

HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD REGULAR BOARD MEETING

July 25, 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
 - a. Approval of Board Minutes, June 27, 2019
 - b. Approval of Board Minutes, July 11, 2019
4. OPEN FORUM
5. OLD BUSINESS
 - a. Ad Hoc Committee
Report by T. Hall, E. Lai and T. Williams regarding dry rot and deferred maintenance in capital improvement cases
 - b. Formation of additional ad hoc committees, membership and review of issues identified in May 9, 2019, Board meeting
 - Information about the Building Code and intersection with the Regulations;
e.g. window bars-there is a code that applies to this.
 - Should dry rot be treated differently from other deferred maintenance items?
 - Clarification of deferred maintenance v. items that benefit tenants?
 - Ambiguous terms in the regulations and in the Ordinance;
 - How is the value of the Decreased Housing Services determined?
 - What constitutes a burden of proof regarding expenses for capital improvements?

6. NEW BUSINESS

- a. Appeal Hearings in:
 - i. T18-0379, Alvarez v. Geary
 - ii. L18-0127, Pelly v. Tenants

7. SCHEDULING AND REPORTS

- a. Report by Deputy City Attorney regarding Administrative Writs in Alameda County Superior Court
- b. Report of Streamlining Ordinance and Attendance Policy

8. ORAL REPORT OF FINAL DECISIONS MADE DURING CLOSED SESSION & DISCLOSURE OF NON-CONFIDENTIAL CLOSED SESSION DISCUSSIONS

9. 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@oaklandca.gov or call (510) 238-3715 or California relay service at 711 at least five working days before the meeting. Please refrain from wearing scented products to this meeting as a courtesy to attendees with chemical sensitivities.

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

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

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

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

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

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

CITY OF OAKLAND
HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD

FULL BOARD MEETING
June 27, 2019
7:00 p.m.
City Hall, Hearing Room #1
One Frank H. Ogawa Plaza, Oakland, CA

MINUTES

1. CALL TO ORDER

The HRRRB was called to order at 7:07 p.m. by Board Chair, Jesse Warner.

2. ROLL CALL

MEMBER	STATUS	PRESENT	ABSENT	EXCUSED
Tanaia Hall	Tenant	X		
Rose Auguste	Tenant	X		
Ardis Graham	Homeowner	X		
Ed Lai	Homeowner	X		
Jesse Warner	Homeowner	X		
Terrence Williams	Owner	X		
Kathleen Sims	Owner	X		

Staff Present

Ubaldo Fernandez	Deputy City Attorney, Office of the City Attorney
Linda M. Moroz	Hearing Officer, Rent Adjustment Program
Kelly Rush	Program Analyst I, Rent Adjustment Program

3. OPEN FORUM

No speakers.

4. CONSENT ITEMS

- a. Minutes for Approval, May 9, 2019
- b. Minutes for Approval, June 13, 2019

Ed Lai made a motion to approve both May 9 and June 13, 2019, Minutes as submitted. T. Williams seconded.

The Board voted as follows:

Aye: T. Hall, R. Auguste, A. Graham, E. Lai, K. Sims, T. Williams, J. Warner

Nay: 0

Abstain: 0

The Motion was approved by consensus.

5. NEW BUSINESS

A. Appeal Hearings in cases:

- i. L17-0230, Fong v. Tenants
- ii. T16-0549, Beasley v. Horejsi
T17-0523, Beasley v. Horejsi
T18-0480, Beasley v. Horejsi

i. **L17-0230, Fong v. Tenants**

Appearances:	Jackie Zaneri, Centro Legal	Attorney for Tenant Appellant
	May Fong	Owner Appellee

The tenant appealed the Hearing Decision which partially granted the owner petition for approval of a rent increase based on capital improvements alleging that the amount approved as capital improvement pass-through was larger than the amount noticed on the owner's petition, the work was deferred maintenance and not capital improvement, there was no finding of a demolition permit and whether the permit was required. The tenant did not respond to the initial petition and did not appear for the original hearing.

Board Discussion

After arguments made by both parties, Board questions to the parties and Board discussion, J. Warner moved to remand the Hearing Decision to the Hearing Officer to analyze and determine (1) whether or not the permit was required for demolition and if so, whether the permit was obtained and finalized; (2) whether the condition of the structure was due to deferred maintenance; and (3) whether the noticed amount is lower than the awarded amount as pass through. E. Lai seconded.

