

**HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD  
PANEL MEETING  
FEBRUARY 6, 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. OPEN FORUM
4. APPEALS\*
  - a) T19-0357, Martin v. Do
  - b) T19-0347, Chan v. Sequoia 592 LLC
  - c) T19-0163, Kelly v. Chen
5. ADJOURNMENT

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

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

會場有適合輪椅出入設施。需要殘障輔助設施, 手語, 西班牙語, 粵語或國語翻譯服務, 請在會議前五個工作天電郵 [sshannon@oaklandnet.com](mailto:sshannon@oaklandnet.com)

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

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.

## CHRONOLOGICAL CASE REPORT

Case No.: T19-0357  
Case Name: Martin v. Dang & Do  
Property Address: 211 Hanover Ave., #5, Oakland, CA  
Parties: David Martin (Tenant)  
Tiep Dang (Owner)


### TENANT APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	July 18, 2019
Owner Response filed	October 7, 2019
Administrative Decision mailed	December 16, 2019
Tenant Appeal filed	December 30, 2019
Owner filed response to Tenant Appeal	January 21, 2020

000003

T19-0357 KM/EL

**RECEIVED**

 CITY OF OAKLAND	<b>CITY OF OAKLAND          RENT ADJUSTMENT          PROGRAM</b> 250 Frank H. Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721	For date stamp <b>JUL 18 2019</b>  <b>RENT ADJUSTMENT PROGRAM          OAKLAND</b>  <b>TENANT PETITION</b>
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**Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed.**

**Please print legibly**

Your Name David C. Martin	Rental Address (with zip code) 211 Hanover Ave #5  Oakland CA 94606	Telephone:  E-mail:
Your Representative's Name	Mailing Address (with zip code)	Telephone:  Email:
Property Owner(s) name(s) Dang & Do	Mailing Address (with zip code) PO Box 16178  Oakland CA 94606	Telephone:  Email:
Property Manager or Management Co. (if applicable)	Mailing Address (with zip code)	Telephone:  Email:

Number of units on the property: 8

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

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

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

<input checked="" type="checkbox"/>	(a) The CPI and/or banked rent increase notice I was given was calculated incorrectly.
<input checked="" type="checkbox"/>	(b) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
<input 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.
(k) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).
(l) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake. (OMC 8.22, Article I)
(m) The owner did not give me a summary of the justification(s) for the increase despite my written request.
(n) The rent was raised <u>illegally</u> after the unit was vacated as set forth under OMC 8.22.080.

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

Date you moved into the Unit: July 5, 2005 Initial Rent: \$ 1600.00 /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: July 5, 2005. 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		
April 23, 2019	June 7, 2019	\$1813.88	\$ 1993.45	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

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

Have you ever filed a petition for this rental unit?

- Yes  
 No

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

T15-0062;T15-0094;T15-0106;T15-0162;T16-0393;T18-0370

**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:

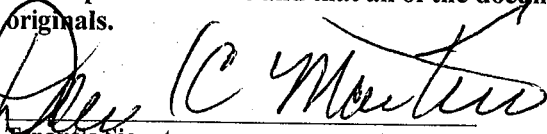
- 1) a list of the lost housing service(s) or problem(s);
- 2) the date the loss(es) or problem(s) began or the date you began paying for the service(s)
- 3) when you notified the owner of the problem(s); and
- 4) how you calculate the dollar value of lost service(s) or problem(s).

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).

\_\_\_\_\_  
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, 250 Frank H. Ogawa Plaza, Suite 5313, Oakland, CA 94612; **In person:** Date stamp and deposit in Rent Adjustment Drop-Box, Housing Assistance Center, Dalziel Building, 250 Frank H. Ogawa Plaza, 6<sup>th</sup> Floor, Oakland; 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): \_\_\_\_\_

David C Martin

Petition for Rent Adjustment

On November 1, 201~~3~~<sup>4</sup> at 5:00 pm my unit sustained substantial damage rendering the unit uninhabitable until January 2015. As such I do not believe that a rent increase using accrual amounts from 2013 and 2014 should be used in the basis of the rent increase.

*David Martin*

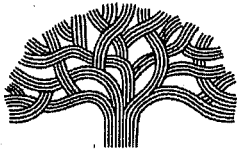
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KM/EL

RECEIVED  
CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM

2018 OCT -7 AM 11:28  
Pop Date stamp.

 CITY OF OAKLAND	<b>CITY OF OAKLAND</b> <b>RENT ADJUSTMENT PROGRAM</b> 250 Frank H. Ogawa Plaza, Suite 5313 Oakland, CA 94612-0243 (510) 238-3721	<u><b>PROPERTY OWNER</b></u> <u><b>RESPONSE</b></u>
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**Please Fill Out This Form As Completely As You Can.** Failure to provide needed information may result in your response being rejected or delayed.

CASE NUMBER T19-0357 KM/EL

Your Name Khiem Do Tiep Dang	Complete Address (with zip code) P.O. Box 16178 Oakland, CA. 94610	Telephone: _____ Email: _____
Your Representative's Name (if any)	Complete Address (with zip code)	Telephone: _____ Email: _____
Tenant(s) Name(s) David Martin	Complete Address (with zip code) 211 Hanover Ave, Apt # 5 Oakland, CA. 94606	Telephone: _____ Email: _____
Property Address (If the property has more than one address, list all addresses) 211 Hanover Ave, Oakland CA. 94606 1914 Lakeshore Ave, Oakland CA. 94606		Total number of units on property 10

Have you paid for your Oakland Business License? Yes  No  Lic. Number: 00038737  
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: 00038738  
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: 2/5/2003

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.

Date of Contested Increase	Banking (deferred annual increases )	Increased Housing Service Costs	Capital Improvements	Uninsured Repair Costs	Debt Service	Fair Return
6/7/2019	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<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 7/5/2005.

The tenant's initial rent including all services provided was: \$ 1600<sup>00</sup> / 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? 7/1/2005

Is the tenant current on the rent? Yes  No

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

Date Notice Given (mo./day/year)	Date Increase Effective	Rent Increased		Did you provide the "RAP NOTICE" with the notice of rent increase?
		From	To	
4/23/2019	6/7/2019	\$ 1813.88	\$ 1993.45	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
4/23/2018	6/7/2018	\$ 1696.80	\$ 1813.88	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
5/1/2017	6/7/2017	\$ 1600.75*	\$ 1696.80	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
1/18/2012	3/1/2012	\$ 1600.00	\$ 1685.00	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No

\* 5% reduction per RAP# T15-0162

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

### 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.

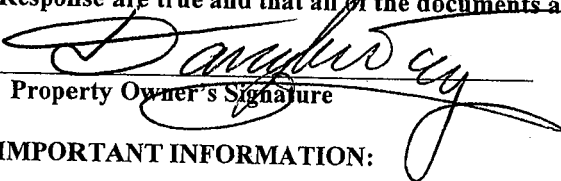
The unit is located in a building with three or fewer units. The owner occupies one of the units continuously as his or her principal residence and has done so for at least one year.

### 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

Oct. 7, 2019  
Date

**IMPORTANT INFORMATION:**

**Time to File**

This form **must be received** by the Rent Adjustment Program (RAP), 250 Frank H. Ogawa Plaza, Suite 5313, 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

Response to Mr. Martin's Petition (T19-0357)

211 Hanover Ave. Apt#5 Oakland, CA. 94606

Mr. Martin filed the petition (T19-0357) on the following grounds:

(a) The CPI and/or banked rent increase notice I was given was calculated incorrectly.

**Response:** The increase was per guidelines including banking; copy of Notice to Change Terms of Tenancy for rent increase is attached as Exhibit A.

As stated in the notice, the increase included deferred CPI increases that were not imposed or were not imposed in full; they are: 2% from 2.1% of 2013, 1.9% of 2014, 1.7% of 2015, 2% of 2016 and 2.3% of 2017.

(b) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.

**Response:** This increase included the deferred annual CPI increases in as stated above. The total percentage for the increase was 9.9%, which is below the limit of 10% and less than 3 times the current CPI for 2018 of 3.4%.

Prior to this petition, Mr. Martin has filed the following petitions: T18-0370, T17-0446, T16-0393, T15-0587, T15-0162, T15-0106, T15-0094, T15-0062.

