

HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD  
BOARD APPEAL PANEL

May 2, 2019

7:00 P.M.

CITY HALL, HEARING ROOM #1  
ONE FRANK H. OGAWA PLAZA  
OAKLAND, CA

AGENDA

1. CALL TO ORDER
2. ROLL CALL
3. CONSENT ITEMS
4. NEW BUSINESS
  - a. Appeal Hearings in:
    - i. T17-0518, McCullouch v. Cohen
    - ii. T18-0172, Embaye v. Amin  
T18-0183, Embaye v. Amin
    - iii. T18-0055, Vargas et al. v. 3000 Nicol Avenue Properties
5. ADJOURNMENT

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

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

會場有適合輪椅出入設施。需要殘障輔助設施, 手語, 西班牙語,

粵語或國語翻譯服務, 請在會議前五個工作天電郵 [sshannon@oaklandnet.com](mailto:sshannon@oaklandnet.com) 或致電 (510) 238-3715 或 711 California relay service。請避免塗搽香氛產品，參加者可能對化學成分敏感。

**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

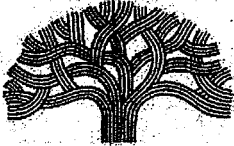
Case No.: T17-0518  
Case Name: McCulloch v. Cohen  
Property Address: 345 Hanover Ave., Oakland, CA  
Parties: Catherine McCulloch (Tenant)  
(No Appearance by Owner)

### OWNER APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	September 8, 2017
No Owner Response filed	-----
Hearing Decision mailed	March 8, 2018
1 <sup>st</sup> Owner Appeal filed	August 6, 2018
Corrected Hearing Decision mailed	August 22, 2018
2 <sup>nd</sup> Owner Appeal filed	September 11, 2018
Tenant Response to Owner Appeal filed	September 26, 2018

T17-0518 R/SK

RENT ADJUSTMENT PROGRAM

 CITY OF OAKLAND	<b>CITY OF OAKLAND</b> <b>RENT ADJUSTMENT PROGRAM</b> P.O. Box 70243 Oakland, CA 94612-0243 (510) 238-3721	For date stamp: 2017 SEP -8 AM 10: 14
	<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 <i>Catherine McCulloch</i>	Rental Address (with zip code) <i>345 Hanover Ave Oakland CA 94606</i>	Telephone: <i>818 970 6469</i>
		E-mail: <i>katiehmed@gmail.com</i>
Your Representative's Name	Mailing Address (with zip code)	Telephone:  Email:
Property Owner(s) name(s) <i>Arik Cohen</i>	Mailing Address (with zip code) <i>45 Lapidge Street San Francisco CA 94110</i>	Telephone: <i>510-435-9401</i>
		Email: <i>Cohen@KWL-engineering.com</i>
Property Manager or Management Co. (if applicable)	Mailing Address (with zip code)	Telephone:  Email:

Number of units on the property: 2

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

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

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

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

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

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

Date you moved into the Unit: 9/22/14 Initial Rent: \$ 866.66 /month

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

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

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

Date you received the notice (mo/day/year)	Date increase goes into effect (mo/day/year)	Monthly rent increase		Are you Contesting this increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
<u>8/4/17</u>	<u>8/4/17</u>	\$	\$ <u>Reduced Services</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:

TI7-0229 / TI7-1012 (online)

**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:

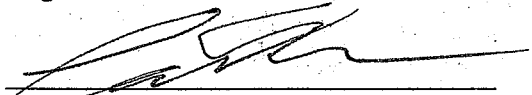
- 1) a list of the lost housing service(s) or problem(s);
- 2) the date the loss(es) or problem(s) began or the date you began paying for the service(s)
- 3) when you notified the owner of the problem(s); and
- 4) how you calculate the dollar value of lost service(s) or problem(s).

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

8/31/17  
Date

[Empty rectangular box]

[Empty rectangular box]

**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): \_\_\_\_\_



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

CITY OF OAKLAND

Department of Housing and Community Development  
Rent Adjustment Program

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

**HEARING DECISION**

**CASE NUMBER:** T17-0518, McCulloch v. Cohen  
**PROPERTY ADDRESS:** 345 Hanover Ave., Oakland, CA  
**DATE OF HEARING:** February 22, 2018  
**DATE OF DECISION:** March 8, 2018  
**APPEARANCES:** Catherine McCulloch (Tenant)  
(No Appearance by Owner)

**SUMMARY OF DECISION**

The tenant's petition is granted.

**CONTENTIONS OF THE PARTIES**

The tenant filed a petition on September 8, 2017, which alleges that her housing services have been decreased due to loss of access to a parking space in the driveway of the building in which she lives. The owner did not file a response to the petition, nor did the owner appear at the Hearing.

**THE ISSUE**

Have the tenant's housing services been decreased and, if so, by what percentage of the total housing services that are provided by the owner?

/  
/  
/  
/



## EVIDENCE

Factual Basis for the Petition: At the Hearing, the tenant testified that she is a tenant in the back unit of a 2-unit residential building, in which she lives with two roommates. There is a long, fairly wide driveway next to the building, which can accommodate 2 passenger cars parked side by side. When the tenant moved into the back unit, the tenant and owner agreed that the tenants in the back unit would have the use of 3 parking spaces in the driveway. This agreement was then memorialized in a lease dated April 15, 2015. The tenant submitted a page of a lease that the parties signed on that date.<sup>1</sup> A paragraph in this lease states, in part: “[T]he tenant is entitled to the exclusive use of the following parking (the ‘Parking’) on or about the premises: Imaginary line down the middle of drive way, half closest to house for back unit, half next to fence for front unit.”

The tenant testified that half of the driveway can accommodate 3 passenger cars parked one behind another. The tenant and her roommates would park and move each other’s cars so that all 3 parking spaces could be utilized. At some point, the owner’s brother, Danny, moved into the front unit. In early August 2017, the owner told the tenant and her roommates that they would no longer have the right to park in the driveway unless Danny gave them permission to do so.

On August 6, 2017, the owner sent an email to the tenant and her roommates regarding a proposed new lease.<sup>2</sup> This email states, in part: “Regarding the parking, yes, going forward, it belongs to the front unit. I think Danny is coming home tomorrow so if you want to talk to him about how and if he is planning to share the driveway you should but ultimately moving forward it is up to him.”

In early August, Danny began parking a large motor home at various places in the driveway. The tenant submitted photographs of this motor home, which show that the driveway is not wide enough to accommodate both the motor home and a car.<sup>3</sup> Further, there was a large trash pile at the back of the driveway portion away from the house. The existence of this trash pile effectively eliminated one potential parking space on this lane of the driveway. If the motor home were parked at the back of the driveway, one or two cars could be parked next to the house. If it were parked at the entrance to the driveway, there would be no room for any car to park next to the house.

The tenant is a Deputy Public Defender in Contra Costa County, and often needs to work late, at times until midnight or later. When she returns home from her office in Martinez, if she is unable to park in the driveway, she must find street parking, which is very difficult in the neighborhood in which she lives. On such occasions, she must walk alone for several blocks late at night. She is afraid to do so. In early August 2017, there was often one or no available parking spaces on the house side of the driveway, and one of her roommates would commonly park in the available space before the tenant returned home. Therefore, beginning in early August, the tenant tried living elsewhere, house or dog sitting for various friends when possible.

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<sup>1</sup> Exhibit No. 4. This Exhibit, and all others to which reference is made in this Decision, were admitted into evidence.

<sup>2</sup> Exhibit No. 6.

<sup>3</sup> Exhibit Nos. 2 & 3

In early October 2017, Danny removed that trash pile so that there would be 2 available spaces next to the house if the motor home were parked at the far end of the driveway. The tenant's third roommate has not owned a car since that time, so the tenant has had an available parking space next to the house. However, if the motor home is parked at the back of the driveway, and Danny tells the tenant and her roommates that he needs to leave in his motor home, or that he will be returning, they must move their cars to accommodate him. Further, the former third parking space is not available for the tenant's visitors, who must look for difficult street parking.

Rent History: The tenant testified that the rent for the subject unit has been \$2,750 per month since August 2017.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The tenant's documentary evidence and uncontroverted testimony is credited. It is clear that use of a parking space next to her residence is an important housing service for the tenant, a young woman who often works late hours. When the owner changed the terms of the original rental agreement by denying the tenant and her roommates exclusive use to park on half of the driveway, he significantly decreased the tenant's housing services.

The owner's action reduced the tenant's package of housing services by 10% from August through September 2017 and by 5% from October 2017 to date. Although the tenant now has access to a parking space, the denial of a third space still has an impact upon the tenant. Her third roommate may buy a car and compete for one of the 2 parking spaces, and the tenant's visitors are inconvenienced if they otherwise would be able to park in the driveway.

Because of the current decrease in housing services, the tenant's rent for the entire rental unit in which she lives is reduced by 5%, being \$275 per month. The rent for the unit is therefore reduced, to \$2,475 per month. This rent decrease will remain in effect until there are 3 parking spaces available at all times in the driveway next to the subject house for the use of the tenant and her co-tenants, as specified in the Order below. Further, as set forth on the following Table, the tenant has overpaid rent since August 2017.

**VALUE OF LOST SERVICES**

Service Lost	From	To	Rent	% Rent Decrease	Decrease /month	No. Months	Overpaid
Parking Space	1-Aug-17	30-Sep-17	\$2,750	10%	\$ 275.00	2	\$550.00
Parking Space	1-Oct-17	31-Mar-18	\$2,750	5%	\$ 137.50	6	\$825.00
<b>TOTAL LOST SERVICES</b>							<b>\$1,375.00</b>

**RESTITUTION**

MONTHLY RENT	\$917
<b>TOTAL TO BE REPAID TO TENANT</b>	<b>\$1,375.00</b>
TOTAL AS PERCENT OF MONTHLY RENT	150%
AMORTIZED OVER 12 MO. BY REG. IS	<b>\$114.58</b>

Conclusion: Because of ongoing decreased housing services, the rent for the entire rental unit is reduced to \$2,475 per month. The tenant has overpaid in the amount of \$1,375. The overpayment is ordered repaid over a period of 12 months.<sup>4</sup> The rent for the rental unit in which the tenant lives is temporarily reduced by \$114.58 per month, to \$2,360.42 per month, beginning with the rent payment in April 2018 and ending with the rent payment in March 2019.

**ORDER**

1. Petition T17-0518 is granted.
2. The Base Rent for the entire rental unit in which the tenant lives is \$2,750 per month.
3. Because of an ongoing decrease in housing services, the current rent for the entire unit, before reduction due to rent overpayments, is \$2,475 per month.
4. Because of past decreased housing services, the tenant has overpaid rent in the amount of \$1,375. This overpayment is adjusted by a rent reduction for 12 months.
5. The rent is temporarily reduced by \$114.58 per month, to \$2,360.42 per month, beginning with the rent payment in April 2018 and ending with the rent payment in March 2019.
6. In April 2019, the rent will increase to \$2,745 per month.
7. When there are 3 parking spaces available at all times in the driveway next to the subject house for the use of the tenant and her co-tenants, the owner may increase the rent by \$275 per month, after giving proper notice in accordance with Civil Code Section 827.
8. **Right to Appeal: This decision is the final decision of the Rent Adjustment Program Staff.** Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within twenty (20) calendar days after service of the decision. The date of service is shown on the attached Proof of Service. If the Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.

Dated: March 8, 2018

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

<sup>4</sup> Regulations, Section 8.22.110(F)

**PROOF OF SERVICE**

**Case Number T17-0518**

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

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

**Tenant**

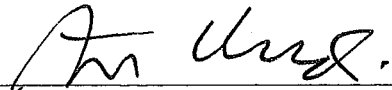
Catherine McCulloch  
345 Hanover Ave  
Oakland, CA 94606

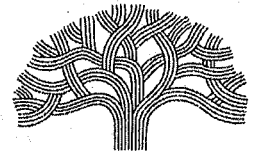
**Owner**

Arik Cohen  
45 Lapidge St  
San Francisco, CA 94110

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on March 08, 2018 in Oakland, CA.

  
\_\_\_\_\_  
Stephen Kasdin

 CITY OF OAKLAND	<b>CITY OF OAKLAND</b> <b>RENT ADJUSTMENT PROGRAM</b> 250 Frank Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721	For date stamp. <b>2018 AUG -6 PM 1:58</b>
	<b><u>APPEAL</u></b>	

<b>Appellant's Name</b> Arik Cohen		<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant	
<b>Property Address (Include Unit Number)</b> 345 Hanover Ave, Oakland CA 94612			
<b>Appellant's Mailing Address (For receipt of notices)</b> 269 Chenery St., San Francisco CA 94131		<b>Case Number</b> T17-0518	
		<b>Date of Decision appealed</b> July 20, 2018	
<b>Name of Representative (if any)</b>		<b>Representative's Mailing Address (For notices)</b>	

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

- 1) There are math/clerical errors that require the Hearing Decision to be updated. *(Please clearly explain the math/clerical errors.)* 10% not 5% as stated was used to calculate the rent after decrease of services.
- 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: 1.

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

I declare under penalty of perjury under the laws of the State of California that on August 6, 2018, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<b><u>Name</u></b>	Cathrine McCulloch
<b><u>Address</u></b>	345 Hanover
<b><u>City, State Zip</u></b>	Oakland, CA 94612
<b><u>Name</u></b>	
<b><u>Address</u></b>	
<b><u>City, State Zip</u></b>	

	8/6/2018
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SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE

DATE

For more information phone (510) 238-3721.

## Detailed Explanation Accompanying Owner's Appeal

Case T17-0158  
August 6, 2018  
Dear Mr. Kasdin

I am requesting an appeal to the ruling in Case #T17-0158 primarily because there is a mathematical error in the appeal's calculations.

