demolition be allowed as a capital improvement, the Tenant requests that this case be remanded to the Hearing Officer to determine whether the Landlord was required to secure demolition permits and did in fact receive all required demolition permits prior to performing any work.

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<sup>6</sup> Oakland Mun. Code § 15.36.100.

<sup>7</sup> Hearing Recording, 7:32 to 7:42.

**3. The Decision is Not Supported by Substantial Evidence because the Hearing Officer Incorrectly Allowed Dry Rot Repairs, Which are Deferred Maintenance, to be Included as Capital Improvements.**

The Hearing Officer failed to properly apply the correct legal standard because she incorrectly allowed the Landlord to pass deferred maintenance costs through to the Tenants as capital improvements.

Rent Board regulations explicitly exempt all deferred maintenance from capital improvements pass-throughs.<sup>8</sup> Deferred maintenance is considered repair work that a landlord could have avoided had they exercised reasonable diligence and made timely repairs to a condition.<sup>9</sup> Multiple rent board decisions have found that damage due to dry rot, which is the decay of wood over time due to fungus, is typically considered deferred maintenance.<sup>10</sup>

At the hearing, the Landlord testified that she demolished the garage because it was severely damaged and hazardous due to dry rot:

"So when I purchased it.. it was in a devastated state - dry rot. The ceiling was collapsing and so forth, and I had sent them warnings that I don't want them to use that. So we demoed it. We had to remove the whole thing."<sup>11</sup>

She also submitted photos of the garage demonstrating the extent of the damage.<sup>12</sup>

Because the Landlord demonstrated that she demolished the garage not as a benefit to the tenants, as capital improvements require, but to repair a structure that deteriorated over time due to neglect, the demolition costs cannot be considered capital improvements, but must be denied as deferred maintenance.

---

<sup>8</sup> Regulation 10.2.2.1.b.

<sup>9</sup> *Id.*

<sup>10</sup> T16-0108, *Chamales v. Farley*; *see also* Case No. T13-0175, *Schenck v. Deng*.

<sup>11</sup> Hearing Recording, 5:16-5:42.

<sup>12</sup> Hearing Evidence, Exhibit 3.

## CONCLUSION

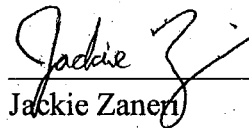
In light of the aforementioned, Tenant-Petitioner respectfully requests that the Board rule that the hearing decision is vacated and the and the improvements pass-through of \$6,517 is disallowed as deferred maintenance due to dry rot.

In the alternative, the tenant requests that the case be remanded to the hearing officer

- (1) For a determination of whether demolition permits were required, and if the landlord secured the proper permits; and
- (2) With the instruction that no capital improvements pass-through for garage demolition can be allowed beyond the amount listed in the Landlord's original petition.

Date: September 14, 2018

Respectfully submitted,



Jackie Zaneri

CENTRO LEGAL DE LA RAZA  
Attorney for Tenant-Appellant  
Alan LeBlanc

**PROOF OF SERVICE**

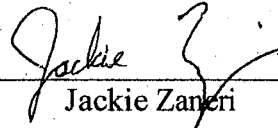
I am a resident of the State of California at least eighteen years of age. I am not a party to the Residential Rent Adjustment Program case listed above. I am employed in Alameda County, California. My business address is 3022 International Blvd, Suite 410, Oakland, CA, 94601.

Today, I served the attached Appeal Brief by placing a true and correct copy in a sealed envelope for collection with the United States Postal Service with the postage fully prepaid.

The envelope was addressed and mailed as follows to the Landlord:

**May Fong**  
**358 Cerro Ct.**  
**Daly City, CA 94015**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on September 14, 2018 in Oakland, CA.

  
\_\_\_\_\_  
Jackie Zaneri

## CHRONOLOGICAL CASE REPORT

Case Nos.: T16-0549, T17-0523 & T18-0480  
Case Name: Beasley v. Horejsi  
Property Address: 3764 39<sup>th</sup> Ave., Apt. # D, Oakland, CA  
Parties: Linda Akenduca Beasley (Tenant)  
Satchidananda Mims (Tenant)  
Michael E. Horejsi (Property Owner)

### OWNER AND TENANT APPEAL, CASE# T16-0549

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	October 4, 2016
Owner Response filed	November 2, 2016
Hearing Decision issued	March 15, 2017
Owner Appeal filed	April 3, 2017
Tenant's Response to Owner Appeal	July 17, 2018
Remand Hearing Decision issued	January 23, 2019
Tenant Appeal filed	February 4, 2019
Owner Appeal filed	February 5, 2019
Respondent's Opposition to Landlord Appeal filed	March 4, 2019
Rebuttal to Response to Respondent's Opposition to Landlord's Appeal	March 21, 2019

**TENANT APPEAL, CASE# T17-0523**

Tenant Petition filed	September 12, 2017
Owner Response filed	February 1, 2018
Hearing Decision issued	March 29, 2018
Tenant Appeal filed	April 18, 2018
Tenant filed Supporting Memorandum	May 3, 2018

**TENANT APPEAL, CASE # T18-0480**

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	September 4, 2018
Owner Response filed	January 9, 2019
Hearing Decision issued	May 2, 2019
Tenant Appeal filed	May 20, 2019
Appellant's Brief filed	June 3, 2019

T16.0549 KM/BC

<b>CITY OF OAKLAND</b> <b>RENT ADJUSTMENT PROGRAM</b> Mail To: P. O. Box 70243 Oakland, California 94612-0243 (510) 238-3721	For date stamp. <div style="text-align: right;"> <b>RECEIVED</b>  <b>CITY OF OAKLAND</b>  <b>RENT ARBITRATION PROGRAM</b>  <b>2016 OCT -4 PM 4:39</b> </div>
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**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

**TENANT PETITION**

Your Name Akenduca Beasley aka Linda J. Beasley	Rental Address (with zip code) 3764 39th Ave. Apt D. Oakland, CA 94619	Telephone
Your Representative's Name Self	Mailing Address (with zip code) PO Box 19304, Oakland CA 94619	Telephone
Property Owner(s) name(s) Michael E. Horejsi	Mailing Address (with zip code) P.O. Box 2883 Castro Valley, CA 94546	Telephone

Number of units on the property: 7

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

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

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

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

Date you moved into the Unit: 7/24/1982 Initial Rent: \$ 425.00 /month

When did the owner first provide you with a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program (RAP NOTICE)? Date: 06/05/2002. If never provided, enter "Never."

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

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

Date Notice Served (mo/day/year)	Date Increase Effective (mo/day/year)	Amount Rent Increased		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
Not served***	Oct 1, 2016	\$ 828	\$ 882.42	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
June 30, 2016	Aug 1, 2000	\$ 675	\$ 780.00	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Aug 23, 1999	Oct 1, 1999	\$ 650	\$675.00	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
June 30, 1998	Aug 1, 1998	\$ 625	\$ 650.00	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
June 1, 1991	July 1, 1991	\$ 525	\$ 625.00	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Dec 26, 185	Feb 1, 1986	\$	\$ 525.00	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

\* You have 60 days from the date of notice of increase or from the first date you received written notice of the existence of the Rent Adjustment program (whichever is later) to contest a rent increase. (O.M.C. 8.22.090 A 2) If you never got the RAP Notice you can contest all past increases.

List case number(s) of all Petition(s) you have ever filed for this rental unit: No. T03-0300

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

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

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

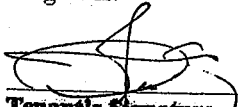
If you answered "Yes" to any of the above, please attach a separate sheet listing a description of the reduced service(s) and problem(s). Be sure to include at least the following: 1) a list of the lost housing service(s) or serious problem(s); 2) the date the loss(es) began or the date you began paying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

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



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

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

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

10-3-2016  
\_\_\_\_\_  
Date


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

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

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

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

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

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

10-3-2016  
\_\_\_\_\_  
Date

**VI. IMPORTANT INFORMATION:**

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

**File Review**

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

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

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

BEASLEY, AKENDUCA D.: TENANT PETITION ATTACHMENT

Regarding legally withholding rent: The rent is current in accordance with a court order issued by the Superior court of California.

II. RENTAL HISTORY

Service of Notice.

\*\*\* On or about 8/27/16, Petitioner discovered the notice to increase rent folded up, in the inside of the bottom right side of the front door at residence 3764 39th Ave. Apt. D., Oakland, CA 94619. The Notice was not served within the confines of applicable California law. For example service under applicable law requires:

Personal service - To serve you personally, the person serving the notice must hand you the notice (or leave it with you if you refuse to take it).

Substituted service on another person -If the landlord can't find you at home, the landlord should try to serve you personally at work. If the landlord can't find you at home or at work, the landlord can use "substituted service" instead of serving you personally.

To comply with the rules on substituted service, the person serving the notice must leave the notice with a person of "suitable age and discretion" at your home or work and also mail a copy of the notice to you at home. A person of suitable age and discretion normally would be an adult at your home or workplace, or a teenage member of your household.

Service of the notice is legally complete when both of these steps have been completed. The three-day period begins the day after both steps have been completed.

Posting and mailing - If the landlord can't serve the notice on you personally or by substituted service, the notice can be served by taping or tacking a copy to the rental unit in a conspicuous place (such as the front door of the rental unit) and by mailing another copy to you at the rental unit's address. (This service method is commonly called "posting and mailing" or "nailing and mailing.")

Service of the notice is not complete until the copy of the notice has been mailed. The three-day period begins the day after the notice was posted and mailed.

See California Civil Code §§ 827; 1162; Walters v. Meyers (1990) 226 Cal.App.3d Supp. 15

III. Description of Decreased or Inadequate Housing Services

Services: dates are estimated below, exact dates not known at this time. Services not believed to be in compliance with California Civil Code §1941.

Date Decreased/Inadequate Services Amount (\$)

Table with 3 columns: Date, Decreased/Inadequate Services, Amount (\$). Rows include: 7/2015 Heater doesn't function To be determined by rent board; 7/2007 Bath Tub -- rusted and full of mold cannot be used to bath. To be determined by rent board; 7/2007 Bathroom Mold and Mildew To be determined by rent board; 7/2007 Defective stove To be determined by rent

		board
7/2007	Hole in closet	To be determined by rent board
7/2007	Window Screens	To be determined by rent board
1/2005	Parking- is a part of the original rental agreement.	(\$25 per month.)- should be noted, No. T03-0300 tenant petition filed challenged increase and the land lord rescinded the increase.
7/2005	<b>Electrical wiring and power surges- causes a lot of lightbulbs to blow out within a few days of instillation.</b>	To be determined by rent board

Several documents have been ordered masked from public view by the Superior Court of California. Documents in support of this petition will be filed at a later time. Along with any other information the Rent board indicates it needs to make a determination in this case. If you have questions or concerns please contact petitioner Akenduca D. Beasley by means above.

**CITY OF OAKLAND**  
**RENT ADJUSTMENT PROGRAM**  
P.O. Box 70243  
250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721

For filing stamp.

**RECEIVED**

NOV - 2 2016

OAKLAND RENT ADJUSTMENT

**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 T16-0549

OWNER RESPONSE

**Please print legibly.**

Your Name <i>Michael E Horejsi</i>	Complete Address (with zip code) <i>P.O. Box 2883 Castro Valley Ca 94546</i>	Phone: _____ Email: _____
Your Representative's Name (if any) <i>Self.</i>	Complete Address (with zip code)	Phone: _____ Fax: _____ Email: _____
Tenant(s) name(s) <i>Linda Beasley</i>	Complete Address (with zip code) <i>3764 39th Ave Apt D Oakland, Ca 94619</i>	

Have you paid for your Oakland Business License? Yes  No  Number 2826364  
(Provide proof of payment.)

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

There are 7 residential units in the subject building. I acquired the building on 1/6/74.

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

**I. RENTAL HISTORY**

The tenant moved into the rental unit on 7/24/1982.

The tenant's initial rent including all services provided was \$ 832.48 / month. *Rent was set at this figure, RAB Hearing Decision, Jan 22, 2004. Tenant did not pay this amount.*

Have you (or a previous Owner) given the City of Oakland's form entitled **NOTICE TO TENANTS OF RESIDENTIAL RENT ADJUSTMENT PROGRAM ("RAP Notice")** to all of the petitioning tenants?  
Yes  No  I don't know  If yes, on what date was the Notice first given? 5 June 2002

Is the tenant current on the rent? Yes  No

If you believe your unit is exempt from Rent Adjustment you may skip to **Section IV. EXEMPTION.**

If a contested increase was based on **Capital Improvements**, did you provide an **Enhanced Notice to Tenants for Capital Improvements** to the petitioning tenant(s)? Yes \_\_\_\_\_ No \_\_\_\_\_. If yes, on what date was the Enhanced Notice given? \_\_\_\_\_. Did you submit a copy of the Enhanced Notice to the RAP office within 10 days of serving the tenant? Yes \_\_\_\_\_ No \_\_\_\_\_. Not applicable: there was no capital improvements increase. \_\_\_\_\_

Begin with the most recent rent increase and work backwards. Attach another sheet if needed.

Rent set by RAB TD3-0300

Date Notice Given (mo/day/year)	Date Increase Effective (mo/day/year)	Amount Rent Increased		Did you provide NOTICE TO TENANTS with the notice of rent increase?
		From	To	
Aug 26, 2016	Oct 1, 2016	\$ 832.48	\$ 882.42	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Jan 22, 2016	Oct 1, 2013	\$ 800.00	\$ 832.48	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No

**II. JUSTIFICATION FOR RENT INCREASE**

You must prove that each contested rent increase greater than the Annual CPI Adjustment is justified and was correctly served. Use the following table and check the applicable justification(s) box for each increase contested by the tenant(s) petition. For a summary of these justifications, please refer to the "Justifications for Increases Greater than the Annual CPI Rate" section in the attached Owner's Guide to Rent Adjustment.

Date of Increase	Banking (deferred annual increases)	Increased Housing Service Costs	Capital Improvements	Uninsured Repair Costs	Fair Return	Debt Service (if purchased before 4/1/14)
Aug 26, 2016	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jan 22, 2016	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/> never paid	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

### **III. DECREASED HOUSING SERVICES**

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

### **IV. EXEMPTION**

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

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

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

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

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

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

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

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

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

### **V. IMPORTANT INFORMATION**

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

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

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

**VI. VERIFICATION**

Owner must sign here:

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

  
Owner's Signature

30 Oct 2016  
Date

**VII. MEDIATION AVAILABLE**

Your tenant may have signed the mediation section in the Tenant Petition to request mediation of the disputed issues. Mediation is an entirely voluntary process to assist the parties to reach an agreement on the disputed issues in lieu of a Rent Adjustment hearing.

If the parties reach an agreement during the mediation, a written Agreement will be prepared immediately by the mediator and signed by the parties at that time. If the parties fail to settle the dispute, the case will go to a formal Rent Adjustment Program Hearing, usually the same day. A Rent Adjustment Program staff Hearing Officer serves as mediator unless the parties choose to have the mediation conducted by an outside mediator. If you and the tenant(s) agree to use an outside mediator, please notify the RAP office at (510) 238-3721. Any fees charged by an outside mediator for mediation of rent disputes will be the responsibility of the parties requesting the use of their services. (There is no charge for a RAP Hearing Officer to mediate a RAP case.)

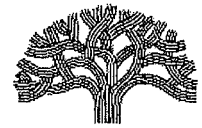
Mediation will be scheduled only if both parties request it – after both the Tenant Petition and the Owner Response have been filed with the Rent Adjustment Program. **The Rent Adjustment Program will not schedule a mediation session if the owner does not file a response to the petition.** (Rent Board Regulation 8.22.100.A.)

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

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

  
Owner's Signature

30 Oct 2016  
Date



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

CITY OF OAKLAND

Department of Housing and Community Development  
Rent Adjustment Program

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

## **HEARING DECISION**

**CASE NUMBER:** T16-0549, Beasley v. Horejsi  
**PROPERTY ADDRESS:** 3764 - 39<sup>th</sup> Ave., #D, Oakland, CA  
**DATE OF HEARING:** January 27, 2017  
**DATE OF DECISION:** March 15, 2017  
**APPEARANCES:** Linda Akenduca Beasley (Tenant)  
Satchidananda Mims (Tenant)  
Michael E. Horejsi (Owner)

## **SUMMARY OF DECISION**

The tenant's petition is partly granted.

## **CONTENTIONS OF THE PARTIES**

Tenant Beasley filed a petition on October 4, 2016, which alleges that a proposed rent increase from \$828 to \$882.42, effective October 1, 2016, and a rent increase in the year 2000, exceed the CPI Adjustment and are unjustified or is greater than 10%; that the owner did not give her a summary of the justification for the proposed rent increase despite her written request; that she did not receive the form Notice to Tenants (RAP Notice) at least 6 months before the effective date of the contested rent increase or together with the contested rent increase; that the contested rent increase is the second rent increase in a 12-month period; that her rent has not been reduced after the expiration period of the rent increase based on capital improvements; that at present there exists a health, safety, fire or building code violation in her unit; and that her housing services have been decreased due to problems with the heater; the bathtub; mold and mildew; the stove; the closet; window screens; and electrical problems; and that parking was a part of her original rental agreement.

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The owner filed a response to the petition, which alleges that the tenant was given the RAP Notice on July 24, 2002 and together with both contested rent increases; that the current rent increase is justified by Banking; and denies that the tenant's housing services have decreased.

### THE ISSUES

- (1) Did the owner respond to the tenant's request for the justification for the current rent increase?
- (2) When, if ever, did the tenant receive the RAP Notice?
- (3) Was the current contested rent increase notice served in accordance with legal requirements?
- (4) Is a current rent increase justified by Banking and, if so, in what amount?
- (5) Have the tenant's housing services been decreased and, if so, by what percentage of the total housing services that are provided by the owner?

### EVIDENCE

Request for Justification of Rent Increase: At the Hearing, the tenant testified that the owner responded to her request for the justification for the rent increase.

RAP Notice: At the Hearing, the tenant testified that she received the RAP Notice "many years ago." On Page 2 of her sworn petition, the tenant wrote that she received the Notice in the year 2002, as well as together with both contested rent increases.

Service of Rent Increase Notice: The tenant testified that the current rent increase notice was "stuck in her door," and that she never received a copy in the mail. The tenant further testified that the mail carrier sometimes does not deliver mail properly. At times, mail is placed in the "community box," rather than in her individual mail box. Also, she sometimes gets other tenants' mail in her box, and her mail is put in the mail boxes of others. The owner testified that he mailed a copy to the tenant on August 26, 2016, and that it was not returned to him by the postal service.

Rent History: The parties agreed that the tenant's rent has not been increased since the year 2004, when the rent was \$828 per month. The parties stipulated that a document signed by both of them on August 15, 2016, entitled "Stipulation Re: Dismissal / Judgment" (Stipulation) in an Alameda County Superior Case entitled Horesji v. Beasley, Mims" could be admitted into evidence.<sup>1</sup>

This Stipulation states, on page 2, "Defendants acknowledge that their current rent is \$828 and that they owe an additional \$25/month for parking, which is not rent." This document further states that "Defendant shall pay to plaintiff \$3,856.84, which constitutes a bargained for amount of all rents, fees, parking fees, etc. and costs due and owing for the premises through 8/31/16. . . Defendant shall pay \$100 every month, along with his/her monthly rent, beginning with September 2016 . . ."

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<sup>1</sup> Exhibit No. 1. This Exhibit, and all other Exhibits to which reference is made in this Decision, were admitted into evidence without objection.

### Decreased Housing Services:

Heater: The tenants testified that there is one gas heater in her unit. Beginning about 3 years ago, the heater would not come on using the thermostat, although the pilot light was lit. The tenants notified the owner at that time, but nothing was done. The above-mentioned Stipulation, dated August 15, 2016, states, in part: "within 30 days, plaintiff [the owner] shall inspect and repair as necessary the following defects . . . heater." The tenants testified that the thermostat was replaced in late November 2016. The owner testified that his first notice about this problem was when he received the tenant's petition in the present case, which was mailed to him on October 19, 2016.

Bathtub: The tenant testified that the bathtub in her unit was re-surfaced in the year 2002. At that time, the owner's repair person told her that the tub would need to be re-surfaced every few years. The tenant testified that she told the owner "a couple of years later," but the tub has not been re-surfaced. One of the items listed in the Stipulation is "bathtub." The tenant submitted photos of the tub that were taken in July and August 2016.<sup>2</sup> The tenant testified that the condition was the same at the time of the Hearing.

These photos depict several areas on the bottom of the tub where the surface is completely worn away and the metal below is rusted. The tenants testified that, because of this condition, they cannot take baths and place plastic mats on the tub floor when they take showers. The tenants further testified that the owner's repair person put the toilet into the tub when he made repairs.

The owner testified that the rusted areas are the result of "hammer marks" or something similar, and that the damage was caused by the tenants. The owner further stated that he did nothing regarding the tub after signing the Stipulation.

Mold: The tenants testified that there is a window in their bathroom, but no fan. They open the window after showering, but there is significant mold on the wall and window above the shower. A photo submitted by the tenants supports the claim of mold accumulation.<sup>3</sup> The Stipulation includes inspection and repair of "bathroom mold and mildew." The tenants testified that this problem has existed for 20 years, and that the mold "comes from the walls." The owner testified that he has cleaned the bathroom walls, the last time being 5 or 6 years ago. He inspected in November 2016, at which time he saw soap scum, but no mold.

Stove: The tenants testified that the burners on the electric stove in their unit do not heat consistently, and that they notified the owner about this problem 2-3 years ago. The Stipulation lists "defective stove." The owner testified that he inspected the stove in November 2016, and the burners performed normally.

Closet: The tenants testified that there is a hole in the wall of the closet in that was caused by a leaking roof. They cover the hole, and it has no effect upon their tenancy.

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<sup>2</sup> Exhibit Nos. 2B through 2D

<sup>3</sup> Exhibit No. 3

Screens: The tenants testified that they moved into the unit in 1982, and there were window screens on the windows at that time. They fell into disrepair, and were replaced in November 2016. The list of repairs in the Stipulation includes “window screens.”

Electrical problems: The tenants testified that at times the lights in the unit flicker. There was no evidence of the cause of this problem.

Parking: The tenants testified that one parking space was included in their original rental agreement.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

Request for Justification of Rent Increase: It is found that the owners complied with the tenants’ request.

RAP Notice: It is found that the tenants received the RAP Notice in the year 2002, as well as together with both contested rent increases. A tenant petition must be filed within 90 days of the date of service of a rent increase notice or the date the tenant first receives the RAP Notice, whichever is later.<sup>4</sup> Therefore, the tenant’s petition was filed far too late to contest the rent increase in the year 2002.

Service of Rent Increase Notice: Rent Adjustment proceedings are governed by State law as well as the Rent Adjustment Ordinance (O.M.C.). Under State law,<sup>5</sup> a written notice of rent increase must be served either by delivering a copy to the tenant personally or by serving a copy by mail under the procedures prescribed in Code of Civil Procedure Section 1013. This Code section requires that the document be deposited in a mailbox, post office or other facility maintained by the U. S. Postal Service.

The owner’s testimony that he mailed the rent increase notice to the tenants is found to be credible, and a letter correctly addressed and properly mailed is presumed to have been received in the ordinary course of mail.<sup>6</sup> It is likely that the tenant did not receive the mailed notice due to problems with the postal service. This is not the fault of the owner. Therefore, it is found that the 2016 rent increase notice was properly served upon the tenant.

Banking: The Rent Adjustment Ordinance<sup>7</sup> defines “rent” as “the total consideration charged or received by an Owner in exchange for the use or occupancy of a Covered Unit **including all Housing Services provided to the tenant.**” (emphasis added). Therefore, the tenant’s current rent – which includes parking – is \$853 per month.

An owner is allowed to bank rent increases and use them in subsequent years, subject to certain limitations.<sup>8</sup> The parties agree on the dates and rent amounts entered into the Banking

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<sup>4</sup> O.M.C. Section 8.22.090 (A)(2)

<sup>5</sup> Civil Code Section 827(b)(1)

<sup>6</sup> Evidence Code Section 641.

<sup>7</sup> O.M.C. Section 8.22.020

<sup>8</sup> O.M.C. Section 8.22.070(C); Regulations Appendix, Section 10.5.1

calculations shown on the attached Table. The method of calculation on this Table has been approved by the Rent Board.<sup>9</sup> As set forth in this Table, the maximum rent for the tenant's unit is \$904.18 per month. This is more than the amount stated in the contested rent increase notice. Therefore, before consideration of the tenant's claims of decreased housing services, the rent is \$882.42 per month, effective October 1, 2016.

Decreased Housing Services: Under the Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent<sup>10</sup> and may be corrected by a rent adjustment.<sup>11</sup> However, in order to justify a decrease in rent, a decrease in housing services must be either the elimination or reduction of a service that existed at the start of the tenancy or a violation of the housing or building code which seriously affects the habitability of the tenant's unit. Also, an owner must have notice of a problem, and a reasonable opportunity to make needed repairs, before a claim of decreased housing services will be granted.

There is also a time limit for claiming decreased housing services. A tenant petition must be filed within 90 days after the date of service of a rent increase notice or change in the terms of a tenancy or the date the tenant first receives the RAP Notice, whichever is later.<sup>12</sup>

However, when a tenant complains of ongoing problems with his or her unit, the Board has declared that such claims should not be completely denied if the tenant received the RAP Notice more than 90 days before the petition was filed. The tenant first received the RAP Notice in the year 2002, far more than 90 days before filing her petition on October 4, 2016. Therefore, in accordance with the Regulations and Board decision,<sup>13</sup> the tenant can only be granted relief on her claims for decreased housing services beginning 90 days before the date on which she filed her petition. Allowable claims of decreased housing services therefore begin on July 4, 2016.

Heater: This was an item included in the court Stipulation, dated August 15, 2016. Contrary to his testimony at the Hearing, the owner obviously had notice of this problem before the court appearance in mid-August 2016. Heat is a basic housing service, and the heater should have been repaired before July 4, 2016. The lack of heat reduced the package of housing services by 10% from July 4 through November 30, 2016. As set forth on the Table below, the tenants overpaid rent during that time.

Bathtub: There is no evidence that the damage to the tub – which was also an item listed in the Stipulation – was caused by the tenants' misuse; the owner's testimony to the contrary was mere speculation. The tenants' testimony that they have been unable to take baths is supported by photos of several areas of the tub. This condition has reduced the housing services by 3% since July 4, 2016. Because of the current decrease in housing services, the rent is reduced by 3%, being \$26.47 per month, to \$855.95 per month. This rent decrease will remain in effect until the bathtub is re-surfaced or replaced, as specified in the Order below.

<sup>9</sup> Appeal Decision, Case No. 98-02, et al. Merlo v. Rose Ventures III et al. The Board has designated this decision to be a Precedent Decision.

<sup>10</sup> O.M.C. Section 8.22.070(F)

<sup>11</sup> O.M.C. Section 8.22.110(E)

<sup>12</sup> O.M.C. Section 8.22.090(A)(2)

<sup>13</sup> Appeal Decision in Case No. T09-0086, Lindsey v. Grimsley, et al., as modified by O. M. C. Section 8.22.090(A)(3)

Further, the tenant has overpaid rent since August 4, 2016. As set forth on the Table below, the tenant overpaid rent during that time.

Mold: Mold is caused by excess moisture in the air. When asked the cause of the mold in their bathroom, the tenants testified that they believed it “comes from the walls.” This is not a condition that the owner can correct and, therefore, the claim is denied.

Stove: The testimony of the parties was equally credible, and the tenants have not sustained their burden of proof. For this reason, the claim is denied.

Closet: Since the tenants testified that the hole in the wall does not affect their tenancy, the condition does not constitute a decreased housing service. The claim is denied.

Screens: This item is listed in the Stipulation. Since there were intact screens at the start of the tenancy, their dilapidation reduced the tenants’ housing services by 1% from July 4 through November 30, 2016. As set forth on the Table below, the tenants overpaid rent during that time.

Electrical problems: Intermittent flickering of the lights is a vague claim, and there is no practical way in which an Order can be stated to allow an owner to correct the problem; the claim is therefore denied.

Parking: This claim is addressed earlier in this Decision. Parking is a housing service, and the separate charge is part of the Base Rent. Therefore, the claim is denied.

**VALUE OF LOST SERVICES**

Service Lost	From	To	Rent	% Rent Decrease	Decrease /month	No. Months	Overpaid
Heat	4-Jul-16	30-Nov-16	\$828	10%	\$ 82.80	5	\$414.00
Bathitub	4-Jul-16	8-Mar-17	\$828	3%	\$ 24.84	9	\$223.56
Screens	4-Jul-16	30-Nov-16	\$828	1%	\$ 8.28	5	\$ 41.40
<b>TOTAL LOST SERVICES</b>							<b>\$678.96</b>

**RESTITUTION**

**TOTAL TO BE REPAID TO TENANT \$678.96**

Conclusion: The current rent is \$855.95 per month, effective October 1, 2016. The tenants paid a total of \$4,968 for the months of October 2016 through March 2017. The full amount of rent for this time period was \$5,135.70 (\$855.95 x 6). Before considering past decreased housing services, this was an underpayment of \$167.70. However, because of past decreased housing services, as set forth in the Table above, the tenants overpaid \$678.96.

The underpayment and overpayment are set off against each other. This results in a total overpayment of \$511.26. This overpayment is ordered repaid over a period of 9 months.<sup>14</sup> The current rent of \$855.95 per month is temporarily reduced by \$56.81 per month, to \$799.14 per month, beginning with the rent payment in April 2017 and ending with the rent payment in March 2018. When the bathtub is re-surfaced or replaced, the owner may increase the rent by \$26.47 per month, after giving proper notice in accordance with Civil Code Section 827.

**ORDER**

1. Petition T16-0549 is partly granted.
2. The Base Rent is \$882.42 per month.
3. Because of an ongoing decrease in housing services, the current rent, before reduction due to rent overpayments, is \$855.95 per month.
4. Because of past decreased housing services, the tenant has overpaid rent in the amount of \$511.26. This overpayment is adjusted by a rent reduction for 9 months.
5. The rent is temporarily reduced by \$56.81 per month. The current rent is \$799.14 per month, beginning with the rent payment in April 2017 and ending with the rent payment in March 2018.
6. In April 2018, the rent will increase to \$855.95 per month.
7. When the bathtub is re-surfaced or replaced, the owner may increase the rent by \$26.47 per month, after giving proper notice in accordance with Civil Code Section 827.
8. The Anniversary Date for future rent increases is October 1.
9. **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: March 15, 2017



Stephen Kasdin  
Hearing Officer  
Rent Adjustment Program

<sup>14</sup> Regulations, Section 8.22.110(F)

# CITY OF OAKLAND



Department of Housing and Community Development  
 Rent Adjustment Program  
<http://www2.oaklandnet.com/Government/o/hcd/o/RentAdjustment/>

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

### CALCULATION OF DEFERRED CPI INCREASES (BANKING)

Initial move-in date	24-Jul-1982	<b>MUST FILL IN D9, D10, D11 and D14</b>	Case No.:		<b>CHANGE YELLOW CELLS ONLY</b>
Effective date of increase	1-Oct-2016		Unit:		
Current rent (before increase and without prior cap. improve pass-through)	\$853				
Prior cap. imp. pass-through					
Date calculation begins	1-Oct-2006				
Base rent when calc. begins	\$853				

If the planned increase includes other than banking put an X in the box→

### ANNUAL INCREASES TABLE

Year Ending	Debt Serv. or Fair Return increase	Housing Serv. Costs increase	Base Rent Reduction	Annual %	CPI Increase	Rent Ceiling
10/1/2016				2.0%	\$ 20.91	\$ 1,066.32
10/1/2015				1.7%	\$ 17.47	\$ 1,045.41
10/1/2014				1.9%	\$ 19.17	\$ 1,027.94
10/1/2013				2.1%	\$ 20.75	\$ 1,008.77
10/1/2012				3.0%	\$ 28.78	\$ 988.02
10/1/2011				2.0%	\$ 18.81	\$ 959.24
10/1/2010				2.7%	\$ 24.72	\$ 940.44
10/1/2009				0.7%	\$ 6.37	\$ 915.71
10/1/2008				3.2%	\$ 28.20	\$ 909.35
10/1/2007				3.3%	\$ 28.15	\$ 881.15
10/1/2006				-	-	\$853

### Calculation of Limit on Increase

Prior base rent	\$853.00
Banking limit this year (3 x current CPI and not more than 10%)	6.0%
Banking available this year	\$ 51.18
Banking this year + base rent	\$ 904.18
Prior capital improvements recovery	\$ -
Rent ceiling w/o other new increases	\$ 904.18

Notes:

1. You cannot use banked rent increases after 10 years.
2. CPI increases are calculated on the base rent only, excluding capital improvement pass-throughs.
3. The banking limit is calculated on the last rent paid, excluding capital improvement pass-throughs.
4. Debt Service and Fair Return increases include all past annual CPI adjustments.
5. An Increased Housing Service Cost increase takes the place of the current year's CPI adjustment.
6. Past increases for unspecified reasons are presumed to be for banking.
7. Banked annual increases are compounded.
8. The current CPI is not included in "Banking", but it is added to this spreadsheet for your convenience.

Revised April 30, 2015

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**PROOF OF SERVICE**

**Case Number T16-0549**

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

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

**Tenants**

Akenduca Beasley aka Linda J. Beasley  
P.O. Box 19304  
Oakland, CA 94619

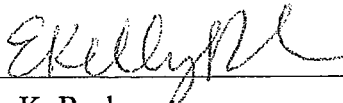
Akenduca Beasley aka Linda J. Beasley  
3764 39th Ave #D  
Oakland, CA 94619

**Owner**

Michael E. Horejsi  
P.O. Box 2883  
Castro Valley, CA 94546

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 March 15, 2017 in Oakland, CA.

  
\_\_\_\_\_  
Esther K. Rush



KM

<b>City of Oakland</b> <b>Residential Rent Adjustment Program</b> 250 Frank Ogawa Plaza, Suite 5313 Oakland, California 94612 (510) 238-3721		RECEIVED CITY OF OAKLAND RENT ARBITRATION PROGRAM <b>APPEAL</b> 2017 APR -3 PM 4:00	
<b>Appellant's Name</b>  Michael E. Horejsi		<b>Landlord</b> <input checked="" type="checkbox"/>	<b>Tenant</b> <input type="checkbox"/>
<b>Property Address (Include Unit Number)</b>  3764 39 <sup>th</sup> Avenue, Apt. D Oakland, CA 94619			
<b>Appellant's Mailing Address (For receipt of notices)</b>  Michael E. Horejsi P.O. Box 2883 Castro Valley, CA 94546		<b>Case Number</b> T16-0549	<b>Date of Decision appealed</b> March 15, 2017
<b>Name of Representative (if any)</b>  N/A	<b>Representative's Mailing Address (For notices)</b>  N/A		

I appeal the decision issued in the case and on the date written above on the following grounds:  
 (Check the applicable ground(s). Additional explanation is required (see below). Please attach additional pages to this form.)


1.  **The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board.** You must identify the Ordinance section, regulation or prior Board decision(s) and specify the inconsistency.
2.  **The decision is inconsistent with decisions issued by other hearing officers.** You must identify the prior inconsistent decision and explain how the decision is inconsistent.
3.  **The decision raises a new policy issue that has not been decided by the Board.** You must provide a detailed statement of the issue and why the issue should be decided in your favor.
4.  **The decision is not supported by substantial evidence.** You must explain why the decision is not supported by substantial evidence found in the case record. The entire case record is available to the Board, but sections of audio recordings must be pre-designated to Rent Adjustment Staff.
5.  **I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim.** You must explain how you were denied a sufficient opportunity 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.
6.  **The decision denies me a fair return on my investment.** You must specifically state why you have been denied a fair return and attach the calculations supporting your claim.

Revised 5/29/09

7.  Other. You must attach a detailed explanation of your grounds for appeal. Submissions to the Board are limited to 25 pages from each party. Number of pages attached 23. Please number attached pages consecutively. *W/ Exhibits*

8. 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 April 3, 2017, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<b>Name :</b> Akenduca Beasley aka Linda Beasley
<b>Address :</b> P.O. Box 19304
<b>City, State Zip :</b> Oakland, CA 94619
<b>Name :</b> Saichidonanda Mims
<b>Address :</b> 3764 39 <sup>th</sup> Avenue, Apt. D
<b>City, State Zip :</b> Oakland, CA 94619

 <b>SIGNATURE OF APPELLANT or DESIGNATED REPRESENTATIVE</b>	<u>3 April 2017</u> <b>DATE</b>
---	------------------------------------

**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.
- Anything to be considered by the Board must be received by the Rent Adjustment Program by 3:00 p.m. on the 8th day before the appeal hearing.
- 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.
- 

Revised 5/29/09

**APPEAL ISSUES**

Tenants were allowed to file an appeal of the rent increase **despite** the fact that they were behind in their rent. This is a violation of OMC 8.22 0904b and their appeal should be denied. Tenants were behind in their rent by an amount of \$2,000 when they filed. This issue was **not** addressed in the decision.

The tenants refused to pay the lawful rent increase, which was to begin on October 1, 2016. This requirement was spelled out in the RAP notice issued with the rent increase. This was acknowledged by the hearing officer, but omitted from the decision. This is a violation of OMC 8.22 70 D5. They are currently behind on their rent increase 6 months. This fact again was omitted from the decision.

Tenants' appeal is a litigation of the same issues between the same parties settled by a Stipulated Judgment, no longer subject to an appeal. This matter has been judged and litigation is prohibited by the Doctrine of res judicata. The tenants' appeal regarding all housing service issues must be denied.

The housing service reduction regarding the heater, in addition to being barred by the doctrine of res judicata, is also barred by the state law. Tenants caused their heater to not work by turning off the gas. This is an improper use of a gas fixture, CCC Section 1941.2b. The tenants, by turning off the gas, caused an unlivable condition to occur. If the tenant fails to meet the requirement articulated in CCC Section 1941.2, no action can be taken against the landlord concerning any violation of the implied warranty of habitability. CCC Sections 1929, 1942. Any claim for reduced housing service must be denied.

The reasons for denial of a housing service reduction regarding the window screens are essentially as previously stated. The screens were damaged by an identical hole in each screen; this is not normal fair wear and tear. The tenant has a responsibility under CCC Section 1941.2d to not damage property.

The reasons for denial of a housing service reduction regarding the tub are also as stated previously. Additionally, there is indisputable evidence that the tub finish is damaged and that it occurred while tenants were living in the apartment. It is well established that chipped porcelain, or other damaged surface, is not considered fair wear and tear. In this case, the tenant was absolved of her responsibilities under CCC Section 1941.2d. In addition, the landlord was levied a reduction of rent for the previous 6 months, and also fined with a permanent 3% reduction in rent for the remainder of the tenants' stay in the unit. For all of the above reasons, this claim should be denied. There is no basis in law for this ruling.

This decision denies me a fair return on my investment. Not only was my requested banked rent increase denied, but the unit rent was decreased by 3%. The collected rent on this unit has not covered the basic cost of maintaining and operating the unit for the past three years.

#### **1. BANKED RENT**

The rent was last increased on February 2, 2004, R.H.P.R. Case TO3-300. The rent at that time was set at \$832.48. A separate fee for parking in the amount of \$25 per month was paid, treated and accounted for as a separate service fund. Tenant refused to pay more than \$828 per month in rent and \$25 extra for rent of her parking. I do not know how she determined that to be the amount of rent due.

Since tenants' rent had not been increased for 12 years, considerable rent has been banked. An election was made to legally request a rent increase, including some of the banked rent permitted.

Tenants were served on August 26, 2016 with a rent increase of 6%. The increase was effective on October 1, 2016.

It appears that the playing field is not level – these decisions all came off the bottom of the deck. They are arbitrary and not supported by law. It appears that every effort was made to assure the tenants did not get an increase in rent – this is unacceptable.

The rent in this unit is less than half the rent of the lowest 25% of apartments rented in the 94619 zip code. A survey conducted in 2015 ranged rents from \$1,695 to \$2,850 for a 2 bedroom unit. See Exhibit \_\_\_/

## II. SUPERIOR COURT STIPULATED JUDGMENT

This Stipulation between parties resulted from an unlawful detainer action. (See file)

The tenant is compelled to pay her rent plus \$100 in delinquent rent from September 2016 to June 2018.

This Stipulation eliminated the landlord from receiving any more money for delinquent rent, or the tenants from attaining anymore reimbursement in rent relief for any complaints she may have had concerning the apartment for the period of time **prior** to August 31, 2016.

The tenants' petition is barred by the Doctrine of Collateral Estoppel, which precludes relitigation of a suit on a different cause of action involving a party to the first case – this is considered legal harassment. It is also barred by the doctrine of res judicata as previously stated.

The Stipulation issuing Court maintains sole jurisdiction over this case until September 20, 2018.

The Stipulation also, in paragraph 6, contains a specified waiver to wit: "With the exception of the rights set forth herein, the parties waive all other rights known to them at this time."

Paragraph 6 also contains a very vague list of things with no explanation of any particular problems. There was no penalty specified for the results of dealing with these issues. The instructions were:

'within 30 days plaintiff shall inspect and repair as necessary the following defects'

No particular defects were noted. This is a typical unlawful detainer maneuver. My attorney at the time suggested an inspection be delayed to assure tenant was able to pay the amounts agreed upon or be evicted. However, contrary to the hearing officer's statement, this was the first notice of any particular problem from this tenant, beyond the shower.

The statement of (inspect and repair as necessary) was apparently interpreted by the hearing officer as some kind of blanket, all-encompassing repair commitment.

My point of reference for 'inspect and repair as necessary' is the California Consumer Affairs Outline – Landlord's and Tenant's Responsibility for Habitability and Repairs: Legal Guide LT-8. Landlord's responsibilities are defined by California Civil Code Section 1941 and the Tenant's Responsibilities under California Civil Code Section 1941.2. For Information See Exhibit \_\_\_.

I also consulted the California Apartment House Association's guide to 'wear and tear' or 'damages' to determine if the tenant is responsible for damages to the apartment. See Exhibit \_\_\_.

An inspection of the unit was completed on November 2, 2016. I returned to the unit several times after that to complete the work and installed needed items. The heater and shower issues were resolved on that date. Although the inspection was late, it was well within the 90 day limit set by R.A.P.R. 10.2.2 4b. For results and actions taken see letter dated January 24, 2017 in file.

## III. RENT REDUCTIONS

I reject the rent reductions concerning the shower, heater and window screens. The findings are not supported by the facts, the law, or the authority of the hearing officer.

A. On page 6 of the decision, the hearing officer listed a beginning date for loss of service as July 4, 2016 for the heater, shower and window screens. This is improper because the tenant settled all claims for any possible alleged loss of service which occurred **prior** to August 31, 2016 as previously stated.

B. The hearing officer does **not** have the authority to override a Superior Court Judge who maintains jurisdiction over the case.

C. The tenant waived all rights to further claims in the Stipulation.

D. The causation of the damage to the tub was due to tenant's actions/neglect – explanation to follow.

E. The damage to the window screens are due to tenant's actions/neglect.

F. Tenant's additional claim for damages prior to August 31, 2016 are precluded by the Doctrine of Collateral Estoppel and the Doctrine of res judicata.

G. Rent reduction provided for the window screens and heater continued through November 2016. Both of these items were addressed during my visit on November 2, 2016. See letter dated Jan. 24, 2017.

There was a statement in the Decision that work was not done in the apartment until **late** November 2016. This statement is incorrect and contrary to my testimony and letter of January 14, 2017 concerning the issue. To settle the issue, receipts for materials purchased as a result of my November 2, 2016 inspection are attached as Exhibit \_\_\_\_\_. On November 4, 2016, window cranks, a window casement operator, on/off push switch, and cabinet knobs were purchased, and an order for window screens was placed on November 5, 2016. All items were included in the letter sent to the tenants.

None of the alleged decreased housing services include substantial problems with the condition of the unit.

The only months that are available for a rent reduction are the months of September and October 2016.

#### **IV THE LAW AND OTHER REQUIREMENTS**

What follows are the laws I have referenced above, which I used to determine what was 'repair as necessary' identified in the Stipulation.

The general rule is that:

"When a landlord (property owner) rents an apartment to a tenant (Renter), the rented property must be fit to live in. In other words, the rented property must be 'habitable.' During the time that the property is being rented, the landlord must do maintenance work and make repairs which are necessary to keep it habitable. However, a landlord is not responsible for repairing damage caused by the tenant, or the tenant's guest, children or pets." See Exhibit \_\_\_\_\_

The following landlord responsibilities are relevant to the issues presented to the Rent Board.

CCC Section 1941 b: Plumbing facilities in good working order, including hot and cold running water, connected to a disposal system. (no problem)

CCC Section 1941 d: Heating facilities in good working order. (no problem, heater turned off by tenant)

CCC Section 1941 i: A working toilet, wash basin, and bathtub or shower, the tub shower must be in a room that is ventilated, and that allows privacy.

(Note: The tenant did not complain that she did not have hot and cold running water. Tenant did not complain of a lack of ventilation; tenant did want a fan in addition to the window. There is no requirement to provide both [window and fan]. Tenant did not complain of not having a bathtub or shower, only one is required.)

Tenant claimed building code violations, but presented no evidence of any violation.

What follows are the laws and general rules I used to determine whether the tenant is complying with the law and their legal responsibilities.

General Rules: "A tenant must take reasonable care of the rental property and common areas, such as hallways. This means that the tenant must keep those areas in good condition. A tenant also must repair all damages that he or she causes, or that is caused by the tenant's guests, children or pets."

The following laws are relevant to the issues in this appeal:

CCC Section 1941.2 a: Keep the premises 'as clean and sanitary as the condition of the premises permits.' (Note: The tenants' housekeeping is deplorable.)

CCC Section 1941.2 b: Use and operate gas, electrical and plumbing fixtures properly. (example of improper use includes overloading the electrical outlets. Flushing large, foreign objects down the toilet and allowing any gas, electrical or plumbing fixtures to become filthy.)

(Note: In this case, no one could accuse the tenant of having a bathtub that is **not** filthy. The gas heater did not operate because the **tenant turned off the gas** – this is improper use of a gas fixture.)

CCC Section 1941.2 d: Not destroy, damage, or deface the premises, or allow anyone else to do so.

(Note: Tub and window screens were damaged.)

CCC Section 1941.2 e: Not remove any part of the structure, dwelling unit, facilities, equipment or appurtenance, or allow anyone else to do so.

(Note: This pertains to the window screen clips that secure the window screens to the window.)

"If the tenant does not perform these duties and causes the property to become uninhabitable, the tenant cannot require the landlord to repair the property to make it habitable."

OMC 8.22.360 4 – This provides an eviction remedy for damage to the property and refusal to pay for the damages.

Both HUD and the California Apartment House Association consider chipped porcelain as tenant damage. The later identifies damaged window screens as tenant damage.

This unit rents for \$828 a month and is not in perfect condition. It is not in the same condition as a \$3,000 a month unit, nor is it required to be. The implied warranty of habitability is not violated merely because the rental unit is not in perfect, aesthetically pleasing condition, nor is the implied warranty of habitability violated if there are minor housing code violations, which standing alone, do not affect habitability. Green v. Superior Court (1974)

## V. BATHTUB

The bathtub was inspected on November 2, 2016. Fresh damage was noted on the surface of the tub. Damage consisted of numerous small areas of damaged porcelain on the bottom of the tub, as well as the sides and upper ledge – these were not caused by normal wear. Several areas of irregular chipped porcelain were noted, most were roughly 1 inch in diameter or less. Areas of mineral stains were also observed.

It was obvious the tub and tile walls had not been cleaned in a very long time. The accumulation of soap scum was heavy.

The tub had been refinished in 2002 and the finish showed no sign a failure, peeling or blistering.

This is a steel tub, most new ones have a lifetime warranty. All units have their original tubs, they are over 60 years old and still serviceable.

When the tub was resurfaced, a five year warranty and recommended instructions for cleaning and use were provided. See Exhibit \_\_\_\_.

1. Use only non-abrasive bathmats.
2. Avoid trapping water against the surface for a long period of time.
3. Use non-suction bathmats.
4. Suction bathmats will harm finish. and
5. Do not leave any bathmats on the floor from day to day.

The tenant was provided with these instructions and failed to follow them. While at the unit on March 10, 2017, it was noted that several inches of water and bleach was standing in the tub, as well as the suction type bathmats [not recommended]. I doubt this tenant would treat a new resurface better than the one she has.

Contrary to the tenant's claims, the new resurfaced tubs have a warranty of over 10 years; one installer informed me he had one in his house that was 20 years old. A new roof has a warranty of 3 years and a life expectancy of 25 years.

Tenants provided photos taken in preparation for their unlawful detainer trial which occurred in August 2016. In retrospect, I believe the photos presented at the hearing showed considerably more 'rust' than was present in the photos I took on November 2, 2016. I believe the tenants possibly enhanced, with shoe polish, damaged areas in the bottom of the tub.

Upon close of the hearing, I was going to provide some photos for the file -- for some reason I didn't. I believe the hearing officer indicated he had enough material to make a decision. After reviewing the decision, it appears that the photos are relevant and should have been part of the record. Please enter these in the record. See Exhibit \_\_\_\_.

**The hearing officer should conduct a joint on-site visit to inspect the actual, true condition and damage to the tub.**

The statement by the hearing officer that 'there is no evidence that the damage to the tub was caused by tenant misuse' is irrelevant. This conclusion is interesting. "Misuse" is the mother of damage. The wrong standard is being applied. First, he acknowledges that there is damage to the tub, I concur. Second, it is irrelevant whether it was caused intentionally or through carelessness or the tenants' misuse. In this case, the tub would not rust if the porcelain was intact. The tenant, in some manner, damaged the porcelain; also damaged was the rust barrier under the porcelain in some areas, this is black and ordinarily is revealed under a normal chip.

The tenants, through some means, caused damage to the tub, which, according to tenants, created so much rust to occur in the tub that they can no longer use the tub and has now become uninhabitable in their minds. The tenants, and no one else, created this condition. CCC Section 1941.2.

The law regarding this issue is covered in IV above.

1. The damage to the surface enamel of the tub is considered tenant damage by both HUB and the California Apartment House Association. See Exhibit \_\_\_\_.
2. CCC Section 1941.2 d restricts tenant from either destroying or damaging the property.
3. A general rule is that if the tenant causes the property to become uninhabitable, the tenant cannot require the landlord to repair the property to make it habitable.
4. CCC Section 1941 i states that a landlord provide either a bathtub or shower, both are not required. This is not a habitability issue.

The tenants freely admit they are able to use the shower. A problem with their complaint is if there is rust, which I did not see, it's far more sanitary than the normal state of sanitation in the rest of the tub and enclosure. CCC Section 1941.2 b requires tenants to prevent plumbing fixtures from becoming filthy.

For all of the above reasons, this claim should be denied. Tenants should be required to repair the damaged areas in the tub as normally is required or pay for such service to be provided.

No credible legal authority was provided for this ruling.

This claim is barred by the doctrine of res judicata and collateral estoppel. It should be dismissed.

## VI. WINDOW SCREENS

The tenants complained of window screens in their appeal since 2007 (whatever that means).

An inspection was conducted on November 2, 2016. The window screens are constructed with an aluminum metal screen, surrounded by a metal frame. Each screen is secured to the window frame by four metal clips. These screens do not deteriorate – some have been in place in excess of 60 years.

The inspection revealed that four of the screens had a single 3/8 inch hole, about pencil or pen size in each one. The likelihood of this happening due to age is not possible. The condition of the screens otherwise were excellent – no deterioration was noted. Additionally, about 6 of the securing clips were gone. This allowed the screen to fit loosely; in some cases, the screen was 1 inch away from the window.

The window screens were replaced with screens that did not have holes – all missing clips were replaced. The tenant was not, as yet, charged for the damaged screens.

The California Apartment House Association identifies missing, bent or torn screens as tenant caused damage. See Exhibit \_\_\_\_.

The law in this matter, IV above, covers this type of damage.

CCC Section 1941.2 d states that the tenant cannot destroy property (punch hole through window screen).

CCC Section 1941.2 e states that the tenant cannot remove any part of the dwelling unit (clips securing window screens).

Testimony to the above damage was disregarded.

The rent reduction for this is not justified by law – tenants are responsible for damage caused by themselves.

