

**HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD
REGULAR MEETING
FEBRUARY 13, 2020
7:00 P.M.
CITY HALL, HEARING ROOM #1
ONE FRANK H. OGAWA PLAZA
OAKLAND, CA**

AGENDA

1. CALL TO ORDER
2. ROLL CALL
3. CONSENT ITEMS
 - a) Approval of Board Minutes from January 23, 2020
 - b) Review of Board Minutes from January 30, 2020
4. OPEN FORUM
5. APPEALS*
 - a) T18-0414 & T18-0472, Martin et al v. Zalabak
 - b) T18-0018, Sund v. Vernon Street Apartments, LP aka Flynn Family Holdings, LLC
6. ACTION ITEMS
 - a) Formation of additional ad hoc committees, membership and review of issues identified in May 9, 2019, Board meeting (see attached list on page 3)
7. INFORMATION AND ANNOUNCEMENTS
 - a) Census Presentation (see attached handouts page 5 through 20)
 - b) Rent Adjustment Program Updates (C. Franklin Minor)
 - c) Legislative Updates (Office of the City Attorney)
8. COMMITTEE REPORTS AND SCHEDULING
 - a) Report from Ad Hoc Committee – Deferred Maintenance v. Capital Improvement of Dry Rot
 - i. Handout from Dry Rot Committee (see attached handout on page 4)
9. ADJOURNMENT

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

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

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

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

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

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

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

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

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

Dry Rot - as it relates to capital improvements and deferred maintenance
Met on 10/20/19 @ 6pm

Goals:

- Improve communication to landlords, tenants, and hearing officers on what dry rot is and is not.
- Formalize a way to identify dry rot consistently.
- Determine if we as a body are addressing dry rot appropriately as it applies to capital improvement and deferred maintenance

Concerns:

- Individuals identifying dry rot (as it applies to capital improvement and deferred maintenance) may not be correct in their determination
- Dry Rot is considered a condition that develops over time. For this reason, when dry rot is found the repairs are not considered timely and the cause is deemed to be from deferred maintenance. Deferred maintenance precludes anyone from a capital improvement increase.
 - Are there instances where the above logic doesn't hold true?
- Should the presence of dry rot routinely mean that there is deferred maintenance?
- Currently the existence of dry rot removes a property from capital improvement consideration and classifies the situation as "normal routine maintenance". Should this be % base or remain all or nothing?
- What is the working definition of deferred maintenance?

Conversation points:

3rd party verification should be considered
pictures must be required

United States[®]
Census
2020



#OaklandCounts

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Census Overview

- Every 10 years, U.S. Census Bureau counts every person living in the country.
- Determines the number of seats in the U.S. House of Representatives.
- Used for congressional, state and local redistricting.
- Population data is used to allocate billions in federal funding.
- Key data set for research and planning purposes.

What's new with the 2020 Census?

- First primarily digital Census.
- All addresses will receive a letter in March inviting them to complete the Census online.
- Shorter survey ([link](#)).
 - 9 questions for primary person.
 - 7 questions each for all other members of the household.
 - No citizenship question on the Census.

March 12, 2020

A Message from the Director, U.S. Census Bureau

Dear Resident:

This is your invitation to respond to the **2020 Census**. We need your help to count everyone in the United States by providing basic information about all adults, children, and babies living or staying at this address.

Results from the 2020 Census will be used to:

- Direct billions of dollars in federal funds to local communities for schools, roads, and other public services.
- Help your community prepare to meet transportation and emergency readiness needs.
- Determine the number of seats each state has in the U.S. House of Representatives and your political representation at all levels of government.

Your Census ID is:

Respond by April 1st at:
XXXX.XXXX.gov

The Census Bureau is using the internet to securely collect your information. Responding online helps us conserve natural resources, save taxpayer money, and process data more efficiently. If you are unable to complete your 2020 Census questionnaire online, we will send you a questionnaire in a few weeks for you to complete and mail back.

The census is so important that your response is required by law, and your answers are completely confidential. If you do not respond, we will need to send a Census Bureau in person to your home to collect your answers in person. If you need help completing your 2020 questionnaire, please call toll-free 1-844-330-2020.



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United States
Census
2020

2020 Census

FAQ INSTRUCTIONS

Address Verification

Household Questions

Demographic Questions

Final Questions

You will need the materials we mailed to you or left at your door.
All the information that you provide will remain confidential.

Where can I find my 12-digit Census ID?

- In the LETTER, click here.
- On the front of the QUESTIONNAIRE, click here.
- Below the barcode on the POSTCARD, click here.
- On the NOTICE of VISIT, click here.

Please Log In

Please enter the 12-digit Census ID found in the materials we mailed to you or left at your door.

Input fields for the 12-digit Census ID.

Login button

If you do not have a Census ID, click here.

- ENGLISH
- ESPAÑOL
- 中文(簡體)
- Tiếng Việt
- 한국어
- РУССКИЙ
- PORTUGUÊS
- العربية
- TAGALOG
- POLSKIE
- FRANÇAIS
- KERTEL ANSIVEN
- 日本語

#OaklandCounts

2020 Census Challenges

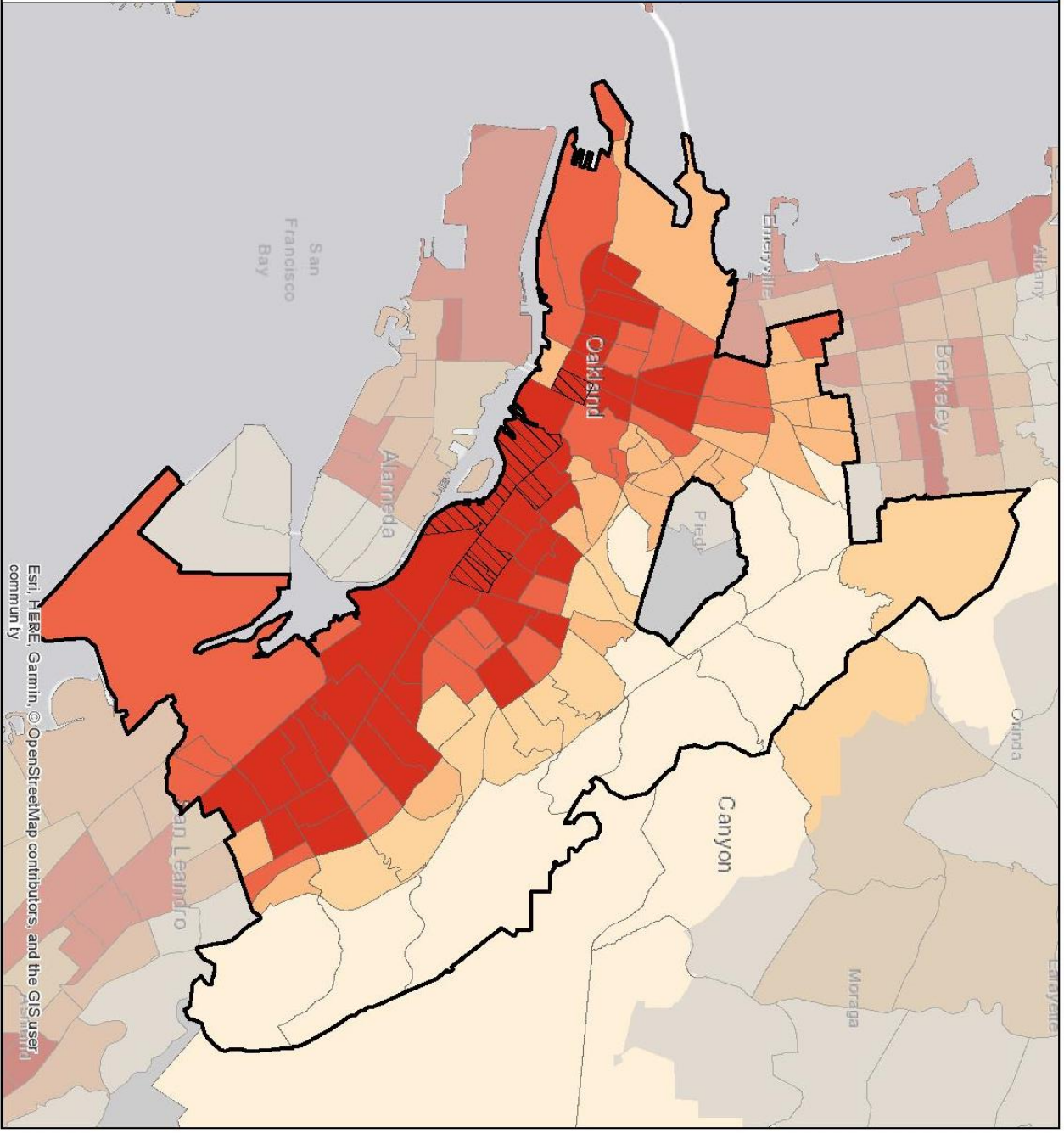
- Lack of digital access.
- Language accessibility.
 - Online and phone response options only available in 13 languages.
 - Form response only available in English and Spanish.
- Distrust in government.
- Oakland is one of the hardest-to-count cities in the country.

Oakland Hard-to-Count Facts

- 57% of population lives in hard-to-count Census tracts.
- Oakland's leading hard-to-count characteristics include:
 - Crowded units
 - Renter-occupied units
 - Multiple families living at the same residence
 - People living below poverty level
 - Substantial unhoused population
 - Limited-English speaking households

Oakland City

California Hard-to-Count Index by Census Tract



Esri, HERE, Garmin, © OpenStreetMap contributors, and the GIS user community

000011

What is asked on the Census?

- How many people live at the address?
- Is the home rented or owned?
- What is your telephone number?
- First and last name of all people living at home.
- Sex of each person.
- Age of each person.

What is asked on the Census? (cont'd)

- Are you of Hispanic, Latino or Spanish origin?
- What is your race?
- How are you related to the primary person?

Start here OR go online at [ipuri.removed](#) to complete your 2020 Census questionnaire.
Use a blue or black pen.

Before you answer Question 1, count the people living in this house, apartment, or mobile-home using our guidelines.

- Count all people, including babies, who live and sleep here most of the time.
- If no one lives and sleeps at this address most of the time, go online at [ipuri.removed](#) or call the number on page 8.

The census must also include people without a permanent place to live, so:

- If someone who does not have a permanent place to live is staying here on April 1, 2020, count that person.

The Census Bureau also conducts counts in institutions and other places, so:

- Do not count anyone living away from here, either at college or in the Armed Forces.
- Do not count anyone in a nursing home, jail, prison, detention facility, etc., on April 1, 2020.
- Leave these people off your questionnaire, even if they will return to live here after they leave college, the nursing home, the military jail, etc. Otherwise, they may be counted twice.

1. How many people were living or staying in this house, apartment, or mobile home on April 1, 2020?

Number of people =

2. Were there any additional people staying here on April 1, 2020 that you did not include in Question 1?
Mark X, all that apply.

- Children, related or unrelated, such as newborn babies, grandchildren, or foster children
- Relatives, such as adult children, cousins, or in-laws
- Nonrelatives, such as roommates or live-in babysitters
- People staying here temporarily
- No additional people

3. Is this house, apartment, or mobile home — Mark ONE box.

- Owned by you, or someone in this household with a mortgage or loan? Include home equity loans.
- Owned by you or someone in this household free and clear (without a mortgage or loan)?
- Rented?
- Occupied without payment of rent?

4. What is your telephone number?
We will only contact you if needed for official Census Bureau business.

Telephone Number

Person 1

5. Please provide information for each person living here. If there is someone living here who pays the rent or owns this house, apartment, or mobile-home, you must list that person first as owner or the person who pays the rent does not live here, start by listing any adult living here as Person 1.

What is Person 1's name? *Print name below.*

First Name

Last Name(s)

MI

6. What is Person 1's sex? Mark ONE box.

Male Female

7. What is Person 1's age and what is Person 1's date of birth?
Write 0 as the age. 1 year old do not write the age in months. Write 0 as the age.

Age on April 1, 2020 years months days

Month Day Year of birth

8. What is Person 1's race? Mark X, one or more boxes AND print origins.
Mark X, one or more boxes AND print origins.

- White — Print, for example, German, Irish, English, Italian, Latvian, etc. ✓
- Black or African Am. — Print, for example, African American, Jamaican, Haitian, Nepan, Egyptian, Somali, etc. ✓
- American Indian or Alaska Native — Print, for example, Navajo, Hopi, Pitkan, etc. ✓
- Native Hawaiian or Other Pacific Islander — Print, for example, Hawaiian, Samoan, etc. ✓
- Chinese
- Japanese
- Korean
- Other Asian — Print, for example, Filipino, Vietnamese, etc. ✓
- Other Hispanic or Latino — Print, for example, Mexican, Puerto Rican, Cuban, etc. ✓
- Other race — Print, for example, Arab, American Indian, etc. ✓

9. What is Person 1's ethnicity? Mark X, one or more boxes AND print origins.
Mark X, one or more boxes AND print origins.

- Spanish, Mexican, or Puerto Rican
- Not Hispanic or Latino

How do I respond?



- Paper form only available during non-response follow up period beginning in May 2020.

Language Accessibility

- Online and phone responses available in 13 languages: English, Spanish, Chinese, Vietnamese, Korean, Russian, Arabic, Tagalog, Polish, French, Haitian Creole, Portuguese, and Japanese.
- Paper Census surveys will only be available in English and Spanish.
- Print and video language guides will be available in 59 non-English languages.

Is it safe to complete the Census?

- Yes! Private information is confidential and protected under Title 13 of the U.S. Code.
- Census responses cannot be used against you by any government agency including law enforcement.
- Census responses cannot be used to determine your eligibility for benefits.

Key Dates

Dates	Activity
Now – March 2020	Awareness stage
Early March	Invitations mailed to all addresses
March 12 th – May 1 st	Self response period open
April 1 st	Census Day
May – July	Non-response follow up period
July 31 st	Final day to submit Census form

#OaklandCounts

How can you help?

- Pledge to complete the Census.
- Signup as a County Census Ambassador.
 - www.acgov.org/census2020
- Encourage family, friends, co-workers and neighbors to complete the Census before April 1, 2020.
- Post and share Census information on social media using #OaklandCounts

#OaklandCounts

Additional Resources

- www.californiacensus.org
- www.oaklandca.gov/census

text **COUNT** to **510-800-5868**

#OaklandCounts

**HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD
REGULAR MEETING
JANUARY 23, 2020
7:00 P.M.
CITY HALL, HEARING ROOM #1
ONE FRANK H. OGAWA PLAZA
OAKLAND, CA**

MINUTES

1. CALL TO ORDER

The HRRRB meeting was called to order at 7:04 p.m. by Chair, A. Graham.