000013

EXHIBIT (A)

**NOTICE TO CHANGE TERMS OF TENANCY**

To: Mr. David Martin  
211 Hanover Ave, Apt #5  
Oakland, CA. 94606

April 23, 2019

You're hereby notified that the terms of tenancy under which you occupy the above-described premises is to be changed.

Effective June 7, 2019, your monthly rent payment will be **\$1,993.45 \***.

The adjustment is based on the current monthly rent payment of \$1,813.88 \* and 9.9% banking from 2013 (2% of 2.1%), 2014 (1.9%), 2015 (1.7%), 2016 (2%), and 2017 (2.3%). The rent increase is 9.9% or a total amount of \$179.57 per month.

The adjustment is per following:

Current rent payment:	\$1,813.88 *
Rent increase (9.9%):	\$179.57
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New rent payment	<b>\$ 1,993.45 * per month</b>

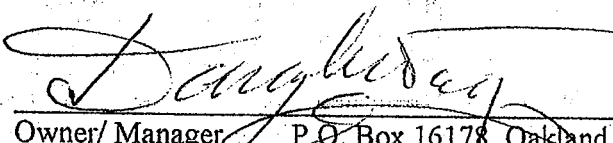
The banking limit this year is 10% (3X current CPI of 3.4%, and not more than 10%).

As a reminder, the City of Oakland has a Residential Rent Adjustment Program ("RAP"), which sets forth certain guidelines for annual rent increases for rentals within the city (<https://www.oaklandca.gov/resources/learn-more-about-allowable-rent-increases>).

Should you have any questions about the propriety of the subject rent increase, please don't hesitate to contact us for information about the allowed increase governed by Oakland Municipal Code Section 8.22. While this information was provided to you previously, we have attached a duplicate copy of the ordinance summary herewith for your reference, as page 2/2. The information is also available online (<https://cao-94612.s3.amazonaws.com/documents/oak062835.pdf>).

It is the express intention that the balance of any allowed rent increases under the Ordinance are banked under provisions of the "RAP" and can be added to any future increases and transferred to any future property owners. To date, the remaining accrual banking includes:

3.40 % remaining for 2018



Owner/ Manager P.O. Box 16178 Oakland, CA. 94610  
(510) 207-6106

The Owner/ Manager served this Notice in the following manner (check one)

- by personal delivery to the premise
- by mailing

\* Rent payment reflects 5% rent reduction from the base rent per RAP #T15-0162.

CITY OF OAKLAND



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

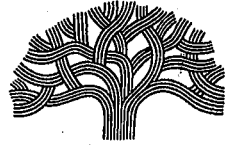
- Oakland has a Rent Adjustment Program ("RAP") that limits rent increases...
Starting on February 1, 2017, an owner must petition the RAP for any rent increase...
Contesting a Rent Increase: You can file a petition with the RAP to contest unlawful rent increases...
If you contest a rent increase, you must pay your rent with the contested increase until you file a petition...
Oakland has eviction controls (the Just Cause for Eviction Ordinance and Regulations, O.M.C. 8.22)...
Oakland charges owners a Rent Program Service Fee per unit per year...
Oakland has a Tenant Protection Ordinance ("TPO") to deter harassing behaviors by landlords...
The owner \_\_\_ is \_\_\_ is not permitted to set the initial rent on this unit without limitations...

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.
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.



Housing and Community Development Department  
Rent Adjustment Program

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

## **ADMINISTRATIVE DECISION**

**CASE NUMBER:** T19-0357 Martin v. Dang  
**PROPERTY ADDRESS:** 211 Hanover Avenue, Unit 5  
Oakland, CA  
**PARTIES:** David Martin, Tenant  
Tiep Dang, Owner

### **SUMMARY OF DECISION**

The Tenant's petition is dismissed.

### **INTRODUCTION**

**Reason for Administrative decision:** An Administrative Decision is a decision issued without a hearing. The purpose of a hearing is to allow the parties to present testimony and other evidence to allow resolution of disputes of material fact. However, in this case, sufficient uncontested facts have been presented to issue a decision without a hearing, and there are no material facts in dispute. Therefore, an administrative decision, without a hearing, is being issued.

On July 18, 2019, the tenant filed a petition. The petition alleged that the notice of rent increase, effective June 7, 2019, increasing the rent from \$1813.88 to \$1,993.45, violated the Oakland Rent Adjustment Ordinance. The tenant's petition indicated a prior petition was filed regarding the subject unit.

The Hearing Decision issued in the prior petition, T17-0446, was issued on July 20, 2018, and was affirmed by the Board on Appeal on April 11, 2019. Official notice is taken of T17-0446. The Hearing Decision set the base rent at \$1,781.05, less ongoing decreased housing services as set forth in T15-0062, in the amount of \$84.25.



The Administrative Decision issued in a prior petition, T18-0370, was issued on May 2, 2019, and was not appealed. The Hearing Decision is now final. Official notice is taken of T18-0370. The Administrative Decision set the base rent at \$1,843.00, less ongoing decreased housing services as set forth in T15-0062, in the amount of \$84.25.

An owner is allowed to bank increases and use them in subsequent years, subject to certain limitations.<sup>1</sup> The total of CPI Adjustments imposed in any one Rent increase, including the current CPI Rent Adjustment, may not exceed three times the allowable CPI Rent Adjustment on the effective date of the Rent Increase Notice.<sup>2</sup>

The Rent Ordinance allows a tenant to contest any rent increase, which exceeds the CPI Rent Adjustment.<sup>3</sup> **The owner's timely filed response indicated banking as a justification for the current rent increase.** The allowable rent increase effective July 1, 2018, is 3.4%. The maximum banking allowed, effective July 1, 2018, is 10%. Accordingly, the maximum banked increase allowable on the current rent is \$184.30.

The maximum rent ceiling on the subject unit is \$2,027.30, less ongoing decreased housing services as set forth in T15-0062, in the amount of \$84.25, or \$1,993.45. The rent increase served on the tenant, which is being contested, was for \$1,993.45 and, therefore, is the allowable banked maximum. Accordingly, the tenant's petition is dismissed.

### ORDER

1. Petition T18-0357 is dismissed.
2. The rent increase is valid and justified by banking.

**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

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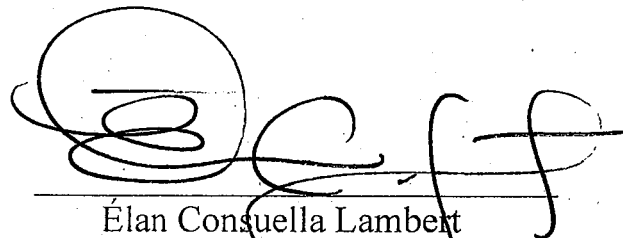
<sup>1</sup> O.M.C. Section 8.22.070(B)

<sup>2</sup> Regulations, Appendix A, Section 10.5

<sup>3</sup> O.M.C. Section 8.22.070(B)

Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.

Dated: December 16, 2019



---

Élan Consuella Lambert  
Hearing Officer  
Rent Adjustment Program

**000018**

**PROOF OF SERVICE**  
**Case Number T19-0357**

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**  
Administrative Decision


**Owner**  
Khiem Do  
P.O. Box 16178  
Oakland, CA 94610

**Owner**  
Tiep Dang  
P.O. Box 16178  
Oakland, CA 94610

**Tenant**  
David C Martin  
211 Hanover Avenue Unit 5  
Oakland, CA 94608

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 16, 2019** in Oakland, CA.




Raven Smith

Oakland Rent Adjustment Program

**000019**

74112

 <b>CITY OF OAKLAND</b> <b>CITY OF OAKLAND</b>	<b>CITY OF OAKLAND</b> <b>RENT ADJUSTMENT PROGRAM</b> 250 Frank Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721	For date stamp. 2019 DEC 30 AM 9:55
	<b>APPEAL</b>	

Appellant's Name		<input type="checkbox"/> Owner <input checked="" type="checkbox"/> Tenant	
DAVID MARTIN			
Property Address (Include Unit Number)			
211 HANOVER AVE #5		94606 OAKLAND CA.	
Appellant's Mailing Address (For receipt of notices)		Case Number	
211 HANOVER AVE #5		719-0357	
		Date of Decision appealed	
		12/16/19	
Name of Representative (if any)		Representative's Mailing Address (For notices)	
SELF		N/A	

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.)*

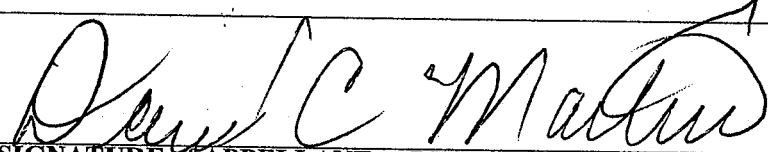
For more information phone (510) 238-3721.