As previously stated, the timeframe specified by the RAP overrides a Superior Court judgment for Stipulation. This is barred by the Doctrine of Collateral Estoppel. This matter was resolved by that Court and still remains under its jurisdiction.

This type of ruling removes a tenant's responsibility and rewards them for damaging a landlord's property.

This is akin to a tenant appearing at a Hearing demanding that a reduction for housing services is justified because they have four broken windows. The story is that they have lived in the unit for 32 years, the windows were okay when they moved in, but fell into disrepair. Landlord had **replaced windows prior to** Hearing. RAP awards tenants rent reduction for 6 months (really?).



## VII HEATER

Tenants claim their heater did not function properly since July 2015. In their testimony, they claimed beginning about 3 years ago the heater would not come on using the thermostat, although the pilot light was lit. The condition of the heater was also confirmed by myself at the hearing and in a letter dated January 14, 2017.

The statement that 'tenants notified the owner at that time (when?) and nothing was done' is unclear. No evidence of notification was provided. The rental contract requires a **written** notification, as does state law and the OMC.

The first notification I received of the heater being a problem was at the conclusion of an unlawful detainer action filed against the tenant. Obviously, since I signed the Stipulation on August 15, 2016, I was aware of the problem. The hearing officer perhaps misunderstood my answer – I was also informed on October 19, 2016 when I received the tenants' petition.

The unit was inspected on November 2, 2016. The condition of the heater was as described previously. Further investigation revealed the gas heating control at the heater was in the OFF position. This control has three different possible positions controlled by a selector knob: ON, Pilot, and OFF – the selector knob was set to the OFF position. In the OFF position, the heater is prevented from receiving and acting upon any signals received from the thermostat. No one provided testimony contrary to this fact. When the heating control knob was turned to the ON position, the heater functioned as designed when the thermostat was manipulated. No one contested this fact. Both tenants were present at the time. At that time, tenants were also informed that I was going to upgrade the thermostat. The tenants' testimony as to when the heater was fixed is incorrect. I also advised the tenants at that time that the control was in the OFF position.

This was explained in detail to the hearing officer – it was my impression he was having some difficulty understanding the concept of how heaters operate.

A similar situation would be having a lamp controlled by a wall switch that lights when the wall switch was turned on. If the lamp switch was turned OFF, even three years of manipulation of the wall switch would not cause the lamp to light. (Would this be worth 6 months of rent reduction for loss of housing service??)

Again, reference is made to the Stipulation rather than the tenants' appeal. I object to this for a variety of legal reasons. However, for the sake of discussion, the Stipulation in my view may have been signed on August 15, 2016, but contains a date thru August 31, 2016.

The hearing officer seems to suggest he can administer some type of penalty based upon this agreement. The tenant has defined penalties in this Stipulation. If she does not comply with her obligations under the Stipulation, she will be evicted, end of story. The landlord does not.

So, per the Agreement, the 30 days in my view runs from September 1 thru September 30, 2016. I agreed to repair what I am required by law to do, in accordance with the law as identified in IV above. This was not a blanket agreement to remodel the apartment, or repair tenant damages. In essence, I was a month late in turning on tenants' wall furnace that was **turned off by them (tenants)**. Presumably, this was used to again bolster their unlawful detainer defense. Tenants again defied the law in this issue:

CCC Section 1941.2 – They are required to use gas fixtures properly.

It is my position that an award of a 10% reduction in rent for six months because **tenants disabled their heater** is unwarranted, and excessive. The statement that 'contrary to his testimony at the hearing, the owner obviously had notice of this problem before the court appearance in mid-August 2016' is unsupported by facts and is mere speculation. This is why tenants are **required to actually provide written notification** of issues.

A rent reduction prior to August 31, 2016 is further barred by the Doctrine of Collateral Estoppel. A reduction of rent for the month of November 2016 is barred because the furnace operated during that month. A rent reduction during the month of September and October 2016 is excessive because heaters are not required during these months due to mild weather. This would be like allowing a 6 month 10% reduction for an inoperable air conditioning unit during the month of April.

#### VIII ACTION REQUESTED

Tenants' appeal should be **dismissed** based on any number of the stated objections. In the alternative, any reductions in rent based on housing services should not be allowed. None of the alleged decreased housing services include substantial problems with the condition of the unit.

The base rent should be set at \$882.42 per the noticed rent increase.

**MAY 2015 - DECEMBER 2015 RENT DATA FOR OAKLAND BY ZIP CODE & UNIT TYPE**

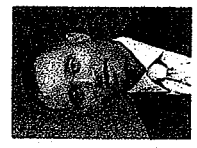
Be informed. Know the market. Have a plan.

Oakland remains one of the hottest real estate markets in the county, and both rents and sales prices have been trending up for some time now.

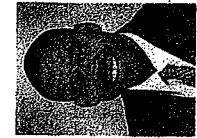
Are you taking advantage of this market? Is now the best time to sell, or exchange into another property? Is this the time to identify and utilize strategic management options to raise rents and lower expenses?

Savvy investors utilize up-to-date market data and partner with professionals who can help them plan all aspects of their investment strategy, including acquisition, management, valuation and disposition.

Call me today and let's discuss how you can realize the potential of your income property!



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**510.474.7421**  
rodger@baypropertygroup.com

Zip Code	1 Bedroom Units		2 Bedroom Units		3 Bedroom Units	
	25th %	75th %	25th %	75th %	25th %	75th %
94601	\$1,150	\$1,295	\$1,500	700	\$2.13	77
94602	\$1,450	\$1,550	\$1,600	617	\$2.40	64
94603	\$1,125	\$1,200	\$1,275	700	\$1.65	28
94605	\$1,100	\$1,200	\$1,448	600	\$2.05	51
94606	\$1,455	\$1,613	\$1,975	650	\$2.33	119
94607	\$1,973	\$2,371	\$2,695	781	\$3.16	99
94608	\$1,450	\$1,550	\$1,950	775	\$2.20	36
94609	\$1,650	\$1,850	\$1,975	600	\$3.16	94
94610	\$1,800	\$1,995	\$2,395	750	\$2.87	136
94611	\$1,700	\$1,850	\$2,173	700	\$2.67	108
94612	\$1,612	\$1,950	\$2,530	750	\$3.26	96
94618	\$1,725	\$1,998	\$2,450	665	\$3.20	51
94619	\$1,275	\$1,500	\$2,220	770	\$2.67	60
94621	\$1,025	\$1,300	\$1,348	650	\$2.00	23

\*More data points assume greater accuracy

Zip Code	Studios		1 Bedroom		2 Bedroom		3 Bedroom	
	25th %	75th %	25th %	75th %	25th %	75th %	25th %	75th %
94601	\$998	\$1,338	483	\$2.27	27			
94602	\$1,000	\$1,500	514	\$2.76	25			
94603	Not enough data points for this zip code and room type							
94605	Not enough data points for this zip code and room type							
94606	\$1,150	\$1,575	500	\$3.03	50			
94607	\$1,150	\$1,550	570	\$3.12	34			
94608	\$1,188	\$1,750	585	\$2.99	24			
94609	\$1,250	\$1,400	450	\$3.14	41			
94610	\$1,450	\$1,895	487	\$3.60	62			
94611	\$1,395	\$1,995	550	\$2.86	38			
94612	\$1,273	\$1,848	548	\$3.24	40			
94618	\$1,338	\$1,748	467	\$3.24	24			
94621	\$845	\$975	425	\$2.30	25			

\*More data points assume greater accuracy

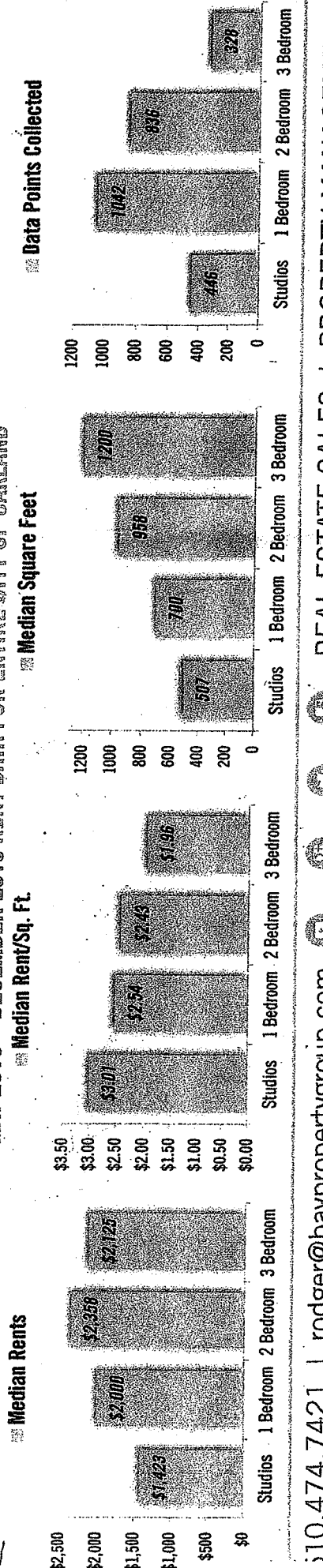
Zip Code	2 Bedroom Units		3 Bedroom Units			
	25th %	75th %	25th %	75th %		
94601	\$1,400	\$1,650	\$2,350	1150	\$1.55	23
94602	\$1,638	\$1,795	\$2,225	1000	\$1.92	24
94603	\$1,370	\$1,400	\$1,700	1250	\$1.55	21
94605	\$1,400	\$1,650	\$1,950	1100	\$1.55	21
94606	\$1,650	\$2,000	\$2,495	1200	\$1.96	22
94607	\$2,725	\$3,417	\$3,250	987	\$2.12	36
94608	\$2,048	\$2,200	\$3,725	1222	\$2.25	23
94609	\$2,300	\$2,688	\$2,950	1200	\$2.27	34
94610	\$2,300	\$2,995	\$3,500	1188	\$3.14	21
94611	\$2,295	\$2,595	\$3,500	1188	\$3.14	21
94612	\$2,500	\$3,281	\$3,538	1100	\$2.18	28
94618	\$2,525	\$2,950	\$3,295	1600	\$2.06	21
94619	\$1,695	\$2,515	\$2,523	1721	\$1.59	24
94621	\$1,400	\$1,450	\$1,348	650	\$2.00	23

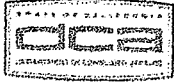
\*More data points assume greater accuracy

Zip Code	2 Bedroom Units		3 Bedroom Units			
	25th %	75th %	25th %	75th %		
94601	\$1,400	\$1,650	\$2,350	1150	\$1.55	23
94602	\$1,638	\$1,795	\$2,225	1000	\$1.92	24
94603	\$1,370	\$1,400	\$1,700	1250	\$1.55	21
94605	\$1,400	\$1,650	\$1,950	1100	\$1.55	21
94606	\$1,650	\$2,000	\$2,495	1200	\$1.96	22
94607	\$2,725	\$3,417	\$3,250	987	\$2.12	36
94608	\$2,048	\$2,200	\$3,725	1222	\$2.25	23
94609	\$2,300	\$2,688	\$2,950	1200	\$2.27	34
94610	\$2,300	\$2,995	\$3,500	1188	\$3.14	21
94611	\$2,295	\$2,595	\$3,500	1188	\$3.14	21
94612	\$2,500	\$3,281	\$3,538	1100	\$2.18	28
94618	\$2,525	\$2,950	\$3,295	1600	\$2.06	21
94619	\$1,695	\$2,515	\$2,523	1721	\$1.59	24
94621	\$1,400	\$1,450	\$1,348	650	\$2.00	23

\*More data points assume greater accuracy

\*Data above and below are for "asking rents". Data provided is believed to be accurate, however, no representation or warranty is made regarding the accuracy or completeness of this information.





# Outline - Landlords' And Tenants' Responsibilities For Habitability And Repairs: Legal Guide LT-8

Printer Friendly Version

May 2012

**General Rule:** When a landlord (property owner) rents an apartment or a house to a tenant (renter), the rented property must be fit to live in. In other words, the rented property must be "habitable." During the time that the property is being rented, the landlord must do maintenance work and make repairs which are necessary to keep it habitable. However, a landlord is not responsible for repairing damage caused by the tenant, or the tenant's guests, children or pets.

## Landlord's Responsibilities

California Civil Code section 1941 states that when a landlord rents property to a tenant as a place to live, the property must be in a "habitable" condition. ("Habitable" means fit to live in; "uninhabitable" means not fit to live in.) Section 1941 also states that the landlord must repair problems that make the property uninhabitable - except for problems caused by the tenant or the tenant's guests, children or pets. In order for the property to be habitable, it must have all of the following:

- a) Effective waterproofing and weather protection of roof and exterior walls, including unbroken windows and doors.
  - b) Plumbing facilities in good working order, including hot and cold running water, connected to a sewage disposal system.
  - c) Gas facilities in good working order.
  - d) Heating facilities in good working order.
  - e) An electrical system, including lighting, wiring and equipment, in good working order.
  - f) Clean and sanitary buildings, grounds and appurtenances (for example, a garden or a detached garage) which are free from debris, filth, rubbish, garbage, rodents and vermin.
  - g) Adequate trash receptacles in good repair.
  - h) Floors, stairways and railings in good repair.
- In addition, the rented property must have all of the following:
- i) A working toilet, wash basin, and bathtub or shower. The toilet and bathtub/shower must be in a room that is ventilated, and that allows for privacy.
  - j) A kitchen with a sink, which cannot be made of an absorbent material (for example, wood).
  - k) Natural lighting in every room through windows or skylights. Unless there is a ventilation fan, the windows must be able to open at least halfway.
  - l) Safe fire or emergency exits leading to a street or hallway. Stairs, hallways and exits must be kept litter free. Storage areas, garages, and basements must be kept free of combustible materials.
  - m) Operable deadbolt locks on the main entry doors of rental units, and operable locking or security devices on windows.
  - n) Working smoke detectors in all units of multi-unit buildings, such as duplexes and apartment complexes. Apartment complexes also must have smoke detectors in common stairwells.

These are minimum requirements. Other conditions may make the rented property not habitable. For example, the rented property may not be habitable if it does not substantially comply with building and housing code standards that materially affect tenants' health and safety.

## Tenant's Responsibilities

A tenant must take reasonable care of the rented property and common areas, such as hallways. This means that the tenant must keep those areas in good condition. A tenant also must repair all damage that he or she causes, or that is caused by the tenants' guests, children or pets. California Civil Code section 1941.2 requires the tenant to do all of the following:

- a) Keep the premises "as clean and sanitary as the condition of the premises permits."
- b) Use and operate gas, electrical and plumbing fixtures properly. (Examples of improper use include overloading electrical outlets, flushing large, foreign objects down the toilet, and allowing any gas, electrical or plumbing fixture to become filthy.)
- c) Dispose of trash and garbage in a clean and sanitary manner.
- d) Not destroy, damage, or deface the premises, or allow anyone else to do so.
- e) Not remove any part of the structure, dwelling unit, facilities, equipment or appurtenances, or allow anyone else to do so.
- f) Use the premises as a place to live, and use the rooms for their proper purposes. For example, the bedroom must be used as a bedroom and not as a kitchen.
- g) Notify the landlord when deadbolt locks and window locks or security devices do not operate properly.

If the tenant does not perform these duties and causes the property to become uninhabitable, the tenant cannot require the landlord to repair the property to make it habitable.

Similarly, the tenant cannot require the landlord to repair the property if the tenant substantially interferes with the landlord's ability to repair defects (for example, by not allowing the landlord's electrician to enter the apartment to fix faulty wiring).

In addition, the landlord is not obligated to repair damage caused by the tenant's own carelessness (for example, a toilet that will not flush because the tenant's child flushed a sock down it).

This Legal Guide is only a summary of landlords' and tenants' rights and responsibilities in this area. For more complete information, including, a discussion of tenants' remedies, please consult *California Tenants - A Guide to Residential Tenants' and Landlords' Rights and Responsibilities*.

**NOTICE:** We strive to make our Legal Guides accurate as of the date of publication, but they are only guidelines and not definitive statements of the law. Questions about the law's application to particular cases should be directed to a specialist.

Prepared by Legal Services Unit, June 1996. Updated May 2012.

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Select Language ▾

## "WEAR AND TEAR" OR "DAMAGES"?

### "Normal wear and tear" caused by ordinary comings and goings

Well-worn keys  
"Sticky" key  
Balky door lock

Depressurized fire extinguisher with unbroken seal  
Worn pattern in plastic countertop  
Rust stain under sink faucet  
Loose, inoperable faucet handle  
Rusty refrigerator shelf  
Discolored ceramic tile  
Loose grout around ceramic tile  
Carpet seam unraveling  
Threadbare carpet in hallway

Scuffing on wooden floor  
Linoleum with the back showing through  
Wobbly toilet  
Rusty shower curtain rod  
Rust stain under bathtub spout  
Tracks on doorjamb where door rubs  
Door off its hinges and stored in garage  
Plant hanger left in ceiling  
Stain on ceiling caused by leaky roof

Cracked paint  
Chipped paint (minor)

Pleasing, professional tenant wallpapering  
Mildew around shower or tub  
Urine odor around toilet  
Discolored light fixture globe  
Odd-wattage lightbulbs which work  
Light fixture installed by tenant which fits its location  
Window cracked by settling or high wind  
Faded shade  
Paint-blistered Venetian blinds  
Sun-damaged drapes  
Drapery rod which won't close properly  
Dirty window screen  
Ants inside after rain storm  
Scrawny landscaping which was sparingly watered due to drought conditions  
Grease stains on parking space

### "Damage" caused by carelessness, abuse, thievery, mysterious disappearance, accident, rules violation, or special request

Missing keys  
Key broken off inside lock  
Door lock replaced by tenant without management's permission  
Depressurized fire extinguisher with broken seal (not used to put out fire)  
Burn in plastic countertop  
Sink discolored by clothing dye  
Missing faucet handle  
Missing refrigerator shelf  
Painted ceramic tile  
Chipped or cracked ceramic tile  
Carpet burn  
Rust marks on carpet from indoor plant container  
Gouge in wooden floor  
Tear in linoleum  
Broken toilet tank lid  
Kinked shower curtain rod  
Chip in bathtub enamel  
Hole in hollow-core door  
Missing door  
Two-inch-diameter hole in ceiling  
Stain on ceiling caused by popping champagne or beer bottles  
Crayon marks on wall  
Walls painted by tenant in dark color necessitating repainting  
Amateurish tenant wallpapering  
Mildew where tenant kept aquarium  
Urine odor in carpet  
Missing light fixture globe  
Burned out or missing lightbulbs  
Light fixture installed by tenant which must be replaced  
Window cracked by movers  
Torn shade  
Venetian blinds with bent slats  
Pet-damaged drapes  
Drapery rod with missing parts  
Missing, bent, or torn window screen  
Fleas left behind by tenant's pet  
Neglected landscaping which must be replaced with similar plantings  
Caked grease on parking space



2569 CASTRO VALLEY BLVD.  
CASTRO VALLEY, CA 94546  
(510) 581-7633

**SPECIAL ORDER FORM**

DATE 11/5/16  
HOME PHONE (510) 581-7662

CUSTOMER #375 MICHAEL HOREJSI

CELL PHONE  
WORK PHONE

ADDRESS	SKU#	QTY	DESCRIPTION	PRICE
	270A	4	18 1/8 x 48 1/4	30.45
	270A	4	18 1/4 x 48 1/4	30.45
	270A	1	18 1/8 x 48 1/4	30.45
			RE-SCREEN	
			FIELD ALUMINUM FLIGHT	

RESPERSON YASMINA

PRICE 207.25

NOTES SOF #1051981201  
SPECIAL ORDERS LEFT AFTER 30 DAYS WILL BE RETURNED TO THE MANUFACTURER.  
CUSTOM SIZE SCREENS ARE NON REFUNDABLE.  
SIGNATURE

TAX  
TOTAL  
LESS DEPOSIT  
BALANCE DUE

*[Handwritten signature]*

Michael Horejsi  
MICHAEL E. HOREJSI  
#375 1339#

*3764 Reports*

THANK YOU FOR SHOPPING AT  
PETE'S HARDWARE CO  
(510) 581-7633

www.peteshardware.com

INSTORE CREDIT ISSUED ON RETURNS WITHOUT RECEIPT. CHECKS REQUIRE 10 DAYS TO VERIFY  
11/04/16 11:41AM JOSE 551 SALE

- 53609 1 EA 4.29 EA
- ← WINDOW CRANK HNDL ALUM 5/16" 4.29
- 3530813 1 EA 3.49 EA
- ← PUSH SWITCH ON/OFF NCKL6A 3.49
- 5065529 1 EA 15.99 EA
- ← CASEMENT OPERATOR ALUM 1762RA 15.99
- 50523 1 EA 4.29 EA
- 605 SCREEN PATCH ALUM 4.29
- 57276 1 EA 3.59 EA
- SHOWER DOOR ROLLER 7/8 #1901 3.59
- 55038 4 EA 2.49 EA
- ← CABINET KNOB-BRASS BP3413-3 9.96

SUB-TOTAL: \$ 41.61 TAX: \$ 3.95  
DISCOUNT: TOTAL: \$ 45.56  
CHARGE AMT: 45.56

654



JRNL#F21615 INV#633367  
000078

Our reputation is no secret. Our Glazecote formula is!



4316 Chamberlin Court / Oakland, CA 94619  
 (510) 482-3788  
 CA Lic. # 612463



**AGREEMENT**

Mike Harris  
 Job Site Name  
3764 39th Ave  
 Street Address  
Oakland CA  
 City State Zip  
 Home Phone Work Phone

Bill To \_\_\_\_\_  
 Street Address \_\_\_\_\_  
 City State Zip \_\_\_\_\_  
482-7662 425 8046 R  
 Home Phone Work Phone

COLOR: B White

Date Work Completed: 4/9/02

Special Notes \_\_\_\_\_

**5 YEAR LIMITED WARRANTY**  
 The independent company above warrants its refinishing on bathtubs, ceramic tile and sinks for a period of (5) five years from the date of completion on residential jobs and (1) one year on commercial jobs and other refinished items. Chip repairs and other repair work is warranted for one hundred twenty (120) days. This warranty is limited by problems from man-made damage, abuse, rust, leaky faucets and/or other plumbing problems, and noncompliance with the Care & Maintenance instructions printed on the back of the Agreement. This warranty is only for the repair of the problem area. The caulking must be maintained around the reglazed surface and is not covered by the warranty. A service fee may be charged for non-warranty repairs. Franchiser's liability is limited to the cost of the refinishing material only. At option of contractor or franchiser, any reimbursement will be prorated over the warranty term. Neither franchiser nor it's franchisees shall be liable for incidental, special, direct or consequential damages. All franchises are independently owned and operated.

Description/Item	Amount
Bathtub	\$ <u>475</u>
Tile	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
<b>Total</b>	\$ <u>475</u>
<b>Sales Tax</b>	\$ _____
<b>Deposit</b>	\$ _____
<b>Total Due</b>	\$ <u>475</u>

*pd (kr 553)*

**TERMS AND CONDITIONS**

- All work is due and payable when completed unless prior arrangements in writing have been specifically made. A "Repeat Billing Charge" will be added to all accounts over 30 days old. We also reserve the right to charge interest at 1.5% per month (18% per annum) on balances 30 days or older. In the event any amount due hereunder is not paid as agreed, the undersigned jointly and severally agree to pay all costs incurred in securing payment of said unpaid balance, including a reasonable attorney's fee.
- The resurfaced items shall not have a non-skid surface unless customer specifically requests and pays for a non-skid surface.

I have resurfaced the above items using the approved safety procedures and followed the Bathcrest reglazing methods and procedures.

[Signature] 4/9/02  
 Technician's Signature Date

I certify that the installations listed on this agreement have all been completed satisfactorily.

[Signature] \_\_\_\_\_  
 Customer's Signature Date

**CUSTOMER ACKNOWLEDGEMENT**

Both parties hereby acknowledge the receipt of this contract and the prescribed care and maintenance (printed on back). No oral agreements are accepted.

[Signature] \_\_\_\_\_  
 Customer's Signature Date

David Th 4/9/02  
 Company Representative's Signature Date

# EASY MAINTENANCE

## Cleaning Tips

### HOW CAN I KEEP MY BATHTUB LOOKING NEW?

The fixture may be used after the following date:

4/11/02

The investment you have made in your bathroom can be a lasting improvement to your home and give you many years of comfort. Please take the time to read this care and maintenance sheet. It will help you to properly maintain your bathtub.

#### IMPORTANT REMINDERS

Only use nonabrasive cleansers such as Bathcrest Bathroom Cleaner (a cleaner that is safe on your tub and the environment) or a spray mist cleaner that you like. Do not use abrasive cleaners. The particles in abrasive cleaners will scratch the finish and wear away the shine.

Avoid trapping water against the surface for a long period of time. Do not leave bathmats, washcloths, soap bars and/or bottles on the refinished surface. The moisture gets trapped underneath and damages the finish. Do not hang bathmats, rugs or wet towels over the edge of the bathtub.

Fix your leaky faucets. Dripping water will wear through the hardest of surfaces. Make sure that your plumbing problems are fixed immediately.

Avoid chips and scratches by keeping heavy, sharp, metal and other damaging items away from your bathroom fixtures. If a chip does occur, please contact us for repairs.

#### BATHMATS

You may use a non-suction type bathmat. The suction type mat will harm your new finish. Your local authorized Bathcrest franchise has approved bathmats available. Do not leave any bathmat on the tub from day to day. If you use bathmat, take it out of the tub when finished bathing or showering.

#### STUBBORN STAINS

For stubborn stains or scum buildup, use a Purex Dobie pad or a nylon net scrubber with the Bathcrest Bathroom Cleaner. Let the Bathcrest cleaner stand on the surface for 1-2 minutes. You may also use a more concentrated strength of the Bathcrest cleaner for stubborn stains. Do not use Scotch-Brite pads or other heavy abrasion type pads--they will only harm the finish.

#### DRAIN PAINS

The good old fashioned remedies work. First, clean out the hair and gunk under the strainer. Pour one cup of baking soda down the drain. Follow with one cup of white vinegar and one-half gallon of boiling water. Repeat if necessary. The baking soda will also help eliminate drain odors.

#### MINERAL DEPOSITS

Bathcrest Bathroom Cleaner is a great cleaner for unsightly mineral deposits on your fixtures and plumbing faucets. If more cleaning treatment becomes necessary, then try a more concentrated strength of the Bathcrest cleaner. Once a week, clean the faucets with the cleaner to maintain the shine. The Bathcrest cleaner also works well on windows, shower doors, bathtubs, sinks and tiles.

Thank you for your confidence in Bathcrest refinishing. If we can be of more service, please let us know.



*If your bathtub isn't becoming to you,  
you should be coming to us.*

000080

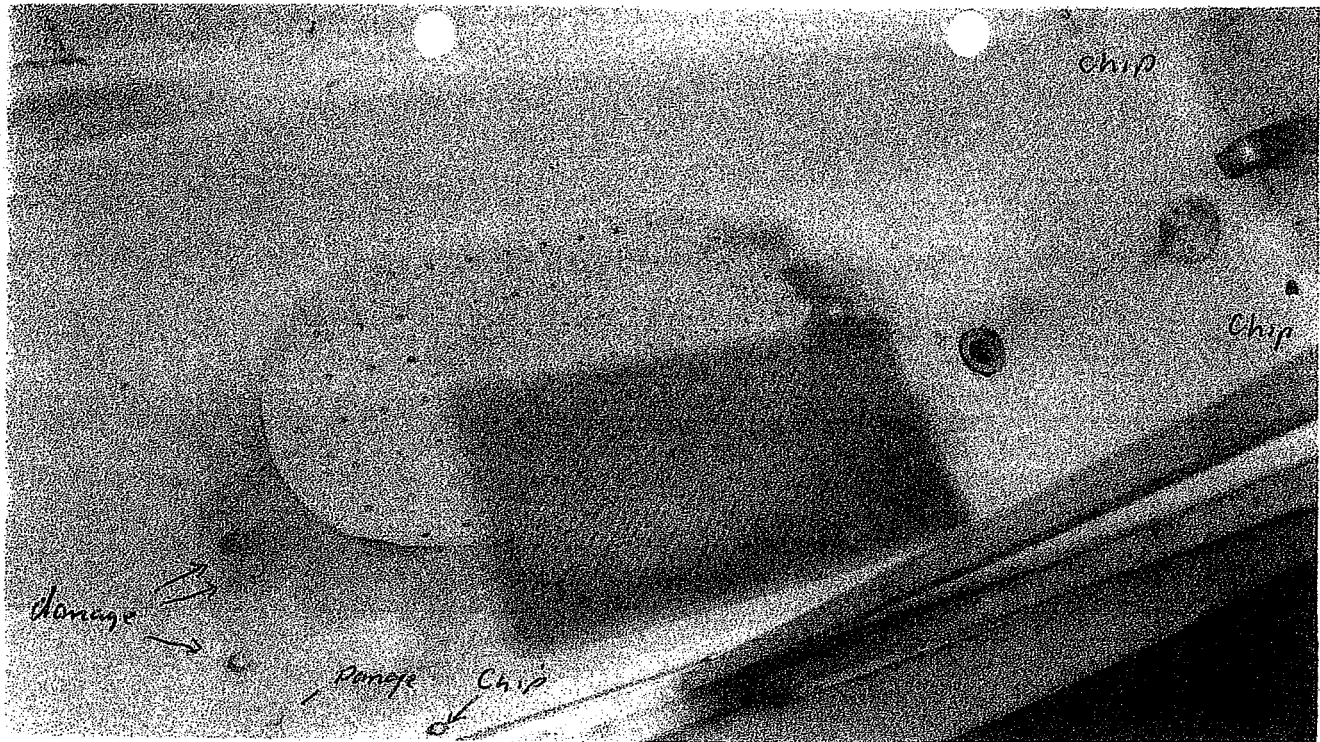


March 2013

CHINA

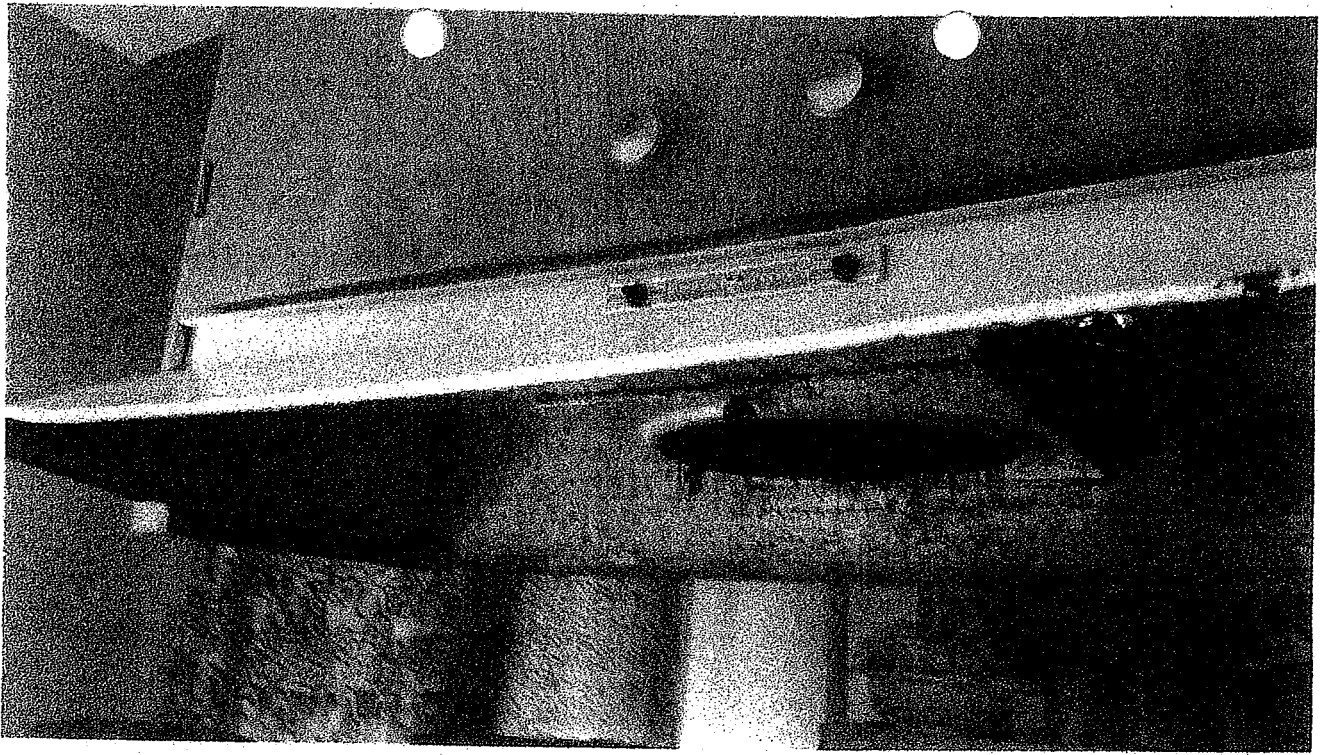
CHINA

← 7/15  
RIPPER in



2 Nov 2016

1. no rust noted.
2. Some mineral deposits noted.  
Bottom of tub not worn through  
Surface finish, Body oil and soap  
Scum noted.



2 NOV 2016

Range hood, fire danger  
filthy



2 NOV 2016

Bedroom



2 NOV 2016

Bedroom

**EXAMPLES (Not all inclusive) of  
TENANT DAMAGE versus "NORMAL WEAR AND TEAR"**

Normal costs of turning over an apartment after a tenant vacates may not be included on a claim to HUD for tenant damages. The costs an owner incurs for the basic cleaning and repairing of such items necessary to make a unit ready for occupancy by the next tenant are part of the costs of doing business. The following is a list of items typically attributable to routine use or "normal wear and tear".

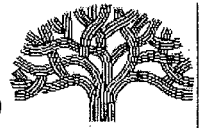
**Normal Wear and Tear:**

- ñ Fading, peeling, or cracked paint
- ñ Slightly torn or faded wallpaper
- ñ Small chips in plaster
- ñ Nail holes, pin holes, or cracks in wall
- ñ Door sticking from humidity
- ñ Cracked window pane from faulty foundation or building settling
- ñ Floors needing coat of varnish
- ñ Carpet faded or worn thin from walking
- ñ Loose grouting and bathroom tiles
- ñ Worn or scratched enamel in old bathtubs, sinks, or toilets
- ñ Rusty shower rod
- ñ Partially clogged sinks caused by aging pipes
- ñ Dirty or faded lamp or window shades

Tenant damages usually require more extensive repair, and at greater cost than "normal wear and tear", and are often the result of a tenant's abuse or negligence that is above and beyond normal wear and tear.

**Tenant Damage**

- ñ Gaping holes in walls or plaster
- ñ Drawings, crayon markings, or wallpaper that owner did not approve
- ñ Seriously damaged or ruined wallpaper
- ñ Chipped or gouged wood floors
- ñ Doors ripped off hinges
- ñ Broken windows
- ñ Missing fixtures
- ñ Holes in ceiling from removed fixtures
- ñ Holes, stains, or burns in carpet
- ñ Missing or cracked bathroom tiles
- ñ Chipped and broken enamel in bathtubs and sinks
- ñ Clogged or damaged toilet from improper use
- ñ Missing or bent shower rods
- ñ Torn, stained, or missing lamp and window shades



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

Department of Housing and Community Development  
Rent Adjustment Program

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

## **REMAND DECISION**

**CASE NUMBERS:** T16-0549 & T17-0523, *Beasley v. Horejsi*

**PROPERTY ADDRESS:** 3762 - 39<sup>th</sup> Ave., #D, Oakland, CA

**APPEARANCES:** Linda Beasley (Tenant)  
Satchidananda Mims (Tenant)  
Michael Horejsi (Owner)

**DATES OF HEARINGS:** January 27, 2017 (T16-0549) & February 26, 2018  
(T17-0523)

**DATES OF DECISIONS:** March 15, 2017 (T16-0549) & March 29, 2018  
(T17-0523)

**DATE OF REMAND  
DECISION:** January 18, 2019

## **PROCEDURAL HISTORY**

Hearing Decisions: On October 4, 2016, the tenant filed a petition in Case No. T16-0549. The Hearing Decision in that case denied the tenants' challenges to rent increases and partly granted the tenants' claims of decreased housing services. It was found that the tenants' housing services were decreased due to problems with the heat, bathtub, and screens.

On October 12, 2017, the tenant filed a petition in Case No. T17-0523. The Hearing Decision in that case partly granted the tenants' challenges to rent increases and denied the tenants' claims of decreased housing services.

Prior Litigation: Before the subject Hearings, the parties were involved in litigation in the Alameda County Superior Court, being Case No. RG16-821622, Horejsi v. Beasley, et al. The parties in that case entered into a Stipulation Re: Dismissal / Judgment, a copy of which was admitted into evidence in Case No. T16-0549 as Exhibit No. 1. This

Stipulation, dated August 15, 2016, states, in part: "Within 30 days, plaintiff [Horesji] shall inspect and repair as necessary the following defects – bathtub; bathroom mold & mildew; hood above stove; defective stove; heater; hole in closet; window screens." The Stipulation further states: "The court . . . accepts the parties' request to retain jurisdiction pursuant to CCP Section 664.6." This Code Section states: "If the parties to pending litigation stipulate . . . for settlement of the case, or part thereof, the court . . . may retain jurisdiction over the parties to enforce the settlement . . ."

Appeals: Both the tenants and the owner filed Appeals, and on October 11, 2018 the Board remanded the case to determine the following:

- Does RAP have jurisdiction regarding the petitions or has the Superior Court assumed jurisdiction based on the court stipulation?
- If there is overlapping jurisdiction, what is the impact of the Superior Court dismissal?
- Is the court stipulation between the parties a waiver of RAP jurisdiction?

### **SUMMARY OF DECISION**

The Rent Adjustment Program has jurisdiction over all issues in the subject cases that were included in petitions that were filed after the date of the Stipulation. The Hearing Decision in Case No. T17-0523 remains unchanged. The Hearing Decision in Case No. T16-0549 is changed only with regard to the time periods during which the tenants' housing services were decreased, and the amount of restitution is changed accordingly.

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

Both of the Hearings in question took place after the Stipulation was signed. It is a basic legal principle that one cannot waive claims that may arise in the future. Since the tenants' claims of decreased housing services in Case No. T17-0523 were denied, the Stipulation has no effect upon this case.

However, with regard to Case No. T16-0549, the findings of decreased housing services should properly begin on August 16, 2016, the day after the Stipulation was signed. The remainder of the Hearing Decision in that case is unchanged. The Hearing Decision in that case set the amount of restitution due to decreased housing services at \$678.96. As set forth on Table below, due to decreased housing services, the tenants overpaid rent in the amount of \$563.04.

This amount is \$115.92 less than the amount stated in the Hearing Decision. Therefore, if the tenants have already deducted the original restitution amount of \$678.96 from their rent, the owner is owed \$115.92. This amount is to be repaid over a period of 3 months<sup>1</sup> by a rent increase of \$38.64 per month, beginning with the rent payment in February 2019 and ending with the rent payment in April 2019. If the tenants did not deduct any amount from their rent at any time following the Hearing Decision in Case No. T16-

<sup>1</sup> Regulations, Section 8.22.110(F)



0549, they may deduct \$563.04 from the rent in 6 installments of \$93.84 per month, beginning with the rent payment in February 2019 and ending with the rent payment in July 2019.

**VALUE OF LOST SERVICES**

Service Lost	From	To	Rent	% Rent Decrease	Decrease /month	No. Months	Overpaid
Heat	16-Aug-16	30-Nov-16	\$828	10%	\$82.80	4	\$331.20
Bathtub	16-Aug-16	8-Mar-17	\$828	3%	\$24.84	8	\$198.72
Screens	16-Aug-16	30-Nov-16	\$828	1%	\$8.28	4	\$ 33.12
<b>TOTAL LOST SERVICES</b>							<b>\$563.04</b>

**RESTITUTION**

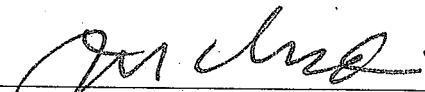
**TOTAL TO BE REPAYED TO TENANT**

**\$563.04**

**ORDER**

1. The Hearing Decision in Case No. T17-0523 is unchanged.
2. If the tenants have already deducted the original restitution amount of \$678.96 from their rent, the owner is owed \$115.92. This amount is to be repaid over a period of 3 months by a rent increase of \$38.64 per month, beginning with the rent payment in February 2019 and ending with the rent payment in April 2019.
3. If the tenants did not deduct any amount from their rent at any time following the Hearing Decision in Case No. T16-0549, they may deduct \$563.04 from the rent in 6 installments of \$93.84 per month, beginning with the rent payment in February 2019 and ending with the rent payment in July 2019.
4. **Right to Appeal:** **This decision is the final decision of the Rent Adjustment Program Staff.** Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within twenty (20) days after service of this decision. The date of service is shown on the attached Proof of Service. If the last day to file is a weekend or holiday, the appeal may be filed on the next business day.

Dated: January 19, 2019

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

**PROOF OF SERVICE**

**Case Number T16-0549 & T17-0523**

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

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

**Documents Included**

Remand Decision

**Owner**

Michael Horejsi  
P.O. Box 2883  
Castro Valley, CA 94546

**Owner Representative**

Steven Schectman  
111 Myrtle St Ste 201  
Oakland, CA 94607

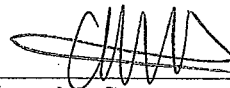
**Tenant**

Akenduca Beasley  
aka Linda J. Beasley  
3764 39th Ave #D  
Oakland, CA 94619

Akenduca Beasley  
aka Linda J. Beasley  
P.O. Box 19304  
Oakland, CA 94619

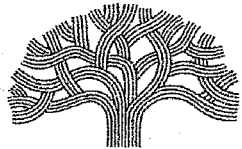
I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **January 23, 2019** in Oakland, CA.



Claudette M. Campos  
Oakland Rent Adjustment Program

**000090**

 CITY OF OAKLAND	<b>CITY OF OAKLAND</b> <b>RENT ADJUSTMENT PROGRAM</b> 250 Frank Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721	For date stamp 2019 FEB -4 PM 3:20
	<b><u>APPEAL</u></b>	

<b>Appellant's Name</b> Akenduca D. Beasley aka Linda J Beasley		<input type="checkbox"/> Owner <input checked="" type="checkbox"/> Tenant	
<b>Property Address (Include Unit Number)</b> 3764 39th Ave. Apt D. Oakland, CA 94619			
<b>Appellant's Mailing Address (For receipt of notices)</b> PO Box 19304 Oakland, CA 94619		<b>Case Number</b> T16-0549 & T17-0523	
		<b>Date of Decision appealed</b> January 19, 2019	
<b>Name of Representative (if any)</b> Akenduca D. Beasley: representing tenants in Apt D at property address listed above.		<b>Representative's Mailing Address (For notices)</b>	

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

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

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

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


For more information phone (510) 238-3721.

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

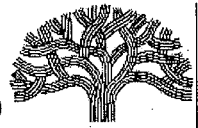
Submissions to the Board must *not* exceed 25 pages from each party, and they must be received by the Rent Adjustment Program with a proof of service on opposing party within 15 days of filing the appeal. Only the first 25 pages of submissions from each party will be considered by the Board, subject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

• You must serve a copy of your appeal on the opposing parties or your appeal may be dismissed. •  
 I declare under penalty of perjury under the laws of the State of California that on February 04, 2019, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<b>Name</b>	Michael E. Horejsi
<b>Address</b>	PO BOX 2883
<b>City, State Zip</b>	CASTRO VALLEY CA 94546
<b>Name</b>	
<b>Address</b>	
<b>City, State Zip</b>	

	February 04, 2019
<b>SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE</b>	<b>DATE</b>

For more information phone (510) 238-3721.



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

Department of Housing and Community Development  
Rent Adjustment Program

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

## **REMAND DECISION**

**CASE NUMBERS:** T16-0549 & T17-0523, *Beasley v. Horejsi*

**PROPERTY ADDRESS:** 3762 - 39<sup>th</sup> Ave., #D, Oakland, CA

**APPEARANCES:** Linda Beasley (Tenant)  
Satchidananda Mims (Tenant)  
Michael Horejsi (Owner)

**DATES OF HEARINGS:** January 27, 2017 (T16-0549) & February 26, 2018  
(T17-0523)

**DATES OF DECISIONS:** March 15, 2017 (T16-0549) & March 29, 2018  
(T17-0523)

**DATE OF REMAND  
DECISION:** January 18, 2019

## **PROCEDURAL HISTORY**

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Appeals: Both the tenants and the owner filed Appeals, and on October 11, 2018 the Board remanded the case to determine the following:

- Does RAP have jurisdiction regarding the petitions or has the Superior Court assumed jurisdiction based on the court stipulation?
- If there is overlapping jurisdiction, what is the impact of the Superior Court dismissal?
- Is the court stipulation between the parties a waiver of RAP jurisdiction?

### SUMMARY OF DECISION

The Rent Adjustment Program has jurisdiction over all issues in the subject cases that were included in petitions that were filed after the date of the Stipulation. The Hearing Decision in Case No. T17-0523 remains unchanged. The Hearing Decision in Case No. T16-0549 is changed only with regard to the time periods during which the tenants’ housing services were decreased, and the amount of restitution is changed accordingly.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

Both of the Hearings in question took place after the Stipulation was signed. It is a basic legal principle that one cannot waive claims that may arise in the future. Since the tenants’ claims of decreased housing services in Case No. T17-0523 were denied, the Stipulation has no effect upon this case.

However, with regard to Case No. T16-0549, the findings of decreased housing services should properly begin on August 16, 2016, the day after the Stipulation was signed. The remainder of the Hearing Decision in that case is unchanged. The Hearing Decision in that case set the amount of restitution due to decreased housing services at \$678.96. As set forth on Table below, due to decreased housing services, the tenants overpaid rent in the amount of \$563.04.

This amount is \$115.92 less than the amount stated in the Hearing Decision. Therefore, if the tenants have already deducted the original restitution amount of \$678.96 from their rent, the owner is owed \$115.92. This amount is to be repaid over a period of 3 months<sup>1</sup> by a rent increase of \$38.64 per month, beginning with the rent payment in February 2019 and ending with the rent payment in April 2019. If the tenants did not deduct any amount from their rent at any time following the Hearing Decision in Case No. T16-

<sup>1</sup> Regulations, Section 8.22.110(F)

0549, they may deduct \$563.04 from the rent in 6 installments of \$93.84 per month, beginning with the rent payment in February 2019 and ending with the rent payment in July 2019.

**VALUE OF LOST SERVICES**

Service Lost	From	To	Rent	% Rent Decrease	Decrease /month	No. Months	Overpaid
Heat	16-Aug-16	30-Nov-16	\$828	10%	\$82.80	4	\$331.20
Bathtub	16-Aug-16	8-Mar-17	\$828	3%	\$24.84	8	\$198.72
Screens	16-Aug-16	30-Nov-16	\$828	1%	\$8.28	4	\$ 33.12
<b>TOTAL LOST SERVICES</b>							<b>\$563.04</b>

**RESTITUTION**

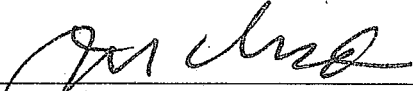
**TOTAL TO BE REPAYED TO TENANT**

**\$563.04**

**ORDER**

1. The Hearing Decision in Case No. T17-0523 is unchanged.
2. If the tenants have already deducted the original restitution amount of \$678.96 from their rent, the owner is owed \$115.92. This amount is to be repaid over a period of 3 months by a rent increase of \$38.64 per month, beginning with the rent payment in February 2019 and ending with the rent payment in April 2019.
3. If the tenants did not deduct any amount from their rent at any time following the Hearing Decision in Case No. T16-0549, they may deduct \$563.04 from the rent in 6 installments of \$93.84 per month, beginning with the rent payment in February 2019 and ending with the rent payment in July 2019.
4. Right to Appeal: **This decision is the final decision of the Rent Adjustment Program Staff.** Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within twenty (20) days after service of this decision. The date of service is shown on the attached Proof of Service. If the last day to file is a weekend or holiday, the appeal may be filed on the next business day.

Dated: January 19, 2019

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

**PROOF OF SERVICE**  
**Case Number T16-0549 & T17-0523**

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

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

**Documents Included**

Remand Decision

**Owner**

Michael Horejsi  
P.O. Box 2883  
Castro Valley, CA 94546

**Owner Representative**

Steven Schectman  
111 Myrtle St Ste 201  
Oakland, CA 94607

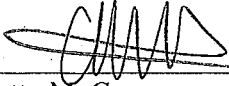
**Tenant**

Akenduca Beasley  
aka Linda J. Beasley  
3764 39th Ave #D  
Oakland, CA 94619

Akenduca Beasley  
aka Linda J. Beasley  
P.O. Box 19304  
Oakland, CA 94619

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **January 23, 2019** in Oakland, CA.

  
\_\_\_\_\_  
Claudette M. Campos  
Oakland Rent Adjustment Program

**000096**



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RENT ADJUSTMENT PROGRAM

2019 FEB 10 10:00 AM

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THE CITY OF OAKLAND RENT ADJUSTMENT PROGRAM: APPEAL

No. T16-0549 & T17-0523

*Akenduca D. Beasley,*  
*Tenant and Appellant,*

vs.

Michael Horejsi  
*Respondent and Landlord;*

CITY OF OAKLAND RENT ADJUSTMENT PROGRAM, et al.

Real Parties in Interest.

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**Tenant's Appeal To Rent Increase**

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Akenduca D. Beasley  
Satchidananda Mims  
P.O. Box 19304  
Oakland, California 94619  
Telephone: (510) 530-6345

Respondent – Tenant Akenduca Beasley,  
Representing Tenants at 3764 39<sup>th</sup> Ave Apt. D,  
Oakland, 94619

000097

## **Grounds For Tenants Appeal**

1. The decision raises a new policy issue that has not been decided by the Board.
2. The decision violates federal, state or local law.
3. The decision is not supported by substantial evidence.
4. I was denied a sufficient opportunity to present my claim or respond to petitioner's claim.
5. Other...

## **INTRODUCTION AND STATEMENT OF THE CASE**

Appellant appeals from the Order of the Hearing Officer Stephen Kasdin, Arbitrator Presiding, of the Oakland Rent Adjustment Program, case numbers T16-0549 & T17-0523 in which the Housing Residential Rent and Relocation Board remand the case to him to determine the following: "Does RAP have jurisdiction regarding this petition or has the Superior Court assumed jurisdiction based on the court stipulation? If there is overlapping jurisdiction, what is the impact of the Superior Court dismissal? Is the court stipulation between the parties a waiver of RAP jurisdiction?" In his summary Kasdin concluded the following: "The Rent Adjustment Program has jurisdiction over all issues in the subject case that included in petitions that were filed after the date of the Stipulation. The Hearing Decision for Case No. T17-0523 remains unchanged. The Hearing Decision in Case No. T16-0549 is changed only with regard to the time periods during which the tenants housing services decreased, and the amount of restitution is changed accordingly."

## **ISSUES PRESENTED IN THIS APPEAL**

This case presents several issues on appeal:

- (1) Does the Rent Adjustment Program have authority to act after the Superior Court issued Stipulation Order/ Judgment that assumed subject matter jurisdiction over issues presented in petitions?
- (2) Does the Rent Adjustment Program have authority to overrule or ignore portions of the Superior Court Stipulation Order/ Judgment?
- (3) Does the Rent Adjustment Program have the power to interfere or increase rent while rent is being controlled by an unlawful detainer action under jurisdiction of the Superior Court?
- (4) Does the Rent Adjustment Program have authority to issue orders allowing increases in rent, based on banked rent that has been ordered waived by the superior court stipulation?

Appellant contends that the answers to these questions are “no” under applicable California law, and that as a result, the Oakland Rent Adjustment Program granting Land Lord rent increases, which was predicated on the answers to all questions being “yes,” was erroneous and should be reversed.

### **STATEMENT OF RELEVANT FACTS**

A “CLAIM is the assertion of a right to money or property; the aggregate of operative facts giving rise to a right enforceable in the courts, *Thompson v. Zurich Insurance Company* 309 F. Supp. 1178 (1970). Therefore any assertion from the landlord right to raise or collect rent is a form of a claim.