Under the Findings of Fact and Conclusion of Law Section 3rd Paragraph: *"The tenant's rent for the entire rental unit in which she lives is reduced by 5%, being \$275"*. This is not accurate because 5% of total rent is \$137.50 NOT \$275.00.

Since the rent board valued the current loss of services at 5%, the new rent should be reduced by 5% if the current loss of services are not mitigated by the owner.

To explain my absence for the July 20, 2018 hearing; In reading the most recent communications from RAP (see highlighted text below) my understanding at the time was that there would be no hearing if I did not file an official response.

If the owner files a Response to the tenant's Petition within the aforementioned time limit, a Hearing in this case will begin.

Date: July 20, 2018  
Time: 10:00 A.M.  
Place: 250 Frank H. Ogawa Plaza, Ste. #5313 (Dalziel Building)  
Oakland, CA

I was also confused when the tenant started paying full rent and assumed that she had come to her senses and dropped this issue. Please note that the tenant has never communicated to me directly any of the issues she described to the board. If she had I would have gladly asked that the RV be removed from the driveway. I have had no issues with the other tenants that live with her.

Sincerely,



Arik Cohen

000015



250 FRANK OGAWA PLAZA, STE. 5313, OAKLAND, CA 94612

## CITY OF OAKLAND

Department of Housing and Community Development  
Rent Adjustment Program

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

### CORRECTED HEARING DECISION

**CASE NUMBER:** T17-0518, McCulloch v. Cohen  
**PROPERTY ADDRESS:** 345 Hanover Ave., Oakland, CA  
**DATE OF HEARING:** February 22, 2018  
**DATE OF DECISION:** March 8, 2018  
**DATE OF CORRECTED DECISION:** August 22, 2018  
**APPEARANCES:** Catherine McCulloch (Tenant)  
(No Appearance by Owner)

### REASON FOR CORRECTED DECISION:

The owner did not appear at the Hearing on February 22, 2018. A Hearing Decision was issued on March 8, 2018 and was served by mail upon all parties. Thereafter, an Order was issued setting aside the Hearing Decision to allow the owner to file a response to the tenant's petition and to appear at a Hearing on July 20, 2018. The owner did not file a response to the petition, nor did he appear at the Hearing on July 20, 2018. Therefore, on July 20, 2018, an Order was issued which states that the original Hearing Decision remains in effect.

On August 6, 2018, the owner filed an appeal, in which he pointed out that the Hearing Decision contains miscalculations. Upon review of the Hearing Decision, it is found that both the Findings of Fact and Conclusions of Law, and the Order in the Hearing Decision, incorrectly state the amount of current rent reduction and the dollar amount to which the tenant's rent will increase in April 2019. This Corrected Hearing Decision is issued to remedy this error. The Hearing Decision dated March 8, 2018 is hereby amended only with regard to the Findings of Fact and Conclusions of Law, and the Order, as set forth below.

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This Corrected Hearing Decision is an entirely new Decision. There is a new time limit for the appeal of this Corrected Hearing Decision, as set forth below.

### **SUMMARY OF DECISION**

The tenant's petition is granted:

### **CONTENTIONS OF THE PARTIES**

The tenant filed a petition on September 8, 2017, which alleges that her housing services have been decreased due to loss of access to a parking space in the driveway of the building in which she lives. The owner did not file a response to the petition, nor did the owner appear at the Hearing.

### **THE ISSUE**

Have the tenant's housing services been decreased and, if so, by what percentage of the total housing services that are provided by the owner?

### **EVIDENCE**

**Factual Basis for the Petition:** At the Hearing, the tenant testified that she is a tenant in the back unit of a 2-unit residential building, in which she lives with two roommates. There is a long, fairly wide driveway next to the building, which can accommodate 2 passenger cars parked side by side. When the tenant moved into the back unit, the tenant and owner agreed that the tenants in the back unit would have the use of 3 parking spaces in the driveway. This agreement was then memorialized in a lease dated April 15, 2015. The tenant submitted a page of a lease that the parties signed on that date.<sup>1</sup> A paragraph in this lease states, in part: "[T]he tenant is entitled to the exclusive use of the following parking (the 'Parking') on or about the premises: Imaginary line down the middle of drive way, half closest to house for back unit, half next to fence for front unit."

The tenant testified that half of the driveway can accommodate 3 passenger cars parked one behind another. The tenant and her roommates would park and move each other's cars so that all 3 parking spaces could be utilized. At some point, the owner's brother, Danny, moved into the front unit. In early August 2017, the owner told the tenant and her roommates that they would no longer have the right to park in the driveway unless Danny gave them permission to do so.

On August 6, 2017, the owner sent an email to the tenant and her roommates regarding a proposed new lease.<sup>2</sup> This email states, in part: "Regarding the parking, yes, going forward, it belongs to the front unit. I think Danny is coming home tomorrow so if you want to talk to him

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<sup>1</sup> Exhibit No. 4. This Exhibit, and all others to which reference is made in this Decision, were admitted into evidence.

<sup>2</sup> Exhibit No. 6.

about how and if he is planning to share the driveway you should but ultimately moving forward it is up to him.”

In early August, Danny began parking a large motor home at various places in the driveway. The tenant submitted photographs of this motor home, which show that the driveway is not wide enough to accommodate both the motor home and a car.<sup>3</sup> Further, there was a large trash pile at the back of the driveway portion away from the house. The existence of this trash pile effectively eliminated one potential parking space on this lane of the driveway. If the motor home were parked at the back of the driveway, one or two cars could be parked next to the house. If it were parked at the entrance to the driveway, there would be no room for any car to park next to the house.

The tenant is a Deputy Public Defender in Contra Costa County, and often needs to work late, at times until midnight or later. When she returns home from her office in Martinez, if she is unable to park in the driveway, she must find street parking, which is very difficult in the neighborhood in which she lives. On such occasions, she must walk alone for several blocks late at night. She is afraid to do so. In early August 2017, there was often one or no available parking spaces on the house side of the driveway, and one of her roommates would commonly park in the available space before the tenant returned home. Therefore, beginning in early August, the tenant tried living elsewhere, house or dog sitting for various friends when possible.

In early October 2017, Danny removed that trash pile so that there would be 2 available spaces next to the house if the motor home were parked at the far end of the driveway. The tenant's third roommate has not owned a car since that time, so the tenant has had an available parking space next to the house. However, if the motor home is parked at the back of the driveway, and Danny tells the tenant and her roommates that he needs to leave in his motor home, or that he will be returning, they must move their cars to accommodate him. Further, the former third parking space is not available for the tenant's visitors, who must look for difficult street parking.

Rent History: The tenant testified that the rent for the subject unit has been \$2,750 per month since August 2017.

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

The tenant's documentary evidence and uncontroverted testimony is credited. It is clear that use of a parking space next to her residence is an important housing service for the tenant, a young woman who often works late hours. When the owner changed the terms of the original rental agreement by denying the tenant and her roommates exclusive use to park on half of the driveway, he significantly decreased the tenant's housing services.

The owner's action reduced the tenant's package of housing services by 10% from August through September 2017 and by 5% from October 2017 to date. Although the tenant now has access to a parking space, the denial of a third space still has an impact upon the tenant. Her third roommate may buy a car and compete for one of the 2 parking spaces, and the tenant's visitors are inconvenienced if they otherwise would be able to park in the driveway.

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<sup>3</sup> Exhibit Nos. 2 & 3

Because of the current decrease in housing services, the tenant's rent for the entire rental unit in which she lives is reduced by 5%, being \$137.50 per month. The rent for the unit is therefore reduced, to \$2,612.50 per month. This rent decrease will remain in effect until there are 3 parking spaces available at all times in the driveway next to the subject house for the use of the tenant and her co-tenants, as specified in the Order below. Further, as set forth on the following Table, the tenant has overpaid rent since August 2017:

**VALUE OF LOST SERVICES**

Service Lost	From	To	Rent	% Rent Decrease	Decrease /month	No. Months	Overpaid
Parking Space	1-Aug-17	30-Sep-17	\$2,750	10%	\$275.00	2	\$550.00
Parking Space	1-Oct-17	31-Mar-18	\$2,750	5%	\$137.50	6	\$825.00
<b>TOTAL LOST SERVICES</b>							<b>\$1,375.00</b>

**RESTITUTION**

MONTHLY RENT	\$2,750
<b>TOTAL TO BE REPAID TO TENANT</b>	<b>\$1,375.00</b>
TOTAL AS PERCENT OF MONTHLY RENT	50%
AMORTIZED OVER 6 MO. BY REG. IS	<b>\$229.17</b>

Conclusion: Because of ongoing decreased housing services, the rent for the entire rental unit is reduced to \$2,612.50 per month. The tenant has overpaid in the amount of \$1,375. The overpayment is ordered repaid over a period of 6 months.<sup>4</sup> The rent for the rental unit in which the tenant lives is temporarily reduced by \$229.17 per month, to \$2,383.33 per month, beginning with the rent payment in April 2018 and ending with the rent payment in September 2018.

**ORDER**

1. Petition T17-0518 is granted.
2. The Base Rent for the entire rental unit in which the tenant lives is \$2,750 per month.
3. Because of an ongoing decrease in housing services, the current rent for the entire unit, before reduction due to rent overpayments, is \$2,612.50 per month.
4. Because of past decreased housing services, the tenant has overpaid rent in the amount of \$1,375. This overpayment is adjusted by a rent reduction for 6 months.
5. The rent is temporarily reduced by \$229.17 per month, to \$2,383.33 per month, beginning with the rent payment in April 2018 and ending with the rent payment in September 2018.
6. In October 2018, the rent will increase to \$2,612.50 per month.

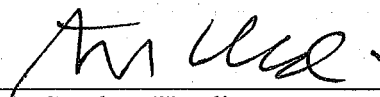
<sup>4</sup> Regulations, Section 8.22.110(F)

7. The amount of rent due in September 2018 shall be adjusted for underpayments or overpayments in accordance with this Decision.

8. When there are 3 parking spaces available at all times in the driveway next to the subject house for the use of the tenant and her co-tenants, the owner may increase the rent by \$137.50 per month, after giving proper notice in accordance with Civil Code Section 827.

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

Dated: August 21, 2018



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Stephen Kasdin  
Hearing Officer  
Rent Adjustment Program

## PROOF OF SERVICE

Case Number: T17-0518 (McCulloch v. Cohen)

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, 5<sup>th</sup> Floor, Oakland, California 94612.


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

Catherine McCulloch  
345 Hanover Ave.  
Oakland, CA 94606

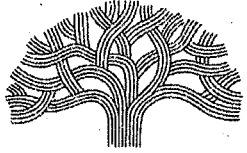
Arik Cohen  
269 Chenery St.  
San Francisco, CA 94131

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on August 22, 2018, in Oakland, California.

  
\_\_\_\_\_  
Stephen Kasdin  
Oakland Rent Adjustment Program

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.  
2018 SEP 11 AM 9:59

**APPEAL**

<b>Appellant's Name</b> Arik Cohen		<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant	
<b>Property Address (Include Unit Number)</b> 345 Hanover Ave, Oakland CA 94612			
<b>Appellant's Mailing Address (For receipt of notices)</b> 269 Chenery St., San Francisco CA 94131		<b>Case Number</b> T17-0518	
		<b>Date of Decision appealed</b> Aug. 22, 2018	
<b>Name of Representative (if any)</b>		<b>Representative's Mailing Address (For notices)</b>	

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

- 1) There are math/clerical errors that require the Hearing Decision to be updated. *(Please clearly explain the math/clerical errors.)* 10% not 5% as stated was used to calculate the rent after decrease of services.
- 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.)*

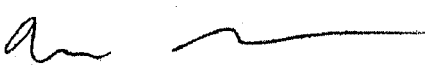
For more information phone (510) 238-3721.

- 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: 1.

• You must serve a copy of your appeal on the opposing parties or your appeal may be dismissed. •  
 I declare under penalty of perjury under the laws of the State of California that on September 10, 2018, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<b><u>Name</u></b>	Cathrine McCulloch
<b><u>Address</u></b>	345 Hanover
<b><u>City, State Zip</u></b>	Oakland, CA 94612
<b><u>Name</u></b>	
<b><u>Address</u></b>	
<b><u>City, State Zip</u></b>	

	8/6/2018
---	----------

SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE

DATE

For more information phone (510) 238-3721.

## **IMPORTANT INFORMATION:**

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

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

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



Detailed Explanation Accompanying Owner's Appeal: Exhibit 2.  
 Catharine McCulloch car in driveway  
 Case T17-0158, September 10, 2018  
 Dear Mr. Kasdin

I am requesting an appeal to the ruling in Case #T17-0158 primarily because I thought that the issues brought up by the tenant were resolved in an email dated 9/19/2018. See Exhibit 2 on page 2 of this addendum.

I do not think it is fair that I am back-charged a total of \$1,375, see table below, for issues that I thought had been resolved on 9/19/2018.

Exhibit 1

VALUE OF LOST SERVICES

Service Lost	From	To	Rent	% Rent Decrease	Decrease /month	No. Months	Overpaid
Parking Space	1-Aug-17	30-Sep-17	\$2,750	10%	\$275.00	2	\$550.00
Parking Space	1-Oct-17	31-Mar-18	\$2,750	5%	\$137.50	6	\$825.00
<b>TOTAL LOST SERVICES</b>							<b>\$1,375.00</b>

RESTITUTION

MONTHLY RENT	\$2,750
<b>TOTAL TO BE REPAYED TO TENANT</b>	<b>\$1,375.00</b>
TOTAL AS PERCENT OF MONTHLY RENT	50%
AMORTIZED OVER 6 MO. BY REG. IS	\$229.17

During the period above, the tenant parked in the driveway. Therefore, there was no loss of service to her. As soon as I got the decision from RAP, March 31, 2018, I went and took a picture of her car in the driveway.