2. ROLL CALL

MEMBER	STATUS	PRESENT	ABSENT	EXCUSED
T. HALL	Tenant	X		
R. AUGUSTE	Tenant	X		
H. FLANERY	Tenant Alt.			X
C. TODD	Tenant Alt.			X
R. STONE	Homeowner			X
J. WARNER	Homeowner	X		
A. GRAHAM	Homeowner	X		
E. LAI	Homeowner Alt.			X
J. MA POWERS	Homeowner Alt.	X		
K. FRIEDMAN	Landlord	X		
T. WILLIAMS	Landlord	X		
B. SCOTT	Landlord Alt.			X
K. SIMS	Landlord Alt.			X

Staff Present

Kent Qian
Kelly Rush

Deputy City Attorney
Program Analyst, Rent Adjustment Program

3. CONSENT ITEMS

- a) Approval of Board Minutes from January 9, 2020
Regular Meeting

K. Friedman provides correction on bate stamp
#7. Change "J. Friedman" to "K. Friedman."

K. Friedman motions to approve Rent Board minutes from January 9th, 2020 with the correction provided. T. Hall seconded the motion.

The Board voted as follows: (J. Warner not present for this vote)

Aye: K. Friedman, T. Williams, R. Auguste, T. Hall

Nay: None

Abstain: A. Graham

The motion was passed.

HRRRB Chair, J. Warner arrived at 7:08pm and began chairing the meeting.

4. OPEN FORUM

Nancy Conway

- Factual disputes should be heard through a hearing rather than an Administrative Decision

5. APPEALS

a) T19-0184, Beard v. Meridian Management Group

Appearances:	Nancy Conway	Tenant Representative
	Greg McConnell	Owner Representative

The tenant representative appeared and argued that the refrigerator was a decreased housing service because the noise was loud and prevented the tenant from sleeping. She introduced the fact that the refrigerator was replaced since the petition was filed and therefore this should be determined to be a decreased housing service. She stated that there was ongoing leak even after an attempt to fix the problem. She points to the memorandum that was written by the owner representative and argues that the tenant was not allowed to respond to the memorandum through a hearing. The tenant representative argued that everyone did not get to see the evidence since there was no hearing held and that a hearing should be conducted before a hearing officer with a transcript recorded.

The owner representative appeared and contended that the issues were already or should have already been heard in the prior case. He states that the hearing officer was correct in deciding that the same issues cannot be relitigated due to collateral estoppel or res judicata and claims that the tenant is a serial filer. The owner representative pleaded that the Rent Board either affirm the Hearing Officer's decision or dismiss the appeal altogether. He claims that the Hearing Officer had the opportunity to review the record and that he has the right to submit a memorandum in response to the tenant petition being filed asking for a decision.

After arguments made by both parties, Board questions to the parties and Board discussion, J. Warner motions to remand to the hearing officer to hold a full hearing on the issues raised in the tenant petition. R. Auguste seconded.

K. Friedman proposed a friendly amendment to ask the Hearing Officer to determine if this was a new leak or an ongoing leak. J. Warner accepted the friendly amendment. R. Auguste also accepted the friendly amendment.

R. Auguste proposed a friendly amendment to include the refrigerator as disturbing the quiet enjoyment of the unit and as an issue of fact. J. Warner accepts the friendly amendment

K. Friedman presented a sub motion to remand to the Hearing Officer for purposes of determining if the issue is a new leak or if this was the ongoing leak. T. Williams seconded.

The Board voted on the sub-motion as follows:

Aye: A. Graham, J. Ma Powers, T. Williams, K. Friedman

Nay: T. Hall, R. Auguste

Abstain: None

The motion passed.

J. Warner motioned to request that the Hearing Officer consider factual basis on the refrigerator issue as a decreased housing service. A. Graham seconded.

The Board voted as follows:

Aye: R. Auguste, J. Ma Powers, A. Graham, J. Warner

Nay: T. Hall, T. Williams, K. Friedman

Abstain: None

The motion passed.

b) T17-0221, Kaufman v. Nguyen

Appearances: Michael Kaufman Tenant Appellant
James Vann Tenant Appellant Representative
No appearances by the owner appellee

The tenant representative appeared and contended that the old owner did not serve the RAP notice and there was a prior case that determined that the banking from the prior owner was not valid. He argued that the owners should not be permitted to have a second bite at the apple. The tenant appellant appeared and contended that the case was decided wrong as a matter of law and the prior decision made by Hearing Officer, B. Kong-Brown should be reinstated. He claimed that the increases before the RAP notice was served are unlawful and the banking should be disallowed.

After arguments made by both parties, Board questions to the parties and Board discussion. K. Friedman moved to affirm the Hearing Officer's decision. T. Williams seconded the motion.

J. Warner made a sub motion to postpone this appeal for a later date to receive council on the issue from other jurisdictions before making a decision to resolve this appeal. There was no second to this motion. The motion failed.

K. Friedman withdrew her prior motion.

A. Graham motioned to postpone this appeal to the second full board meeting in March to allow staff to research other jurisdictions with the issue of banking and RAP notice. The first meeting in March should allow for public comment and Board discussion on the findings. K. Friedman seconded.

The Board voted on the sub-motion as follows:

Aye: T. Hall, R. Auguste, J. Ma Powers, A. Graham, T. Williams, K. Friedman, J. Warner

Nay: None

Abstain: None

The motion passed by consensus.

T. Hall proposed a friendly amendment to include looking at past cases that have been decided in Oakland's jurisdiction. A. Graham and K. Friedman accepted the friendly amendment.

c) E18-0012 to 0017, Homes East Bay 4 LLC v. Tenant

Appearances:	Darryl Yorkey	Owner Appellant Representative
	Rocio Toriz	Tenant Appellee Representative

The owner appellant representative appeared and contended that the owner could not start work on the units until all tenants had vacated the property and one tenant did not leave timely which caused some delay. He also provided that granting the extension of time would allow for the reality of the situation which was that permits from the City of Oakland took an extensive amount of time to obtain and that more conditions were discovered that made the work go beyond the initial scope of the work. The owner representative claims that as soon as this information was obtained, they filed the petition.

The tenant appellee representative appeared and contended that the petition was untimely and that tenants did not file a response because they vacated the units where the petition was served. The representative further contended that even though the last tenant did not vacate the unit until approximately March or April of 2018, the owners should have filed the petition in June or July of 2018 rather than November of 2018. The tenant representative provided that the owner was aware of the deadline to submit evidence was 14 days before the hearing and that they were given ample opportunity to submit further documentation. She provided that tenant's counsel was not served with a copy of the appeal and the tenants are still not in possession of the units which has forced them to pay higher rents elsewhere.

After arguments made by both parties, Board questions to the parties and Board discussion. J. Warner motioned to affirm the Hearing Officer's decision based on substantial evidence. A. Graham seconded.

The Board voted on the sub-motion as follows:

Aye: T. Hall, R. Auguste, J. Ma Powers, A. Graham, T. Williams, K. Friedman, J. Warner

Nay: None

Abstain: None

The motion passed by consensus.

6. ACTION ITEMS

- a) Formation of additional ad hoc committees, membership and review of issues identified in May 9, 2019, Board meeting (see attached list on page 3)

No further ad hoc committees were created at this time.

7. INFORMATION AND ANNOUNCEMENTS

- a) Discussion of language to include in dismissal of a single case that is consolidated with other cases (J. Warner)

J. Warner indicated that this was provided for staff to consider rather than an agenda item for Board discussion.

K. Rush provided that Senior Hearing Officer, B. Kong-Brown has stated that she will bring this topic to a Hearing Officer meeting to discuss adding new language to dismissal forms and orders for dismissals in consolidated cases.

R. Auguste requests that a training on Robert's Rules. She would like this to be prioritized this specific training topic and requests that the facilitator be independent from the City of Oakland. She would like possible dates that this could be considered.

J. Warner made a motion to continue the meeting after 10pm. There was no second. The motion failed.

8. COMMITTEE REPORTS AND SCHEDULING

- a) Report from Ad Hoc Committee – Deferred Maintenance v. Capital Improvement of Dry Rot
 - i. Handout from Dry Rot Committee (see attached handout on page 4)

9. ADJOURNMENT

The HRRRB meeting was adjourned at 10:00 p.m. by Chair, J. Warner.

CITY OF OAKLAND
HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD

BOARD PANEL MEETING
January 30, 2020
7:00 p.m.
City Hall, Hearing Room #1
One Frank H. Ogawa Plaza, Oakland, CA

MINUTES

1. CALL TO ORDER

The HRRRB Panel was called to order at 7:05 p.m. by Panel Chair, Ed Lai

2. ROLL CALL

MEMBER	STATUS	PRESENT	ABSENT	EXCUSED
Ed Lai	Homeowner	X		
Karen Friedman	Landlord Alt.	X		
Hannah Flanery	Tenant Alt.	X		

Staff Present

Oliver Luby	Deputy City Attorney, Office of the City Attorney
Barbara Kong-Brown	Senior Hearing Officer, Rent Adjustment Program
Susan Ma	Program Analyst II, Rent Adjustment Program

3. OPEN FORUM

No Speakers

4. NEW BUSINESS

i. Appeal Hearing in cases

a. **T19-0147, Cheam et al. v. Kuo**

Appearances	Raymond Correa	Owner Appellant Representative
	Sambat Cheam	Tenant Appellee

The owner appealed from a hearing decision granting the tenant restitution for rent overpayment on the grounds that the owner did not meet his burden showing that the RAP notice had been served on the tenant.

000027

Grounds for Appeal

The owner appealed the hearing decision on the following grounds:

- The decision is not supported by substantial evidence;
- The owner was denied a sufficient opportunity to present his claim or respond to the petitioner's claim;
- The decision denies the Owner a fair return on my investment;
- Other

Specifically, the owner contends that he made an agreement with the tenant that the monthly rent would be \$600.00, commencing July 1, 2019, and thought the hearing would be cancelled. He also contends that the rent payments in his records are different from the rent payments provided in the Hearing Decision. They have not calculated the value of the tenant's labor in determining the proper allowable increase. Despite the tenant's statement under penalty of perjury that they were never given the RAP notice, the owner submitted a document on appeal indicating the tenants were given the RAP notice in August 2014, which was signed by at least one of them.

The tenant did not file a response to the owner's appeal. At the appeal hearing the tenant contended that they did not agree on the value of the tenant's work as the on-site manager and told the owner to appear at the hearing. He also denied ever receiving the RAP notice.

Appeal Decision

After questions to the parties and Board discussion, K. Friedman moved to remand the hearing decision on the ground that the Hearing Decision is flawed because the RAP notice was provided to the tenants in 2014. There was no second and the motion failed.

H. Flanery moved to affirm the hearing decision based on substantial evidence. E. Lai seconded.

The Board panel voted as follows:

Aye: H. Flanery, E. Lai,
Nay: K. Friedman
Abstain: 0

The motion carried.

b. L19-0092, Williams v. Tenants

Appearances No appearance by owner appellant

Appeal Decision

E. Lai moved to dismiss the owner appeal subject to a showing of good cause.
K. Friedman seconded.

The Board panel voted as follows:

Aye: H. Flanery, E. Lai, K. Friedman

Nay:

Abstain: 0

5. ADJOURNMENT

The meeting was adjourned at 8:00 p.m.

CONSOLIDATED CHRONOLOGICAL CASE REPORT

Case No.: T18-0414 & T18-0472
Case Name: Martin et al v. Zalabak
Property Address: 5553 Kales Ave., Oakland, CA
Parties: Chester Martin (Tenant)
Kristen Ponger (Tenant)
Sherry Zalabak (Owner)
Alana Grice Conner (Attorney for Owner)

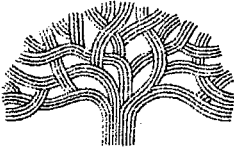
TENANT APPEAL:

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

000030

T18-0414 Re/EJL

RECEIVED
CITY OF OAKLAND
PLANNING DEPARTMENT

 CITY OF OAKLAND	CITY OF OAKLAND RENT ADJUSTMENT PROGRAM P.O. Box 70243 Oakland, CA 94612-0243 (510) 238-3721	For date stamp: 2018 AUG -3 10:41
	<u>TENANT PETITION</u>	

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

Please print legibly

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

Number of units on the property: 2

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

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

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

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

<input checked="" type="checkbox"/>	(d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.)
<input checked="" type="checkbox"/>	(e) The property owner did not give me the required form "Notice of the Rent Adjustment Program" at least 6 months before the effective date of the rent increase(s).
	(f) The rent increase notice(s) was (were) not given to me in compliance with State law.
	(g) The increase I am contesting is the second increase in my rent in a 12-month period.
	(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)
	(i) The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner. (OMC 8.22.070(F): A decrease in housing services is considered an increase in rent. A tenant may petition for a rent adjustment based on a decrease in housing services.) (Complete Section III on following page)
	(j) My rent was not reduced after a prior rent increase period for a Capital Improvement had expired.
<input checked="" type="checkbox"/>	(k) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).
<input checked="" type="checkbox"/>	(l) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake. (OMC 8.22, Article I)
	(m) The owner did not give me a summary of the justification(s) for the increase despite my written request.
	(n) The rent was raised <u>illegally</u> after the unit was vacated as set forth under OMC 8.22.080.

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

Date you moved into the Unit: NOV. 24, 2014 Initial Rent: \$ 2,600 /month

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

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

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

Date you received the notice (mo/day/year)	Date increase goes into effect (mo/day/year)	Monthly rent increase		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
06/05/18	08/01/18	\$2,652	\$ 4,500	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
12/1/16	1/1/17	\$2,600	\$ 2,652	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

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

Have you ever filed a petition for this rental unit?

- Yes
 No

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

III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:

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

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

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

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

Please attach documentary evidence if available.

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

IV. VERIFICATION: The tenant must sign:

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

Tenant's Signature

Date

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

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

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

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

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

C. Mark
Tenant's Signature

8/2/18
Date

VI. IMPORTANT INFORMATION:

Time to File

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

File Review

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

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

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

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

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

To Whom it May Concern:

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

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

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

Key Points:

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

000035

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

Glossary of Attachments:

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

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

Background:

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

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

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

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

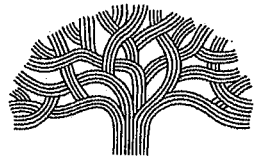
On March 28th, Tenants Kristen & Chase replied to Landlord's email confirming interest in purchasing the property, but could not make an offer without the landlord first providing an asking price. Tenants also requested that landlord would reconsider the July 1st vacancy timeline since their baby was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

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

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

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

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



CITY OF OAKLAND

**CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM**

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

For date stamp.

CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM

2018 DEC -5 PM 4: 24

PROPERTY OWNER
RESPONSE

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

CASE NUMBER T 18-0414

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

Have you paid for your Oakland Business License? Yes No Lic. Number: 00182031
The property owner must have a current Oakland Business License. If it is not current, an Owner Petition or Response may not be considered in a Rent Adjustment proceeding. **Please provide proof of payment.**

Have you paid the current year's Rent Program Service Fee (\$68 per unit)? Yes No APN:48A-7043-40
The property owner must be current on payment of the RAP Service Fee. If the fee is not current, an Owner Petition or Response may not be considered in a Rent Adjustment proceeding. **Please provide proof of payment.**

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

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

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

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

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

CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM
JUL 15 2014 4:24

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

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

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

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

The tenant moved into the rental unit on November 24, 2014.