- 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 12/30, 2019, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<b>Name</b>	DANG & DO
<b>Address</b>	PO BOX 16178
<b>City, State Zip</b>	OAKLAND CA <del>94606</del> 94610
<b>Name</b>	
<b>Address</b>	
<b>City, State Zip</b>	

	12/30/19
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

For more information phone (510) 238-3721.

## Petition for Appeal

T19-0357

I am appealing the Administrative Decision dated December 16, 2019 based on the following:

**1) There is a math clerical error in the original petition.**

- a. The original petition stated that on "November 1, 2018...." The petition should have read "November 1, 2014". As in aside the "ORDER" in the Administrative decision indicates that T18-0357 is dismissed. This is a clerical error. That being said is my original petition still valid?

**2) Appealing the decision for one of the grounds below**

**a. I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim.**

- i. Given an opportunity to present my claim I would show that I was evicted from the unit for a period of over 1 year whilst the landlord was performing repairs due to a fire in another unit.

**b. The decision violates federal, state or local law.**

- i. Banking is a function of the lease; the lease is a contract. I was evicted as the unit was uninhabitable as stated above. Thus because I was evicted, the contract or the lease for the time period until I moved back in 2016 is unenforceable because I wasn't enjoying my tenancy. In that I was evicted, and was not paying rent, there was no contract hence no lease, hence the landlord should not be able to accrue banking for a contract or lease which was not enforce nor could be enforced.

I am hereby requesting that my appeal be heard either by the hearing officer or the Rent Board, please let me know the new proposed date as I believe that the proposed date of a hearing for January 27, 2020 10:00 am as indicated by your September 25, 2019 NOTICE OF SETTLEMENT CONFERENCE AND HEARING has been vacated by the Administrative Decision dated December 16, 2019.

Please let me know if you have any further question at

Regards



David C. Martin  
211 Hanover Ave. #5

000022

2020 JAN 21 AM 10:39

Response to Mr. Martin's Appeal (T19-0357)

KM/EL

Mr. Martin appealed the decision based on the following:

1. "The decision violates federal, state and local law".

**Response:** The rent increase effective June 7, 2019 followed local and state laws. Oakland Rent Control permits rent increase based on CPI and banking. The detail is included in our response to the petition T19-0357.

According to the new Assembly Bill No. 1482 that became effective January 1, 2020, the applicable increase needs to be readjusted for January 2020. We sent Mr. Martin a letter in mid-December to inform him of the adjustment, and have attached a following copy.

2. "I was denied sufficient opportunity to present my claim or respond to the petitioner's claim".

**Response:** Mr. Martin did not provide any information in his original claim. In his appeal, he wrote a note mentioning about the apartment fire and the fire repair.

In fact, a fire occurred on November 1, 2013. Due to its damages and required repairs, Mr. Martin vacated the apartment between 11/18/2013 - 12/3/2014. During this time, there was no rental payment.

As stated above, the rent increase reflected CPI only; changes in the CPI are changes associated with the cost of living regardless of occupancy.

000023

To: Mr. David Martin  
211 Hanover Ave, Apt #5  
Oakland, CA. 94606

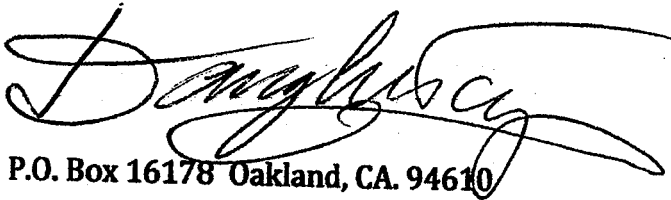
December 14, 2019

According to the Assembly Bill No. 1482, approved by the Governor on October 8, 2019, your applicable rent on January 1, 2020 shall be \$1977.13:

Your rent as of March 2019:	\$1813.88 *
Applicable Increase Percentage:	9% **
Applicable Increase Amount:	\$ 163.25
Your rent as of January 2020:	\$ 1977.13 ***

Let us know if you have any question.

Best,



P.O. Box 16178 Oakland, CA. 94610

(510) 207-6106

(\*) Rent payment reflects 5% rent reduction from the base rent per RAP #T15-0162.

(\*\*) "This bill would, until January 1, 2030, prohibit an owner of residential real property from, over the course of any 12-month period, increasing the gross rental rate for a dwelling or unit more than 5% plus the percentage change in the cost of living, as defined, or 10%, whichever is lower..."

The annual percentage change in the cost of living per US Bureau of Labor Statistics – SF Bay Area as of April 2019 is 4%. Therefore, the allowable increase percentage is 9%.

(\*\*\*) "The bill would provide that these provisions apply to all rent increases occurring on or after March 15, 2019. The bill would provide that in the event that an owner increased the rent by more than the amount specified above between March 15, 2019, and January 1, 2020, the applicable rent on January 1, 2020, shall be the rent as of March 15, 2019, plus the maximum permissible increase, and the owner shall not be liable to the tenant for any corresponding rent overpayment."

000024



# CITY OF OAKLAND



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.

## CHRONOLOGICAL CASE REPORT

Case No.: T19-0347  
Case Name: Chan v. Sequoia 592 LLC  
Property Address: 592 Jean Street, Apt. #104, Oakland, CA  
Parties: Caitlin Chan (Tenant)  
Sequoia 592 LLC (Owner)

### TENANT APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	July 10, 2019
No Owner Response filed	-----
Administrative Decision mailed	December 16, 2019
Tenant Appeal filed	January 2, 2020

T19-0347 RE/EL

RECEIVED

JUL 10 2019

City of Oakland Rent Adjustment Program

Tenant Petition

RENT ADJUSTMENT PROGRAM  
OAKLAND

Case **Petition: 10595**  
Property Address **592 JEAN ST**

Party	Name	Address	Mailing Address
Tenant	Caitlin Sheaulin Chan	592 Jean Street Apt 104 Oakland, CA 94610	
Owner	Sequoia 592 LLC	6355 Telegraph Avenue Suite 101 Oakland, CA 94609	

**Rental Property Information**

Number of Units	1
Type of unit you rent	Apartment, Room or Live-work
Are you current on your rent?	Yes

**Grounds for Petition**

Decrease in Services

**Rental History**

When did you move into the unit?	5/6/2012				
Initial monthly rent	1095				
When did the property owner first provide you with a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program (RAP NOTICE)?	5/1/2013				
Did the property owner provide you with a RAP Notice, a written notice of the existence of the Rent Adjustment Program?	Yes				
Is your rent subsidized or controlled by any government agency, including HUD (Section 8)?	Yes				
Have you ever filed a petition for your rental unit?	No				
Rent increases that you want to challenge.					
Did you receive a RAP Notice with the notice of rent increase?	Date RAP notice served	Date increase goes into effect	Monthly Rent Increase From	Monthly Rent Increase To	Are you contesting this increase in this petition?
Yes	11/26/2018	1/1/2019	1217.23	1245.23	No

**Description of Decreased or Inadequate Housing Services**

City of Oakland

1 / 2

City of Oakland Rent Adjustment Program  
Tenant Petition

Case                    Petition: 10595  
Property Address    592 JEAN ST

---

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?                    No

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

Are you claiming any serious problem(s) with the condition of your rental unit?                    No

**Loss of Service**

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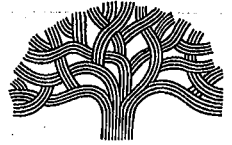
Date Loss Began	Date Owner Was Notified of Loss	Estimated Loss	Reduced Service Description
6/2/2019	6/2/2019		Refusal to allow a roommate replacement

**Mediation**

---

Mediation Requested                    Yes

CITY OF OAKLAND



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

Housing and Community Development Department  
Rent Adjustment Program

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

**ADMINISTRATIVE DECISION**

**CASE NUMBER:** T19-0347, Chan v. Sequoia 592 LLC

**PROPERTY ADDRESS:** 592 Jean Street, Unit 104  
Oakland, CA

**PARTIES:** Caitlin Chan, Tenant

**SUMMARY OF DECISION**

The Tenant's petition is dismissed.