I also want to understand how to move forward. Questions include:

- 1) We have elongated the right side of the driveway to accomage three cars on the left side of the driveway. Is this sufficient?
- 2) If I decided not to allow the tenant to park in the driveway, what would be the penalty in rent reduction.

Sincerely,



Arik Cohen

Detailed Explanation Accompanying Owner's Appeal: Exhibit 2.  
Catharine McCulloch car in driveway

**From:** Arik Cohen  
**To:** Cat McCulloch  
**Subject:** Re: Missed Calls  
**Date:** Tuesday, September 19, 2017 1:18:30 PM

---

There is no lease violation. You are free to park in the driveway just like Hannah has been doing. No one is keeping you from parking in the driveway and if they are you should let me know.

Arik Cohen P.E

On Sep 19, 2017, at 9:07 AM, Cat McCulloch <[katiehmcc@gmail.com](mailto:katiehmcc@gmail.com)> wrote:

Hello Arik,

At this point, I don't think a phone call would be productive between the two of us. I will call you as soon as you make steps to resolving the violation of my lease. To date, you have done nothing to resolve the lease violation. I have said what I need to say. On several occasions, I have told you about the lease violation (taking away the parking guaranteed to me under the lease) and expressed my concern about the situation. On those occasions, I have also told you how you could resolve the lease violation. The only thing I can do is to repeat what I have already said. I don't want to continue to belabor my grievances. You are in the position of power. You have the power to resolve this situation. You can restore the services guaranteed to me under the lease. Please exercise your power and give me the services guaranteed to me under the lease.

Sincerely,

Cat McCulloch

On Mon, Sep 18, 2017 at 8:10 AM, Arik Cohen <[cohen@kw-engineering.com](mailto:cohen@kw-engineering.com)> wrote:

Also, just so you know. This situation is causing me a lot of stress too. I woke up this morning and it's the first thing on my mind. I hope that you can get out of whatever frame of mind that you are in so we can talk about this like human beings. There are solutions and right now everything you say in email feels like a setup to me and paints a very one sided picture. I don't want to go through your words line by line and try understanding tone and intent. You sent me a certified letter so excuse me if I am misinterpreting your end goal.

Arik Cohen P.E

On Sep 17, 2017, at 8:29 PM, Arik Cohen <[cohen@kw-engineering.com](mailto:cohen@kw-engineering.com)> wrote:

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Cat

Emails are not direct communication. You get to say what you want to say with no feedback from the recipient. There has been a week that has past before you responded. Honestly, we can't resolve this through email. You want to resolve it then call me.

Arik Cohen P.E

On Sep 17, 2017, at 7:04 PM, Cat McCulloch  
<[katiehmcc@gmail.com](mailto:katiehmcc@gmail.com)> wrote:

Hi Arik,

I hope you are well. I absolutely want to resolve this situation and put it behind me. As I have said before, this situation is incredibly stressful for me. I really want to be able to park my car. It is hard to resolve the situation when you say that nothing has changed. Things have changed. For more than a month there has been an RV parked in the part of the driveway that is guaranteed to the back unit per the lease. On August 6 you sent an email stating that the front tenant, Danny, is in charge of the parking. Hannah and I later had a conversation with Danny, who put strict restrictions on when/how/if ever we would be able to use the parking spaces. Since the RV, your statements that the parking is now under Danny's control, and my conversation with Danny- the parking situation has changed.

I am directly communicating with you Arik. Emails and letters are forms of direct communication. There are many reasons why I prefer to communicate in writing. One of the reasons is so that things don't get lost in communication. For instance, Danny has a different memory of the conversation he had with me. However, my housemate was present for the entire conversation and I took notes.

When I spoke with Danny, he told me that you had sold him the right to use the entire driveway for \$150 a month (the difference of the rent we pay and what the initially suggested rent increase of 12% would have had us paying). He said that every time we want to use the parking we would have to ask his permission. He said that if it became too big of a hassle for him and if the communication was not good he would not permit us to use the parking spaces. He said that there would

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be times that we would not be able to park in the driveway. He said that we could not work out a schedule for parking. He said that it would be on a day by day case by case basis. He said that he and Hannah, the tenant who did not protest the rent increase and in fact coalesced to the increase, have great communication and he was sure they could work something out. He indicated that I am not in the same category as Hannah. He then discussed how this arrangement was the result of needing to finance the house, and how that is directly tied to my actions. He sounded and visually appeared angry and upset with me. I told him that I wanted a guaranteed space to park. He said that was not possible under the current situation. I asked him if he would be willing to have the RV remain in the driveway, not park his car in the driveway, and let our unit take the remaining spots. He said no.

I am interested in a resolution. A resolution where my rights as a tenant are upheld and the services guaranteed to me under the lease are not sold off or otherwise cut off. If you want to resolve this situation please tell Danny to move his RV and give my unit our side of the driveway back. As an alternative, please tell Danny that he can keep the RV there if he does not use the remainder of the driveway. This would give our unit the ability to park three cars. I am truly interested in a resolution. This is the resolution I am interested in. Please send me a text or an email confirming that you agree to this.

Best,

Cat

On Thu, Sep 7, 2017 at 7:48 PM, Arik Cohen  
<[cohen@kw-engineering.com](mailto:cohen@kw-engineering.com)> wrote:

Hi Cat

The driveway is and has been open to your use. You just need to communicate with others sharing the driveway in scenario that you are forced to park

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behind someone. Nothing has changed.

Also in regards to your previous email. I talked to Danny and his interpretation of the conversation was very different than yours.

I called you again today but no answer.

You have not been willing to communicate with me directly for some time. It is very difficult to solve issues without direct communication. I truly want to resolve this situation and do not understand why you find it necessary to write me emails every other week and then go silent. This mode of communication is not effective, extremely frustrating, and leaves me feeling that you are not truly interested in resolution.

Please call me so we can discuss this and put it behind us.

Arik Cohen P.E

> On Sep 7, 2017, at 5:03 PM, Cat McCulloch  
<[katiehmcc@gmail.com](mailto:katiehmcc@gmail.com)> wrote:

>

> Hello Arik,

>

> I hope you are well. I received your calls, texts, and voice mails from Thursday and Friday. Sorry for the late response. Last week was pretty hectic for me. Also, in general, email is much easier for me. So please feel free to send me an email. Please let me know if you have any questions about my letter. Please let me know if you are going to tell the front tenant to stop parking in my parking space. I have been without a parking space for a month now. As I've stated in my letter and my petition to the rent board, this is a very uncomfortable and sad situation for me, but I will not belabor what I have already stated in my letter.

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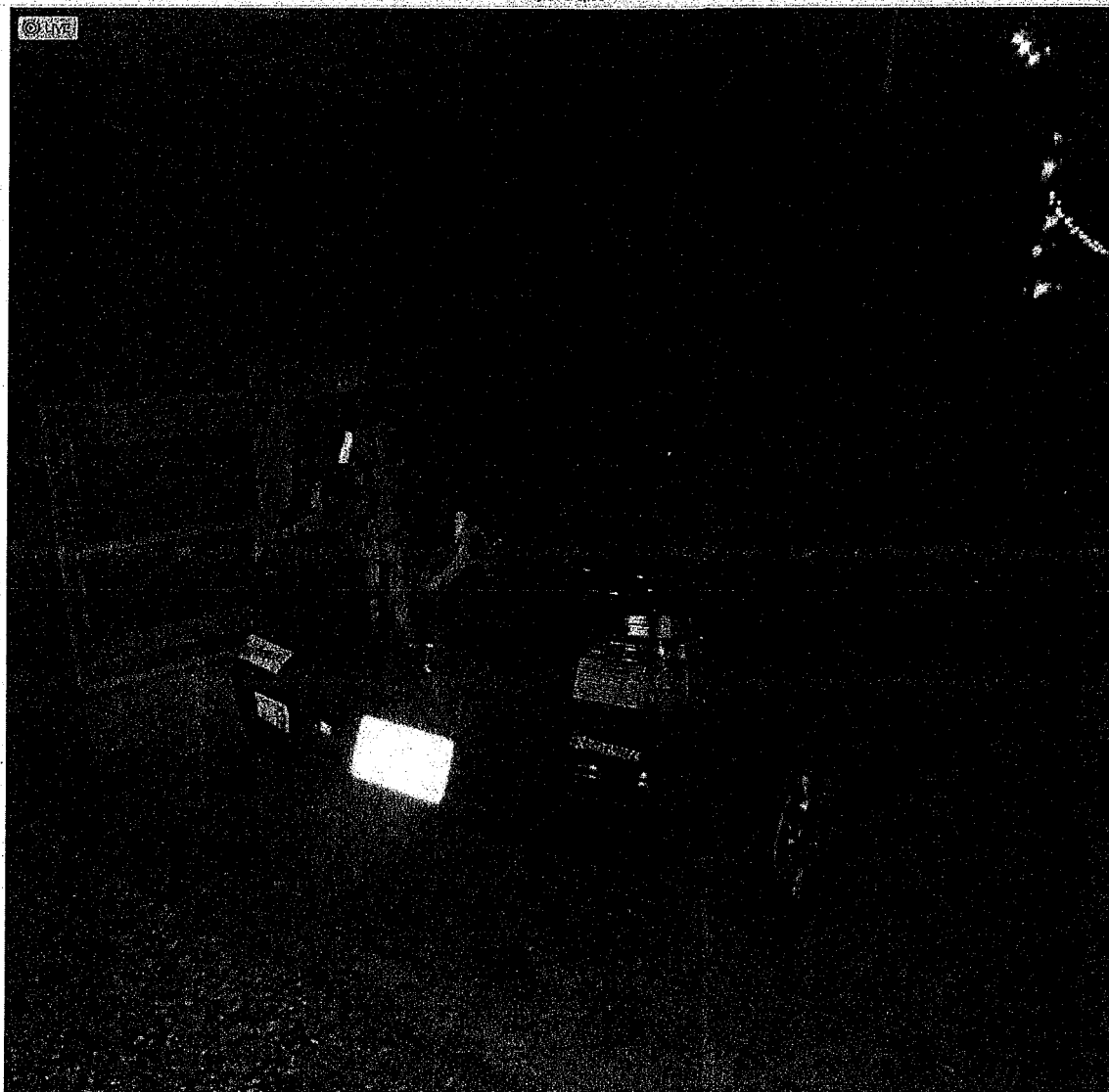
> Best,

>

> Cat McCulloch

Detailed Explanation Accompanying Owner's Appeal: Exhibit 3.  
Catharine McCulloch car in driveway

March 31, 2018, 8:50:37 PM  
4.838 of 6.103



117-0518

RC

September 24, 2018

To Whom it May Concern,

This appeal is improper. The landlord has continuously failed to appear at hearings and file timely responses/appeals. The Rent Adjustment Program issued a decision in this matter on March 8, 2018. This was a final decision. As a tenant I should be able to rely on the finality of the Rent Adjustment Program's decision- more than a year has passed since the filing of this petition. I understand that a clerical error was made in this case. However, the landlord is trying to use this clerical error to appeal a decision that has already been reached. For this reason, I ask that the Rent Adjustment Program deny the landlord's request for an appeal in this matter. In the alternative, I ask that the appeal be restricted to the miscalculation.

On September 8, 2017, the tenant filed a petition in this matter. On February 22, 2018, a hearing was held in this matter. The tenant appeared at the hearing and provided testimony and evidence. The landlord did not appear at the hearing.

On March 8, 2018, the rent adjustment program issued an order regarding the ongoing decrease in housing services and rent over-payments for the back unit. Thereafter, the landlord contacted the Rent Adjustment Program stating that he had not received the tenant petition or the Notice of the Hearing because the documents were not mailed to the correct address.

On May 21, 2018, an order and notice of the new hearing date were mailed to the landlord. The hearing officer contacted the landlord via email and confirmed that the landlord received the materials. The landlord did not file a response. The landlord did not file a request for a new date.

On July 20, 2018, a new hearing was held. The tenant appeared at the rent adjustment program. Again, the landlord failed to appear. On July 20, 2018, the Rent Adjustment Program issued another order stating that the original hearing decision (the March 8, 2018 order) remains in effect. Thereafter, on or about August 6, 2018, the landlord contacted the Rent adjustment program and requested a corrected decision based on a mathematical miscalculation. No formal appeal was filed or received by the tenant.

RECEIVED  
CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM  
2018 SEP 26 AM 10:38  
000032



On August 22, 2018 the Hearing Officer issued a corrected decision. The corrected decision is only in regards to a miscalculation in the rent decrease. The correction was made at the behest of Arik Cohen.

On September 10, 2018, I received an email with the landlord's appeal as an attachment. I have not been properly served with this appeal. Despite the fact that the corrected decision was made at the behest of the landlord, the landlord is now attempting to appeal the corrected decision in an attempt to get another hearing date/ chance to appeal a decision that was reached in March 2018 and again on July 20, 2018.

Furthermore, without again going into the substance of the petition, I informed the landlord about the parking issues/decrease in rent on numerous occasions. I have already provided the rent board with testimony and evidence to this effect.