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

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

Yes No I don't know

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

Is the tenant current on the rent? Yes No

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

<u>Date Notice Given (mo./day/year)</u>	<u>Date Increase Effective</u>	<u>Rent Increased</u>		<u>Did you provide the "RAP NOTICE" with the notice of rent increase?</u>
		<u>From</u>	<u>To</u>	
10/10/18	12/15/18	\$ 2,652.00	\$ 4,500.00	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
12/1/16	1/1/17	\$ 2,600.00	\$ 2,652.00	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No

III. EXEMPTION

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

2018 DEC -5 PM 4:24

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

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

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

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

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

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

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

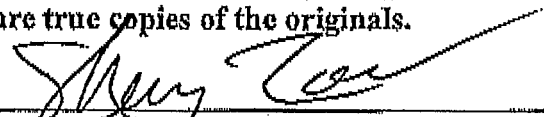
The unit is located in a building with three or fewer units. The owner occupies one of the units continuously as his or her principal residence and has done so for at least one year.

IV. DECREASED HOUSING SERVICES

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

V. VERIFICATION

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



Property Owner's Signature



Date

Landlord Narrative

RECEIVED
CITY OF LOS ANGELES
RENT ARBITRATION BOARD

2018 DEC - 5 PM 4:12

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

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

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

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

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

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

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

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

I. Justification for Rent Increase

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

Justification: Single Family Home exemption

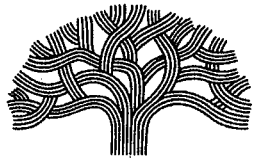
RECEIVED
CITY OF SAN JOSE
RENT ARBITRATION PROGRAM

2018 DEC -5 PM 4:24

III. Exemption Attachment

1. Did the prior tenant leave after being given a notice to quit (Civil Code Section 1946)?
No
2. Did the prior tenant leave after being given a notice of rent increase (Civil Code Section 827)?
No
3. Was the prior tenant evicted for cause?
No
4. Are there any outstanding violations of building housing, fire or safety codes in the unit or building?
No
5. Is the unit a single family dwelling or condominium that can be sold separately?
Yes
6. Did the petitioning tenant have roommates when he/she moved in?
No
7. If the unit is a condominium, did you purchase it? **No**
If so: 1) from whom? **N/A** 2) Did you purchase the entire building? **N/A**

T18-0472 RC/RL



CITY OF OAKLAND

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

For date stamp
 2018 NOV -9 PM 3:26

TENANT PETITION

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

Please print legibly

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

Number of units on the property: _____

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

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

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

<input 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.

	(d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.)
<input checked="" type="checkbox"/>	(e) The property owner did not give me the required form "Notice of the Rent Adjustment Program" at least 6 months before the effective date of the rent increase(s).
	(f) The rent increase notice(s) was (were) not given to me in compliance with State law.
	(g) The increase I am contesting is the second increase in my rent in a 12-month period.
	(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)
	(i) The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner. (OMC 8.22.070(F): A decrease in housing services is considered an increase in rent. A tenant may petition for a rent adjustment based on a decrease in housing services.) (Complete Section III on following page)
	(j) My rent was not reduced after a prior rent increase period for a Capital Improvement had expired.
<input checked="" type="checkbox"/>	(k) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).
<input checked="" type="checkbox"/>	(l) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake. (OMC 8.22, Article I)
	(m) The owner did not give me a summary of the justification(s) for the increase despite my written request.
	(n) The rent was raised <u>illegally</u> after the unit was vacated as set forth under OMC 8.22.080.

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

Date you moved into the Unit: NOVEMBER 24, 2014 Initial Rent: \$ 2,600 /month

When did the owner first provide you with the RAP NOTICE, a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program? Date: November 4, 2018. If never provided, enter "Never."

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

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

Date you received the notice (mo/day/year)	Date increase goes into effect (mo/day/year)	Monthly rent increase		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
11/4/18	01/03/19	\$2,652	\$4,500	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
06/05/18	08/01/18	\$2,652	\$4,500	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
12/1/16	01/01/17	\$2,600	\$2,652	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

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

Have you ever filed a petition for this rental unit?

- Yes
- No

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

T18-0414 Martin et al v. Zalabak

III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:

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

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

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

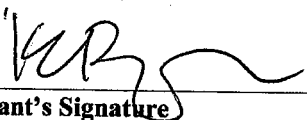
- 1) a list of the lost housing service(s) or problem(s);
- 2) the date the loss(es) or problem(s) began or the date you began paying for the service(s)
- 3) when you notified the owner of the problem(s); and
- 4) how you calculate the dollar value of lost service(s) or problem(s).

Please attach documentary evidence if available.

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

IV. VERIFICATION: The tenant must sign:

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



Tenant's Signature

11/9/18

Date

Empty rectangular box for additional information or notes.

Empty rectangular box for additional information or notes.

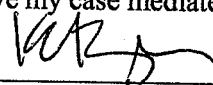
V. MEDIATION AVAILABLE: Mediation is an entirely voluntary process to assist you in reaching an agreement with the owner. If both parties agree, you have the option to mediate your complaints before a hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal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

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

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

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

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



Tenant's Signature

11/9/18

Date

VI. IMPORTANT INFORMATION:

Time to File

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

File Review

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

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

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

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

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

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

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

To Whom it May Concern:

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

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

1. The increase exceeds the CPI Adjustment and is unjustified and greater than 10%.
2. I received a rent increase notice before the property owner received approval from the Rent Adjustment Program for such an increase and the rent increase exceeds the CPI Adjustment and the available banked rent increase.
3. The proposed rent increase would exceed an overall increase of 30% in 5 years.
4. **I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake.**

Key Points:

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

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

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

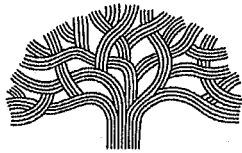
Despite Landlord's request for Tenants not to take legal action, on November 4, 2018 Tenants Chester Martin and Kristen Ponger received two letters from Alana Grice Conner of Fried & Williams Attorneys at Law [Attachment AA, EE]. The first letter notified the tenants that the landlord is rescinding the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

Glossary of Attachments:

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

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

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



CITY OF OAKLAND

**CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM**

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

For date stamp
CITY OF OAKLAND
ARBITRATION PROGRAM

2019 FEB 15 PM 3:52

PROPERTY OWNER
RESPONSE

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

CASE NUMBER T 18-0472

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

Have you paid for your Oakland Business License? Yes No Lic. Number: 00182031
The property owner must have a current Oakland Business License. If it is not current, an Owner Petition or Response may not be considered in a Rent Adjustment proceeding. **Please provide proof of payment.**

Have you paid the current year's Rent Program Service Fee (\$68 per unit)? Yes No APN: 48A-7043-40
The property owner must be current on payment of the RAP Service Fee. If the fee is not current, an Owner Petition or Response may not be considered in a Rent Adjustment proceeding. **Please provide proof of payment.**

Date on which you acquired the building: 10/07/10.

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

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

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

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

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

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

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

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

The tenant moved into the rental unit on November 24, 2014.

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

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

Yes X No _____ I don't know _____

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

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

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

<u>Date Notice Given (mo./day/year)</u>	<u>Date Increase Effective</u>	<u>Rent Increased</u>		<u>Did you provide the "RAP NOTICE" with the notice of rent increase?</u>
		<u>From</u>	<u>To</u>	
10/10/18	12/15/18	\$ 2,652.00	\$ 4,500.00	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
06/05/18	08/01/18	\$ 2,652.00	\$4,500.00(Rescinded)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
12/1/16	1/1/17	\$ 2,600.00	\$ 2,652.00	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No

III. EXEMPTION

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

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

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

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

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

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

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

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


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

IV. DECREASED HOUSING SERVICES

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

V. VERIFICATION

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



Property Owner's Signature

February 15, 2019

Date

Landlord Narrative

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

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

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

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

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

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

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

I. Justification for Rent Increase

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

Justification: Single Family Home exemption

III. Exemption Attachment

1. Did the prior tenant leave after being given a notice to quit (Civil Code Section 1946)?
No
2. Did the prior tenant leave after being given a notice of rent increase (Civil Code Section 827)?
No
3. Was the prior tenant evicted for cause?
No
4. Are there any outstanding violations of building housing, fire or safety codes in the unit or building?
No
5. Is the unit a single family dwelling or condominium that can be sold separately?
Yes
6. Did the petitioning tenant have roommates when he/she moved in?
No
7. If the unit is a condominium, did you purchase it? **No**
If so: 1) from whom? **N/A** 2) Did you purchase the entire building? **N/A**

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RENT ARBITRATION PROGRAM

2019 FEB 15 PM 3:52

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

5 Attorneys for Respondent and Owner
Sherry Zalabak

8 **DEPARTMENT OF HOUSING & COMMUNITY DEVELOPMENT AGENCY**
9 **RENT ADJUSTMENT PROGRAM**
10 **CITY OF OAKLAND**

11 CHESTER "CHASE" MARTIN;
12 KRISTEN PONGER;

13 Petitioner/Tenants,

14 v.

15 SHERRY ZALABAK;

16 Respondent/Owner.

CASE NO.: T18-0472

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

HEARING DATE: MARCH 5, 2019

TIME: 10:00 A.M.

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

18 **I. INTRODUCTION**

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

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

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

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

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

14 **II. LEGAL ARGUMENT**

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

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

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

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

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

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

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

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

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

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

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

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

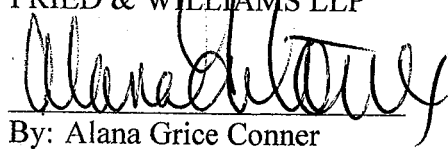
1 Worksheet and Record Details exhibiting the removal of the stove and conversion of the studio to an
2 office is attached hereto as Exhibit G.

3 **III. CONCLUSION**

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

8 Dated: February 15, 2019

FRIED & WILLIAMS LLP

9 

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

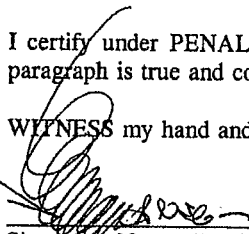
Acknowledgement of Notary Public

State of California }
County of Contra Costa }

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

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

WITNESS my hand and official seal.



Signature, Notary Public for the State of California



Legal Description

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

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

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

Recorded at the request of:

F. MICHAEL HANSON, Esq.

When recorded return to:

Sherry Diane Zalabak
402 Vermont Avenue
Berkeley, California 94707



2010293555

10/07/2010 02:56 PM

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



3 PGS

ZALABAK.SA

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DECLARATION RE DEATH OF LIFE TENANT

I, Sherry Diane Zalabak, declare as follows:

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

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

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

APN: 048A-7043-040

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

Dated: October 4, 2010

SHERRY DIANE ZALABAK

Mail Tax Statements To:

Sherry D. Zalabak
402 Vermont Avenue
Berkeley, California 94707

000059

RC MS/SK

EL

2019 APR 11 PM 2:01

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

8 Attorneys for Respondent and Owner
9 Sherry Zalabak

10 **DEPARTMENT OF HOUSING & COMMUNITY DEVELOPMENT AGENCY**

11 **RENT ADJUSTMENT PROGRAM**

12 **CITY OF OAKLAND**

13 CHESTER "CHASE" MARTIN;
14 KRISTEN PONGER;

15 Petitioner/Tenants,

16 v.

17 SHERRY ZALABAK;

18 Respondent/Owner.

CASE NO.: T18-0114 & T18-0472

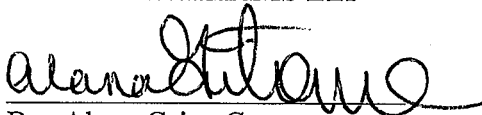
PROPERTY OWNER'S SUPPLEMENTAL STATEMENT

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

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

26 Dated: April 11, 2019

FRIED & WILLIAMS LLP



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

RENT ADJUSTMENT PROGRAM
PROOF OF SERVICE BY FIRST-CLASS MAIL

2019 APR 11 PM 2:01

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

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

PROPERTY OWNER'S SUPPLEMENTAL STATEMENT

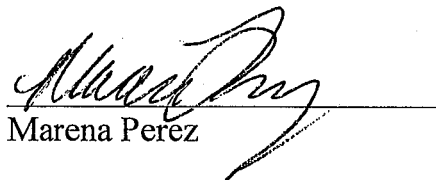
on the parties herein in said action, by placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for mailing with the United States Postal Service. On the same day that correspondence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

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

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

Kristen Ponger
5553 Kales Avenue
Oakland, CA 94618

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


Marena Perez

000061

* 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

RECEIVED

FEB 22 2019

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

III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:

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

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

C. Man Li K. Pong

Tenant's Signature

2/16/18
Date

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

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

8 Attorneys for Respondent and Owner
9 Sherry Zalabak

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

13 CHESTER "CHASE" MARTIN;
14 KRISTEN PONGER;
15
16 Petitioner/Tenants,
17
18 v.
19 SHERRY ZALABAK;
20
21 Respondent/Owner.

CASE NO.: T18-0414

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

HEARING DATE: MARCH 5, 2019
TIME: 10:00 A.M.
PLACE: 250 FRANK H. OGAWA PLAZA, STE.
5313, OAKLAND, CA 94612

22 **I. INTRODUCTION**

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

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

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

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

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

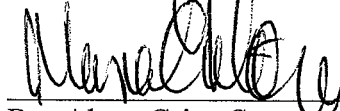
16 On October 10, 2018, Respondent rescinded the Notice of Change to Terms of Tenancy served on
17 Petitioners and refunded Petitioners for overpayment by giving a rent credit in the amount of \$360.00. A
18 true and correct copy of the rescission letter and image of the check are attached hereto as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

19 **III. CONCLUSION**

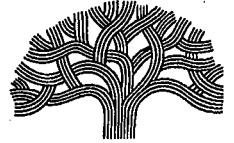
20 Respondent has rescinded the rent increase making any challenge to the rent increase moot. Thus,
21 Petitioner's petition should be dismissed.

22
23 Dated: February 15, 2019

FRIED & WILLIAMS LLP



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



HEARING DECISION

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

PROPERTY ADDRESS: 5553 Kales Avenue, Oakland, CA

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

DATE OF DECISION: April 30, 2019

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

SUMMARY OF DECISION

The Tenant's petitions are dismissed.

INTRODUCTION

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

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

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

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

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

ISSUE(S) PRESENTED

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

EVIDENCE

March 5, 2019

Rental History

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

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

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

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

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

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

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

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

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

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

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

April 22, 2019

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

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

³ Exhibit 11, March Hearing.

⁴ Exhibit A, April Hearing.

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Exemption

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

Exceptions to the Application of Costa-Hawkins:

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

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

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

//

//

⁵ Exhibit B, April Hearing.