**INTRODUCTION**

**Reason for Administrative decision:** An Administrative Decision is a decision issued without a hearing. The purpose of a hearing is to allow the parties to present testimony and other evidence to allow resolution of disputes of material fact. However, in this case, sufficient uncontested facts have been presented to issue a decision without a hearing, and there are no material facts in dispute. Therefore, an administrative decision, without a hearing, is being issued.

On July 10, 2019, the tenant filed a petition alleged decreased housing services. The tenant's petition states under penalty of perjury that their rent is subsidized or controlled by a government agency, including HUD.

**Exemption from the Rent Ordinance:** The Oakland Rent Ordinance<sup>1</sup> states:

A. . . The following dwelling units are not Covered Units<sup>2</sup> for the purposes of this Chapter 8.22: . . . 1. Dwelling units whose rents are controlled, regulated (other

<sup>1</sup> O.M.C. Section 8.22.030

<sup>2</sup> A "Covered Unit" is a rental unit that is not exempt from the Rent Ordinance (O.M.C. Section 8.22.020).

**000030**

than by this Chapter), or subsidized by any governmental unit, agency, or authority.

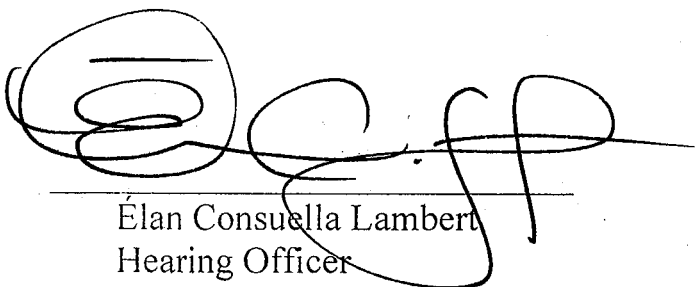
The petition admits that the rent for the subject unit is controlled, regulated, or subsidized by a governmental unit, agency, or authority. Therefore, the subject unit is exempt from the Rent Adjustment Ordinance, and the Rent Adjustment Program has no jurisdiction over the subject unit. Therefore, the tenant's petition is dismissed.

**ORDER**

1. Petition T19-0347 is dismissed.
2. The hearing on January 22, 2020, is canceled.

**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: December 16, 2019



---

Elan Consuegra Lambert  
Hearing Officer  
Rent Adjustment Program

**PROOF OF SERVICE**

**Case Number T19-0347**

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**

Administrative Decision

**Owner**

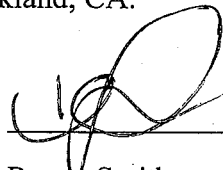
Sequoia 592 LLC  
6355 Telegraph Avenue Suite 101  
Oakland, CA 94609

**Tenant**

Caitlin Sheaulin Chan  
592 Jean Street Apt 104  
Oakland, CA 94610

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 16, 2019** in Oakland, CA.



Raven Smith

Oakland Rent Adjustment Program


**000032**



RC/EL

RECEIVED  
CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM

20  
2019 JAN 2 AM 10:59

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

Appellant's Name Caitlin Chan		<input type="checkbox"/> Owner <input checked="" type="checkbox"/> Tenant
Property Address (Include Unit Number) 592 Jean St, Apt 104, Oakland, CA 94610		
Appellant's Mailing Address (For receipt of notices) 592 Jean St, Apt 104 Oakland, CA 94610		Case Number 19-0347, Chan v Sequoia 592 LLC
		Date of Decision appealed Dec 16, 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.

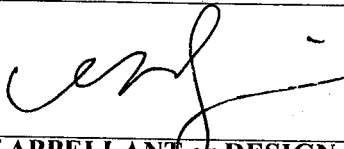
- f)  I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. (In your explanation, you must describe how you were denied the chance to defend your claims and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue 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: 4.

• 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 Dec 26, 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: (I have proof of postage)

<b>Name</b>	Sequoia 592 LLC c/o Bishwendu K Paul
<b>Address</b>	6355 Telegraph Ave, Suite 101
<b>City, State Zip</b>	Oakland, CA 94609
<b>Name</b>	
<b>Address</b>	
<b>City, State Zip</b>	

	12/26/19
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

For more information phone (510) 238-3721.

## **IMPORTANT INFORMATION:**

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

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

For more information phone (510) 238-3721.

12/26/19

Chan v. Sequoia Case # T19-0347

To Whom It May Concern,

My name is Caitlin Chan and I am the tenant in the case T19-0347 Chan v. Sequoia 592 LLC. I am appealing the administrative decision made on December 16, 2019, to dismiss my petition and cancel my hearing. I believe that I made a mistake in filing my original petition. I misunderstood the form, and checked the box that my unit is controlled, regulated, or subsidized by a governmental unit, agency, or authority. This is incorrect. I do not have Section 8 or use HUD or anything that would disqualify me from the jurisdiction of the Oakland Rent Adjustment Ordinance and the Rent Adjustment Program. **My unit is covered under the Oakland Rent Adjustment Ordinance.**

I checked the box believing that it meant that I am covered under the Oakland Rent Adjustment Program. I am attaching the most recent documents I have which note that I am covered by the Rent Adjustment Program. I ask that my petition be reinstated and that I be offered a new hearing to present my case.

Sincerely,

Caitlin Chan

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**SEQUOIA 592 LLC**  
6355 TELEGRAPH AVENUE, SUITE 101  
OAKLAND, CA 94609  
TEL: 510-928-1065

November 18, 2019

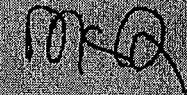
Caitlin Chan  
592 Jean Street #104  
Oakland, CA 94610

**RE: Notice of Change of Terms of Tenancy - Rent Adjustment**

You are hereby notified, in accordance with Civil Code Section 827, that 30 days after service upon you of this Notice, or [REDACTED], whichever is later, your tenancy of the premises will be changed as follows:

1. The monthly rent which is payable in advance on or before the 1<sup>st</sup> day of each month, will be sum of ~~\$1,245.23~~ **\$1,287.56**, instead of \$1,245.23, the current monthly rent.
2. This rent increase is within "Allowable Annual Rent Increase" permissible by "The Oakland Rent Adjustment Ordinance (O. M. C. 8:22:070) and Rent Adjustment Program Regulations of the City of Oakland. A copy of the Banking form and Rent Board Notice are included for your information.
3. Except as herein provided, all other terms and conditions of your tenancy shall remain in full force and effect.
4. As required by law, you are 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.

Respectfully,



Bishwendu K. Paul, Manager  
Sequoia 592 LLC

Just a reminder that you may drop-off the rent check in a mail box on left wall of the laundry room or can be mailed to:

Sequoia 592 LLC  
c/o Bishwendu K. Paul  
6355 Telegraph Avenue, Suite 101  
Oakland, CA 94609

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2

**B. K. PAUL**  
6355 TELEGRAPH AVENUE, SUITE 101  
OAKLAND, CA 94609  
TEL: 510-928-1065 E-MAIL: [REDACTED]

November 18, 2019

592 Jean Street #  
Oakland, CA 94610

**RE: City of Oakland Annual Rent Program Service Fee**


Request to pay \$34.00 to "Sequoia 592 LLC"

Dear Resident:

Effective January 1, 2020 City of Oakland rent program service fee is \$68.00/unit, where one-half (1/2) of the said fee would be charged to each tenant.

This notice is provided you to pay \$34.00 to "Sequoia 592 LLC", and can be paid by a separate check or may be added to January 2020 rent check.

Sincerely,

  
Bishwendu K. Paul, Manager  
510-928-1065

Just a reminder that you may drop-off the rent check in a mail box in laundry room or can be mailed

B. K. Paul  
6355 Telegraph Avenue, Suite 101  
Oakland, CA 94609

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CITY OF OAKLAND



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 you want 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)

此份通告(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.

