

**HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD**

**PANEL MEETING**

**NOVEMBER 7, 2019**

**7:00 P.M.**

**CITY HALL, HEARING ROOM #1**

**ONE FRANK H. OGAWA PLAZA**

**OAKLAND, CA**

**AGENDA**

1. CALL TO ORDER
2. ROLL CALL
3. OPEN FORUM
4. APPEALS\*
  - a. T18-0098, Arguete v. Ogbeide
5. ADJOURNMENT

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

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

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

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\* Staff recommendation memos for the appeals will be available at the Rent Program and the Clerk's office at least 48 hours prior to the meeting pursuant to O.M.C. 2.20.070.

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

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

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

## CHRONOLOGICAL CASE REPORT

Case No.: T18-0098  
Case Name: Aruguete v. Ogbeide  
Property Address: 3851 Madrone Ave., Oakland, CA  
Parties: Eve Aruguete (Tenant)  
Festus Ogbeide (Owner)

### OWNER APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	January 9, 2018
Owner Response filed	June 15, 2018
1 <sup>st</sup> Hearing Decision mailed	August 27, 2018
1 <sup>st</sup> Owner Appeal filed	September 4, 2018
Tenant filed response to Owner's 1 <sup>st</sup> Appeal	September 24, 2018
Appeal Panel Decision	May 3, 2019
Remand Decision mailed	May 31, 2019
2 <sup>nd</sup> Owner Appeal filed	June 19, 2019

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T18-0098 RC/E

**RECEIVED**  
Griffin, Debra...  
**JAN - 9 2018**

Rent Adjustment Program

Tenant Petition 8905

**RENT ADJUSTMENT PROGRAM  
OAKLAND**

Housing and  
Community  
Development

Case Number Not Assigned

Case Management

Applicant Information

Print/Oracle BI

Tenant Applicant Eve Aruguete  
3851 Madrone Ave  
Oakland, CA 94619

Resources

Filer Eve Aruguete  
3851 Madrone Ave  
Oakland, CA 94619

Public Dashboard

Rental Property Information

Type of unit you rent \*

Number of Units

Approximate range of units in the building

Are you current on your rent? Yes  No

Griffin, Debora... ▾

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.)

Rent Adjustment Program

Housing and Community Development

Case Management

Print/Oracle BI

Resources

Public Dashboard

Rental History

When did you move into the unit?

2016-08-04 00:00

Initial monthly rent

2600

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

M-D-YYYY

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

Yes  No

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

Yes  No

Have you ever filed a petition for your rental unit?

Yes  No

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

Mediation Requested

Yes  No

Save

Cancel

# Grounds for Petition

Add · Remove

- Decrease in Services
- Exemption Based on Fraud or Mistake

2 records

# Rent Increase

Add · Remove

- |                          |                 |                |           |                   |                 |       |
|--------------------------|-----------------|----------------|-----------|-------------------|-----------------|-------|
| <input type="checkbox"/> | NOTICE<br>GIVEN | NOTICE<br>DATE | EFFECTIVE | INCREASED<br>FROM | INCREASED<br>TO | CONTE |
|--------------------------|-----------------|----------------|-----------|-------------------|-----------------|-------|

No tenant rental increment infoes to show...

0 records

# Loss of Services

Add · Remove

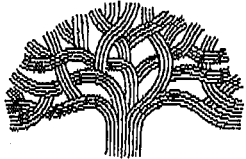
- |                          |                                   |                   |                |                             |               |
|--------------------------|-----------------------------------|-------------------|----------------|-----------------------------|---------------|
| <input type="checkbox"/> | REDUCED<br>SERVICE<br>DESCRIPTION | ESTIMATED<br>LOSS | NOTICE<br>DATE | LOSS<br>BEGAN<br>ON<br>DATE | DATE<br>STAMP |
|--------------------------|-----------------------------------|-------------------|----------------|-----------------------------|---------------|

No tenant lost service infoes to show...