⁶ Civil Code Section 1954.52(a)(3)

⁷ O.M.C. Section 8.22.030(A)(7)

ORDER

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

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

Dated: May 31, 2019



Elan Consuella Lambert
Hearing Officer
Rent Adjustment Program

000069

PROOF OF SERVICE
Case Number T18-0414

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

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

Documents Included
Hearing Decision

Owner
Sherry Zalabak
402 Vermont Avenue
Berkeley, CA 94707

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

Tenant
Chester Martin
5553 Kales Avenue
Oakland, CA 94618

Tenant
Kristen Ponger
5553 Kales Avenue
Oakland, CA 94618

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

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



Brittni Lothlen

Oakland Rent Adjustment Program

000070

PROOF OF SERVICE
Case Number T18-0472

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

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

Documents Included

Hearing Decision

Owner

Sherry Zalabak
402 Vermont Avenue
Berkeley, CA 94707

Owner Representative

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

Tenant

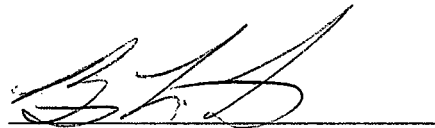
Chester Martin
5553 Kales Avenue
Oakland, CA 94618

Tenant

Kristen Ponger
5553 Kales Avenue
Oakland, CA 94618

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

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



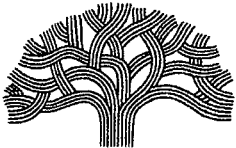
Brittni Lothlen

Oakland Rent Adjustment Program

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RC/ECL

RECEIVED
CITY OF OAKLAND
RENT ARBITRATION PROGRAM

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

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

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

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



For more information phone (510) 238-3721.

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

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

• You must serve a copy of your appeal on the opposing parties or your appeal may be dismissed. •
 I declare under penalty of perjury under the laws of the State of California that on June 27, 2019, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

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

		6.27.2019
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE		DATE

For more information phone (510) 238-3721.

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

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

Case Number(s):

T18-0414

T18-0472

Tenant(s):

Chester "Chase" Martin
Kristen Ponger

Landlord:

Sherry Zalabak

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

Tenants Cause for Appeal:

We are appealing the decision on the following grounds:

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

Key Points:

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

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

000074

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

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

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

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

In Summary

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



Chase Martin

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

2 messages

Kristen Ponger
To: Chase Martin

Mon, Jul 23, 2018 at 11:53 AM

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

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

Hi Sherry,

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

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

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

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

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

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

All the best,

Chase & Kristen

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

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

000076

CHRONOLOGICAL CASE REPORT

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

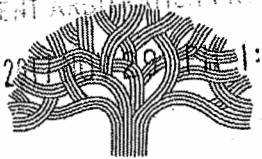
Parties: Jessica Sund (Tenant)
Paul Kranz (Attorney for Tenant)
Kim Rohrbach (Paralegal for Petitioner)
Greg McConnell (Owner Representative)
JR McConnell (Owner Representative)
Don MacRitchie (Witness for Owner)
Ursula Morales (Property Manager)
Jessica Vernaglia (Property Supervisor)
Dave Wasserman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

TENANT APPEAL:

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

000077

T18-0018 RC/MA

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

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

Please print legibly

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

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

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

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

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

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

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

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

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

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

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

2014-2015 or thereabout

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

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

Date you received the notice (mo/day/year)	Date increase goes into effect (mo/day/year)	Monthly rent increase		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
On or about	12/1/17	\$ 908.67	\$ 2095.00	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
9/6/17		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

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

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

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

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

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

Tenant's Signature

Date

VI. IMPORTANT INFORMATION:

Time to File

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

File Review

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

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



Printed form provided by the owner

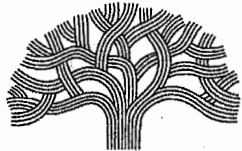
Pamphlet distributed by the Rent Adjustment Program

Legal services or community organization

Sign on bus or bus shelter

Rent Adjustment Program web site

Other (describe): _____



CITY OF OAKLAND

**CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM**

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

For date stamp, RECEIVED
CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM
2010 APR -2 PM 4:04

**PROPERTY OWNER
RESPONSE**

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

CASE NUMBER T 18-0018

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

Have you paid for your Oakland Business License? Yes No Lic. Number: 00197907
The property owner must have a current Oakland Business License. If it is not current, an Owner Petition or Response may not be considered in a Rent Adjustment proceeding. **Please provide proof of payment.**

** Documentation will be submitted prior to hearing

Have you paid the current year's Rent Program Service Fee (\$68 per unit)? Yes No APN: 23-467-5
The property owner must be current on payment of the RAP Service Fee. If the fee is not current, an Owner Petition or Response may not be considered in a Rent Adjustment proceeding. **Please provide proof of payment.**

**Documentation will be submitted prior to hearing

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

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

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

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

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

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

<u>Date of Contested Increase</u>	<u>Banking (deferred annual increases)</u>	<u>Increased Housing Service Costs</u>	<u>Capital Improvements</u>	<u>Uninsured Repair Costs</u>	<u>Debt Service</u>	<u>Fair Return</u>
12/1/17	** <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

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

The tenant moved into the rental unit on _____.

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

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

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

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

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

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

III. EXEMPTION

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

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

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

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

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

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

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

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

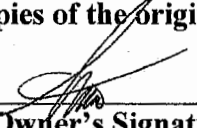
The unit is located in a building with three or fewer units. The owner occupies one of the units continuously as his or her principal residence and has done so for at least one year.

IV. DECREASED HOUSING SERVICES

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

V. VERIFICATION

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



Property Owner's Signature

4/2/18

Date

IMPORTANT INFORMATION:

Time to File

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

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

File Review

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

Mediation Program

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

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

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

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

Property Owner's Signature

Date

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

Attachment A

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

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

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

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CLERK OF SUPERIOR COURT
2018 APR -2 PM 11:04



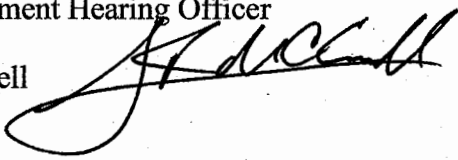
THE MCCONNELL GROUP

Consultants and Advocates

2018 MAY 22 PM 1:03

Memorandum

To: Rent Adjustment Hearing Officer

From: JR McConnell 

Date: 5/22/2018

Subject: Additional documentation re: T18-0018

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

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

Thank you.

May 20, 2018

Re: Sund, Jessica Maggie - 633 Alma #5

DATA SEARCHES RE: JESSICA MAGGIE SUND

DOB: _____
SSN. _____ XXX issued in California in 1985.

CONCLUSIONS:

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

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

NEILSON AND MacRITCHIE
INVESTIGATORS
SINCE 1953

SUMMARY:

ADDRESS HISTORY

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

Database #1:

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

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

Database #2:

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

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

Database #3:

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

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

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

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

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

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

(See pages 9-15)

TELEPHONE NUMBER DATABASES

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

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

(See pages 15-16)

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INVESTIGATORS
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PAGE 3

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000090

UTILITIES

Utilities databases identified no account associated with Jessica Sund.

REAL PROPERTY OWNERSHIP RECORDS

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

ALAMEDA COUNTY RECORDER INDEXES:

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

CALIFORNIA DMV RECORDS:

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

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

(See pages 16-18)

VEHICLE SIGHTINGS:

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

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

(See pages 18-23)

VOTER REGISTRATION:

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

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

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

(See pages 24-27)

BUSINESS ENTITIES/EMPLOYMENT RECORDS:

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

(See pages 27-28)

LIENS & JUDGMENTS:

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

CALIFORNIA SUPERIOR COURT CIVIL RECORDS:

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

(See pages 28-33)

CALIFORNIA SUPERIOR COURT CRIMINAL RECORDS:

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

ARIZONA SUPERIOR COURT CIVIL & CRIMINAL RECORDS:

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

NATIONWIDE FEDERAL BANKRUPTCY, CIVIL AND CRIMINAL COURT RECORDS:

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

INTERNET SEARCHES:

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

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

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INVESTIGATORS
SINCE 1953

PAGE 6

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

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

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

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

(See pages 34-43)

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

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

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

(See pages 44-49)

NEILSON AND MACRITCHIE
INVESTIGATORS
SINCE 1953

PAGE 7

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000094

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

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

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

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

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

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

(See pages 50-52)

SUBJECT INFO:

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

ADDRESS HISTORY

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

Database #1:

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

5/18/18: One current addresses was reported: 3024 California Street, Oakland, CA 94602, reporting dates – 10/2005-5/18/2018. The reporting dates for the subject address, 633 Alma Avenue, Apt. 5, Oakland, CA, were 10/2/2005 -11/03/2017. NOTE: The sudden appearance of an identical initial reporting date of 10/2005 for both addresses in the 5/18/18 datasearch indicates that this 10/2005 initial reporting date for both properties is due to a database error, and the original initial reporting dates identified on 12/5/2017 of 9/25/2011 for 633 Alma Avenue and 08/31/2017 for 3024 California Street are the more reliable dates.

Database #2:

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

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

Database #3:

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

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

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

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

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

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

DECEMBER 5, 2017 DATABASE SEARCHES:

Database #1

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Database #2

- 633 ALMA AVE APT 5, OAKLAND, CA 94610-3857, ALAMEDA COUNTY (Sep 2017)
- 6138 PARK AVE, RICHMOND, CA 94805-1229, CONTRA COSTA COUNTY (Mar 2005 - May 2005)
- 822 59TH ST, EMERYVILLE, CA 94608-1408, ALAMEDA COUNTY (Feb 2004 - May 2005)
- PO BOX 9045, OAKLAND, CA 94613-0045, ALAMEDA COUNTY (Mar 1998 - Sep 2001)
- 886 CLEVELAND ST, OAKLAND, CA 94606-1568, ALAMEDA COUNTY (Feb 1999)
- 3445 PIERSON ST, OAKLAND, CA 94619-3425, ALAMEDA COUNTY (Aug 1991 - Mar 1993)

Database #3

Name	Address	SSN / DOB	Phone
SUND JESSICA M	4x633 ALMA AVE 5 OAKLAND CA 94610-3857 Reported: 08/28/2008 - 12/05/2017 County: ALAMEDA	556-83-XXXX Issued: 1985 in CA DOB: 01/XX/1976 Age: 41	Cell: (510)206-5436 Cell: (510)306-5436 Landline: (510)836-0705
SUND JESSICA M	4x PO BOX 11634 OAKLAND CA 94611-0634 Reported: 06/20/2008 - 09/12/2008 County: ALAMEDA	556-83-XXXX Issued: 1985 in CA DOB: 01/XX/1976 Age: 41	

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

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

MAY 18, 2018 DATABASE SEARCHES:

Database #1:

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

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

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

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

6138 PARK AVE, RICHMOND, CA 94805-1229 (CONTRA COSTA COUNTY) (05/10/2005 to 05/24/2005)

3707 MALVERN RD, KINGSFORD HEIGHTS, IN 46346-3355 (LA PORTE COUNTY) (10/2008 to 10/2008)

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

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

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

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

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

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

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

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

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

Database #2:

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

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

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

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

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

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CITY OF OAKLAND

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

Housing and Community Development Department
Rent Adjustment Program

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

HEARING DECISION

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

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

HEARING DATE: May 30, 2018
June 4, 2018

SITE INSPECTION : June 4, 2018

DECISION DATE: December 20, 2018

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

SUMMARY OF DECISION

The petitioner's petition is DENIED.

INTRODUCTION

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

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

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

ISSUES PRESENTED

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

EVIDENCE

Petitioner's Status as a Tenant

Testimony of Jessica Sund - Petitioner

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

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

¹ Exhibit 1

² Exhibit 2

³ Exhibit 3

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

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

Testimony of Lucky Stewart – Agent for Owner

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

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

⁴ Exhibit 4

⁵ Exhibit 5

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

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

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

⁶ Exhibit 12

⁷ Exhibit 12

⁸ Exhibit 11

⁹ Exhibit 2

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

Testimony of Property Manager – Ursula Morales

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

Testimony of Don MacRitchie - Private Investigator

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

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

¹⁰ Exhibit I

¹¹ T16-0707 *Brown v. Wasserman*

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

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

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

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

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

Site Inspection

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

¹² Exhibits 7 and 8

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Petitioner's Status as a Tenant

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

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

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

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

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

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

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

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

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

Costa-Hawkins

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

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

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


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

ORDER

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

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

Dated: December 20, 2018



MAIMOONA SAHI AHMAD
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE
Case Number T18-0018

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

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

Documents Included

Hearing Decision

Manager

Thomas Preston
633 Alma Avenue
Oakland, CA 94619

Manager

Ursula Morales
633 Alma Avenue
Oakland, CA 94619

Owner

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

Owner Representative

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

Owner Representative

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

Tenant

Jessica Sund
633 Alma Avenue #5
Oakland, CA 94610

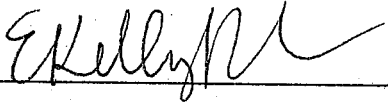
000110

Tenant Representative

Paul Kranz
639 San Gabriel Avenue
Albany, CA 94706

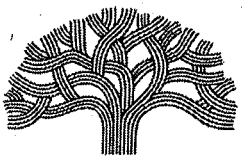
I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first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

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



Esther K. Rush

Oakland Rent Adjustment Program

 CITY OF OAKLAND	CITY OF OAKLAND RENT ADJUSTMENT PROGRAM 250 Frank Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721	For dates only RECEIVED JAN 09 2019 RENT ADJUSTMENT PROGRAM OAKLAND APPEAL
--	--	---

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

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

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

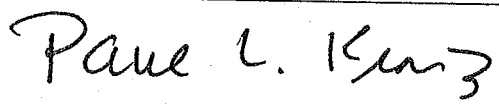
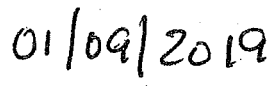
For more information phone (510) 238-3721.

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

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

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

<u>Name</u>	
<u>Address</u>	
<u>City, State Zip</u>	
<u>Name</u>	
<u>Address</u>	
<u>City, State Zip</u>	

	
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

For more information phone (510) 238-3721.

ATTACHMENT 1

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

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

ATTACHMENT 2

CITY OF OAKLAND

HOUSING & COMMUNITY DEVELOPMENT DEPARTMENT

RENT ADJUSTMENT DIVISION

500 FRANKLIN OAKLAND, CA 94612

TEL: 510.534.3300

OAKLAND, CA 94612

Jessica Sund
633 Alma Avenue #5
Oakland, CA 94610

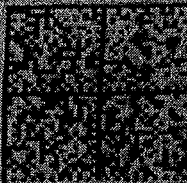
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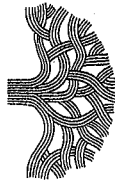


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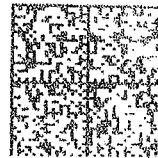
CITY OF OAKLAND



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

Paul Kranz
639 San Gabriel Avenue
Albany, CA 94706

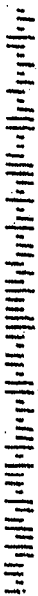
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LAW OFFICES
Paul L. Kranz
639 San Gabriel Avenue
Albany, California 94706
Telephone (510) 549-5900

RECEIVED

JUL 12 2019

**RENT ADJUSTMENT PROGRAM
OAKLAND**

July 5, 2019

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

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

Dear Ms. Barbara Kong-Brown

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

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

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

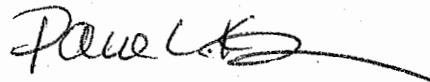
I look forward to hearing from you about these matters.

000119

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

Thank you for your consideration.

Very truly yours,

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

Paul L. Kranz

PLK:gr

000120

Kong-Brown, Barbara

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

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

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

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

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

Jessica Sund v. Vernon Street
Apartments, LP

T18-0018
633 Alma Street
#5

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

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

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INTRODUCTION

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

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

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

Petitioner's Brief in Support of Appeal
000122

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

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

STATEMENT OF FACTS

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

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

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

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

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

The Hearing Officer’s Decision and Findings

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

²See Exhibit 6, pp. 1–2

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

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

³See Attachment 6, p. 2

⁴See Attachment 6, pp. 2-3

⁵See Attachment 6, pp. 3, 24,

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

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

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

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

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

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

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

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

/ / /

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

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

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

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

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

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

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

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

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

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

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

MACRITCHIE: YES.