## CHRONOLOGICAL CASE REPORT

Case No.: T19-0163  
Case Name: Kelly v. Chen  
Property Address: 3680 38<sup>th</sup> Ave., Oakland, CA  
Parties: Sherylan Kelly (Tenant)  
Yu Chen (Owner)

### OWNER APPEAL:

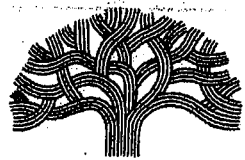
<u>Activity</u>	<u>Date</u>
Tenant Petition filed	January 24, 2019
Owner Response filed	July 19, 2019
Hearing Decision mailed	December 23, 2019
Owner Appeal filed	January 10, 2020

000040



T19-0163 MS/MA

RECEIVED  
CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM

 CITY OF OAKLAND	CITY OF OAKLAND <b>RENT ADJUSTMENT PROGRAM</b> P.O. Box 70243 Oakland, CA 94612-0243 (510) 238-3721	For date stamp. 24 PM 12:22
	<b>TENANT PETITION</b>	

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

**Please print legibly**

Your Name	Rental Address (with zip code)	Telephone:
Sheridan Kelly	3680 38th AVE Oakland CA 94619	
Your Representative's Name	Mailing Address (with zip code)	Telephone:
		Email:
Property Owner(s) name(s)	Mailing Address (with zip code)	Telephone:
Yu Chen	P.O. Box 5422 Hercules CA 94517	Email:
Property Manager or Management Co. (if applicable)	Mailing Address (with zip code)	Telephone:
		Email:

Number of units on the property: 3

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

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

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

<input type="checkbox"/> (a) The CPI and/or banked rent increase notice I was given was calculated incorrectly.
<input type="checkbox"/> (b) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
<input type="checkbox"/> (c) I received a rent increase notice before the property owner received approval from the Rent Adjustment Program for such an increase and the rent increase exceeds the CPI Adjustment and the available banked 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.
(k) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).
(l) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake. (OMC 8.22, Article I)
(m) The owner did not give me a summary of the justification(s) for the increase despite my written request.
(n) The rent was raised <u>illegally</u> after the unit was vacated as set forth under OMC 8.22.080.

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

Date you moved into the Unit: Prior resident Initial Rent: \$ 1350 /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 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		
<u>January 24, 2019</u>		<u>\$ 1350</u>	<u>\$ 1478</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

\* 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:

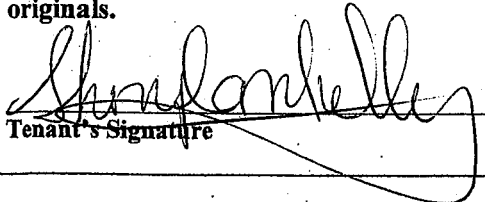
- 1) a list of the lost housing service(s) or problem(s);
- 2) the date the loss(es) or problem(s) began or the date you began paying for the service(s)
- 3) when you notified the owner of the problem(s); and
- 4) how you calculate the dollar value of lost service(s) or problem(s).

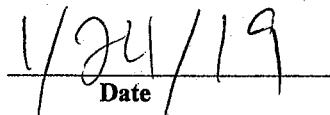
Please attach documentary evidence if available.

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

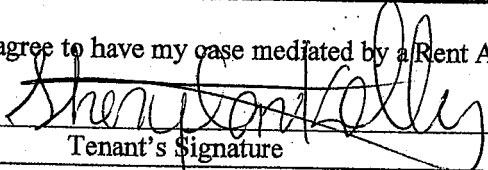
**V. MEDIATION AVAILABLE:** Mediation is an entirely voluntary process to assist you in reaching an agreement with the owner. If both parties agree, you have the option to mediate your complaints before a hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal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

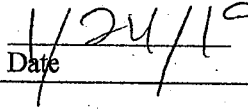
You may choose to have the mediation conducted by a Rent Adjustment Program Hearing Officer or select an outside mediator. Rent Adjustment Program Hearing Officers conduct mediation sessions free of charge. If you and the owner agree to an outside mediator, please call (510) 238-3721 to make arrangements. 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).

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

  
\_\_\_\_\_  
Date

## **VI. IMPORTANT INFORMATION:**

### **Time to File**

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

### **File Review**

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

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

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

**RECEIVED**

JUL JUN 19 2019

City of Oakland Rent Adjustment Program

Owner Response

**RENT ADJUSTMENT PROGRAM  
OAKLAND**

Case T19-0163  
Property Address 3680 38th Avenue

Party	Name	Address	Mailing Address
Tenant	Sherylan Kelly	3680 38th Avenue Oakland, CA 94619	
Owner	Yu Chen	P.O. Box 5422 Hercules, CA 94547	

**Business Information**

Date of which you aquired the building	8-31-2018
Total Number of Units	3
Is there more than one street address on the parcel?	Yes
Type of Unit	Apartment, Room or Live-work
Is the contested increase a capital improvements increase?	No
Business License	00206388
Have you paid your business license?	Yes
Have you paid the Rent Adjustment Program Service Fee (\$68 per unit)?	Yes

**Rent History**

The tenant moved into the rental unit on	11-1-2013
Initial monthly rent	1350
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?	I don't know
On what date was the notice first given?	9-1-2018
Is the tenant current on the rent?	Yes

**Rent Increase**

RAP Notice Given	RAP Notice Date	Increase Effective Date	Increase From	Increase To	Justification
No	6/19/2019	8/1/2019	1350	1478	Banking (deferred annual increases)
No	9/22/2018	11/1/2018	1350	1478	Banking (deferred annual increases)

**000045**

City of Oakland

1/2

**000046**

City of Oakland Rent Adjustment Program

Owner Response

Case T19-0163  
Property Address 3680 38th Avenue

Exemption

- 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: No
- 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. No
- The unit was newly constructed and a certificate of occupancy was issued for it on or after January 1, 1983. No
- On the day the petition was filed, the tenant petitioner was a resident of a motel, hotel, or boarding house for less than 30 days. No
- 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. No
- 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. No
- 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. No

THIRTY-DAY NOTICE OF CHANGE OF MONTHLY RENT

RECEIVED

JUN 19 2019

TO: Clyde Staten, Porcha Washington & Shar Kelly
All Residents (tenants and subtenants) in possession (full name) and all others in possession

of the premises located at:

RENT ADJUSTMENT PROGRAM
OAKLAND

3680 38th Ave.
(Street Address)
Oakland, CA 94619
(City) (Zip)

You are hereby notified, in accordance with Civil Code Section 827, that 30 days after service upon you of this Notice, or 11/1/18, whichever is later, your monthly rent which is payable in advance on or before the 1st day of each month, will be the sum of \$ 1,478.00, instead of \$ 1,350.00, the current monthly rent.

Except as herein provided, all other terms of your tenancy shall remain in full force and effect.

If you fail to fulfill the terms of your credit obligations, a negative credit report may be submitted to a credit reporting agency.

9/22/18
Date

Jack Adamson
Owner/Agent

Proof of Service

I, the undersigned, being at least 18 years of age, declare that I served this notice, of which this is a true copy, on the day of (month), (year), on the above-mentioned resident(s) in possession, in the manner indicated below. (Select one)

BY MAILING by first class mail on said date a copy to each resident by depositing said copies in the United States Mail, in a sealed envelope, with postage fully prepaid, addressed to the above-named resident(s) at their place of residence
Place of Mailing: Date of Mailing:
BY DELIVERING a copy of the Notice to the following resident(s) PERSONALLY:

I, declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct and if called as a witness to testify thereto, I could do so competently.

Executed this day of (month), (year), in (city), (state).

Name of Declarant (Print)

(Signature of Declarant)

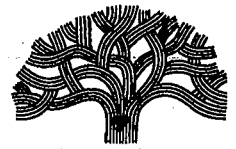


Unauthorized Reproduction of Blank Forms is Illegal.



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

Housing and Community Development  
Department Rent Adjustment Program

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

## **HEARING DECISION**

**CASE NUMBER:** T19-0163 Kelly v. Chen  
**PROPERTY ADDRESS:** 3680 38<sup>th</sup> Avenue, Oakland, CA  
**DATE OF HEARING:** September 30, 2019  
**DATE OF DECISION:** December 19, 2019  
**APPEARANCES:** Sherylan Kelly, Tenant

### **SUMMARY OF DECISION**

The tenant petition is granted.

### **INTRODUCTION**

The tenant filed a petition on January 24, 2019, contesting a monthly rent increase from \$1,350.00 to \$1,478.00 effective August 1, 2019.

The owner filed a timely response, contending that the rent increase was justified on the basis of banking.