0 records

**For more information regarding the Rent Adjustment Program, Please contact: City of Oakland, Rent Adjustment Program, Dalziel Building 250 Frank H. Ogawa Plaza Suite -**

**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	For date stamp. JUN 15 2018 RENT ADJUSTMENT PROGRAM <b>PROPERTY OWNER</b> <b>RESPONSE</b>
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**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 - 18-0098**

Your Name FESTUS OBEIDE, Trustee THE DONNA RAE PITTMAN	Complete Address (with zip code) 2935 BAYWALK RD ALAMEDA, CA 94502	Telephone: 510-967-6060
EVE ARUGUEIE	3851 MADRONE AVE OAKLAND, CA 94619	Email:
Property Address (If the property has more than one address, list all addresses) 3851 MADRONE AVE OAKLAND, CA 94619		Total number of units on property 1

Have you paid for your Oakland Business License? Yes  No  Lic. Number: 00011659  
 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: EXEMPTED  
 The property owner must be current on payment of the RAP Service Fee. If the fee is not current, an Owner Petition or Response may not be considered in a Rent Adjustment proceeding. Please provide proof of payment.

Date on which you acquired the building: 08/06/15

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

Type of unit (Circle One) House / Condominium/ Apartment, room, or live-work

**I. JUSTIFICATION FOR RENT INCREASE** You must check the appropriate justification(s) box for each increase greater than the Annual CPI adjustment contested in the tenant(s) petition. For the detailed text of these justifications, see Oakland Municipal Code Chapter 8.22 and the Rent



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

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

<u>Date of Contested Increase</u>	<u>Banking (deferred annual increases)</u>	<u>Increased Housing Service Costs</u>	<u>Capital Improvements</u>	<u>Uninsured Repair Costs</u>	<u>Debt Service</u>	<u>Fair Return</u>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

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

The tenant moved into the rental unit on \_\_\_\_\_

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

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

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

Is the tenant current on the rent? Yes \_\_\_\_\_ No \_\_\_\_\_

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

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

III EXEMPTIONS

X THE UNIT IS A SINGLE FAMILY RESIDENCE WITH A FINISHED BASEMENT.

QUESTIONS

1- NO

2- NO

3- NO

4- NO

5- NO

6- YES

7- NOT A CONDOMINIUM

THE DELAY of OUR RESPONSE was BECAUSE WE DID NOT RECEIVE THE COMPLAINT DUE TO OUR ADDRESS BEING INCOMPLETE (we are in Suite 1) at THE TIME of MAILING.

HOWEVER, OUR RESPONSE IS THAT WE ARE EXEMPT.  
(SEE DOCUMENTS ATTACHED).

**Property Location**

Address:	3851 MADRONE AVE	City:	OAKLAND	Zip:	94619-2731
APN#:	030-1968-005-00	Use Code:	Single Family Residence	County:	Alameda
Tract:	HIGH STREET TERRACE	Census Tract:	4079.00	Zone:	
Map Page/Grid:	650/ G6	Legal Desc:	MAP 22 PG 82 BLK 18 PART OF LOT 24,25		
Total Assessed Value:	225,942	Tax Amount:	4,171.52		
Percent Improvement:	29.00	Tax Year:	2017		

**Current Owner Information**

Current Owner:	PITTMAN, DONNA R/OGBEIDE, FESTUS E TR	Owner Address:			
City, State, Zip:	ALAMEDA, CA, 94502-7912	Owner Occupied:	No		
Last Transaction:	08/06/2015	Deed Type:	quitclaim/deed of trust		
Amount:		Document:	0000216762		

**Last sale Information**

Transferred From:	BUTTS	Seller Address:			
Recording / Sale Date:	01/13/1988 /	Prior Recording / Sale Date:	/		
Most Recent Sale Price:	137,000	Prior Sale Price:			
Document Number:	0000009229	Prior Document No.:			
Document Type:	high liability	Prior Document Type:			

**Lender Information**

Lender:	GREAT AMERICAN FED'L SAVI	Full/Partial:	F		
Loan Amount / 2nd Trust Deed:	123,000 / 0	Loan Type:	conventional variable		

**Physical Information**

Building Area:	961	# of Bedrooms:	2	Lot Size:	3,800
Additional:	0	# of Bathrooms:	1.00	Year Built / Effective:	1937 / 1937
Garage:	0	# of Stories:	1	Heating:	
First Floor:	0	Total Rooms:	6	Cooling:	
Second Floor:	0	# of Units:	1	Roof Type:	
Third Floor:	0	Garage/Carport:	Yes /	Construction/Quality:	Wood Frame / 6
Basement Finished:	0	Fireplaces:	0	Building Shape:	L-Shaped
Basement Unfinished:	0	Pool/Spa:	No	View:	

# 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:** T18-0098, Aruguete v. Ogbeide  
**PROPERTY ADDRESS:** 3851 Madrone Avenue, Oakland, CA  
**DATE OF HEARING:** July 09, 2018  
**DATE OF DECISION:** August 1, 2018  
**APPEARANCES:** Eve Aruguete, Tenant

## SUMMARY OF DECISION

The tenant's petition for decreased housing services is granted in part.