MR. KRANZ: AND WHAT DID THEY TELL YOU ?

MACRITCHIE: WHAT I JUST TOLD YOU.

ARGUMENT

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

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

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

II. The Decision Constitutes An Abuse of Discretion.

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

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

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

The decision thus reflects an abuse of discretion, all of which in Respondent's favor, and demonstrates a lack of objectivity and a prejudice towards Petitioner.

III. In Disregard of the Evidence, the Hearing Officer Arrived at the Unwarranted Conclusion, "The Petitioner's Testimony that She Temporarily Moved from the Alma Street Address to the California Street Address in October of 2017, After Her Request to Have Her Boyfriend Move Into Her Unit Was Denied, is Simply Not Credible"

This conclusion was at best misguided, as was her ancillary conclusion, "It is implausible that the petitioner's boyfriend, Cory Hamrick, would leave his two-bedroom house, that he owns and claims a homestead exemption for, to move into the Ms. Sund's one-bedroom apartment." (See Decision (Statement of Facts and Conclusions) at p. 7.)

Ms. Sund testified that she and her boyfriend had been together just two years; that were not married and that she did not know if the relationship would be permanent. (KR note 36.) For these reasons, she was not certain about where she would continue to live. She also testified that her baby was born with and still suffered from a serious, even potentially life-threatening condition that required around-the-clock monitoring, a circumstance that required her to live with her boyfriend.

This evidence was, further, undisputed.

The phenomena of single women choosing to have children is commonplace in our society, and hardly novel. This is reflected in the fact that it is now illegal to discriminate based

on familial status. In addition, the phenomena of children splitting their time between parents who live in different locations is ubiquitous in our society. Therefore, the hearing officer's above conclusions are unsupported by evidence, tone-deaf to contemporary realities, and inconsistent with the evidence that was submitted. Each was altogether unwarranted.

IV. Under CACI No. 203, The "Evidence" Respondent's Submitted and Cited in the Decision the Decision Deserved To Be Viewed With Distrust and Rejected.

CACI No. 203, entitled *Party Having Power to Produce Better Evidence*, provides as follows:

You may consider the ability of each party to provide evidence. If a party provided weaker evidence when it could have provided stronger evidence, you may distrust the weaker evidence.

Examples of Respondent's failure to provide stronger evidence when it could have or ostensibly could have produced stronger evidences are numerous and have been recounted above. They include Respondent's failure to produce employees claimed to have relevant information, and failure to produce declarations, documents, video footage, etc.. Indeed, testimony from Respondent's own witnesses was sufficient to defeat, and should have defeated, its claims. Respondent called three witnesses. Each offered significant evidence contradicting or inconsistent with Respondent's claims.

Its asset manager testified that the siting of the "international" couple was *not* itself the cause of the rent increase.

Respondent's 24/7 on-site property manager testified that she never saw a possible sublessee and in effect had no evidence that Respondent ever sublet. And Respondent's private investigator, who Respondent and the hearing officer insisted was an expert, found no evidence of subletting.

Also, Respondent offered no explanation for why it never responded the emails and phone calls Ms. Sund made to discuss her boyfriend and their baby staying in her unit. Moreover, Respondent never explained why its August 28th letter stated that it would be "amenable" to considering Ms. Sund's request when it allegedly already believed and was allegedly already investigating—and had received information that—Ms. Sund was subletting in

violation of her lease. Either the August 28th letter was disingenuous, or the landlord did not believe that Petitioner was subletting—if not *both*.

Ms. Sund testified on the first day of the hearing that she never received an August 22nd letter warning her about subletting. The letter was anonymously signed, "The Management." And why didn't Stewart, who said he wrote the letter, testify that *he* posted and mailed it? (KR note 48.) Also, given the weight Respondent places on that letter, why didn't its private investigator interview Mr. Stewart about the details it contained? Why wasn't a declaration from Mr. Stewart presented, at least by the second day of the hearing, five days later?

V. The Residential Rental Adjustment Program and Appeals Board Are Authorized Under Costa-Hawkins to Regulate or Monitor the Grounds for Eviction.

In August 1995, California enacted Civil Code sections 1954.50 through 1954.535, the Costa-Hawkins Rental Housing Act (Costa-Hawkins), which established "what is known among landlord-tenant specialists as 'vacancy decontrol,' declaring that '[n]otwithstanding any other provision of law,' all residential landlords may, except in specified situations, 'establish the initial rental rate for a dwelling or unit.'" (*DeZerega v. Meggs* (2000) 83 Cal. App. 4th 28, 41, 99 Cal. Rptr. 2d 366; see Civ.Code § 1954.53, subd. (a).) The effect of this provision was to permit landlords "to impose whatever rent they choose at the commencement of a tenancy." (*Cobb v. San Francisco Residential Rent Stabilization and Arbitration Bd.* (2002) 98 Cal.App.4th 345, 351, 119 Cal. Rptr. 2d 741.) However, the Legislature was well aware, however, that such vacancy decontrol gave landlords an incentive to evict tenants that were paying rents below market rates. (*Bullard v. San Francisco Residential Rent Stabilization Bd.* (2003) 106 Cal. App. 4th 488, 492, 130 Cal. Rptr. 2d 819). Accordingly, the Costa Hawkins statute expressly preserved the authority of local governments "to regulate or monitor the grounds for eviction." (Civ.Code § 1954.53, subd. (e).)

A. The Evidence Establishes a Case of Constructive Eviction.

The evidence here establishes a constructive eviction of Ms. Sund because the rent increase Respondent sought meant that Ms. Sund would no longer be able to reside in her unit. She testified she cannot afford a more than doubling of her rent. The rent board cannot meaningfully monitor or regulate the grounds of this eviction without examining the reasons for

it. Petitioner contends that the reason was her request that her boyfriend and baby's father, and later their child, be able to reside in her unit.

Ms. Sund had a right to have the father of her expected child and their daughter move in with her. This right accrued when she notified the landlord of as much. It was improper and offensive for the landlord to insist that Ms. Sund had to wait to "revisit this issue down the road," and it violated her rights. Further, her immediate subsequent phone calls to do just that were ignored by the landlord, until the landlord served her with the Notice of Change of Terms-Rent Increase.

It is illegal to discriminate in housing based on pregnancy or family status, under both state (FEHA, DFEH) and federal (FHA, HUD) law and agency regulations. The landlord cannot impose conditions on Petitioner's exercise of that right. That Respondent ignored the phone calls Petitioner made in an effort to exercise that right was unreasonable—especially after it had stated that it would consider her request, i.e., that it would "revisit this issue". The landlord never responded except by way of a notice of rent increase. This was despite the fact that it had already independently verified that Petitioner was pregnant and who the father was. (KR note 53.) Respondent never asked for any additional information. This evidence establishes an attempted illegal eviction.

B. The Evidence Establishes a Case of Retaliation.

It was within days of Petitioner's request that the Respondent served her with a notice of rent increase. That this occurred within days after Petitioner sought to exercise certain rights provided to her by law. This is undeniable. The *only* response or communication Petitioner *ever* received after seeking to exercise these rights was the notice of rent increase. This was retaliation. Therefore, the rent increase being sought is impermissible.

C. The City of Oakland's Prohibition Against Discrimination and Harassment, as Embodied in OMC Chapter 8.22, Provided the Hearing Officer With the Authority to Consider the Evident Discrimination and Harassment in This Case.

The laws of the State of California and the Housing Element of the General Plan of the City of Oakland prohibit arbitrary discrimination by landlords." (OMC § 8.22.300.) Basic fairness requires that a landlord must not terminate the tenancy of a residential tenant without

good, just, non-arbitrary, non-discriminatory reasons. (*Ibid.*) The rising market demand for rental housing in Oakland creates an incentive for some landlords to engage in harassing behavior, including:

[R]epeated acts or omissions of such significance as to substantially interfere with or disturb the comfort, repose, peace or quiet of any person lawfully entitled to occupancy of such dwelling unit and that cause, are likely to cause, or are intended to cause any person lawfully entitled to occupancy of a dwelling unit to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy

(See OMC § 8.22.610E, .8.22.640A(15).)

In other short, the purposes of Chapter 8.22 plainly include preventing discrimination and harassment. It is *impossible* to fulfill these purposes without considering evidence of either discrimination or of harassment when there is such evidence. Yet, the hearing officer made it clear during the initial May 30 hearing in this matter that she would not consider evidence of discrimination. Petitioner did not seek to have this evidence considered for the purpose of monetary damages or other affirmative relief. It was offered as a defense to the respondent's attempt to increase her rent [and to thereby effectively evict her]. The hearing officer's refusal to consider this evidence was error.

VII. Petitioner's Unit Is Not Exempt Under Costa Hawkins Since the Vacancy De-Control is Inapplicable Here.

The effect of section 1954.53, subdivision (a)⁵ of Costa-Hawkins is to permit landlords "to impose whatever rent they choose at the commencement of a tenancy." (See *Cobb v. San Francisco Residential Rent Stabilization and Arbitration Bd.* (2002) 98 Cal. App. 4th 345, 351.) Section 1954.53, subdivision (d)(2) further provides,

⁵Subdivision (a) in relevant part provides that an owner of residential real property may establish the initial rental rate for a dwelling or unit.

If the original occupant or occupants who took possession of the dwelling or unit pursuant to the rental agreement with the owner no longer permanently reside there, an owner may increase the rent by any amount allowed by this section *to a lawful sublessee or assignee* [emphasis added].

That Ms. Sund is the original occupant in lawful possession of the subject unit is in uncontested. There is no claim that at any time she notified the owner any intent to vacate or terminate her tenancy.⁶ The dispute here revolves whether or not Ms. Sund has continued to permanently reside in her unit.

The word "permanently" is undefined in Costa-Hawkins *except* with reference to subletting and assignment. (See *ibid*; see also §1954.51.) Yet, implicit in the statutory language is that a rent increase is unwarranted absent the creation of a new tenancy. (See § 1954.53 subd. (a) & (d)(2).)

Here, there was no new tenancy: Contrary to the owner's theory of this case and the hearing officer's decision, there is no substantial or admissible evidence that Ms. Sund sublet or assigned the unit at any time since the inception of her tenancy in July, 2008. For the above reasons, subdivision (d)(2) is inapplicable.

/ / /

Submitted 1/24/19

Paul Kranz
Paul Kranz,
Esq.

⁶ Indeed, as she testified on May 30th and as was earlier stated, she continues to retain personal possessions at 633 Alma Street, receive certain items of mail there, use the shower, occasionally eat, take care of her plants, and so forth.

Attachment 1

Update

1 message

Thu, Aug 24, 2017 at 10:10 AM

To: 633alm@gmail.com

August 24, 2017

Jessica Sund
633 Almaden Ave. #5
Oakland, CA 94610
jessica.sund@gmail.com

Thomas Preston, Property Supervisor
Almaden Apartments, LP
633 Almaden Ave.
Oakland, CA 94610
tel: (916) 772-1291
t.preston@almadens.com

Dear Mr. Preston,

Please accept this email as written notice that my significant other will be moving into my apartment at 633 Almaden Ave. #5, Oakland, CA 94610 this weekend, on August 25th or 26th, 2017. Also, I am pregnant and my baby is expected in October 2017. I am sending this email to you because I do not have a mailing address for you.

Thank you.

Sincerely,
Jessica Sund

8/24/17 T. Preston sent email (above), no reply

8/28/17 T. Preston left vmessage re: did you receive email sent 8/24/17? no reply

8/29/17 T. Preston left vmessage " " no reply

Attachment 2

Alma Apartments LP

633 Alma
Oakland, CA

Jessica Sund
633 Alma # 5
Oakland, Ca

August 28, 2017

RE: 633 Alma #5 demand.

Dear Ms. Sund:

Thank you for your email and voicemail.

The fundamental problem with your "request" is that it has been couched as a demand. As you know, the operative lease has a "no subletting/no assignment" clause and a "use/occupancy" provision. Nevertheless, this landlord is typically amendable to accommodate tenants who, in good faith, approach the landlord with a particular need which may justify a relaxation or suspension of a lease covenant. However, you did everything but make a reasonable and proper request. Rather, instead of making a request well in advance of the requested move-in date, and thereafter providing necessary information and documentation to management, you unilaterally stated that your significant other will be moving in the next day.

Please be advised that if he does move in, or has already moved in, your lease and tenancy will be terminated for unlawful subletting. If you would like to re-visit this issue down the road in a more appropriate fashion, then management may be more receptive. Until then however, the "no subletting" clause in the lease will not be waived and shall be strictly enforced.

This is written confirmation that your request has been denied. Should you have any further questions, please review the lease in which you signed and abide by it in its entirety.

Sincerely,



Thomas Preston

Property Supervisor

000139

ENCLAVE CA 946

07 SEP 29/17 11 21 L



Jessica Maggie Sand
All City Company
633 Alameda Street
Oakland, CA 94610

MAILED - 10/17/17



Attachment 3

000141

THIS NOTICE TO CHANGE TERMS OF TENANCY HEREBY SUPERSEDES AND REPLACES ANY OTHER NOTICE TO CHANGE TERMS OF TENANCY AND/OR ANY OTHER RENT INCREASE NOTICE(S) PREVIOUSLY SERVED UPON YOU.

NOTICE TO CHANGE TERMS OF TENANCY
-RENT INCREASE NOTICE-

To **Jessica Maggie Sund (original occupant), AND ALL SUBTENANTS IN POSSESSION, name(s) unknown**, as well as any other occupant(s) claiming the right to possession of the following residential rental premises:

633 Alma Street, Unit Number 5
City of Oakland, County of Alameda, State of California 94610
--including all associated housing privileges-- (the "Premises")

You are hereby notified that, effective **December 1, 2017**, not less than sixty (60) days after service of this notice is completed upon you, the terms of your tenancy of the Premises will be changed as follows:

The monthly rental thereof will be changed from \$908.67 per month to two thousand ninety five dollars (\$2,095) per month, payable in the advance of the first day each and every month you continue to hold possession of the Premises.

All other terms of the tenancy will remain unchanged.

You are further notified that a negative credit report reflecting on your credit history may be submitted to a credit-reporting agency if you fail to fulfill the terms of your credit obligations.

You are hereby notified that, pursuant to California Civil Code Section 1954.50, *et seq.* (Costa-Hawkins Rental Housing Act), the Premises and/or your tenancy therein are not subject to the City of Oakland's Rent Adjustment Program (Chapter 8.22 of the Oakland Municipal Code) for purposes of this rent increase. The landlord and owner of the Premises contends that the last original occupant, Jessica Maggie Sund, no longer permanently resides at the Premises, and that all current occupants are subsequent occupants and sublessees who commenced occupancy of the Premises on or after January 1, 1996.