### **ISSUE**

1. Is the contested rent increase valid?

### **EVIDENCE**

#### **Background and Rent Increase**

The tenant testified that she moved into the subject unit in May of 2018. At the time, there was already a prior tenant, Clyde Staten, residing in the unit. She testified that she moved in with Mr. Staten and at that time, he was paying \$1,350.00 in rent monthly. Mr. Staten paid rent for the months of May, and June, 2018, and then moved out in July of 2018. The tenant testified that in July of 2018, she began paying rent in the amount of \$1,350.00. She further testified that she also signed a lease with the prior owner in July of 2018, at the time she began paying rent. The tenant did not submit a copy of the July 2018 lease and did not know where it was. Since July of 2018, she has been the only tenant residing in the unit, along with her children.

In August of 2018, the subject property was purchased by the current owner. In June of 2019, she received a notice of rent increase from the current owner, proposing to increase her rent from \$1,350.00 to \$1,478.00, effective August 1, 2019.<sup>1</sup> The tenant testified that the rent increase is based on banking and the banking was calculated based on a move-in date of November 2013, which is when Clyde Staten moved into the unit. She argued that any rent increase based on banking should be calculated based on when she moved into the unit and began paying rent, which was July of 2018.

Finally, the tenant testified that she paid the increased rent of \$1,478.00 in August, and September of 2019.

The owner testified that he only has a copy of the original lease from November of 2013, which was signed by Clyde Staten and lists an initial monthly rent of \$1,350.00.<sup>2</sup> He does not have a lease with the tenant, and has no record of when the tenant moved into the unit and when Mr. Staten moved out. The owner testified that he calculated the banking rent increase based on the November 2018 lease with Clyde Staten, as that is the only lease he has for the subject property. Finally, the owner conceded that Ms. Kelly has been the only tenant residing in the unit, along with her children, since he purchased the property.

#### RAP Notice

The tenant testified at the hearing that she first received the notice of the existence of the Rent Adjustment Program (RAP Notice) in September of 2018. She also received the RAP Notice with the contested rent increase notice in June of 2019.

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

#### Invalid Rent Increase

An owner is allowed to bank increases and use them in subsequent years, subject to certain limitations.<sup>3</sup> However, the total CPI Rent Adjustments imposed in any one rent increase, including the current CPI Rent Adjustment, may not exceed three times the allowable CPI Rent Adjustment on the effective date of the rent increase notice.<sup>4</sup>

Based on the record, it is undisputed that the tenant has been residing in the unit and paying rent to the current owner since August of 2018. Further, the tenant testified that she only became a tenant and began paying rent in July of 2018. The owner did not produce any evidence to refute this testimony. Therefore, any rent increase based on banking should be calculated based on a move-in date of July, 2018. Because the

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<sup>1</sup> Exhibit 2

<sup>2</sup> Exhibit 1

<sup>3</sup> O.M.C. Section 8.22.070(B)(5)

<sup>4</sup> RAP Regulations 10.5

contested banking increase is based on a move-in date of November 2013, the rent increase is invalid and the tenant's rent remains \$1,350.00. Since the tenant has been paying \$1,478.00 in rent monthly as of August 1, 2019, she is owed restitution for overpayment of rent in the amount of \$640.00 (\$128.00 x 5 months). The restitution may be adjusted over a period of 5 months in the amount of \$128.00 per month. The tenant is entitled to begin to deduct the restitution owed from her rent after this Hearing Decision becomes final. The decision is final if no party has filed an Appeal within 20 days of the date the Hearing Decision is mailed to all parties.

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

### ORDER

1. Petition T19-0163 is granted. The rent increase is invalid. The tenant's rent remains \$1,350.00.
2. Due to rent overpayments, the tenant is entitled to restitution for overpayment of rent in the amount of \$640.00. The restitution is adjusted by a rent decrease for 5 months in the amount of \$128.00 per month.
3. The tenant is entitled to reduce the rent per the restitution order after the Hearing Decision becomes final.
4. If the owner wishes to, he can repay the restitution owed to the tenant at any time. If he does so, the monthly decrease for restitution ends at the time the tenant is provided restitution.

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

Date: December 19, 2019

  
\_\_\_\_\_  
**Maimoona Sahi Ahmad, Esq.**  
Hearing Officer  
Rent Adjustment Program

**PROOF OF SERVICE**  
**Case Number T19-0163**

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**

Yu Chen  
P.O. Box 5422  
Hercules, CA 94547

**Owner Representative**

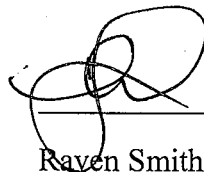
Jack Adamson  
366 International Blvd  
Oakland, CA 94606

**Tenant**

Sherylan Kelly  
3680 38th Avenue  
Oakland, CA 94619

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

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



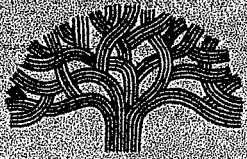
Raven Smith

Oakland Rent Adjustment Program

**000052**

MS/MA

RECEIVED  
CITY OF 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 date stamp  
2020 JAN 10 AM 9:29

**APPEAL**

<b>Appellant's Name</b> Yu Chen		<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant	
<b>Property Address (Include Unit Number)</b> 3680 38th Ave, Oakland, CA 94619			
<b>Appellant's Mailing Address (For receipt of notices)</b> 1487 Partridge Dr Hercules, CA 94547		<b>Case Number</b> T19-0163	<b>Date of Decision appealed</b> Dec 19, 2019
<b>Name of Representative (if any)</b> Jack Adamson		<b>Representative's Mailing Address (For notices)</b> 336 International Blvd Oakland, CA 94606	

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.)* **TEENANT DID NOT PROVIDE ANY RENTAL AGREEMENT**

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 Jan \_\_\_\_\_, 2020, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<b>Name</b>	Sherylan Kelly
<b>Address</b>	3680 38th Ave
<b>City, State Zip</b>	Oakland, CA 94619
<b>Name</b>	
<b>Address</b>	
<b>City, State Zip</b>	

	1/9/2020
<b>SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE</b>	<b>DATE</b>

For more information phone (510) 238-3721

To Oakland Rent Board

I am appealing the rent board decision regarding case number T19-0163 based upon my allowable banked rent increases. This case was originally filed on 1/24/19 but was withdrawn because we could not confirm if the prior owner had given a RAP notice to the tenants. Tenant stated to hearing officer that she signed a new agreement with the old owner but never produced a copy of the lease. Prior owner stated that he had no idea when Ms. Kelly moved in and never signed a lease with her. I presented the only lease to the unit and if tenant has a valid lease then they should produce one or the original lease that I submitted should be the valid lease. Here are the Issues

- 1) I produce the only rent agreement for the unit signed in Nov 2013
- 2) Tenant HAS NOT produced any agreement with the prior owner.
- 3) Prior owner did not have any knowledge of when Ms. Kelly moved into the unit with the prior tenant who is on the rental agreement.
- 4) Hearing officer asked for a rental agreement from Ms. Kelly but never produced it.
- 5) Ms. Kelly stated to agent that the tenant on the lease moved out in May 2018 and she continue to reside in unit.

Tenant assume the existing agreement that the tenants had on the property and did not enter into any new rental agreement with the prior owner or with the new owner.

Owner should be allowed the current increase based upon the only Rental Agreement for the unit that is existing.