## ISSUE(S) PRESENTED

1. Is the subject unit exempt from the Rent Adjustment Program?
2. When, if ever, was the tenant given written notice of the Rent Adjustment Program (RAP Notice)?
3. Has the tenant suffered decreased housing services?

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4. If so, what, if any, restitution is owed to the tenant and how does that impact the rent?

## **INTRODUCTION**

The tenant filed the petition on January 9, 2018, which alleges that her housing services have decreased. The petition did not describe the decreased housing services claimed. On April 11, 2018, the tenant provided a description of the decrease housing services. The owner filed an untimely response on June 15, 2018, claiming he was exempt from the Ordinance and the RAP fee. Attached to the untimely was response was evidence of the owner's business license. The owner did not appear at the hearing.

## **EVIDENCE**

### **Rental History**

The tenant moved into the apartment on August 4, 2016. At the inception of her tenancy her unit consisted of a single-family residence including an unfinished basement, she had exclusive use of all the space and her rent was \$2,600.00.

The tenant indicated in her petition that the RAP Notice was provided. There was no evidence when the RAP notice was provided to the tenant.

The tenant testified that around September 9, 2017, she discussed reducing her rent with the owner, and initially offered to pay \$1600.00 per month. The owner proposed \$1800.00 per month. The tenant testified that she started paying the landlord \$1,800 for rent effective October 1, 2017. The tenant was unclear if she and landlord came to an agreement on that amount, and she has been paying that amount since October 2017.

Subsequently, the owner demanded rent in the amount of \$2,200.00. On November 29, 2017, the tenant sent the owner a letter confirming that she was accepting his offer to pay \$1800.00, per month as rent.

The tenant also testified that she discussed dividing the utilities with the owner because he does not want to install new meters.<sup>1</sup>

### Decreased Housing Services

The tenant's petition cites that her housing services were decreased. The tenant testified that her housing services were decreased beginning in July 2017 when the owner started to convert her basement into another unit with a kitchen and bathroom. She testified that there are tenants residing in that space now and she no longer has use of the basement.

### Garage

The tenant testified that on July 9, 2017, she lost the use of her basement office, which was in the garage, when the owner asked her to move her office upstairs to accommodate the construction. She testified that she still had the use of the half the basement which was the storage/laundry room.

### Storage/Laundry Room

The tenant also testified that on September 4, 2017, she lost use of the storage/laundry room. The tenant testified that the landlord did create a new shared laundry for her and the other tenants.

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

### **Exemption**

Costa-Hawkins: The Costa-Hawkins Rental Housing Act<sup>2</sup> provides that a dwelling or unit which is separately alienable from any other dwelling or unit is exempt from local rent control, except under certain circumstances. The Oakland Rent Adjustment Ordinance specifically states that if a unit is covered under Costa-Hawkins it is exempt from the Ordinance.<sup>3</sup>

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<sup>1</sup> The issue of utilities pursuant to OMC Regulation 10.1.10 was not raised by the tenant in her petition and as such was not addressed herein.

<sup>2</sup> Civil Code Section 1954.52(a)(3)

<sup>3</sup> O.M.C. Section 8.22.030(A)(7)

### Exceptions to the Application of Costa-Hawkins:

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

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

The tenant's testimony that she rented a single-family residence including and unfinished basement is undisputed. Likewise, the tenant's testimony that there are now tenants living in the finished basement is also undisputed. Therefore, the subject unit was a single-family house. However, now that there are tenants are living in the basement, the house is no longer a single-family residence. Therefore, the house is no longer exempt from the application of the Oakland Rent Adjustment Ordinance.