Pursuant to the Costa-Hawkins Rental Housing Act (Civil Code Sections 1954.50, et seq.), please note as follows:

Conditions for Establishing the Initial Rental Rate Upon Sublet or Assignment:

(A) Where the original occupant or occupants who took possession of the dwelling or unit pursuant to the rental agreement with the owner no longer permanently reside there, an owner

may increase the rent by any amount allowed by this section to a lawful sublessee or assignee who did not reside at the dwelling or unit prior to January 1, 1996. However, such a rent increase shall not be permitted while:

(i) The dwelling or unit has been cited in an inspection report by the appropriate governmental agency as containing serious health, safety, fire, or building code violations, as defined by Section 17920.3 of the California Health and Safety Code, excluding any violation caused by a disaster; and,

(ii) The citation was issued at least 60 days prior to the date of the vacancy; and,

(iii) The cited violation had not been abated when the prior tenant vacated and had remained unabated for 60 days or for a longer period of time. However, the 60-day time period may be extended by the appropriate governmental agency that issued the citation.

(B) This provision shall not apply to partial changes in occupancy of a dwelling or unit where one or more of the occupants of the premises, pursuant to the agreement with the owner, remains an occupant in lawful possession of the dwelling or unit, or where a lawful sublessee or assignee who resided at the dwelling or unit prior to January 1, 1996, remains in possession of the dwelling or unit.

(C) Acceptance of rent by the owner shall not operate as a waiver or otherwise prevent enforcement of a covenant prohibiting sublease or assignment or as a waiver of an owner's rights to establish the initial rental rate unless the owner has received written notice from the tenant that is party to the agreement and thereafter accepted rent.

Information regarding this NOTICE may be obtained from the City of Oakland's Rent Adjustment Program. Parties seeking legal advice concerning evictions should consult with an attorney. The Rent Program is located at 250 Frank H. Ogawa Plaza, Suite 5313, Oakland, California 94612, 510.238.3721, website: www.oaklandnet.com. Please refer to the attached City of Oakland Rent Adjustment Program *Notice to Tenants of Residential Rent Adjustment Program*.

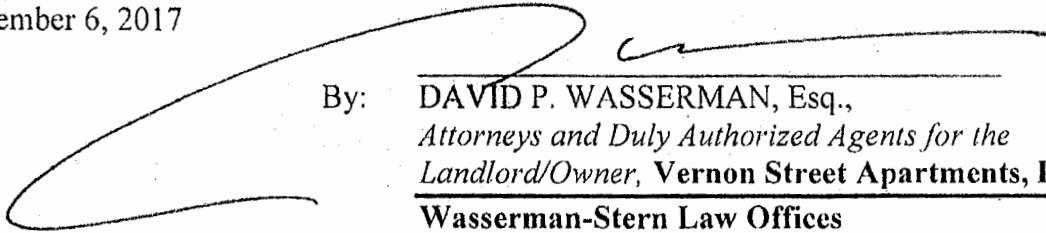
Rent increases imposed pursuant to the Costa-Hawkins Rental Housing Act are effective upon the expiration of the notice period prescribed by California Civil Code section 827 and are not governed by the Rent Adjustment Program..

Questions about this NOTICE may be directed to the undersigned, who is the agent for the landlord and owner.

WASSERMAN-STERN

Dated: September 6, 2017

By:


DAVID P. WASSERMAN, Esq.,
Attorneys and Duly Authorized Agents for the
Landlord/Owner, Vernon Street Apartments, LP

Wasserman-Stern Law Offices

2960 Van Ness Avenue

San Francisco, CA 94109

Tel. No.: (415) 567-9600

Fax. No.: (415) 567-9696

Email: dwasserman@wassermanstern.com



P.O. BOX 70243, OAKLAND, CA 94612-2043
 Department of Housing and Community Development
 Rent Adjustment Program

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

NOTICE TO TENANTS OF THE RESIDENTIAL RENT ADJUSTMENT PROGRAM

- Oakland has a Rent Adjustment Program (“RAP”) that limits rent increases (Chapter 8.22 of the Oakland Municipal Code) and covers most residential rental units built before 1983. For more information on which units are covered, contact the RAP office.
- Starting on February 1, 2017, an owner must petition the RAP for any rent increase that is more than the annual general rent increase (“CPI increase”) or allowed “banked” rent increases. These include capital improvements and operating expense increases. For these types of rent increases, the owner may raise your rent only after a hearing officer has approved the increase. No annual rent increase may exceed 10%. You have a right to contest the proposed rent increase by responding to the owner’s petition. You do not have to file your own petition.
- **Contesting a Rent Increase:** You can file a petition with the RAP to contest unlawful rent increases or decreased housing services. To contest a rent increase, you must file a petition (1) within ninety (90) days of the notice of rent increase if the owner also provided this Notice to Tenants with the notice of rent increase; or (2) within 120 days of the notice of rent increase if this Notice to Tenants was not given with the notice of rent increase. If the owner did not give this Notice to Tenants at the beginning of your tenancy, you must file a petition within ninety (90) days of first receiving this Notice to Tenants. Information and the petition forms are available from the RAP drop-in office at the Housing Assistance Center: 250 Frank H. Ogawa Plaza, 6th Floor, Oakland and at: <http://www2.oaklandnet.com/Government/o/hcd/o/RentAdjustment>.
- If you contest a rent increase, you must pay your rent with the contested increase until you file a petition. If the increase is approved and you did not pay the increase, you will owe the amount of the increase retroactive to the effective date of increase.
- Oakland has eviction controls (the Just Cause for Eviction Ordinance and Regulations, O.M.C. 8.22) which limit the grounds for evictions in covered units. For more information contact the RAP office.
- Oakland charges owners a Rent Program Service Fee per unit per year. If the fee is paid on time, the owner is entitled to get half of the fee from you. Tenants in subsidized units are not required to pay the tenant portion of the fee.
- Oakland has a Tenant Protection Ordinance (“TPO”) to deter harassing behaviors by landlords and to give tenants legal recourse in instances where they are subjected to harassing behavior by landlords (O.M.C. 8.22.600). (City Council Ordinance No. 13265 C.M.S.)
- The owner ___ is ___ is not permitted to set the initial rent on this unit without limitations (such as pursuant to the Costa-Hawkins Act). If the owner is not permitted to set the initial rent without limitation, the rent in effect when the prior tenant vacated was _____.

TENANTS’ SMOKING POLICY DISCLOSURE

- Smoking (circle one) IS or IS NOT permitted in Unit _____, the unit you intend to rent.
- Smoking (circle one) IS or IS NOT permitted in other units of your building. (If both smoking and non-smoking units exist in tenant’s building, attach a list of units in which smoking is permitted.)
- There (circle one) IS or IS NOT a designated outdoor smoking area. It is located at _____.

I received a copy of this notice on _____ (Date) _____ (Tenant’s signature)

此份屋崙(奧克蘭)市租客權利通知書附有中文版本。請致電(510) 238-3721 索取副本。
 La Notificación del Derecho del Inquilino está disponible en español. Si desea una copia, llame al (510) 238-3721.

DAVID P. WASSERMAN, ESQ. (171923)

(415) 567-9600

WASSERMAN-STERN LAW OFFICES

2960 Van Ness Avenue, Suite B

San Francisco, California 94109

Ref. No. Or File No.

W2683460

Attorneys for: 633 ALMA STREET

Insert name of court, judicial district and branch court, if any:

Plaintiff:

633 ALMA STREET

Defendant:

JESSICA MAGGIE SUND (original occupant)

POS BY MAIL

Hearing Date:

Time:

Dept/Div:

Case Number:

At the time of service I was at least 18 years of age and not a party to this action.

On September 6, 2017, I served the within:

NOTICE TO CHANGE TERMS OF TENANCY - RENT INCREASE NOTICE; NOTICE TO TENANTS OF THE RESIDENTIAL RENT ADJUSTMENT PROGRAM

on the defendant in the within action by placing a true copy in a sealed envelope with postage fully prepaid for first class in the United States mail at San Francisco, California, addressed as follows:

JESSICA MAGGIE SUND (original occupant); ANY/ALL UNNAMED OCCUPANTS
633 Alma Avenue, Unit 5
Oakland, CA 94610

Person serving:

Scott Lane

Wheels of Justice, Inc.

52 Second Street, Third Floor

San Francisco, California 94105

Phone: (415) 546-6000

a. Fee for service:

d. Registered California Process Server

(1) Employee or independent contractor

(2) Registration No.: 1126

(3) County: San Francisco

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

Date: September 6, 2017

Signature: _____

Scott Lane



Attachment 4

Alma Apartments, LP

633 Alma Ave
Oakland, CA 94610

August 22, 2017

Jessica Sund
633 Alma Apt. 5
Oakland, CA 94610

Dear Jessica Sund,

In the short time that we have taken over the management and ownership of the building, the managers have noticed and received complaints regarding an overwhelming amount of random visitors coming and going from unit 5. These visitors seem to have access and keys to come and go freely, yet you are not around. What is also troubling is that some of them have been disturbing your neighbors and this is their home.

Your neighbors and your landlord require cooperation and performance of the lease. This lease is in your name only. Your lease does not allow for you to sublet or assign any part of the premise.

Please review section 11. USE/OCCUPANCY and also Section 15. ASSIGNMENT AND SUBLETTING in your lease as we believe these are very clear and you have already violated the days.

Thank you in advance
Sincerely yours,

Management

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PROOF OF SERVICE
Case Number T18-0018

I, the undersigned, certify and attest as follows:

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

On January 24, 2019, I caused the within:

RESIDENTIAL RENT ADJUSTMENT PROGRAM—
PETITIONER JESSICA SUND'S BRIEF IN SUPPORT OF APPEAL;
ATTACHMENTS TO APPEAL

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

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

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

Executed in Albany in the County of Alameda, California, on January 24, 2019.

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

Gloria Reynolds

Gloria Reynbls

000148

CITY OF OAKLAND RENT ADJUSTMENT PROGRAM

**Notice Of Errata and Amended Submission In Support
Of Appeal of Hearing Officer's Decision**

CASE No. T18-0018

RECEIVED
CITY OF OAKLAND
RENT ARBITRATION PROGRAM
2019 JAN 29 AM 11:25

JESSICA SUND,
Petitioner and Tenant

v.

**VERNON STREET APARTMENTS, LP, AKA FLYNN FAMILY HOLDINGS,
LLC,,**
Owner and Respondent.

LAW OFFICES OF PAUL L. KRANZ
PAUL L. KRANZ (BAR No. 114999)
639 SAN GABRIEL AVENUE
ALBANY CA 94706
(510) 549-5900
kranzlaw@sbcglobal.net

ATTORNEYS FOR PETITIONER
JESSICA SUND

000149

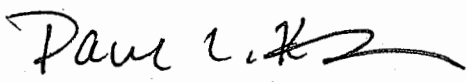
NOTICE OF ERRATA

Petitioner submits this Notice of Errata and the attached amended submission in support of her appeal in case no. T18-0018. The attached submission is substantially the same as her submission filed on January 24, 2019, and primarily differs from the submission filed on January 24, 2019 by containing certain format changes, correction of typographical errors, and the inclusion of certain limited additional portions of the testimony at the subject hearing.

For the following reasons, Petitioner also asserts that this submission should be considered and that it should not be considered late. First, as stated in and evidenced by Petitioner's previous filings, the hearing officer's decision was not served by mail until December 26, 2018, as evidenced by the postmarks on the envelopes in which the hearing officer's decision was mailed and received by both Petitioner and her attorney. An appellant is permitted 35 days from the date of mail service to file a notice of appeal and any submissions in support of the appeal (20 days to file the notice of appeal and 15 days thereafter to file submissions). Thirty five days from the date the decision was mailed is January 30, 2019. Therefore, this submission should be considered timely. Second, Petitioner's attorney Paul L. Kranz has been out of his office and out of state because of the recent very serious illness of an immediate family member. For this reason, he was out of his office, from December 21, 2018 to January 6, 2019 and again from January 21, 2019 to January 25, 2019. Therefore, Petitioner's attorney's very limited availability during this period when the appeal had to be prepared and finalized constitutes good cause to permit this amended submission.

Dated: January 28, 2019

Respectfully submitted,

By: 
Paul L. Kranz

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Petitioner Jessica Sund appeals from the decision of Hearing Officer Maimoona Sah Ahmad. Petitioner notes for the record that her petition was filed on November 29, 2018. The hearing commenced six months later, on May 30, 2018, and concluded on June 4, 2018. The decision did not issue for more than six months, on December 20, 2018. According to the proof of service attached to it, it was mailed on December 20, 2018, but the envelopes in which it was contained were postmarked December 26, 2018.

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

INTRODUCTION

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

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

The landlord did not present any evidence to contradict these facts. Instead, the landlord contrived the story that Ms. Sund was residing with her boyfriend because she was subletting her unit in order to take advantage of its below-market rent and make a profit. But the landlord did not present an iota of credible and competent evidence to support its claim. With the exception

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

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

STATEMENT OF FACTS

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

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

Attachment 2.) Per Mr. Preston, any request had to be made “well in advance of the requested move-in date, and thereafter providing necessary information and documentation to management.” (*Ibid.*) On the same day Ms. Sund made her request, and on the following day, August 29, 2017, Ms. Sund called Preston three times to further discuss her request. (See Attachment 5 at 1–2; Attachment 1.) Neither Preston nor anyone else responded on behalf of the landlord; Preston did not return her phone messages; and, he did not respond by email or by letter. (See *ibid.*) Instead, the very next communication Ms. Sund received from the landlord was on or about September 6, 2017, when the landlord personally served Ms. Sund with a Notice of Change Terms of Tenancy-Rent Increase Notice [Costa-Hawkins], increasing her rent from \$908.67 to \$2,095, and stating that “Jessica Maggie Sund no longer resides at the Premises and that all current occupants are subsequent occupants and subleases” (See Attachment 3; Attachment 5 at 3.) In fact, there were no other current or subsequent occupants and subleases at the subject premises and Ms. Sund still resided there by herself (See Attachment 5 at 2.)

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

Ms. Sund also continued to stay with her boyfriend after the baby was born because of medical issues the baby suffered that required 24-hour monitoring. (See Attachment 5 at 4–6.) These were serious medical problems; potentially life-threatening for her newborn daughter. (See *id.* at 6.)

The Hearing Officer’s Decision and Findings

The hearing officer’s decision relies on testimony from the landlord’s “asset manager” Lucky Stewart stating that the subject property was acquired by his employer in June 2017; that shortly thereafter, he received reports from tenants that Ms. Sund was subletting and that there

were strangers with keys to her unit and that Ms. Sund was no longer there²; that he personally observed a tall blond couple with luggage coming out of the unit speaking a foreign language, who ignored him when he tried to speak to them³; and that, based on this information, he had attorney conduct an investigation involving LexisNexis, which identified a second address (the California Street address) "linked to" Ms. Sund and which prompted his attorney to say, "Yeah, she's no longer living there."⁴ He also testified this led him to conduct an internet search in which he located a baby registry connected to Ms. Sund and her boyfriend, Cory Hamrich⁵; and that he also located on-line "couchsurfing[.com]" listings "from them renting out apartments in, under her or Cory's name."⁶ And that, based on this information, he issued a letter dated August 22, 2017, warning Ms. Sund not to sublet.