The Board voted as follows:

Aye: T. Hall, R. Auguste, A. Graham, E. Lai, K. Sims, T. Williams, J. Warner

Nay: 0

Abstain: 0

The Motion was approved by consensus.

ii. T16-0549, Beasley v. Horejsi
T17-0523, Beasley v. Horejsi
T18-0480, Beasley v. Horejsi

Appearances: Satchidananda Mims Tenant
Michael Horejsi Owner

The cases involve the same parties. The tenant appealed the Hearing Decision in T16-0549 for banking and decreased housing services, alleging that the RAP did not have jurisdiction over this decision due the August 2016 Settlement Agreement the parties reached in the Court eviction proceeding. The tenant argued that by Settlement Agreement the owner waived his right to banked rent increases.

The tenant also appealed the Remand Hearing Decision in T17-0523, that denied the decreased housing services and allowed the rent increase based on banking.

The same parties entered into a Settlement Agreement on January 3, 2019, in a civil case brought by the tenants against the owner. That Settlement occurred after the tenant filed Tenant Petition T18-0480 but before the hearing. The Hearing Officer denied the tenant petition in T18-0480 and determined that the January 3, 2019, Court Settlement Agreement settled all claims between the parties.

Board Discussion

After arguments made by both parties, Board questions to the parties and Board discussion, J. Warner moved to affirm the T18-0480 Hearing Decision based on substantial evidence and, in light of this affirmed decision, request that the Hearing Officer also review the prior Hearing Decisions in T16-0549 and T17-0523 to conform them to the affirmed Hearing Decision in T18-0480. K. Sims seconded.

The Board voted as follows:

Aye: T. Williams, K. Sims, E. Lai, A. Graham, R. Auguste, J. Warner

Nay: 0

Abstain: T. Hall

The Motion carried.

B. Report by Deputy City Attorney regarding Cases Appealed to Superior Court and Disposition.

The Board Chair requested that the RAP staff schedule this report be presented in the Closed Session prior to the Board Meeting on July 25, 2019.

6. OLD BUSINESS

A. Formulation of Ad Hoc Committee

Before the presentation, the Board took a five-minute break. After the break, the Board Chair made a motion to continue the meeting after 10:00 p.m. E. Lai seconded.

The Board voted as follows:

Aye: T. Hall, R. Auguste, A. Graham, E. Lai, K. Sims, T. Williams, J. Warner

Nay: 0

Abstain: 0

The Motion was approved by consensus.

Deputy City Attorney U. Fernandez made a presentation regarding the formation, conduct, limited power, scope and duration of the Ad Hoc Committee.

After questions to the City Attorney and the Board discussion of topics on page #008 of the Agenda, T. Williams moved to form the Ad Hoc Committee for duration of three months to better understand dry rot as it appears in capital improvement cases. The committee will include members T. Williams, T. Hall and E. Lai. A. Graham seconded.

The Board voted as follows:

Aye: T. Hall, R. Auguste, A. Graham, E. Lai, K. Sims, T. Williams, J. Warner

Nay: 0

Abstain: 0

The Motion was approved by consensus.

7. SCHEDULING AND REPORTS

The Board reserved this section for further discussion to form other Ad Hoc Committees in the future for other topics.

8. ADJOURNMENT

The meeting was adjourned at 10:16 p.m.

**CITY OF OAKLAND
HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD
Full Board Meeting
July 11, 2019
7:00 p.m.
City Hall, Hearing Room #1
One Frank H. Ogawa Plaza, Oakland, CA**

MINUTES

1. CALL TO ORDER

The HRRRB was called to order at 7:05 p.m. by Board Chair Jessie Warner

2. ROLL CALL

MEMBER	STATUS	PRESENT	ABSENT	EXCUSED
T. Hall	Tenant	X		
R. Auguste	Tenant	X		
Hannah Flanery	Tenant Alt.			X
Corean Todd	Tenant Alt.			X
R. Stone	Homeowner	X		
J. Warner	Homeowner	X		
A. Graham	Homeowner		X	
E. Lai	Homeowner Alt.			X
Julia Ma Powers	Homeowner Alt.			X
K. Friedman	Landlord	X		
T. Williams	Landlord	X		
B. Scott	Landlord Alt.			X
K. Sims	Landlord Alt.			X