### **When, if ever, was the tenant given written notice of the Rent Adjustment Program (RAP Notice)?**

The Rent Adjustment Ordinance requires an owner to serve the RAP Notice at the start of a tenancy<sup>4</sup> and together with any notice of rent increase or change in the terms of a tenancy.<sup>5</sup>

The tenant's petition states that she received the RAP Notice. However, the tenant's testimony that she was not given a copy of the RAP Notice when she signed the lease is undisputed. Accordingly, it is found that the tenant was not been given written notice of the RAP Program.

### **Has the tenant suffered 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>

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<sup>4</sup> O.M.C. § 8.22.060(A)

<sup>5</sup> O.M.C. § 8.22.070(H)(1)(A)

<sup>6</sup> O.M.C. § 8.22.070(F)

<sup>7</sup> O.M.C. § 8.22.110(E)



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.

There is also a time limit for claiming decreased housing services. If the decreased service is the result of a noticed or discrete change in services provided to the tenant, the petition must be filed within 90 days after of whichever is later: (1) the date the tenant is noticed or first becomes aware of the decreased housing service; or (2) the date the tenant first receives the RAP Notice.

If the decreased housing service is for a condition that is ongoing (e.g., a leaking roof), the tenant may file a petition at any point but is limited in restitution for 90 days before the petition is filed.<sup>8</sup> However, where the RAP Notice has never been given, a tenant can be granted restitution for rent overpayments due to decreased housing services for a maximum of 3 years.<sup>9</sup> Since the evidence established that the tenant did not receive the RAP Notice, the tenant is entitled to restitution for up to three years.

For a tenant's claim for decreased housing services to be granted, an owner must have notice of a problem and a reasonable opportunity to make needed repairs, except for those items the owner should have been aware of based upon a reasonable annual inspection.

The tenant's testimony was that she negotiated with the landlord for a permanent reduction in her rent to compensate her for the loss of use of the basement. Accordingly, it is found that the parties negotiated rent reduction for the loss of use of the basement compensates the tenant and therefore she has no decrease in housing services. As there is no decrease in housing services, no restitution is due.

### **ORDER**

1. Petition T18-0098 is granted in part.
2. The current legal rent for the subject unit is \$1,800.00 per month.

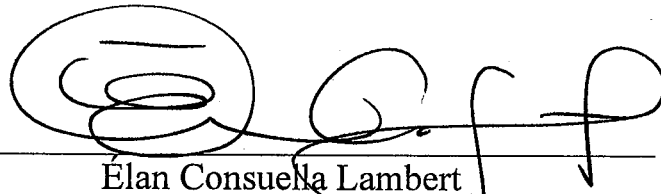
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<sup>8</sup> O.M.C. § 8.22.090(A)(3)

<sup>9</sup> Appeal Decision in Case No. T06-0051, Barajas/Avalos v. Chu

**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: August 1, 2018

A handwritten signature in black ink, consisting of a large, stylized 'E' followed by a series of loops and a long horizontal stroke that ends in a small 'f' shape.

Élan Consuela Lambert  
Administrative Hearing Officer  
Rent Adjustment Program

**PROOF OF SERVICE**  
**Case Number T18-0098**

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

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

**Documents Included**  
Hearing Decision


**Owner**  
Festus Obeide  
2935 Baywack Road  
Alameda, CA 94502

**Owner**  
Festus Ogbeide  
Gao Associates  
3035 Chapman St Apt. #1  
Oakland, CA 94601

**Tenant**  
Eve Aruguete  
3851 Madrone Ave  
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 August 27, 2018 in Oakland, CA.

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

**000019**

**RECEIVED**

 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. <b>SEP 04 2018</b> RENT ADJUSTMENT PROGRAM OAKLAND <u>APPEAL</u>
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Appellant's Name <b>FESTUS OGBEIDE</b>		<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant	
Property Address (Include Unit Number) <b>3851 MADRONE AVE OAKLAND, CA 94619</b>			
Appellant's Mailing Address (For receipt of notices) <b>3035 CHAPMAN ST STE 1                  OAKLAND, CA 94601</b>		Case Number <i>Arugeta v. Ogbide</i> <b>T-18-0098</b> Date of Decision appealed <b>8-1-18</b>	
Name of Representative (if any)		Representative's Mailing Address (For notices)	

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

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

For more information phone (510) 238-3721.