The August 22 warning letter, signed "The Management," stated that property managers had noticed and received complaints of an "overwhelming amount of random visitors coming and going from [her] unit, and with keys to the unit." (See Attachment 4.) Ms. Sund testified that she never received the letter. (See Attachment 5 at 10.) With the exception of Lucky Stewart's testimony that he had personally observed what he believed to be an "international" couple (tall, blonder, speaking a foreign language), nothing else he testified to was supported by admissible evidence. There was no evidence of any internet search conducted by him or by the landlord's attorney; no evidence of "managers" noticing any suspected sublessees⁷; no evidence of an "overwhelming amount of random visitors." (See Attachments 6-8, inclusive.) As for the

²See Attachment 6 at 1-2

³See Attachment 6 at 2, 15

⁴See Attachment 6 at 2-3

⁵See Attachment 6 at 3, 24,

⁶See Attachment 6 at 3; see also *id.* at 10-11, 7-8

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

"couchsurfing"⁸ posts (unsupported by any evidence), Stewart later changed his testimony, saying that he didn't recall or see any reference to any specific address. (See Attachment 6 at 9–10.) He also changed his testimony and said that he did not couchsurfing listing pertaining to Ms. Sund. (See Attachment 6 at 7–8.) The couchsurfing testimony was also hearsay.

Stewart characterized the August 22nd letter, sent after his claimed "international" couple sighting, as a "warning". (See Attachment 6 at 4, 7.) Stewart went on to explain, "Then when we saw that it [subletting] was still continuing, and it was observed that there were still people coming and going and not the tenant, we resorted to serving the Costa-Hawkins [rent increase]." (See *id.* at 4.) Not only were there no documents or declarations or notes to support *any* subletting (persons "coming and going" from Ms. Sund's unit) after August 22 or at *any* time, but there were *no firsthand accounts whatsoever of any person(s) coming and going*, other than the "international" couple Mr. Stewart claimed he'd seen. (See Attachments 6–8.) The only property manager who testified—the landlord's 24/7 on-site property manager Ursula Morales—stated that *she never saw anyone coming and going from Ms. Sund's unit, either*. (See Attachment 7 at 7.) Yet, the lack of evidence of anybody coming and going is nowhere cited or acknowledge in the hearing officer's decision.

Also, after initially testifying that she'd been informed of "strangers coming in and out of" Ms. Sund's unit, Ms. Morales later testified that she'd received just *one* such complaint from a single tenant, in around November or December 2017. (See Attachment 7, inclusive.) The complaining tenant had reported "smoke and noise," apparently attributed to Ms. Sund's unit. (See *id.* at 2.) When Ms. Morales went downstairs to investigate, she found "nothing out of the ordinary" and just some TV noise. (See Attachment *id* at 3.) The purported complaint was also inadmissible; plainly hearsay. Although Morales testified that this complaint was sent to her by email (See *id* at p. 5), no email was offered as evidence. And on cross-examination, Morales testified that the complaint was "more about" noise than anything else. (See Attachment 7 at 6.) Finally, when asked by the hearing officer if the extent of the complaint was limited to smoke

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

and noise, Ms. Morales replied, "M-hm" (See *id.* at 7.). However, none of these obvious inconsistencies or lapses in testimony are cited or acknowledged in the hearing officer's decision.

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

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

There were also surveillance cameras at the property. According to Stewart's testimony, at the time of the hearing there were about five cameras total. (See Attachment 6 at 18.) These included a camera at the back of the first floor, where Ms. Sund's unit is located. (See *ibid.*) There were also multiple cameras in front of the building. (See *ibid.*) Mr. Stewart testified that he never checked any cameras for recordings of people coming in and out of Ms. Sund's apartment. (See Attachment 6 at 20–21.) When asked why, his incredible answer was, "If I thought it ["whether she's subletting"] was an important issue, I would have presented the footage. We didn't produce the footage.." (See *id.* at 21.) Yet, the decision contains *no reference to the landlord's failure to produce any footage, despite the fact that there were multiple recording cameras on the property.*

Apart from the hearing officer's misplaced reliance on Mr. Stewart's testimony, she also

relied on the testimony of Don MacRitchie, a private investigator hired by the owner. The hearing officer's summary of this testimony concludes, "MacRitchie opined that a preponderance of the evidence supports a conclusion that Ms. Sund's permanent place of residence is not the subject property . . . [.]"⁴ (See Hearing Decision ("Decision") at 6.)

"Permanent place of residence" in the context of Costa-Hawkins is a legal issue, and an expert is prohibited from testifying as to a legal conclusion. "There are limits to expert testimony, not the least of which is the prohibition against admission of an expert's opinion on a question of law. (*Ferreira v. Workmen's Comp. Appeals Bd.* (1974) 38 Cal.App.3d 120; *Summers v. A.L. Gilbert Co.* (1999) Cal. App. 4th 1155, 1178.)

More importantly, the landlord's expert, MacRitchie—after testifying that he'd conducted extensive data-base searches in the course of investigating Ms. Sund's status— testified that he was unable to identify a single individual who'd ever sublet Ms. Sund's unit. (See Attachment 8 at 1.) And he stated that *he had not been able to find any evidence that Ms. Sund was subletting.* (See Attachment 8, inclusive.) *Therefore, his opinion was Ms. Sund was not subletting.* Once again, reference to this testimony is omitted from the decision.

Further, after the first day of testimony, at which he was present throughout, MacRitchie was asked to interview four tenants from the subject premises. (The first day of testimony was Friday, May 30th; the second was June 4th.) He did so. And none of them had knowledge of any other persons associated with Ms. Sund's unit, according to his testimony as follows:

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

MACRITCHIE: THEY DIDN'T, THEY THOUGHT IT POSSIBLE.

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

MACRITCHIE: ALL DIDN'T HAVE DEFINITE KNOWLEDGE, AND THEY ALL WERE AWARE THAT THERE WERE PEOPLE THAT WERE IN THE BUILDING THAT WEREN'T ASSOCIATED WITH APARTMENTS, AND THEY DIDN'T KNOW FOR

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

CERTAIN WHAT APARTMENT THEY WERE ASSOCIATED WITH. SO THEY THOUGHT THEY WERE SOME TYPE OF SUBTENANTS, BUT THEY COULD NOT DEFINITELY ASSOCIATE WITH MS. SUND'S APARTMENT.

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

MACRITCHIE: YES.

MR. KRANZ: AND WHAT DID THEY TELL YOU ?

MACRITCHIE: WHAT I JUST TOLD YOU.

(See *id.* at 1.)

ARGUMENT

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

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

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

II. The Decision Constitutes An Abuse of Discretion.

An abuse of discretion is a plain error, discretion exercised to an end not justified by the

evidence, a judgment that is clearly against the logic and effect of the facts as are found. (*Rabkin v. Oregon Health Sciences Univ.* (9th Cir. 2003) 350 F.3d 967, 977; *In re Korean Air Lines Co., Ltd.* (9th Cir. 2011) 642 F.3d 685, 698 n.11.)

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

The hearing officer's exercise of discretion reflects judgement that was clearly against the logic and effect of the facts. The selective use of evidence, the mischaracterizations and misstatements of other of evidence, and the plain lack of objectivity, as evinced by the decision, demonstrates a judgement inconsistent with logic and the facts. The decision consistently relied on evidence that was inadmissible, while at the same entirely ignoring other material; evidence, much of which was submitted on behalf of the Respondent.

The decision thus reflects an abuse of discretion, demonstrates a lack of objectivity and a prejudice towards Petitioner.

III. In Disregard of the Evidence, the Hearing Officer Arrived at the Unwarranted Conclusion That "The Petitioner's Testimony that She Temporarily Moved from the Alma Street Address to the California Street Address in October of 2017, After Her Request to Have Her Boyfriend Move Into Her Unit Was Denied, is Simply Not Credible"

This conclusion was at best misguided, as was her ancillary conclusion, "It is implausible that the petitioner's boyfriend, Cory Hamrick, would leave his two-bedroom house, that he owns and claims a homestead exemption for, to move into the Ms. Sund's one-bedroom apartment." (See Decision (Statement of Facts and Conclusions) at p. 7.)

Ms. Sund testified that she and her boyfriend had been together just two years; that they were not married; that she did not know if the relationship would be permanent. (See Attachment 5 at 13.) For these reasons, she was not certain about where she would live. She also testified that her baby was born with and still suffered from a serious, even potentially life-threatening condition that required around-the-clock monitoring, a circumstance that required her

to live with her boyfriend. (See Attachment 5 at 5.) This evidence was, further, undisputed.

The phenomena of single women choosing to have children is commonplace in our society, and hardly novel. This is reflected in, for example, the fact that it is now illegal to discriminate based on marital or familial status. In addition, the phenomena of children splitting their time between parents who live in different locations is ubiquitous in our society. Therefore, the hearing officer's above conclusions are unsupported by evidence, are tone-deaf to contemporary realities, and are inconsistent with the evidence that was submitted. Each conclusion was altogether unwarranted.

IV. Under CACI No. 203, The "Evidence" Respondent's Submitted and Cited in the Decision Deserved To Be Viewed With Distrust and Rejected.

California Civil Jury Instruction (CACI) No. 203, entitled *Party Having Power to Produce Better Evidence*, provides as follows:

You may consider the ability of each party to provide evidence. If a party provided weaker evidence when it could have provided stronger evidence, you may distrust the weaker evidence.

Examples of Respondent's failures to provide stronger evidence when it could have produced stronger evidence are numerous and have been recounted above. They included, but are not limited to, Respondent's failure to produce employee witnesses claimed to have relevant information; its failure to produce documents, video footage, etc. Indeed, testimony from Respondent's *own* witnesses was sufficient to defeat, and should have defeated, its claims. Respondent called three witnesses. Each offered significant evidence contradicting or inconsistent with Respondent's claims. Some examples are:

Respondent's asset manager testified that the sighting of the "international" couple was *not* itself the cause of the rent increase. Respondent's 24/7 on-site property manager testified that she never saw a possible a sublessee and in effect had no evidence that Respondent ever sublet. And Respondent's private investigator, who Respondent and the hearing officer insisted was an expert, could not find any evidence of subletting.

Also, Respondent offered no explanation for why it never responded to the emails and phone calls Ms. Sund made to discuss her boyfriend and their baby staying in her unit.

Moreover, Respondent never explained why its August 28th letter stated that it would be "amenable" to considering Ms. Sund's request when it allegedly already believed that she was subletting and was allegedly already investigating as much. Either the August 28th letter was disingenuous, or the landlord did not believe that Petitioner was subletting—if not *both*.

Ms. Sund testified on the first day of the hearing that she never received an August 22nd letter warning her about subletting. The letter was anonymously signed, "The Management." And why didn't Stewart, who said he wrote the letter, testify that *he* posted and mailed it? (See Attachment 5 at 3.) Also, given the weight Respondent places on that letter, why didn't its private investigator interview Mr. Stewart about the details it contained? Why wasn't a declaration from Mr. Stewart presented, at least by the second day of the hearing, five days later?

V. The Residential Rental Adjustment Program and Appeals Board Are Authorized Under Costa-Hawkins to Regulate or Monitor the Grounds for Eviction.

In August 1995, California enacted Civil Code sections 1954.50 through 1954.535, the Costa-Hawkins Rental Housing Act (Costa-Hawkins), which established "what is known among landlord-tenant specialists as 'vacancy decontrol,' declaring that '[n]otwithstanding any other provision of law,' all residential landlords may, except in specified situations, 'establish the initial rental rate for a dwelling or unit.'" (*DeZerega v. Meggs* (2000) 83 Cal. App. 4th 28, 41; Civ.Code § 1954.53, subd. (a).) The effect of this provision was to permit landlords "to impose whatever rent they choose at the commencement of a tenancy." (*Cobb v. San Francisco Residential Rent Stabilization and Arbitration Bd.* (2002) 98 Cal.App.4th 345, 351.) However, the Legislature was well aware that such vacancy decontrol gave landlords an incentive to evict tenants that were paying rents below market rates. (*Bullard v. San Francisco Residential Rent Stabilization Bd.* (2003) 106 Cal. App. 4th 488, 492). Accordingly, the Costa Hawkins statute expressly preserved the authority of local governments "to regulate or monitor the grounds for eviction." (Civ.Code § 1954.53, subd. (e).)

A. The Evidence Establishes a Case of Constructive Eviction.

The evidence here establishes a constructive eviction of Ms. Sund because the rent increase Respondent sought meant that Ms. Sund would no longer be able to reside in her unit.

She testified she cannot afford a more than doubling of her rent. The Rent Board cannot meaningfully monitor or regulate the grounds of this eviction without examining the reasons for it. Petitioner contends that the reason was her request that her boyfriend and baby's father, and later their child, be able to reside in her unit.

Ms. Sund had a right to have the father of her expected child and their daughter move in with her. This right accrued when she notified the landlord of as much. It was improper and offensive for the landlord to insist that Ms. Sund had to wait to "revisit this issue down the road," and it violated her rights. Further, her immediate subsequent phone calls to do just that were ignored by the landlord, until the landlord served her with the Notice of Change of Terms-Rent Increase.

It is illegal to discriminate in housing based on pregnancy or family status, under both state (FEHA, DFEH) and federal (FHA, HUD) law and agency regulations. The landlord cannot impose conditions on Petitioner's exercise of that right. That Respondent ignored the phone calls Petitioner made in an effort to exercise that right was unreasonable—especially after it had stated that it would consider her request, i.e., that it would "revisit this issue". The landlord never responded except by way of a notice of rent increase. This was despite the fact that it had already independently verified that Petitioner was pregnant and who the father was. (See Attachment 5 at 6.) Respondent never asked for any additional information. This evidence establishes an attempted illegal eviction.

B. The Evidence Establishes a Case of Retaliation.

It was within days of Petitioner's request that the Respondent served her with a notice of rent increase. That this occurred within days after Petitioner sought to exercise certain rights provided to her by law. This is undeniable. The *only* response or communication Petitioner *ever* received after seeking to exercise these rights was the notice of rent increase. This was retaliation. Therefore, the rent increase being sought is impermissible.

C. The City of Oakland's Prohibition Against Discrimination and Harassment, as Embodied in OMC Chapter 8.22, Provided the Hearing Officer With the Authority to Consider the Evident Discrimination and Harassment in This Case.

The laws of the State of California and the Housing Element of the General Plan of the City of Oakland prohibit arbitrary discrimination by landlords." (OMC § 8.22.300.) Basic fairness requires that a landlord must not terminate the tenancy of a residential tenant without good, just, non-arbitrary, non-discriminatory reasons. (*Ibid.*) The rising market demand for rental housing in Oakland creates an incentive for some landlords to engage in harassing behavior, including:

[R]epeated acts or omissions of such significance as to substantially interfere with or disturb the comfort, repose, peace or quiet of any person lawfully entitled to occupancy of such dwelling unit and that cause, are likely to cause, or are intended to cause any person lawfully entitled to occupancy of a dwelling unit to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy

(See OMC § 8.22.610E, .8.22.640A(15).)

In sum, the purposes of Chapter 8.22 plainly include preventing discrimination and harassment. It is *impossible* to fulfill these purposes without considering evidence of either discrimination or of harassment when there is such evidence. Yet, the hearing officer made it clear during the initial May 30 hearing in this matter that she would not consider evidence of discrimination. Petitioner did not seek to have this evidence considered for the purpose of monetary damages or other affirmative relief. It was offered as a defense to the respondent's attempt to increase her rent and to thereby effectively evict her. The hearing officer's refusal to consider this evidence was error.