Tenant Akenduca Beasley filed a petition, case number T16-0549 on or about October 4, 2016, which alleges that the proposed rent increase from \$828 to \$882.42, effective

October 1, 2016, and a rent increase in the year 2000, exceed the CPI Adjustment and are

unjustified or is greater than 10%; that the owner did not give summary of the justification for the proposed rent increase despite her written request; that she did not receive the form Notice to Tenants (RAP Notice) at least 6 months before the effective date of the contested rent increase or together with the contested rent increase; that the contested rent increase is the second rent increase in a 12-month period; that her rent has not been reduced after the expiration period of the rent increase based on capital improvements; that at present there exists a health, safety, fire or building code violation in her unit; and that her housing services have been decreased due to problems with the heater; the bathtub; mold and mildew; the stove; the closet; window screens; and electrical problems; and that parking was a part of her original rental agreement.

The owner filed a response to the petition, which alleges that the tenant was given the RAP Notice on July 24, 2002 and together with both contested rent increases; that the current rent increase is justified by Banking; and denies that the tenant's housing services have decreased.

As stated in her original petition. Tenant Akenduca Beasley was handed a notice of rent increase from landlord Mr. Horejsi on or about July 27, 2017 stating the rent would increase from \$882.42 to (\$943.42 + 25 parking) = \$968.42. The notice indicates that rental is due to banking/ rental history.

On or about August 15, 2016, (Plaintiff/ Owner) Horejsi and (Defendant(s)/ Tenant(s)) Beasley and Mims entered into an agreement regarding any and all rents, fees, parking fees, late fees, etc.... and costs, and stipulated under Cal. Civ. Proc. § 664 the Superior court would retain jurisdiction from August 8, 2016 through September 10, 2018. Simultaneously the court made

the stipulation a court order / judgment and required parties to do their part in fulfilling the agreement. As a result of the agreement the landlord waived his rights to claim past banked rent to increases from 1982 through 8/31/16. In addition the City of Oakland Rent Adjustment Program is limited and preempted from raising the rent, because increases are in conflict with *Cal. Civ Proc. §§ 664; 1174.2; and Cal. Civ. Code § 1942.4.; and California Health and Safety Code § 17920.3.*

During the hearing conducted for case number T17-0523, on February 26, 2018. Both the landlord and tenants submitted evidence to be reviewed by hearing Officer Stephen Kasdin. The main issue of discussion of the hearing was the stove and the fire which occurred on January 02, 2018. Tenants testified that the oven was worked on or serviced by the landlord. The landlord is the only person who has worked on the oven since its installation many years ago. The landlord testimony through his own admission consisted of majority speculation and hearsay, however the officer found his testimony credible.

**POINTS AND AUTHORITES**  
**ARGUMENT IN SUPPORT OF TENANTS PETITION FOR APPEAL**  
**LEGAL AUTHORITY**

*California Code of Civil Procedure Section 664.6.* States in pertinent part:

“If parties to pending litigation stipulate, in a writing signed by the parties outside the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.”

**California Code of Civil Procedure Section 1174.2** states in pertinent part:

“a) In an unlawful detainer proceeding involving residential premises after default in payment of rent and in which the tenant has raised as an affirmative defense a breach of the landlord's obligations under Section 1941 of the Civil Code or of any warranty of habitability, the court shall determine whether a substantial breach of these obligations has occurred. If the court finds that a substantial breach has occurred, the court (1) shall determine the reasonable rental value of the premises in its untenable state to the date of trial, (2) shall deny possession to the landlord and adjudge the tenant to be the prevailing party, conditioned upon the payment by the tenant of the rent that has accrued to the date of the trial as adjusted pursuant to this subdivision within a reasonable period of time not exceeding five days, from the date of the court's judgment or, if service of the court's judgment is made by mail, the payment shall be made within the time set forth in Section 1013, (3) may order the landlord to make repairs and correct the conditions which constitute a breach of the landlord's obligations, (4) shall order that the monthly rent be limited to the reasonable rental value of the premises as determined pursuant to this subdivision until repairs are completed, and (5) except as otherwise provided in subdivision (b), shall award the tenant costs and attorneys fees if provided by, and pursuant to, any statute or the contract of the parties. If the court orders repairs or corrections, or both, pursuant to paragraph (3), the court's jurisdiction continues over the matter for the purpose of ensuring compliance. The court shall, however, award possession of the premises to the landlord if the tenant fails to pay all rent accrued to the date of trial, as determined due in the judgment, within the period prescribed by the court pursuant to this subdivision. The tenant shall, however, retain any rights conferred by Section 1174.”

**THE RENT ADJUSTMENT PROGRAM IS REQUIRED BY LAW TO STOP  
UNLAWFUL RENT INCREASE(S)**

It is clear from analyzing the code of civil procedure that the legislature intended for the Superior Court of California to govern certain aspects of rent. Particularly when a stipulated agreement is involved, resulting from an unlawful detainer case and both parties request for the court to retain jurisdiction over the subject matter. See *Cal. Civ Proc. §§ 664.6; 1174.2*.

The Rent Adjustment Program officer found that the order of the court stipulation Re: Dismissal / Judgment concerns only rent arrearages, and has no effect upon the present case, which involves a proposed rent increase and the tenant's claims of decreased housing services. The officer failed to justify how the Rent Adjustment Program order regarding claims based on the court order stipulation has no bearing in this rent case. The court set the amount of rent to

(\$828 rent) + (\$25 parking) = \$853 and added (\$100 arrearage payment) = \$953 to be paid from September 2016 to June 2018, and retained subject matter jurisdiction from August 15, 2016 through September 10, 2018. The court also ordered, "Within 30 days, Plaintiff shall inspect and repair as necessary the following defects: Bathtub, Bathroom mold and mildew, et cetera." *Cal. Civ Proc. § 1174.2*. states in relevant part: "(3) may order the landlord to make repairs and correct the conditions which constitute a breach of the landlord's obligations, (4) shall order that the monthly rent be limited to the reasonable rental value of the premises as determined pursuant to this subdivision until repairs are completed... If the court orders repairs or corrections, or both, pursuant to paragraph (3), the court's jurisdiction continues over the matter for the purpose of ensuring compliance." Therefore all aspects of the stipulation / court order was in jurisdiction of the California Superior Court and court has the right to identify substandard portions of a dwelling, and set the rent until all repairs are done to the satisfaction of the court. Furthermore when the court made the stipulation an order, the landlord was required by law to follow the agreement, by repairing agreed defects. The Hearing Officer was wrong when he evaluated each point from the stipulation and indicated in much of its analysis of each agreed upon repair, except for the bath tub, either there is not enough evidence to substantiate a claim or within the respect to mold or mildew that nothing could be done about it. See file for *T16-0549, Beasley v. Horejsi (2017)*. When parties agreed to the stipulation and the court made it an order, the court essentially acknowledge that repairs were required and the needed repairs, made the housing substandard and order them fixed within 30 days.

In addition the law indicates that a landlord may not issue a notice of a rent increase or require a tenant pay rent when certain substandard housing defects exists. See the following laws.

*Cal. Civ. Code § 1942.4.* States in pertinent part:

“(a) A landlord of a dwelling may not demand rent, collect rent, issue a notice of a rent increase, or issue a three-day notice to pay rent or quit pursuant to subdivision (2) of Section 1161 of the Code of Civil Procedure, if all of the following conditions exist prior to the landlord’s demand or notice:

(1) The dwelling substantially lacks any of the affirmative standard characteristics listed in Section 1941.1 or violates Section 17920.10 of the Health and Safety Code, or is deemed and declared substandard as set forth in Section 17920.3 of the Health and Safety Code because conditions listed in that section exist to an extent that endangers the or life, limb, health, property, safety, welfare of the public or the occupants of the dwelling.

(2) A public officer or employee who is responsible for the enforcement of any housing law, after inspecting the premises, has notified the landlord or the landlord’s agent in writing of his or her obligations to abate the nuisance or repair the substandard conditions.

(3) The conditions have existed and have not been abated 35 days beyond the date of service of the notice specified in paragraph (2) and the delay is without good cause. For purposes of this subdivision, service shall be complete at the time of deposit in the United States mail.

(4) The conditions were not caused by an act or omission of the tenant or lessee in violation of Section 1929 or 1941.2...”

*California Health and Safety Code § 17920.3* states in pertinent part:

“Any building or portion thereof including any dwelling unit, guestroom or suite of rooms, or the premises on which the same is located, in which there exists any of the following listed conditions to an extent that endangers the life, limb, health, property, safety, or welfare of the public or the occupants thereof shall be deemed and hereby is declared to be a substandard building:

(a) Inadequate sanitation shall include, but not be limited to, the following:

(1) Lack of, or improper water closet, lavatory, or bathtub or shower in a dwelling unit.

(2) Lack of, or improper water closets, lavatories, and bathtubs or showers per number of guests in a hotel.

(3) Lack of, or improper kitchen sink.

(4) Lack of hot and cold running water to plumbing fixtures in a hotel.

(5) Lack of hot and cold running water to plumbing fixtures in a dwelling unit.

(6) Lack of adequate heating.

(7) Lack of, or improper operation of required ventilating equipment.

(8) Lack of minimum amounts of natural light and ventilation required by this code.

(9) Room and space dimensions less than required by this code.

(10) Lack of required electrical lighting.



(11) Dampness of habitable rooms...

(13) Visible mold growth, as determined by a health officer or a code enforcement officer, as defined in Section 829.5 of the Penal Code, excluding the presence of mold that is minor and found on surfaces that can accumulate moisture as part of their properly functioning and intended use...

(14) General dilapidation or improper maintenance.

b) Structural hazards shall include, but not be limited to, the following:

(1) Deteriorated or inadequate foundations.

(2) Defective or deteriorated flooring or floor supports.

(3) Flooring or floor supports of insufficient size to carry imposed loads with safety...

c) Any nuisance.

(d) All wiring, except that which conformed with all applicable laws in effect at the time of installation if it is currently in good and safe condition and working properly..."

Consequently the Rent Adjustment Program overstepped its authority bypassing applicable California law and court order, in granting increases in rent.

### THE INCREASE IN RENT IS PREEMPTED BY LAW

A court may infer an intent to *preempt* municipal legislation only if (1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; or (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the municipality. See *Fisher v. City of Berkeley* (1984) 37 Cal. 3d 644. In the Fisher case the court invalidated an ordinance to the extent it created an evidentiary presumption that affected the burden of proof in regard to retaliatory evictions. The ordinance was rejected because evidence laws of California already govern evidence.

As stated above, the decisions for T16-0549, *Beasley v. Horejsi (2017)* and T17-0523, *Beasley v. Horejsi (2018)* cases; and the pending Rent Adjustment Program case T18-0480 set for a March 28, 2019 hearing, are prohibited by law, because the legislature intended to give the courts the right to exclusively govern rent when dealing with an unlawful detainer case. A conflict exists if the ordinance duplicates, contradicts, or enters into a field of regulation expressly or impliedly reserved to the state [*California Grocers Assn. v. City of Los Angeles* (2011) 52 Cal. 4th 177, 188, 127 Cal. Rptr. 3d 726, 254 P.3d 1019, cert. to fully occupy the particular area of law [*Big Creek Lumber Co. v. Cnty. of Santa Cruz* (2006) 38 Cal. 4th 1139, 1157-1158, 45 Cal. Rptr.3d 21, 136 P.3d 821. All ordinances which allow the Rent Adjustment Program to oversee rental amounts based on landlord rent increase conflicts, inhibits and impedes with the courts ability to settle the unlawful detainer action, because the court set an amount as current rent, plus one hundred dollars, and by taking action to either increase or change the amount ordered by the court for tenants to pay, conflicts with the court order/ judgment. Therefore rent increases given to tenants, while should be denied.

THE RENT ADJUSTMENT PROGRAM  
LACK'S SUBJECT MATTER JURISDICTION

The general rule is that subject matter jurisdiction can be challenged at any time during the course of an action. [*Barnick v. Longs Drug Stores*, 203 CA3d 377, 379, 250 CR 10 (1988).]

For a tribunal, court or any other entity designated to arbitrate or make a legal decision, it must hold the authority to make a decision in the form of subject matter jurisdiction. Subject matter jurisdiction relates to the inherent authority of the court involved to deal with the case or matter before it; in the absence of subject matter jurisdiction a trial court has no power to hear or

determine a case. [*Varian Med. Systems, Inc. v. Delfino*, 35 C4th 180, 196-197, 25 CR3d 298 (2005) (appeal divests trial court of subject matter jurisdiction).] A judgment rendered by a court that does not have subject matter jurisdiction is void and unenforceable and may be attacked anywhere, directly or collaterally, by parties or by strangers. [*Gorgi v. Jack in the Box Inc.*, 166 CA4th 255, 261, 82 CR3d 629 (2008).] Unlike personal jurisdiction, subject matter jurisdiction cannot be conferred on a court by consent of the parties, waiver, or estoppel. [*Marlow v. Campbell*, 7 CA4th 921, 9 CR2d 516 (1992).]

In Appellants case, regarding landlord rent increase, the Superior Court assumed jurisdiction, by issuing the stipulation order / judgment prior to landlord issuing rent increase notices. The 2016 stipulation for the unlawful detainer between parties, states in relevant part: “The court accepts this stipulation for filing and accepts the parties' request to retain jurisdiction pursuant to CCP section 664.6.” In addition it takes control over the matters concerned within the stipulation from the date it was signed by the judge, August 15, 2016 through September 09, 2018.

Therefore the Superior court took complete control over the subject matters concerning rent, repairs, waivers etcetera. Even if theoretically the Rent Adjustment Board has some authority to act, the court took possession over the matter first. See *Consumer Advocacy Group v. ExxonMobil Corp.*, 168 CA4th 675, 682, 86 CR3d 39 (2008) (where two California courts have concurrent jurisdiction, the first to assume jurisdiction over the subject matter and all parties takes precedence).

Article VI, §1 of the California Constitution confers broad subject-matter jurisdiction on the superior court. [*Serrano v. Stefan Merli Plastering Co.*, 162 CA4th 1014, 1029, 76 CR3d 559

(2008).] Consequently the Rent Adjustment Board does not have subject matter jurisdiction over the issues discussed in the petition and the landlords request for rent increase should be denied.

**THE DECISION IS NOT BASED ON SUBSTANTIAL EVIDENCE.**

**a. Appellant Has a Due Process Right to a Fair Hearing**

Under the 14<sup>th</sup> Amendment to the United States Constitution and Article I, §§ 7 & 15 of the California Constitution, no person may be deprived of life, liberty, or property without “due process of law”. The words “due process of law” refers to a principal that “fundamental fairness” must be applied to every party in a civil or criminal proceeding. *Lassiter v. Department of Social Services* (1981) 452 U.S. 18, 101 S.Ct. 2153, 2158, 68 L.Ed.2d 640, 648; see also, Witkin, *Summary of California Law*, Ninth Edition, *Constitutional Law*, §481.

The due process requirement of fundamental fairness has been expressly interpreted to include the right to have a “fair hearing”. A fair hearing includes the right to produce evidence and cross-examine parties. This fundamental element of due process was eloquently summarized by the California Court of Appeals, Second District, in *Buchman v. Buchman* (1954) 123 Cal. App. 2d 546, 560:

“Judicial absolutism is not part of the American way of life. The odious doctrine that the end justifies the means does not prevail in our system for the administration of justice. The power vested in a judge is to hear and determine, not to determine without a hearing. *When the Constitution requires a hearing, it requires a fair one, one before a tribunal which meets established standards of procedure. It is not for nothing that most of the provisions of the Bill of Rights have to do with matters of procedure.* Procedure is the fair, orderly, and deliberate method by which matters are litigated. To judge in a contested proceeding implies the hearing of evidence from both sides in open court, a comparison of the merits of the evidence of each side, a conclusion from the evidence of where the truth lies, application of the appropriate laws to the facts found, and the rendition of a judgment accordingly.”(Emphasis Added).

4

(*Fewel v. Fewel* (1943) 23 C.2d 431, 433; *People v. Lawrence*, (1956) 140 Cal. App.2d 133, 136-137; *People v. Thompson* (1935) 5 Cal. App. 2d 655, 659-661; see also Witkin *Summary of California Law*, Ninth Edition, *Constitutional Law*, §§502-503.)

Rent Adjust Program officer Kasdin allowed landlord and tenants to submit some evidence, but quickly criticized the evidence submitted by tenants regarding the Jan 2, 2018 fire of the range. Kasdin indicated that the statement from the fire department could not be used as evidence, because the fire happened after the 2017 claim. The landlord insisted that it be used and indicated that it is relevant to the information he submitted regarding the range. Kasdin then said okay and allowed it into evidence.

The hearing officer Kasdin presented and used the following as evidence in his decision:

“Stove: The tenant testified that on January 2, 2018, there was a fire in her electric stove. She had been roasting peanuts in the oven. She smelled smoke, and when she went into the kitchen smoke was coming out of the oven. The tenant turned off the circuit breaker in her apartment, which caused the fire in the oven to go out. She then called the Fire Department. Fire fighters responded, and later prepared a report.<sup>1</sup> The tenant further testified that she had previously told the owner that the oven was overheating, and approximately 6 weeks before this incident the owner worked on the screws on the heating element in the oven.

The Fire Department report states, in part: "Contents of pan in oven charred, and oven extremely hot with heat damage to exterior of oven above door and door itself. Per resident, she was roasting contents at reasonable temperature (approx. 350) when broiler area ignited and flames traveled through main oven box and out top of door. . . Resident stated recent work by property manager on oven."

The owner testified that on September 25, 2017, he and Mr. Jackson, his repair person, inspected the stove. Following the inspection, the owner arranged for the heating element to be replaced. He submitted a bill for a heating element from Appliance Parts Distributor, dated October 20, 2017.<sup>2</sup>

On November 11, 2017, the owner wrote a letter to the tenant, with the caption "Findings: Annual Inspection conducted on September 25, 2017."<sup>3</sup> This letter states, in part: "The walls and kitchen area are excessively greasy. The range hood and oven require cleaning. . The oven appears to have not been cleaned since installed . . . the bake element was damaged and

replaced at that time. . . Shortly after this inspection you called and stated the oven did not work. Upon inspection, it was determined that someone had removed the bake element mounting screws and apparently attempted to remove the bake element causing an electrical short to occur. The bake element was subsequently replaced."

The owner testified that, following the fire, he noted that the screws that hold the bake element (an electric tubing) in place were missing. They had been in place when he inspected the stove in September 2017. He further testified that these screws could not have come out on their own; someone would have had to remove them. With the screws missing, the bake element could touch the side of the stove, and cause a fire. The owner submitted a photo of the inside of the oven that he took after the fire.<sup>4</sup> This photo depicts a large burnt area at the back of the oven."

The majority of the testimony regarding the oven given by the landlord Mike Horejsi at the hearing was based on speculation and or conjecture. For example Horejsi indicates that it appear the oven has not been cleaned in a long time. Also in the letter used as evidence it appears the walls of the oven were greasy. The Rent Adjustment Program should go back and listen to the testimony given by tenants and the landlord, to review several of his statements, as he admits that his analysis of the stove is based on speculation. The fire report indicates that grease was not a factor in the Jan 2, 2018 fire.

In addition toward the end of the testimony given by the tenant and the landlord, Kasdin asked is there any more questions? The other tenant Satchidananda Mims asked Horejsi two questions. First, Satchidananda asked, who is the manufacture of the range (oven-stove)? Horejsi responded, that he did not know. Second he asked, Are you a certified to repair the range? Horejsi indicated that he was not a certified repair man authorized to fix appliances. I request the Rent Adjustment Program to review the record.

It also appears the Kasdin got the testimony twisted as the oven was serviced and not missing any screws on the date of the fire. Attach is a true copy of a pictures taken of the inside

and top of the range shortly after the fire on January 2, 2018. Also attach are true copies of a letter and notice to enter dwelling from the landlord from the landlord October 21, 017 and October 26, 2017.

Even though the landlord indicates he is not an expert it appears that the Rent Adjustment Officer accepted Horejsi testimony as if he were an expert repair man. Expert or not speculation or conjecture is not admissible as evidence. See *In re Lockheed Litigation Cases*, 115 CA4th 558, 564, 10 CR3d 34, 37 (2004) (“an expert opinion based on speculation or conjecture is inadmissible”); *Maatuk v. Guttman*, 173 CA4th 1191, 1197-98, 93 CR3d 381, 385-86 (2009)(expert opinion based on information outside area of expertise not of sort experts reasonably rely upon excluded as without foundation).]

#### CONCLUSION

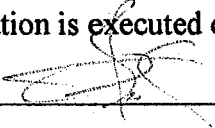
Based on the foregoing, Petitioner request that the Rent Adjustment Board grant appeal and deny landlord claims for rent increases. In addition, rule that the banked-rent prior to the 2016 is deemed waived by the court stipulation and cannot be used in calculations for future rent increase. Moreover, the Oakland Rent Board rule that during the time the notices of rent increase served on tenants between August 15, 2016 through September 10 2018, be deemed void, because the Superior Court took jurisdiction over all claims for rent.

Attached hereto, marked as indicated below, and incorporated herein by reference are true copies of the following documents: Pictures of Range.

**VERIFICATION**

I, Akenduca D. Beasley am the Petitioner in this proceeding. I have read the foregoing Petition and know the contents thereof. The same is true of my own knowledge, except as to those matters that are therein stated on information and belief, and, as to those matters, I believe it to be true.

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 is executed on February 19, 2019.

  
\_\_\_\_\_  
Akenduca D. Beasley aka Linda Beasley

**PROOF OF SERVICE**  
Case Number T17-0523



I am a resident of the State of California at least eighteen years of age. I am live in Alameda County, California. My mailing address is PO Box 19304, Oakland, CA 94619.

Today, I served the attached Appeal arguments and attachments by placing a true copy of it in a sealed envelope with postage fully paid into U.S. POSTAL mail box receptacle in Oakland, California addressed to:


**Owner**

Michael E. Horejsi

P.O. Box 2883

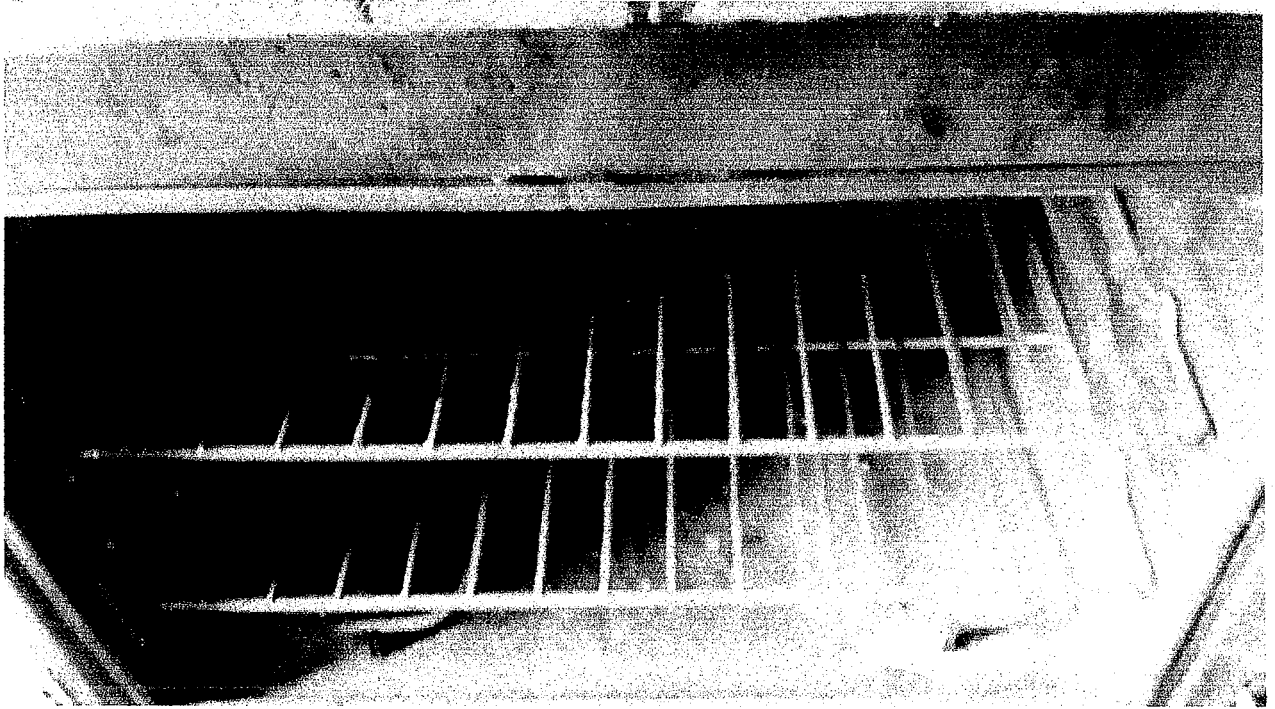
Castro Valley, CA 94546

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on February 19, 2019, in Oakland, CA.

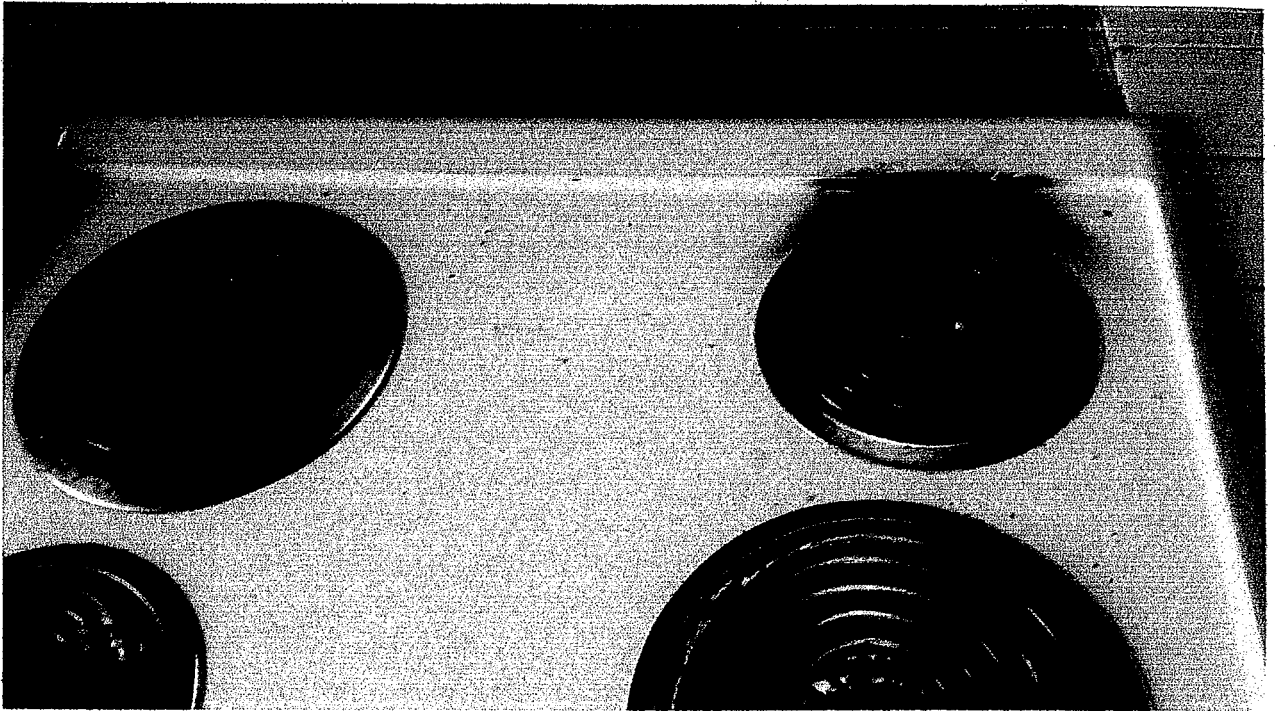


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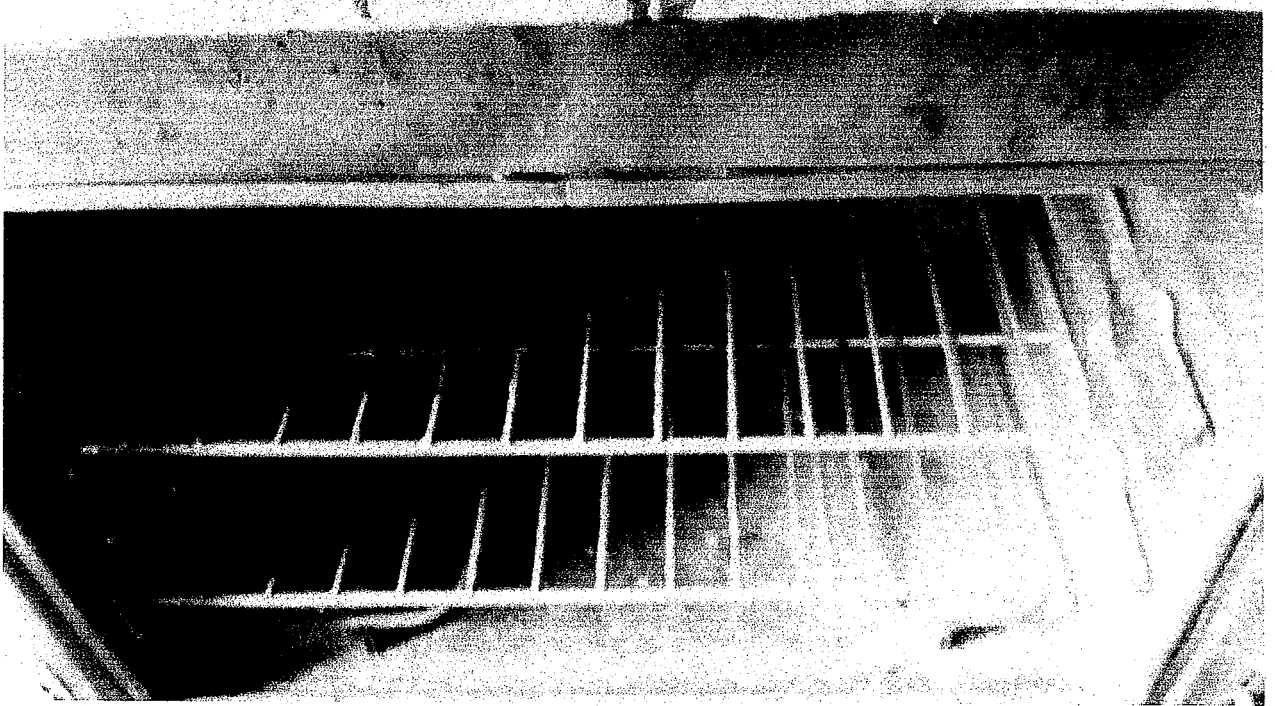
Akenduca D. Beasley aka Linda Beasley



Picture of inside of range taken January 02, 2018, shortly after the fire.



Picture of the top of the Range dated January 02, 2018



Picture of the top of the Range dated January 04, 2018

<b>City of Oakland</b> <b>Residential Rent Adjustment Program</b> 250 Frank Ogawa Plaza, Suite 5313 Oakland, California 94612 (510) 238-3721		RECEIVED CITY OF OAKLAND RENT ADJUSTMENT PROGRAM 2019 FEB -5 PM 2:44 <b>APPEAL</b>	
<b>Appellant's Name</b>  Michael E. Horejsi		<b>Landlord</b> <input checked="" type="checkbox"/>	<b>Tenant</b> <input type="checkbox"/>
<b>Property Address (Include Unit Number)</b>  3764 39 <sup>th</sup> Avenue, Apt. D Oakland, CA 94619			
<b>Appellant's Mailing Address (For receipt of notices)</b>  Michael E. Horejsi P.O. Box 2883 Castro Valley, CA 94546		<b>Case Number</b> T16-0549	<b>Date of Decision appealed</b> January 19, 2019
<b>Name of Representative (if any)</b>  N/A	<b>Representative's Mailing Address (For notices)</b>  N/A		

I appeal the decision issued in the case and on the date written above on the following grounds:  
 (Check the applicable ground(s). Additional explanation is required (see below). Please attach additional pages to this form.)

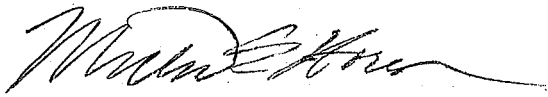
1.  **The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board.** You must identify the Ordinance section, regulation or prior Board decision(s) and specify the inconsistency.
2. /X/ **The decision is inconsistent with decisions issued by other hearing officers.** You must identify the prior inconsistent decision and explain how the decision is inconsistent.
3. /X/ **The decision raises a new policy issue that has not been decided by the Board.** You must provide a detailed statement of the issue and why the issue should be decided in your favor.
4. /X/ **The decision is not supported by substantial evidence.** You must explain why the decision is not supported by substantial evidence found in the case record. The entire case record is available to the Board, but sections of audio recordings must be pre-designated to Rent Adjustment Staff.
5.  **I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim.** You must explain how you were denied a sufficient opportunity 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.
6. /X/ **The decision denies me a fair return on my investment.** You must specifically state why you have been denied a fair return and attach the calculations supporting your claim.

Revised 5/29/09

7.  / Other. You must attach a detailed explanation of your grounds for appeal. Submissions to the Board are limited to 25 pages from each party. Number of pages attached 12. Please number attached pages consecutively.

8. 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 April 3, 2017, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<b>Name : Akenduca Beasley aka Linda Beasley</b>
<b>Address :</b> P.O. Box 19304
<b>City, State Zip :</b> Oakland, CA 94619
<b>Name : Saichidonanda Mims</b>
<b>Address :</b> 3764 39 <sup>th</sup> Avenue, Apt. D
<b>City, State Zip :</b> Oakland, CA 94619

	5 Feb 2019
<b>SIGNATURE OF APPELLANT or DESIGNATED REPRESENTATIVE</b>	<b>DATE</b>

**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.
- Anything to be considered by the Board must be received by the Rent Adjustment Program by 3:00 p.m. on the 8th day before the appeal hearing.
- 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.
- 

Revised 5/29/09

This appeal concerns only the decision rendered on January 19, 2019 concerning RAP jurisdiction and the reduction of banked rent claimed. The Board remanded the case to determine the following:

1. Does RAP have jurisdiction regarding the petitions or does the Superior Court assume jurisdiction based on the Court Stipulation?
2. If there is overlapping jurisdiction, what is the impact of the Superior Court Dismissal?
3. Is the Court Stipulation between the parties a waiver of RAP jurisdiction?

I. Superior Court Jurisdiction

It appears, for the most part, these issues were not addressed by the Remand Decision.

The facts demonstrate that the Superior Court, in Case No. RG16-821622, Horejsi v. Beasley, et al., maintained jurisdiction in this case; Page 4 states "The Court accepts this Stipulation for finding and accepts the parties' request to retain jurisdiction pursuant to CCP Section 664.2." This Stipulation was signed on August 15, 2016 by the Judge. It further states a 'compliance review 9/10/18 @9:15a.m. in Dept. 511, Dismiss with prejudice if neither party appears.'

There is no question that the Superior Court had the full authority and intent to maintain jurisdiction over all matters listed in the Stipulation.

II. Impact of Superior Court Dismissal

On September 9, 2018, both parties appeared at the Compliance Review hearing. After hearing from both parties, the **case was dismissed with prejudice**. The dismissal by the Superior Court, having legal jurisdiction, should have been a bar to RAP continuing to litigate the issues. See Attached A

Under the legal doctrine of res judicata, a valid final judgment is a bar to subsequent action by parties on the same action. The doctrine applies when (1) the issues decided in prior adjudication are identical with those presented in a later action, (2) there was a final judgment on the merits in the prior action, and (3) the party against whom the plea is raised was a party or was in privity with the party to the prior adjudication.

While the hearing officer contends the Rent Adjustment Program has jurisdiction over all issues in the subject cases that were filed after the date of the Stipulation, it is inconsistent with the Court Order and the law. The hearing officer **did not coordinate with the Court having jurisdiction**. The Court Stipulation was effective from August 15, 2016 **through** September 9, 2018, **clearly covering the period in which the original Decision was rendered**.

In this case, the hearing officer should have referred tenants back to the Superior Court maintaining jurisdiction of the issues. This could have been done by the tenant filing a Declaration of Non-Compliance.

///

///

III. The Court Stipulation is a waiver of RAP jurisdiction on issues listed in Stipulation.

The hearing officer suggests that it is a basic legal principle that one cannot waive claims that may arise in the future is true. Any other claims **beyond those listed** in the Stipulation could have been rightfully considered by the RAP. See Attached B

Attached is a comparison of alleged deficiencies claimed by tenants in various filings:

Column 1 [left side] are deficiencies claimed in the Unlawful Detainer action, filed 7/5/2016.

Column 2: Deficiencies noted in the Stipulation RG16-821622, signed 8/15/2016.

Column 3: Deficiencies noted by tenant in their tenant petition T16-0549 on 10/4/2016.

Column 4: Deficiencies noted in an Unlimited Civil Lawsuit filed on 7/20/2017, RG17-868344. This lawsuit was filed in Superior Court over 13 months prior to the Compliance Review on case RG16-821611. This information was submitted in T17-0323. This case was **settled** on January 3, 2019. A copy of the Mutual Settlement Agreement and Release was provided to RAP on Jan. 9, 2019.

#### IV. Waiver of rights to RAP jurisdiction

By filing the Unlimited Civil Action in July 2017, the tenant effectively removed the habitability issues from RAP jurisdiction. It is common knowledge a litigant **cannot** seek relief in multiple legal venues for the same issues. The tenant in effect appealed her case to the Superior Court.

The Mutual Settlement Agreement and Release **included** all prior claims made by tenants, which are now being litigated by the RAP. Excluded were matters now pending at the Rent Board, which included banked rent and current rent increases pending.

Paragraph 5.11 of this Agreement states "The Court may retain jurisdiction over the parties and enforce this Settlement Agreement and Release pursuant to Code of Civil Procedure Secion 664.6."

The effective date of this Agreement is January 3, 2019. Para 5.13

Under the current circumstances, the Rent Board must rescind their findings concerning habitability issues as they are contrary to the Superior Court Mutual Settlement Agreement and Release. See Attached. C The Settlement Agreement is a bar to further litigation by RAP.

#### V. Arbitrary reduction of entitled banked rent increase.

The rent increase requested for case T16-0549 was 6%, including banked rent. The hearing officer used the calculation of deferred CPI increases banking, after incorporating the separate \$25.00 parking charge as part of the base rent. The allowable rent was \$904.18. He then, arbitrarily, reduced the annual rent increase to \$882.42, a 3.4% raise.

#### VI. Requested action.

1. Increase the base rent to \$904.18, as requested effective 10/1/2016.
2. Remove all rent reductions related to claims of decreased housing services in Case No. T16-0549.



Attorney at Law  
Attn: Horwitz, Alan  
510 3rd St., Ste. 101  
Oakland, CA 94607

Linda Beasley  
3764 39th Avenue  
Oakland, CA 94619  
2018 FEB -5 PM 2:44

**Superior Court of California, County of Alameda  
Hayward Hall of Justice**

Michael E. Horejsi, Patricia H. Horejsi, Trustee  
Plaintiff/Petitioner(s)

VS.

Beasley

Defendant/Respondent(s)  
(Abbreviated Title)

No. RG16821622

Order of Dismissal

Date: 09/10/2018

Time: 09:15 AM

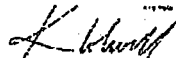
Dept: 511

Judge: Kimberly E. Colwell

It is hereby ordered that:

Case dismissed by Court with Prejudice - Pursuant to Court Order..

Dated: 09/10/2018



Judge Kimberly E. Colwell

SHORT TITLE:

Michael E. Horcisi, Patricia H. Horcisi, Trustee VS Beasley

CASE NUMBER:

RG16821622

ADDITIONAL ADDRESSEES

---

Satchidanda Mins  
3764 39th Avenue  
Oakland, CA 94619

Comparison of Alleged Deficiencies

July 5, 2016	August 15, 2016	October 4, 2016	July 2017
Deficiencies complained of in Answ	Deficiencies noted in Stip	Deficiencies noted to RAP	Unlimited Civil lawsuit
Mold & Mildew contamination	Bathroom mold & mildew	Bathroom mold & mildew	Bathroom mold & mildew
Defective stove	Hood above stove	Bathroom mold & mildew	Defective stove
Defective & broken heater	Defective stove	Defective stove	Defective heater -- no heat
	Heater	Heater doesn't function	
	Hole in closet	Hole in closet	
	Window screens	Window screens	Missing window screens
		Parking	
Inadequate ventilation			Inadequate ventilation
Defective electrical		Electrical wiring & power surges	Inadequate electrical wiring
Wiring, constant shortages			
Gap in windows & doors			
Inadequate weather proofing -- windows & door			
Insect infestation			Insect infestation
Decrepit carpeting			
Inadequate water pressure			
Defective plumbing			Defective plumbing
			Holes in wall
			Cracks in wall

Recent tenant discovery suggests tenant had unit inspected by the City Code Enforcement Division and Alameda County Vector Control Contract Services -- NO reports or citations issued.

Para 10 of Tenant's Answer: Retaliation against tenant for:

1. Complaining about habitability defects and requesting repairs [No record/evidence of request by tenant];
2. Seeking legal advice, I filed an Unlawful Detainer action because tenant was in rent arrears in the approximate amount of \$20,000 beginning January 2008 through June 2016; and
3. Complained to the City of Oakland -- NO report, City found nothing wrong & NO citations were issued.

2019 FEB -5 PM 2:45

2019 JAN -9 PM 1:00

**MUTUAL SETTLEMENT AGREEMENT AND RELEASE**

1.0 PARTIES

THIS SETTLEMENT AGREEMENT AND GENERAL RELEASE ("Agreement") is made by and entered between the following parties ("Parties"):

- 1.1 Plaintiff AKENDUCA BEASLEY;
- 1.2 Plaintiff SATCHIDANANDA MIMS (collectively "Plaintiffs"), and,
- 1.3 Defendants MICHAEL E. HOREJSI and PATRICIA H. HOREJSI (collectively "Defendants").

2.0 INTENT

2.1 The Parties named in Section 1.0 have been involved in litigation (hereinafter "Action") involving the real property located at 3764 39<sup>th</sup> Ave., Oakland, CA 94619. ("Property"). The Action involves claims by Plaintiffs against Defendants regarding damages and injuries arising out of the Property allegedly sustained during the period of Plaintiffs' occupancy of the Property (hereinafter "Incident"). Plaintiffs and Defendants now wish to settle the Action and the claims that have been asserted in the Action, together with any and all claims, disputes, and controversies of any kind between Plaintiffs and Defendants.

2.2 Notwithstanding any matters now pending at the "Rent Board", is the intent of the Parties to this Agreement that, in exchange for the settlement payment set forth below, that Plaintiffs and Defendants shall release each other from all claims which they brought or may have been brought in the Action arising out of any and all claims related to the Incident including, but not limited to, any claims for contract damages, bodily injury, property damage, or personal injury.

2.3 As used herein, "claim" or "claims" shall refer to any and all claims, cross-claims, actions, causes of action, allegations, complaints, cross-complaints, damages, demands, liabilities, obligations, debts, liens, fees, costs, and warranties, whether known or unknown, suspected or unsuspected, which allegedly arise from the Action, and/or any allegation which has been made, or could have been made, in the Action related to same. Such claims include, but are not necessarily limited to, intentional or negligent acts, indemnification, intentional or negligent omissions, breach of contract, nuisance damages, economic damages, emotional distress damages, bodily injury damages, personal injury damages, inconvenience damages, property damage, loss of use, out-of-pocket costs, attorney's fees, expert fees, investigative costs, and any other actionable omissions, conduct or damage of every kind and nature whatsoever which allegedly arise from the Action or Plaintiffs' tenancy.

NOW THEREFORE, in consideration of the following and the mutual covenants and conditions hereinafter set forth, the Parties hereto agree as follows:

3.0 SETTLEMENT AMOUNT AND DISMISSAL

3.1 This Action has been settled for the total amount of FIFTY THOUSAND DOLLARS and NO CENTS (\$50,000.00) to Plaintiffs. This total amount includes costs and attorneys' fees. The funds will be made payable to Law Offices of Andrew Wolff, P.C., Client

Trust Account.

3.2 In exchange for these payments, Plaintiffs' claims in the Action shall be dismissed with prejudice by Plaintiffs within ten days of receipt of the settlement payment by Plaintiffs' counsel, Law Offices of Andrew Wolff, P.C.

3.3 Payment shall be made within ten (10) days following the execution of this Settlement Agreement and Release from Plaintiffs' counsel by Defendants' counsel, Haapala Thompson & Abern.

3.4 The payment set forth above will be made by or on behalf of Defendants and will satisfy all obligations of Defendants to Plaintiffs as a result of the Incident.

3.5 Defendants shall pay Plaintiffs' portion of the Mediator's fee directly to the mediator.

4.0 RELEASE TERMS

4.1 Notwithstanding any matters pending at the "Rent Board", Plaintiffs and Defendants, hereby release and each of their heirs, attorneys, insurers, and assigns, from all claims brought by Plaintiffs in the Action and all claims which could have been brought by them arising from the Incident, and from any claims which relate to Plaintiffs' occupancy of the Property.

4.2 Plaintiffs understand and agree that the released claims contemplated by this Agreement include all claims described in the above paragraphs of every nature and kind whatsoever whether known or unknown, suspected or unsuspected, and hereby expressly waive all rights under Section 1542 of the Civil Code of the State of California, which provides as follows:

**A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**

Plaintiffs acknowledge and assume the risk that they may hereafter discover facts different from, or in addition to, those which they now know or believe to be true with respect to the released claims, and agree that this Agreement and the releases and covenants contained herein shall be and remain effective in all respects notwithstanding such different or additional facts or the discovery thereof.

4.3 Plaintiffs will hold harmless and indemnify Defendants from any claim, loss, demand or cause of action of the spouse, children, parent, grandparent, grandchildren or other family of Plaintiffs and any guardians of such persons, as well as those of any insurance company, governmental agency, health care provider, fraternal or benevolent organization, employer, union, or any lien pursuant to Sections 708.410 through 708.480 of the Code of Civil Procedure (Liens in Pending Action or Proceedings), or from Medicare, Medi-Cal, or other healthcare provider, or any other party claiming to have suffered damage, loss or expense by reason of the Incident.

4.4 Plaintiffs shall be solely responsible for any and all outstanding medical costs and liens, and expressly agree to hold Defendants and Mercury Insurance Company harmless from same.

## 5.0 OTHER PROVISIONS

5.1 The Parties expressly recognize that this is a compromise settlement of disputed claims and that payment in consideration of this Agreement shall not be construed to be an admission of liability by any other party, or any other person, entity, association, or corporation.

5.2 Each party shall be responsible for payment of her/his own court costs, attorneys' fees, and other expenses incurred in connection with the Action, including any costs incurred in compliance with the terms of this Agreement, except as expressly stated in this Agreement.

5.3 The text of the Agreement is the product of negotiation by the Parties and their counsel and is not to be construed as being prepared by one party or the other. The Parties acknowledge that this Agreement is executed without reliance on any representation made by any other party, or anyone acting on their behalf.

5.4 This Agreement contains the entire agreement between the Parties and shall be construed and enforced in accordance with the laws of the State of California.

5.5 In the event any portion of this Agreement is found void or voidable by a court of competent jurisdiction, or arbitrator(s), such portion shall be stricken, and the Agreement reformed to as closely approximate, as the law permits, the intent of the stricken portion or portions. The remainder of said stricken provision and of the entire Agreement will remain in effect.

5.6 The undersigned acknowledge that, in entering into this Agreement, they have sought or obtained, or otherwise waived, the advice of legal counsel and, in executing this Agreement, do so with full knowledge of its significance and with the express intention of effecting its legal consequences.

5.7 The Agreement is binding upon and shall inure to the benefit of each of the Parties hereto and their respective parents, subsidiaries, affiliates, predecessors, successors, divisions, shareholders, directors, officers, employees, attorneys, agents, representatives, heirs and assigns.

5.8 The Parties warrant that they believe no other person has or had, or claims any interest in any of the claims, demands, causes of action, obligations, damages or liabilities asserted by it referred to herein; that they have the sole right and exclusive authority to execute this Agreement and to bind themselves and their assigns thereby; and that they have not sold, assigned, transferred, conveyed or otherwise disposed of any claims, demands, causes of action, obligations, damages or liability asserted by them referred to herein.

5.9 Each of the Parties fully understands that if any fact with respect to any matter covered by this Agreement is found hereafter to be other than, or different from the facts now

believed by it to be true, each expressly accepts and assumes the risk of the possible differences in facts and agrees that this Agreement shall be and remain effective notwithstanding the difference in facts.

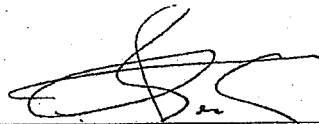
5.10 This Settlement Agreement and Release is exempt from the confidentiality provisions of California Evidence Code section 1119, et seq., and is admissible in evidence to enforce the terms of the Settlement Agreement and Release, subject to the limitations of Section 5.1.

5.11 The court may retain jurisdiction over the parties and enforce this Settlement Agreement and Release pursuant to Code of Civil Procedure section 664.6.

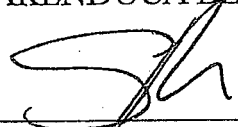
5.12 This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. The Parties agree that this Agreement may be deemed executed by the delivery of signatures of the Parties by facsimile or electronic transmission. Fax and electronic signatures as well as copies of this document may be used in lieu of the original and such copies shall be equally admissible in evidence.

5.13 This Agreement shall be effective on the date last set forth beside the signatures below.

Dated: January 3, 2019

  
AKENDUCA BEASLEY

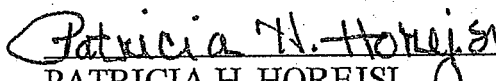
Dated: January 3, 2019

  
SATCHIDANANDA MIMS

Dated: January 3, 2019

  
MICHAEL E. HOREJSI

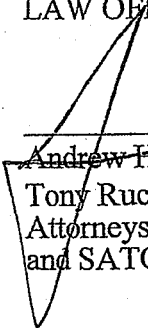
Dated: January 3, 2019

  
PATRICIA H. HOREJSI

APPROVED AS TO FORM:

LAW OFFICES OF ANDREW WOLFF, PC

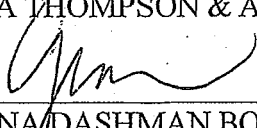
Dated: January 3, 2019

  
Andrew H. Wolff  
Tony Ruch  
Attorneys for Plaintiffs AKENDUCA BEASLEY  
and SATCHIDANANDA MIMS

DATED: January 3, 2019

HAAPALA THOMPSON & ABERN, LLP

BY

  
\_\_\_\_\_  
GINA DASHMAN BOER  
BRANDON K. FIELDS  
Attorneys for Defendants  
MICHAEL E. HOREJSI and  
PATRICIA H. HOREJSI



January 8, 2019

RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION BOARD  
2019 JAN -9 PM 1:02

City of Oakland, Hearing Officer  
Rent Adjustment Program  
P.O. Box 70243  
Oakland, CA 94612-0243

---

Re: Appeal of Case Nos. T16-0549 & T17-0523

Dear Hearing Officer:


Attachments:

1. Property Owner Response, T18-0480;
2. Mutual Settlement Agreement and Release dated January 3, 2019; and
3. Superior Court filed dated July 20, 2017.

1. The above cases are under consideration of an Appeal Panel Review.
2. On January 3, 2019, tenants and landlord executed a Mutual Settlement Agreement to resolving an insurance company Settlement of Claims by tenants.
3. **All habitability claims were settled** by the Mutual Settlement Agreement. All habitability issues raised by tenants in cases T16-0549, T17-0523 and T18-0480 were included in said agreement. The claims listed in these Petitions are now moot.
4. The Mutual Settlement Agreement does **not** restrict landlord's rights to rent increase requests pending with this Rent Board. Landlord respectfully requests that all pending rent increases be approved accordingly.

Sincerely,

---

  
Michael E. Horejsi  
Landlord

/MEH  
Enclosure attachments [3]

000129

110-0549  
T17-0523  
RECEIVED  
CITY OF SAN JOSE  
RENT ARBITRATION BOARD  
2019 JAN -9 PM 1:02

PROPERTY OWNER RESPONSE

(Attachment to form: T18-0480)

I respectfully request that information provided in RAP Cases T03-0237, T03-0300, Unlawful Detainer Case RG16821622, Stipulation, T16-0549 and T17-0523, be incorporated into this response.