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

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

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

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

<b>Name</b>	EVE ARUGUETE
<b>Address</b>	3851 MADRONE AVE
<b>City, State Zip</b>	OAKLAND, CA 94619
<b>Name</b>	
<b>Address</b>	
<b>City, State Zip</b>	

	09/04/18
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.

3

# EXPLANATION

To: CITY of OAKLAND  
Housing and Community  
Development Department  
Rent Adjustment Program

**THE GROUNDS FOR MY APPEAL ARE BASED ON PARAGRAPH 2e and 2f OF YOUR APPEAL FORM:**

The tenant's "DECREASE IN HOUSING SERVICES" was the temporary disruption and inconvenience of construction, for which the tenant was compensated by a \$1,000/mo TEMPORARY REDUCTION IN RENT.

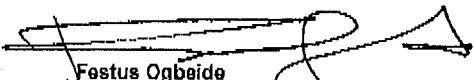
The only "HOUSING SERVICES" lost by the tenant was a storage area in the basement (and not stipulated in the lease). The cost of storage for comparable square footage is approximately \$185/mo. I have VOLUNTARILY reduced the tenant's rent by \$400/mo.

Convenient access to the laundry area has been restored, which, in turn restores the ESSENTIALS and SPECIFICS of the LEASE AGREEMENT.

**IN RESPONSE TO THE ISSUES PRESENTED in the HEARING DECISION:**

- 1 - The owner believed that the property, being a SINGLE FAMILY RESIDENCE (SFR) with an ACCESSORY DWELLING UNIT (ADU) (without a separated address or separate utilities) was exempt from RAP.
- 2 - In light of the owner's understanding of issue #1, he believed that NO RAP NOTICE WAS REQUIRED.
- 3 - The tenant's DECREASE IN HOUSING SERVICES was TEMPORARY and COMPENSATED FOR by a TEMPORARY REDUCTION of RENT of \$1,000/mo, until alterations to the basement were completed.
- 4 - There is NO NEGATIVE IMPACT on the tenant; she is now enjoying a \$400/mo savings from her \$2,800/mo lease on a house that Commands \$3,000/mo any where in the neighborhood.

Sincerely,

  
 Festus Ogbuide  
 9/04/18

*OaklandCA org*

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) 238-8254

RECEIVED

SEP 04 2018

RENT ADJUSTMENT PROGRAM  
OAKLAND

HEARING DECISION

**CASE NUMBER:** T18-0098, Aruguete v. Ogbeide

**PROPERTY ADDRESS:** 3851 Madrone Avenue, Oakland, CA

**DATE OF HEARING:** July 09, 2018

**DATE OF DECISION:** August 1, 2018

**APPEARANCES:** Eve Aruguete, Tenant

SUMMARY OF DECISION

The tenant's petition for decreased housing services is granted in part.

ISSUE(S) PRESENTED

1. Is the subject unit exempt from the Rent Adjustment Program?
2. When, if ever, was the tenant given written notice of the Rent Adjustment Program (RAP Notice)?
3. Has the tenant suffered decreased housing services?



## Tenant Response to Owner Appeal

Petition 8905 / Case number T18-0098

2018 SEP 24 PM 1:27

I, Eve Aruguete, am responding to listed grounds for appeal from the building owner, Festus Ogbeide.

### Key

Quotes from owner's appeal statement are in bold blue.

A document submitted as evidence is alerted in yellow highlights.

**The tenant's "DECREASE IN HOUSING SERVICES" was the temporary disruption and inconvenience of construction, for which the tenant was compensated by a \$1000/mo TEMPORARY REDUCTION IN RENT.**

This is a totally false statement. I was never compensated with any payment or benefit for the construction. Please see enclosed cancelled checks. My cancelled checks show I paid \$2,600/mo until October 2017, after that I started paying \$1800. The construction ran from July – Dec 2017.

**The only "HOUSING SERVICES" lost by the tenant was a storage area in the basement (and not stipulated in the lease). The cost of storage for comparable square footage is approximately \$165/mo. I have VOLUNTARILY reduced the tenant's rent by \$400/mo.**

As was shown in the previous hearing, the space lost was approximately 499 sq ft, about 34% of the total square footage of the house (see Floorplan and photos from previous hearing). Right now Festus is charging the downstairs tenants \$1400/mo for the area he claims is only worth \$165 (see downstairs lease agreement).