VII. Petitioner's Unit Is Not Exempt Under Costa Hawkins Since the Vacancy De-Control is Inapplicable Here.

The effect of section 1954.53, subdivision (a)⁵ of Costa-Hawkins is to permit landlords

⁵Subdivision (a) in relevant part provides that an owner of residential real property may establish the initial rental rate for a dwelling or unit.

"to impose whatever rent they choose at the commencement of a tenancy." (See *Cobb v. San Francisco Residential Rent Stabilization and Arbitration Bd.* (2002) 98 Cal. App. 4th 345, 351.)

Section 1954.53, subdivision (d)(2) further provides,

If the original occupant or occupants who took possession of the dwelling or unit pursuant to the rental agreement with the owner no longer permanently reside there, an owner may increase the rent by any amount allowed by this section *to a lawful sublessee or assignee* [emphasis added].

That Ms. Sund is the original occupant in lawful possession of the subject unit is in uncontested. There is no claim that at any time she notified the owner any intent to vacate or terminate her tenancy.⁶ The dispute here revolves whether or not Ms. Sund has continued to permanently reside in her unit.

The word "permanently" is undefined in *Costa-Hawkins* *except* with reference to subletting and assignment. (See *ibid*; see also §1954.51.) Yet, implicit in the statutory language is that a rent increase is unwarranted absent the creation of a new tenancy. (See § 1954.53 subd. (a) & (d)(2).)

Here, there was no new tenancy: Contrary to the owner's theory of this case and the hearing officer's decision, there is no substantial or admissible evidence that Ms. Sund sublet or assigned the unit at any time since the inception of her tenancy in July, 2008. For the above reasons, subdivision (d)(2) is inapplicable.

CONCLUSION

For the foregoing reasons, this appeal should be granted.

Dated: January 28, 2019

Respectfully submitted,

LAW OFFICES OF PAUL L. KRANZ

By: 

Paul L. Kranz

⁶ Indeed, as she testified on May 30th and as was earlier stated, she continues to retain personal possessions at 633 Alma Street, receive certain items of mail there, use the shower, occasionally eat, take care of her plants, and so forth.

PROOF OF SERVICE

(Case Number T18-0018)

I, the undersigned, certify and attest as follows:

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

On January 29, 2019, I caused the within:

**NOTICE OF ERRATA AND AMENDED SUBMISSION IN SUPPORT
OF APPEAL OF HEARING OFFICER'S DECISION**

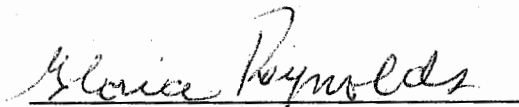
to be served by first class mail, postage prepaid, on Respondent's representatives. addressed as follows:

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

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

Executed Albany, California on January 29, 2019.

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


Gloria Reynolds

Attachment 1



James Bond

Update

1 message

Thu, Aug 24, 2017 at 10:10 AM

J Bond JamesBond@gmail.com

August 24, 2017

James Bond
633 Alma Ave #5
Oakland, CA 94610
JamesBond@gmail.com

Thomas Preston, Property Supervisor
1000 Lakeside Dr
800 Pine Ave
Oakland, CA 94610
(510) 775-1481
t.preston@jagmail.com

Dear Mr. Preston,

Please accept this email as notice that the significant other will be moving into my apartment at 633 Alma Ave. #5, Oakland, CA 94610 this weekend, on August 26th or 28th, 2017. Also, I am pregnant and my baby is expected in October 2017. I am sending this email to you because I do not have a mailing address for you.

Thank you.

Sincerely,

James Bond

(S) [Redacted]

8/24/17 T Preston sent email (above) no reply

8/24/17 T Preston left unmessage re: did you receive email sent 8/24/17? no reply

8/24/17 T Preston left unmessage x

no reply

Attachment 2

Alma Apartments LP

633 Alma
Oakland, CA

Jessica Sund
633 Alma # 5
Oakland, Ca

August 22, 2017

RE: 633 Alma #5 demand.

Dear Ms. Sund:

Thank you for your email and voicemail.

The fundamental problem with your "request" is that it has been couched as a demand. As you know, the operative lease has a "no subletting/no assignment" clause and a "full occupancy" provision. Furthermore, this landlord is typically amenable to occupying lease tenants who, in good faith, approach the landlord with a particular need which may justify a modification of these provisions. However, you did not come forward with a particular need or explanation of these provisions. You have only expressed a desire to sublet and assign the lease. Instead of making a request, you have made a demand. The landlord has the right to refuse your request and to require you to vacate the premises. You are advised that you should have provided the necessary information and documentation to management and to the landlord prior to your demand for all the moving in the past few days.

Management has reviewed your request and has determined that you do not have a particular need or explanation of these provisions. You are advised that you should have provided the necessary information and documentation to management and to the landlord prior to your demand for all the moving in the past few days.

This is written confirmation that your request has been denied. Should you have any further questions, please review the lease in which you signed and abide by it in its entirety.

Sincerely,



Thomas Preston
Property Supervisor

OAKLAND CA 946
RESIDENT MAIL



Lester Myrtle Sand
Algeria Bay
633 Main Street
Oakland, CA 94610

Attachment 3

THIS NOTICE TO CHANGE TERMS OF TENANCY HEREBY SUPERSEDES AND REPLACES ANY OTHER NOTICE TO CHANGE TERMS OF TENANCY AND/OR ANY OTHER RENT INCREASE NOTICE(S) PREVIOUSLY SERVED UPON YOU.

NOTICE TO CHANGE TERMS OF TENANCY
-RENT INCREASE NOTICE-

To **Jessica Maggie Sund (original occupant), AND ALL SUBTENANTS IN POSSESSION, name(s) unknown**, as well as any other occupant(s) claiming the right to possession of the following residential rental premises:

633 Alma Street, Unit Number 5
City of Oakland, County of Alameda, State of California 94610
--including all associated housing privileges-- (the "Premises")

You are hereby notified that, effective **December 1, 2017**, not less than sixty (60) days after service of this notice is completed upon you, the terms of your tenancy of the Premises will be changed as follows:

The monthly rental thereof will be changed from \$908.67 per month to two thousand ninety five dollars (\$2,095) per month, payable in the advance of the first day each and every month you continue to hold possession of the Premises.

All other terms of the tenancy will remain unchanged.

You are further notified that a negative credit report reflecting on your credit history may be submitted to a credit-reporting agency if you fail to fulfill the terms of your credit obligations.

You are hereby notified that, pursuant to California Civil Code Section 1954.50, *et seq.* (Costa-Hawkins Rental Housing Act), the Premises and/or your tenancy therein are not subject to the City of Oakland's Rent Adjustment Program (Chapter 8.22 of the Oakland Municipal Code) for purposes of this rent increase. The landlord and owner of the Premises contends that the last original occupant, Jessica Maggie Sund, no longer permanently resides at the Premises, and that all current occupants are subsequent occupants and sublessees who commenced occupancy of the Premises on or after January 1, 1996.

Pursuant to the Costa-Hawkins Rental Housing Act (Civil Code Sections 1954.50, et seq.), please note as follows:

Conditions for Establishing the Initial Rental Rate Upon Sublet or Assignment:

(A) Where the original occupant or occupants who took possession of the dwelling or unit pursuant to the rental agreement with the owner no longer permanently reside there, an owner

may increase the rent by any amount allowed by this section to a lawful sublessee or assignee who did not reside at the dwelling or unit prior to January 1, 1996. However, such a rent increase shall not be permitted while:

(i) The dwelling or unit has been cited in an inspection report by the appropriate governmental agency as containing serious health, safety, fire, or building code violations, as defined by Section 17920.3 of the California Health and Safety Code, excluding any violation caused by a disaster; and,

(ii) The citation was issued at least 60 days prior to the date of the vacancy; and,

(iii) The cited violation had not been abated when the prior tenant vacated and had remained unabated for 60 days or for a longer period of time. However, the 60-day time period may be extended by the appropriate governmental agency that issued the citation.

(B) This provision shall not apply to partial changes in occupancy of a dwelling or unit where one or more of the occupants of the premises, pursuant to the agreement with the owner, remains an occupant in lawful possession of the dwelling or unit, or where a lawful sublessee or assignee who resided at the dwelling or unit prior to January 1, 1996, remains in possession of the dwelling or unit.

(C) Acceptance of rent by the owner shall not operate as a waiver or otherwise prevent enforcement of a covenant prohibiting sublease or assignment or as a waiver of an owner's rights to establish the initial rental rate unless the owner has received written notice from the tenant that is party to the agreement and thereafter accepted rent.

Information regarding this NOTICE may be obtained from the City of Oakland's Rent Adjustment Program. Parties seeking legal advice concerning evictions should consult with an attorney. The Rent Program is located at 250 Frank H. Ogawa Plaza, Suite 5313, Oakland, California 94612, 510.238.3721, website: www.oaklandnet.com. Please refer to the attached City of Oakland Rent Adjustment Program Notice to Tenants of Residential Rent Adjustment Program.

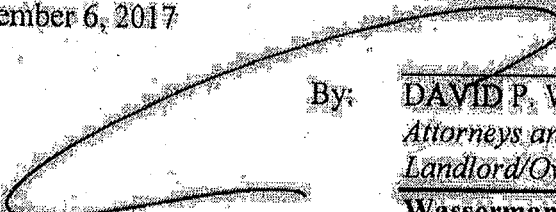
Rent increases imposed pursuant to the Costa-Hawkins Rental Housing Act are effective upon the expiration of the notice period prescribed by California Civil Code section 827 and are not governed by the Rent Adjustment Program.

Questions about this NOTICE may be directed to the undersigned, who is the agent for the landlord and owner.

Dated: September 6, 2017

WASSERMAN-STERN

By:


DAVID P. WASSERMAN, Esq.
*Attorneys and Duly Authorized Agents for the
Landlord/Owner, Vernon Street Apartments, LP*

Wasserman-Stern Law Offices

2960 Van Ness Avenue

San Francisco, CA 94109

Tel. No.: (415) 567-9600

Fax No.: (415) 567-9696

Email: dwasserman@wassermanstern.com



P.O. BOX 70243, OAKLAND, CA 94612-2043
 Department of Housing and Community Development
 Rent Adjustment Program

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

NOTICE TO TENANTS OF THE RESIDENTIAL RENT ADJUSTMENT PROGRAM

- Oakland has a Rent Adjustment Program ("RAP") that limits rent increases (Chapter 8.22 of the Oakland Municipal Code) and covers most residential rental units built before 1983. For more information on which units are covered, contact the RAP office.
- Starting on February 1, 2017, an owner must petition the RAP for any rent increase that is more than the annual general rent increase ("CPI increase") or allowed "banked" rent increases. These include capital improvements and operating expense increases. For these types of rent increases, the owner may raise your rent only after a hearing officer has approved the increase. No annual rent increase may exceed 10%. You have a right to contest the proposed rent increase by responding to the owner's petition. You do not have to file your own petition.
- **Contesting a Rent Increase:** You can file a petition with the RAP to contest unlawful rent increases or decreased housing services. To contest a rent increase, you must file a petition (1) within ninety (90) days of the notice of rent increase if the owner also provided this Notice to Tenants with the notice of rent increase; or (2) within 120 days of the notice of rent increase if this Notice to Tenants was not given with the notice of rent increase. If the owner did not give this Notice to Tenants at the beginning of your tenancy, you must file a petition within ninety (90) days of first receiving this Notice to Tenants. Information and the petition forms are available from the RAP drop-in office at the Housing Assistance Center: 250 Frank H. Ogawa Plaza, 6th Floor, Oakland and at: <http://www2.oaklandnet.com/Government/office/RentAdjustment>.
- If you contest a rent increase, you must pay your rent with the contested increase until you file a petition. If the increase is approved and you did not pay the increase, you will owe the amount of the increase retroactive to the effective date of increase.
- Oakland has eviction controls (the Just Cause for Eviction Ordinance and Regulations, O.M.C. 8.22) which limit the grounds for evictions in covered units. For more information contact the RAP office.
- Oakland charges owners a Rent Program Service Fee per unit per year. If the fee is paid on time, the owner is entitled to get half of the fee from you. Tenants in subsidized units are not required to pay the tenant portion of the fee.
- Oakland has a Tenant Protection Ordinance ("TPO") to deter harassing behaviors by landlords and to give tenants legal recourse in instances where they are subjected to harassing behavior by landlords (O.M.C. 8.22.600). (City Council Ordinance No. 13265 C.M.S.)
- The owner ___ is ___ is not permitted to set the initial rent on this unit without limitations (such as pursuant to the Costa-Hawkins Act). If the owner is not permitted to set the initial rent without limitation, the rent in effect when the prior tenant vacated was _____.

TENANTS' SMOKING POLICY DISCLOSURE

- Smoking (circle one) IS or IS NOT permitted in Unit _____, the unit you intend to rent.
- Smoking (circle one) IS or IS NOT permitted in other units of your building. (If both smoking and non-smoking units exist in tenant's building, attach a list of units in which smoking is permitted.)
- There (circle one) IS or IS NOT a designated outdoor smoking area. It is located at _____.

I received a copy of this notice on _____ (Date) _____ (Tenant's signature)

此份屋崙(奧克蘭)市租客權利通知書附有中文版本。請致電(510) 238-3721 索取副本。
 La Notificación del Derecho del Inquilino está disponible en español. Si desea una copia, llame al (510) 238-3721.

Attorney Or Party Without Attorney (Name and Address)		Telephone:	FOR COURT USE ONLY	
DAVID P. WASSERMAN, ESQ. (171-23) WASSERMAN-STERN LAW OFFICES 2960 Van Ness Avenue, Suite B San Francisco, California 94109				
Attorneys for: 633 ALMA STREET		Ref. No. Or File No.	W2683460	
Insert name of court, judicial district and branch court, if any:				
Plaintiff: 633 ALMA STREET				
Defendant: JESSICA MAGGIE SUND (original occupant)				
POS BY MAIL	Hearing Date:	Time:	Dept./City:	Case Number:

At the time of service I was at least 18 years of age and not a party to this action.

On September 6, 2017, I served the within:

NOTICE TO CHANGE TERMS OF TENANCY - RENT INCREASE NOTICE; NOTICE TO TENANTS OF THE RESIDENTIAL RENT ADJUSTMENT PROGRAM

on the defendant in the within action by placing a true copy in a sealed envelope with postage fully prepaid for first class in the United States mail at San Francisco, California, addressed as follows:

JESSICA MAGGIE SUND (original occupant); ANY/ALL UNNAMED OCCUPANTS
633 Alma Avenue, Unit 5
Oakland, CA 94610

Person serving:

Scott Lane
Wheels of Justice, Inc.
52 Second Street, Third Floor
San Francisco, California 94105
Phone: (415) 546-6000

a. Fee for service:

- d. Registered California Process Server
 - (1) Employee or independent contractor
 - (2) Registration No.: 1126
 - (3) County: San Francisco

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

Date: September 6, 2017

Signature: _____
Scott Lane