Staff Present

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

3. CONSENT ITEMS

a. Board Panel Minutes for Review, June 20, 2019

4. OPEN FORUM SPEAKERS

James Vann

5. OLD BUSINESS

A. Ad Hoc Committee

1. Membership and Issues to be discussed

J. Warner moved to discuss this item after New Business. R. Stone and K. Friedman seconded. The Board voted as follows:

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

Nay: 0

Abstain: 0

The motion was approved by consensus

6. NEW BUSINESS

A. Appeal Hearings

i. T17-0518, McCulloch v. Cohen

Appearances: Sarah McCulloch Tenant
No appearance by Owner

The owner appealed from the hearing decision based on errors in the rent calculations. Based on the non appearance of the owner J. Warner moved to dismiss the appeal pending a showing of good cause. T. Hall seconded.

The Board voted as follows:

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

Nay: 0

Abstain: 0

The motion was approved by consensus

ii. T18-0172, Embaye v. Amin
T18-0183, Embaye v. Amin

Appearances: Michael Embaye Tenant Appellant
Said Amin Owner Appellee

The tenant filed two petitions which contested rent increases on the grounds that he did not receive the RAP notice and the rent increase was the second increase in a twelve month period. He also claimed decreased housing services. The hearing decision dismissed the petition on the grounds that the tenant failed to appear at the hearing

The tenant filed an appeal on the grounds that he was denied sufficient opportunity to present his claim. He stated that he had moved out of his unit and did not receive notice of the hearing.

After arguments made by the parties, questions and Board discussion, R. Stone moved to remand the hearing decision to the hearing officer on the grounds that the tenant did not receive adequate notice of the underlying hearing. R. Auguste seconded.

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

The motion was approved by consensus

iii. Kelly v. Claridge Hotel

Appearances: Pariss Kelly Tenant Appellant

No appearance by Owner

The tenant filed a petition which contested rent increases and claimed code violations and decreased housing services regarding heat, bed bugs and cockroaches. The hearing decision granted restitution for the rent increases totaling \$1,495, \$60 monthly for inadequate heat, and denied restitution for the bed bugs and cockroaches on the ground that the owner had reasonably responded to the tenant complaint and that he had initiated pest control treatment immediately after notice to the tenant.

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

The Board voted as follows:

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

The motion carried.

5. OLD BUSINESS

A. Ad Hoc Committee

At the last full board meeting the Board formed an ad hoc committee consisting of the following members: T. Hall, E.Lai, T. Williams

The committee will focus on issues pertaining to dry rot and deferred maintenance in capital improvement cases.

U. Fernandez, the Deputy City Attorney, discussed the difference between a standing committee and an ad hoc committee; that a standing committee is subject to public notice, staffing, the Brown Act and Sunshine Ordinance.

An ad hoc committee meeting does not have to be noticed or staffed by the RAP, and is exempt from the Brown Act and Sunshine Ordinance. The committee is of limited duration, pertaining to a specific issue, and the committee reports back to the Board but takes no final action.

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

B. Letter to City Council

K. Friedman advised that E. Lai states it is no longer necessary to write the letter to the City Council due to the formation of ad hoc committees

7. SCHEDULING AND REPORTS

a. Formation of new ad hoc committees, membership, review, add and prioritize issues identified by the Board in the May 9, 2019, minutes and include in future agendas for upcoming full board meetings

b. Report from ad hoc committee regarding dry rot and deferred maintenance

c. Request that staff send out emails for full board meeting on September 12, 2019, to notify all board members to attend if s/he is interested in participating in an ad hoc committee

d. Report from the Deputy City Attorney regarding status of Administrative Writs in Superior Court

8. ADJOURNMENT

The Board meeting was adjourned by consensus at 8:42 p.m.