Additionally:

Both previous cases T16-0549 and T17-0523 were appealed. The hearing was conducted on October 11, 2018. Both cases were remanded to the hearing officer. There was some discussion by the Panel suggesting that since the habitability issues raised by the Tenants in their petition was under the jurisdiction of a Superior tribunal, the **RAP should not have considered those habitability issues.**

The Panel posed several significant issues to the Hearing Officer in these two cases.

Does the RAP have jurisdiction regarding this Petition or has the Superior Court assumed jurisdiction based on the Court Stipulation [signed by all parties]?

If there is overlapping jurisdiction, what is the impact of the Superior Court Dismissal?

Is the Superior Court Stipulation between the parties a waiver of RAP jurisdiction?

All attorneys I have spoken to suggest that RAP does **not** have jurisdiction over the Superior Court.

The Stipulation in RG16-321622 was initiated on August 15, 2016. The Superior Court maintained jurisdiction through September 10, 2018. The tenants appeared for the final hearing in September 2018. After presenting their arguments, the **case was dismissed.** Encl. 1

The rulings on both T16-0549 and T17-0523 were rendered during this timeframe. The **Superior Court specifically maintained jurisdiction.** The RAP should thus dismiss any and all claims of habitability since they were under the jurisdiction of the Superior Court and should **only address the rent increases requested.**

**Tenants also waived further claims** in order to entice landlord into signing the Stipulation to prevent their eviction. They committed an abuse of process and fraud upon the Court by initiating yet another lawsuit **concerning the same habitability issues.**

The tenants increased the chaos by filing an Unlimited Superior Court lawsuit RG17-868344 **concerning the same habitability issues raised in prior cases.** Tenants have proven themselves incompetent in legal proceedings.

This lawsuit was filed on July 20, 2017, over a year prior to final hearing on the Stipulated Judgment. At this point, they had two RAP Petitions and two Superior Court cases pending. All, with exception of rent increases, were directed to **alleged habitability issues.**

From a legal perspective, upon filing their case in Superior Court on July 20, 2017, they elected to remove RAP concerning habitability issues. They effectively disregard rent control jurisdiction and appealed their habitability issues to a higher venue.

They did not appeal the rent increases.

Case RG17-868344 was defended by my insurance company and was settled on January 3, 2019. All habitability claims were settled, including those listed in the last 3 RAP tenant Petitions. This agreement renders all pending Petitions moot.

The tenants rejected my attempts to maintain their unit by placing such restrictions on access as to make it impossible for landlord to maintain the property. Encl. \_\_\_ [Just cause for eviction violation]

The rent increase notices beginning in 2016 omitted parking from the calculated rent. This is contrary to the Ruling in both T03-0237 and T03-0300 and T16-0549. Tenants have raised this issue [parking] at least five times ignoring prior rulings.

I am requesting that the RAP award past rent due as follows. Rent through March 2019: tenant paid \$853.00 per month. All requested increases were not paid.

T16-0549 base rent \$853 x 6% = \$904.18

Oct-Dec 2016	\$51.18 x3	\$153.44
Jan-Dec 2017	51.18 x12	614.16
Jan-Dec 2018	51.18 x 12	614.16
Jan-Mar 2019	51.18 x 3	158.54

T17-0523 base rent \$904.18 x 6.9% = \$966.57

Oct-Dec 2017	62.89 x 3	\$187.17
Jan-Dec 2018	62.89 x 12	748.68
Jan-Mar 2019	62.89 x 3	187.17

T18-0480 base rent was 966.57 x 10% = \$1063.23

Oct-Dec 2018	\$96.66 x 3	\$289.98
Jan-Mar 2019	96.66 x 3	289.98

It appears that the delinquent rent per the 3 years of [landlord] requests totals \$3,238.38. Due to the recent Settlement Agreement [signed by tenants on 1/3/19], tenants are able to pay this amount in a lump sum and landlord hereby respectfully requests that the RAP approve accordingly. Rent commencing April 1, 2019 should be \$1,063.28 per month.

Tenant Beasley was personally served with the rent increase notices, banked rent was claimed.

MUTUAL SETTLEMENT AGREEMENT AND RELEASE 1:03

1.0 PARTIES

THIS SETTLEMENT AGREEMENT AND GENERAL RELEASE ("Agreement") is made by and entered between the following parties ("Parties"):

1.1 Plaintiff AKENDUCA BEASLEY;

1.2 Plaintiff SATCHIDANANDA MIMS (collectively "Plaintiffs"), and,

1.3 Defendants MICHAEL E. HOREJSI and PATRICIA H. HOREJSI (collectively "Defendants").

2.0 INTENT

2.1 The Parties named in Section 1.0 have been involved in litigation (hereinafter "Action") involving the real property located at 3764 39<sup>th</sup> Ave., Oakland, CA 94619. ("Property"). The Action involves claims by Plaintiffs against Defendants regarding damages and injuries arising out of the Property allegedly sustained during the period of Plaintiffs' occupancy of the Property (hereinafter "Incident"). Plaintiffs and Defendants now wish to settle the Action and the claims that have been asserted in the Action, together with any and all claims, disputes, and controversies of any kind between Plaintiffs and Defendants.

2.2 Notwithstanding any matters now pending at the "Rent Board", is the intent of the Parties to this Agreement that, in exchange for the settlement payment set forth below, that Plaintiffs and Defendants shall release each other from all claims which they brought or may have been brought in the Action arising out of any and all claims related to the Incident including, but not limited to, any claims for contract damages, bodily injury, property damage, or personal injury.

2.3 As used herein, "claim" or "claims" shall refer to any and all claims, cross-claims, actions, causes of action, allegations, complaints, cross-complaints, damages, demands, liabilities, obligations, debts, liens, fees, costs, and warranties, whether known or unknown, suspected or unsuspected, which allegedly arise from the Action, and/or any allegation which has been made, or could have been made, in the Action related to same. Such claims include, but are not necessarily limited to, intentional or negligent acts, indemnification, intentional or negligent omissions, breach of contract, nuisance damages, economic damages, emotional distress damages, bodily injury damages, personal injury damages, inconvenience damages, property damage, loss of use, out-of-pocket costs, attorney's fees, expert fees, investigative costs, and any other actionable omissions, conduct or damage of every kind and nature whatsoever which allegedly arise from the Action or Plaintiffs' tenancy.

NOW THEREFORE, in consideration of the following and the mutual covenants and conditions hereinafter set forth, the Parties hereto agree as follows:

3.0 SETTLEMENT AMOUNT AND DISMISSAL

3.1 This Action has been settled for the total amount of FIFTY THOUSAND DOLLARS and NO CENTS (\$50,000.00) to Plaintiffs. This total amount includes costs and attorneys' fees. The funds will be made payable to Law Offices of Andrew Wolff, P.C., Client

Trust Account.

3.2 In exchange for these payments, Plaintiffs' claims in the Action shall be dismissed with prejudice by Plaintiffs within ten days of receipt of the settlement payment by Plaintiffs' counsel, Law Offices of Andrew Wolff, P.C.

3.3 Payment shall be made within ten (10) days following the execution of this Settlement Agreement and Release from Plaintiffs' counsel by Defendants' counsel, Haapala Thompson & Abern.

3.4 The payment set forth above will be made by or on behalf of Defendants and will satisfy all obligations of Defendants to Plaintiffs as a result of the Incident.

3.5 Defendants shall pay Plaintiffs' portion of the Mediator's fee directly to the mediator.

#### 4.0 RELEASE TERMS

4.1 Notwithstanding any matters pending at the "Rent Board", Plaintiffs and Defendants, hereby release and each of their heirs, attorneys, insurers, and assigns, from all claims brought by Plaintiffs in the Action and all claims which could have been brought by them arising from the Incident, and from any claims which relate to Plaintiffs' occupancy of the Property.

4.2 Plaintiffs understand and agree that the released claims contemplated by this Agreement include all claims described in the above paragraphs of every nature and kind whatsoever whether known or unknown, suspected or unsuspected, and hereby expressly waive all rights under Section 1542 of the Civil Code of the State of California, which provides as follows:

**A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**

Plaintiffs acknowledge and assume the risk that they may hereafter discover facts different from, or in addition to, those which they now know or believe to be true with respect to the released claims, and agree that this Agreement and the releases and covenants contained herein shall be and remain effective in all respects notwithstanding such different or additional facts or the discovery thereof.

4.3 Plaintiffs will hold harmless and indemnify Defendants from any claim, loss, demand or cause of action of the spouse, children, parent, grandparent, grandchildren or other family of Plaintiffs and any guardians of such persons, as well as those of any insurance company, governmental agency, health care provider, fraternal or benevolent organization, employer, union, or any lien pursuant to Sections 708.410 through 708.480 of the Code of Civil Procedure (Liens in Pending Action or Proceedings), or from Medicare, Medi-Cal, or other healthcare provider, or any other party claiming to have suffered damage, loss or expense by reason of the Incident.

4.4 Plaintiffs shall be solely responsible for any and all outstanding medical costs and liens, and expressly agree to hold Defendants and Mercury Insurance Company harmless from same.

#### 5.0 OTHER PROVISIONS

5.1 The Parties expressly recognize that this is a compromise settlement of disputed claims and that payment in consideration of this Agreement shall not be construed to be an admission of liability by any other party, or any other person, entity, association, or corporation.

5.2 Each party shall be responsible for payment of her/his own court costs, attorneys' fees, and other expenses incurred in connection with the Action, including any costs incurred in compliance with the terms of this Agreement, except as expressly stated in this Agreement.

5.3 The text of the Agreement is the product of negotiation by the Parties and their counsel and is not to be construed as being prepared by one party or the other. The Parties acknowledge that this Agreement is executed without reliance on any representation made by any other party, or anyone acting on their behalf.

5.4 This Agreement contains the entire agreement between the Parties and shall be construed and enforced in accordance with the laws of the State of California.

5.5 In the event any portion of this Agreement is found void or voidable by a court of competent jurisdiction, or arbitrator(s), such portion shall be stricken, and the Agreement reformed to as closely approximate, as the law permits, the intent of the stricken portion or portions. The remainder of said stricken provision and of the entire Agreement will remain in effect.

5.6 The undersigned acknowledge that, in entering into this Agreement, they have sought or obtained, or otherwise waived, the advice of legal counsel and, in executing this Agreement, do so with full knowledge of its significance and with the express intention of effecting its legal consequences.

5.7 The Agreement is binding upon and shall inure to the benefit of each of the Parties hereto and their respective parents, subsidiaries, affiliates, predecessors, successors, divisions, shareholders, directors, officers, employees, attorneys, agents, representatives, heirs and assigns.

5.8 The Parties warrant that they believe no other person has or had, or claims any interest in any of the claims, demands, causes of action, obligations, damages or liabilities asserted by it referred to herein; that they have the sole right and exclusive authority to execute this Agreement and to bind themselves and their assigns thereby; and that they have not sold, assigned, transferred, conveyed or otherwise disposed of any claims, demands, causes of action, obligations, damages or liability asserted by them referred to herein.

5.9 Each of the Parties fully understands that if any fact with respect to any matter covered by this Agreement is found hereafter to be other than, or different from the facts now

believed by it to be true, each expressly accepts and assumes the risk of the possible differences in facts and agrees that this Agreement shall be and remain effective notwithstanding the difference in facts.

5.10 This Settlement Agreement and Release is exempt from the confidentiality provisions of California Evidence Code section 1119, et seq., and is admissible in evidence to enforce the terms of the Settlement Agreement and Release, subject to the limitations of Section 5.1.

5.11 The court may retain jurisdiction over the parties and enforce this Settlement Agreement and Release pursuant to Code of Civil Procedure section 664.6.

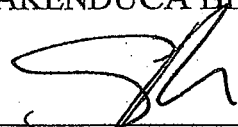
5.12 This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. The Parties agree that this Agreement may be deemed executed by the delivery of signatures of the Parties by facsimile or electronic transmission. Fax and electronic signatures as well as copies of this document may be used in lieu of the original and such copies shall be equally admissible in evidence.

5.13 This Agreement shall be effective on the date last set forth beside the signatures below.

Dated: January 3, 2019

  
AKENDUCA BEASLEY

Dated: January 3, 2019

  
SATCHIDANANDA MIMS

Dated: January 3, 2019

  
MICHAEL E. HOREJSI

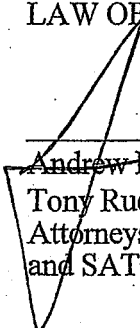
Dated: January 3, 2019

  
PATRICIA H. HOREJSI

APPROVED AS TO FORM:

LAW OFFICES OF ANDREW WOLFF, PC

Dated: January 3, 2019

  
Andrew H. Wolff  
Tony Ruch  
Attorneys for Plaintiffs AKENDUCA BEASLEY  
and SATCHIDANANDA MIMS

000135

Case 7:17-cv-0180

Served 15 Sep 2017

Case 7:17-cv-0180

11A

SUMMONS (CITACION JUDICIAL) 03

FOR COURT USE ONLY (SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

MICHAEL E. HOREJSI, PATRICIA H. HOREJSI and DOES 1-30

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

AKENDUCA BEASLEY and SATCHIDANANDA MIMS

Handwritten signature

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program.

AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro.

The name and address of the court is: (El nombre y dirección de la corte es): Alameda County Superior Court 1225 Fallon Street Oakland, CA 94612

CASE NUMBER (Número de caso): 17868344

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es): Andrew Wolff, SBN 195092, 1956 Webster Street, Ste. 275, Oakland, CA 94612, 510-834-3300

DATE: (Fecha) JUL 20 2017 Chad Finke Clerk, by (Secretario) Aral Spensel Deputy (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).) (Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

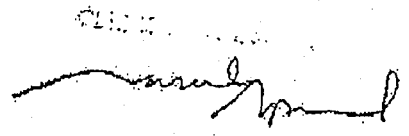
RECEIVED

NOTICE TO THE PERSON SERVED: You are served

- 1. [X] as an individual defendant.
2. [ ] as the person sued under the fictitious name of (specify):
3. [ ] on behalf of (specify):
under: [ ] CCP 416.10 (corporation) [ ] CCP 416.60 (minor)
[ ] CCP 416.20 (defunct corporation) [ ] CCP 416.70 (conservatee)
[ ] CCP 416.40 (association or partnership) [ ] CCP 416.90 (authorized person)
[ ] other (specify):
4. [ ] by personal delivery on (date):



1 Andrew Wolff, Esq. (SBN 195092)  
David Lavine, Esq. (SBN 166744)  
2 Wortham F. Briscoe, Esq. (SBN 303359)  
LAW OFFICES OF ANDREW WOLFF, PC  
3 1956 Webster Street, Ste. 275  
Oakland, California 94612  
4 T(510) 834-3300  
F(510) 834-3377  
5 [andrew@awolfflaw.com](mailto:andrew@awolfflaw.com)  
[david@awolfflaw.com](mailto:david@awolfflaw.com)



7 Attorney for Plaintiffs  
AKENDUCA BEASLEY and SATCHIDANANDA MIMS

9  
10 SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
11 IN AND FOR THE COUNTY OF ALAMEDA  
12 UNLIMITED JURISDICTION

Case No.: **RG 17868344**

13 AKENDUCA BEASLEY and  
SATCHIDANANDA MIMS,

14 Plaintiffs,

**COMPLAINT FOR DAMAGES;  
JURY TRIAL DEMANDED**

15 vs.

17 MICHAEL E. HOREJSI, PATRICIA  
H. HOREJSI and DOES 1-30,

18 Defendants.

19  
20 Plaintiffs, AKENDUCA BEASLEY and SATCHIDANANDA MIMS, allege as follows:

21 GENERAL FACTUAL ALLEGATIONS

22 1. At all times herein relevant, Plaintiffs, AKENDUCA BEASLEY and  
23 SATCHIDANANDA MIMS (hereinafter, "Plaintiffs"), were competent adults residing in the  
24 City of Oakland, County of Alameda, California.

25 2. Plaintiffs are informed and believe, and thereon allege, that MICHAEL E.  
26 HOREJSI, PATRICIA H. HOREJSI and DOES 1-30, (hereinafter "Defendants"), owned,  
27 controlled, and/or managed the unit that Plaintiffs resided in during all relevant periods of time in  
28 this complaint.

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1 3. Defendants DOES 1-30 are individuals and/or business entities doing business in  
2 the County of Alameda and/or who are contracted to do work in the County of Alameda. Each  
3 and every Defendant was at all relevant time the agents and/or employees of other Defendants  
4 and acted within the scope of said agency and/or employment. Plaintiffs do not know the true  
5 names of Defendants identified as DOES 1-30, but will seek leave to amend this complaint if and  
6 when Plaintiffs discover the identity of any of the Defendants now sued under the fictitious  
7 names DOES 1-30.

8 4. In committing the acts complained of herein, each Defendant acted as the  
9 authorized agent, employee, and/or representative of each other Defendant. Each act of each  
10 Defendants complained of herein was committed within the scope of said agency, employment,  
11 or other representation, and each act was ratified by each other Defendant. Each Defendant is  
12 liable, in whole or in part, for the damages and injuries suffered by Plaintiffs.

13 5. This court is the proper court because Defendants do business in its jurisdictional  
14 area, the damage to Plaintiffs—and the making of the contract which is the subject of this  
15 action—occurred within its jurisdictional area.

16 6. Plaintiffs are informed and believe, and thereon allege, that at all relevant times,  
17 Defendants were Plaintiffs' landlords, and Plaintiffs were the tenants of Defendants as those  
18 terms, "landlord" and "tenant" are defined under California Common Law, under California  
19 Code of Civil Procedure § 1161 et seq. and under California Civil Code § 1980.

20 7. On or about August 1, 1982, Plaintiffs, as tenants, and Defendants, as owner  
21 and/or agent and/or lessor, entered into a written agreement to rent the premises located at 3764  
22 39th Avenue Apt D, Oakland, California 94619 to Plaintiffs. Such address is hereinafter referred  
23 to as the "Subject Premises". The essential terms of the written rental agreement required  
24 Plaintiffs to pay rent of \$425.00, payable on the first day of each month. The terms of this written  
25 rental agreement also required Plaintiffs to deposit a security deposit of \$400.00. A copy of this  
26 agreement is attached hereto as Exhibit A.

27 8. Defendants named herein were the owners and/or property managers or the agents  
28 and/or employees of the owners and/or property managers of the Subject Premises during all time

1 periods relevant herein.

2 9. Throughout Plaintiffs' tenancy several substantial habitability defects existed in  
3 the Subject Premises which rendered the Subject Premises unfit for human occupancy under  
4 California common law and statutes. The defects were due to the Defendants' failure to maintain  
5 the Subject Premises during their relevant periods of ownership and/or management of said  
6 Subject Premises. These substantial habitability defects existed in Plaintiffs' unit and together  
7 and separately constituted violations of applicable housing laws, including but not limited to the  
8 Oakland Housing and Building Codes, California Civil Code §§ 1941.1, 1942, and Health and  
9 Safety Code §§ 17920, 19210, and 13133.7.

10 10. Said defective conditions included, but were not limited to, the following which  
11 existed at varying points throughout Plaintiffs' tenancy: ; mold and mildew contamination;  
12 defective heater; no heat; defective stove; holes in wall, cracks in wall, inadequate ventilation,  
13 missing window screens, defective bathtub, inadequate electrical wiring, insect infestation,  
14 defective plumbing.

15 11. Plaintiffs sent several repair requests in writing and made other requests verbally  
16 to Defendants to have the aforementioned defects and others existing throughout their tenancy  
17 remedied.

18 12. Plaintiffs also filed complaints with the city of Oakland Rent Adjustment Program  
19 which ruled Plaintiffs were overpaying rent due to Defendants failing to maintain the Subject  
20 Premises in accordance with state and local housing and building codes.

21 13. Plaintiffs are informed and believe and thereon allege that Defendants violated  
22 health & safety code section 17920.3 and 17920.10 because Defendants allowed the subject  
23 property to contain hazardous fluids and materials, lack adequate weatherproofing, and to be  
24 substandard in every way identified herein and as defined by the applicable statutes.

25 14. All defendants had adequate opportunity and notice to repair said defects prior to  
26 Plaintiffs filing this complaint. Defendants failed and refused, and continue to fail and refuse, to  
27 repair the defects in Plaintiffs' unit.

28 15. On or about June 30, 2016, Defendants filed an unlawful detainer lawsuit seeking

1 to evict Plaintiffs from the Subject Premises.

2 16. Plaintiffs are informed, believe and thereon allege, that Defendants filed said  
3 unlawful detainer action to retaliate against Plaintiffs because Plaintiffs lawfully exercised their  
4 rights as a tenant, actions which include, but are not limited to, demanding repairs, contacting  
5 government agencies, and lawfully withholding rent in order to motivate Defendants to make  
6 repairs.

7 17. Plaintiffs suffered emotional distress, physical injury, over-payment of rent, and  
8 out-of-pocket expenses as a result of the aforementioned habitability defects and other acts  
9 and/or omissions committed by Defendants.

10 **FIRST CAUSE OF ACTION**  
11 **TORTIOUS BREACH OF THE IMPLIED WARRANTY OF HABITABILITY;**  
12 **VIOLATIONS OF CIVIL CODE SECTION 1941**  
13 **(All Plaintiffs v. All Defendants)**

14 18. Plaintiffs re-allege and incorporate into this cause of action the allegations of  
15 paragraphs 1 through 17, as if the same were set out at length herein.

16 19. Plaintiffs made requests for repairs and reported uninhabitable conditions in their  
17 unit to their landlords and their agents and/or employees. Said requests were ignored, refused,  
18 denied, and/or inadequately addressed.

19 20. Under California law, Defendants, as landlords, had an obligation pursuant to  
20 Civil Code §§ 1941 et seq. and common law to provide and maintain the Subject Premises rented  
21 to Plaintiff in a habitable condition. Under these obligations, Defendants owed a legal duty to  
22 Plaintiffs to use due care to provide and maintain a habitable premises. Defendants breached  
23 their legal duty to Plaintiffs by making inadequate repairs, by failing and refusing to make  
24 repairs, and by delaying in making necessary repairs to the Subject Premises after obtaining  
25 knowledge and/or being notified of the poor conditions of the Subject Premises. Said breaches of  
26 this legal duty caused Plaintiffs to pay excessive rent, suffer out of pocket expenses, and  
27 emotional distress in an amount to be proven at trial. Said breaches actually caused and legally  
28 caused the complained of damages to Plaintiffs.

29 21. Wherefore Plaintiffs pray for the damages stated below.

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Complaint for Damages, Jury Trial Demanded

**SECOND CAUSE OF ACTION**  
**CONTRACTUAL BREACH OF THE IMPLIED WARRANTY OF HABITABILITY;**  
**VIOLATIONS OF CIVIL CODE SECTION 1941**  
**(All Plaintiffs v. All Defendants)**

22. Plaintiffs re-allege and incorporate into this cause of action the allegations of paragraphs 1 through 17, as if the same were set out at length herein.

23. Plaintiffs and Defendants entered into a written agreement to lease the Subject Premises. Every lease for residential property contains an implied warranty of habitability.

24. During Plaintiffs' time of residency and prior to filing this complaint, Plaintiffs performed their obligations or was excused from performing their obligations under the rental agreement.

25. Each and every Defendant breached said agreement by making inadequate repairs, by failing and refusing to make repairs, and by delaying in making necessary repairs to the Subject Premises after obtaining knowledge and/or being notified of the poor conditions of the Subject Premises. Defendants further breached the rental agreement on multiple occasions by collecting rent from Plaintiffs to which Defendants were not entitled because of the substantial habitability defects.

26. Plaintiffs suffered damages including an overpayment of rent, and incidental out of pocket expenses. Plaintiffs also seeks interest on their damages from each Defendant calculated according to statute.

27. Wherefore Plaintiffs pray for the damages stated below.

**THIRD CAUSE OF ACTION**  
**BREACH OF CONTRACT - CAL. CIVIL CODE §3300 et seq.**  
**(All Plaintiffs v. All Defendants)**

28. Plaintiffs re-allege and incorporate into this cause of action the allegations of paragraphs 1 through 17, as if the same were set out at length herein.

29. Plaintiffs and Defendants entered into a written residential rental agreement. Defendants were obligated to perform under the terms of this agreement. Plaintiffs performed or was excused from performing their obligations under the contract. A covenant to provide a habitable premises and a covenant of good faith and fair dealing is contained in every residential rental lease and/or agreement in the State of California pursuant to state statute and common law.

Beasley, et al. v. Horejsi, et al.  
Complaint for Damages, Jury Trial Demanded

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1 Furthermore Defendants warranted that the Subject Premises was in good condition at the time of  
2 entering into the contract.

3 30. Defendants breached the terms of said agreement on multiple occasions during the  
4 term of preceding the filing of this complaint by failing to make requested repairs, by failing to  
5 provide a habitable premises to Plaintiffs, and by collecting rent without repairing the  
6 substandard and habitability defects on the Subject Premises after being given a reasonable  
7 opportunity to do so. Defendants also failed to reasonably inspect their property for defects and  
8 health and safety hazards, and failed to warn or protect Plaintiffs from harm due to the health and  
9 safety hazards contained herein.

10 31. As a result of all Defendants' conduct Plaintiffs suffered damages including  
11 overpayment of rent, out of pocket expenses, physical and mental discomfort, and other damages  
12 to be ascertained at trial.

13 32. Wherefore Plaintiffs pray for the damages stated below.

14  
15 **FOURTH CAUSE OF ACTION**  
**BREACH OF QUIET ENJOYMENT - CALIFORNIA CIVIL CODE §1927**  
16 **(All Plaintiffs v. All Defendants)**

17 33. Plaintiffs re-allege and incorporate into this cause of action the allegations of  
18 paragraphs 1 through 17, as if the same were set out at length herein.

19 34. Every lease for real property includes the implied warranty of quiet enjoyment.  
20 This covenant prohibits lessors and landlords from actions that diminish a Plaintiffs' beneficial  
21 enjoyment of the Subject Premises. The covenant also places on lessors and landlords an  
22 affirmative duty to take reasonable steps in protecting Plaintiffs' quiet enjoyment of the Subject  
23 Premises from interference by other persons on or about the Subject Premises.

24 35. All Defendants by and through the acts and omissions alleged herein, breached the  
25 warranty of quiet enjoyment. All Defendants interfered with Plaintiffs' use and enjoyment of the  
26 Subject Premises by allowing the conditions named above and others according to proof to exist  
27 after being informed of their existence and being given an ample opportunity to correct these  
28 conditions.

36. As a direct and proximate result of the breach of all Defendants, Plaintiffs have

Beasley, et al. v. Horejsi, et al.  
Complaint for Damages, Jury Trial Demanded

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1 suffered damages to be ascertained at trial.

2 37. Wherefore Plaintiffs pray for the damages stated below.

3 **FIFTH CAUSE OF ACTION**  
4 **PRIVATE NUISANCE - CALIFORNIA CIVIL CODE §3501 et seq.**  
5 **(All Plaintiffs v. All Defendants)**

6 38. Plaintiffs re-allege and incorporate into this cause of action the allegations of  
7 paragraphs 1 through 17, as if the same were set out at length herein.

8 39. All Defendants created a nuisance on the Subject Premises by interfering with  
9 Plaintiffs' use and enjoyment of the Subject Premises by allowing the conditions named above,  
10 and others, to exist after being informed of their existence and being given an ample opportunity  
11 to correct these conditions.

12 40. The aforementioned conditions were harmful to Plaintiffs' health, and/or offensive  
13 to their senses, and/or an obstruction to the free use of the property so as to interfere with the  
14 comfortable enjoyment of Plaintiffs' life and/or property.

15 41. Plaintiffs made several complaints to all Defendants regarding the uninhabitable  
16 conditions of the dwelling unit and complained of other disturbances to their possession and  
17 quiet enjoyment of the Subject Premises. Defendants failed and refused to remedy the conditions  
18 of the Subject Premises.

19 42. As a direct and proximate result of the aforementioned conditions on the Subject  
20 Premises, Plaintiffs was reasonably annoyed and/or disturbed by the condition of their living  
21 unit. Furthermore, Plaintiffs were harmed by these conditions. Plaintiffs incurred out of pocket  
22 expenses, suffered emotional distress, and did not receive the full benefit of their home. The  
23 harm to Plaintiffs outweighs any potential benefit, if any exists, of Defendants' conduct. As a  
24 direct and proximate result of Defendants' failures, Plaintiffs suffered damages as specified  
25 throughout this complaint.

26 43. Wherefore Plaintiffs pray for the damages stated below.

27 **SIXTH CAUSE OF ACTION**  
28 **PREMISES LIABILITY - VIOLATION OF CAL. CIVIL CODE SEC. 1714**  
**(All Plaintiffs v. All Defendants)**

44. Plaintiffs re-allege and incorporate into this cause of action the allegations of  
paragraphs 1 through 17, as if the same were set out at length herein.

Beasley, et al. v. Horejsi, et al.  
Complaint for Damages, Jury Trial Demanded

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1 45. Defendants who owned and/or were otherwise responsible for the maintenance of  
2 the Subject Premises had an obligation to maintain the Subject Premises and to perform repairs  
3 in a reasonable and safe manner. As a tenant, Defendants owed Plaintiffs a duty of care which  
4 encompassed maintaining the Subject Premises and performing repairs in a reasonable and safe  
5 manner. During the statutory period, Plaintiffs suffered physical, mental and emotional injuries  
6 due to the dangerous conditions of the Subject Premises which include, but are not limited to,  
7 mold and mildew contamination, defective heater, no heat, defective stove, holes in wall, cracks  
8 in wall, inadequate ventilation, missing window screens, defective bathtub, inadequate electrical  
9 wiring, insect infestation, defective plumbing, all of which caused or contributed to Plaintiffs'  
10 physical injuries, and emotional distress in the form of mental anguish, and pain and suffering.

11 46. Defendants had ownership, and/or control of the subject property at the time of  
12 Plaintiffs' injury. Prior to Plaintiffs' injury Defendants knew, or should have known, about the  
13 dangerous conditions and that exposure to them was, and is, a health hazard and/or in fact injured  
14 or contributed to the injury of Plaintiffs.

15 47. Defendants did not remedy the condition before Plaintiffs suffered emotional  
16 distress and physical injury. Defendants had the ability and opportunity to warn of the dangerous  
17 conditions, but did not warn nor give Plaintiffs notice of the dangerous conditions that caused or  
18 contributed to their injuries.

19 48. The defendants who managed the property owed Plaintiffs, as their tenants, the  
20 duty to maintain the Subject Premises and to perform repairs in a reasonable and safe manner.  
21 Defendants breached their duties by performing maintenance and/or repair work negligently and  
22 by allowing Plaintiffs to be exposed to the above-named defective conditions. Defendants also  
23 employed others negligently and/or had a non-delegable duty with regard to dangerous conditions  
24 created on the Subject Premises by persons employed by Defendants to perform work on the  
25 Subject Premises. Plaintiffs suffered harm to their property in an amount to be determined at  
26 trial.

27 49. As a result of Defendants' conduct, Plaintiffs suffered damages, including medical  
28 specials, emotional distress and pain and suffering, in an amount to be ascertained at trial.



1 50. Wherefore Plaintiffs pray for the damages stated below.

2 SEVENTH CAUSE OF ACTION  
3 RETALIATION IN VIOLATION OF CAL. CIVIL CODE SECTION 1942.5 (a) and (c)  
4 (All Plaintiffs v. All Defendants)

5 51. Plaintiffs re-allege and incorporate into this cause of action the allegations of  
6 paragraphs 1 through 17, as if the same were set out at length herein.

7 52. Plaintiffs made requests for repairs and complained about habitability defects  
8 existing at the Subject Premises to Defendants and/or their agents and/or employees. Plaintiffs  
9 has also consistently exercised their right to inform Defendants about the above mentioned  
10 nuisance and the above mentioned breach of Plaintiffs' quiet enjoyment of the Subject Premises.  
11 Plaintiffs were within their rights to make the aforementioned requests and complaints and are,  
12 and were, protected under the laws of California from being retaliated against for making said  
13 requests and complaints.

14 53. Defendants have continually denied repairs and maintenance to Plaintiffs' unit and  
15 surrounding common areas, and filed unlawful detainer actions for the stated reason of retaliating  
16 against Plaintiffs for engaging in the protected activity of demanding repairs.

17 54. Defendants violated Plaintiffs' rights by harassing and intimidating Plaintiffs,  
18 denying repairs and filing unlawful detainer actions against Plaintiffs. Defendants' dominant  
19 motive in harassing and intimidating Plaintiffs, denying repairs and/or filing unlawful detainer  
20 actions was to retaliate against Plaintiffs for engaging in a protected activity.

21 55. Plaintiffs suffered out of pocket expenses, emotional distress and other general  
22 and special damages in an amount to be proven at trial as a direct and proximate result of  
23 Defendants' retaliatory conduct.

24 56. Wherefore Plaintiffs pray for the damages stated below.

25 EIGHTH CAUSE OF ACTION  
26 NEGLIGENCE  
27 (All Plaintiffs v. All Defendants)

28 57. Plaintiffs re-allege and incorporate into this cause of action the allegations of  
paragraphs 1 through 17, as if the same were set out at length herein.

58. Defendants owed a duty of care to maintain the Subject Premises in a habitable

1 condition pursuant to state and local codes, and not to violate Plaintiffs' rights. All Defendants  
2 violated said duty, throughout their respective terms of ownership, by failing to maintain the  
3 Subject Premises by allowing, mold and mildew contamination, defective heater, no heat,  
4 defective stove, holes in wall, cracks in wall, inadequate ventilation, missing window screens,  
5 defective bathtub, inadequate electrical wiring, insect infestation, defective plumbing and other  
6 conditions to exist on the Subject Premises. Defendants also breached their duties by retaliating  
7 against Plaintiffs for demanding that the Defendants repair the defective conditions mentioned in  
8 this paragraph.

9 59. Plaintiffs further allege that Defendants violated California Code Sections 1941.1  
10 and 1942.5 in that Defendants intentionally and/or negligently failed and refused to remedy the  
11 defective, dilapidated and appalling conditions on the Subject Premises throughout Plaintiffs'  
12 tenancy, and by retaliating against Plaintiffs for demanding repairs.

13 60. As a direct and proximate result of each Defendant's breach of their duties  
14 throughout each respective period of ownership, Plaintiffs were harmed.

15 61. Plaintiffs are in the class of persons sought to be protected by California Code  
16 Sections 1941.1, 1942.4 and 1942.5 from the type of harm that was inflicted upon Plaintiffs by  
17 Defendants' breaches of said statutes. Thus Defendants' breach of the law constitutes negligence  
18 per se.

19 62. As a direct and proximate cause of the acts and omissions of Defendants,  
20 Plaintiffs suffered damages in an amount according to proof.

21 63. Wherefore Plaintiffs pray for the damages stated below.

22 **NINTH CAUSE OF ACTION**  
23 **VIOLATION OF OAKLAND ORDINANCE 8.22 et Seq.**  
(All Plaintiffs v. All Defendants)

24 64. Plaintiffs re-allege and incorporate into this cause of action the allegations of  
25 paragraphs 1 through 14 and 17, as if the same were set out at length herein.

26 65. As a tenant of residential property located in Oakland, California and subject to  
27 Oakland City Ordinance 8.22.300 et seq. (Hereinafter, "Just Cause Ordinance"), Plaintiffs are  
28 entitled to bring an action against all Defendants who have violated said Ordinance to Plaintiffs'

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1 detriment.

2 66. Oakland's Just Cause Ordinance provides safeguards for tenants in Oakland.  
3 When a landlord wrongfully endeavors to recover possession of a property in violation of the  
4 Oakland Rental Ordinance, a Plaintiff is entitled to including damages for mental and emotional  
5 distress.

6 67. Defendants have violated the Just Cause Ordinance by wrongfully endeavoring to  
7 recover possession of the Subject Premises by failing to make repairs to the Subject Premises, by  
8 serving Plaintiffs with misleading notices, attempting to trick Plaintiffs into moving out without  
9 just cause, and not advising Plaintiffs of their right to contact the rent board, or advising  
10 Plaintiffs of the Just Cause Ordinance.

11 68. Plaintiffs were harmed by these violations in that they suffered emotional distress,  
12 anxiety, worry, and fear of losing their home. Plaintiffs have also been force to hire an attorney  
13 to enforce their rights.

14 69. Defendants acted in knowing violation and/or in reckless disregard of the Just  
15 Cause Eviction Ordinance by wrongfully endeavoring to recover possession of the Subject  
16 Premises justifying an award of treble damages to Plaintiffs.

17 70. Wherefore Plaintiffs pray for the damages stated below.

18 **TENTH CAUSE OF ACTION**  
19 **VIOLATION OF OAKLAND TENANT PROTECTION ORDINANCE 8.22.600 et Seq.**  
20 **(Plaintiffs v. All Defendants)**

21 71. Plaintiffs re-alleges and incorporates into this cause of action the allegations of  
22 paragraphs 1 through 14 and 17, as if the same were set out at length herein.

23 72. As a tenant of residential property located in Oakland, California and subject to  
24 Oakland City Ordinance 8.22.600 et seq. (Hereinafter, "Tenant Protection Ordinance"),  
25 Plaintiffs are entitled to bring an action against all Defendants who have violated said Tenant  
26 Protection Ordinance to Plaintiff's detriment.

27 73. Oakland's Tenant Protection Ordinance provides safeguards for tenants in  
28 Oakland. When a landlord wrongfully harasses tenants and/or fails to provide habitable rental  
units, a Plaintiff is entitled to including damages for mental and emotional distress.

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1 74. Defendants have violated the Tenant Protection Ordinance by wrongfully  
2 endeavoring to recover possession of the Subject Premises by failing to make repairs to the  
3 Subject Premises, influencing and/or attempting to influence Plaintiff from vacating the Subject  
4 Premises, and/or substantially interfering with the Plaintiff's right to quiet use and enjoyment the  
5 Subject Premises.

6 75. Plaintiffs were harmed by these violations in that they suffered emotional distress,  
7 anxiety, worry, and fear of losing their home. Plaintiffs have also been force to hire an attorney  
8 to enforce their rights.

9 76. Defendants acted in knowing violation and/or in reckless disregard of the Tenant  
10 Protection Ordinance by wrongfully endeavoring to recover possession of the Subject Premises  
11 justifying an award of treble damages to Plaintiff.

12 77. Wherefore Plaintiffs' prays for the damages stated below.

13 **ELEVENTH CAUSE OF ACTION**  
14 **VIOLATIONS OF THE CALIFORNIA CIVIL CODE SECTIONS 51, 51.5, 52**  
15 **(Plaintiff AKENDUCA BEASLEY v. All Defendants)**

16 78. Plaintiff AKENDUCA BEASLEY re-alleges and incorporates into this cause of  
17 action the allegations of paragraphs 1 through 17, as if the same were set out at length herein.

18 79. Plaintiff BEASLEY belongs to a protected class under the above-referenced  
19 statutes in that said Plaintiff BEASLEY is disabled, aged, or have a medical condition as defined  
20 by California law.

21 80. Defendants are a business establishment as that term is defined by Civil Code  
22 Sections 51-53.

23 81. Defendants have denied Plaintiff BEASLEY full and equal accommodations,  
24 advantages, facilities, privileges, or services as set forth above because of Plaintiffs' membership  
25 in said class. Defendants have also discriminated against Plaintiff BEASLEY with regards to the  
26 rental of property because of Plaintiff BEASLEY's age, disability, or medical condition.

27 82. Plaintiff BEASLEY has suffered out of pocket expenses and great mental,  
28 emotional and nervous pain and suffering, and other general damages as a result of Defendants  
denial of full and equal accommodations, advantages, facilities, privileges, or services.

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1 83. Plaintiff BEASLEY has also been required to engage the services of an attorney as  
2 a result of said denials of full and equal accommodations, advantages, facilities, privileges, or  
3 services. Plaintiff BEASLEY seeks compensation for attorneys' fees as provided for by Cal.  
4 Civil Code Section 52.

5 84. Wherefore Plaintiff BEASLEY prays for the damages stated below.

6 **TWELFTH CAUSE OF ACTION**  
7 **VIOLATION OF CALIFORNIA WELFARE AND INSTITUTION CODE 15610.57**  
(Plaintiff AKENDUCA BEASLEY v. All Defendants)

8 85. Plaintiff AKENDUCA BEASLEY re-alleges and incorporates into this cause of  
9 action the allegations of paragraphs 1 through 17, as if the same were set out at length herein.

10 86. Plaintiff BEASLEY is an elderly and dependant adult as defined by California  
11 Welfare and Institution Code section 15610.27 and 156610.23 respectively.

12 87. Defendants owned and/or were otherwise responsible for the maintenance of the  
13 Subject Premises and had an obligation to maintain the Subject Premises, and to perform repairs,  
14 in a reasonable and safe manner which encompassed maintaining the Subject Premises and  
15 protecting Plaintiff BEASLEY from the health and safety hazards listed herein.

16 88. Defendants also owed Plaintiff BEASLEY as a tenant, a duty of care to not  
17 physically and mentally abuse Plaintiff BEASLEY or to isolate her from outside contact, or to  
18 completely neglect Plaintiff BEASLEY's living conditions knowing it would result in physical  
19 and mental injury to Plaintiff BEASLEY.

20 89. During Plaintiff BEASLEY's tenancy Defendants did not maintain the Subject  
21 Premises in a reasonable healthy and safe fashion, and permitted the herein described health and  
22 safety defects to exist.

23 90. During Plaintiff BEASLEY's tenancy Plaintiff BEASLEY was physically and  
24 mentally abused and isolated by the Defendants and/or agents and/or representatives of the  
25 Defendants which resulted in physical and mental harm to Plaintiff BEASLEY.

26 91. Plaintiff BEASLEY suffered injuries including, but not limited to, emotional  
27 distress, pain and suffering, mental anguish and anxiety, due to the above mentioned dangerous  
28 conditions of the Subject Premises.

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1 92. In performing the acts herein alleged, Defendants acted with oppression, fraud,  
2 despicably, willfully, maliciously and in conscious disregard of Plaintiff BEASLEY's rights  
3 under her rental agreement and state and local laws. Plaintiff BEASLEY is entitled to punitive  
4 damages in an amount to be ascertained at the time of trial.

5 93. Wherefore Plaintiff BEASLEY prays for the damages stated below.

6 **THIRTEENTH CAUSE OF ACTION**  
7 **UNFAIR BUSINESS PRACTICE - VIOLATION OF CALIFORNIA BUSINESS**  
8 **AND PROFESSIONS CODE §§17200, et seq., 17500**

(All Plaintiffs v. All Defendants)

8 94. Plaintiffs re-allege and incorporate into this cause of action the allegations of  
9 paragraphs 1 through 17, as if the same were set out at length herein.

10 95. Plaintiffs brings this cause of action on Plaintiffs' own behalf, on behalf of all  
11 persons similarly situated, and on behalf of the People of the State of California.

12 96. By reason of Defendants' failure to comply with state and local law for the  
13 management of real property, Defendants' conduct constitutes an unfair business practice under  
14 California Business and Professions Code §17200, et seq., and Business and Professions Code  
15 §17500.

16 97. Plaintiffs are informed and believe and thereon allege that it is the regular practice  
17 of Defendants to intentionally disregard the rights of tenants and violate applicable laws relating  
18 to tenancies in their buildings in ways that include, but are not limited to, failing to provide quiet  
19 enjoyment, failing to abate nuisances, allowing the defects identified herein to continue to exist  
20 in the face of government notices to abate, and renting units without certificates of occupancy.

21 98. At all times herein relevant, Defendants were conducting business under the laws  
22 of the State of California, the County of Alameda, and the City of Oakland. In conducting said  
23 business, Defendants were obligated to comply with the laws of the State of California, the  
24 County of Alameda, and the City of Oakland.

25 99. As a direct and proximate result of Defendants' conduct, Defendants have accrued  
26 unjust enrichment.

27 100. Wherefore Plaintiffs pray for the damages stated below.

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**FOURTEENTH CAUSE OF ACTION**  
**RETALIATORY EVICTION**  
**(All Plaintiffs v. All Defendants)**

101. Plaintiffs re-allege and incorporate into this cause of action the allegations of paragraphs 1 through 17, as if the same were set out at length herein.

102. Plaintiffs made requests for repairs and complained about habitability defects existing at the Subject Premises to Defendants and/or their agents and/or employees. Plaintiffs has also consistently exercised their right to inform Defendants about the above mentioned nuisance and the above mentioned breach of Plaintiffs' quiet enjoyment of the Subject Premises. Plaintiffs were within their rights to make the aforementioned requests and complaints and is, and was, protected under the laws of California from being retaliated against for making said requests and complaints.

103. Within 180 days of Plaintiffs' above exercises of their rights, Defendants filed an Unlawful Detainer action against Plaintiffs. Defendants' dominant motive in filing this Unlawful Detainer action was to retaliate against Plaintiffs for engaging in protected activity and lawfully exercising Plaintiffs' rights.

104. Plaintiffs suffered out of pocket expenses, emotional distress and other general and special damages in an amount to be proven at trial as a direct and proximate result of Defendants' retaliatory conduct.

105. Wherefore Plaintiffs pray for the damages stated below.

**CLAIM FOR EXEMPLARY DAMAGES**  
**(All Plaintiffs v. All Defendants)**

106. Plaintiffs re-allege and incorporate into this cause of action the allegations of paragraphs 1 through 56 and 64 through 105, as if the same were set out at length herein.

107. Defendants intentionally violated Plaintiffs' rights and retaliated against Plaintiffs for enforcing their rights as tenants.

108. Defendants' actions were willful and done in conscious disregard of Plaintiffs' rights. Such willful and conscious disregard for Plaintiffs' rights justifies an award of punitive damages as such conduct was oppressive and malicious as defined by Civil Code 3294. The willful failure and refusal to repair longstanding defects existing in Plaintiffs' unit also merits an

1 award of substantial punitive damages against all Defendants. Defendants knew or should have  
2 known that their intentional failure to maintain and repair the Subject Premises posed a  
3 substantial risk of harm to Plaintiffs. Defendants' actions arose to despicable conduct carried out  
4 by defendant with willful and conscious disregard of the consumer and tenant rights and safety of  
5 others including Plaintiffs.

6 PRAYER

7 WHEREFORE Plaintiffs pray for judgment as follows as to all Defendants:

- 8 A. For general damages in the amount of \$100,000.00, or according to proof, for  
9 each cause of action;
- 10 B. For special damages including property damage and loss in the amount of  
11 \$100,000.00, or according to proof, for each cause of action;
- 12 C. For punitive and exemplary damages according to statute and according to proof,  
13 to be determined at trial;
- 14 D. For statutory damages of \$5,000.00 for each violation of Civil Code § 1942.4 and  
15 \$2,000 per violation of Civil Code Section 1942.5
- 16 E. For compensatory damages for losses resulting from humiliation, mental anguish,  
17 frustration, annoyance and emotional distress in the amount of \$100,000.00, or according  
18 to proof;
- 19 F. For incidental expenses, past, present and future,
- 20 G. For interest on the amount of losses incurred at the prevailing legal rate;
- 21 H. For attorney's fees according to contract and statute, in the amount of  
22 \$100,000.00, pursuant to Civil Code §1942.4, §1942.5(g), O.M.C. Chapter 8.22.670 (D)  
23 and CCP §1021.5;
- 24 I. For costs of suit incurred herein;
- 25 J. For pre-judgment interest;
- 26 K. For statutory penalties;
- 27 A. For costs of suit incurred herein; and
- 28 B. For such other and further relief which this Court deems just and proper.

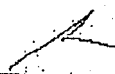
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Dated: July 14, 2017

LAW OFFICES OF ANDREW WOLFF, PC

  
ANDREW WOLFF, ESQ.  
Attorney for Plaintiffs  
BEASLEY and MIMS

Beasley, et al, v. Horejsi, et al.  
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EXHIBIT A  
(Written Rental Agreement)

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AGREEMENT AND CONDITIONS OF OCCUPANCY

The owners of the property known as Marriott Hotel, hereinafter referred to as "Management", hereby rent to Linda Bailey, hereinafter referred to as "Resident", those certain premises known as Apartment D at 7764 39th Ave, Oakland, California, month to month, commencing 1 August 1972 at a monthly advance rental of \$ 525.00 (including \_\_\_\_\_).

1. **RENTAL PAYMENT.** The monthly rental shall be due and payable on the first day of the month in advance. If commencement of residency is other than on the 1st day of the month, in the month following commencement of this rental, resident shall pay pro rata the rent to the end of that month. Rent proration in the amount of \$ 14.16 will be paid on or before 28 July 72 for the period 28 July 72 to 31 July 72. A late service charge of \$1.50 shall be charged resident for each day that rental payment is delinquent, commencing on the 5th day from the due date. Resident agrees to pay an additional charge of \$10.00 for each returned check unpaid.

2. **DEPOSITS.** It is agreed that the resident shall pay a \$ 50.00 KEY DEPOSIT (Keys, Key Card, I.D. Sticker), refundable approximately 14 days after termination of residency and return of keys. A SECURITY DEPOSIT OF \$ 500.00 shall be paid to cover terms and conditions of this Agreement. Management may retain amounts from the Security Deposit that are reasonably necessary: a) to remedy resident's defaults in the payment of rent, b) to clean, paint and repair premises if beyond normal wear and tear. Cleaning or repair work performed by vacating resident will be done to management's satisfaction. Balance of security deposit, if any, shall be mailed to tenant's last known address within 14 days of surrender of premises. In any event no security deposit shall be returned when the tenancy is less than six months. If actual costs of damage or a breach of the terms of this Rental Agreement exceed the amount of the security deposit, resident shall personally pay any excess cost. Resident shall not apply any portion of the security deposit against unpaid rent.

3. **FEES.** Upon execution hereof, resident shall pay a cleaning fee of \$ 70.00 which is agreed to be a reasonable amount to clean the carpets and drapes on termination.

4. **UTILITIES.** Resident shall pay for the following utilities:  
PG & E

5. **USE.** Premises shall be occupied by the undersigned 1 adults. Premises will not be rented to parents or families with children under the age of 18 without written approval of management. If a child is born to the resident after this Rental Agreement is in effect, resident shall be permitted to remain for a period up to six months in order to obtain new housing accommodations. Resident agrees to use the premises solely as a private residence for the occupants and no other person or persons without the prior written consent of management. Resident also agrees to use the premises and all common areas in accordance with management's Rules and Regulations, a copy of which resident has received and which by this reference are made a part hereof, and further agrees not to violate any law or ordinance of any governmental authority with respect to the premises or any common areas. Guests remaining more than 7 days shall be considered additional occupants. Resident agrees to pay additional rent in the amount of \$10.00 per day for each additional occupant.

6. **PETS.** No pets may be brought onto any part of the apartment community at any time, except on express written consent of management. Resident agrees to pay \$100.00 per month for each such pet kept or brought on the property without written permission.

7. **AUTO PARKING.** It is expressly understood and agreed that the assigned parking space at said premises is limited to private passenger vehicles and the resident shall have no right to store any vehicles, boats, or trailers or other property on said parking space without written consent of management. Car repairs are not permitted anywhere on the property. The resident hereby grants to the management the undisputed right, with 10 days notice to remove any vehicle from the parking space which is inoperable in management's opinion, and remains inoperable for 10 consecutive days. Resident further agrees that any vehicle owned by resident remaining on the property after termination of this Rental Agreement may be immediately removed by the management with full immunity from damages for such removal. Resident further agrees that any vehicle kept on the premises shall be covered by liability insurance at all times.

8. **TERMINATION.** Either management or resident may terminate this Rental Agreement at any time by giving 30 days notice in writing to the other, or as provided by the State Statutes. No oral notice or notice given by resident under which the termination date is not definite or resident does not completely vacate the premises including all storage areas within the said 30 days shall be effective. Rent shall be paid to and including date of termination of occupancy.

9. **ALTERATIONS & IMPROVEMENTS.** Resident shall make no alterations or improvements to the premises without obtaining management's written consent in advance, including without limitation painting, wallpapering, permanent shelving, and flooring, and the changing of locks. All alterations, additions, or improvements made in and to said premises shall be the property of the apartment community and shall remain upon and be surrendered with the premises.