I have experienced continued harassment by the landlord as the result of filing petitions with the Rent Adjustment Program. Over a year ago, I filed a petition with the Rent Adjustment Program regarding an unlawful rent increase as Mr. Cohen was attempting to increase the rent by 12%. As a response to this petition he restricted the tenants use to parking. I filed this instant petition with the rent board in response to Mr. Cohen's restricting our parking. On March 31, 2018, I informed Mr. Cohen of the Rent Adjustment Program's decision in this instant case. Mr. Cohen came to my house without permission at around 10 p.m. He banged on the windows and doors. He seemed irate and intoxicated. He threatened to tow my car and repeatedly yelled at me to come outside. I had to call the police to make him leave the premises. On that same date, he sent an email that I was never to park in the driveway ever again. He sent me a voicemail to the same effect. Frankly, I am physically afraid to be in the same room as Mr. Cohen who has shown himself to be aggressive and unpredictable.

For the foregoing reasons, I request that Arik Cohen's request for an appeal be denied. In the alternative, I request that the landlord's request for appeal be restricted to the correction that was made to the Hearing Officer's corrected decision- the miscalculation in rent.

Sincerely,

  
Catherine McCulloch

000033

## CONSOLIDATED CHRONOLOGICAL CASE REPORT

Case Nos. & Names      T18-0172, Embaye v. Amin  
                                 T18-0183, Embaye v. Amin

Property Address:      3133 Beaumont Ave., Oakland, CA

Parties:                      Cases Dismissed

### TENANT APPEAL:

Activity

Date

Tenant Petition filed (CASE T17-0172)

February 29, 2018

Tenant Petition filed (CASE T17-0183)

March 7, 2018

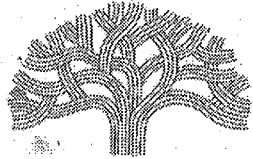
Dismissal mailed to all parties  
in both cases

August 21, 2018

Tenant Appeal filed for both cases

September 6, 2018

T18-0172 MS/SK



CITY OF OAKLAND

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

RENT ADJUSTMENT PROGRAM  
 For date stamp AND INFORMATION  
 2018 FEB 29 AM 10:30

**TENANT PETITION**

2018 FEB 29 AM 10:31  
 CITY OF OAKLAND  
 RENT ADJUSTMENT PROGRAM

**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 <b>MICHAEL EMBAYE</b>	Rental Address (with zip code) <b>3133 BEAUMONT ME OAK, CA 94602</b>	Telephone: <b>510-940-5952</b>
Your Representative's Name <b>SAID AMIN</b>	Mailing Address (with zip code) <b>3133 BEAUMONT ME OAK, CA 94602</b>	Telephone: <b>415-850-0201</b>
Property Owner(s) name(s) <b>SUB OWNER SAID-AMIN</b>	Mailing Address (with zip code) <b>3133 BEAUMONT ME OAK, CA 94602</b>	Telephone: <b>415-850-0201</b>
Property Manager or Management Co. (if applicable)	Mailing Address (with zip code)	Telephone:
		Email:

Number of units on the property: **UPSTAIRS 5 UNITS**

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

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

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

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

<input checked="" type="checkbox"/> (d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.)
<input checked="" type="checkbox"/> (e) The property owner did not give me the required form "Notice of the Rent Adjustment Program" at least 6 months before the effective date of the rent increase(s). <u>SUBDUMBER</u>
<input checked="" type="checkbox"/> (f) The rent increase notice(s) was (were) not given to me in compliance with State law.
<input checked="" type="checkbox"/> (g) The increase I am contesting is the second increase in my rent in a 12-month period.
(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)
<input checked="" type="checkbox"/> (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: YES Initial Rent: \$ 560 /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: 4 months. 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? <u>NO</u>
		From	To		
<u>NO</u>	<u>NO</u>	From <u>3/1/18</u>	To	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
		\$ <u>500</u>	\$ <u>500</u>	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$ <u>650</u>	\$ <u>700</u>	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<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.

*I PAID CASH FOR THE GARBAGE BAG*

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.

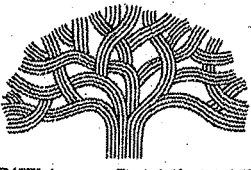
*Michael Embury*

Tenant's Signature

*2/28/18*

Date

T18-0183 MS/6K

 <p>CITY OF OAKLAND</p>	<p><b>CITY OF OAKLAND</b>  <b>RENT ADJUSTMENT PROGRAM</b>          P.O. Box 70243          Oakland, CA 94612-0243          (510) 238-3721</p>	<p>For date stamp:          CITY OF OAKLAND          2018 MAR -7 AM 11:57</p>
	<p><b>TENANT PETITION</b></p>	

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

**Please print legibly**

Your Name MICHAEL EMABYE	Rental Address (with zip code) 3133 BEAUMONT AVE OAKLAND, CA 94602	Telephone: 510-940-5952 E-mail:
Your Representative's Name	Mailing Address (with zip code)	Telephone: Email:
Property Owner(s) name(s) SAID AMIN	Mailing Address (with zip code) 3133 BEAUMONT AVE OAKLAND, CA 94602	Telephone: 415-550-0201 Email:
Property Manager or Management Co. (if applicable)	Mailing Address (with zip code)	Telephone: Email:

Number of units on the property: 4

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

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

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

<input type="checkbox"/>	(a) The CPI and/or banked rent increase notice I was given was calculated incorrectly.
<input type="checkbox"/>	(b) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
<input type="checkbox"/>	(c) I received a rent increase notice before the property owner received approval from the Rent Adjustment Program for such an increase and the rent increase exceeds the CPI Adjustment and the available banked 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)
X (i) The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner. (OMC 8.22.070(F): A decrease in housing services is considered an increase in rent. A tenant may petition for a rent adjustment based on a decrease in housing services.) (Complete Section III on following page)
(j) My rent was not reduced after a prior rent increase period for a Capital Improvement had expired.
(k) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).
(l) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake. (OMC 8.22, Article I)
(m) The owner did not give me a summary of the justification(s) for the increase despite my written request.
(n) The rent was raised <u>illegally</u> after the unit was vacated as set forth under OMC 8.22.080.

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

Date you moved into the Unit: around 9/1/15 Initial Rent: \$ 550<sup>00</sup> /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: NOVE. 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		
2/28/18	2/28/18	\$ 650 <sup>00</sup>	\$ 700 <sup>00</sup>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
SOMETIME	IN 2017	\$ 650	\$ 650	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
SOMETIME	IN 2017	\$ 550	\$ 600	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

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

Have you ever filed a petition for this rental unit?

Yes  
 No

Feb 28<sup>th</sup> 2018

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

*HE IS VERY AGGRESSIVE*

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.

*Michael Embury*

Tenant's Signature

*3/7/18*

Date

[Empty rectangular box]

[Empty rectangular box]



**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): \_\_\_\_\_

2010 MAR -7 AM 11:57

SALD AMIN -

I AFTER I FILED THE PETITION  
HE TURNED OFF THE TV HE LEFT IN  
THE DARK. HE MAKE US PAY FOR  
THE TRASH BAG & I AM NOT SURE WHAT  
ELSE IS GOING TO DO NEXT TIME.

Muhul Emsaje

3/7/18

DECLARATION OF MICHAEL EMBAYE RENT ADJUSTMENT PROGRAM

RENT ADJUSTMENT CASE NO. CASE FILED 2/28/18 -7 PM 12:11  
(if applicable)

The purpose of this declaration is to inform the City of Oakland Rent Adjustment Program about what I think is a violation of the Rent Adjustment Ordinance.

I, MICHAEL EMBAYE, an adult, 18 years of age or older, declare as follows:  
(please print your name)

THE MANAGER REFUSED TO TAKE THE MONTHLY RENT AMOUNT 650<sup>00</sup> (SEE 11/20/17 FIGS) CHECK. HE HANDED IT BACK TO ME.

2018 MAR -7 PM 12:11

(attach extra sheets if necessary)

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

Executed at Oakland, California on 3/7/18, 2018 2018

Signature Michael Embaye

## Violations Subject to Administrative Citation

Violations, whether by the tenant or the landlord, to specific provisions of the Rent Adjustment Ordinance may be subject to administrative citation.

Specific violations in which a citation may be issued include the following:

1. A tenant or landlord has failed or refuses to comply with the terms of the mediation agreement or the final order of the Hearing Officer or Board.
2. A landlord is demanding payment of a rent increase in excess of that permitted after a tenant has filed a petition challenging a rent increase(s).
3. A tenant failed to pay the Rent Adjustment Program Service Fee pass-through as required.
4. A landlord failed to pay the Rent Adjustment Program Service Fee as required.
5. A landlord failed to file notice with the Rent Adjustment Program that a unit is no longer exempt as required.

In order for the Rent Adjustment Program to investigate possible violations, a Declaration must be made in writing and submitted to our office, at:

City Of Oakland  
Rent Adjustment Program  
250 Frank H. Ogawa Plaza, Ste. 5313  
Oakland, CA 94612

If you have any further questions, please contact our office between the hours of 8:30am and 5:00pm at (510) 238-3721.

RENT ARBITRATION PROGRAM

2018 MAR -7 PM 12: 11

SENAYT G TESFAMICAEL  
3183 BEAUMONT AVE  
Oakland, CA 94602

09901

DATE 3-1-18

90-781211

PAY TO THE ORDER OF

SIAD - AMIN

\$ 650 dollars

Six hundred fifty dollars <sup>no</sup> / 100

DOLLARS



BANK OF WEST

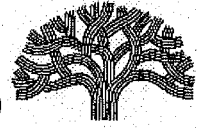
3400 LAKESHORE AVE  
OAKLAND, CA 94612  
1-800-440-2285

FOR

Room Rent for the month MARCH - 18



000045



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

Department of Housing and Community Development  
Rent Adjustment Program

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

## **DISMISSAL**

**CASE NUMBERS:** T18-0172 & T18-0183, Embaye v. Amin

**PROPERTY ADDRESS:** 3133 Beaumont Ave., Oakland, CA

**HEARING DATE:** August 21, 2018

### **INTRODUCTION**

A Notice of Hearing was mailed to the parties, including the tenant petitioner, at his address. The Hearing came on regularly on August 21, 2018 at 10:00 A.M.

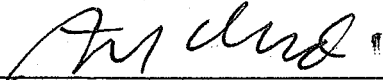
### **DISMISSAL**

The Hearing was called at 10:20 A.M. The tenant did not appear and the Rent Adjustment Program received no communication regarding his non-appearance. The petition is dismissed because the tenant failed to appear at the Hearing.<sup>1</sup>

### **RIGHT TO APPEAL**

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.

Dated: August 21, 2018

  
\_\_\_\_\_  
STEPHEN KASDIN  
Hearing Officer  
Rent Adjustment Program

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

## PROOF OF SERVICE

Case Numbers: T18-0172 & T18-0183 (Embaye v. Amin)

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, 5<sup>th</sup> Floor, Oakland, California 94612.

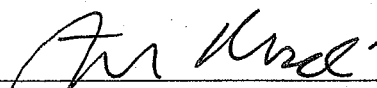
Today, I served the attached **Dismissal** by placing a true copy of it in a sealed envelope in City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Suite 5313, 5<sup>th</sup> Floor, Oakland, California, addressed to:

Michael Embaye  
3133 Beaumont Ave.  
Oakland, CA 94602

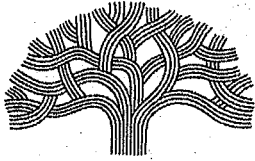
Said Amin  
3133 Beaumont Ave.  
Oakland, CA 94602

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on August 21, 2018, in Oakland, California.

  
\_\_\_\_\_  
Stephen Kasdin  
Oakland Rent Adjustment Program

000047



CITY OF OAKLAND

**CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM**

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

For date stamp.

Recd. 9-06-2018  
Rent Adjustment  
Program

**APPEAL**

Appellant's Name <i>MICHAEL EMBAYE</i>		<input type="checkbox"/> Owner <input checked="" type="checkbox"/> Tenant	
Property Address (Include Unit Number) <i>3133 BEAUMONT AVE OAKLAND, CA 94602</i>			
Appellant's Mailing Address (For receipt of notices) <i>3255 SAN PABLO AVE OAKLAND, CA 94608</i>		Case Number <i>T18-0172 &amp; T180183</i>	Date of Decision appealed <i>August 21 2018</i>
Name of Representative (if any) <i>T18-0183 T18-0172</i>	Representative's Mailing Address (For notices) <i>SALIA AMIN 3133 BEAUMONT AVE OAKLAND, CA 94602</i>		

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: 7

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

I declare under penalty of perjury under the laws of the State of California that on \_\_\_\_\_, 20\_\_\_\_, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows: 9-6-18

<b>Name</b>	SAID AMIN
<b>Address</b>	3133 BEAUMONT AVE
<b>City, State Zip</b>	OAKLAND, CA 94602
<b>Name</b>	
<b>Address</b>	
<b>City, State Zip</b>	

<u>Michael Embaye</u>	9-4-18
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

For more information phone (510) 238-3721.

I WAS DENIED SUFFICIENT OPPORTUNITY.  
BECAUSE OF NOT RECEIVED THE HEARING DATE  
DUE TO MOVED TO OTHER PLACE OR ADDRESS  
I MADE THE NECESSARY ADDRESS CHANGE AT  
THE POST OFFICE ON TIME.