Yu Chen  
January 8, 2019

000055

# RESIDENTIAL LEASE - RENTAL AGREEMENT AND DEPOSIT RECEIPT

RECEIVED FROM CLAUDE STAYEN, PORCHA WASHINGTON, hereinafter referred to as Tenant, the sum of TWO THOUSAND ONE HUNDRED DOLLARS), evidenced by CHECK & CASH, as deposit which, upon acceptance of this rental agreement, the Owner of the premises, hereinafter referred to as Owner, shall apply said deposit as follows:

	TOTAL	RECEIVED	BALANCE DUE PRIOR TO OCCUPANCY
Rent for the period from <u>11/1/13</u> to <u>11/31/13</u>	\$ 1375	\$ 1375	\$ _____
Security deposit (not applicable toward last month's rent)	\$ 1375	\$ 725	\$ 650
Other <u>BALANCE DUE 11/1/13</u>	\$ _____	\$ _____	\$ _____
<b>TOTAL</b> <u>650</u>	<b>\$ 2750</b>	<b>\$ _____</b>	<b>\$ 650</b>

In the event that this agreement is not accepted by the Owner or his/her authorized agent, within 3 days, the total deposit received shall be refunded. Tenant hereby offers to rent from the Owner the premises situated in the City of BAKLAND, County of ALABAMA, State of CA, described as 38th ME and consisting of 2500 USA, upon the following TERMS AND CONDITIONS:

- 1. TERM:** The term hereof shall commence on 11/1/13 2000, and continue (check one of the two following alternatives):  
 - until 11/1/14 2000, for a total rent of \$ 16,500 (SIXTEEN THOUSAND FIVE HUNDRED dollars),  
 on a month-to-month basis thereafter, until either party shall terminate the same by giving the other party 30 days written notice delivered by certified mail.
- 2. RENT:** Rent shall be \$ 1375, per month, payable in advance, upon the 1st day of each calendar month to Owner or his authorized agent, at the following address: 1266 21st, late charge of \$ \_\_\_\_\_ plus interest at \_\_\_\_\_ % per month on the delinquent amount. Tenant further agrees to pay \$ \_\_\_\_\_ for each dishonored bank check. The late charge period is not a grace period, and Owner is entitled to make written demand for any rent if not paid when due. Any unpaid balances remaining after termination of occupancy are subject to 1 1/2 % interest per month or the maximum rate allowed by law.
- 3. MULTIPLE OCCUPANCY:** It is expressly understood that this agreement is between the Owner and each signatory jointly and severally. Each signatory shall be responsible for timely payment of rent and performance of other provisions of this agreement.
- 4. UTILITIES:** Tenant shall be responsible for the payment of all utilities and services, except: \_\_\_\_\_, which shall be paid by Owner.
- 5. USE:** The premises shall be exclusively used as a residence for no more than 2 persons. Guests staying more than a total of ten (10) days in a calendar year without written consent of the Owner shall constitute a violation of this agreement. There shall be no commercial activity on the premises of this residential property.
- 6. ANIMALS:** No animals shall be brought or kept on the premises.
- 7. HOUSE RULES:** In the event that the premises are a portion of a building containing more than one unit, Tenant agrees to abide by any and all house rules, whether promulgated before or after the execution thereof, including, but not limited to, rules with respect to noise, odors, disposal of refuse, animals, parking, and use of common areas. Tenant shall not have or keep a waterbed on the premises.
- 8. ORDINANCES AND STATUTES:** Tenant shall comply with all statutes, ordinances and requirements of all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the use of the premises. If you are located in a rent control area, contact Rent and Arbitration Board for your legal rights.
- 9. ASSIGNMENT AND SUBLETTING:** TENANTS SHALL NOT ASSIGN THIS AGREEMENT OR SUBLET ANY PORTION OF THE PREMISES.
- 10. MAINTENANCE, REPAIRS OR ALTERATIONS:** Tenant acknowledges that the premises are in good order and repair, unless otherwise indicated herein. Owner may at any time give Tenant a written inventory of furniture and furnishings on the premises and Tenant shall be deemed to have possession of all said furniture and furnishings in good condition and repair, unless he/she objects thereto in writing within five (5) days after receipt of such inventory. Tenant shall, as his/her own expense, and at all times, maintain the premises in a clean and sanitary manner including all equipment, appliances, furniture and furnishings there in and shall surrender the same, at termination hereof, in as good condition as received, normal wear and tear excepted. Tenant shall be responsible for damages caused by his/her negligence and that of his family or invitees and guests. Tenant shall not paint, paper or otherwise redecorate or make alterations to the premises without the prior written consent of the Owner. Tenant shall irrigate and maintain any surrounding grounds, including lawns and shrubbery, and keep the same clear of rubbish or weeds, if such grounds are a part of the premises and are exclusively for the use of the Tenant. Tenant shall not commit any waste upon said premises, or any nuisance or act which may disturb the quiet enjoyment of any tenant in the building.
- 11. INVENTORY:** Any furnishings and equipment to be furnished by the Owner shall be set out in a special inventory. The inventory shall be signed by both Tenant and Owner concurrently with this Lease and shall be a part of this Lease.
- 12. DAMAGES TO PREMISES:** If the premises are so damaged by fire or from any other cause as to render them untenable, then either party shall have the right to terminate this Lease as of the date on which such damage occurs, through written notice to the other party, to be given within fifteen (15) days after occurrence of such damage; except that should such damage or destruction occur as the result of the abuse or negligence of Tenant, or his invitees, then Owner only shall have the right to termination. Should this right be exercised by either Owner or Tenant, then rent for the current month shall be prorated between the parties as of the date the damage occurred and any prepaid rent and unused security deposit shall be refunded to Tenant. If this Lease is not terminated, then Owner shall promptly repair the premises and there shall be a proportionate reduction of rent until the premises are repaired and ready for Tenant's occupancy. The proportionate reduction shall be based on the extent to which the making of repairs interferes with Tenant's reasonable use of the premises.
- 13. ENTRY AND INSPECTION:** Owner shall have the right to enter the premises: (a) in case of emergency; (b) to make necessary or agreed repairs, decorations, alterations, improvements, supply necessary or agreed services, exhibit the premises to prospective or actual buyers, mortgages, tenants, work persons, or contractors; (c) when tenant has abandoned or surrendered the premises. Except under (a) and (c), entry may be made only during normal business hours, and at least 24 hours prior notice to Tenant.
- 14. INDEMNIFICATION:** Owner shall not be liable for any damage or injury to Tenant, or any other persons or to any property, occurring on the premises or any part thereof, or in common areas thereof, unless such damage is the proximate result of the negligence or unlawful act of Owner, his/her agents, or his/her employees. Tenant agrees to hold Owner harmless from any claims for damages no matter how caused, except for injury or damages caused by willful act or negligence of Lessor, his agents or employees. Owner's insurance does not cover Tenant's personal property.
- 15. PHYSICAL POSSESSION:** If Owner is unable to deliver possession of the premises at the commencement hereof, Owner shall not be liable for any damage caused thereby, nor shall this agreement be void or voidable, but Tenant shall not be liable for any rent until possession is delivered. Tenant may terminate this agreement if possession is not delivered within \_\_\_\_\_ days of the commencement of the term hereof.
- 16. DEFAULT:** If Tenant shall fail to pay rent when due, or perform any term hereof, after not less than three (3) days written notice of such default given in the manner required by law, the Owner, as his/her option, may terminate all rights of Tenant hereunder, unless Tenant, within said time, shall cure such default. If Tenant abandons or vacates the property, while in default of the payment of rent, Owner may consider any property left on the premises to be abandoned and may dispose of the same in any manner allowed by law. In the event the Owner reasonably believes that such abandoned property has no value, it may be discarded. All property on the premises shall be subject to a lien for the benefit of Owner securing the payment of all sums due hereunder, to the maximum extent allowed by law.  
 In the event of a default by Tenant, Owner may elect to (a) continue the lease in effect and enforce all his/her rights and remedies hereunder, including the right to recover the rent as it becomes due, or (b) at any time, terminate all of Tenant's rights hereunder and recover from Tenant all damages he/she may incur by reason of the breach of the lease, including the cost of recovering the premises, and including the worth at the time of such termination, or at the time of an award if suit be instituted to enforce this provision, of the amount by which the unpaid rent for the balance of the term exceeds the amount of such rental loss which the Tenant proves could be reasonably avoided.
- 17. SECURITY:** The security deposit set forth, if any, shall secure the performance of Tenant's obligations hereunder. Owner may, but shall not be obligated to, apply all portions of said deposit on account of Tenant's obligations hereunder. Any balance remaining upon termination shall be returned to Tenant. Tenant shall not have the right to demand a deposit in payment of the last month's rent. Funds held at

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until 11/1/14 200, for a total rent of \$ 16,500 and continue (check one of the following alternatives): SIXTEEN THOUSAND AND 00 on a month-to-month basis thereafter, until either party shall terminate the same by giving the other party 30 days written notice delivered by certified mail.