10. **NOISE, ETC.** Loud and boisterous noise, or any other objectionable behavior by residents or their guests cannot be permitted, and resident agrees to use good judgment and thoughtfulness for others in the use of his apartment. Resident further agrees not to commit, suffer or permit any waste or nuisance in, on, or about the said premises, or in any way to annoy, molest or

interfere with any other resident or occupant, nor to use in a wasteful or unreasonable or hazardous manner any of the utilities furnished by management. Resident further agrees that neither he nor his family shall keep or bring on said premises any gun or other musical instrument without written permission from management.

11. INJURIES OR DAMAGE. Neither management nor the owner of the apartment community shall be liable to resident for any loss or damage to resident's effects. It is agreed it is resident's responsibility to insure their property and safeguard against personal loss. Resident agrees to save and hold management harmless from any claims, or for any damages arising as the result of resident's negligence.

12. MANAGEMENT'S LIABILITIES. Resident releases management from any liability for loss or damage to resident's property while stored on the said premises. No property shall be so stored without the prior written consent of management. Any property so stored shall be removed from the premises immediately on termination of tenancy. In the event such property is not so removed, management may dispose of same without any liability to resident whatsoever.

Resident releases management from any and all liability to person and property suffered by resident while on said premises or on the premises of which the rented unit is a part. Resident shall see said management safe and harmless from any liability for any injury or damage to the person or property of third persons while on said premises at the express or implied invitation of said resident, or to other residents on rented premises.

13. ABANDONMENT. Resident's absence from the premises for five consecutive days, while all or any portion of the rent is unpaid, shall be deemed abandonment of said premises, and this residency at management's option may immediately terminate without further notice. In such event, management may dispose of all of resident's property remaining on said premises and re-rent said premises without liability to resident whatsoever.

14. TRANSFERABILITY & COST OF COLLECTION. This Rental Agreement is not transferable without prior written consent of management, nor shall resident sublet all or any part of the premises without such prior written consent. In the event suit is necessary to enforce any of the provisions herein contained, or to recover possession, resident agrees to pay reasonable attorney fees and court fees, and delinquent amounts and damages.

15. OTHER COVENANTS. Resident's application to rent and community policies are agreed to be a part of the Rental Agreement, and the terms, conditions, and representations shall be binding upon the heirs.

16. RIGHT OF ENTRY. Management or its agents may enter said premises at reasonable times to inspect, clean, repair, redecorate, remodel or show the premises to prospective tenants, purchasers or representatives of lending institutions.

17. NOTICES. Any notice to be given by either party to the other shall be in writing either delivered personally, or sent by U.S. Mail, prepaid, to resident at the address of the apartment, and to the management at the address of the resident manager.

18. MANAGEMENT'S REPRESENTATIVE. Management appoints resident manager as its duly authorized agent to manage the premises and to act for the purposes of services of process and for the purpose of receiving and receipting for all notices and demands.

19. POSSESSION. Failure to deliver possession of premises at the time herein agreed upon shall not subject management to liability for damages beyond the amount of the deposit received from resident.

20. FURNITURE. If apartment is furnished, inventory shall be attached hereto and made a part hereof, and signed by the resident. Resident agrees not to furnish apartment with water bed without written permission of management.

21. APPLIANCES. The resident hereby acknowledges that the following appliances are part of the described premises:  Refrigerator,  Range,  Dishwasher,  Air Conditioning Unit,  Washer,  Dryer,  Television

22. CONDITION OF PREMISES. Resident hereby acknowledges that the premises are in good condition at commencement of this Rental Agreement except as noted on move-in sheet attached.

23. OTHER ITEMS OF MUTUAL AGREEMENT.

Each of the parties hereto acknowledges receipt of an executed duplicate copy of this Rental Agreement. All residents shall sign this agreement and shall be jointly and severally liable thereunder, and any subtenant or guest, whether or not considered to be by management, by taking occupancy, shall be deemed to have knowledge of and to have consented to the terms of this Agreement.

IN WITNESS WHEREOF, the parties have signed this Rental Agreement this 23<sup>rd</sup> day of July, 1982.

Resident Manager:

*Michael [Signature]*

Resident:

*[Signature]* 7/21/82

Resident:

*[Signature]*

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RENT ADJUSTMENT PROGRAM

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**THE CITY OF OAKLAND RENT ADJUSTMENT PROGRAM:**

**APPEAL**

**No. T16-0549**

**Michael Horejsi,**  
*Landlord and Appellant;*

**vs.**

*Akenduca D. Beasley,*  
*Respondent and Tenant;*

**CITY OF OAKLAND RENT ADJUSTMENT PROGRAM, et al.**

**Real Parties in Interest.**

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**Respondent's Evidential Response To Landlord Appeal**

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**Akenduca D. Beasley**  
**P.O. Box 19304**  
**Oakland, California 94619**  
**Telephone:**

**Respondent - Tenant, Representing**  
**Tenants at 3764 39<sup>th</sup> Ave Apt. D, Oakland, 94619**

**000157**

## STATEMENT OF RELEVANT FACTS

Tenant A. Beasley filed a petition on October 4, 2016, which alleges that the proposed rent increase from \$828 to \$882.42, effective October 1, 2016, and a rent increase in the year 2000, exceed the CPI Adjustment and are unjustified or is greater than 10%; that the owner did not give summary of the justification for the proposed rent increase despite her written request; that she did not receive the form Notice to Tenants (RAP Notice) at least 6 months before the effective date of the contested rent increase or together with the contested rent increase; that the contested rent increase is the second rent increase in a 12-month period; that her rent has not been reduced after the expiration period of the rent increase based on capital improvements; that at present there exists a health, safety, fire or building code violation in her unit; and that her housing services have been decreased due to problems with the heater; the bathtub; mold and mildew; the stove; the closet; window screens; and electrical problems; and that parking was a part of her original rental agreement.

The owner filed a response to the petition, which alleges that the tenant was given the RAP Notice on July 24, 2002 and together with both contested rent increases; that the current rent increase is justified by Banking; and denies that the tenant's housing services have decreased.

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The owner filed a response to the petition, which alleges that the tenant was given the RAP Notice on July 24, 2002 and together with both contested rent increases; that the current rent increase is justified by Banking; and denies that the tenant's housing services have decreased.

The decision appealed is for March 15, 2017. At this time the Residential Rent Adjustment Program did not alert Respondent of time limits as to filing response or evidence. Respondent contacted the RAP and was informed that a response or evidence is due 7 days before a hearing on appeal. So far no hearing has been scheduled for the Appeal submitted by landlord.

**POINTS AND AUTHORITIES &  
ARGUMENT IN OPPOSITION TO APPEAL**

**LEGAL AUTHORITY**

**Evidence Code.** The Evidence Code governs proceedings in all actions [Evid. Code §12(a)] and defines "actions" to include both civil and criminal proceedings. Evid. Code §105. Unless otherwise provided in the Penal Code, the rules of evidence in civil actions are applicable to criminal prosecutions. Penal Code §1102.

**Code of Civil Procedure.** The Code of Civil Procedure is to be interpreted liberally in order to affect its objects and promote justice. *Justus v. Atchison* (1977) 19 Cal. 3d 564, 579, 139 Cal. Rptr. 97; Code Civ. Proc. §4, Code Commissioners' Notes. While it is advisable to comply literally with its provisions, nothing short of a substantial departure will be fatal to a proceeding under it. *Shinn v. Cummins* (1884) 65 Cal. 97, 3 P. 133.

Certain provisions of the Code of Civil Procedure are applicable in criminal prosecutions. As used in the Code, an "action" includes a proceeding in which a party seeks punishment for a public offense. Code Civ. Proc. §22. In the Code of Civil Procedure, actions are divided into two kinds, civil and criminal, and unless it appears that the particular statute was intended to apply only to civil actions, it applies equally to criminal proceedings. *See People v. Bouchard* (1957) 49 Cal. 2d 438, 440-441, 317 P.2d 971.

**LANDLORD'S APPEAL SHOULD BE DENIED BECAUSE IT IS BASED ON  
CONJECUTRE, HEARSAY & UNTRUTHFUL STATEMENTS**

Tenants filed a petition challenging landlord rent increase, because the landlord agreed in court stipulation, within 30 days, to inspect and make following repairs to the apartment: bathtub, bathroom mold + mildew, hood above stove, defective stove, heater, hole in closet, window screens. He did not act within the 30 day period, thereby breaching the order issued by the court. In addition, within the court stipulation the landlord agreed to accept \$2000, he indicates in his appeal was not paid. Therefore landlord claim that rent is late is false.

Also Contrary to idea that tenants refused to pay lawful rent increase, the rent increase was challenged in the RAP hearing and was found credible by the decrease in service claims within the petition. All of the tenants claims are based from the agreement, in which landlord agreed to make repairs to the within the thirty day period.

Moreover the claims for tenants is not barred by res judicata, because they were not claims filed in a court by tenants and the defects in the apartment described were apart of settlement, governed by *California Code of Civil Procedure Section 664.6*; as a result of the landlord filing a frivolous unlawful detainer in which he indicated tenants didn't pay rent. Actually the landlord is prohibited from making claims regarding damages to the apartment. See paragraph 4 of the stipulation agreement. The court stipulation states in relevant part: paragraph (4.) plaintiff hereby waives any and all claims for rent, fees, costs, parking and late fees and daily damages for the premises above the \$3856.84 amount outlined in paragraph 1, through 8/31/16. Therefore the claims from landlord that *Cal Civ. Code Sections 1929 and 1941.2* prohibit any claim for reduction in housing services as a defense, is unsubstantiated. In court he agreed to make repairs within a reasonable time and he did not act.

With respect to the claims that were granted by RAP, relating to the heater and bathtub. *Cal. Civ. Code § 1942.4* prohibits the landlord of a dwelling from issuing a notice of a rent increase or obtaining an increase when such decreases exist. Particularly when an employee who is responsible for the enforcement of any housing law, after inspecting the premises, has notified the landlord or the landlord's agent in writing of his or her obligations to abate the nuisance or repair the substandard conditions. The conditions have existed and have not been abated 35 days beyond the date of service of the notice specified in paragraph, and the delay is without good



cause; and the conditions were not caused by an act or omission of the tenant or lessee in violation of Section 1929 or 1941.2... It was determined by the hearing officer Kasdin after examine evidence that decreases exist and neither claim, was caused by tenants. Consequently the rent increase should be denied.

The Rent Adjustment board decision indicated the following regarding tenants claims regarding the heater and bathtub: "**Heater**: This was an item included in the court Stipulation, dated August 15, 2016. Contrary to his testimony at the Hearing, the owner obviously had notice of this problem before the court appearance in mid-August 2016. Heat is a basic housing service, and the heater should have been repaired before July 4, 2016. The lack of heat reduced the package of housing services by 10% from July 4 through November 30, 2016. As set forth on the Table below, the tenants overpaid rent during that time. **Bathtub**: There is no evidence that the damage to the tub — which was also an item listed in the Stipulation — was caused by the tenants' misuse; the owner's testimony to the contrary was mere speculation. The tenants' testimony that they have been unable to take baths is supported by photos of several areas of the tub. This condition has reduced the housing services by 3% since July 4, 2016. Because of the current decrease in housing services, the rent is reduced by 3%, being \$26.47 per month, to \$855.95 per month. This rent decrease will remain in effect until the bathtub is re-surfaced or replaced, as specified in the Order below." A true and correct copy of the letter from Landlord is attached as Exhibit 1. A true and correct copy of the PG &E analysis given by technician is attached as Exhibit 2. A true and correct copy of picture of the removal of the heater taken 4/11/2018 is attached as Exhibits 3 and 4. A true and correct copy of picture of bathtub taken 2/16/2018 is attached as Exhibits 5 and 6.

On April 26, 2018, tenants discovered the building isn't grounded correctly. Akenduca and Satchidananda (tenants) spoke with a technician named Shay about fixing problems with cable and internet services. After the technician ran tests. It was learned that the building is grounded into Comcast. The technician didn't have a way of printing out his notes to give a copy to the landlord, but I was able to contact customer service and receive the relevant part of technician notes indicating building isn't grounded. Tenants had a claim involving flickering lights, the building not being properly grounded might be the problem. A true and correct copy of the conversation with Comcast customer service online is attached as Exhibit 7.

Based on 3\19\2018, PG &E inspection that the heater wasn't repaired properly and did not function when tested, and the bathtub has not been repaired as ordered, and building isn't grounded, in violation of *Cal. Civ. Code § 1942.4*, and other applicable law. Therefore rent increase should be void and the decreased calculations should be adjusted to reflect that the heater and tub were not repaired.

**OBJECTIONS TO EVIDENCE**

**LANDLORD TEXT**

**OBJECTIONS**

<p><b>Exhibit 1, pg. 11</b> (Bay area Property Group)</p>	<p>1. Lacks Foundation; Speculation; Lacks Relevance; Lacks Authentication. Cal. Evid. Code §§ 210, 403, 702, 1401.</p>
<p><b>Exhibit 1, pg. 11</b> (Bay area Property Group)</p>	<p><b><u>#1 Lack Foundation and are Speculative:</u></b> The statement and accompanying exhibit lack foundation and are speculative because the landlord does not state any facts upon which his purported knowledge is based.</p>
<p><b>Exhibit 1, pg. 11</b> (Bay area Property Group)</p>	<p><b><u>#2 Lacks Relevance:</u></b> Exhibit 1 is not relevant because it does not have any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action.</p>

<p><b>Exhibit 1, pg. 11</b> (Bay area Property Group)</p>	<p><b>#3 Lacks Authentication:</b> Exhibit 1 lacks authentication because landlord doesn't make it clear where exhibit came from, it appears to be Newspaper Advertisement. Not declared to be true and correct copy.</p>
<p><b>Exhibit 1, pg. 11</b> (Bay area Property Group)</p>	<p><b>#4 Hearsay:</b> The statement and accompanying exhibit are hearsay because they are based on an out of court statement offered for the truth of the matter asserted, regarding an event that occurred at tenant's home. Also Newspaper is inadmissible evidence. See <i>Bebbington v California W. States Life Ins. Co.</i>, 30 Cal. 2d 157, (1947).</p>
<p><b>Exhibit 2, pg. 12,</b> quote from page 5, Appeal: "What follows are the laws I have referenced above, which I used to determine what was 'repair as necessary' identified in the Stipulation. The general rule is that: "When a landlord (property owner) rents an apartment to a tenant (Renter), the rented property must be fit to live in. In other words, the rented property must be 'habitable.' During the time that the property is being rented, the landlord must do maintenance work and make repairs which are necessary to keep it habitable. However, a landlord is not responsible for repairing damage caused by the tenant, or the tenant's guest, children or pets." See Exhibit 2</p>	<p><b>Improper Opinion; Lacks Foundation; Speculation.</b> Cal Evid. Code §§ 702, 720, 800, 801.</p>
<p><b>Exhibit 2, pg. 12</b> quote from page 5, Appeal: "What follows are the laws I have referenced above,</p>	<p><b>#1 Improper Opinion:</b> The statement is improper opinion testimony because the</p>

<p>which I used to determine what was 'repair as necessary' identified in the Stipulation.</p> <p>The general rule is that:</p> <p>"When a landlord (property owner) rents an apartment to a tenant (Renter), the rented property must be fit to live in. In other words, the rented property must be 'habitable.' During the time that the property is being rented, the landlord must do maintenance work and make repairs which are necessary to keep it habitable. However, a landlord is not responsible for repairing damage caused by the tenant, or the tenant's guest, children or pets."</p> <p>See Exhibit 2</p>	<p>landlord does not lay any foundation to establish his qualifications as an expert on determining which repairs to make or assertion about a general rule.</p>
<p><b>Exhibit 2, pg. 12</b> quote from page 5, Appeal:</p> <p>"What follows are the laws I have referenced above, which I used to determine what was 'repair as necessary' identified in the Stipulation.</p> <p>The general rule is that:</p> <p>"When a landlord (property owner) rents an apartment to a tenant (Renter), the rented property must be fit to live in. In other words, the rented property must be 'habitable.' During the time that the property is being rented, the landlord must do maintenance work and make repairs which are necessary to keep it habitable. However, a landlord is not responsible for repairing damage caused by the tenant, or the tenant's guest, children or pets."</p> <p>See Exhibit 2</p>	<p><u>#2 Lack Foundation and are Speculative:</u></p> <p>The statement and accompanying exhibit lack foundation and are speculative because the landlord does not state any facts upon which his purported knowledge is based.</p>
<p><b>Exhibit 3, quote from page pg. 4:</b></p> <p>"I also consulted the California Apartment House Association's guide to 'wear and tear' or 'damages' to determine if the tenant is responsible for damages to the apartment."</p>	<p>Hearsay, Lacks Foundation; Speculation; Lacks Relevance; Lacks Authentication. Cal. Evid. Code §§ 210, 403, 702, 1401.</p>
<p><b>Exhibit 3, quote from page pg. 4:</b></p> <p>"I also consulted the California Apartment House Association's guide to 'wear and tear' or 'damages' to determine if the tenant is responsible for damages to the apartment."</p>	<p><u>#1 Hearsay:</u> The statement and accompanying exhibit are hearsay because they are based on an out of court statement offered for the truth of the matter asserted.</p>

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<p><b>Exhibit 4, receipt from Pete hardware quote from page pg5:</b>          “There was a statement in the Decision that work was not done in the apartment until late November 2016. This statement is incorrect and contrary to my testimony and letter of January 14, 2017 concerning</p>	<p>Lacks Relevance; Lacks Authentication; Improper Opinion. Cal. Evid. Code §§ 210, 403, 702, 1401</p>

<p>the issue. To settle the issue, receipts for materials purchased as a result of my November 2, 2016 inspection are attached as Exhibit 1”</p>	
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<p><b>Exhibit 5</b>, pg. 15-16, Bath Crest</p>	<p>Lacks Foundation; Speculation; Lacks Relevance; Lacks Authentication. Cal. Evid. Code §§ 210, 403, 702, 1401.</p>

<p><b>Exhibit 5, pg. 15-16, Bath Crest</b></p>	<p><u>#1 Lack Foundation and are Speculative:</u> The statement and accompanying exhibit lack foundation and are speculative because the landlord does not state any facts upon which his purported knowledge is based.</p>
<p><b>Exhibit 5, pg. 15-16, Bath Crest</b></p>	<p><u>#2 Lacks Relevance:</u> Exhibit 1 is not relevant because it does not have any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action</p>
<p><b>Exhibit 5, pg. 15-16, Bath Crest</b></p>	<p><u>#3 Lacks Authentication:</u> Exhibit 4 lacks authentication because landlord doesn't declared it to be true and correct copy.</p>
<p><b>Exhibit 6, pg. 17</b></p>	<p>Lacks Foundation; Speculation; Lacks Relevance; Lacks Authentication. Cal. Evid. Code §§ 210, 403, 702, 1401.</p>
<p><b>Exhibit 6, pg. 17</b></p>	<p><u>#1 Lack Foundation and are Speculative:</u> The statement and accompanying exhibit lack foundation and are speculative because the landlord does not state any facts upon which his purported knowledge is based.</p>
<p><b>Exhibit 6, pg. 17</b></p>	<p><u>#2 Lacks Relevance:</u> Exhibit 6 is not relevant because it does not have any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action</p>
<p><b>Exhibit 8, pg. 19</b></p>	<p>Lacks Foundation; Speculation; Lacks Relevance; Lacks Authentication. Cal. Evid. Code §§ 210, 403, 702, 1401.</p>

<b>Exhibit 8, pg. 19</b>	<b><u>#1 Lack Foundation and are Speculative:</u> The statement and accompanying exhibit lack foundation and are speculative because the landlord does not state any facts upon which his purported knowledge is based.</b>
<b>Exhibit 8, pg. 19</b>	<b><u>#2 Lacks Relevance:</u> Exhibit 6 is not relevant because it does not have any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action</b>
<b>Exhibit 9, pg. 20</b>	<b>Lacks Foundation; Speculation; Lacks Relevance; Lacks Authentication. Cal. Evid. Code §§ 210, 403, 702, 1401.</b>
<b>Exhibit 9, pg. 20</b>	<b><u>#1 Lack Foundation and are Speculative:</u> The statement and accompanying exhibit lack foundation and are speculative because the landlord does not state any facts upon which his purported knowledge is based.</b>
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<b>Exhibit 9, pg. 20</b>	<b><u>#3 Lacks Relevance:</u> Exhibit 3 is not relevant because it does not have any tendency in reason</b>



	to prove or disprove any disputed fact that is of consequence to the determination of the action.
<b>Exhibit 10, 11, pg. 21-22 picture of bedroom</b>	Lacks Foundation; Speculation; Lacks Relevance; Lacks Authentication. Cal. Evid. Code §§ 210, 403, 702, 1401.
<b>Exhibit 10, 11, pg. 21-22 picture of bedroom</b>	<u>#1 Lack Foundation and are Speculative:</u> The statement and accompanying exhibit lack foundation and are speculative because the landlord does not state any facts upon which his purported knowledge is based.
<b>Exhibit 10, 11, pg. 21-22 picture of bedroom</b>	<u>#2 Lack Foundation and are Speculative:</u> The statement and accompanying exhibit lack foundation and are speculative because the landlord does not state any facts upon which his purported knowledge is based.
<b>Exhibit 10, 11, pg. 21-22 picture of bedroom</b>	<u>#3 Lacks Relevance:</u> Exhibit 3 is not relevant because it does not have any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action.
<b>Exhibit 12, pg. 23</b>	Hearsay, Lacks Foundation; Speculation; Lacks Relevance; Lacks Authentication. Cal. Evid. Code §§ 210, 403, 702, 1401.
<b>Exhibit 12, pg. 23</b>	<u>#1 Hearsay:</u> The statement and accompanying

	<p>exhibit are hearsay because they are based on an out of court statement offered for the truth of the matter asserted.</p>
<p><b>Exhibit 12, pg. 23</b></p>	<p><u>#2 Lack Foundation and are Speculative:</u> The statement and accompanying exhibit lack foundation and are speculative because the landlord does not state any facts upon which his purported knowledge is based.</p>
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<p><b>Exhibit 12, pg. 23</b></p>	<p><u>#4 Improper Opinion:</u> The statement is improper opinion testimony because the landlord does not lay any foundation to establish his qualifications as an expert on determining if the tenant is responsible for damages to the apartment.</p>


**CONCLUSION**

Based on the foregoing, Petitioner request that the Rent Adjustment Board deny landlord appeal and deny all claims for rent increases pursuant to *Cal. Civ. Code § 1942.4* and any other applicable law.

**VERIFICATION**

I, Akenduca D. Beasley am the Respondent in this proceeding. I have read the foregoing Tenant Evidentiary Response and know the contents thereof. The same is true of my own knowledge, except as to those matters that are therein stated on information and belief, and, as to those matters, I believe it to be true.

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 is executed on July 14, 2018.

  
\_\_\_\_\_  
Akenduca D. Beasley aka Linda Beasley

# EXHIBIT

1

Letter

April 24, 2018

Linda Beasley  
3764 39<sup>th</sup> Ave., #D  
Oakland, CA 94619

Re: Your letter dated April 5, 2018

Dear Linda:

You raised several issues in your letter referenced above. You apparently requested that PGE conduct an inspection of your electric cook range. They [PGE] arrived on March 19, 2018 to provide the requested service. My understanding from you is that upon arrival, the PGE representative advised you that he could not check the range/perform the inspection because the range is electric [and not gas].

The PGE rep asked you if you wanted a safety check performed on the wall heater – you indicated that he told you the pilot light was too high and upon lowering the pilot light, the heater would not operate. The heater had been operating properly prior to this adjustment. According to the Service Report, there was an indication that the 'possible control valve is bad.'

Your wall heater was checked by myself on April 11, 2018. The heater burner assembly was removed and taken to Appliance Parts Distributor and bench tested. The technicians found that it functioned normally. The burner unit was reinstalled and a new 750 millivolt power generator was installed. The burner unit seemed to work well even with the lower pilot light setting.

The PGE representatives have special sensors and are normally good at detecting gas leaks; however, they are not experienced technicians. I would suggest if you want an expert evaluation of your appliances, you contact a professional to perform this service.

As far as your rent is concerned, you have paid the amount required per the Stipulation. You pay by check and therefore have a record of what you have paid. As you know, you have failed to pay the basic CPI (2%) increase mandated by the RAP since October 2016 as required by law. This failure amounts to a delinquency of \$17.06 per month since that date [2016]. You have also failed to pay the basic CPI (2.3%) increase mandated by the RAP since October 2017. This failure amounts to an additional delinquency of \$20.28 per month since October 2017.

There is also the matter of damages to the kitchen range that you have refused to pay. Further, your portion of the RAP fees of \$34.00 is also due – please include this with your May rent.

In February, wire, plastic and onion peelings were removed from your disposal – these are not items that belong in the disposal. Upon checking it again during my current visit, it was clear of debris and works properly. It does make some noise, but continues to work as designed.

000173

Linda Beasley  
April 24, 2018  
Page | 2

Concerning your request for painting, you have previously indicated that you intend to move when you settle the lawsuit. There is little justification for performing this type of work at this time. However, I will arrange for a contractor to come in and evaluate the work you have requested, as well as provide an estimate for the proposed work. You will be advised when this evaluation is scheduled.

Sincerely,



Mike Horejsi, Landlord/Owner

/meh

000174

**EXHIBIT**

**2**

**PG & E**

**TECH**



**Pacific Gas and Electric Company®**

# SERVICE REPORT

PG&E Visited your Property Today to Service Your Account

Valued Customer: 3764 39<sup>th</sup> Ave #1 Oakland  
Address

Service Date/Time: 3-19-18 A.M./P.M.

Service Technician: Kiel Confirmation/Field Order # \_\_\_\_\_

Transaction Type: Outright

**SORRY WE MISSED YOU:** Unfortunately we were not able to complete your service request because it requires your presence or the presence of an adult. Please call us at 1-800-743-5000

**SORRY WE MISSED YOU:** Please see reverse side for additional information

### Gas Service

#### Service/Inspection of Gas Equipment

Appliance Type	Inspected	Cleaned Burner Pilot	Filter Inspected	Adjusted	Repaired	Gas Leak Repaired	Appliance Parts Replace Program	Unsafe Condition Identified	Refer to Licensed Contractor
Range									
Oven									
Water Heater									
Heating Appliance	✓								
Dryer									
Pool/Spa Heater									
Other									

### Electric Service

#### Service/Inspection of Electric Equipment

Equipment Type	Inspected	Voltage Read	Problem Corrected	Parts/Contractor Referral	Unsafe Condition Identified	Refer to Dealer
Service Panel						
Voltage Problem						
Complete Outage						
Partial Outage						
Electric Range						
Electric Water Heater						
Other						

#### Remarks:

Unable to do safety check on stove due to electric stove safety check wall furnace Pilot light still on but heater won't turn on. Possible control valve is bad. Refer to license contractor for service. CO detector active

Case # \_\_\_\_\_

#### Additional PG&E Work Required

The work you requested will require additional PG&E follow up or repairs to complete. Please refer to your case number above when calling for additional information regarding your request.

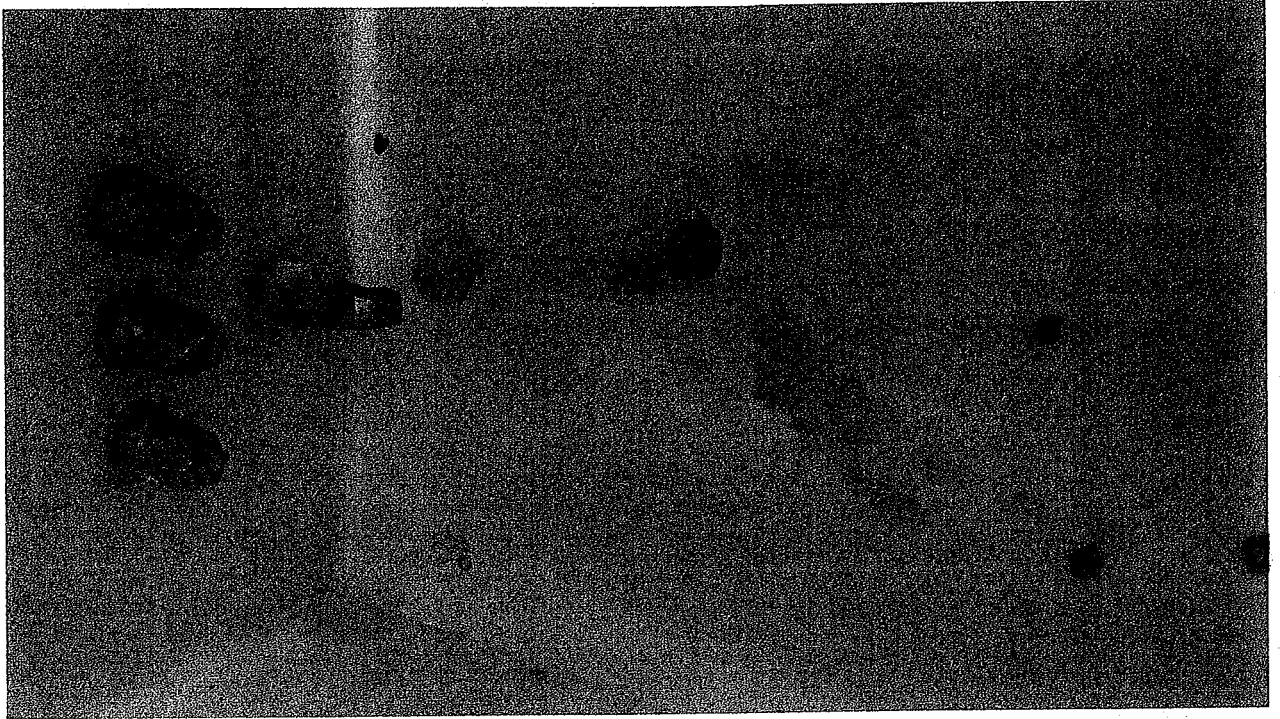
Thank you for the opportunity to serve you

Were you satisfied with the service? Yes  No  If your answer is "No" how can we improve?

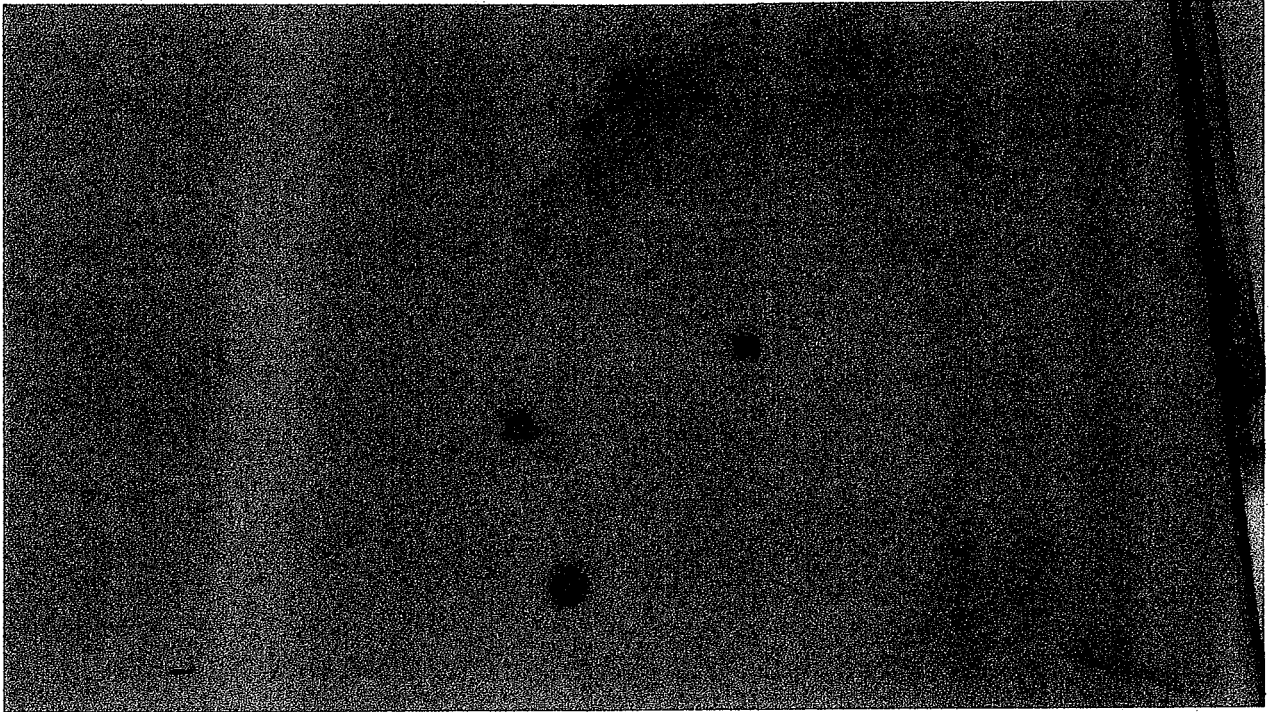




**Exhibit 3, picture of heater taken 4/11/2018, removal of parts.**



**Exhibit 5, picture of tub taken 2/16/2018.**



**Exhibit 6, picture of tub taken 2/16/2018.**

# EXHIBIT

7

# xfinity Chat Transcript

**CHAT STARTED AT Apr 26, 2018 11:15:17 PM**

**11:15:17 PM AKENDUCA BEASLEY :** On 4/26 a technician came to my apartment to determine problem with TV and internet service. After careful review he indicated that the building I live in is grounded into Comcast and Comcast has installed filters to compensate. I spoke with customer service earlier and the agent indicated that she did not have a way of giving me a copy of what the tech stated in his notes. It could only be obtained by warrant or subpoena. The agent indicated that she would cut and pasted a copy of what was stated in the technician notes in an email and sent it to my linda\_B\_year2000@hotmail.com, email address, but after looking into my account it appears that she did not send it.

The information is necessary to demand the landlord fix the problem.

---You are now chatting with Namita---

**11:16:02 PM Namita :** Hi Akenduca, thank you for contacting Xfinity Chat Support. My name is Namita.

**11:16:08 PM AKENDUCA BEASLEY :** hi

**11:16:47 PM Namita :** I will certainly assist you with this by checking on your account status and provide assistance as needed.

**11:16:57 PM AKENDUCA BEASLEY :** okay

**11:17:00 PM Namita :** Please provide your complete name and the complete service address, including apartment number and state zip code. This is required for the verification purposes.

**11:17:36 PM AKENDUCA BEASLEY :** Akenduca Beasley

**11:18:01 PM AKENDUCA BEASLEY :** service address: 3764 39th Ave Apt. D., Oakland, 94619

**11:18:43 PM Namita :** Thank you for confirming these details.

**11:18:58 PM Namita :** lease allow me 1-2 minutes to check this for you.

**11:19:07 PM AKENDUCA BEASLEY :** okay

**11:22:27 PM Namita :** Akenduca, please stay connected. I am still checking.

**11:22:38 PM AKENDUCA BEASLEY :** okay

**11:23:03 PM Namita :** Thank you for waiting.

**11:24:17 PM Namita :** Here are the notes:

**11:24:24 PM Namita : INSIDE MDU BOX FILTERS ARE PLACED ON ALL UNITS INSIDE APARTMENT BUILDING VOLTAGE AND INGRESS, THE BUILDING ISN'T GROUNDED**

**11:25:10 PM Namita : This is what is mentioned here in the note.**

**11:26:45 PM AKENDUCA BEASLEY : yeah the agent indicated that he mad several notes about the building, in addition to that he stated something about the building was using Comcast to ground the building.**

**11:27:47 PM Namita : Akenduca, this is what I found in the notes that the building isn't grounded.**

**11:28:50 PM Namita : yes, there one more note- " the building is using Comcast as a ground instead of PGE"**

**11:29:31 PM Namita : That's it. These are the two notes mentioned here.**

**11:29:36 PM AKENDUCA BEASLEY : okay**

**11:30:26 PM AKENDUCA BEASLEY : Is there a way to get a formal letter or email indicating the tech findings?**

**11:31:54 PM Namita : Unfortunately, we are not able to send emails to our customers. We can just chat. However, you can save a transcript of this chat by clicking on the 3 horizontal lines at the top left corner of the screen.**

**11:32:21 PM AKENDUCA BEASLEY : okay**

**11:33:03 PM Namita : While going over to your account, I see a great deal that would save your money and internet speed would increase. Would you like to have a look at this offer?**

**Powered By eGain**

**Proof of Service**

**Case No. T16-0549**

The undersigned hereby declares: I am over the age of eighteen and a tenant of 3764 39<sup>th</sup> Ave. Apt. D, Oakland, CA 94619. I am a resident of or employed in the county where the following mailing took place and my name and residence or business address is as follows:

Name: Satchidananda Mims

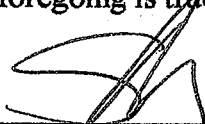
Address: PO Box 19304, Oakland, CA 94619

**Documents served:** Respondent's Evidential Response to Landlord Appeal and Supporting Documents

On July 16, 2018, I served a copy of the foregoing on the following person(s), by placing it in a sealed envelope addressed to those persons, with the postage fully paid, and then placing the envelope in the mail at the following place: Oakland, CA.

Person Served: Michael Horejsi, PO Box 2883, Castro Valley, CA 94546.

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



\_\_\_\_\_  
Satchidandanda Mims

2019 MAR -4 PM 3:27

KM/BC

**THE CITY OF OAKLAND RENT ADJUSTMENT PROGRAM: APPEAL No. T16-0549**

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Michael Horejsi,  
*Landlord and Appellant,*

vs.

Akenduca D. Beasley,  
*Respondent and Tenant;*

CITY OF OAKLAND RENT ADJUSTMENT PROGRAM, et al.

Real Parties in Interest.

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**Respondent's Opposition To Landlord Appeal**

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Akenduca D. Beasley  
P.O. Box 19304  
Oakland, California 94619  
Telephone: (510) 530-6345

Respondent -Tenant, Representing  
Tenants at 3764 39<sup>th</sup> Ave Apt. D, Oakland, 94619



## INTRODUCTION

This case involves a landlord giving his tenants three rent increase notices, over the period of time when Superior Court issued a court stipulation order/judgment resulting from unlawful detainer, which assumed subject matter jurisdiction over rent, repairs, waivers etcetera. In response to each rent increase, tenants filed petitions in Rent Adjustment Program ("RAP"). The RAP designated the following case numbers to each response: T16-0549, *Beasley v. Horejsi (2017)*; T17-0523, *Beasley v. Horejsi (2018)* cases; and currently pending case T18-0480, hearing set for March 28, 2019.

The landlord filed an appeal to case number T16-0549, *Beasley v. Horejsi (2017)*, because the RAP noted habitability problems, and consequently reduced part of the tenants rent.

On January 19, 2019, The City of Oakland Housing Residential Rent and Relocation Board remanded case numbers T16-0549 & T17-0523 in which the remand the case to Kasdin to determine the following: "Does RAP have jurisdiction regarding this petition or has the Superior Court assumed jurisdiction based on the court stipulation? If there is overlapping jurisdiction, what is the impact of the Superior Court dismissal? Is the court stipulation between the parties a waiver of RAP jurisdiction?" In his summary Kasdin concluded the following: "The Rent Adjustment Program has jurisdiction over all issues in the subject case that included in petitions that were filed after the date of the Stipulation. The Hearing Decision for Case No.T17-0523 remains unchanged. The Hearing Decision in Case No.T16-0549 is changed only with regard to the time periods during which the tenants housing services decreased, and the amount of restitution is changed accordingly."

THE LANDLORD'S CLAIMS FOR RENT INCREASE(S) IS BARRED AS A  
MATTER OF LAW, BECAUSE THE SUPERIOR COURT ASSUMED  
COMPLETE SUBJECT MATTER JURISDICTION

A judgment rendered by a court that does not have subject matter jurisdiction is void and unenforceable and may be attacked anywhere, directly or collaterally, by parties or by strangers. [*Gorgi v. Jack in the Box Inc.*, 166 CA4th 255, 261, 82 CR3d 629 (2008).]

For a tribunal, court or any other entity designated to arbitrate or make a legal decision, it must hold the authority to make a decision in the form of subject matter jurisdiction. Subject matter jurisdiction relates to the inherent authority of the court involved to deal with the case or matter before it; in the absence of subject matter jurisdiction a trial court has no power to hear or determine a case. [*Varian Med. Systems, Inc. v. Delfino*, 35 C4th 180, 196-197, 25 CR3d 298 (2005) (appeal divests trial court of subject matter jurisdiction).]

In Respondent's circumstance, regarding landlord rent increase, the Superior Court assumed jurisdiction, by issuing the stipulation order / judgment prior to landlord issuing rent increase notices. The 2016 stipulation for the unlawful detainer between parties, states in relevant part: "The court accepts this stipulation for filing and accepts the parties' request to retain jurisdiction pursuant to CCP section 664.6." In addition it takes control over the matters concerned within the stipulation from the date it was signed by the judge to the time of Compliance review, August 15, 2016 through September 10, 2018.

Therefore the Superior court took complete control over the subject matters concerning rent, repairs, waivers etcetera. Even if theoretically the Rent Adjustment Board has some authority to act, the court took possession over the matter first. See *Consumer Advocacy Group v. ExxonMobil Corp.*, 168 CA4th 675, 682, 86 CR3d 39 (2008) (where two California courts have

concurrent jurisdiction, the first to assume jurisdiction over the subject matter and all parties takes precedence).

The landlord seems to agree with tenant's assertion that the Superior Court has complete and full jurisdiction of all issues listed within the Court Stipulation. However, the landlord diverges when it comes to rent increase claims initiated by him. On page 3 of his Appeal paragraph 2, landlord states in relevant part: "The facts demonstrate that the Superior Court, in Case No. RG16-821622, Horejsi v. Beasley, et al., maintained jurisdiction in this case; Page 4 states "The Court accepts this Stipulation for finding and accepts the parties' request to retain jurisdiction pursuant to CCP section 664... This Stipulation was signed on August 15, 2016 by the judge. It further states a compliance review 9/10/18@9:15 a.m. in Dept. 511, Dismiss with prejudice if neither party appears... There is no question that the Superior Court had the full authority and intent to maintain jurisdiction over all matters listed in the Stipulation."

First and foremost rent is listed within the court stipulation.

With respect to the language in stipulation: paragraph (4.), "Plaintiff hereby waives any and all claims for rent, fees, costs, parking and late fees and daily damages for the premises above \$3856. 84 amount outlined in paragraph 1 through 8/31/2016." Paragraph (1) stated in pertinent part: "Defendant shall pay to Plaintiff \$3856. 84, which constitutes a bargained for amount of all rents, fees, parking fees, late fees etcetera and costs due and owing for the premises through 8/31/2016... Defendant shall pay \$. Along with his/her monthly rent, beginning with September 2016 and ending with June 2018..." Waiver clearly includes "banked rent". See *Gould v. Corinthian Colleges, Inc.* (2011) 192 Cal.App.4th 1176, "(It may be implied through conduct manifesting an intention to waive. (*Id.* at pp. 532-533.) Acceptance of benefits under a lease is conduct that supports a finding of waiver. (*Id.* at p.

533.))” The landlord and his counsel agreed to waiver and added the following words by hand writing them in to paragraph 6 of the stipulation: “With the exception of the rights set forth herein, the parties waive all other rights known to them at this time.” The waiver may be either express, based on the words of the waiving party, or implied, based on conduct indicating an intent to relinquish the right.” (*Stephens & Stephens XII, LLC v. Fireman’s Fund Ins. Co.* (2014) 231 Cal.App.4th 1131, 1148 [180 Cal.Rptr.3d 683].)

Also, contrary to several statements made by landlord regarding waiver in previous Appeal and written response to RAP hearing case no T17-0523, Owner's Response to Tenant's attachment, landlord states in pertinent part: “...annual CPI rent increase is an entitlement and can be levied by the landlord at his discretion. The tenant does not have the right to contest a basic annual CPI increase... The note on the Stipulation was entered by my attorney and referred to only claims which arise based on the unlawful detainer action. Since the CPI and banked rent are entitlements and not claims, any suggestion entitlements were waived is without merit.” An entitlement is synonymous to a claim. “Claim is the assertion of a right to money or property, the aggregate of operative facts which give rise to a right enforceable in the courts.” *Dery v. Wyer*, 265 F.2d 804, 807 (2nd Cir. 1959). The entire unlawful detainer action was involving tenant’s payment or non-payment of rent.

What's more the Rent Board is preempted by law from increasing the rent as a direct result of the court assuming jurisdiction.

### THE INCREASE IN RENT IS PREEMPTED BY LAW

A court may infer an intent to preempt municipal legislation only if (1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become

exclusively a matter of state concern; or (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the municipality. See *Fisher v. City of Berkeley* (1984) 37 Cal. 3d 644. In the Fisher case the court invalidated an ordinance to the extent it created an evidentiary presumption that affected the burden of proof in regard to retaliatory evictions. The ordinance was rejected because evidence laws of California already govern evidence.

As stated above, the decisions for T16-0549, *Beasley v. Horejsi* (2017) and T17-0523, *Beasley v. Horejsi* (2018) cases; and the pending Rent Adjustment Program case T18-0480 set for a March 28, 2019 hearing, are prohibited by law, because the legislature intended to give the courts the right to exclusively govern rent when dealing with an unlawful detainer case. A conflict exists if the ordinance duplicates, contradicts, or enters into a field of regulation expressly or impliedly reserved to the state [*California Grocers Assn. v. City of Los Angeles* (2011) 52 Cal. 4th 177, 188, 127 Cal. Rptr. 3d 726, 254 P.3d 1019, cert. to fully occupy the particular area of law [*Big Creek Lumber Co. v. Cnty. of Santa Cruz* (2006) 38 Cal. 4th 1139, 1157-1158, 45 Cal. Rptr.3d 21, 136 P.3d 821. All ordinances which allow the Rent Adjustment Program to oversee rental amounts based on landlord rent increase conflicts, inhibits and impedes with the courts ability to settle the unlawful detainer action, because the court set an amount as current rent, plus one hundred dollars, and by taking action to either increase or change the amount ordered by the court for tenants to pay, conflicts with the court order/ judgment.

Therefore the Superior Court assumed jurisdiction, the unlawful detainer Stipulation was signed on August 15, 2016 by a judge. It further set a compliance review September 10, 2018 in Dept. 511, landlord waived his right to claim rents before the stipulation, which includes “banked rent”, and the rent increase based on declared “banked rent” should be denied in its entirety. Consequently each notice of rent increase issued to tenants while the stipulation was in effect should be void and request for rent increases denied.

### STIPULATION ORDER / JUDGMENT & FINAL DISMISSAL

The landlord’s arguments are fallacious. The unlawful detainer dismissal does not have the impact he describes in his Appeal. When the parties attended court on September 10, 2018 the following description is of events during Compliance Review:

1. The Judge Kimberly E. Colwell asked landlord Mike Horesji, “Did Tenants (Satchidananda Mims & Akenduca D. Beasley) follow the stipulation and pay the amounts for rent outlined in the case?” Tenants responded, “Yes.”
2. The Judge, asked Mike Horesji, “Did Tenants make payments, the stipulated payments to him?” He was evasive and indicated tenants did not pay rent increases through the rent board and he wanted an extension of a few more months for the case. The judge advised Mr. Horejsi that she was speaking about what is in the stipulation agreement. After a few minutes the landlord admitted tenants paid.
3. The Judge asked tenants, “Did Mike Horejsi follow the stipulation?” Tenants responded no, the bathtub was not repaired.
4. Judge then asked Mike Horesji, was the bathtub repaired?” he said something about tenant damage. The judge asked Mr. Horejsi was the damage caused before or after the stipulation. Mr. Horejsi responded, “Some.” The judge responded, “Then the answer is no.”
5. The judge then asked, “Is there anything else.” Satchidananda responded that the stove was repaired by Mr. Horejsi and shortly after the repair it burned and caught fire.

6. Mr. Horejsi indicated after the fire, the range was repaired. At that point the judge ordered the unlawful detainer dismissed with prejudice.

As you can see from above description Res Judicata doesn't have a direct impact on the unlawful detainer dismissal in this case.

The Superior Court is broken up in to limited and unlimited jurisdictions, as well as a small claims division. [CCP §§85, 87, 88.] Questions regarding where a matter should be heard in a particular superior court is governed by the court's local rules. [*In re Estate of Bowles*, 169 CA4th 684, 695, 87 CR3d 122 (2008).] The Rent Adjustment Board, via City of Oakland ordinances has specific jurisdiction to deal with claims regarding rent. Article VI, §1 of the California Constitution confers broad subject-matter jurisdiction on the superior court. [*Serrano v. Stefan Merli Plastering Co.*, 162 CA4th 1014, 1029, 76 CR3d 559 (2008).]

The courts deals only with the type of cases designate to them by local rules which gives them subject matter jurisdiction. In this case of the unlawful detainer filed by the landlord. That court has jurisdiction over rent, and payments of rent made by a tenant. Res Judicata doesn't apply in this case, because the tenants didn't file claims in Superior Court regarding rent, the landlord did. The stipulation is the result of parties submitting evidence and the court looking at the overall evidence, and turning a settlement agreement in to a judgment/ order and allowing the court to assume jurisdiction by means of CCP§ 664.6. Tenants were not in arrear for one year as landlord stated in his unlawful detainer complaint. Tenants provided receipts and other evidence as proof in court. In addition, the landlord

agreed to make repairs outlined within the stipulation in 30 days from the order being issued and failed to do so.

The reason tenants made claims to the rent board; is a direct response to the landlord violating stipulation issuing, rent increases demanding more rent, and listing banked rent, and not doing all agreed repairs. For example, not repairing bathtub.

The Rent Adjustment Program via city ordinances determines rate for rentals in Oakland and with the listed problems within the stipulation have the option to decrease rent until repairs are resolved. Therefore landlord argument that tenants Rent Adjustment Program claims are barred by Res judicata are baseless.

#### SUPERIOR COURT IS NOT A WAIVER

Although Superior Courts have general jurisdiction over most subject matters, the fact that the court has the ability to hear the similar claims listed within tenant's response to landlord rent increase doesn't automatically bar tenant claims nor somehow remove tenants rent claims into Superior Court jurisdiction.

Rent Adjustment Program claims presented in each petition by tenant are not barred by waiver. As Tenant stated above the landlord initiated unlawful detainer claim, not the tenants, the deficiencies were listed within the agreement and landlord chose not to follow it.

Tenants filed petitions challenging landlord each rent increase, because the landlord agreed in court stipulation, within 30 days, to inspect and make following repairs to the apartment: bathtub, bathroom mold + mildew, hood above stove, defective stove, heater, hole in closet, window screens. He did not act within the 30 day period, thereby breaching the order issued by the court.



Also Contrary to idea that tenants refused to pay lawful rent increase, the rent increase was challenged in the RAP hearing and was found credible by the decrease in service claims within the petition. All of the tenants claims are based from the agreement, in which landlord agreed to make repairs to the within the thirty day period.

Moreover the claims for tenants is not barred by res judicata, because they were not claims filed in a court by tenants and the defects in the apartment described were apart of settlement, governed by *California Code of Civil Procedure Section 664.6*; as a result of the landlord filing a frivolous unlawful detainer in which he indicated tenants didn't pay rent. Actually the landlord is prohibited from making claims regarding damages to the apartment. See paragraph 4 of the stipulation agreement. The court stipulation states in relevant part: paragraph (4.) plaintiff hereby waives any and all claims for rent, fees, costs, parking and late fees and daily damages for the premises above the \$3856.84 amount outlined in paragraph 1, through 8/31/16. Therefore the claims from landlord that *Cal Civ Code Sections 1929 and 1941.2* prohibit any claim for reduction in housing services as a defense, is unsubstantiated. In court he agreed to make repairs within a reasonable time and he did not act.

With respect to the claims that were granted by RAP, relating to the heater and bathtub. *Cal. Civ. Code § 1942.4* prohibits the landlord of a dwelling from issuing a notice of a rent increase or obtaining an increase when such decreases exist. Particularly when an employee who is responsible for the enforcement of any housing law, after inspecting the premises, has notified the landlord or the landlord's agent in writing of his or her obligations to abate the nuisance or repair the substandard conditions. The conditions have existed and have not been abated 35 days beyond the date of service of the notice specified in paragraph, and the delay is without good

Tenants filed a petition challenging landlord rent increase, because the landlord agreed in court

stipulation, within 30 days, to inspect and make following repairs to the apartment: bathtub, bathroom mold + mildew, hood above stove, defective stove, heater, hole in closet, window screens. He did not act within the 30 day period, thereby breaching the order issued by the court. In addition, within the court stipulation the landlord agreed to accept \$2000, he indicates in his appeal was not paid. Therefore landlord claim that rent is late is false.