Muhammad Embay  
9-6-18

## **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.**

## CHRONOLOGICAL CASE REPORT

Case No.: T18-0055

Case Name: Vargas et al v. 3000 Nicol Avenue Property, LLC

Property Address: 3000 Nicol Ave., #11, Oakland, CA

Parties:

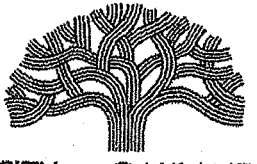
Michele Vargas	(Tenant)
Robert Lopez	(Tenant)
Karyn Erickson	(Tenant Attorney)
Betsy Brazy	(Tenant Attorney)
Owen Jerez	(Owner)
Angie Sandoval	(Owner Attorney)
Clifford Fried	(Owner Attorney)

### OWNER APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition & Declaration filed	December 22, 2017
Owner Response & Narrative filed	April 6, 2018
Hearing Decision mailed	August 30, 2018
Owner Appeal filed	September 19, 2018
Tenant Response to Owner Appeal filed	October 19, 2018

T18-0055 MS / SK

RECEIVED  
CITY OF OAKLAND

 CITY OF OAKLAND	<b>CITY OF OAKLAND</b> <b>RENT ADJUSTMENT PROGRAM</b> P.O. Box 70243 Oakland, CA 94612-0243 (510) 238-3721	RECEIVED CITY OF OAKLAND 2017 DEC 22 PM 3:34 <b>TENANT PETITION</b>
	RENT ADJUSTMENT PROGRAM	

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 MICHELE VARGAS AND ROBERT LOPEZ	Rental Address (with zip code) 3000 NICOL AVENUE UNIT 11 OAKLAND, CA 94601	Telephone: (510) 479-4809 E-mail: Michele.Vargas29@gmail.com
Your Representative's Name	Mailing Address (with zip code)	Telephone: Email:
Property Owner(s) name(s) JAIKRIT SIKHANTRAPORN	Mailing Address (with zip code) C/O JAMES C. LI LI & ASSOCIATES ACCOUNTANCY COMP. 800 S. BARRANCA AVE. / STE 360 EDWINA, CA 91323	Telephone: Email:
Property Manager or Management Co. (if applicable) 3000 NICOL AVE. PROPERTY, LLC	Mailing Address (with zip code) 281 13th STREET #32353 OAKLAND, CA 94604	Telephone: Email: mypropertymanagementcloud@gmail.com

Number of units on the property: 11

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

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

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

<input type="checkbox"/>	(a) The CPI and/or banked rent increase notice I was given was calculated incorrectly.
<input 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.

Rev. 7/31/17

For more information phone (510) 238-3721.

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

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

Date you moved into the Unit: 2/1/2014 Initial Rent: \$ 1350<sup>00</sup> /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: 10/16/17. 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		
		\$	\$	<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
		\$	\$	<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 [X] No
Have you lost services originally provided by the owner or have the conditions changed? [X] Yes [ ] No
Are you claiming any serious problem(s) with the condition of your rental unit? [ ] Yes [X] 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 SEE OUR ATTACHED DECLARATION AND EXHIBITS.

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 MICHELE VANANIS

12-22-17
Date

[Empty signature line]

Tenant's Signature ROBERT LOPEZ

[Empty signature line]

**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): Private Attorney



1 MICHELE VARGAS  
ROBERT LOPEZ  
2 3000 NICOL AVENUE, APT. 11  
BERKELEY, CA 94702  
3 Telephone: 510/479-4809

4 In Pro Per

7 CITY OF OAKLAND RENT ADJUSTMENT BOARD

9 Case Number: TO BE ASSIGNED

10 MICHELE VARGAS

10 **DECLARATION OF MICHELE VARGAS  
AND ROBERT LOPEZ IN SUPPORT OF  
TENANT PETITION FOR REDUCTION  
OF RENTAL SERVICES**

11 and

12 ROBERT LOPEZ,

Hearing: TBD

13 v.

Time: TBD

14 3000 NICOL PROPERTY, LLC.

Dept: Oakland Rent  
Adjustment Board, Dalziel  
Building, 250 Frank H. Ogawa  
Plaza Suite 5313, Oakland, CA  
94612

15 and their agents.

19 I, **MICHELE VARGAS** and, I, **ROBERT LOPEZ**, declare as follows:

20 1. We are tenants living within the Oakland city limits  
21 at 3000 Nicole Avenue, Oakland, California 94602 (hereinafter,  
22 the "SUBJECT PROPERTY.")

23 2. We have been tenants at the SUBJECT PROPERTY since on  
24 or about February 1, 2014, lease Unit 11, and live there with  
25 our two children.

26 3. After our 12-month fixed term lease expired, our lease  
27 terms were converted to a month-to-month tenancy.  
28

1           4.    There are a total of 11 units in the building all of  
2 which are townhouses and consist of two floors. The first floor  
3 has a front door and also a backdoor which opens onto a small,  
4 fenced-in backyard. A back door on the second floor opens onto a  
5 narrow balcony which wraps around the building and is shared by  
6 all adjoining units.

7           5.    We had full use of a garage and parking spot on the  
8 premises and full use of the laundry facilities.

9           6.    We also had access to a locked back-gate next to our  
10 garage which afforded easier access to our unit than through the  
11 locked front-entranceway.

12           7.    On September 8, 2017, three notices were posted on our  
13 door which together notified us that the property had been sold  
14 and that our 2014 lease agreement and \$1,500 security deposit  
15 had been transferred to a new owner. True and correct copies of  
16 two of these notices are attached as Exhibits 1 and 2.

17           8.    On information and belief, the SUBJECT PROPERTY is  
18 currently co-owned by JAKKRIT SIRIKANTRAPORN (hereinafter, "  
19 JAKRRIT") and one other owner under the name of 3000 NICOL  
20 AVENUE PROPERTY, LLC. A true and correct copy of the publicly  
21 available record from the Secretary of State of California is  
22 attached as Exhibit 3.

23           9.    The property manager is ALEXANDER ESPARZA ("ALEX") who  
24 appears to be the assistant of OWEN JEREZ. Both are reachable  
25 via email at [propertymanagementcloud@gmail.com](mailto:propertymanagementcloud@gmail.com).

26           10.   On information and belief, one of their construction  
27 agents now resides on the property - 24/7 - in one of the vacant  
28 units. We believe that at least three units are vacant.

1 11. Although we had full use of a garage since 2014,  
2 because the garage was not specified in our lease agreement, **the**  
3 **new owners removed our access to the garage and parking space,**  
4 required us to remove our car and property in the garage, and  
5 changed the locks.

6 12. Because I, Robert, had no place to park my Mustang  
7 car, I was forced to sell my vehicle since parking my Mustang on  
8 the street would present a high risk of my car being stolen  
9 and/or vandalized. A true and correct copy of a photograph of my  
10 Mustang car parked in the garage is attached as Exhibit 4.

11 13. Our apartment is 850 square feet and the garage is  
12 about 264 square feet, thus, the total square footage leased was  
13 1,114 square feet. Our current rent is \$1,399.47 and our rent  
14 per square foot is \$1.26 per square foot. **We are demanding a**  
15 **rent reduction due to loss of the garage and parking space of**  
16 **\$332.64 per month.**

17 14. Effective September 8, 2017, the laundry room which  
18 was accessed and used by all tenants was removed from our use,  
19 allegedly for "60-days."

20 15. On or about October 27, 2017, the new owners applied  
21 for building permits to convert the laundry facilities from gas  
22 to electric **well after construction** on the laundry room **had**  
23 **actually begun.** A true and correct copy of a report available  
24 from <https://aca.accela.com/oakland/default.aspx> is attached as Exhibit 5.

25 16. As of the filing of this petition, **the laundry room is**  
26 **still locked and inaccessible by tenants.**

27 17. Due to the loss of the laundry room, we now have to  
28 use public facilities to do our laundry for two adults and two

1 children and average \$20.00 per week to do the laundry. **We are**  
2 **demanding a rent reduction of \$20.00 per week of every week that**  
3 **we lack use of the on premise laundry room.**

4 18. Exhibit 5 also shows that **Unit 3 is being**  
5 **substantially remodeled** and, in fact, the owners are advertising  
6 at least one converted unit on Zillow as a "two-bedroom,  
7 luxurious executive apartment" for \$2,995 monthly rent. A true  
8 and correct copy of the Zillow ad is attached as Exhibit 6.

9 19. On or about October 19, 2017, a notice was posted on  
10 our door relating to AT&T wiring and other matters. A true and  
11 correct copy of this notice is attached as Exhibit 7.

12 20. On or about October 23, 2017, the AT&T wiring  
13 immediately outside our upstairs backdoor was disconnected and  
14 the main junction box removed. We had signed a one-year contract  
15 with AT&T the week before for landline telephone and wireless  
16 internet service.

17 21. The AT&T service was in my, Robert's name, and was for  
18 a 12-month contract. **We are paying \$30.00 per month plus an**  
19 **\$80.00 installation fee which was paid over 3-months.** Robert has  
20 been unable to cancel this contract so we are "locked-in" for  
21 one year.

22 22. We were informed by the property manager(s) that we  
23 could sign-up with Comcast for internet, cable TV, and wireless  
24 services but the price for even one of these services was cost  
25 prohibitive. We dropped Comcast for AT&T and had previously paid  
26 \$280 per month for Comcast TV, Internet, and Telephone service.  
27 To re-up with Comcast for internet services alone, Comcast will  
28 now charge us \$100.00 per month. **We are now demanding a rent**

Declaration of MICHELE VARGAS  
and ROBERT LOPEZ

bt:blank

1 **reduction of \$70.00 per month** (e.g. increase of \$70.00 per month  
2 for Comcast services over AT&T) **plus a \$440.00 refund for the**  
3 **non-useable AT&T services** over the life of the one-year  
4 contract.

5 23. Since our AT&T services were severed by the building  
6 owner, we have had to resort to using our cell phones and have  
7 no wireless service.

8 24. The October 19 notice also precluded any children from  
9 playing on the property.

10 25. The townhouses are enclosed by gates and a fence; our  
11 children had previously been able to play in the common outside  
12 areas. As of service of this notice, our children are now  
13 required to play in a nearby park (Nicol Park) which is in a  
14 high-crime area.

15 26. In addition, we have received 3 water shut-off notices  
16 between end of October and mid-November 2017.

17 27. **In total, between September 8, 2017 and November 30,**  
18 **2017, we received 27 notices.**

19 28. Notices were typically taped to our front-door and  
20 included notice that the back yard-gate could no longer be used  
21 for ingress, that security cameras were installed throughout the  
22 exterior building areas, notices concerning installation of  
23 smoke and CO2 detectors, notices about relocation of garbage  
24 cans, and notices concerning mandated signing of a new lease  
25 agreement.

26 29. In an email to me, Ms. Vargas, dated September 19,  
27 2017 relating to the laundry room conversion, Alex stated that "  
28 we do not see [this conversion] as a reduction in services" but

1 of repairs. A true and correct copy of the email is attached as  
2 Exhibit 8.

3 30. We were also required to sign a new lease agreement  
4 that was materially different from our 2014 lease agreement.

5 31. Alex would not provide a copy of the new lease  
6 agreement in advance without a "personal explanation" and, if we  
7 wanted the lease agreement to be pre-reviewed by an attorney, we  
8 were required to provide a "short description" as to why we  
9 wanted this. See Exhibit 8.

10 32. It was clear from the communications that asking for  
11 pre-review of the lease agreement would be onerous, was  
12 impliedly frowned upon by the owner and his property manager(s),  
13 and we found the requirement to provide a "short description"  
14 about why we wanted a lease review intimidating.

15 33. The 2017 lease agreement also required us to agree to  
16 temporarily relocate for **substantial repairs** without informing  
17 us about our rights under Oakland's municipal code.

18 34. A true and correct copy of our 2014 and 2017 lease  
19 agreements are attached as Exhibits 9 and 10.

20 35. Since the new owner(s) have taken control of the  
21 property, some of the tenants have left without explanation.

22 36. In summary, we are alleging loss of services related  
23 to: 1) loss of use of the laundry room since 9/8/17 to the time  
24 that these services are restored; 2) loss of the use of the  
25 garage which we had full use of since 2/1/14 through 9/29/17  
26 when the new owners took access to garage away; and 3) loss of  
27 use of AT&T landline and wireless services since 10/23/17  
28

1 because these services were affirmatively removed by the  
2 building owners and their agents.

3 37. Moreover, we believe that receipt of 27 notices is  
4 excessive and is **interfering with our right to quiet enjoyment**  
5 **of the property**. We feel that these notices and a mandate to  
6 sign a new and materially different lease agreement with  
7 prohibitive requirements discouraging lease review by an  
8 attorney to be intimidating, if not coercive.

9 38. Pursuant to O.M.C. 8.22.640 (A), "No Owner or such  
10 Owner's agent...shall do any of the following in bad faith:

- 11 1. Interrupt, terminate, or fail to provide housing  
12 services required by contract or by State, County, or  
13 municipal housing, health or safety laws;
- 14 6. Influence or attempt to influence a Tenant to vacate a  
15 Rental Unit through ... intimidation or coercion...
- 16 7. Substantially and directly interfere with a Tenant's  
17 right to quiet use and enjoyment of a rental housing  
18 unit as that right is defined by California law;
- 19 8. Removing a housing service for the purpose of causing  
20 the Tenant to vacate the Rental Unit. For example,  
21 taking away a parking space knowing that a Tenant  
22 cannot find alternative parking and must move."

23 39. In addition to petitioning the rent board for a rent  
24 reduction related to a reduction of housing services, we are  
25 exercising our rights under O.M.C. chapter 8.22.640 since we  
26 feel that 27 notices posted on our door within 84-days is  
27 excessive and these notices together with the reduction of  
28 housing services, installation of security cameras, and 24-hour

Declaration of MICHELE VARGAS  
and ROBERT LOPEZ

Page 7 of 8

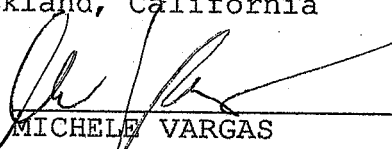
1 presence of the owner's agent is tantamount to an insidious form  
2 of harassment that is in violation of the Oakland Tenant  
3 Protection Ordinance.