The fact that the downstairs space was not stipulated in the lease has no bearing as NO rooms were described in the lease. (see Lease from previous hearing).

**Convenient access to the laundry area has been restored, which, in turn restores the ESSENTIALS and SPECIFICS of the LEASE AGREEMENT.**

I am only contesting the loss of space aka "services". There are no rooms described, nor are there "essentials" or "specifics" in the lease (see Lease from previous hearing).

**1-The owner believed that the property, being a SINGLE FAMILY RESIDENCE (SFR) with an ACCESSORY DWELLING UNIT (ADU) (without separated address or separate utilities) was exempt from RAP.**

Festus didn't obtain a permit for the unit he built. This building has 2 units. There are 2 people living in what was my basement. They have a separate lease agreement (see enclosed downstairs lease agreement.) They have their own entrance, kitchen and bathroom. The utilities and the address are shared because the second unit had not been reported to any government agencies.

**4 - There is NO NEGATIVE IMPACT on the tenant; she is now enjoying a \$400/mo savings from her \$2600/mo lease on a house that commands \$3000/mo any where in the neighborhood.**

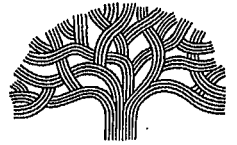
If I was paying what Festus is demanding (\$2200) I could not afford to live in my home. I first rented the house with another person and we each paid \$1300. That individual moved. Now that I've lost the space downstairs I can no longer rent to roommates. \$1800 is over ½ my income but I am willing to do it because I have experienced so much housing insecurity in Oakland.

Regarding the notion that a comparable property "commands \$3000" is irrelevant. Festus would like me to leave so he could possibly get more rent from a new tenant. I have a "target on my back". I need the Rent Adjustment Program backed up by Oakland rental law to help me stay in my home.

Please disregard this appeal and revert to Officer Lambert's original decision.

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# CITY OF OAKLAND



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

Housing and Community Development Department  
Rent Adjustment Program

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

## HOUSING RESIDENTIAL RENT AND RELOCATION BOARD APPEAL PANEL DECISION

**Case Number:** T18-0098, Aruguete v. Ogbeide

**Property Address:** 3851 Madrone Avenue  
Oakland, CA

**Date of Appeal Hearing:** April 18, 2019

**Appearances:** Festus Obgeide      Owner Appellant  
Eve Aruguete      Tenant Appellee

### Procedural Background

The tenant filed a petition which claimed decreased housing services. The Hearing Decision set the current legal rent at \$1,800.00 per month, which was a decrease from the move-in rent of \$2,600.00 per month, due to the loss of unfinished basement space after the owner converted the basement to a rental unit.

### Grounds for Appeal

The owner filed an appeal on the following grounds:

- The decision is not supported by substantial evidence;
- He was denied a sufficient opportunity to present his claim or respond to the tenant's claim.

The owner contended that the legal rent was \$2,200.00, not \$1,800, because the reduction to \$1,800 rent was only during the construction period which was temporary. He also contended that the property is a single family dwelling with an accessory dwelling unit that is exempt from the RAP.

### Board Discussion

After arguments made by the owner and tenant, questions to both parties and Board discussion, B. Scott moved to uphold the Hearing Decision but after further

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discussion withdrew his motion. E. Lai moved to remand the case back to the Hearing Officer to determine 1) the date of when the property stopped being exempt, and 2) what the appropriate rent should be once that date is determined.

The Board panel voted as follows:

Aye: E. Lai, B. Scott

Nay: 0

Abstain: T. Hall


The Motion carried.

### NOTICE TO PARTIES

**This decision is the final decision of the City of Oakland.**

Pursuant to Ordinances No. 9510 C.M.S. of 1977 and 10449 C.M.S. of 1984, modified in Article 5 of Chapter 1 of the Municipal Code, the City of Oakland has adopted the ninety (90) day statute of limitations period of Civil Procedure, Section 1094.6.