With respect to the claims that were granted by RAP, relating to the heater and bathtub. *Cal. Civ. Code § 1942.4* prohibits the landlord of a dwelling from issuing a notice of a rent increase or obtaining an increase when such decreases exist. Particularly when an employee who is responsible for the enforcement of any housing law, after inspecting the premises, has notified the landlord or the landlord's agent in writing of his or her obligations to abate the nuisance or repair the substandard conditions. The conditions have existed and have not been abated 35 days beyond the date of service of the notice specified in paragraph, and the delay is without good cause; and the conditions were not caused by an act or omission of the tenant or lessee in violation of Section 1929 or 1941.2... It was determined by the hearing officer Kasdin after examine evidence that decreases exist and neither claim, was caused by tenants. Consequently the rent increase should be denied.

Landlord indicated in his appeal that tenants settled the Superior Court claim and somehow that automatically assumes jurisdiction over RAP issues. His argument is false, do to California Evidence Code §1119, Tenant will only comment on the litigation by saying it is resolved. Also paragraph 2.2 within the settlement states in relevant part: "Notwithstanding any matters now pending at the "Rent Board..." That is the only fact Tenants will comment on in regards to the settlement. The landlord is in violation of law by submitting the document to the RAP and Tenants formally object to and demand the exhibit be redacted from the public. The

facts above show that the resolve of the case which landlord has provided as Exhibit C is not a waiver of any RAP claim.

**OBJECTIONS TO EVIDENCE**

**LANDLORD TEXT**

**OBJECTIONS**

<p><b>Exhibit B, pg. 7</b></p>	<p>Objection: Lacks Foundation; Speculation; Lacks Relevance; Lacks Authentication. Cal. Evid. Code §§ 210, 403, 702, 1401.</p>
<p><b>Exhibit B, pg. 7</b></p>	<p><u>#1 Lack Foundation and are Speculative:</u> The statement and accompanying exhibit lack foundation and are speculative because the landlord does not state any facts upon which his purported knowledge is based.</p>
<p><b>Exhibit B, pg. 7</b></p>	<p><u>#2 Lacks Relevance:</u> Exhibit B is not relevant because it does not have any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action.</p>
<p><b>Exhibit B, pg. 7</b></p>	<p><u>#3 Lacks Authentication:</u> Exhibit B lacks authentication because landlord doesn't make it clear where exhibit came from, it appears to be something he typed up.</p>
<p><b>Exhibit C, pg. 8-12,</b></p>	<p>Objection: Prohibited by law: Evidence Code §1119</p>
<p><b>Exhibit C, pg. 8-12</b></p>	<p><u>Objection Evidence Code §1119:</u>          (a) No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, a mediation or a mediation consultation is admissible or subject to discovery, and disclosure of the evidence shall not be compelled, in any arbitration, administrative</p>

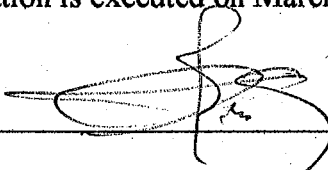
### **CONCLUSION**

Based on the foregoing, Respondent request that the Rent Adjustment Board deny landlord claims for rent increases. In addition, rule that the banked-rent prior to the 2016 is deemed waived by the court stipulation and cannot be used in calculations for future rent increase. Moreover, the Oakland Rent Board rule that during the time the notices of rent increase served on tenants between August 15, 2016 through September 10 2018, be deemed void, because the Superior Court took jurisdiction over all claims for rent.

### **VERIFICATION**

I, Akenduca D. Beasley am the Respondent in this proceeding. I have read the foregoing Tenant Response and know the contents thereof. The same is true of my own knowledge, except as to those matters that are therein stated on information and belief, and, as to those matters, I believe it to be true.

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 is executed on March 04, 2019.



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Akenduca D. Beasley aka Linda Beasley

**PROOF OF SERVICE**

**Case Number T16-0549**

I am a resident of the State of California at least eighteen years of age. I am live in Alameda County, California. My mailing address is PO Box 19304, Oakland, CA 94619.

Today, I served the attached Response to Appeal arguments and attachments by placing a true copy of it in a sealed envelope with postage fully paid into U.S. POSTAL mail box receptacle in Oakland, California addressed to:

**Owner**

Michael E. Horejsi

P.O. Box 2883

Castro Valley, CA 94546

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on March 04, 2019, in Oakland, CA.

  
Akenduca D. Beasley aka Linda Beasley

REBUTTAL TO RESPONSE TO RESPONDENT'S  
OPPOSITION TO LANDLORD'S APPEAL

2019 MAR 21 PM 2:32

Case No. T16-0549

I. GENERAL

1. The Remand decision appeared to only relate to Case T16-0549 and the Rent Board's questions concerning jurisdiction. Further, that the Decision was final in Case T17-0523, thus making it unappealable to the Panel again.

2. However, one of the issues, the reduction for the bathtub 'tenant cause damage,' specified that tenant receive a rent reduction of \$26.47 per month, which are now a reduction in Case T17-0523 and T18-0480.

3. Tenant(s) representative filed a document titled 'Tenants Appeal to Rent Increase concerning Case T16-0549 and T17-0523.' This appears to be a request for a new hearing on both cases. This document was filed on Feb. 19, 2019. No response will be made to this document as it was filed to delay a final decision in the case. I am opposed to this document being filed or considered.

4. I was served with the Cover Letter only for the appeal of both T16-0549 and T17-0523 on Feb. 4, 2019. Tenant(s)' representative apparently filed an appeal to the Remand decision on March 4, 2019, **well after the deadline** for filing has passed. I am opposed to this document being filed or considered.

5. I will respond, in part, to the second document filed on March 4, 2019 titled Respondent's Opposition to Landlord Appeal T16-0549. The object of rebuttal is to address errors in application of the law and interpreting the facts surrounding issues of jurisdiction.

6. The Panel was prudent in remanding this case to the hearing officer to review the jurisdictional issue.

7. The hearing officer was unresponsive. I believe it demonstrated a certain mindset or bias to the parties. The Hearing Officer **did not adequately address** the questions proposed by the Rent Panel.

8. Although not an attorney, I believe Mr. Kasdin's decision on Case T16-0549 is a **civil contempt** issue, barred by **res judicata** and an abuse of discretion.

II. FACTUAL BACKGROUND

This case involves multiple acts of **civil contempt** by both the Hearing Officer and Tenant during the administration of several requests for authorized rent increases. Prior to serving the first increase effective in T16-0549, tenant(s) and landlord were involved in an Unlawful Detainer case involving **rent in arrears of nearly \$20,000**. By law, the delinquent rent that could be claimed under CCP Section 1161, "delinquent rent included any time within one year after the rent became due." This reduced the delinquent rent which could be claimed to

\$9,989.76, which increased to \$11,671.72 by the date of the hearing in Case RG16821622. The Three-Day Notice and Complaint covered the period of July 2015 through the current date. The Settlement date was Aug. 15, 2016.

An Agreement was reached outside the courtroom (in the hallway). Both parties were represented by attorneys. The Judge was not privy to any of the discussions concerning the settlement pursuant to CCP Section 664.6. The Stipulation, in brief, contained the following conditions: both parties agreed that the base rent was \$828.00 + \$25.00 for parking per month. This amount was unchanged since October 1, 2003, T03-0300. **Tenant(s)** was also in **civil contempt** of that order, by failing to pay the **ordered rent increase**. Tenant agreed to pay \$3,856.84 of the delinquent rent (\$11,671.72) from July 1, 2015 through Aug. 31, 2016. That constitutes a bargained-for amount of all rents, fees, parking fees, late fees, and costs due and owing for the premises through Aug. 31, 2016. Tenant(s) were to pay \$1,656.84 on or before Aug. 22, 2016; following this payment, tenant(s) was required to pay \$2,200 in delinquent rent. 'Defendants shall pay \$100 per month along with his/her monthly rent beginning with Sept. 2016 and ending with June 2018.' The Stipulation contained a non-performance clause allowing Landlord to commence obtaining a Judgment of Possession of the premises should tenant(s) fail to comply with said terms.

The tenant(s) requested that within 30 days, Plaintiff shall inspect and repair, as necessary, the following defects: bathtub, bathroom mold and mildew, fan above stove, defective stove, heater, hole in closet, window screens. Non-compliance actions were not specified with this request. Included beneath the Request for Repairs was a legal waiver "with the exception of the rights set forth herein, the parties waive all rights known to them as of this time." This waiver is not only **res judicata** for the habitability issues described in the Stipulation, but also included ten other claimed habitability complaints outlined in tenant(s)' Answer to the Unlawful Detainer case. These are: inadequate ventilation, defective electrical, wiring, constant shortages, gap in windows and doors, insect infestation, decrepit carpeting, inadequate water pressure, defective plumbing, the waiver in the Stipulation barred addressing any issues which occurred prior to Aug. 31, 2016. Several other conditions were identified in the Stipulation, one concerning the masking of records pertaining to the Unlawful Detainer action. Tenant(s) have made this an issue in their Petition T16-0549, another instance of **civil contempt**. The Court Order specifies jurisdiction of this action, "the Court accepts this Stipulation for filing and accepts the parties' request to retain jurisdiction pursuant to CCP Section 664.6. The Unlawful Detainer case received a Compliance Review on Sept. 10, 2018; all parties were present in court. A Court Order was published dismissing the case with prejudice, **barring all prior habitability claims by res judicata**.

An annual rent increase was requested effective Oct. 1, 2016, T16-0549. A 6% banked rent increase was requested based on the \$828.00 base rent listed in the Unlawful Detainer case. This did **not** include the parking fee of \$25.00 per month. The tenant(s) filed a petition to the rent increase. The tenant(s) listed habitability issues. Dating from July 2005 to 2015, the following issues were presented – heater, bathtub, bathroom mold and mildew, defective stove, hole in closet, window screens, parking, electrical wiring and power surges. None of the

habitability claims were new or arose after Aug. 15, 2016, the **date tenant waived all claims**. By raising these issues in direct disregard for their waiver of rights, **all claims were prevented by res judicata and they committed no less than 8 civil contempt offenses**. The Hearing Officer is also in **civil contempt** for interfering with a Court Order and a process that was still under the jurisdiction of another Court Judge. He is also in **civil contempt** for ignoring the waiver of rights contained in the Court Order. **Not a single issues tenant(s) complained of occurred after Aug. 15, 2016**. The Hearing Officer denied the claims for mold, range hood defective stove and the hole in the closet. The 3 issues which were clearly tenant damage, bathtub damage not due to normal wear, heater turned off by tenant(s) and window screen with holes poked through by tenant(s), were granted. The Hearing Officer again was in **civil contempt** for ruling on these issues. Judges should review the prescribed applicable law before allowing a rent decrease, not reduced housing services. There needs to be a substantial breach of the Landlord's responsibility for providing adequate housing and the conditions not created by the tenant(s).

After substantial pencil whipping, the entitled rent increase to \$904.18 was reduced to \$855.95, a \$2.97 raise per month. This is insulting and an abuse of discretion.

The tenant(s) was served with an annual rent increase to be effective Oct. 1, 2017, T17-0523, again the entitlement of banked rent was requested as permitted by the RAP Program.

The tenant(s) again filed a petition, listing services not to be in compliance with CCC Section 1941. The claim was that the habitability defects occurred beginning January 2005 and July 2007 – **none were new claims beginning after Aug. 15, 2016** (date of Stipulation signed by all parties). The bathtub, bathroom mold, defective stove, hole in closet and parking was cited as habitability issues or reduced services. All of these issues **were barred** by the Stipulation, waiver of rights – **res judicata**. **This constituted four additional acts of civil contempt**. Three of the issues, bathroom mold and mildew and defective stove, **were denied** and were not only settled by the waiver of rights, but also denied by Court Order in the hearing decision rendered in T16-0549. Three more instances of **civil contempt** were committed by tenant(s). As to the parking issue, this is the fourth time it was ruled upon and denied by the RAP – the issue was denied in T03-0237, T03-0300 and T16-0549. This is 4 more acts of **civil contempt** of the RAP orders. The issue of tenant-caused damage to the bathroom was also decided improperly in T16-0549 and carried over to this case with a reduction of \$26.47 per month in rent, even though it was **waived by tenant(s) in the Stipulation**. This carry-over is due to **civil contempt** and an abuse of discretion by a failure to be governed by the Stipulation.

In July 2017, tenant(s) initiated yet another unlimited civil lawsuit, RG17868344, claiming all previous habitability issues previously claimed and **settled** by the insurance company on Jan. 3, 2019, and further **Dismissed** with prejudice on Jan. 29 2019. Tenant(s) were litigating the same issues. This lawsuit was an appeal of the RAP decision in Case T16-0549. This lawsuit was an appeal to RAP decisions and a further waiver of their rights under the RAP.



III. THE DOCTRINE OF RES JUDICATA BARS TENANT(S)' CLAIMS IN T16-0549 & T17-0523.

Under the doctrine of res judicata, the August 2016 Stipulation bars tenant(s) from asserting any claims against Landlord based on facts known to them before August 15, 2016. “Res Judicata, or claim preclusion, prevents relitigation of the same causes of action in a second suit between the parties or parties in privity with them.” (Needelman v. DeWolf Realty Co., Inc. (2015) 239 Cal.App.4<sup>th</sup> 750, 757) “The doctrine applies when (1) the issues decided in the prior adjudication are identical with those presented in the later action; (2) there was a final judgment on the merits in the prior action; and (3) the party against whom the plea is raised was a party or was in a privity with a party to the prior adjudication.”

Needelman demonstrates that pursuant to the doctrine of res judicata, a stipulated settlement has claim preclusive effect as to claims that could have been litigated in an unlawful detainer action. (Id. at 759-760.) In Needelman, Needelman filed an answer to DeWolf’s unlawful detainer complaint, asserting various affirmative defenses, including breach of warranty of habitability and retaliation. (Id. at 753) The parties subsequently entered a settlement agreement whereby Needelman waived ‘any claims he may have ..., to bring an attempted wrongful eviction against [the lessors] *or any action in any way arising out of or concerned with his tenancy.*’ (Id. at 754) (Emphasis added) Thereafter Needelman filed a complaint against DeWolf setting forth ten causes of action, some of which were not raised in his answer to DeWolf’s unlawful detainer complaint. (Id. at 755-756) In affirming the trial court order sustaining DeWolf’s demurrer to Needelman’s entire complaint, the First District explained the settlement agreement had claim preclusive effect because his answer constituted an appearance in the prior adjudication and his decision to settle demonstrates he had an opportunity to litigate his defenses to the unlawful detainer action. (Id. at 759) The First District made clear, “under California law, a judgment entered without contest, by consent or stipulation, is usually as conclusive a merger or bar as a judgment rendered after trial.” (Id.) Accordingly, the First District concluded Needelman “[could not] now relitigate claims within the scope of the stipulated settlement; claims that *could* have been litigated in the unlawful detainer action are now barred ... [including] affirmative defenses that would preclude removal of the tenant.” (Id.) Critically, the First District further noted the settlement Needelman entered, wherein he agreed to waive *any action in any way arising out of or concerned with his tenancy*, waived not only the affirmative defenses he could raise in an unlawful detainer action, but also “specifically settled the claims he is now attempting to relitigate” in connection with his complaint against DeWolf that asserted new causes of action. (Id. at 760)

Needelman is controlling. Needelman demonstrates that pursuant to the doctrine of res judicata, the August 2016 Stipulation has claim preclusive effect as to (1) claims that tenant(s) could have litigated in connection with the 2016 UD and (2) any claims known to tenant(s) prior to August 16, 2016. The undisputed facts show tenant(s)’ June 5, 2016 verified answer constitutes an appearance in the 2016 UD. The affirmative defenses that tenant(s) raised, which bear on habitability and retaliation, demonstrate the issues decided in the 2016 UD are identical to issues set forth in the present action. (Needelman, supra, 239 Cal.App.4<sup>th</sup> at 760) As in

Needelman, tenant(s)' promise to "waive all other rights known to them at this time," demonstrates tenant(s) settled the known claims they had against Landlord prior to August 15, 2016, which they are "now attempting to relitigate." (Id.) The undisputed facts also show there was a final judgment on the merits in the 2016 UD. On Sept. 10, 2018, the Court held a Compliance hearing regarding the August 2016 Stipulation, and dismissed the 2016 UD with prejudice, which constitutes a final judgment on the merits. Accordingly, Needelman demonstrates that under the doctrine of res judicata, the August 2016 Stipulation has claim preclusive effect as to the claims that tenant(s) admit were known to them before August 15, 2016.

The August 2016 Stipulation completely bars tenant(s)' claims regarding the alleged habitability defects before August 15, 2016 because tenant(s) contend those conditions were known to them before that date and they forever waived these claims.

The tenant(s) present a rather sophomoric argument that the waiver applied to issues beyond the scope of delinquent rent and habitability defects. The tenant(s) are now expanding the meaning of the waiver to well beyond the context in which it was made. Obviously, the waiver **only** applied to issues raised in the Stipulation. The Court took control only of "matters concerned with in the Stipulation." Tenant(s)' assertion that "regarding Landlord rent increase, the Superior Court assumed jurisdiction" by issuing the Stipulation Order/Judgment." **This argument is blatantly false** – nothing in the Stipulation specified or implied that past banked rent or future rent increases were even considered in the Stipulation. Para 4 of the Stipulation relates to rent which was claimed in the Unlawful Detainer action. The Court did not 'issue' the Stipulation, it merely acknowledged accepting the CCP 664.6 agreement between the two parties. The waiver was not 'implied through any conscionable conduct manifesting an intention to waive.'" No such conduct has been articulated because it **never** occurred.

Tenant(s)' erroneous claim, "the court set an amount as current rent plus one hundred dollars, and by taking action to either increase or change the amount ordered by the court for tenant(s) to pay conflicts with the Court Order/Judgment." Para 1 of the Stipulation consists of a handwritten entry by Defendants, "Defendants acknowledge that their current rent is \$828 and they owe an additional \$25.00/month for parking which is not rent." Clearly the tenant(s) verified the rent and parking they were paying for the last fifteen years on Aug. 15, 2016. Tenant(s) even attempted to represent this as a rent increase. The Court merely accepted tenant(s)' statement.

Tenant(s)' argument concerning relevance of waiver of rights under the RAP should be disregarded. They have offered nothing to support their position that the waiver included a waiver of rights under the RAP.

Landlord does concur with the assessment that the Superior Court had jurisdiction over the Stipulation and all matters articulated therein.

The author suggests that the waiver waived all entitlements including banked rent and future rent increases and in some filings, rent increases given since 1982 should be rescinded.

This is ludicrous and nonsensical. They suggest “an entitlement is synonymous with a claim.” The pertinent legal description of a ‘legal entitlement’ found in Blacks Law Dictionary:

Typically granted by contract or law, meeting the required qualifications triggers the entitlement. Benefits to members of a particular group in a government scheme.

In the City of Oakland OMC 8.22, by law permits an annual rent increase to Landlord reflecting the CPI index increase for each year beginning July 1<sup>st</sup>. This increase can be initiated by providing a 30 day notice to the tenant stating the CPI increase allowed. By any legal definition, the CPI allowance is an entitlement.

The tenant(s) would be happy if a rent increase was considered a legal claim so every rent increase could be heard by a jury.

The tenant(s)’ representative presents a vigorous argument on pages 1-7 that the Superior Court had jurisdiction over all aspects of the Stipulation, even concerning issues of increased rent **not** included in the Stipulation. Midway through this response, beginning on pg. 8, they make a U-turn without signaling and now argue that the Superior Court does **not have jurisdiction** over the habitability defects or the rent reduction provided by the RAP decision. At this point, Landlord is confused.

#### IV. SIGNIFICANT LEGAL ISSUE – CIVIL CONTEMPT

1. Courts of justice have an inherent power to punish all persons for contempt of their rules and orders, for disobedience of their process and for disturbing them in their proceedings. The Hearing Officer has committed a **civil contempt of court**.

2. Code of Civil Procedure 1209 states in pertinent part that, “(a) the following acts or omissions in respect to a court of justice, or proceedings therein, are contempt’s of the authority of the court.

(3) Misbehavior in office, or other willful neglect or violation or duty by any attorney, counsel, clerk, sheriff, coroner, or other person, appointed or elected to perform a judicial or ministerial service;

(5) Disobedience of any lawful judgment, order, or process of the Court.”

3. Code of Civil Procedure Section 1211(a) states in pertinent part that,

‘When the contempt is not committed in the immediate view and presence of the court, or of the judge at chambers, an affidavit shall be presented to the court or judge of the facts constituting the contempt, or a statement of the facts by the referee or arbitrators, or other judicial officers.’

4. The California Supreme Court has stated that a trial court may punish contempt under section 1218 if it finds: (1) a valid court order, (2) the alleged contemnor’s knowledge of the order, and (3) noncompliance. See Moss v. Superior Court (1998) 17 Cal.4<sup>th</sup> 396, 428.

5. If a party was personally present in Court when the order was made they have knowledge of the order. However, the California Supreme Court has stated that if counsel for a party was present in court when the order was made, and was later served with the written order, the court may infer that the party had knowledge of the order.

6. The party requesting an Order to Show Cause for civil contempt in California can also request that the other party be ordered to pay their reasonable attorney's fees and costs incurred with commencing the contempt proceeding pursuant to Code of Civil Procedure section 1218(a) which states that:

“(a) Upon the answer and evidence taken, the court or judge shall determine whether the person proceeded against is guilty of the contempt charged, and if it be adjudged that he or she is guilty of the contempt, a fine may be imposed on him or her not exceeding one thousand dollars (\$1,000), payable to the court, or he or she may be imprisoned not exceeding five days, or both. In addition, a person who is subject to a court order as a party to the action, or any agent of this person, who is adjudged guilty of contempt for violating that court order may be ordered to pay the party initiating the contempt proceeding the reasonable attorney's fees and costs incurred by this party in connection with the contempt proceeding.” (Emphasis added).

7. At least two California Courts of Appeal have stated in published decisions that in order to encourage parties to prosecute contempt proceedings and to indirectly encourage all parties to abide by the terms of court orders, section 1218 authorizes trial courts to award complainants attorney fees and costs for initiating and prosecuting contempt proceedings.

8. In view of the above legal information, it is readily apparent that the Hearing Officer is in direct violation of CC section 1218.

(1) The Unlawful Detainer Stipulation is a valid court order.

(2) The Hearing Officer knew the Stipulation existed. He cited it continuously in his decisions and allowed the Stipulation to be entered into evidence.

(3) The Hearing Officer is not only in non-compliance, he altered the Order and decided on three habitability items that were barred by **res judicata**.

Mr. Kasdin, I presume, is appointed to perform judicial duties at the RAP, and therefore he is in specific violation of CCP Section 1209(3) committing misbehavior in office as an appointed official to perform judicial services.

9. The Unlawful Detainer Stipulation contained a waiver in para 6 - just below the list of damages. This was ignored by the Hearing Officer during and after the hearing “with the exception of the rights set forth herein, the parties waive all other rights known to them at this time.” The meaning of this was that the tenant(s) could not further claims for damages listed in their Unlawful Detainer Answer or the court Stipulation. Mr. Kasdin again committed a **civil contempt** by ignoring this clause.

In the Remand Decision, Mr. Kasdin stated "it is a basic legal principle that one cannot waive claims that may arise in the future." This principle is applicable **when new habitability** issues arise, but must have occurred **after** the date the Stipulation was signed 'effective date, para 4, 8/31/16.' **Evidence was not provided** that any of the claims made in the Stipulation occurred after Aug. 31, 2016.

10. Attached is a Comparison of Deficiencies; those listed on the left side titled RG16821622 are deficiencies listed on tenant(s)' Answer to the Unlawful Detainer case. Encl. B

The second column on the Comparison are habitability issues, which were listed on the Stipulation.

The third column represents habitability issues presented to RAP on T16-0549.

The fourth column is a civil unlimited lawsuit filed by tenant(s) in July 2017. This case **was dismissed** with prejudice on Jan. 3, 2019. See Encl. 1. The waiver on the Stipulation essentially barred legal action for those habitability complaints which began prior to Aug. 31, 2016, on both the Unlawful Detainer case (left column) and the Stipulation (2<sup>nd</sup> column).

#### V. EFFECT OF COURT ORDERS OF DISMISSAL WITH PREJUDICE.

1. Proceeding with case **after court dismissal with prejudice** is again **civil contempt**. The Superior Court maintained jurisdiction of the Unlawful Detainer case RG16821622 through Sept. 10, 2018. On Sept. 10, 2018, both parties were in court. After hearing tenant(s)' complaints of the kitchen range fire, the court dismissed the case with prejudice. Ref. Encl. 5a.

2. The Unlimited Civil case RG17868344 was **settled** by the insurance company on Jan. 3, 2019. See Mutual Settlement Agreement 8C. The case was **dismissed** with prejudice. Proceeding with any issues of habitability occurring prior to the date of the settlement would be an act of **civil contempt**. See Court Order Encl. D

USLegal.com describes dismissal with prejudice, 'a dismissal of a case on merits after adjudication. The plaintiff is barred from bringing an action on the same claim. Dismissal with prejudice is a final judgment and the case becomes res judicata on the claims that were or could have been brought in it.'

Black's Law Dictionary defines a dismissal with prejudice, 'with a loss of all rights in a way that finally disposes of a party's claim and bars any future action in that claim.'

3. The dismissal with prejudice in September 2018 of the Unlawful Detainer action, by either of the above definitions is a **final judgment** of all matters addressed by that case. It becomes **res judicata** on the claims that were or could have been brought in it. This would include the pending appeal of the **improper rent reduction** for alleged habitability complaints in T16-0549.

4. The dismissal with prejudice on Jan. 3, 2019 of the Unlimited Superior Court case RG17868344 represents a **global settlement** of all alleged issues tenant(s) may have had since the beginning of their tenancy and renders the current appeal in actions moot.

5. There is no provision in the law for a case to be grandfathered in shielding the action from the **Doctrine of Res Judicata** or a dismissal with prejudice.

6. A continuance of this appeal by the Hearing Officer and Rent Board Panel would be an act of **civil contempt**.

7. In light of the Mutual Settlement Agreement [Encl. C], effective Jan. 3, 2019, the tenant(s) and her/their legal representatives should be requesting that all claims concerning habitability currently addressed in the appeal be dismissed. As these claims are barred by the Settlement Agreement, this puts tenant(s) in violation of the Settlement Agreement.

8. A provision of the Settlement Agreement is that the Court may retain jurisdiction over the parties and enforce this Settlement Agreement and Release pursuant to Code of Civil Procedure Section 664.6. If any further appeal of this matter is required, it will be directed to this Court as a civil and perhaps criminal contempt issue.

9. The author of tenant(s)' response claims "the unlawful detainer dismissal does not have the impact he describes in his appeal." This has to be the world's shortest argument against the doctrine of res judicata. If this advice were presented to a client, it could be considered both **civil contempt** and **legal malpractice**.

10. The author describes generally what happened during the hearing on Sept. 10, 2018 when the Unlawful Detainer Stipulation was dismissed with prejudice. The recollection of what transpired is generally correct. The issues are presented here.

1. The Judge was not interested in their rent increase, only what was in the Stipulation. The Judge did not accept control of their rent.

2. Tenant(s) did not present the rent increases as an issue precluded by the waiver – not one peep.

3. The Judge was not concerned about the tenant(s) caused damage to the bathtub – it was waived by the waiver in the Stipulation.

4. Tenant(s) brought up issues which occurred **after** the Stipulation was signed – the fire in the range brought up in T17-0523.

5. After a full hearing, the case was dismissed with prejudice.

11. The facts are as stated earlier – the Judge had no concern over any rent increases that were given to the tenant(s) after the Stipulation was signed.

12. The arguments on pg 9 of tenant(s)' response are nonsensical.

- a. Claims res judicata does not apply because tenant(s) did not file claims in court (not necessary). Res judicata applies to both parties – no basis for this argument.
- b. Landlord is prohibited from making claims regarding damages to the apartment. No legal basis for this argument.
- c. The statement that “in court he agreed to make repairs within a reasonable time and did not act” is **inaccurate and misleading**. This is irrelevant to the issues addressed in the Remand decision. However, the exact words were he “within 30 days Plaintiff shall inspect and repair as necessary the following defects.” The waiver was then added afterward **barring any further claims** concerning the alleged defects.
- d. Repairs as necessary does not include **tenant(s) damage**.
- e. It is a fact of law that tenant(s) cannot claim relief under CCC 1942.4, ‘unless a public officer, responsible for enforcement of any housing law, after inspecting premises, notifying the landlord in writing to abate the condition.’ CCC 1942.4(a)(2) additionally conditions were not caused by an act or omission of the tenant. CCC 1942.4(a)(4).
- f. The claims under CCC 1942.4 are misleading and without legal basis.
- g. Tenant(s)’ representative complains of entering the Mutual Settlement Agreement and Release into evidence is somehow illegal. There is again no legal basis to this claim. Para 5.10 of the agreement makes it exempt from Evidence Code Section 1119, and is admissible as evidence.
- h. Para 2.2 of the agreement exempts the rent increase issues, which are unrelated to the habitability defects claimed.

## VI. OVERLAPPING JURISDICTION

The Hearing Panel posed the question of whether there is overlapping jurisdiction and what is the impact of the Dismissal. The effects of the Superior Court Dismissal have been previously discussed.

The Hearing Officer suggested, ‘The Rent Adjustment Program has jurisdiction over all issues in the subject cases that were included in Petitions that were filed after the Stipulation.’ This statement is legally incorrect, with the exception of those issues addressed in the Stipulation. I believe there is in fact overlapping jurisdiction in this matter.

The following information concerning jurisdiction and venue is provided from a California Courts web site.

1. For a court to be able to decide a case, it has to have jurisdiction.

2. It must have jurisdiction over the legal issue or dispute you are suing about called subject-matter jurisdiction.
3. More than one court may have jurisdiction over a certain case.
4. There are three types of subject matter jurisdiction:
  - (a) General Jurisdiction, which means that a court has the ability to hear and decide a wide range of cases, unless a law or constitutional provision denies them jurisdiction. Courts of General jurisdiction can handle any kind of case. The California Supreme Courts are General Jurisdiction courts.

It should be readily apparent that the Superior Court handling the Unlawful Detainer case had sole jurisdiction over both parties in this matter concerning delinquent rent claimed by Landlord and the habitability claims by tenant(s). The Unlawful Detainer court has subject-matter jurisdiction over Unlawful Detainer actions.

- (b) Limited Jurisdiction, which means that a court has restrictions on the cases it can decide. Small Claims court is a court of limited jurisdiction – it can only hear and decide cases that claim damages of \$10,000 or less. Limited civil courts can only hear and decide cases for up to \$25,000, while these are heard in California Superior Courts. The Judge has to follow the jurisdictional limits in these cases.

- (c) Exclusive Jurisdiction, which means that only a particular court can decide a case. For example, Bankruptcy Court is a court with exclusive subject-matter jurisdiction. A person can only file a bankruptcy action in a Federal Bankruptcy Court. State Courts have no jurisdiction in a bankruptcy case.

The RAP is a quasi-Exclusive Limited Jurisdiction court limited to rent adjustment, or depending on personal experience, rent reduction within the City of Oakland. As such, any of the contested rulings or issues concerning an abuse of discretion can be elevated to a Limited Jurisdiction Superior Court. Presumably, the Court will apply both California law and OMC 8-22, Ref. OMC 8.22-120D. Appeal procedures.

In the present case, the Superior Court Unlawful Detainer action was initiated **8 months prior to the hearing decision on case T16-0549**. This action included rent in arrears and all habitability issues listed in both the Unlawful Detainer Answer and the Order for Judgment on Stipulation, as well as a waiver by both parties on all issues – both monetary and habitability claims – prior to the effective date of Aug. 31, 2016.

In this situation, the Rent Board also has jurisdiction over the tenant(s) petition to the extent it does **not** interfere with the Superior Court case. All other issues of habitability **could have only been considered as long as they were new and different** from those listed in the Stipulation. Requested rent increases could have been addressed. The Hearing Officer should



have directed tenant(s) to the Court maintaining jurisdiction over their alleged habitability defects.

There is not a legal term for joint jurisdiction in the legal dictionary. When the Hearing Officer decided to enforce aspects of the Stipulation (habitability) and **ignore** other aspects of tenant(s) damage (waiver of rights), he committed both an abuse of discretion and **civil contempt**, and altered the Stipulation.

If the law is to be adhered to, the hearing Panel must rule in such a manner as to prevent further litigation of the **habitability defects that were permanently settled by both parties** in two Agreements and the Court Orders of Dismissal with prejudice.

The opposing parties maintain that the Stipulation agreement waived all past rent due and further rent increases. This is absurd. OMC 8.22.380 provides "the provision of this chapter may not be waived, and any term of any Lease, Contract, or other agreement which purports to waive or limit a tenant substantive or procedural rights under this ordinance are contrary to public policy unenforceable, and void." I would assume, under equal protection of the law, this also applies to the Landlord.

## VII. CONCLUSION

1. The 2016 UD waiver of rights was included in the Stipulation at Landlord's direction as a condition of approving the Stipulation, under the Doctrine of Res Judicata. This barred tenant(s) from asserting any claims against Landlord based on facts known to them before August 15, 2016. Tenant(s) committed an act of **civil contempt** by claiming these issues in their Petition.

2. The Hearing Officer had **no authority** to further rule or provide relief, or ignore the terms of the Stipulation. By doing so, the Hearing Officer also committed an act of **civil contempt** and an abuse of discretion, and further demonstrates that the RAP does **not** conform to established California law.

3. There was overlapping jurisdiction in this case. The delinquent rent and bargained reduction of rent for all rights of tenant(s) concerning habitability defects **prior** to August 15, 2016 clearly were under the jurisdiction of the UD Court. The Rent Board has jurisdiction over any **new** habitability defects occurring **after** August 16, 2016, as well as all matters concerning rent adjustments requested by Landlord.

4. The UD case was dismissed with prejudice on Sept. 10, 2018. This became res judicata as to all claims covered in the Stipulation and the RAP findings of habitability defects still pending appeal. The most current Agreement of Jan. 3, 2019 **further restricts RAP from continuing with the appeal**. Tenant(s) waived RAP jurisdiction on all habitability defects when she/he filed the Unlimited civil case in July 2017, and when they signed the most recent Settlement Agreement on Jan. 3, 2019.

5. If the RAP fails to reject the claims concerning the bathtub, heater and window screens in Case T16-0549, they will be in violation of California law. Reference the Doctrine of Res Judicata - failure to comply with a Court Order and an abuse of process.

PROOF OF SERVICE BY MAIL

The undersigned declares:

I am a citizen of the United States of America, over the age of eighteen years. My mailing address is P.O. Box 2883, Castro Valley, CA 94546.


On 21 MAR 2019, 2019, I served the attached Rebuttal To Response  
To Respondent's OPPOSITION TO Landlord's Appeal Case  
N 716-0549  
on the parties in this action by placing a true and correct copy thereof, in a sealed envelope with first class postage fully prepaid, in the United States mail at Castro Valley, California, addressed as follows:

Linda Beasley  
Satchidananda Miras  
3764 39th Ave #D  
Oakland, Ca 94619

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Dated this 21 day of March, 2019 at Castro Valley, CA.

  
Michael E. Horejsi

T17-0523 KM/3K

 CITY OF OAKLAND	<b>CITY OF OAKLAND</b> <b>RENT ADJUSTMENT PROGRAM</b> P.O. Box 70243 Oakland, CA 94612-0243 (510) 238-3721	For date stamp. RENT ADJUSTMENT PROGRAM 2017 SEP 12 PM 1:24
	<b>TENANT PETITION</b>	

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

**Please print legibly**

Your Name Akenduca D. Beasley aka Linda J. Beasley	Rental Address (with zip code) 3764 39th Ave. Apt. D., Oakland, CA 94619	Telephone: 510-530-6345 E-mail:
Your Representative's Name self	Mailing Address (with zip code) PO Box 19304, Oakland, CA 94619	Telephone: (510)-530-6345 Email:
Property Owner(s) name(s) Michael E. Horejsi	Mailing Address (with zip code) P.O. Box 2883 Castro Valley, CA 94546	Telephone: (775) 400-6464 Email:
Property Manager or Management Co. (if applicable)	Mailing Address (with zip code)	Telephone: Email:

Number of units on the property: 7

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

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

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

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

<input 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 checked="" type="checkbox"/>	(f) The rent increase notice(s) was (were) not given to me in compliance with State law.
<input checked="" type="checkbox"/>	(g) The increase I am contesting is the second increase in my rent in a 12-month period.
<input checked="" type="checkbox"/>	(h) There is a current health, safety, fire, or building code violation in my unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance. (Complete Section III on following page)
<input checked="" type="checkbox"/>	(i) The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner. (OMC 8.22.070(F): A decrease in housing services is considered an increase in rent. A tenant may petition for a rent adjustment based on a decrease in housing services.) (Complete Section III on following page)
<input type="checkbox"/>	(j) My rent was not reduced after a prior rent increase period for a Capital Improvement had expired.
<input type="checkbox"/>	(k) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).
<input type="checkbox"/>	(l) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake. (OMC 8.22, Article D)
<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: 7/24/1982 Initial Rent: \$ 425.00 /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: 06/05/2002. 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		
07/27/2017	10/01/2017	\$ 882.42	\$ 968.42	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	Oct 1, 2016	\$ 828.00	\$ 882.42	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<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:

T03-0300, T16-0549

**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:

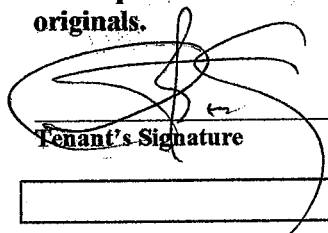
- 1) a list of the lost housing service(s) or problem(s);
- 2) the date the loss(es) or problem(s) began or the date you began paying for the service(s)
- 3) when you notified the owner of the problem(s); and
- 4) how you calculate the dollar value of lost service(s) or problem(s).

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

9/11/2017  
\_\_\_\_\_  
Date

\_\_\_\_\_

\_\_\_\_\_

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

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

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

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

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

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

\_\_\_\_\_  
Date

## **VI. IMPORTANT INFORMATION:**

### **Time to File**

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

### **File Review**

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

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

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

BEASLEY, AKENDUCA D; is representing Tenants in Apartment D.:

**Tenant's PETITION ATTACHMENT**

Regarding legally withholding rent: The rent is current in accordance with a court order issued by the Superior court of California. See exhibits and other documents associated within tenant petition T16-0549, which was decided on March 15, 2017.

**II. RENTAL HISTORY**

Tenant Akenduca Beasley was handed a notice of rent increase from landlord Mr. Horejsi on or about July 27, 2017 stating the rent would increase from \$882.42 to (\$943.42 + 25 parking) = \$968.42. The notice indicates that rental is due to banking/ rental history. Tenants contend that the rent increase claim is invalid and lists reasons below:

By definition: "**CLAIM** is the assertion of a right to money or property; the aggregate of operative facts giving rise to a right enforceable in the courts, 309 F. Supp. 1178, 1181. A claim must show the existence of a right, an injury, and a prayer for damages. See 149 F. Supp. 615, 618." Gifts, Steven H., Barron's Law Dictionary 6<sup>th</sup> Ed. (2010), pp. 3332. Therefore all rent increases proposed by landlord Mr. Horejsi, banked or otherwise, represent claims.

On or about August 15, 2016, (Plaintiff/ Owner) Horejsi and (Defendant(s)/ Tenant(s)) Beasley and Mims entered into an agreement regarding any and all rents, fees, parking fees, late fees, etc.... and costs, and stipulated under Cal. Civ. Proc. § 664 the Superior court would retain jurisdiction. The agreement states in relevant part, in paragraphs 1, 4 and 6: "(1.) Defendant(s) shall retain possession of the premises located at 3764 39<sup>th</sup> Ave. Apt. D in Oakland, CA on the following conditions: Defendant shall pay to Plaintiff \$3856.84, which constitutes a bargained for amount of all rents, fees, parking fees, late fees et cetera and costs due and owing for the premises through 8/31/2016... (4.) Plaintiff hereby waives any and all claims for rent, fees, costs, parking and late fees and daily damages for the premises above \$3856. 84 amount outlined in paragraph 1. Through 8/31/2016... (6.) Within 30 days, Plaintiff shall inspect and repair as necessary the following defects: Bathtub, Bathroom mold and mildew, et cetera. In addition the landlord Horejsi hand wrote the following statement at the bottom in paragraph six; with the exception of the rights set forth herein the parties waive all other rights known to them at this time. "Consequently the landlord waived his rights to claim past banked rent to increases from 1



1982 through 8/31/16.

Also, the landlords past claims for banked rent through the ordinances provided from the Oakland Rent Board are preempted by *Code. Civ. Proc.* § 664.6, because the claims interfere with the courts ability to control, and settle claims for rent in the tenants unlawful detainer case.

*Code. Civ. Proc.* § 664.6. "If parties to pending litigation stipulate, in a writing signed by the parties outside the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement."

It is clear from analyzing the code of civil procedure that the legislature intended for the Superior Court of California to govern the current stipulated agreement and for the court to enforce it if requested by parties involved. Local legislation enters an area fully occupied by general law when the legislature has expressly manifested its intent to fully occupy the area or when it has impliedly done so in light of recognized indicia of intent [*California Grocers Assn. city of Los Angeles* (2011) 52 Cal. 4th 177, 188, 127 Cal. Rptr. 3d 726, 254 P.3d 1019, cert. denied, (2012) 132 S.Ct. 1144, 181 L.Ed.2d 1018 (only field occupied by Retail Food Code is health and sanitation standards for retail food establishments)]. Where the legislature has adopted statutes governing a particular subject matter, its intent with regard to occupying the field to the exclusion of all local regulation is not to be measured alone by the language used but by the whole purpose and scope of the legislative scheme [*Sequoia Park Assocs. v. Cty of Sonoma* (2009) 176 Cal. App. 4th 1270, 1278, 98 Cal. Rptr.3d 669).

A conflict exists if the ordinance duplicates, contradicts, or enters into a field of regulation expressly or impliedly reserved to the state [*California Grocers Assn. v. City of Los Angeles* (2011) 52 Cal. 4th 177, 188, 127 Cal. Rptr. 3d 726, 254 P.3d 1019, cert. to fully occupy the particular area of law [*Big Creek Lumber Co. v. Cnty: of Santa Cruz* (2006) 38 Cal. 4th 1139, 1157-1158, 45 Cal. Rptr.3d 21, 136 P.3d 821. As stated in the last paragraph of the stipulated agreement above the judges' signature: "The court accepts this stipulation for filing and accepts the parties' request to retain jurisdiction pursuant to CCP section 664.6." Therefore it is clear the legislature gave Superior courts the authority to settle claims in unlawful detainer cases.

Lastly, the landlord has violated: 8.22.600 - Tenant protection ordinance. (Ord. No. 13265, § 1, 11-5-2014). By refusing to make agreed repairs to the bathroom.

See examples of harassment in 8.22.610 - Findings and purpose.

Under J stated in pertinent part: J.) Of the approximately four hundred eighty (480) Oakland tenants who received legal services at Centro Legal de la Raza during fiscal year 2014 (July 1, 2013 through June 30, 2014), approximately forty percent (40%) faced harassment by their landlords. The forms of harassment varied, but included one or more of the following in each case:

- “1. Interrupting, terminating, failing to provide or threatening to interrupt, terminate or fail to provide housing services required by contract or by State, County or municipal housing, health or safety laws;
2. Failing to perform required repairs and/or maintenance or threatening to fail to do so;
3. Failing to exercise due diligence in completing repairs and maintenance once undertaken or failing to follow appropriate industry repair, containment or remediation protocols designed to minimize exposure to noise, dust, lead paint, mold, asbestos, or other building materials with potentially harmful health impacts;
4. Abusing the owner's right of access into a rental housing unit as that right is provided by law;
5. Unlawfully removing from the rental unit personal property, furnishings, or any other items without the prior written consent of the tenant;
6. Influencing, or attempting to influence, a tenant to vacate a rental unit through fraud, intimidation or coercion;
7. Attempting to coerce a tenant to vacate with offer(s) of payments to vacate which are accompanied with threats or intimidation;
8. Threatening the tenant, by word or gesture, with physical harm;
9. Substantially and directly interfering with a Tenant's right to quiet use and enjoyment<sub>3</sub>

of a rental housing unit as that right is defined by California law;

10. Fraudulently refusing to accept or acknowledge receipt of a Tenant's lawful rent payment.”

The landlord has violated the first, three examples of harassment in 8.22.610 by first, failing to provide housing services required by contract and health and safety laws; second, by failing to perform required repairs and threaten to and failing to do so; and third by failing to exercise due diligence in completing repairs.. Or failing to follow appropriate industry repair, containment or remediation protocols designed to minimize exposure to noise, dust, lead paint, mold, asbestos, or other building materials with potentially harmful health impacts.

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

**Services:** dates are estimated below, exact dates not known at this time; Services not believed to be in compliance with California Civil Code §1941.

<b>Date</b>	<b>Decreased/Inadequate Services</b>	<b>Amount (\$)</b>
7/2007	Bath Tub – rusted and full of mold cannot be used to bath	\$26.47 per month, set by rent board on March 15, 2017 case no.T16-0549
7/2007	Bathroom Mold and Mildew	To be determined by rent board
7/2007	Defective stove	To be determined by rent board
7/2007	Hole in closet	To be determined by rent board
1/2005	Parking- is a part of the original rental agreement.	(\$25 per month.)- should be noted, No. T03-0300 tenant petition filed challenged increase and the land lord rescinded the increase.

Several documents have been ordered masked from public view by the Superior Court of California. Documents in support of this petition will be filed at a later time. Along with any other information the Rent board indicates it needs to make a determination in this case. If you have questions or concerns please contact petitioner Akenduca D. Beasley by means above.

**PROOF OF SERVICE BY MAIL**

The undersigned declares:

I am a citizen of the United States of America, over the age of eighteen years. My mailing address is Post Office Box 19304, Oakland, CA 94619.

On, 12, September 2017, I served the attached, Tenant Petition on the parties in this action by placing a true copy thereof, in a sealed envelope with first class postage fully prepaid, in the United States Mail at Oakland, California, addressed as follows:

Michael E. Horejsi

P.O. Box 2883  
Castro Valley, CA 94546  
(775) 400-6464

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

Sworn this 12<sup>th</sup> September 2017, at Oakland, California



\_\_\_\_\_  
Satchidananda Mims



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

For date stamp.  
 2018 JAN 32 PM 1:02  
 FEB 1 (KR)  
**PROPERTY OWNER**  
**RESPONSE**

**RECEIVED**

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

FEB 01 2018

**CASE NUMBER T 17 0523**

RENT ADJUSTMENT PROGRAM  
**OAKLAND**

Your Name	Complete Address (with zip code)	Telephone:
Michael E. Horejsi	P.O. Box 2883 Castro Valley, CA 94546	775-400-6464
Your Representative's Name (if any)	Complete Address (with zip code)	Email:
Self		mhorejsi@aol.com
Tenant(s) Name(s)	Complete Address (with zip code)	Telephone:
Linda Beasley	3764 39th Ave, Apt D Oakland, CA 94619	Email:
Property Address (If the property has more than one address, list all addresses)		Total number of units on property
3764 39th Ave., Apt D, Oakland, CA 94619		7

Have you paid for your Oakland Business License? Yes  No  Lic. Number: 1054416  
 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: 030-1925-033  
 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: 01 / 6 / 1974

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.

<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>
10/1/17	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
*10/1/16	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
*T16-0549	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Pending Appeal)

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 7/24/1982

The tenant's initial rent including all services provided was: \$ 425.00 / month.

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

If yes, on what date was the Notice first given? 6/05/2002

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>	
7/27/2017	10/01/17	\$ 907.42	\$ 968.42	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
8/26/2016	10/01/16	\$ 828.00	\$ 907.42	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No

\*\*Rent set at \$882.42, T16-0549, appeal still pending.

### 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 Attachment for further information and facts.\*\***

### 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

## PROPERTY OWNER RESPONSE

(Attachment to form)

1. Assignment of Hearing Officer:

I respectfully request that a different hearing officer, other than Mr. Kasdin, be assigned to this case. Mr. Kasdin was the hearing officer in the last case, T16-0549, which is currently under appeal. It would be a conflict of interest for him to handle this Petition.

2. Rental History:

The rent for this unit was last increased on Feb. 2, 2004, over 13 years ago.

Tenants were given a rent increase, which was to be effective Oct. 1, 2016. Tenants' filed an appeal to that increase, T16-0549. A hearing was conducted and a decision was rendered on March 15, 2017. An owner's appeal to that decision was filed on April 3, 2017. This appeal has still not been scheduled for a hearing. OMC 8.22-120 B1 **requires** that a hearing be scheduled **within 30 days of filing the appeal**. Over 270 days have passed since the appeal was filed. This is unacceptable. The OMC RAP does not provide for this kind of delay which effectively freezes the rent for this unit.

I found it necessary to write a letter to the Director, Ms. Byrd, to see if this matter could be resolved. A hearing has, of yet, **not** been set for case T16-0549. However, I did receive a copy of the tenant's most recent Petition filed on September 12, 2017. Although, I was **not** served with the tenant's Petition until December 29, 2017, over 3 months after the filing date. This is unacceptable. See Encl. \_\_\_.

Considering the fees of the RAP were increased by 100% in 2017, over two million dollars, and it's my understanding only one new employee was hired, is again unacceptable. Why would any owner participate in this program?

3. Tenants' rent is delinquent:

Tenants are delinquent with their rent. While they are paying their delinquent rent at the rate of \$100 each month per a Court Stipulation, they will be in arrears until June 2018. They were in arrears \$900 when they filed their appeal in September 2016, claiming their rent was current.

Tenants are required to pay the annual CPI increase even though they may appeal banked rent. Tenants refused to pay the annual CPI increase from Oct. 1, 2016. OMC 8.22 0904b, the 2% increase was clearly specified in the Three Day Notice, as of January 2018. This is calculated at 2% of \$904.18. This amounts to \$18.08 per month for 16 months, through January 2018; an amount of \$289.33 is delinquent. This places the tenants in violation of the Court Stipulation.

Tenants also failed to pay the annual CPI increase effective Oct. 1, 2017. Based on 2.3% of \$968.42, this amounts to \$22.23 per month increase. As of January 2018, the amount of additional delinquent rent is \$88.92.



These tenants have continuously demonstrated a complete disregard for the RAP ordinance. The hearing decision and owner's appeal to T16-0549 should be incorporated herein by reference.

I. Owner's Response to Tenants' Petition

(a-b) The base rent as outlined in the Order for T16-0549 was set at \$882.42; when the \$25.00 was added, the total base rent comes to \$907.42. The rent for the current increase (2017) based on the 2.3% CPI with banking allowance is 6.9%. A 6.9% increase for \$907.42 is \$62.61 for a total of \$970.03. The total amount for rent and parking on the rent increase notice is \$968.42. This is less than authorized by the RAP. Objection is without merit.

(c) The rent increase does not exceed the CPI Adjustment and the banked rent increase. Grounds for the Petition are not credible.

(f) The rent increase notice was given, in person by myself, to Ms. Beasley in accordance with the law. Grounds for Petition are not credible.

(g) The anniversary date for future yearly rent increases was set by Order for T16-0549 as of October 1<sup>st</sup> each year. Her last rent increase was effective October 1, 2016. The current rent increase was effective October 1, 2017. Ms. Beasley's grounds for her Petition are **not** credible.

(h-i) See Section III

III. Owner's Response to alleged decreased or inadequate services.

The tenant has alleged the same complaints for the most part which were addressed in T16-0549. An Appeal was filed for this ruling. The appeal addressed the rent reduction for tenants' causation of damages to window screens, bathtub surface damages and tampering with the unit wall heater. No other issues were disputed.