4 40. We understand that a 6-month moratorium for eviction  
5 due to substantial repairs was enacted by the City of Oakland on  
6 or about November 8, 2017 to provide the city time to "close  
7 loopholes" in the municipal code related to evictions for  
8 substantial repairs.

9 41. On information and belief, a similar story to ours  
10 played out at 2300 Fruitvale Avenue, Oakland. This property is  
11 registered to 2300 Fruitvale Avenue Property, LLC and is  
12 registered to Owen Jerez. Mr. Jerez is one of the property  
13 managers for the property in which we reside. A true and correct  
14 copy of the publicly available record from the Secretary of  
15 State of California is attached as Exhibit 12.

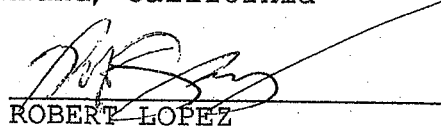
16 I, **MICHELE VARGAS**, declare under penalty of perjury under  
17 the laws of the State of California that the foregoing is  
18 true and correct.

19 Executed on December 22, 2017 at Oakland, California

20   
21 \_\_\_\_\_  
MICHELE VARGAS

22 I, **ROBERT LOPEZ**, declare under penalty of perjury under the  
23 laws of the State of California that the foregoing is true  
24 and correct.

25 Executed on December 22, 2017 at Oakland, California

26   
27 \_\_\_\_\_  
ROBERT LOPEZ





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

For date stamp.  
 2018 APR -6 PM 3:46

**PROPERTY OWNER**  
**RESPONSE**

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

**CASE NUMBER T 18 - 055**

Your Name 3000 Nicol Avenue Property LLC	Complete Address (with zip code) 5425 Sunol Blvd. Suite 10146 Pleasanton, CA 94566	Telephone: (510) 485 -9287
		Email: mypropertymanagementcloud@gmail.com
Your Representative's Name (if any) Fried & Williams LLP Clifford E. Fried, Esq., SBN 118288 Angelica A. Sandoval, Esq., SBN 318093	Complete Address (with zip code) 1901 Harrison Street, 14th Floor Oakland, CA 94612	Telephone: (510) 626-0100
		Email: cfried@friedwilliams.com; asandoval@friedwilliams.com
Tenant(s) Name(s) Michele Vargas Robert Lopez	Complete Address (with zip code) 3000 Nicol Avenue #11 Oakland, CA 94601	Telephone: (510) 479-4809
		Email: michelevargas29@gmail.com
Property Address (If the property has more than one address, list all addresses) 3000 Nicol Ave., Oakland, CA 94602		Total number of units on property 11

Have you paid for your Oakland Business License? Yes  No  Lic. Number: 00201721  
 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: 00201722  
 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: 09 / 08 / 2017

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.

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

<u>Date of Contested Increase</u>	<u>Banking (deferred annual increases )</u>	<u>Increased Housing Service Costs</u>	<u>Capital Improvements</u>	<u>Uninsured Repair Costs</u>	<u>Debt Service</u>	<u>Fair Return</u>
N/A	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
N/A	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
N/A	<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 2-01-2014

The tenant's initial rent including all services provided was: \$ 1,350.00 / month.

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

If yes, on what date was the Notice first given? 10-16-2017

Is the tenant current on the rent? Yes  No

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

<u>Date Notice Given (mo./day/year)</u>	<u>Date Increase Effective</u>	<u>Rent Increased</u>		<u>Did you provide the "RAP NOTICE" with the notice of rent increase?</u>
		<u>From</u>	<u>To</u>	
12-22-2017	2-01-2018	\$ 1,399.44	\$ 1,431.62	<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

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**III. EXEMPTION**

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

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

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

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

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

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

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

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

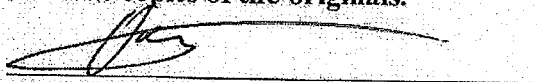
The unit is located in a building with three or fewer units. The owner occupies one of the units continuously as his or her principal residence and has done so for at least one year.

**IV. DECREASED HOUSING SERVICES**

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

**V. VERIFICATION**

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

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

4-1-2018  
Date

2018 APR -6 PM 3:43

1 Clifford E. Fried, Esq., SBN 118288  
Angelica A. Sandoval, Esq., SBN 318093  
2 Fried & Williams LLP  
1901 Harrison Street  
3 Oakland, CA 94612  
Telephone: 510-625-0100  
4 Facsimile: 510-550-3621  
[cfried@friedwilliams.com](mailto:cfried@friedwilliams.com)  
5 [asandoval@friedwilliams.com](mailto:asandoval@friedwilliams.com)

6 Attorney for Landlord  
3000 Nicol Avenue Property LLC  
7

8 COMMUNITY AND HOUSING DEVELOPMENT AGENCY  
9 RENT ADJUSTMENT PROGRAM

10 Michelle Vargas,  
11 Robert Lopez

12 Petitioners/Tenants,

13 v.

14 3000 Nicol Avenue Property LLC,

15 Respondent/property  
16 manager/owner.

CASE NO: T18-0055

**LANDLORD'S NARRATIVE  
RESPONSE AND SUPPORTING  
EVIDENCE**

Hearing Date: June 19, 2018  
Time: 10:00 a.m.  
Suite: 5313

17 **FACTUAL SUMMARY**

18 Respondent is the property manager of the real property commonly known as 3000 Nicol  
19 Ave. #11, Oakland, CA 94602 (the "Premises"). In February 2014 Respondent's predecessor-in-  
20 interest rented the Premises to Michelle Vargas and Robert Lopez ("Petitioners"). On September 8  
21 2017 Respondent became the owner of the Premises.

22 On December 22, 2017, Petitioners filed this Petition. The owner of the Premises has a  
23 current business license and has paid the Rent Adjustment Program (RAP) fees for 2018. (A copy  
24 of proof of payment of the City of Oakland Business Tax License and a copy of Proof of Payment  
25 of Rent Adjustment Program ("RAP") fees are attached as **Exhibit A.**)

26 In their Petitioner, Petitioners allege a decrease in housing services due to "1) loss of use of  
27 the laundry room since 9/8/2017 to the time that these services are restored; 2) loss of use of the  
28 garage which we had full use of since 2/1/2014 through 9/29/2017 when the new owners took access  
to garage away; and 3) loss of use of AT&T landline and wireless services since 10/23/2017."

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1 **DECREASE IN HOUSING SERVICES**

2 Under the Oakland Rent Ordinance, a decrease in housing services is considered to be an  
3 increase in rent and may be corrected by a rent adjustment. However, in order to justify a decrease  
4 in rent, a decrease in housing services must be the loss of a service that seriously affects the  
5 habitability of a unit or one that was provided at the beginning of the tenancy that is no longer being  
6 provided. A landlord must be first notified about the substandard condition and be given a reasonable  
7 opportunity to correct the condition before a claim for decrease in housing services will be granted.  
8 The court in *Golden Gateway Center v. San Francisco Residential Rent Stabilization and Arbitration*  
9 *Board* (1999) 73 Cal. App. 4<sup>th</sup> 1204, held that a landlord who undertakes to perform a reasonable  
10 necessary repair and maintenance work on rental property, which has the effect of temporarily  
11 interfering with or preventing the tenant's full use of housing services, but does not substantially  
12 interfere with the right to occupancy of the premises as a residence does not effectuate a decrease  
13 in housing services. *Id.* At p 1213. In this case the Court held that the tenant were not allowed a  
14 reduction in rent for a loss of use of their deck during a 4-month period because it did not  
15 substantially interfere with the right to occupancy of the premises as a residence. *Id.*

16 **Laundry room**

17 Petitioners allege they are entitled to a rent reduction because they were temporarily unable  
18 to use such facilities. On September 8, 2017, Respondent gave notice to Petitioner of repair work  
19 that would be done to the laundry room. See Petitioner's Exhibit 2. The laundry room was reopened  
20 in December 2017. Thus, this claim should be dismissed as without merit.

21 **Parking spot - garage**

22 Petitioners allege they are entitled to a rent reduction because they don't have access to the  
23 parking garage. A parking space was never provided to Petitioner in the lease with Respondent's  
24 predecessor-in-interest and is not provided for in lease with Respondent. See Petitioners Exhibit 9  
25 and Exhibit 10. Petitioners acknowledges this in there petition, "the garage was not specified in our  
26 lease" [Petitioners Petition ¶11]. Since this was never provided for in any lease, it should not  
27 considered a decrease in housing service.

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**Loss of land-line and wireless services**

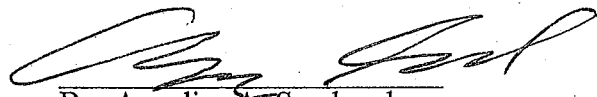
RAP does not have jurisdiction to award compensation from fees associated with switching between internet and cable providers. Respondent allows their tenants to choose the service that best suits their needs. Respondent's only requirement is that tenants are in compliance with all applicable laws. Thus, this claim should be dismissed.

**CONCLUSION**

Respondent took all necessary steps to ensure problems at the property are fixed and in compliance with health and safety codes and all other applicable statutes. Thus, Petitioners petition should be dismissed in its entirety as without merit.

Date: April 6, 2018

Fried & Williams LLP



By: Angelica A. Sandoval  
Attorney for Respondent  
3000 Nicol Avenue Property LLC

# CITY OF OAKLAND



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

Housing and Community Development Department  
Rent Adjustment Program

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

## HEARING DECISION

**CASE NUMBER:** T18-0055, Vargas v. 3000 Nicol Avenue Properties, LLC

**PROPERTY ADDRESS:** 3000 Nicol Avenue, Unit 11, Oakland, CA

**DATE OF HEARING:** June 19, 2018

**DATE OF DECISION:** August 19, 2018

**APPEARANCES:** Michele Vargas, Tenant  
Robert Lopez, Tenant  
Karyn Erickson, Attorney for Tenant  
Betsy Brazy, Attorney for tenant  
Owen Jerez, Owner  
Alexis Esparza, Witness  
Angie Sandoval, Attorney for Owner  
Clifford Fried, Attorney for Owner  
Khalid Aljamal, Observer

## SUMMARY OF DECISION

The tenant's petition for decreased housing services is partially granted. The legal rent for the tenant's unit is set forth below.

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## CONTENTION OF THE PARTIES

The tenant filed the petition, on December 22, 2017, which contests the rent increase on the following grounds:

- The owner is providing me with fewer housing services than received previously or is charging me for services originally paid by the owner.

The list of decreased services includes 4 separate bases discussed below.

The owner filed a timely Owner Response to the tenant petition in which he disputed the claims made by the tenants. The owner indicated that the laundry room had re-opened in December 2017, that the tenant's lease did not include a parking garage and the owner had not never provided telephone or cable services.

### ISSUE(S) PRESENTED

1. When, if ever, was the tenant given written notice of the Rent Adjustment Program (RAP Notice)?
2. Have the tenant's housing services decreased and if yes, in what amount?
3. What, if any, restitution is owed between the parties and how does it affect the rent?

### EVIDENCE

#### Rental History

The tenants testified that they moved into the apartment on February 1, 2014, at an initial monthly rent of \$1,350.00. The testimony was that their lease did not list the garage as included. They further testified that upon initial inspection of the unit, they found rodents and indicated a lack of interest in the unit. As a result, the previous owner offered the garage to them for free in exchange for cleaning the apartment themselves. They testified that they were given keys to the garage and the mailbox when they signed the lease agreement, at move in. The signed lease



does not include the garage or parking space because the agreement for the garage was a verbal agreement. The tenant currently pays \$1,431.62 per month.

The owner's response alleged that the tenant was provided a RAP Notice on October 16, 2017. The owner provided a copy of the RAP Notice signed by the tenant on October 16, 2017<sup>1</sup>.

### Garage

The tenant testified that she received the email dated Tuesday, September 19, 2017, from Alex Esparza, a representative of the owner.<sup>2</sup> The email indicated that Alex would be checking to see if they (the owner and property manager) had a key to her garage. The tenant had access to the garage and was using it until September 29, 2017. The tenant testified that she has not had access to a garage since September 29, 2017.

The owner's witness, Alex Esparza, testified that he is familiar with the subject property because he is the assistant of the owner and property manager. He acknowledged that they were told that the tenants in unit 11 had a verbal agreement for parking but that there was nothing written.

He inspected the garage. He testified that the garage was being used for storage, contained a junk car, charcoal barbeque, and hazardous materials including oil tanks.

He further testified that there are 7 spaces available for the building. The garage that the tenant was using needed to be repaired as it was falling down. He knew that they were using the space. He informed them that they were not permitted to use the space. He requested that they remove their belongings.

On October 9, 2017, he issued a notice indicating that only residents with valid permits can park. The tenants in unit 11 do not have permits. On November 30, 2017, he again issued a notice which indicated again that only residents with valid parking permits residents were allowed to park. Currently, only three units have parking and new tenants pay \$200.00 per month for parking.

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<sup>1</sup>Exhibit H. This Exhibit, and all exhibits referred to in this Hearing Decision other than exhibit A was admitted into evidence without objection. Exhibit A was admitted over the objection.

<sup>2</sup>Exhibit B.

## Laundry Room

The tenant testified that the building had a laundry room by the main entrance. The laundry room contained two washers, two dryers and cubbies for people to put their stuff in. The floors were cement and there was no counter for folding clothes. The machines cost \$1.75 to wash and \$1.75 to dry. The owner assumed ownership of the building on September 8, 2017, and advised the tenants that the laundry room would be closed for remodeling. The laundry room was unavailable from September 29, 2017, to December 20, 2017.