**2. RENT:** Rent shall be \$ 1375 per month, payable in advance, upon the \_\_\_\_\_ day of each calendar month to Owner or his authorized agent, at the following address: 1216 21st, late charge of \$ \_\_\_\_\_ plus interest at \_\_\_\_\_ % per month on the delinquent amount. Tenant further agrees to pay \$ \_\_\_\_\_ for each dishonored bank check. The late charge period is not a grace period, and Owner is entitled to make written demand for any rent if not paid when due. Any unpaid balances remaining after termination of occupancy are subject to 1 1/2 % interest per month or the maximum rate allowed by law.

**3. MULTIPLE OCCUPANCY:** It is expressly understood that this agreement is between the Owner and each signatory jointly and severally. Each signatory shall be responsible for timely payment of rent and performance of other provisions of this agreement.

**4. UTILITIES:** Tenant shall be responsible for the payment of all utilities and services, except: \_\_\_\_\_, which shall be paid by Owner.

**5. USE:** The premises shall be exclusively used as a residence for no more than \_\_\_\_\_ persons. Guests staying more than a total of ten (10) days in a calendar year without written consent of the Owner shall constitute a violation of this agreement. There shall be no commercial activity on the premises of this residential property.

**6. ANIMALS:** No animals shall be brought or kept on the premises.

**7. HOUSE RULES:** In the event that the premises are a portion of a building containing more than one unit, Tenant agrees to abide by any and all house rules, whether promulgated before or after the execution thereof, including, but not limited to, rules with respect to noise, odors, disposal of refuse, animals, parking, and use of common areas. Tenant shall not have or keep a waterbed on the premises.

**8. ORDINANCES AND STATUTES:** Tenant shall comply with all statutes, ordinances and requirements of all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the use of the premises. If you are located in a rent control area, contact Rent and Arbitration Board for your legal rights.

**9. ASSIGNMENT AND SUBLETTING:** TENANTS SHALL NOT ASSIGN THIS AGREEMENT OR SUBLET ANY PORTION OF THE PREMISES.

**10. MAINTENANCE, REPAIRS OR ALTERATIONS:** Tenant acknowledges that the premises are in good order and repair, unless otherwise indicated herein. Owner may at any time give Tenant a written inventory of furniture and furnishings on the premises and Tenant shall be deemed to have possession of all said furniture and furnishings in good condition and repair, unless he/she objects thereto in writing within five (5) days after receipt of such inventory. Tenant shall, as his/her own expense, and at all times, maintain the premises in a clean and sanitary manner including all equipment, appliances, furniture and furnishings there in and shall surrender the same, at termination hereof, in as good condition as received, normal wear and tear excepted. Tenant shall be responsible for damages caused by his/her negligence and that of his family or invitees and guests. Tenant shall not paint, paper or otherwise redecorate or make alterations to the premises without the prior written consent of the Owner. Tenant shall irrigate and maintain any surrounding grounds, including lawns and shrubbery, and keep the same clear of rubbish or weeds, if such grounds are a part of the premises and are exclusively for the use of the Tenant. Tenant shall not commit any waste upon said premises, or any nuisance or act which may disturb the quiet enjoyment of any tenant in the building.

**11. INVENTORY:** Any furnishings and equipment to be furnished by the Owner shall be set out in a special inventory. The inventory shall be signed by both Tenant and Owner concurrently with this Lease and shall be a part of this Lease.

**12. DAMAGES TO PREMISES:** If the premises are so damaged by fire or from any other cause as to render them untenantable, then either party shall have the right to terminate this Lease as of the date on which such damage occurs, through written notice to the other party, to be given within fifteen (15) days after occurrence of such damage; except that should such damage or destruction occur as the result of the abuse or negligence of Tenant, or his invitees, then Owner only shall have the right to termination. Should this right be exercised by either Owner or Tenant, then rent for the current month shall be prorated between the parties as of the date the damage occurred and any prepaid rent and unused security deposit shall be refunded to Tenant. If this Lease is not terminated, then Owner shall promptly repair the premises and there shall be a proportionate reduction of rent until the premises are repaired and ready for Tenant's occupancy. The proportionate reduction shall be based on the extent to which the making of repairs interferes with Tenant's reasonable use of the premises.

**13. ENTRY AND INSPECTION:** Owner shall have the right to enter the premises: (a) in case of emergency; (b) to make necessary or agreed repairs, decorations, alterations, improvements, supply necessary or agreed services, exhibit the premises to prospective or actual buyers, mortgages, tenants, work persons, or contractors; (c) when tenant has abandoned or surrendered the premises. Except under (a) and (c), entry may be made only during normal business hours, and at least 24 hours prior notice to Tenant.

**14. INDEMNIFICATION:** Owner shall not be liable for any damage or injury to Tenant, or any other persons or to any property, occurring on the premises or any part thereof, or in common areas thereof, unless such damage is the proximate result of the negligence or unlawful act of Owner, his/her agents, or his/her employees. Tenant agrees to hold Owner harmless from any claims for damages no matter how caused, except for injury or damages caused by willful act or negligence of Lessor, his agents or employees. Owner's insurance does not cover Tenant's personal property.

**15. PHYSICAL POSSESSION:** If Owner is unable to deliver possession of the premises at the commencement hereof, Owner shall not be liable for any damage caused thereby, nor shall this agreement be void or voidable, but Tenant shall not be liable for any rent until possession is delivered. Tenant may terminate this agreement if possession is not delivered within \_\_\_\_\_ days of the commencement of the term hereof.

**16. DEFAULT:** If Tenant shall fail to pay rent when due, or perform any term hereof, after not less than three (3) days written notice of such default given in the manner required by law, the Owner, as his/her option, may terminate all rights of Tenant hereunder, unless Tenant, within said time, shall cure such default. If Tenant abandons or vacates the property, while in default of the payment of rent, Owner may consider any property left on the premises to be abandoned and may dispose of the same in any manner allowed by law. In the event the Owner reasonably believes that such abandoned property has no value, it may be discarded. All property on the premises shall be subject to a lien for the benefit of Owner securing the payment of all sums due hereunder, to the maximum extent allowed by law.

In the event of a default by Tenant, Owner may elect to (a) continue the lease in effect and enforce all his/her rights and remedies hereunder, including the right to recover the rent as it becomes due, or (b) at any time, terminate all of Tenant's rights hereunder and recover from Tenant all damages he/she may incur by reason of the breach of the lease, including the cost of recovering the premises, and including the worth at the time of such termination, or at the time of an award if suit be instituted to enforce this provision, of the amount by which the unpaid rent for the balance of the term exceeds the amount of such rental loss which the Tenant proves could be reasonably avoided.

**17. SECURITY:** The security deposit set forth, if any, shall secure the performance of Tenant's obligations hereunder. Owner may, but shall not be obligated to, apply all portions of said deposit on account of Tenant's obligations hereunder. Any balance remaining upon termination shall be returned to Tenant. Tenant shall not have the right to apply the security deposit in payment of the last month's rent. Funds held at \_\_\_\_\_.

**18. DEPOSIT REFUNDS:** The balance of all deposits shall be refunded within three weeks from date possession is delivered to Owner or his/her Authorized Agent, together with a statement showing any changes made against such deposits.

**19. ATTORNEY'S FEES AND COSTS:** Each party shall bear their own attorney's fees and costs in any action or proceeding involving a dispute between Owner, Tenant, and/or Broker arising out of the execution of this agreement, or to collect commissions, or to enforce the terms and conditions of this agreement, or to recover possession of the premises from the Tenant.

**20. WAIVER:** No failure of Owner to enforce any term hereof shall be deemed a waiver. The acceptance of rent by Owner shall not waive his/her right to enforce any term hereof.

**21. NOTICES:** Any notice which either party may give or is required to give, may be given by mailing the same, certified mail, to Tenant at the premises or to Owner at the address shown herein or at such other places as may be designated by the parties from time to time.

**22. HOLDING OVER:** Any holding over after the expiration hereof, with the consent of Owner shall become a month-to-month tenancy at a monthly rent of \$ \_\_\_\_\_ payable in advance and otherwise subject to the terms hereof, as applicable, until either party shall terminate the same by giving the other party thirty (30) days written notice.

**23. TIME:** Time is of the essence of this agreement.

**24. ENTIRE AGREEMENT:** The foregoing constitutes the entire agreement between the parties and may be modified only by a writing signed by both parties. The following Exhibits, if any, are attached herein and have been made a part of this agreement on:

DATED: 11/1/13

TENANT Clyde Staten

The undersigned Tenant hereby acknowledges receipt of a copy of the Lease.

OWNER SM

000057