The tenant did **not** provide a written request for any repairs, which is required per agreement, prior to filing her Petition. A routine annual inspection of her unit was conducted on September 25, 2017. See Encl. \_\_\_.

a. Bathtub: As stated, this issue was addressed in Case T16-0549. An appeal is pending scheduling of a hearing.

b. Bathroom mold and mildew: This was addressed in Case T16-0549. Hearing officer's ruling (Mold was caused by excess moisture in the air. When asked the cause of the mold in their bathroom, the tenants testified that they believed it 'comes from the walls.' This is **not** a condition that the owner can correct). The bathroom was repainted in October 2017. There was no obvious mold on the walls. The tub and shower walls had **not** been cleaned and were covered with mineral stains, soap scum and body oil (and still have not been cleaned).

c. Defective stove: The kitchen range was new in 2006. Tenant claims the range has been defective since 2007. This was a complaint from tenant in case T16-0549. The hearing officer stated the tenants did not meet their burden of proof and the **claim was denied**.

The range was checked by myself and my assistant on September 25, 2017. The range, although extremely unclean, worked properly. Both the bake and broil elements worked properly. The thermostat cut-off temperature was reading correctly. All range top burners operated correctly. Tenant was admonished as to the danger of a fire due to excess grease on the range. Inspection Report; Encl. \_\_

On October 18, 2017, tenants complained that the oven did not work. The range was inspected on the same day. It was discovered that both screws securing the bake element to the back range housing had been removed, which allowed the element to short out against the grounded panel. The short caused catastrophic damage to the element.

A new bake element was installed and a new light bulb was replaced on October 25, 2017. This bake element was replaced earlier due to tenant using the oven to heat the kitchen, an act strictly forbidden by the manufacturer. Tenant was advised she would be charged for the bake element - \$81.39 was to be paid with her December rent. Tenant has yet to pay for this damage.

Owner was notified on January 2, 2018 that tenant was baking peanuts in the oven and they caught on fire, or the excess grease in the oven and pan caught on fire. The Fire Department was summoned.

Upon inspection, it appeared the tenant took no action to extinguish the fire. A fire extinguisher was located near her front door. The fire apparently burned the excess grease present and extinguished itself. There was no evidence of fire retardant used to extinguish the fire. There was fire damage to the range front above the oven door. Since the oven door is sealed to prevent heat from escaping, it is likely tenant was baking the peanuts with the oven door slightly open. The top portion of the oven seal was damaged by the fire. The range is cosmetically damaged and will need to be replaced prior to re-renting the unit. Neither the bake element or broil element were damaged – both were operational. A new door seal has been ordered. The fire may have been unintentional, but was clearly caused by unattended baking and tenant's carelessness.

d. Hole in closet floor: This issue was addressed in Case T16-0549. The tenants testified that the hole in the floor does not affect their tenancy; the condition does not constitute a decreased housing service. The claim was **denied** by the hearing officer.

During the inspection conducted on September 25, 2017, the tenants were requested to remove sufficient items stored in the closet to allow inspection of the area. No hole was present in the floor. Prior water damage to the floor was noted next to the back closet floor. This area was adjacent to the closet side of the front of the tub in the bathroom. The damaged area was reinforced with plywood to counter the softness in the floor. The bedroom is full of stored materials, thus there was not sufficient access to the damaged area to repair the area.

A letter of April 21, 2002, concerning this matter, recently came to my attention explaining the circumstances of the water damage. Encl. \_\_ (It should be noted that the bathroom floor was replaced in October 2001. The area around the tub was not completely

sealed. The job was not completed due to **denial of entry** by Mrs. Beasley. The new floor sustained some water damage due to the wall area next to the end of the tub not being sealed.)

The water also leaked through into the closet and was unseen to me. This is undoubtedly what caused the damage to the closet floor.

e. Parking: The parking claim as a reduction of housing services was **denied** in RAP T03-0237, T03-0300, T16-0549, and by the Stipulated Unlawful Detainer Judgment signed by Mrs. Beasley herself.

The tenants seem to have no valid claims for their petitions and are inclined to disregard the RAP decisions and continue to bring up the same complaints repeatedly.

#### IV. Owner's Response to Tenant's attachment.

Author of this attachment is simply confusing a claim for an entitlement. The annual CPI rent increase is an entitlement and can be levied by the landlord at his discretion. The tenant does not have the right to contest a basic annual CPI increase. The author would turn every annual CPI increase into a jury trial.

The argument concerning the application of CCP 664.60 is irrelevant to this case. It is absolutely applicable to the reason the Appeal was filed objecting to rent reductions granted in Case T16-0549. The RAP does not have the authority to grant relief prior to the date of the Superior Court approved Stipulation [August 31, 2016].

At the time the Unlawful Detainer was filed, June 2016, tenants were in arrears \$19,793.00. Encl. \_\_\_. State law limits claim for monetary damages to one years' rent. Consequently, monetary claims stated on the Three Day Notice were limited to one years' rent, \$9,989.76. Encl. \_\_\_. Therefore, any rights waived by myself were generally limited to claims for the period July 1, 2015 to August 31, 2016. The tenants' waiver concerned any claims they may have had prior to signing the Stipulation on August 31, 2016. Nearly \$10,000 in delinquent rent, due prior to July 2015, is still unclaimed. It is ironic that tenants bring this issue up since they recently filed a nuisance unlimited civil lawsuit action, and also in case T16-0549. This tenant is involved, concurrently, in 4 different actions, all regarding the same issues – this is burdensome and a deliberate effort to harass the owner.

The note on the Stipulation was entered by my attorney and referred to only claims which arise based on the unlawful detainer action. Since the CPI and banked rent are entitlements and not claims, any suggestion entitlements were waived is without merit.

Claims are made that the tenants' rights have been violated because I have not made repairs to the damaged to the bathtub. This is an effort to deflect attention away from the tenants' obligations as defined by CCC 1941.2d. Not destroy, damage, or deface the premises, or allow anyone else to. A landlord is not required to repair damages caused by the tenants' own carelessness.

The tub in question was refinished after this tenant caused prior damage – it was repaired in 2002. At that time, according to tenant, it was in perfect condition. It is irrefutable that the

surface to the tub has been damaged. The damage consists of dents, chipped porcelain and rust where the porcelain has been damaged. The tenants still have a shower and can bathe if they choose. CCC 1941i requires a bathtub or shower, not both. Tenants claim the damage they caused to the bathtub is a building code violation and is a habitability issue – this is untrue. The law provides that if the tenant causes the apartment to become uninhabitable, they cannot require the landlord to repair the property.

The current damage occurred around the time they were raising a defense for the 2016 unlawful detainer action.

An unlawful detainer action, 01-032127, against tenants was filed in 2001. These are my comments in a letter to tenants' attorney at the time. 'The bathtub was damaged to the point it needed to be refinished. It had numerous dents and areas of chipped porcelain. It was apparent this damage was caused by being struck with a very hard object.' There was considerable other damage articulated in this letter. Encl. \_\_.

The tenants agreed to pay for this damage, but failed to do so.

The argument that the landlord violated OMC 8.22.600 is without merit.



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

CITY OF OAKLAND

Department of Housing and Community Development  
Rent Adjustment Program

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

## **HEARING DECISION**

**CASE NUMBER:** T17-0523, Beasley v. Horejsi  
**PROPERTY ADDRESS:** 3764 - 39<sup>th</sup> Ave., #D, Oakland, CA  
**DATE OF HEARING:** February 26, 2018  
**DATE OF DECISION:** March 29, 2018  
**APPEARANCES:** Akenduca Linda Beasley (Tenant)  
Satchidananda Mims (Tenant)  
Michael E. Horejsi (Owner)

## **SUMMARY OF DECISION**

The tenant's petition is partly granted.

## **CONTENTIONS OF THE PARTIES**

Tenant Akenduca Linda Beasley (the tenant) filed a petition on September 12, 2017, which alleges that a rent increase in the year 2016, as well as a proposed current rent increase from \$882.42 to \$968.42 per month, effective October 1, 2017, exceeds the CPI Adjustment and is unjustified or is greater than 10%; that the CPI and/or banked rent increase was calculated incorrectly; that the rent increase notice was not given to her in compliance with State law; that the current proposed rent increase is the second increase in a 12-month period; and additionally alleges that at present, there exists a health, safety, fire, or building code violation and serious problems in her unit, as follows: bathtub; bathroom mold and mildew; defective stove; hole in a closet; and that parking was part of her original rental agreement.

The owner filed a response to the petition, which alleges that the proposed rent increase is justified by Banking, and denies that the tenant's housing services have been decreased.

000229

## THE ISSUES

- (1) Does a Court Stipulation between the parties regarding rent affect this case?
- (2) Was the tenant's petition filed within the required time limit to challenge the year 2016 rent increase?
- (3) When did the first tenant receive the form Notice to Tenants (RAP Notice)?
- (4) Is a rent increase based upon Banking justified and, if so in what amount?
- (5) Have the tenant's housing services been decreased and, if so, by what percentage of the total housing services that are provided by the owner?
- (6) What effect, if any, does the tenant's pending Appeal have upon this Hearing Decision?

## EVIDENCE

Court Stipulation: In an attachment to her petition, the tenant refers to a Stipulation which the parties signed in the Alameda County Superior Court in 2016. This Stipulation regards the tenant's obligation to pay back rent, and states that the Court would retain jurisdiction in this matter.

RAP Notice: In their petitions and responses, both parties state that the tenant was given the RAP Notice on June 5, 2002.

Rent History: At the Hearing, the owner testified that the tenant's rent in the year 2007 was \$828 per month. The tenant testified that she assumed that this was correct. The parties agreed that the tenant has been paying rent of \$853 per month.

Decreased Housing Services: Official Notice is taken of Case No. T16-0549, which involved the same parties as the present case. The owner filed an Appeal of the Hearing Decision in that case, which has not yet been decided. In that prior case, the tenant claimed that her housing services had been decreased due to the condition of the bathtub; mold and mildew; the stove; a hole in a closet; and that parking was part of her original rental agreement.

The Order in that prior case states that the Base Rent is \$882.42 per month; that due to past decreased housing services, the rent was temporarily reduced by \$56.81 per month from April 2017 through March 2018; that due to the condition of the bathtub, the rent was reduced by \$26.47 per month, to \$855.95 per month, until the bathtub is repaired. The owner's Appeal contends that the tenant's housing services had not been reduced, and that the rent reduction that was ordered was not justified.

Bathtub: At the Hearing, the tenant testified that this is the same claim that she made in Case No. T16-0549 (the prior case). The parties testified that the tub has not been repaired.

Bathroom Mold and Mildew: The tenant testified that this is the same claim that she made in the prior case.

Stove: The tenant testified that on January 2, 2018, there was a fire in her electric stove. She had been roasting peanuts in the oven. She smelled smoke, and when she went into the

kitchen smoke was coming out of the oven. The tenant turned off the circuit breaker in her apartment, which caused the fire in the oven to go out. She then called the Fire Department. Fire fighters responded, and later prepared a report.<sup>1</sup> The tenant further testified that she had previously told the owner that the oven was overheating, and approximately 6 weeks before this incident the owner worked on the screws on the heating element in the oven.

The Fire Department report states, in part: "Contents of pan in oven charred, and oven extremely hot with heat damage to exterior of oven above door and door itself. Per resident, she was roasting contents at reasonable temperature (approx. 350) when broiler area ignited and flames traveled through main oven box and out top of door. . . Resident stated recent work by property manager on oven."

The owner testified that on September 25, 2017, he and Mr. Jackson, his repair person, inspected the stove. Following the inspection, the owner arranged for the heating element to be replaced. He submitted a bill for a heating element from Appliance Parts Distributor, dated October 20, 2017.<sup>2</sup>

On November 11, 2017, the owner wrote a letter to the tenant, with the caption "Findings: Annual Inspection conducted on September 25, 2017."<sup>3</sup> This letter states, in part: "The walls and kitchen area are excessively greasy. The range hood and oven require cleaning. . The oven appears to have not been cleaned since installed . . . the bake element was damaged and replaced at that time. . . Shortly after this inspection you called and stated the oven did not work. Upon inspection, it was determined that someone had removed the bake element mounting screws and apparently attempted to remove the bake element causing an electrical short to occur. The bake element was subsequently replaced."

The owner testified that, following the fire, he noted that the screws that hold the bake element (an electric tubing) in place were missing. They had been in place when he inspected the stove in September 2017. He further testified that these screws could not have come out on their own; someone would have had to remove them. With the screws missing, the bake element could touch the side of the stove, and cause a fire. The owner submitted a photo of the inside of the oven that he took after the fire.<sup>4</sup> This photo depicts a large burnt area at the back of the oven.

Hole in Closet: The tenant testified that this is the same claim that she made in the prior case.

Parking: The tenant testified that this is the same claim that she made in the prior case.

/

/

/

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<sup>1</sup> Exhibit No. 1. This Exhibit, and all others to which reference is made in this Decision, were admitted into evidence without objection.

<sup>2</sup> Exhibit No. 2

<sup>3</sup> Exhibit No. 3

<sup>4</sup> Exhibit No. 4

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

The following Findings of Fact and Conclusions of Law are based upon the assumption that the owner's Appeal will be denied, and the Hearing Decision in the prior case will stand. If the Appeal is granted, a Hearing Decision following Appeal will be issued, which will replace this Hearing Decision.

Court Stipulation: This Stipulation concerns only rent arrearages, and has no effect upon the present case, which involves a proposed rent increase and the tenant's claims of decreased housing services.

RAP Notice / Filing Requirement: It is found that the tenant received the RAP Notice in the year 2002. A tenant petition must be filed within 90 days of the date of service of a rent increase notice or the date the tenant first receives the RAP Notice, whichever is later.<sup>5</sup> Therefore, the tenant's petition was filed far too late to contest a rent increase in the year 2016. The tenant's Base Rent before considering the current proposed rent increase is \$882.42 per month. This amount does not include payment on back rent pursuant to the Court stipulation noted above.

Banking: An owner is allowed to bank rent increases and use them in subsequent years, subject to certain limitations.<sup>6</sup> The parties agree on the dates and rent amounts entered into the Banking calculations shown on the attached Table. The method of calculation on this Table has been approved by the Rent Board.<sup>7</sup> Therefore, as set forth in this Table, the maximum rent for the tenant's unit is \$942.86 per month.

Decreased Housing Services: Under the Oakland Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent<sup>8</sup> and may be corrected by a rent adjustment.<sup>9</sup> However, in order to justify a decrease in rent, a decrease in housing services must be either the elimination or reduction of a service that existed at the start of the tenancy or a violation of the housing or building code which seriously affects the habitability of the tenant's unit. A tenant has the burden of proof with respect to each decreased services claim. Further, under the legal doctrine of *res judicata*, a valid, final judgment on the merits is a bar to a subsequent action by parties on the same cause of action. Mycogen Corp. v. Monsanto Co., 28 Cal. 4<sup>th</sup> 888, 896 (2002).

Bathtub: Since the identical claim was made in the prior case, the claim is denied. However, the Order in the prior case, which decreased the rent by \$26.47 per month until the bathtub is repaired, remains in effect.

Bathroom Mold and Mildew: Since the identical claim was made in the prior case, and was denied, the claim is denied.

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<sup>5</sup> O.M.C. Section 8.22.090 (A)(2)

<sup>6</sup> O.M.C. Section 8.22.070(C); Regulations Appendix, Section 10.5.1

<sup>7</sup> Appeal Decision, Case No. 98-02, et al. *Merlo v. Rose Ventures III et al.* The Board has designated this decision to be a Precedent Decision.

<sup>8</sup> O.M.C. Section 8.22.070(F)

<sup>9</sup> O.M.C. Section 8.22.110(E)



Stove: It is found that the owner's testimony was credible. The condition that caused the fire could not have occurred without tampering, and the stove was otherwise not defective. At best, the evidence was equally persuasive, and the tenant has not sustained her burden of proof. Therefore, the claim is denied.

Hole in Closet: Since the identical claim was made in the prior case, the claim is denied.

Parking: Since the identical claim was made in the prior case, the claim is denied.

Rent Underpayments: The tenant has underpaid rent, as detailed in the following Table.

Month	Paid	Rent with Banked Increase	Minus Rent Reduction in Prior Case	Minus Ongoing Reduction Due to Condition of Bathtub	Rent Due	Rent Underpayment
October 2017	\$853	\$942.86	\$56.81/mo.	\$26.47/mo.	\$859.58	\$6.58
November 2017	\$853	\$942.86	\$56.81/mo.	\$26.47/mo.	\$859.58	\$6.58
December 2017	\$853	\$942.86	\$56.81/mo.	\$26.47/mo.	\$859.58	\$6.58
January 2018	\$853	\$942.86	\$56.81/mo.	\$26.47/mo.	\$859.58	\$6.58
February 2018	\$853	\$942.86	\$56.81/mo.	\$26.47/mo.	\$859.58	\$6.58
March 2018	\$853	\$942.86	\$56.81/mo.	\$26.47/mo.	\$859.58	\$6.58
April 2018	\$853	\$942.86	NONE	\$26.47/mo.	\$916.39	\$63.39

The underpayments total \$102.87. The underpayment is ordered repaid over a period of 3 months.<sup>10</sup> The rent is temporarily increased by \$34.29 per month, to \$977.15 per month, beginning with the rent payment in May 2018 and ending with the rent payment in July 2018.

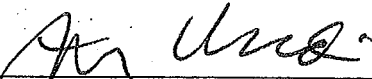
**ORDER**

1. Petition T17-0523 is partly granted.

<sup>10</sup> Regulations, Section 8.22.110(F)

2. The rent, before a temporary increase due to underpaid rent, is \$942.86 per month, effective October 1, 2017. However, the tenant has underpaid rent in the total amount of \$102.87. This underpayment is adjusted over a period of 3 months.
3. The rent is temporarily increased by \$34.29 per month, to \$977.15 per month, beginning with the rent payment in May 2018 and ending with the rent payment in July 2018.
4. In August 2018, the rent will return to 942.86 per month.
5. The Anniversary Date for future rent increases is October 1.
6. **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: March 29, 2018

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

# CITY OF OAKLAND



Department of Housing and Community Development  
 Rent Adjustment Program  
<http://www2.oaklandnet.com/Government/o/hcd/o/RentAdjustment/>

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

## CALCULATION OF DEFERRED CPI INCREASES (BANKING)

Initial move-in date	24-Jul-1982	<b>MUST FILL IN D9, D10, D11 and D14</b>	Case No.:	
Effective date of increase	1-Oct-2017		Unit:	
Current rent (before increase and without prior cap. improve pass-through)	\$882.00		<b>CHANGE YELLOW CELLS ONLY</b>	
Prior cap. imp. pass-through				
Date calculation begins	1-Oct-2006			
Base rent when calc. begins	\$828			
If the planned increase includes other than banking put an X in the box → <input style="width: 50px; height: 15px;" type="checkbox"/>				

## ANNUAL INCREASES TABLE

Year Ending	Debt Serv. or Fair Return increase	Housing Serv. Costs Increase	Base Rent Reduction	Annual %	CPI Increase	Rent Ceiling
10/1/2017				2.3%	\$ 23.81	\$ 1,058.87
10/1/2016				2.0%	\$ 20.30	\$ 1,035.07
10/1/2015				1.7%	\$ 16.96	\$ 1,014.77
10/1/2014				1.9%	\$ 18.60	\$ 997.81
10/1/2013				2.1%	\$ 20.14	\$ 979.20
10/1/2012				3.0%	\$ 27.93	\$ 959.06
10/1/2011				2.0%	\$ 18.26	\$ 931.13
10/1/2010				2.7%	\$ 24.00	\$ 912.87
10/1/2009				0.7%	\$ 6.18	\$ 888.87
10/1/2008				3.2%	\$ 27.37	\$ 882.69
10/1/2007				3.3%	\$ 27.32	\$ 855.32
10/1/2006				-	-	\$828

## Calculation of Limit on Increase

Prior base rent	\$882.00
Banking limit this year (3 x current CPI and not more than 10%)	6.9%
Banking available this year	\$ 60.86
Banking this year + base rent	\$ 942.86
Prior capital improvements recovery	\$ -
<b>Rent ceiling w/o other new increases</b>	<b>\$ 942.86</b>

**Notes:**

1. You cannot use banked rent increases after 10 years.
2. CPI increases are calculated on the base rent only, excluding capital improvement pass-throughs.
3. The banking limit is calculated on the last rent paid, excluding capital improvement pass-throughs.
4. Debt Service and Fair Return increases include all past annual CPI adjustments.
5. An Increased Housing Service Cost increase takes the place of the current year's CPI adjustment.
6. Past increases for unspecified reasons are presumed to be for banking.
7. Banked annual increases are compounded.
8. The current CPI is not included in "Banking", but it is added to this spreadsheet for your convenience.

**PROOF OF SERVICE**

**Case Number T17-0523**

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

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

**Tenant**

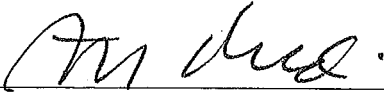
Akenduca D. Beasley aka Linda J. Beasley  
3764 39th Ave #D  
Oakland, CA 94619

**Owner**

Michael E. Horejsi  
P.O. Box 2883  
Castro Valley, CA 94546

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 March 29, 2018 in Oakland, CA.

  
\_\_\_\_\_  
Stephen Kasdin



CITY OF OAKLAND

**CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM**

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

For date stamp.

2018 APR 18 AM 9:09

**APPEAL**

<b>Appellant's Name</b> <b>Akenduca D. Beasley</b>		<input type="checkbox"/> Owner <input checked="" type="checkbox"/> Tenant	
<b>Property Address (Include Unit Number)</b> 3764 39th Ave. Apt D, Oakland, CA 94619			
<b>Appellant's Mailing Address (For receipt of notices)</b> PO Box 19304 Oakland, CA 94619		<b>Case Number</b> T17-0523	
		<b>Date of Decision appealed</b> March 29, 2018	
<b>Name of Representative (if any)</b>		<b>Representative's Mailing Address (For notices)</b>	

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

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

For more information phone (510) 238-3721.

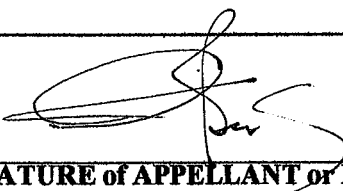
- f)  I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. (In your explanation, you must describe how you were denied the chance to defend your claims and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue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

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

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

I declare under penalty of perjury under the laws of the State of California that on April 18 \_\_\_\_\_, 20<sup>18</sup>, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<b>Name</b>	Michael E. Horejsi
<b>Address</b>	P.O. Box 2883
<b>City, State Zip</b>	Castro Valley, CA 94546
<b>Name</b>	
<b>Address</b>	
<b>City, State Zip</b>	

	4/18/2018
<b>SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE</b>	<b>DATE</b>

For more information phone (510) 238-3721.

RECEIVED  
CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM

2018 MAY -3 PM 3:32

**THE CITY OF OAKLAND RENT ADJUSTMENT**

**PROGRAM: APPEAL**

No. T17-0523

AKENDUCA D. BEASLEY,

*Petitioner and Tenant,*

vs.

Michael Horejsi,

*Respondent and landlord / Owner;*

CITY OF OAKLAND RENT ADJUSTMENT PROGRAM, et al.

Real Parties in Interest.

---

**PETITION FOR APPEAL AND SUPPORTING MEMORANDUM  
OF POINTS AND AUTHORITIES**

---

Akenduca D. Beasley  
P.O. Box 19304  
Oakland, California 94619  
Telephone: (510) 530-6345

Petitioner-Tenant, Representing  
Tenants at 3764 39<sup>th</sup> Ave Apt. D, Oakland, 94619

000239

RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM

2018 MAY -3 PM 3:32

**DECLARATION OF Akenduca Beasley aka Linda Beasley**

(Print your name) Landlord /Tenant (circle one)

3764 39th Ave. Apt D, Oakland, 94619; 510-530-6345

(Print your address and phone number)

**RENT ADJUSTMENT CASE NO. T17-0523**

The purpose of this declaration is to inform the City of Oakland Rent Adjustment Program about what I think is a violation of the Rent Adjustment Ordinance.

I, Akenduca Beasley aka Linda Beasley, an adult, 18 years of age or older, declare the following about:

Michael E. Horejsi, P.O. Box 2883, Castro Valley, CA 94546

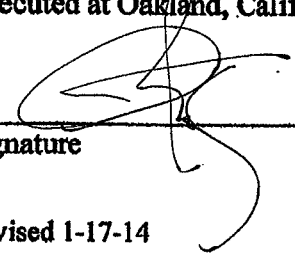
(Print name and address of other party)

The landlord has violated: 8.22.600 - Tenant protection ordinance. (Ord. No. 13265, § 1, 11-5-2014). Failing to perform required repairs and/or maintenance or threatening to fail to do so; Influencing, or attempting to influence, a tenant to vacate a rental unit through fraud, intimidation or coercion. Since Case No. T16-0549, bathtub has not been repaired and landlord indicated he is not going to repair bathtub. Landlord refusal is not in compliance with the rent boards rulings or the court stipulation order. In addition Cal. Civ. Code § 1942.4. states in perenant part: "a) A landlord of a dwelling may not demand rent, collect rent, issue a notice of a rent increase...if all of the following conditions exist prior to the landlord's demand or notice: 1. ) The dwelling substantially lacks any of the affirmative standard characteristics listed in Section 1941.1....or is deemed and declared substandard as set forth in Section 17920.3 of the Health and Safety Code because conditions listed in that section exist to an extent that life, limb, health, property safety, welfare of the public or the occupants of the dwelling..." Based on the fact the adjustment program notified the landlord via rulings about obligations to repair tub and it has been more than 35 days, good cause doesn't exist to explain landlord behavior and tenants did not due damage to the tub. That law has been violated as well as the protection ordinance.

(attach extra sheets if necessary)

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

Executed at Oakland, California on 05/03/2018 (date).

  
Signature

Revised 1-17-14



**AKENDUCA BEASLEY**

3764 39<sup>th</sup> Ave. #D, Oakland, CA 94619

510-530-6345

Department of Housing and Community Development  
Department, Rent Adjust Program  
PO Box 70243  
Oakland, CA 94612-2043

Re: Hearing Decision made March 29, 2018  
Case Number T170523 Beasley v. Horesji

**Grounds For Tenants Appeal**

1. The decision is inconstant with decisions issued by other Hearing Officers.
2. The decision violates federal, state or local law.
3. The decision is not supported by substantial evidence.
4. I was denied a sufficient opportunity to present my claim or respond to petitioner's claim.
5. Other...

**INTRODUCTION AND SUMMARY OF FACTS**

A "CLAIM is the assertion of a right to money or property; the aggregate of operative facts giving rise to a right enforceable in the courts, *Thompson v. Zurich Insurance Company* 309 F. Supp. 1178 (1970). Therefore any assertion from the landlord right to raise or collect rent is a form of a claim.

As stated in her original petition. Tenant Akenduca Beasley was handed a notice of rent increase from landlord Mr. Horejsi on or about July 27, 2017 stating the rent would increase from \$882.42 to (\$943.42 + 25 parking) = \$968.42. The notice indicates that rental is due to banking/ rental history.

On or about August 15, 2016, (Plaintiff/ Owner) Horejsi and (Defendant(s)/ Tenant(s)) Beasley and Mims entered into an agreement regarding any and all rents, fees, parking fees, late fees, etc.... and costs, and stipulated under Cal. Civ. Proc. § 664 the Superior court would retain jurisdiction. Simultaneously the court made the stipulation a court order and required parties to do their part in fulfilling the agreement. As a result of the agreement the landlord waived his rights to claim past banked rent to increases from 1982 through 8/31/16. In addition the City of Oakland Rent Adjustment Program is limited and preempted from raising the rent, because increases are in conflict with *Cal. Civil Proc. §§ 664; 1174.2; and Cal. Civ. Code § 1942.4; and California Health and Safety Code § 17920.3.*

During the hearing conducted on February 26, 2018. Both the landlord and tenants submitted evidence to be reviewed by hearing Officer Stephen Kasdin. The main issue of discussion of the hearing was the stove and the fire which occurred on January 02, 2018. Tenants testified that the oven was worked on or serviced by the landlord. The landlord is the only person who has worked on the oven since its installation many years ago. The landlord testimony through his own admission consisted of majority speculation and hearsay; however the officer found his testimony credible.

### **POINTS AND AUTHORITES**

### **ARGUMENT IN SUPPORT OF PETITION FOR APPEAL**

### **LEGAL AUTHORITY**

*California Code of Civil Procedure Section 664.6* States in pertinent part:

“If parties to pending litigation stipulate, in a writing signed by the parties outside the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.”

***California Code of Civil Procedure Section 1174.2*** states in pertinent part:

a) "In an unlawful detainer proceeding involving residential premises after default in payment of rent and in which the tenant has raised as an affirmative defense a breach of the landlord's obligations under Section 1941 of the Civil Code or of any warranty of habitability, the court shall determine whether a substantial breach of these obligations has occurred. If the court finds that a substantial breach has occurred, the court (1) shall determine the reasonable rental value of the premises in its untenable state to the date of trial, (2) shall deny possession to the landlord and adjudge the tenant to be the prevailing party, conditioned upon the payment by the tenant of the rent that has accrued to the date of the trial as adjusted pursuant to this subdivision within a reasonable period of time not exceeding five days, from the date of the court's judgment or, if service of the court's judgment is made by mail, the payment shall be made within the time set forth in Section 1013, (3) may order the landlord to make repairs and correct the conditions which constitute a breach of the landlord's obligations, (4) shall order that the monthly rent be limited to the reasonable rental value of the premises as determined pursuant to this subdivision until repairs are completed, and (5) except as otherwise provided in subdivision (b), shall award the tenant costs and attorneys fees if provided by, and pursuant to, any statute or the contract of the parties. If the court orders repairs or corrections, or both, pursuant to paragraph (3), the court's jurisdiction continues over the matter for the purpose of ensuring compliance. The court shall, however, award possession of the premises to the landlord if the tenant fails to pay all rent accrued to the date of trial, as determined due in the judgment, within the period prescribed by the court pursuant to this subdivision. The tenant shall, however, retain any rights conferred by Section 1174."

**THE RENT ADJUSTMENT PROGRAM HAS THE OBLIGATION AND AUTHORITY TO STOP THE UNLAWFUL RENT INCREASE(S) IN CURRENT CASE**

It is clear from analyzing the code of civil procedure that the legislature intended for the Superior Court of California to govern certain aspects of rent. Particularly when a stipulated agreement is involved, resulting from an unlawful detainer case and both parties request for the court to retain jurisdiction over the subject matter. See *Cal. Civil Proc. §§ 664.6, 1174.2*.

The Rent Adjustment Program officer found that the order of the court stipulation Re: Dismissal / Judgment concerns only rent arrearages, and has no effect upon the present case, which involves a proposed rent increase and the tenant's claims of decreased housing services. The officer failed to justify how the Rent Adjustment Program order regarding claims based on the court order stipulation has no bearing in this rent case. The court set the amount of rent to (\$828 rent) + (\$25 parking) = \$853 and added (\$100 arrearage payment) = \$953 to be paid from September 2016 to June 2018. The court also ordered, "Within 30 days, Plaintiff shall inspect and repair as necessary the following defects: Bathtub, Bathroom mold and mildew, et cetera." *Cal. Civil Proc. § 1174.2* states in relevant part: "(3) may order the landlord to make repairs and

correct the conditions which constitute a breach of the landlord's obligations, (4) shall order that the monthly rent be limited to the reasonable rental value of the premises as determined pursuant to this subdivision until repairs are completed... If the court orders repairs or corrections, or both, pursuant to paragraph (3), the court's jurisdiction continues over the matter for the purpose of ensuring compliance." Therefore all aspects of the stipulation / court order was in jurisdiction of the California Superior Court and court has the right to identify substandard portions of a dwelling, and set the rent until all repairs are done to the satisfaction of the court. Furthermore when the court made the stipulation an order, the landlord was required by law to follow the agreement, by repairing agreed defects. The Rent Adjustment Program was wrong when he evaluated each point from the stipulation and indicated in much of its analysis of each agreed upon repair, except for the bath tub, either there is not enough evidence to substantiate a claim or within the respect to mold or mildew that nothing could be done about it. See *T16-0549, Beasley v. Horejsi (2017)*. When parties agreed to the stipulation and the court made it an order, the court essentially acknowledge that the repairs that needed to be fixed made the housing substandard and order them fixed within 30 days.

In addition the law indicates that a landlord may not issue a notice of a rent increase or require a tenant pay rent when certain substandard housing defects exist. See the following laws. "*Cal. Civ. Code § 1942.4*, States in pertinent part:

(a) A landlord of a dwelling may not demand rent, collect rent, issue a notice of a rent increase, or issue a three-day notice to pay rent or quit pursuant to subdivision (2) of Section 1161 of the Code of Civil Procedure, if all of the following conditions exist prior to the landlord's demand or notice:

(1) The dwelling substantially lacks any of the affirmative standard characteristics listed in Section 1941.1 or violates Section 17920.10 of the Health and Safety Code, or is deemed and declared substandard as set forth in Section 17920.3 of the Health and Safety Code because conditions listed in that section exist to an extent that endangers the or life, limb, health, property, safety, welfare of the public or the occupants of the dwelling.

(2) A public officer or employee who is responsible for the enforcement of any housing law, after inspecting the premises, has notified the landlord or the landlord's agent in writing of his or her obligations to abate the nuisance or repair the substandard conditions.

(3) The conditions have existed and have not been abated 35 days beyond the date of service of the notice specified in paragraph (2) and the delay is without good cause. For purposes of this subdivision, service shall be complete at the time of deposit in the United States mail.

(4) The conditions were not caused by an act or omission of the tenant or lessee in violation of Section 1929 or 1941.2..."

"*California Health and Safety Code § 17920.3* states in pertinent part:

Any building or portion thereof including any dwelling unit, guestroom or suite of rooms, or the premises on which the same is located, in which there exists any of the following listed conditions to an extent that endangers the life, limb, health, property, safety, or welfare of the public or the occupants thereof shall be deemed and hereby is declared to be a substandard building:

(a) Inadequate sanitation shall include, but not be limited to, the following:

- (1) Lack of, or improper water closet, lavatory, or bathtub or shower in a dwelling unit.
- (2) Lack of, or improper water closets, lavatories, and bathtubs or showers per number of guests in a hotel
- (3) Lack of, or improper kitchen sink.
- (4) Lack of hot and cold running water to plumbing fixtures in a hotel.
- (5) Lack of hot and cold running water to plumbing fixtures in a dwelling unit.
- (6) Lack of adequate heating.
- (7) Lack of, or improper operation of required ventilating equipment,
- (8) Lack of minimum amounts of natural light and ventilation required by this code.
- (9) Room and space dimensions less than required by this code.
- (10) Lack of required electrical lighting.
- (11) Dampness of habitable rooms...
- (13) Visible mold growth, as determined by a health officer or a code enforcement officer, as defined in Section 829.5 of the Penal Code, excluding the presence of mold that is minor and found on surfaces that can accumulate moisture as part of their properly functioning and intended use...
- (14) General dilapidation or improper maintenance.

b) Structural hazards shall include, but not be limited to, the following:

- (1) Deteriorated or inadequate foundations.
- (2) Defective or deteriorated flooring or floor supports.
- (3) Flooring or floor supports of insufficient size to carry imposed loads with safety...

c) Any nuisance.

(d) All wiring, except that which conformed with all applicable laws in effect at the time of installation if it is currently in good and safe condition and working properly..."

Consequently the Rent Adjustment Program overstepped its authority bypassing applicable California law and court order, in granting increases in rent.

**THE INCREASE IN RENT IS PREEMPTED BY LAW**

A court may infer an intent to preempt municipal legislation only if (1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; or (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the municipality. See *Fisher v. City of Berkeley* (1984) 37 Cal. 3d 644. In the Fisher case the court invalidated an ordinance to the extent it created an evidentiary presumption that affected the burden of proof in regard to retaliatory evictions. The ordinance was rejected because evidence laws of California already govern evidence.

As stated above, the decisions for T16-0549, *Beasley v. Horejsi* (2017) and this case are prohibited by law, because the legislature intended to give the courts the right to totally govern rents when dealing with an unlawful detainer case. A conflict exists if the ordinance duplicates, contradicts, or enters into a field of regulation expressly or impliedly reserved to the state [*California Grocers Assn. v. City of Los Angeles* (2011) 52 Cal. 4th 177, 188, 127 Cal. Rptr. 3d 726, 254 P.3d 1019, cert. to fully occupy the particular area of law [*Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal. 4th 1139, 1157-1158, 45 Cal. Rptr.3d 21, 136 P.3d 821.

#### THE DECISION IS NOT BASED ON SUBSTANTIAL EVIDENCE

- a. **Appellant Has a Due Process Right to a Fair Hearing**
- b. Under the 14<sup>th</sup> Amendment to the United States Constitution and Article I, §§ 7 & 15 of the California Constitution, no person may be deprived of life, liberty, or property without “due process of law”. The words “due process of law” refers to a principal that “fundamental fairness” must be applied to every party in a civil or criminal proceeding. *Lassiter v. Department of Social Services* (1981) 452 U.S. 18, 101 S.Ct. 2153, 2158, 68 L.Ed.2d 640, 648; see also, Witkin, *Summary of California Law*, Ninth Edition, *Constitutional Law* §481

The due process requirement of fundamental fairness has been expressly interpreted to include the right to have a “fair hearing”. A fair hearing includes the right to produce evidence and cross-examine parties. This fundamental element of due process was eloquently summarized by the California Court of Appeals, Second District, in *Buchman v. Buchman* (1954) 123 Cal. App. 2d 546, 560:

4

“Judicial absolutism is not part of the American way of life. The odious doctrine that the end justifies the means does not prevail in our system for the administration of justice. The power vested in a judge is to hear and determine not to determine without a hearing. *When the Constitution requires a hearing, it requires a fair one, one before a tribunal which meets established standards of procedure. It is not for nothing that most of the provisions of the Bill of Rights have to do with matters of procedure.* Procedure is the fair, orderly, and deliberate method by which matters are litigated. To judge in a contested proceeding implies the hearing of evidence from both sides in open court, a comparison of the merits of the evidence of each side, a conclusion from the evidence of where the truth lays, application of the appropriate laws to the facts found, and the rendition of a judgment accordingly.”(Emphasis Added).

(*Fewel v. Fewel* (1943) 23 C.2d 431, 433; *People v. Lawrence* (1956) 140 Cal.App.2d 133, 136-137; *People v. Thompson* (1935) 5 Cal. App. 2d 655, 659-661; see also Witkin *Summary of California Law*, Ninth Edition, *Constitutional Law*, §§502-503.)

Rent Adjust Program officer Kasdin allowed landlord and tenants to submit some evidence, but quickly criticized the evidence submitted by tenants regarding the Jan 2, 2018 fire of the range. Kasdin indicated that the statement from the fire department could not be used as evidence, because the fire happened after the 2017 claim. The landlord insisted that it be used and indicated that it is relevant to the information he submitted regarding the range. Kasdin then said okay and allowed it into evidence.

The hearing officer Kasdin presented and used the following as evidence in his decision:

“Stove: The tenant testified that on January 2, 2018, there was a fire in her electric stove. She had been roasting peanuts in the oven. She smelled smoke, and when she went into the kitchen smoke was coming out of the oven. The tenant turned off the circuit breaker in her apartment, which caused the fire in the oven to go out. She then called the Fire Department. Fire fighters responded, and later prepared a report.<sup>1</sup> The tenant further testified that she had previously told the owner that the oven was overheating, and approximately 6 weeks before this incident the owner worked on the screws on the heating element in the oven.

The Fire Department report states, in part: "Contents of pan in oven charred, and oven extremely hot with heat damage to exterior of oven above door and door itself. Per resident, she was roasting contents at reasonable temperature (approx. 350) when broiler area ignited and flames traveled through main oven box and out top of door. . . Resident stated recent work by property manager on oven."

The owner testified that on September 25, 2017, he and Mr. Jackson, his repair person, inspected the stove. Following the inspection, the owner arranged for the heating element to be replaced. He submitted a bill for a heating element from Appliance Parts Distributor, dated October 20, 2017.<sup>2</sup>

On November 11, 2017, the owner wrote a letter to the tenant, with the caption "Findings: Annual Inspection conducted on September 25, 2017."<sup>3</sup> This letter states, in part: "The walls and kitchen area are excessively greasy. The range hood and oven require cleaning. . The oven appears to have not been cleaned since installed . . . the bake element was damaged and replaced at that time. . . Shortly after this inspection you called and stated the oven did not work. Upon inspection, it was determined that someone had removed the bake element mounting screws and apparently attempted to remove the bake element causing an electrical short to occur. The bake element was subsequently replaced."

The owner testified that, following the fire, he noted that the screws that hold the bake element (electric tubing) in place were missing. They had been in place when he inspected the stove in September 2017. He further testified that these screws could not come out on their own; someone would have had to remove them. With the screws missing, the bake element could touch the side of the stove, and cause a fire. The owner submitted a photo of the inside of the oven that he took after the fire.<sup>4</sup> This photo depicts a large burnt area at the back of the oven."

Mr. Horesji is the only person that service, remove and replace parts to the range. It is Akenduca's speculation that Mr. Horesji removed the bake element mounting screws at which time he took a picture of the bake element made a note to him self and reported someone removed them. The majority of the testimony regarding the oven given by the landlord Mike Horejsi at the hearing was based on speculation and or conjecture. For example Horejsi indicates that it appear the oven has not been cleaned. Also in the letter used as evidence it appears the walls of the oven were greasy. The Rent Adjustment Program should go back and listen to the testimony given by tenants and the landlord, to review several of his statements, as he admits that his analysis of the stove is based on speculation. The fire report indicates that grease was not a factor in the January 2, 2018 fire or human error.

In addition toward the end of the testimony given by the tenant and the landlord, Kasdin asked is there any more questions? The other tenant Satchidananda Mims asked Horejsi two questions. First he asked, "Who is the manufacture of the range (oven-stove)?" Mike Horejsi responded, "I don't know." Second he asked, "Are you certified to repair the range?" Mike Horejsi indicated that he is not a certified repairman authorized to fix appliances. I request the Rent Adjustment Program to review the record.



It also appears the Kasdin got the testimony twisted as the oven was serviced and not missing any screws on the date of the fire. Attached is a true copy of a pictures taken of the inside and top of the range shortly after the fire on January 2, 2018, and January 4, 2018. Also attach hereto are true copies of a letter, and notice to enter dwelling from the landlord dated October 21, 2017 and October 26, 2017.

Even though the landlord indicates he is not an expert it appears that the Rent Adjustment Officer accepted Horejsi testimony as if he were an expert repair man. Expert or not speculation or conjecture is not admissible as evidence. See *In re Lockheed Litigation Cases*, 115 CA4th 558, 564, 10 CR3d 34, 37 (2004) (“an expert opinion based on speculation or conjecture is inadmissible”); *Maatuk v. Guttman*, 173 CA4th 1191, 1197-98, 93 CR3d 381, 385-86 (2009)(expert opinion based on information outside area of expertise not of sort experts reasonably rely upon excluded as without foundation).]

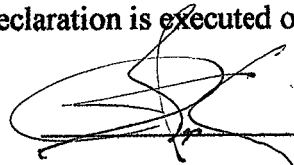
#### CONCLUSION

Based on the foregoing, Petitioner request that the Rent Adjustment Board grant appeal and deny all claims for rent increases pursuant to *Cal. Civ. Code § 1942.4*.

#### VERIFICATION

I, Akenduca D. Beasley am the Petitioner in this proceeding. I have read the foregoing Petition and know the contents thereof. The same is true of my own knowledge, except as to those matters that are therein stated on information and belief, and, as to those matters, I believe it to be true.

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 is executed on May 02, 2018

  
\_\_\_\_\_  
Akenduca D. Beasley aka Linda Beasley

**PROOF OF SERVICE**

**Case Number T17-0523**

I am a resident of the State of California at least eighteen years of age. I am employed in Alameda County, California. My mailing address is PO Box 19304, Oakland, CA 94619.

Today, I served the attached Appeal arguments and attachments by placing a true copy of it in a sealed envelope with postage fully paid into U.S. POSTAL mail box receptacle in Oakland, California addressed to:

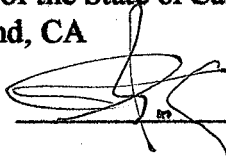
**Owner**

**Michael E. Horejsi**

**P.O. Box 2883**

**Castro Valley, CA 94546**

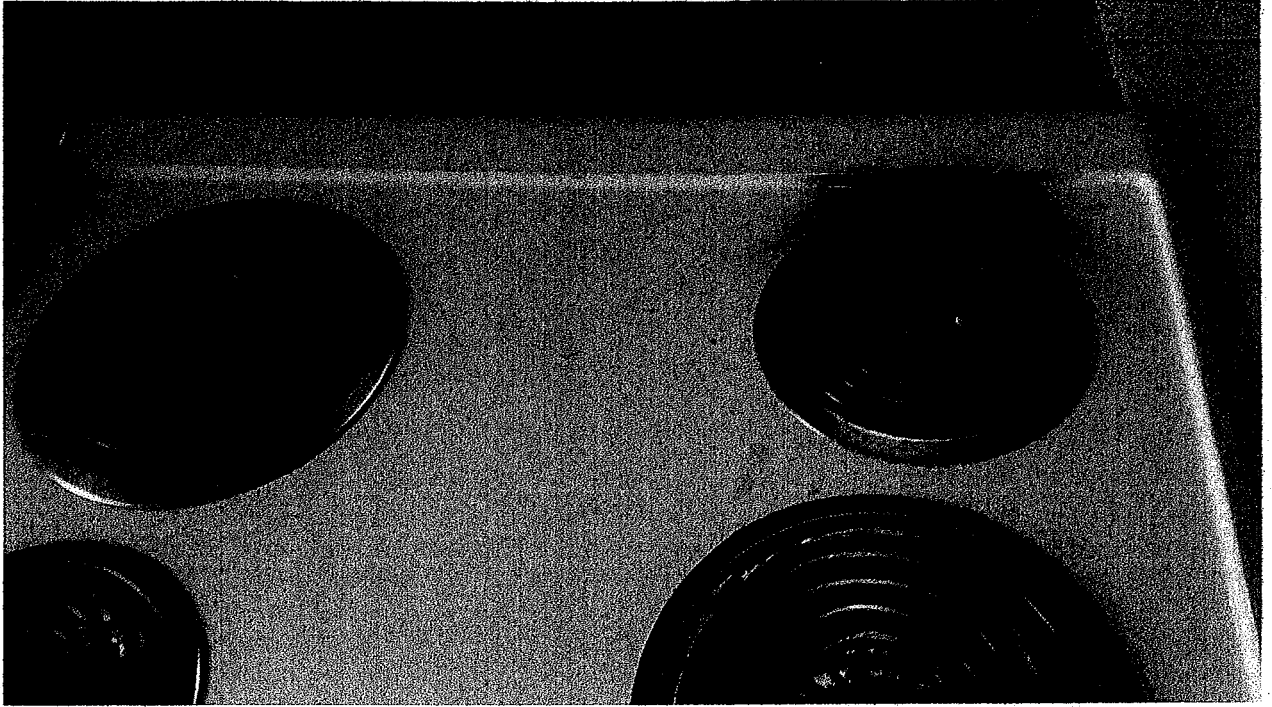
I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on May 03, 2018 in Oakland, CA



**Akenduca D. Beasley aka Linda Beasley**



Picture of inside of range taken January 02, 2018, shortly after the fire.



Picture of the top of the Range dated January 02, 2018



**Picture of the top of the Range dated January 04, 2018**

# NOTICE TO ENTER DWELLING UNIT

Pursuant to California Civil Code Section 1954, Owner/Agent hereby gives notice to:

Linda Beasley, and all persons in the premises located at: 3764 39th Ave #D, Unit # (if applicable) \_\_\_\_\_  
(Street Address) \_\_\_\_\_  
Chico Land Co., CA 94619  
(City) \_\_\_\_\_ (Zip)

Owner, Owner's Agent, or Owner's employee(s) will enter said premises on or about 25 Oct 2017 11-12 AM during normal business hours for the reason set forth in the checked item below: (Date/Time)

- 1. To make necessary or agreed repairs *oven Repair*
- 2. To do necessary or agreed decorating
- 3. To make necessary or agreed alterations or improvements
- 4. To supply necessary or agreed services
- 5. To exhibit the rental unit to prospective or actual purchasers\*
- 6. To exhibit the rental unit to prospective mortgagees
- 7. To exhibit the rental unit to prospective tenants
- 8. To exhibit the rental unit to workmen or contractors
- 9. Pursuant to Court Order
- 10. To inspect waterbed or liquid-filled furniture
- 11. To test the smoke detector
- 12. To verify Resident has abandoned premises
- 13. To inspect the unit prior to the termination of the tenancy if requested by Resident

25 Oct 2017  
Date

[Signature]  
Owner/Agent

\* If the purpose of the entry is to exhibit the dwelling unit to prospective or actual purchasers, the notice can be given orally, in person, or by telephone if the owner or his or her agent has notified the resident in writing within 120 days of the oral notice that the property is for sale and that the owner or agent may contact the Resident orally for the purpose described above. Twenty-four hours is presumed reasonable notice in the absence of evidence to the contrary. At the time of entry, the owner or agent is required to leave written evidence of the entry inside the unit

## Proof of Service To be filled out by Server AFTER service on Resident is complete

I, the undersigned, being at least 18 years of age, declare that I served this notice, of which this is a true copy, on the \_\_\_\_\_ day of \_\_\_\_\_ (month), \_\_\_\_\_ (year), in \_\_\_\_\_ (city), California, on the above mentioned Resident in possession in the manner indicated below.

- BY DELIVERING the notice personally to the Resident or to someone of suitable age and discretion at the premises at least 24 hours prior to the intended entry, or at least 48 hours prior to entry in the case of an initial inspection prior to terminating the tenancy as required by Civil Code Section 1950.5(f)
- BY LEAVING a copy of the notice at, near, or under the usual entry door of the premises at least 24 hours prior to the intended entry in a manner in which a reasonable person would discover the notice, or at least 48 hours prior to entry in the case of an initial inspection prior to terminating the tenancy as required by Civil Code Section 1950.5(f)
- BY MAILING a copy of the notice addressed to the Resident at least 6 days prior to intended entry.

I declare under penalty of perjury that the foregoing is true and correct and if called as a witness to testify thereto, I could do so competently.

\_\_\_\_\_  
(Signature of Declarant)



October 21, 2017

Linda Beasley  
3764 39<sup>th</sup> Ave., #D  
Oakland, CA 94619

Re: Repair request on Oct 18, 2017 for inoperable oven

Dear Linda:

After receiving a request for repair of an inoperable oven, a cursory inspection of the oven was performed on the same day of said request, Oct. 18, 2017. The cause of the oven malfunction was deemed to be due to tenant misuse, either accidental or intentional.

Inspection of the oven revealed that both screws, which secured the bake element to the oven back plate, had been removed allowing the electrical connections on the bake element to come in contact with the range frame, which caused a major electrical short. One of the bake element securing screws was missing and the other was observed on the countertop, which I put back in to secure the bake element properly. The range was previously inspected by myself and Mr. Jackson during an annual inspection on September 25, 2017; both screws were in the bake element at that time and all features of the range functioned as designed.

I could not inspect the rear of the range because my assistant was not present and the range needed to be removed from the countertop.

On Friday, October 20, 2017, Mr. Jackson and I came by in the afternoon to remove the range from the countertop and determine the extent of damage. At that time, you denied entry to perform a complete inspection of the range. It has been a continuing problem gaining access to your unit in a timely fashion even when an appointment has been scheduled. I came by on Friday due to the fact that I would not be able to reschedule until the following Thursday, Oct. 26, 2017, due to other scheduled commitments. I did not have your phone number to call you as I had misplaced my cell phone.

While it may be possible to repair some burnt wires in the rear of the stove (if that is all that is necessary); should the damage be more severe, the following is an estimated cost of the repair parts according to Appliance Parts Distributors: (1) new bake element, if needed - \$80; and (2) new oven control, if needed - \$200 (3 wk delay in ordering part).

Additionally, it was observed and brought to your attention that the ceramic trim tile on the countertop was damaged. This again was due to misuse. The estimated cost to repair the countertop is approximately \$2,000.