After the remodel, the laundry room has new machines and a marble looking counter top. The machines now cost \$2.00 to wash and \$2.00 to dry. She testified that she does not know what the capacity of the laundry machines was but that you can't put as many clothes in as before. She does not know what the capacity of the old machines were. The laundry room floor is now laminate.

The owner testified that he has undertaken more extensive repairs and renovations to every part of the building, including the laundry room. During his inspections, he noted that the laundry room was "inhumane". He observed that there was a constant inch of water on the floor, the machines were loud, and it smelled bad. There were broken bottles and a tenant reported prostitution and drug deals in the laundry room, which he suspected after he cleaned the laundry room. The project was initially intended to provide a beautiful, secure, non-leaking laundry room.

Once repairs started, the owner found that there were extensive leaks than expected, that the gas dryers had valves that were low, so low that children could touch them and that people had been moving them too. He decided to convert to electricity, which required permits. Thereafter, he obtained the necessary permits and the job was completed.

The machines in the laundry room were not owned by the owner of the subject property, current or previous. The machines in the laundry room were owned by a third party. He installed new washers and dryers and they are the latest model in efficiency and quietness. They have them at the Google campus. They are no other more efficient machines. When he started the laundry room project, he did not anticipate needing permits. However, once the project changed and he realized that the work was going to be more extensive, he obtained permits. The owner testified that the laundry room was finished. However, the re-opening was delayed by the strike at the City of Oakland, in December 2017.

AT&T Services

The tenant testified that she was notified, by the owner, in September 2017, that she could subscribe to either AT&T or Comcast. At the time, she had Comcast service. Thereafter, she switched to AT&T internet service, delivered through a wired phone line in the unit. Subsequently, the owner notified the tenant, in October 2017, that the AT&T wiring was an electrical fire hazard and was going to be removed by October 30, 2017. The removal of the AT&T wires on October 23, 2017, stopped her service. She now subscribes to Comcast at a higher cost.

The owner's witness testified that the junction box for cable and internet was old and not functional. Some of the cables were working and some were not. He called AT&T and Comcast to repair. AT&T declined to work on the junction box. Comcast agreed and came out to work on it. There were a lot of wires; from the junction box, wires went to the unit and out to the exterior. Now the wires are underground.

Originally, Mr. Esparza did tell then tenants they could have AT&T, but AT&T declined to work on the junction box. He further testified that he never limited the tenants' ability to contract with any provider. He only advised that the illegally installed wiring would be removed.

The junction box was inspected by his father, a Direct TV technician, and by a technician from AT&T. His father told him the junction box should be removed. The technician from AT&T came out and inspected the junction box. Additionally, the AT&T technician told him it was a fire hazard, that he wasn't going to fix it, and he left. The AT&T technician didn't mention anything about the landlines.

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## FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

The Rent Adjustment Ordinance requires an owner to serve the RAP Notice at the start of a tenancy<sup>3</sup> and together with any notice of rent increase or change in the terms of a tenancy.<sup>4</sup>

The owner alleged that the tenant was provided a RAP Notice on October 16, 2017. The owner provided documentary evidence which supports that the tenant was provided a RAP Notice on October 16, 2017. There was no evidence that the tenant was provided a RAP Notice at any earlier date. Therefore, it is found that the tenant was given a RAP Notice on October 16, 2017.

### **Has the tenant suffered decreased housing services?**

Under the Oakland Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent<sup>5</sup> and may be corrected by a rent adjustment.<sup>6</sup> However, in order to justify a decrease in rent, a decrease in housing services must be either the elimination or reduction of a service that existed at the start of the tenancy or a violation of the housing or building code which seriously affects the habitability of the tenant's unit.

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

If the decreased housing service is for a condition that is ongoing (e.g., a leaking roof), the tenant may file a petition at any point but is limited in restitution for 90 days before the petition is filed.<sup>7</sup>

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<sup>3</sup> O.M.C. § 8.22.060(A)

<sup>4</sup> O.M.C. § 8.22.070(H)(1)(A)

<sup>5</sup> O.M.C. § 8.22.070(F)

<sup>6</sup> O.M.C. § 8.22.110(E)

<sup>7</sup> O.M.C. § 8.22.090(A)(3)

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

### Garage

The tenant established that they had use of the garage from the inception of the tenancy until their access was restricted, by the owner, on September 29, 2017. Therefore, the tenant is entitled to a 10% rent credit from September 2018, until the use of the garage is returned to them.

### Laundry Room

The tenant established that the owner provided a laundry room until the laundry room underwent remodeling. The laundry room was unavailable for tenant use from September 29, 2017 until December 20, 2017. The evidence clearly established that the laundry room repairs were a temporary interference with the tenant's full use of housing services but did not substantially interfere with the right to occupancy of the premises as a residence. As such, it did not effectuate a decrease in housing services. Therefore, the claim is denied.

### AT&T Landline Services

There is no evidence that the owner provided landline services through AT&T or any other company. The evidence established that AT&T declared the junction box a fire hazard and the owner remedied the hazard by removing the hazard. Therefore, the tenant's claim regarding the AT&T Landline Services is denied.

### Cost of Laundry Room Machines

There was no evidence that on the capacity of the prior machines in the laundry room. Likewise, there was no evidence of the capacity of the current machines in the laundry room. The only evidence was that the cost of the current machines are twenty-five cents more than the prior tenants. It is found that the increase has had a minimal impact on tenants and therefore this claim is denied.

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

As indicated above, the legal rent for the unit is \$1,431.62 per month. The tenant is entitled to restitution for the decreased housing services in the amount of \$1,574.78. Additionally, as noted above, the tenant is entitled to an ongoing rent credit in the amount of 10% for the ongoing loss of use, of the garage.

Service Lost	From	VALUE OF LOST SERVICES			Decrease /month	No. Months	Overpaid
		To	Rent	% Rent Decrease			
Garage	1-Oct-17	31-Aug-18	\$1,431.62	10%	\$ 143.16	11	\$ 1,574.78
<b>TOTAL LOST SERVICES</b>							<b>\$ 1,574.78</b>
<b>RESTITUTION</b>							
<b>MONTHLY RENT</b>							<b>\$1,432</b>
<b>TOTAL TO BE REPAID TO TENANT</b>							<b>\$ 1,574.78</b>
<b>TOTAL AS PERCENT OF MONTHLY RENT</b>							<b>110%</b>
AMORTIZED OVER				12	MO. BY REG. IS		<b>\$ 131.23</b>
OR OVER				MONTHS BY HRG. OFFICE			

The chart above indicates restitution for decreased housing services valued at \$1,574.78. Because of the ongoing decrease in housing services, the tenant is entitled to a monthly rent credit in the amount of \$143.16, for the loss of use of the garage. The tenant's monthly restitution amount is subtracted from the current legal rent, less any ongoing decreased housing services rent credit.

Restitution is awarded over a 12-month period. Accordingly, the restitution amount is \$131.23 per month.

**ORDER**

1. Petition T18-055 is granted in part and dismissed in part.
2. The current legal rent for the subject unit is \$1,431.62 per month before deductions for decreased housing services.
3. The total overpayment by the tenant is \$1574.78 past decreased housing services.

4. The tenant's rent is stated below:

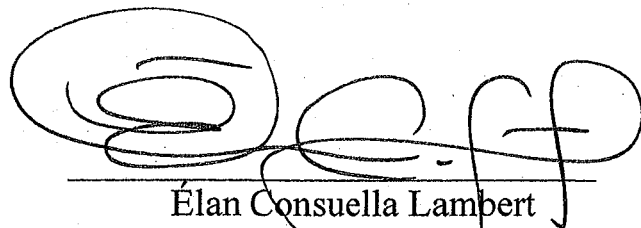
Base rent	\$1,431.62
Less restitution	\$ 131.23
Less garage	\$ 143.16
Net Rent on September 1, 2018	\$1,157.23

5. The tenant's rent for the months of September 2018, through August 2019, is \$1,157.23. The rent will revert to the current legal rent of \$1,431.62 in September 2019, less any ongoing decrease housing services rent credit.

6. When the owner returns the use of the garage to the tenant, and upon property notice in accordance with Section 827 of the California Civil Code, the rent may be increased by \$143.16.

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

Dated: August 13, 2018



Élan Consuella Lambert  
Hearing Officer  
Rent Adjustment Program

**PROOF OF SERVICE**  
**Case Number T18-0055**

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

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

**Documents Included**  
Hearing Decision

**Manager**  
3000 Nicol Avenue Properties LLC  
201 13th Street #32353  
Oakland, CA 94604

**Owner**  
Jakkrit Sirikantraporn  
c/o James C. Lu  
Lu & Associates & Accountancy Corp.  
800 S. Barrasca Avenue, Suite 360  
Covina, CA 91723

**Owner Representative**  
Clifford E. Fried, Esq.,  
Fried & Williams LLP  
1901 Harrison St. 14th Floor  
Oakland, CA 94612

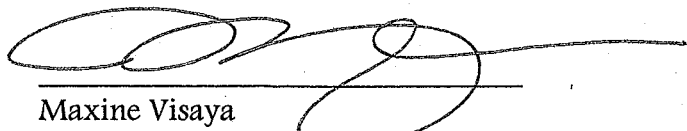
**Tenants**  
Michele Vargas  
3000 Nicol Avenue #11  
Oakland, CA 94601

Robert Lopez  
3000 Nicol Avenue #11  
Oakland, CA 94601

**Tenant Representative**  
Karyn L Erickson  
Law Office of Karyn L. Erickson  
P.O. Box 22941  
Oakland, CA 94609

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

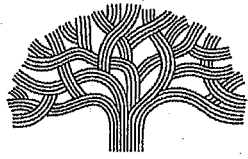
I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on August 30, 2018 in Oakland, CA.

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

000080



7:18 SEP 19 PM 4:01  
For Date Stamp



CITY OF OAKLAND

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

**APPEAL**

<b>Appellant's Name</b> 3000 Nicol Avenue Property, LLC		<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant	
<b>Property Address (Include Unit Number)</b> 3000 Nicol Avenue, Unit 11, Oakland, CA 94602			
<b>Appellant's Mailing Address (For receipt of notices)</b> c/o Fried & Williams LLP 1901 Harrison Street, 14th Floor Oakland, CA 94612		<b>Case Number</b> T-18-0055	
		<b>Date of Decision appealed</b> 8/13/2018	
<b>Name of Representative (if any)</b> Clifford E. Fried, Esq., SBN 1182288 Angelica A. Sandoval, Esq., SBN 318093		<b>Representative's Mailing Address (For notices)</b> Fried & Williams LPP 1901 Harrison Street, 14th Floor Oakland, CA 94612	

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

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

For more information phone (510) 238-3721.

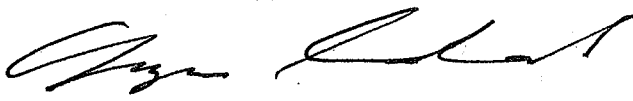
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- f)  I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. (In your explanation, you must describe how you were denied the chance to defend your claims and what evidence you would have presented. Note that 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: 2.

• 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 September 19, 2018, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<b>Name</b>	Karyn L. Erickson, Esq. / Betsy Brazl Law Offices of Karyn L. Erickson
<b>Address</b>	P.O. Box 22941
<b>City, State Zip</b>	Oakland, CA 94609
<b>Name</b>	
<b>Address</b>	
<b>City, State Zip</b>	

	9/19/18
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

For more information phone (510) 238-3721.

2018 SEP 19 PM 4:01

**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.

**EXPLANATION FOR EACH GROUND UPON WHICH APPEAL IS BASED**

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Owners and Appellants 3000 Nicol Avenue Properties, LLC hereby submit the following pursuant to RAP Regulations, Sec. 8.22.120.A.1 and the Appeal form currently posted on the RAP website (dated June 18, 2018).

**I. INTRODUCTION**

Michelle Vargas and Robert Lopez ("Petitioners" and "Respondents") petitioned for a decrease in housing services claiming the loss of a parking space.

RAP precedent has held that a tenant has the burden of proving decrease in housing services by preponderance of the evidence. *Howard v. Smith*, T11-0191. There is no substantial evidence in the record that the parking space was provided for at the start of the tenancy or that a parking space was ever provided as part of the tenancy. The two lease agreements signed by the tenants do not provide for parking.

**II. GROUNDS FOR APPEAL**

**A. 2)d) The Hearing Decision Violates Federal, State, or Local Law.**

**1) The Hearing Decision Violates Evidence Code Section 622**

California Evidence Code Section 622 provides that the facts recited in a written instrument are conclusively presumed to be true as between the parties thereto, and their successors in interest. Despite the tenants signing 2 written instruments that failed to provide for a parking spot, the Hearing officer ruled that the tenancy included parking. This is a violation of Evidence Code Sec. 622. The Hearing Decision does not explain why Section 622 should not apply.

**2) The Hearing Decision Violates the Parol Evidence Rule.**

The parol evidence rule, codified in Evidence Code Sections 1856 and 1625 protects the integrity of written contracts by prohibiting evidence of any prior oral or written representations that contradict the terms of a final written contract. In this case, the tenant signed two agreements that did not provide the tenant with parking at the premises. The second agreement expressly excluded parking. The written agreements are the exclusive evidence that the tenancy did not include parking. The decision violates the parol evidence rule

by changing the written agreement of the parties. The Hearing Decision does not explain why the parol evidence rule should not apply.

**3) There Was no Decrease in Housing Services.**

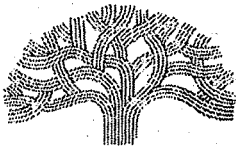
A housing service must be part of the tenancy at the inception either by contract or implied by law. *Garbe v. Kumana*, T08-0146. Thus, rent cannot adjust rent for a service that was not provided as a housing service. If parking was indeed negotiated, it should have been included in the written agreement of the parties. It was not. There is no housing service that was taken away as a matter of law.