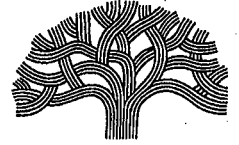
YOU ARE HEREBY NOTIFIED THAT YOU HAVE NINETY (90) DAYS FROM THE DATE OF MAILING OF THIS DECISION WITHIN WHICH TO SEEK JUDICIAL REVIEW OF THE DECISION OF THIS BOARD IN YOUR CASE.

  
\_\_\_\_\_  
CHANEE FRANKLIN MINOR  
BOARD DESIGNEE  
CITY OF OAKLAND  
HOUSING, RESIDENTIAL RENT AND  
RELOCATION BOARD

5/3/19  
\_\_\_\_\_  
DATE

000027

# CITY OF OAKLAND



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

Housing and Community Development Department  
Rent Adjustment Program

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

## REMAND DECISION

**CASE NUMBER:** T18-0098, Aruguete v. Ogbeide  
**PROPERTY ADDRESS:** 3851 Madrone Avenue, Oakland, CA  
**APPEARANCES:** Eve Aruguete, Tenant  
Festus Ogbeide Owner  
**DATE OF DECISION:** May 28, 2019

## PROCEDURAL HISTORY

A Hearing, in this case, was held on July 9, 2018. A Hearing Decision was issued on August 1, 2018. The Decision stated that the subject property was not exempt because tenants were living in the basement unit of the single-family residence. The tenant's claims of decreased housing services were granted based upon a finding that she no longer had access to the unfinished basement and garage. The landlord filed an Appeal, and on April 18, 2019, the Board remanded to the Hearing Officer to determine the following:

1. The date when the property stopped being exempt; and
2. What the appropriate rent should be once that date is determined.

## EVIDENCE

At the original Hearing, the tenant testified that she moved into the apartment on August 4, 2016, and that at the inception of her tenancy her unit consisted of a single-family residence including an unfinished basement. She had exclusive use of all the space, and her monthly rent was \$2,600.00. She also testified that she started paying the landlord \$1,800.00 per month, for rent effective October 1, 2017. The tenant further testified that her housing services were decreased beginning in July 2017, when the owner started to convert her basement into another unit with a kitchen and bathroom.

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The tenant also testified at the original Hearing that the tenants in the basement unit moved into that unit in November 2017 and that she no longer has use of the basement or garage.

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

O.M.C. Section 8.22.020 defines that a “covered unit” means a “dwelling unit, including joint living and work quarters, and all housing services located in Oakland and used or occupied in consideration of payment of rent.”

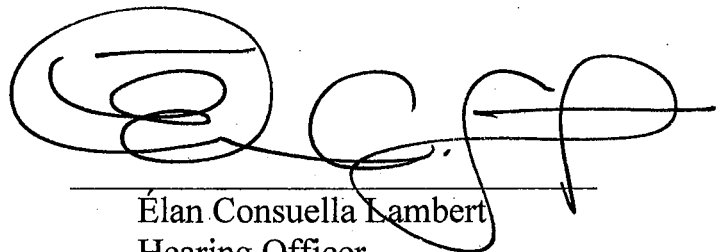
Civil Code Section 1940 defines a “dwelling unit” as structure or the part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household.

The tenants moved into the basement unit in November 2017. Once the property contained two dwelling units, it was no longer exempt from the Rent Ordinance as a single-family home. Accordingly, the property stopped being exempt in November 2017.

### **ORDER**

1. The property stopped being exempt in November 2017.
2. The appropriate rent for the subject unit is \$1,800.00, effective November 2017.

**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.



Elan Consuella Lambert  
Hearing Officer  
Rent Adjustment Program

Dated: May 28, 2019

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**PROOF OF SERVICE**  
**Case Number T18-0098**

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 on Remand

**Owner**

Festus Obeide  
2935 Baywack road  
Alameda, CA 94502

**Owner**

Festus Ogbeide, Gao Associates  
3035 Chapman St Apt. #1  
Oakland, CA 94601

**Tenant**

Eve Aruguete  
3851 Madrone Ave  
Oakland, CA 94619

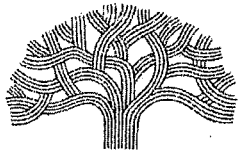
I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first 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 31, 2019** in Oakland, CA.