Sincerely,




Mike Horejsi, Landlord/Owner

/meh

000255

T18-0480 RC/BA EK

RECEIVED

 CITY OF OAKLAND	<b>CITY OF OAKLAND</b> <b>RENT ADJUSTMENT PROGRAM</b> P.O. Box 70243 Oakland, CA 94612-0243 (510) 238-3721	RECEIVED CITY OF OAKLAND RENT ADJUSTMENT PROGRAM 2018 AUG 31 SEPT 4	For date stamp. SEP 04 2018 PM 4:04 RENT ADJUSTMENT PROGRAM OAKLAND
	<b>TENANT PETITION</b>		

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

**Please print legibly**

Your Name Akenduca D. Beasley aka Linda J. Beasley	Rental Address (with zip code) 3764 39th Ave. Apt D, Oakland CA 94619	Telephone: 510-530-6345  E-mail:
Your Representative's Name self	Mailing Address (with zip code) PO Box 19304, Oakland CA 94619	Telephone:  Email:
Property Owner(s) name(s) Michael E. Horejsi	Mailing Address (with zip code) P.O. Box 2883 Castro Valley, CA 94546	Telephone: (775) 400-6464  Email:
Property Manager or Management Co. (if applicable)	Mailing Address (with zip code)	Telephone:  Email:

Number of units on the property: 7

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

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

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

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



<input 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 checked="" type="checkbox"/>	(f) The rent increase notice(s) was (were) not given to me in compliance with State law.
<input type="checkbox"/>	(g) The increase I am contesting is the second increase in my rent in a 12-month period.
<input checked="" type="checkbox"/>	(h) There is a current health, safety, fire, or building code violation in my unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance. (Complete Section III on following page)
<input checked="" type="checkbox"/>	(i) The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner. (OMC 8.22.070(F): A decrease in housing services is considered an increase in rent. A tenant may petition for a rent adjustment based on a decrease in housing services.) (Complete Section III on following page)
<input type="checkbox"/>	(j) My rent was not reduced after a prior rent increase period for a Capital Improvement had expired.
<input type="checkbox"/>	(k) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).
<input type="checkbox"/>	(l) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake. (OMC 8.22, Article I)
<input type="checkbox"/>	(m) The owner did not give me a summary of the justification(s) for the increase despite my written request.
<input type="checkbox"/>	(n) The rent was raised <u>illegally</u> after the unit was vacated as set forth under OMC 8.22.080.

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

Date you moved into the Unit: 7/24/1982 Initial Rent: \$ 425.00 /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: 06/05/2002. 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		
07/06/2018	10/01/2018	\$ 968.42	\$ 1037.14	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<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:

T03-0300, T16-0549, T17-0523

**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

09/04/2018

\_\_\_\_\_  
Date

\_\_\_\_\_

\_\_\_\_\_

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

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

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

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

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

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

\_\_\_\_\_  
Date

## **VI. IMPORTANT INFORMATION:**

### **Time to File**

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

### **File Review**

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

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

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

**Tenants Petition Attachment:**

Beasley, Akenduca D aka Linda J. Beasley is representing Tenants in Apartment D at residence address listed in Petition.

**TENANTS OBJECTIONS TO RENT INCREASE**

1. Landlord has breached the implied warranty of habitability. The habitability defects include, but are not limited to the following: mold, and mildew contamination; defective and broken heater; defective stove; insect infestation; defective refrigerator; defective electrical wiring; constant shortages; defective bathtub and shower. The rent increase is barred by *Cal. Civ. Code* §1942.4.

2. Landlord is guilty of unclean hands, which conduct estops them from receiving relief in this matter. Landlord has brought this action in retaliation for Tenant's assertion of rights under the law. Landlord is retaliating against Tenant for: (1) complaining about habitability defects and requesting repairs; (2) seeking legal advice; (3) complained to the city of Oakland. The Landlord engages in harassing behavior towards the Tenant(s). The Land lord has constructively evicted the Tenants from the property. The rent increase is barred by 8.22.600 - Tenant protection ordinance. (*Ord. No. 13265, § 1, 11 -5 -2014* and *Cal. Civ. Code* §1942.5).

3. The Landlord is estopped and has waived the right to pursue this action based on the court stipulation / judgment. The Landlord with representation of counsel signed and agreed to the court stipulation containing the following words: "Defendant shall pay to Plaintiff \$3856.84, which constitutes a bargained for amount of all rents, fees, parking fees, late fees et cetera and costs due and owing for the premises through 8/31/2016... (4.)...Plaintiff hereby waives any and all claims for rent, fees, costs, parking and late fees and daily damages for the

premises above \$3856. 84 amount outlined in paragraph 1. through 8/31/2016...”

The landlord and his counsel added the following words by hand writing in to paragraph 6 of the stipulation: “With the exception of the rights set forth herein, the parties waive all other rights known to them at this time.” See *Gould v.*

*Corinthian Colleges, Inc.* (2011) 192 Cal.App.4th 1176.

### **GROUNDS FOR OBJECTIONS**

1. With respect to objection 1, the RAP tenants claims, relating to the implied warranty of habitability. *Cal. Civ. Code § 1942.4* prohibits the landlord of a dwelling from issuing a notice of a rent increase or obtaining an increase when such decreases exist. Particularly when an employee who is responsible for the enforcement of any housing law, after inspecting the premises, has notified the landlord or the landlord’s agent in writing of his or her obligations to abate the nuisance or repair the substandard conditions. The conditions have existed and have not been abated 35 days beyond the date of service of the notice specified in paragraph, and the delay is without good cause; and the conditions were not caused by an act or omission of the tenant or lessee in violation of Section 1929 or 1941.2... The court stipulation ordered the landlord to act within 30 days, to repair as necessary: bathtub, bathroom mold and mildew, hood above stove, defective stove, heater, hole in closet, window screens. The landlord didn’t act within 30 days and about eleven days after the stipulation was agreed to, sign by parties, and the judge. The landlord issued the first of three rent increases to tenants. During RAP hearing case no T16-0549 it was determined by the hearing officer Kasdin, after he examine premises by the evidence presented, decreases exist and, were not caused by tenants.

Therefore landlord’s action are prohibited by *Cal. Civ. Code § 1942.4*, and the rent increase should be denied. See *Scott v. Kaiuum* Cal. Super. Ct. (Jan. 4, 2017), 213 Cal. Rptr. 3d

2. With respect to objection 2, the landlord actions is response to tenant(s) asserting their legal rights under California law is guilty of unclean hands, which conduct estops him from receiving relief in this matter. *Cal. Civ. Code* §1942.5 prohibits the landlord of a dwelling from issuing rent increase or decrease housing services in retaliation to tenants asserting their rights. Tenants discovered on or about August 10, 2018 after receiving a response to request to replace the lightbulb in the refrigerator and reviewing documents that have accumulated that rent increases appears to be given in retaliation for tenants asserting their rights. The court stipulation (order / judgment) was signed by parties and the judge on August 15, 2016 and eleven days later the landlord gave tenants notice of rent increase based on banked rent. On or about July 20, 2017 lawsuit regarding habitability was filed on behalf of tenants and on July 27, 2017 landlord issued another notice of rent increase. As stated in previous petitions the landlord waived his rights to all past rent that was not calculated within the stipulation prior to August 15, 2016 which contains banked rent. Therefore each notice of rent increase August 26, 2016, July 27, 2017, and July 06, 2018 is not lawful. See *Rich v. Schwab* (1984) 162 Cal.App.3d 739209 Cal.Rptr. 417; *Schweiger v. Superior Court of Alameda County* (Cal. Nov. 10, 1970), 3 Cal. 3d 507.

As a result, landlord's action are prohibited by *Cal. Civ. Code* §1942.5, and the rent increase in its entirety should be denied.

3. With respect to objection 3, the language in stipulation: paragraph (4.), "Plaintiff hereby waives any and all claims for rent, fees, costs, parking and late fees and daily damages for the premises above \$3856. 84 amount outlined in paragraph 1 through 8/31/2016."

Paragraph (1) stated in pertinent part: "Defendant shall pay to Plaintiff \$3856. 84, which constitutes a bargained for amount of all rents, fees, parking fees, late fees etcetera and costs

due and owing for the premises through 8/31/2016.” Waiver clearly includes "banked rent". See *Gould v. Corinthian Colleges, Inc.* (2011) 192 Cal.App.4th 1176, "(It may be implied through conduct manifesting an intention to waive. (*Id.* at pp. 532-533.) Acceptance of benefits under a lease is conduct that supports a finding of waiver. (*Id.* at p. 533.))" The landlord and his counsel agreed to waiver and added the following words by hand writing them in to paragraph 6 of the stipulation: "With the exception of the rights set forth herein, the parties waive all other rights known to them at this time." The waiver may be either express, based on the words of the waiving party, or implied, based on conduct indicating an intent to relinquish the right." (*Stephens & Stephens XII, LLC v. Fireman's Fund Ins. Co.* (2014) 231 Cal.App.4th 1131, 1148 [180 Cal.Rptr.3d 683].)

Also, contrary to several statements made by landlord regarding waiver in previous written response to RAP hearing case no T17-0523, Owner's Response to Tenant's attachment, landlord states in pertinent part: "... annual CPI rent increase is an entitlement and can be levied by the landlord at his discretion. The tenant does not have the right to contest a basic annual CPI increase... The note on the Stipulation was entered by my attorney and referred to only claims which arise based on the unlawful detainer action. Since the CPI and banked rent are entitlements and not claims, any suggestion entitlements were waived is without merit." An entitlement is synonymous to a claim. "Claim is the assertion of a right to money or property, the aggregate of operative facts which give rise to a right enforceable in the courts." *Dery v. Wyer*, 265 F.2d 804, 807 (2nd Cir. 1959). The entire unlawful detainer action was involving tenant's payment or non-payment of rent.

Therefore landlord waived his right to claim rents before the stipulation, which includes "banked rent", and the rent increase based on declared "banked rent" should be

denied in its entirety.

**Regarding legally withholding rent:** The rent is current in accordance with a court order issued by the Superior court of California; previous rent board decisions and increases are suspended pending outcome of appeal decisions. Tenants are challenging banked rent or CPI increases.

**III. Description of Decreased or Inadequate Housing Services**

**Services:** dates are approximated below. Services not believed to be in compliance with *Cal. Civ. Code* §1942.4.

Date	Decreased/Inadequate Services	Amount (\$)
3/2018 - 2016	<b>Heater</b> defective doesn't function. PG&E technician inspected the heater and determined it was not functioning correctly.	To be determined by rent board
7/2007- present-day	<b>Bath Tub</b> – rusted and full of mold cannot be used to bath.	\$26.47 per month, set by rent board on March 15, 2017 case no. T16-0549
7/2007- present-day	<b>Range</b> defective - both stove and oven overheat sporadically causing it to function at unsafe temperatures.	To be determined by rent board
7/2005-present-day	<b>Electrical wiring and power surges</b> - causes a lot of lightbulbs to blow out within a short period of time. Installation, Cable television not functioning properly. (Cable technician indicate building is grounded into Xfinity cable instead of PG&E.)	To be determined by rent board
7/2018 -present-day	<b>Refrigerator</b> defective: light not functioning	To be determined by rent board



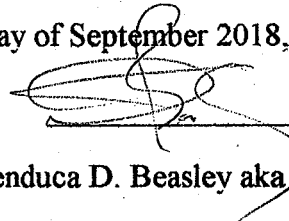
Beasley, Akenduca D aka Linda J. Beasley, am representing the tenants in the above-entitled proceeding. I have read the foregoing:

**Tenants Petition Attachment**

and know the contents thereof. The same is true of my own knowledge, except as to those matters which are herein represented on information and belief, and as to those matters, I believe them to be true.

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

Executed this 04 day of September 2018, in Oakland, California.



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Akenduca D. Beasley aka Linda J. Beasley



**CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM**

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

For date stamp.  
CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM

2019 JAN -9 PM 1:01

**PROPERTY OWNER  
RESPONSE**

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

**CASE NUMBER T** 18-0480

Your Name  Michael E. Horejsi	Complete Address (with zip code)  P.O. Box 2883 Castro Valley, CA 94546	Telephone:  775-400-6464 Email:  mhorejsi@aol.com
Your Representative's Name (if any)  Self	Complete Address (with zip code)	Telephone:  Email:
Tenant(s) Name(s)  Linda Beasley	Complete Address (with zip code)  3764 39th Ave, Apt D Oakland, CA 94619	
Property Address (If the property has more than one address, list all addresses)  3764 39th Ave., Apt D, Oakland, CA 94619		Total number of units on property  7

Have you paid for your Oakland Business License? Yes  No  Lic. Number: 000 54416  
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: 30-1925 33  
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: 01/6/1974

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.**

<b>Date of Contested Increase</b>	<b>Banking (deferred annual increases )</b>	<b>Increased Housing Service Costs</b>	<b>Capital Improvements</b>	<b>Uninsured Repair Costs</b>	<b>Debt Service</b>	<b>Fair Return</b>
<u>7/6/2018</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>*8/27/2017</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>*8/20/2016</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

\*(Pending Appeal)

**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 7/24/1982

The tenant's initial rent including all services provided was: \$ 425.00 / month.

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

Yes  No  I don't know

If yes, on what date was the Notice first given? 6/05/2002

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.

<b>Date Notice Given (mo./day/year)</b>	<b>Date Increase Effective</b>	<b>Rent Increased</b>		<b>Did you provide the "RAP NOTICE" with the notice of rent increase?</b>
		<b>From</b>	<b>To</b>	
7/6/2018	10/01/2018	\$ 966.57	\$1063.23	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
8/27/2017	10/01/2017	\$ 904.18	\$ 966.57	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
8/26/2016	10/1/2016	\$ 853.00	\$ 904.18	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
*corrected rent*		\$	\$	<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 Attachment for further information and facts.\*\*

### 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

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

PROOF OF SERVICE BY MAIL

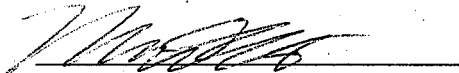
The undersigned declares:

I am a citizen of the United States of America, over the age of eighteen years. My mailing address is P.O. Box 2883, Castro Valley, CA 94546.

On January 9, 2019, I served the attached **Property Owners Response** on the parties in this action by placing a true and correct copy thereof, in a sealed envelope with first class postage fully prepaid, in the United States mail at Castro Valley, California, addressed as follows:

Linda Beasley  
Satchidananda Mims  
3764 39<sup>th</sup> Ave., #D  
Oakland, CA 94619

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Dated this 9th day of January 2019 at Castro Valley, CA.



Michael E. Horejsi

PROPERTY OWNER RESPONSE

(Attachment to form: T18-0480)

MC COUNTY  
CITY OF OLYMPIA  
RENT ARBITRATION  
2019 JAN -9 PM 1:01

I respectfully request that information provided in RAP Cases T03-0237, T03-0300, Unlawful Detainer Case RG16821622, Stipulation, T16-0549 and T17-0523, be incorporated into this response.

Additionally:

Both previous cases T16-0549 and T17-0523 were appealed. The hearing was conducted on October 11, 2018. Both cases were remanded to the hearing officer. There was some discussion by the Panel suggesting that since the habitability issues raised by the Tenants in their petition was under the jurisdiction of a Superior tribunal, the **RAP should not have considered those habitability issues.**

The Panel posed several significant issues to the Hearing Officer in these two cases.

Does the RAP have jurisdiction regarding this Petition or has the Superior Court assumed jurisdiction based on the Court Stipulation [signed by all parties]?

If there is overlapping jurisdiction, what is the impact of the Superior Court Dismissal?

Is the Superior Court Stipulation between the parties a waiver of RAP jurisdiction?

All attorneys I have spoken to suggest that RAP does **not** have jurisdiction over the Superior Court.

The Stipulation in RG16-321622 was initiated on August 15, 2016. The Superior Court maintained jurisdiction through September 10, 2018. The tenants appeared for the final hearing in September 2018. After presenting their arguments, the **case was dismissed.** Encl. 1

The rulings on both T16-0549 and T17-0523 were rendered during this timeframe. The **Superior Court specifically maintained jurisdiction.** The RAP should thus dismiss any and all claims of habitability since they were under the jurisdiction of the Superior Court and should **only address the rent increases requested.**

**Tenants also waived further claims** in order to entice landlord into signing the Stipulation to prevent their eviction. They committed an abuse of process and fraud upon the Court by initiating yet another lawsuit **concerning the same habitability issues.**

The tenants increased the chaos by filing an Unlimited Superior Court lawsuit RG17-868344 **concerning the same habitability issues raised in prior cases.** Tenants have proven themselves incompetent in legal proceedings.

This lawsuit was filed on July 20, 2017, over a year prior to final hearing on the Stipulated Judgment. At this point, they had two RAP Petitions and two Superior Court cases pending. All, with exception of rent increases, were directed to **alleged habitability issues.**

From a legal perspective, upon filing their case in Superior Court on July 20, 2017, they **elected to remove RAP concerning habitability issues**. They effectively **disregard rent control jurisdiction** and appealed their habitability issues to a higher venue.

They did **not** appeal the rent increases.

Case RG17-868344 was defended by my insurance company and **was settled on January 3, 2019**. **All habitability claims were settled, including those listed in the last 3 RAP tenant Petitions**. This agreement renders all pending Petitions moot.

The tenants rejected my attempts to maintain their unit by placing such restrictions on access as to make it impossible for landlord to maintain the property. Encl. \_\_ [Just cause for eviction violation]

The rent increase notices beginning in 2016 omitted parking from the calculated rent. This is contrary to the Ruling in both T03-0237 and T03-0300 and T16-0549. Tenants have raised this issue [parking] at least five times ignoring prior rulings.

I am requesting that the RAP award past rent due as follows. Rent through March 2019: tenant paid \$853.00 per month. **All requested increases were not paid.**

T16-0549 base rent  $\$853 \times 6\% = \$904.18$

Oct-Dec 2016	$\$51.18 \times 3$	\$153.44
Jan-Dec 2017	$51.18 \times 12$	614.16
Jan-Dec 2018	$51.18 \times 12$	614.16
Jan-Mar 2019	$51.18 \times 3$	158.54

T17-0523 base rent  $\$904.18 \times 6.9\% = \$966.57$

Oct-Dec 2017	$62.89 \times 3$	\$187.17
Jan-Dec 2018	$62.89 \times 12$	748.68
Jan-Mar 2019	$62.89 \times 3$	187.17

T18-0480 base rent was  $966.57 \times 10\% = \$1063.23$

Oct-Dec 2018	$\$96.66 \times 3$	\$289.98
Jan-Mar 2019	$96.66 \times 3$	289.98

It appears that the **delinquent rent per the 3 years** of [landlord] requests totals \$3,238.38. Due to the recent Settlement Agreement [signed by tenants on 1/3/19], **tenants are able to pay this amount in a lump sum** and landlord hereby respectfully requests that the RAP approve accordingly. Rent commencing April 1, 2019 should be \$1,063.28 per month.

Tenant Beasley was personally served with the rent increase notices, banked rent was claimed.





250 FRANK OGAWA PLAZA, OAKLAND, CA 94612

CITY OF OAKLAND

Housing and Community Development Department  
Rent Adjustment Program

TEL (510) 238-3721  
FAX (510) 238-6181  
CA RELAY 711

## **HEARING DECISION**

**CASE NUMBER:** T18-0480, Beasley v. Horesji  
**PROPERTY ADDRESS:** 3764 - 39<sup>th</sup> Ave., #D, Oakland, CA  
**DATE OF HEARING:** March 28, 2019  
**DATE OF DECISION:** April 29, 2019  
**APPEARANCES:** A. Beasley (Tenant)  
Satchidananda Mims (Tenant)  
Michael E. Horejsi (Owner)

## **SUMMARY OF DECISION**

The tenants' petition is denied.

## **CONTENTIONS OF THE PARTIES**

Tenant Beasley filed a petition on September 4, 2018, which alleges that a proposed rent increase from \$968.42 to \$1,037.14 per month, effective October 1, 2018, exceeds the CPI Adjustment and is unjustified or is greater than 10%; that the CPI or banked rent increase that she was given was calculated incorrectly; that the rent increase notice was not given to her in compliance with State law; that at present, there exists a health, safety, fire, or building code violation in her unit; and that her housing services have been decreased because of the following problems: heater; bathtub; range; electrical wiring and power surges; and refrigerator light not functioning.

The owners filed a response to the petition, which alleges that the proposed rent increase is justified by Banking, and denies that the tenant's housing services have been decreased.

## **THE ISSUES**

(1) What is the tenant's current rent?

000273

- (2) What is the amount of the rent increase that the tenant is contesting?
- (3) Is a rent increase based upon Banking justified and, if so in what amount?
- (4) Have the tenant's housing services been decreased and, if so, by what percentage of the total housing services that are provided by the owner?

### EVIDENCE

The Contested Rent Increase: At the Hearing, the parties agreed to the contents of a rent increase notice dated July 6, 2018, which stated an increase from \$942.86 to \$1,037.14, effective October 1, 2018.<sup>1</sup>

Rent History: The parties agreed that the tenant's rent on October 1, 2007 was \$853 per month.

Decreased Housing Services:

The owner submitted a copy of a Complaint for Damages in Alameda County Case No. RG17868344, Beasley and Mims v. Michael E. Horejsi, et al, dated July 14, 2017, regarding the subject rental unit.<sup>2</sup> This Complaint states, in Paragraph 45, "Plaintiffs suffered . . . injuries due to the dangerous condition of the Subject Premises which include . . . defective heater, no heat, defective stove . . . inadequate electrical wiring."

The owner also submitted a document entitled "Mutual Settlement Agreement and Release" signed by the parties on January 3, 2019.<sup>3</sup> This document refers to litigation involving the subject rental unit.

This document states, in part, that it is "the intent of the Parties to this Agreement that, in exchange for the settlement payment set forth below, that Plaintiffs and Defendants shall release each other from all claims which they brought or may have been brought in the Action [lawsuit referenced above] . . . which allegedly arise from the Action or Plaintiffs' tenancy. . . This Action has been settled for the total amount of FIFTY THOUSAND DOLLARS and NO CENTS (\$50,000.00) to Plaintiffs."

This document further states: "This Settlement Agreement and Release is exempt from the confidentiality provisions of California Evidence Code section 1119, et seq."

Refrigerator Light: The tenants testified that the bulb inside the refrigerator burned out, and they notified the owner. The owner testified that he came to the tenants' apartment with a replacement light bulb, but the tenants would not allow him access.

---

<sup>1</sup> Exhibit No. 1, which was admitted into evidence without objection.

<sup>2</sup> Exhibit Nos. 2A through 2T. The tenant objected to the admission of this Exhibit into evidence on the ground of relevance. The objection was overruled, and the document was admitted into evidence.

<sup>3</sup> Exhibit Nos. 3A through 3D. The tenant objected to the admission of this Exhibit into evidence on the ground that to do would violate Evidence Code 1119 (mediation confidentiality) and the tenants' right to privacy. The objection was overruled, and the document was admitted into evidence.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Banking: An owner is allowed to bank rent increases and use them in subsequent years, subject to certain limitations.<sup>4</sup> The parties agree on the dates and rent amounts entered into the Banking calculations shown on the attached Table. The method of calculation on this Table has been approved by the Board.<sup>5</sup> Therefore, as set forth in this Table, the maximum allowable rent for the tenant's unit is 1,037.15 per month.

Decreased Housing Services: Under the Oakland Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent<sup>6</sup> and may be corrected by a rent adjustment.<sup>7</sup> The decrease may be either the elimination or reduction of an existing service or a serious violation of the housing or building code which affects the habitability of the tenant's unit.

The tenants filed a lawsuit against the owner alleging that they suffered damages regarding all claims made in this petition except for the refrigerator light bulb. This lawsuit was settled by a payment to the tenants. Both the Rent Adjustment Ordinance and the Code of Civil Procedure provide that rent for a residential unit may be reduced if the owner has breached the implied warranty of habitability. By filing their lawsuit, the Superior Court has assumed jurisdiction over all issues in their petition other than the light bulb, and those claims are denied.

The claim regarding the light bulb is denied for two reasons. First, this was a trivial item that does not affect habitability, and most tenants would have simply bought and installed a new bulb. Secondly, the testimony of the owner that he was willing to replace the bulb was convincing. The tenants have not sustained their burden of proof, and this claim is denied, as well.

### ORDER

1. Petition T18-0480 is denied.
2. The rent is \$1,037.14 per month, effective October 1, 2018.
3. Claims of decreased housing services are denied.
4. 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.

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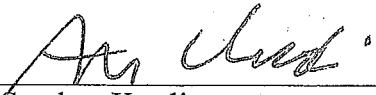
<sup>4</sup> O.M.C. Section 8.22.070(C); Regulations Appendix, Section 10.5.1

<sup>5</sup> Appeal Decision, Case No. 98-02, et al. Merlo v. Rose Ventures III, et al.

<sup>6</sup> O.M.C. Section 8.22.070(F)

<sup>7</sup> O.M.C. Section 8.22.110(E)

Dated: April 29, 2019

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

Department of Housing and Community Development  
 Rent Adjustment Program  
<http://rapwp.oaklandnet.com/about/rap/>

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

**CALCULATION OF DEFERRED CPI INCREASES (BANKING)**

1	Initial move-in date	1-Oct-2007	<b>MUST FILL IN D9, D10, D11 and D14</b>	Case No.:	<b>CHANGE YELLOW CELLS ONLY</b>
2	Effective date of increase	1-Oct-2018		Unit:	
3	Current rent (before increase and without prior cap. improve pass-through)	\$942.86			
4			Prior cap. imp. pass-through		
5	Date calculation begins	1-Oct-2007			
6	Base rent when calc. begins	\$853			

**ANNUAL INCREASES TABLE**

Year Ending	Debt Serv. or Fair Return increase	Housing Serv. Costs increase	Base Rent Reduction	Annual %	CPI Increase	Rent Ceiling
11 10/1/2018				3.4%	\$ 35.90	\$ 1,091.90
10 10/1/2017				2.3%	\$ 23.74	\$ 1,056.00
9 10/1/2016				2.0%	\$ 20.24	\$ 1,032.26
8 10/1/2015				1.7%	\$ 16.92	\$ 1,012.01
7 10/1/2014				1.9%	\$ 18.55	\$ 995.10
6 10/1/2013				2.1%	\$ 20.09	\$ 976.54
5 10/1/2012				3.0%	\$ 27.86	\$ 956.46
4 10/1/2011				2.0%	\$ 18.21	\$ 928.60
3 10/1/2010				2.7%	\$ 23.93	\$ 910.39
2 10/1/2009				0.7%	\$ 6.16	\$ 886.46
1 10/1/2008				3.2%	\$ 27.30	\$ 880.30
0 10/1/2007				-	-	\$853

**Calculation of Limit on Increase**

18	Prior base rent	\$942.86
19	Banking limit this year (3 x current CPI and not more than 10%)	10.0%
20	Banking available this year	\$ 94.29
23	Rent ceiling w/o other new increases	\$ 1,037.15

**PROOF OF SERVICE**  
**Case Number T18-0480**

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

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

**Documents Included**

Hearing Decision

**Owner**

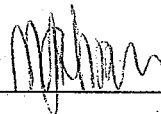
Michael E. Horejsi  
P.O. Box 2883  
Castro Valley, CA 94546

**Tenant**

Akenduca D Beasley  
3764 39th Avenue #D  
Oakland, CA 94619

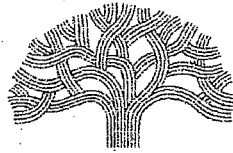
I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **May 02, 2019** in Oakland, CA.



\_\_\_\_\_  
Nia Johnson

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

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RENT ADJUSTMENT PROGRAM  
2019 MAY 20 PM 3:44

**APPEAL**

<b>Appellant's Name</b> Akenduca D. Beasley aka Linda J Beasley; Satchidananda Mims		<input type="checkbox"/> Owner <input checked="" type="checkbox"/> Tenant	
<b>Property Address (Include Unit Number)</b> 3764 39th Ave. Apt D. Oakland, CA 94619			
<b>Appellant's Mailing Address (For receipt of notices)</b> PO Box 19304 Oakland, CA 94619		<b>Case Number</b> T18-0480	
		<b>Date of Decision appealed</b> April 29, 2019	
<b>Name of Representative (if any)</b> Akenduca D. Beasley; representing tenants in Apt D at property address listed above.		<b>Representative's Mailing Address (For notices)</b>	

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

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

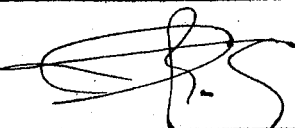
**For more information phone (510) 238-3721.**

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

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

• You must serve a copy of your appeal on the opposing parties or your appeal may be dismissed. •  
 I declare under penalty of perjury under the laws of the State of California that on May 20, 2019.  
 I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<b>Name</b>	Michael E. Horejsi
<b>Address</b>	PO BOX 2883
<b>City, State Zip</b>	CASTRO VALLEY CA 94546
<b>Name</b>	
<b>Address</b>	
<b>City, State Zip</b>	

	May 20, 2019
<b>SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE</b>	<b>DATE</b>

For more information phone (510) 238-3721.



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THE CITY OF OAKLAND RENT ADJUSTMENT PROGRAM APPEAL

2019 JUN -3 PM 4: 35

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No. T18-0480

*Akenduca D. Beasley, Satchidananda Mims,*

*Tenant and Appellant,*

vs. Michael Horejsi,

*Respondent and Landlord;*

CITY OF OAKLAND RENT ADJUSTMENT PROGRAM, et al.

Real Parties in Interest.

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## **APPELLANTS' BRIEF**

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Akenduca D. Beasley aka Linda  
Satchidananda Mims  
P.O. Box 19304  
Oakland, California 94619  
Telephone: (510) 530-6345

Appellants - Tenants, Representing  
Tenants at 3764 39<sup>th</sup> Ave Apt. D, Oakland, 94619

000281

## Grounds For Tenants Appeal

1. The decision is inconstant with decisions issued by other Hearing Officers.
2. The decision violates federal, state or local law.
3. The decision is not supported by substantial evidence.
4. I was denied a sufficient opportunity to present my claim or respond to petitioner's claim.
5. Other...

## INTRODUCTION AND SUMMARY OF FACTS

A "CLAIM is the assertion of a right to money or property; the aggregate of operative facts giving rise to a right enforceable in the courts, *Thompson v. Zurich Insurance Company* 309 F. Supp. 1178 (1970). Therefore any assertion from the landlord right to raise or collect rent is a form of a claim.

This case involves a landlord giving his tenants three rent increase notices, over the course of three years, while the Superior Court issued a court stipulation order/judgment resulting from unlawful detainer, which assumed subject matter jurisdiction over rent, repairs, waivers etcetera. In response to each rent increase, tenants filed petitions in Rent Adjustment Program ("RAP"). Each of the Notice of Rent increases is being challenged via the Rent Adjustment Program Appeal Board. The RAP designated the following case numbers to each response to notice of rent increases: T16-0549, *Beasley v. Horejsi (2017)*; T17-0523, *Beasley v. Horejsi (2018)* cases; and lastly case T18-0480, which had a hearing on March 28, 2019.

On or about August 15, 2016, (Plaintiff / Owner) Horejsi and (Defendants/ Tenants) Beasley and Mims entered into an agreement regarding any and all rents, fees, parking fees, late fees, etc.... and costs, and stipulated under Cal. Civ. Proc. § 664 the Superior court would retain jurisdiction. Simultaneously the court made the stipulation a court order and required parties to do their part in fulfilling the agreement. As a result of the agreement the landlord waived his rights to claim past banked rent to increases from 1982 through 8/31/16. In addition the City of Oakland Rent Adjustment Program is limited and preempted from raising the rent, because increases are in conflict with *Cal. Civil Proc. §§ 664; 1174.2; and Cal. Civ. Code § 1942.4.; and California Health and Safety Code § 17920.3.*

During the hearing conducted on March 28, 2019. The evidence tenants submitted was not reviewed by hearing Officer Stephen Kasdin in its entirety. Kasdin indicated during the hearing that the submitted objections, declarations etc. was not evidence and completely ignored them. He indicated that all other claims besides the refrigerator wouldn't be considered and couldn't be talked about, because of the pending appeals for T16-0549, *Beasley v. Horejsi* (2017); T17-0523, *Beasley v. Horejsi* (2018) cases.

Shortly thereafter Kasdin allowed Michael Horejsi, landlord to submit evidence on the same day of the hearing, in spite, that all evidence was objected to by tenants and according to RAP rules, evidence is to be submitted 14 days prior to hearing on petition. The only issue of discussion allowed during the hearing was the refrigerator. Tenants testified that they requested the refrigerator light to be replaced. The landlord indicated that he was going to change the light bulbs and make any necessary adjustment to the refrigerator, but tenants refused to let him into the dwelling. According to exhibit 1, landlord letter dated August 10, 2019, states in relevant part: "Please be advised that this is responsibility of the tenant. I am not able to provide light bulbs, batteries for smoke detectors, etc. Without a cost to the requesting tenant. If you obtain the refrigerator light bulb, I would be happy to install it accordingly." Landlord admits in his own words that he is not going to fix the refrigerator by indicating he is not responsible for changing light bulbs. Despite the fact, this case deals with an appliance that is considered a part of the apartment and is required to be kept functioning by management or landlord of the apartment building.

In addition Kasdin over ruled every objection to the late submitted evidence: copies of the notice of rent increase, the confidential mediation settlement agreement and a copy of the lawsuit filed against landlord on behalf tenants and used it as evidence in support of the landlord claim. Therefore, overall Kasdin did not follow applicable law, didn't allow tenants to speak or submit evidence, and violated tenants' rights to due process by not providing a fair hearing.

Based on legal theory of "reversible error per se" alone, the present judgment must be reversed. The fact that the Tenants didn't receive a fair hearing violates due process laws. Anything other than reversal would debase the integrity of the appellate process.

There are substantive grounds for reversal here: (1) Hearing Officer violated tenants' rights to due process by not providing fair hearing; (2) Ruling not supported by substantial evidence; (3) Rent increase is preempted by California law; (4) RAP Abused its Discretion ruling on the claims that are currently pending by RAP Appeal.

#### RELEVANT FACTS AND PROCEDURE

The hearing officer Kasdin allowed Michael Horejsi to submit evidence on the day of the hearing March 28, 2019. In spite of the fact that Notice of hearing dated issued December 06, 2018 states in first paragraph, Order to Produce Evidence in relevant part: " All proposed tangible evidence, including but not limited to documents and pictures, must be submitted to the Rent Adjustment Program not less than fourteen (14) days prior to the hearing..."

At the beginning of the hearing Kasdin informed parties' tenants: Akenduca D. Beasley and Satchidananda Mims and Landlord Michael Horejsi, verbally that he would not be evaluating any information connected with the past claims, because they were pending on appeal. Tenants asked what about the documents and other statements they filed with the petition. Hearing officer responded, the only claim that would he would evaluate, is claim regarding tenant's refrigerator.

Tenants testified that the landlord indicated that he wasn't going to repair the refrigerator. Shortly thereafter landlord testified that he gave notice to enter dwelling and he planned to due general repairs, including the refrigerator. Tenants responded by informing Kasdin that landlord testimony regarding repairs wasn't true; the landlord sent a letter indicating that he wasn't going to do repairs without tenants paying for services.

Kasdin then asked do you have evidence to submit regarding the matter. Tenants stated they submitted some evidence, but was not certain if that letter was a part of the documents already submitted. Kasdin asked the landlord did he have a copy of the notice or any other evidence submitted regarding the matter, he didn't see any documents from him on file. The landlord indicated that he submitted all of the documentation that he had with him. Only one document his response to tenants petition had a stamp on it. Landlord indicated that he has evidence within these papers that support his claims. Tenants objected- on the grounds that evidence was supposed to be submitted before the hearing. Kasdin indicated tenants have a good

point, evidence must be submitted at least 7 days prior to the hearing. Landlord indicated that he submitted it. Kasdin indicated that he does appear to list documents as part of the statement he submitted and sometimes these things happen so, he would accept his word that documents were submitted. Kasdin then allowed documents the landlord had in his possession to be submitted as evidence.

The landlord submitted the following documents at the hearing: Notice of rent increase dated July 06, 2018, Superior Court complaint and Settlement Agreement. Each of the documents was objected to.

In Kasdin summary regarding evidence submitted by the landlord, he indicates that the notice of rent increase listed as Exhibit 1 wasn't objected to by either party. He ignored the initial objections submitted by Tenants, which clearly objects to the notice. Also he ignored the fact that the Tenants pointed out the deposition taken of landlord and a copy of the Stipulation agreement. Landlord objected to the stipulation being allowed into evidence. Kasdin over ruled the landlord objection and entered it into evidence. However Kasdin did not include the evidence in his decision regarding the rent increase.

Shortly thereafter he adjourned the hearing and stopped audio recording and indicated that that he should parties should have a decision within 45 days.

## LEGAL DISCUSSION

### I.

#### Hearing Officer Violated Tenants Rights To Due Process By Not Providing Fair Hearing

- a. Appellant Has a Due Process Right to a Fair Hearing
- b. Under the 14<sup>th</sup> Amendment to the United States Constitution and Article I, §§ 7 & 15 of the California Constitution, no person may be deprived of life, liberty, or property without "due process of law". The words "due process of law" refers to a principal that "fundamental fairness" must be applied to every party in a civil or criminal proceeding. *Lassiter v. Department of Social Services* (1981) 452 U.S. 18, 101 S.Ct. 2153, 2158, 68 L.Ed.2d 640, 648; see also, Witkin, *Summary of California Law*, Ninth Edition, *Constitutional Law* §481

The due process requirement of fundamental fairness has been expressly interpreted to include the right to have a "fair hearing". A fair hearing includes the right to produce evidence and cross-examine parties. This fundamental element of due process was eloquently summarized by the California Court of Appeals, Second District, in *Buchman v. Buchman* (1954) 123 Cal. App. 2d 546, 560:

"Judicial absolutism is not part of the American way of life. The odious doctrine that the end justifies the means does not prevail in our system for the administration of justice. The power vested in a judge is to hear and determine not to determine without a hearing. When the Constitution requires a hearing, it requires a fair one, one before a tribunal which meets established standards of procedure. It is not for nothing that most of the provisions of the Bill of Rights have to do with matters of procedure. Procedure is the fair, orderly, and deliberate method by which matters are litigated. To judge in a contested proceeding implies the hearing of evidence from both sides in open court, a comparison of the merits of the evidence of each side, a conclusion from the evidence of where the truth lays, application of the appropriate laws to the facts found, and the rendition of a judgment accordingly."(Emphasis Added).

(*Fewel v. Fewel* (1943) 23 C.2d 431, 433; *People v. Lawrence* (1956) 140 Cal.App.2d 133, 136-137; *People v. Thompson* (1935) 5 Cal. App. 2d 655, 659-661; see also Witkin *Summary of California Law*, Ninth Edition, *Constitutional Law*, §§502-503.)

Tenants did not receive a fair hearing. Tenants were denied the ability to testify or present evidence regarding all claims, other than the refrigerator. As stated in the facts above, the hearing officer indicated during the hearing, no other claims were going to be considered. He contradicted himself by ruling all claims denied in summary findings of facts and conclusion of law, referenced in making the final decision for this hearing. In addition, he allowed the landlord to submit evidence, after 14 days prior to the hearing, set by RAP regulations.

The landlord entered a copy of the complaint, Tenants attorney submitted on their behalf to the superior court. According to the order he entered it into evidence as Exhibit Nos. 2A through 2T. Tenants objected on the grounds of relevance and hearing officer overruled objection and entered complaint into evidence. The settlement agreement regarding the complaint entered into evidence by Kasdin as Exhibit Nos. 3A through 3D. in paragraph 2.2 states in relevant part:

"Notwithstanding any matters now pending at the "Rent Board", is the intent of the Parties to this Agreement that, in exchange for the settlement payment set forth below, that Plaintiffs and Defendants shall release each other from all claims which they brought or may have been brought in

the Action arising out of any and all claims related to the Incident including, but not limited to, any claims for contract damages, bodily injury, property damage, or personal injury.”

The fact settlement excluded matters pending with the RAP or Rent Board show that it is not relevant evidence to this hearing. *Evidence code* § 350. No evidence is admissible except relevant evidence.

Furthermore Kasdin entered the mediation settlement agreement as evidence in violation of *Evidence code* § 1119 which states:

“Except as otherwise provided in this chapter:

(a) No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, a mediation or a mediation consultation is admissible or subject to discovery, and disclosure of the evidence shall not be compelled, in any arbitration, administrative adjudication, civil action, or other noncriminal proceeding in which, pursuant to law, testimony can be compelled to be given.

(b) No writing, as defined in Section 250, that is prepared for the purpose of, in the course of, or pursuant to, a mediation or a mediation consultation, is admissible or subject to discovery, and disclosure of the writing shall not be compelled, in any arbitration, administrative adjudication, civil action, or other noncriminal proceeding in which, pursuant to law, testimony can be compelled to be given.

(c) All communications, negotiations, or settlement discussions by and between participants in the course of a mediation or a mediation consultation shall remain confidential”

Tenants objected to the settlement agreement being used as evidence on the grounds it is in violation *Evidence code* § 1119 and not relevant to the hearing. The hearing officer overruled objection and entered the mediation settlement agreement into evidence. The settlement agreement states the following in pertinent part:

“5.10 This Settlement Agreement and Release is exempt from the confidentiality provisions of California Evidence Code section 1119, et seq., and is admissible in evidence to enforce the terms of the Settlement Agreement and Release, subject to the limitations of Section 5.1.”

Tenants did not understand or intend for the confidentiality of the agreement to be released by paragraph 5.10, to the public or used as evidence, only under circumstances to enforce the agreement. Therefore the Tenants’ request that the waiver not be enforced on the grounds that under well-established precedence, a “[w]aiver is the intentional relinquishment or abandonment

of a known right and always rests upon intent. [citation] [internal quotes omitted]" (*Warner Bros. Entertainment Inc. v. Superior Court* (2018) 29 Cal.App.5th 243, 260.)

Based on the above facts, Tenants were deprived of a fair hearing, the denial of a party's right to testify or present evidence (*Kelly v. New West Fed. Sav.*(1996) 49 Cal.App.4th 659, 677. Therefore the hearing officer made a structural error." "A structural error requires reversal without regard to the strength of the evidence or other circumstances." (*In re Enrique G.* (2006) 140 Cal. App.4th 676, 685.)

Also the fact that the hearing officer admitted the court stipulation into evidence and completely ignored it in his decision shows bias. On or about August 15, 2016, (Plaintiff / Owner) Horejsi and (Defendant(s)/ Tenant(s)) Beasley and Mims entered into an agreement regarding any and all rents, fees, parking fees, late fees, etc.... and costs, and stipulated under Cal. Civ. Proc. § 664 the Superior court would retain jurisdiction. Simultaneously the court made the stipulation a court order and required parties to do their part in fulfilling the agreement. As a result of the agreement the landlord waived his rights to claim past banked rent to increases from 1982 through 8/31/16. In addition the City of Oakland Rent Adjustment Program is limited and preempted from raising the rent, because increases are in conflict with *Cal. Civil Proc. §§ 664; 1174.2*; and *Cal. Civ. Code § 1942.4*; and *California Health and Safety Code § 17920.3*.

With respect to the language in stipulation: paragraph (4.), "Plaintiff hereby waives any and all claims for rent, fees, costs, parking and late fees and daily damages for the premises above \$3856. 84 amount outlined in paragraph 1 through 8/31/2016." Paragraph (1) stated in pertinent part: "Defendant shall pay to Plaintiff \$3856. 84, which constitutes a bargained for amount of all rents, fees, parking fees, late fees etcetera and costs due and owing for the premises through 8/31/2016...Defendant shall pay \$...Along with his/her monthly rent, beginning with September 2016 and ending with June 2018..." Waiver clearly includes "banked rent". See *Gould v. Corinthian Colleges, Inc.* (2011) 192 Cal.App.4th 1176, "(It may be implied through conduct manifesting an intention to waive. (*Id.* at pp. 532-533.) Acceptance of benefits under a lease is conduct that supports a finding of waiver. (*Id.* at p. 533.)" The landlord and his counsel agreed to waiver and added the following words by hand writing them in to paragraph 6 of the stipulation: "With the exception of the rights set forth herein, the parties waive all other rights known to them at this time." The waiver may be



either express, based on the words of the waiving party, or implied, based on conduct indicating an intent to relinquish the right.” (*Stephens & Stephens XII, LLC v. Fireman’s Fund Ins. Co.* (2014) 231 Cal.App.4th 1131, 1148 [180 Cal.Rptr.3d 683].)

**Ruling Not Supported By Substantial Evidence**

The ruling made by the hearing officer was not supported by reasonable evidence. For example he accepted evidence from the landlord that was required to be excluded by law due to the RAP limits of 14 day prior to the hearing. Also he accepted landlord testimony regarding the refrigerator over tenant’s testimony without a basis. The refrigerator is an appliance that is a part of the apartment and is required to be kept functioning by the landlord or management.

The landlord testified that he was going to change the light bulbs and make any necessary adjustment to the refrigerator, but tenants refused to let him to the dwelling. According to exhibit 1 attached, a true and correct copy of the landlord letter dated August 10, 2019, states in relevant part: “Please be advised that this is responsibility of the tenant. I am not able to provide light bulbs, batteries for smoke detectors, etc. Without a cost to the [requesting] tenant. If you obtain the refrigerator light bulb, I would be happy to install it accordingly.” Landlord admits in his own words that he was not going to fix the refrigerator by indicating he is not responsible for changing light bulbs. As noted in, *Kuhn v. Department of General Services*(1994) 22 Cal.App.4th 1627, “While it is commonly stated that our ‘power’ begins and ends with a determination that there is substantial evidence . . . , this does not mean we must blindly seize any evidence in support of the respondent in order to affirm the judgment. The Court of Appeal ‘was not created . . . merely to echo the determinations of the trial court. A decision supported by a mere scintilla of evidence need not be affirmed on review.’” (Id. at p. 1633, citations omitted.)

Based on the letter alone, submitted by Tenants regarding problems with the refrigerator and the lack of evidence provided by the land lord, supports Tenants position, that the evidence is “inherently improbable” or “implausible” so that the falsity or impossibility of the evidence is apparent or it is physically impossible that the evidence is true. (*Evje v. City Title Ins. Co.*(1953) 120 Cal. App.2d 488, 492.)

## THE INCREASE IN RENT IS PREEMPTED BY LAW

A court may infer an intent to *preempt* municipal legislation only if (1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; or (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the municipality. See *Fisher v. City of Berkeley* (1984) 37 Cal. 3d 644. In the Fisher case the court invalidated an ordinance to the extent it created an evidentiary presumption that affected the burden of proof in regard to retaliatory evictions. The ordinance was rejected because evidence laws of California already govern evidence.

As stated above, this case is prohibited by law, because the legislature intended to give the courts the right to totally govern rents when dealing with an unlawful detainer case. A conflict exists if the ordinance duplicates, contradicts, or enters into a field of regulation expressly or impliedly reserved to the state [*California Grocers Assn. v. City of Los Angeles* (2011) 52 Cal. 4th 177, 188, 127 Cal. Rptr. 3d 726, 254 P.3d 1019, cert. to fully occupy the particular area of law [*Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal. 4th 1139, 1157-1158, 45 Cal. Rptr.3d 21, 136 P.3d 821.

### Hearing Officer Abused Its Discretion Ruling On The Claims That Are Currently Pending By RAP Appeal.

In an appeal based on abuse of discretion standard, the appellate court examines the trial court's discretionary rulings "and asks whether it exceeds the bounds of reason or is arbitrary, whimsical or capricious. . . This standard involves abundant deference to the trial court's rulings." (*People v. Jackson* (2005) 128 Cal.App.4th 1009, 1018; citations omitted.) In this case, the hearing officer indicated that he wouldn't make a decision based on claims other than the refrigerator, but later based his decision to deny all other claims, on a settlement agreement, which clearly excludes the RAP or Rent board claims from it, in mediation Settlement Agreement paragraph 2.2.

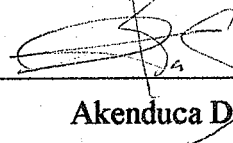
In addition he based decision to deny claim regarding refrigerator light bulb on landlord testimony alone, and indicating a light bulb is not part of habitability. Civil Code §1941.1 and Health and Safety Code §17920.3 California Habitability check list, indicates appliances supplied with unit are a part of an apartment habitability. Based on the letter alone, attached to the appeal, submitted by Tenants regarding problems with the refrigerator and the lack of evidence provided by the landlord, supports Tenants position, that the evidence is “inherently improbable” or “implausible” so that the falsity or impossibility of the evidence is apparent or it is physically impossible that the evidence is true. (*Evje v. City Title Ins. Co.*(1953) 120 Cal. App.2d 488, 492.) Also the hearing officer indicated that previous claims were pending. See *Varian Med. Systems, Inc. v. Delfino*, 35 C4th 180, 196-197, 25 CR3d 298 (2005) (appeal divests trial court of subject matter jurisdiction).] A judgment rendered by a court that does not have subject matter jurisdiction is void and unenforceable and may be attacked anywhere, directly or collaterally, by parties or by strangers. [*Gorgi v. Jack in the Box Inc.*, 166 CA4th 255, 261, 82 CR3d 629 (2008).]

### CONCLUSION

Based on the foregoing, Petitioner request that Rent Board or RAP Appeal Board review, the audio recording of the hearing. Also, Petitioner request that the Rent Board or RAP Appeal Board grant appeal and deny all claims for rent increase.

### VERIFICATION

I, Akenduca D. Beasley am the Petitioner in this proceeding. I have read the foregoing Petition and know the contents thereof. The same is true of my own knowledge, except as to those matters that are therein stated on information and belief, and, as to those matters, I believe it to be true. I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on June 03, 2019 in Oakland, CA



Akenduca D. Beasley aka Linda

**VERIFICATION**

I, Satchidananda Mims am the Petitioner in this proceeding. I have read the foregoing Petition and know the contents thereof. The same is true of my own knowledge, except as to those matters that are therein stated on information and belief, and, as to those matters, I believe it to be true. I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on June 03, 2019 in Oakland, CA



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Satchidananda Mims

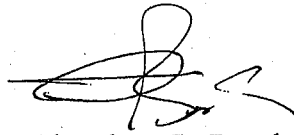
**Declaration**

I Akenduca D. Beasley declare as follows:

1. The letter from the landlord, Attach to the Appeal as Exhibit 1 is a true and correct copy of the document.

**VERIFICATION**

I, Akenduca D. Beasley am the Petitioner in this proceeding. I have read the foregoing Declaration and know the contents thereof. The same is true of my own knowledge, except as to those matters that are therein stated on information and belief, and, as to those matters, I believe it to be true. I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on June 03, 2019 in Oakland, CA



Akenduca D. Beasley aka Linda

# Exhibit 1

August 10, 2018

Linda Beasley  
3764 39<sup>th</sup> Ave., #D  
Oakland, CA 94619

Re: Your memo [letter] re refrigerator light bulb

Dear Linda:

Regarding the above-referenced matter, please be advised as follows:

I received your note stating that you are requesting a new light bulb for the refrigerator in your apartment. Please be advised that this is the responsibility of the tenant. I am not able to provide light bulbs, batteries for smoke detectors, etc. without a cost to the [requesting] tenant. If you obtain the refrigerator light bulb, I would be happy to install it accordingly.

Please let me know if you would like me to provide that service - installing the light bulb.

Sincerely,



Mike Horejsi, Landlord/Owner

/meh

000294

**PROOF OF SERVICE**

**Case Number T18-0480**

I am a resident of the State of California at least eighteen years of age. I am employed in Alameda County, California. My mailing address is PO Box 19304, Oakland, CA 94619.

Today, I served the attached Appeal arguments and attachments by placing a true copy of it in a sealed envelope with postage fully paid into U.S. POSTAL mail box receptacle in Oakland, California addressed to:

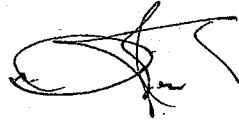
**Owner**

Michael E. Horejsi

P.O. Box 2883

Castro Valley, CA 94546

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on June 03, 2019 in Oakland, CA



Akenduca D. Beasley aka Linda