**B. 2)f) The Decision is Not Supported by Substantial Evidence**

There is no substantial evidence that parking was provided as a housing service at the inception of the tenancy or at the time Appellant purchased the premises. Any such evidence would violation the parol evidence rule and Evidence Code Sec. 622. Thus, the only substantial and admissible evidence before the Hearing Officer were the two written agreement in which the tenants agreed that parking was not part of the tenancy.

**C. 2)h) Other: The Hearing Decision is Wrong as a Matter of Law**

For the reasons stated above, the Hearing Decision is wrong as a matter of law and should be reversed on appeal.



CITY OF OAKLAND

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

**RECEIVED**

OCT 19 2018

RENT ADJUSTMENT PROGRAM  
**OAKLAND**

**Response to  
APPEAL**

<b>Respondent's Names</b> MICHELE VARGAS, ROBERT LOPEZ		<input type="checkbox"/> Owner <input checked="" type="checkbox"/> Tenant	
<b>Property Address (Include Unit Number)</b> 3000 NICOL AVENUE, UNIT U, OAKLAND, CA 94602			
<b>Appellant's Mailing Address (For receipt of notices)</b> RESPONDENT'S 3000 NICOL AVE., UNIT U, OAKLAND, CA 94602		<b>Case Number</b> T18-0055	
		<b>Date of Decision appealed</b> 8/13/2018	
<b>Name of Representative (if any)</b> KARUN L. ERICKSON, ATTORNEY LAW OFFICE OF KARUN L. ERICKSON		<b>Representative's Mailing Address (For notices)</b> P.O. Box 22941 OAKLAND, CA 94609	

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): } NOTE: THIS IS A RESPONSE TO AN APPEAL.

- 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.

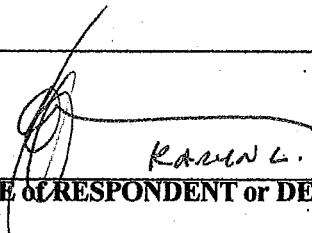
- f)  I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. (In your explanation, you must describe how you were denied the chance to defend your claims and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue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

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 response on the opposing parties within 35-days of being served with the opposing parties' appeal.

I declare, under penalty of perjury, under the laws of the State of California that on October 16, 2018, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service of at least as expeditious as first class mail, with all pages or charges fully prepaid, address to each opposing party as follows:

<b>Name</b>	CLIFFORD B. FAYO, ATTORNEY
<b>Address</b>	FAYO & WILLIAMS, LLP 1901 HARRISON STREET, 14th FLOOR, OAKLAND, CA 94612
<b>City, State Zip</b>	
<b>Name</b>	ANGELICA A. SANDOVAL, ATTORNEY
<b>Address</b>	FAYO & WILLIAMS, LLP, 1901 HARRISON STREET, 14th FLOOR
<b>City, State Zip</b>	OAKLAND, CA 94612

 RAMON L. BECKSON, ATTORNEY	10/16/2018
<b>SIGNATURE of RESPONDENT or DESIGNATED REPRESENTATIVE</b>	<b>DATE</b>

For more information phone (510) 238-3721.

**IMPORTANT INFORMATION:**

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

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- 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.**



**RESPONSE TO APPELLANT'S EXPLANATION FOR EACH GROUND UPON WHICH THEIR APPEAL IS BASED.**

Respondents Michele Vargas and Robert Lopez (original Petitioners) hereby submit their response to Owners/Appellants 3000 Nicol Avenue Properties, LLC, appeal Case No. T18-0055. Respondents request that the Hearing Decision be affirmed and believe that Appellants arguments are without merit.

**INTRODUCTION**

Respondents petitioned for a rent decrease based upon the loss of the use of a parking garage, not a "parking space" as described by Appellants. In their petition and at the administrative hearing, Respondents proved, by substantial evidence, that the former owner granted them access to a parking garage beginning 2/15/2014 until 9/29/2017 when Appellants illegally removed this access within weeks after Appellants purchased the property at 3000 Nicol Avenue, Oakland, CA 94602 ("SUBJECT PROPERTY.") See *Howard v. Smith*, T11-0101, a hearing decision that granted rent reduction for loss of use of a garage and was supported by substantial evidence on appeal.

**I. THE HEARING DECISION IS CONSISTENT WITH LOCAL, STATE, AND FEDERAL LAW**

**1) LEASE AGREEMENTS SUPPORT RESPONDENTS' PETITION:**

Respondents executed a 2014 lease agreement with the original owners and a 2017 lease agreement with Appellants (See Exhibits 9 and 10 to Petition.)

**A. 2014 Lease Agreement**

The original lease agreement was executed on 2/1/2014 with tenancy to begin on 2/15/2014. Respondents testified that on or about 2/15/2014, they prepared to move into the SUBJECT PROPERTY but, upon arriving, discovered that their leased apartment was filthy and rat feces indicated vermin infestation. The property manager orally agreed that if Respondents cleaned the apartment and moved in, he would provide parking garage access to them for the duration of their tenancy. Respondents accepted his offer, cleaned the apartment, moved in, and used the parking garage from 2/15/2014 until Appellants ended garage access on 9/29/2017 and demanded their garage key. Respondents produced this key at the rent board hearing.<sup>1</sup>

**B. 2017 Lease Agreement Is Invalid**

While on 9/8/2017 Respondents received a notice concerning changes in lease terms (see Exhibit 1.1 to Appellants' "Submission of Tangible Evidence"), the terms of the new lease were materially different than the 2014 lease, changed the lease period from month-to-month to 15 days, and failed to list Respondent's occupant children. (CC §§ 827(a), 827(b)(1).)

Respondents first executed the new lease agreement in early October 2017 and added the words "signed under duress." Appellants rejected this signed lease agreement, and required Respondents to meet with Alex Esparza, the property manager, to personally explain the lease terms. If Respondents then wanted the new lease agreement to be reviewed by counsel *after* this explanation, they were required to provide Appellants with "a short timeline" for review but Appellants demanded

<sup>1</sup> Because Appellants replaced all garage locks, Appellants rescinded their demand for the garage key.

that the agreement be subsequently signed without modification. In addition to making the lease term for 15-days, the new lease did not include Respondent's access to their garage and, in fact, required an additional fee for parking garage access.

Pursuant to Oakland Municipal Code 8.22.360(A)(3), a Just Eviction Cause is where "The tenant, who had an oral or written agreement with the landlord which has terminated, has refused after written request or demand by the landlord to execute a written extension or renewal thereof for a further term of like duration and under such terms which are materially the same as in the previous agreement . . ." Here, the implications were clear. Sign the 2017 lease agreement or face eviction.

Both because the new lease agreement is *materially different* from the original lease and was signed **under duress** with no opportunity for a bargained-for exchange, the 2017 Lease Agreement is invalid and the 2014 lease agreement controls.<sup>2</sup> See Declaration of Attorney Karyn L. Erickson in Support of Tenant Petition filed on 6/14/2018. See Exhibit 8 attached to Declaration of Respondents in Support of their Petition.

**2) THE 2014 GARAGE ACCESS CHANGE DID NOT VIOLATE THE PAROL EVIDENCE RULE:**

Cal. Civ. Code § 1625 and Cal. Code of Civ. Proc. § 1856 codify the Parol Evidence Rule: the Parol Evidence Rule excludes evidence of a **prior** or a **contemporaneous** oral agreement that contradicts the original agreement.<sup>3</sup> Here, the 2014 lease agreement was executed on 2/1/2014. An oral agreement modifying the lease agreement was entered into on or about 2/15/2014, fully fifteen days *after* the lease agreement was executed. Thus, because the oral agreement was not a prior or a contemporaneous agreement, the Parol Evidence Rule is inapplicable.

**3) THERE WAS A DECREASE IN A HOUSING SERVICE WITHOUT RENT REDUCTION:**

From 2/15/2014 forward, Respondents were provided with access to a parking garage as part of their monthly lease terms until Appellants terminated garage access on 9/29/2017 without compensation and prior to their execution of the 2017 lease agreement on 10/16/17. Thus, there was a decrease in housing services with no reduction in rent offered by Appellants.

**4) THE DECREASE IN A HOUSING SERVICE IS SUPPORTED BY SUBSTANTIAL EVIDENCE:**

Alex Esparza, witness for Appellants, admitted in his testimony at the hearing that he was aware of the oral agreement between the former owner and Respondents concerning their use of a parking garage at the SUBJECT PROPERTY. Moreover, in email communications with Respondents, Alex continuously referred to Respondent's garage as "your garage." See Exhibits 4 and 8 attached to the Declaration of Respondents in Support of their Petition. See Exhibits A and B and Exhibits 1-6 and 1-9 attached to the Supplemental Declaration of Respondents in Support of their Petition.<sup>4</sup>

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<sup>2</sup> "Even when a writing is integrated, parol evidence is admissible to prove that the instrument is void or voidable for mistake, fraud, duress, undue influence. . . or other invalidating causes. . . Most of these types of problems do not appear on the face of the writing, and so parol evidence is needed to evaluate them." *Pacific State Bank v. Green* (2003), 110 Cal. App.4<sup>th</sup> 375, 387. Matthew Bender Practice Guide: California Contract Litigation (2017) Sec. 21.51.

<sup>3</sup> Appellants wrongly claimed that the Parol Evidence Rule is codified in the California *evidence* code.

<sup>4</sup> All Exhibits to these two supporting declarations were marked and admitted into evidence.

**5) THE HEARING DECISION RECOGNIZES THE ORAL MODIFICATION OF THE 2014 LEASE AGREEMENT AND THE CONDUCT OF THE PARTIES:**

“Parties to a written agreement may modify the agreement by an executed oral agreement [Cal. Civ. Code § 1698(b).] The written contract remains in effect to the extent that it has not been modified. [*Conley v. Matthes* (1997) 56 Cal. App. 4<sup>th</sup> 1453, 1465].” Matthew Bender Practice Guide: California Contract Litigation, Sec. 21.58. Thus, the written lease executed on 2/1/2014 can be presumed to be true pursuant to Cal. Evid. Code § 622 after which there was a subsequent oral modification to the agreement concerning the garage.

In the instant matter, Clause 25 of the 2014 lease agreement states, “No oral representation shall be effective to modify this Lease. If, as per the terms of this paragraph, any provision of this lease is newly added, modified, or stricken out, the remainder of this Lease shall remain in full force and effect.”

Despite the “No Oral Modification” clause, a written contract *can* be modified by executed oral agreements and is a question of fact. “An agreement to modify a written contract will be implied if the conduct of the parties is inconsistent with the written contract so as to warrant the conclusion that the parties intended to modify it.” *Daugherty Co. v. Kimberly-Clark Corp.* (1971) 14 Cal.App.3d 151, 158. Judicial Council of California Civil Jury Instructions (2018 edition), CACI No. 313.

Preliminary to the hearing, Appellants submitted a letter from Peter Pagones, a Realtor at Berkshires Hathaway Homes Services addressed to “To Whom It May Concern,” stating that there were no verbal agreements between the former owner concerning the parking garages and only tenants who had a garage specifically assigned to them in a lease agreement had access to a garage. Testimony from Alex Esparza confirmed that Mr. Pagones represented Appellants (e.g. the *Buyer*.) However, in Appellant’s “Submission of Tangible Evidence” dated 6/12/2018, page 3, Lines 16-19, they stated that Mr. Pagones represented the *Seller* and that Mr. Pagones’ letter was sent to *Respondents*. Mr. Esparza’s testimony at the hearing contradicted the written statements in Appellant’s “Submission of Tangible Evidence” both as it relates to Mr. Pagones’ letter and to the oral agreement between Respondents and the former owner.

Respondents testified that they never received the 5/21/2018 letter from Mr. Pagones and, in fact, did not know who Mr. Pagones was. Notably, Mr. Pagones’ letter, submitted as Exhibit N to the “Submission of Tangible Evidence,” is simply hearsay and not a declaration signed under penalty of perjury. Thus, its reliability is questionable.

Here, while the 2014 lease agreement did not specify a parking garage to Respondents, a *subsequent* oral agreement contradicted the express lease terms and the lease was impliedly modified by the *conduct* of the parties. For nearly four years, Respondents relied on full use of the parking garage for the duration of their tenancy to park Respondent Lopez’s valuable Mustang car until Appellants removed access to the garage. When Appellants removed garage access, Respondent Lopez was forced to sell his Mustang or risk its loss if parked on the Fruitvale neighborhood public streets. Thus, not only did Appellants remove Respondent’s access to their garage, but they did so with **full knowledge** of the 2014 oral agreement between Respondents and the original Landlord and the conduct of the parties. They cemented this reduction in housing services by *mandating* that Respondents sign a new and materially different lease agreement under duress on 10/16/2018.

**RESPONSE TO APPEAL – CASE NUMBER: T18-0055**

**CONCLUSION:**

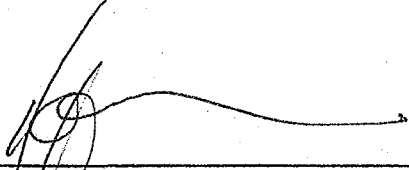
For the reasons stated above, the Hearing Decision is correct as a matter of law and should be affirmed upon appeal.

Respectfully submitted,

LAW OFFICE OF KARYN L. ERICKSON

October 16, 2018

Dated



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KARYN L. ERICKSON, SBN 278121  
Attorney for MICHELE VARGAS and  
ROBERT LOPEZ