  
\_\_\_\_\_  
Nia Johnson

Oakland Rent Adjustment Program

**000030**



CITY OF OAKLAND

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

RECEIVED  
CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM  
For date stamp.

2019 JUN 19 PM 4:34

**APPEAL**

Appellant's Name <i>Festus Ogbeide</i>		<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant	
Property Address (Include Unit Number) <i>3851 Madrone Ave</i>			
Appellant's Mailing Address (For receipt of notices) <i>2935 Baywood Rd Alameda, CA 94502</i>		Case Number <i>118-0098</i>	
		Date of Decision appealed <i>05/30/19</i>	
Name of Representative (if any)		Representative's Mailing Address (For notices)	

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

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


For more information phone (510) 238-3721.

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

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

• You must serve a copy of your appeal on the opposing parties or your appeal may be dismissed. •  
 I declare under penalty of perjury under the laws of the State of California that on \_\_\_\_\_, 20\_\_\_\_, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<u>Name</u>	Eve Argueta
<u>Address</u>	3851 Madrone Avenue
<u>City, State Zip</u>	Oakland, CA
<u>Name</u>	
<u>Address</u>	
<u>City, State Zip</u>	

	6/19/19
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

For more information phone (510) 238-3721.



## **IMPORTANT INFORMATION:**

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

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

**BONNA RAE PITTMAN LIVING TRUST**  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM  
2935 BAYWALK ROAD ALAMEDA CA 94502  
2019 JUN 19 PM 4:42

To: ROBERTO COSTA  
PROGRAM ANALYST  
RENT ADJUSTMENT PROGRAM

Dear Mr. Costa,

*I want to be given the opportunity to present my case.*

I apologize for not providing more information at the start of this hearing, but I did not realize that Ms Aruguete had SUBSTANTIALLY MIS-REPRESENTED her LOSS of "USABLE" LIVING SPACE and her LOSS of "SERVICE".

The upstairs portion of the house was, at the time of the original lease, THE ENTIRETY of USABLE LIVING SPACE. (Currently listed by The county as 961 sq ft. (See attached)

The "basement" was just an UN-FINISHED, UN-INSULATED area UNDERNEATH the house, accessible ONLY by an OUTSIDE DOOR, Exposing SEWER LINES, WATER PIPES, FURNACE and DUCTING.

A small enclosure had been added previously, for a washer and dryer.

Ms Aruguete chose to "use" a portion of this un-finished area as storage and perhaps some vocation of her choosing. I had no objection.

For all practical purposes, and the perimeters of the lease, her "LIVING SPACE" and "SERVICES" CONSISTED OF 961 sq ft (2 bed rooms, 1 bathroom, living room, dining room and kitchen with outside access to a washer and dryer underneath the house proper.)

The original lease was to Ms Aruguete and her partner/roommate, Taneka Lashawn for \$2,600/mo.

When Ms Aruguete's partner left (abandoning the lease), Ms Aruguete asked for some forbearance, which I granted in the amount of \$400/mo, lowering the monthly lease payment to \$2,200/mo, with the understanding that I would convert the garage area, (which was Never usable for parking) into an ADU.

FURTHER, I gave her an ADDITIONAL, TEMPORARY REDUCTION of \$400/mo reduction during renovation as compensation for any possible inconvenience and/or noise that might occur

Her USABLE LIVING SPACE (upstairs) WAS NOT AFFECTED and her ACCESS to the washer and dryer WAS NOT IMPEDED.

Ms Aruguete was to make payments of \$2,200/mo immediately upon completion of renovation. (See 3 day notice attached)

There is now an additional \$2,000 due since the notice.

The original lease has long since expired. I'm attaching COMPARABLE RENTS in this zip code (94619) which show that my current NEW LEASE offer of \$2,300/mo is WELL BELOW MARKET RATE.

Ms Aruguete's total past due amount is \$6,400 as of this month. She can pay it in one lump sum or take up to 2 yrs to pay at \$267/mo.

This property is in a TRUST for 2 college students whose mother has died. The cost of the renovation will not be recouped for another 5 yrs (assuming no protracted vacancies). The NET RENTAL INCOME after mortgage and maintenance is INSUFFICIENT to sustain even one of the students. The TRUST cannot be "short-changed" in any manor..

  
FESTUS OBEIDE, TRUSTEE

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