CHRONOLOGICAL CASE REPORT

Case No.: T18-0379
Case Name: Alvarez v. Geary
Property Address: 472 38th Street, Unit 'B', Oakland, CA
Parties: Matthew Alvarez (Tenant)
Stanley Geary (Owner)
Laura Geary (Owner Witness)

OWNER APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	July 22, 2018
Owner Response filed	November 13, 2018
Hearing Decision issued	March 14, 2019
Owner Appeal filed	April 2, 2019
Tenant response to Owner Appeal filed	April 11, 2019

T18-0379 MS/RCL

City of Oakland Rent Adjustment Program

Tenant Petition

RECEIVED

JUL 22 2018

RENT ADJUSTMENT PROGRAM

Case Petition: 9879

Property Address

Party	Name	Address	Mailing Address
Tenant	Matthew Alvarez (650) 218-1768 superalvarezfamily@gmail.com	472 38th St Apt B - Downstairs Oakland, CA 94609	
Owner	Lauretta and Stanley Geary Owners (925) 735-6935 lgeary@ix.netcom.com	1046 Sunnybrook Dr. Lafayette, CA 94549	

Rental Property Information

Number of Units	3
Type of unit you rent	Apartment, Room or Live-work
Are you current on your rent?	Yes

Grounds for Petition

- Incorrect Rent Increase
- Rent Increase Exceeds CPI or more than 10%
- No Pre Approval of Increase
- No Concurrent RAP Notice
- No RAP Notice at Inception or 6 Months Prior
- Decrease in Services
- No Summary Provided

Rental History

When did you move into the unit?	1/10/2013
Initial monthly rent	1295
When did the property owner first provide you with a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program (RAP NOTICE)?	
Did the property owner provide you with a RAP Notice, a written notice of the existence of the Rent Adjustment Program?	Yes
Is your rent subsidized or controlled by any government agency, including HUD (Section 8)?	No
Have you ever filed a petition for your rental unit?	No

City of Oakland Rent Adjustment Program

Tenant Petition

Case **Petition: 9879**

Property Address

Rent increases that you want to challenge.

Did you receive a RAP Notice with the notice of rent increase?	Date RAP notice served	Date increase goes into effect	Monthly Rent Increase From	Monthly Rent Increase To	Are you contesting this increase in this petition?
No		7/6/2018	1519	1587.72	Yes
No		7/6/2017	1430.2	1519	Yes
No		7/6/2016	1295	1430.2	Yes

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

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

Are you claiming any serious problem(s) with the condition of your rental unit? Yes

Loss of Service

Date Loss Began	Date Owner Was Notified of Loss	Estimated Loss	Reduced Service Description
7/6/2016		2205.99	The "lost services" discussed in this appeal are for services originally paid by the owner, which we are now being charged as "Shared Services". A section for "Water" and section for "Shared Services" previously not included on lease was added in 2016. Landlord cited increased costs in water, garbage collection, gardening services, insurance, and property tax as justification. Section outlines trash removal and associates charge with it (Section j). The 2016 lease update shared services increased by \$57.50/month (25 months paid as of filing)  The 2017 lease update shared services increased by \$57.50/month. (13 months paid as of filing) The 2016 lease update shared services increased by \$20.99/month. (1 month paid as of filing) Total paid since 2016: (\$57.50*25) + (\$57.50*13) + (\$20.99*1) = \$2,205.99

Mediation

Mediation Requested No

Add

<input type="checkbox"/>	TITLE	DESCRIPTION	FILE NAME	CHECKED IN BY	DATE STAMP
<input type="checkbox"/>	TP_LostService		2013 Lease - 472 38th b.pdf	Matthew Alvarez i	7-11-2018 1:54 PM
<input type="checkbox"/>	TP_AdditionalDocuments	Lease/Rental Agreement/RAP Notices	2013 Lease - 472 38th b.pdf	Matthew Alvarez i	7-11-2018 3:43 PM
<input type="checkbox"/>	TP_AdditionalDocuments	Lease/Rental Agreement/RAP Notices	2016 Lease - 472 38th b.pdf	Matthew Alvarez i	7-11-2018 3:43 PM
<input type="checkbox"/>	TP_LostService		2016 Lease - 472 38th b.pdf	Matthew Alvarez i	7-11-2018 1:54 PM
<input type="checkbox"/>	TP_LostService		2017 Lease - 472 38th b.pdf	Matthew Alvarez i	7-11-2018 1:54 PM
<input type="checkbox"/>	TP_AdditionalDocuments	Lease/Rental Agreement/RAP Notices	2017 Lease - 472 38th b.pdf	Matthew Alvarez i	7-11-2018 3:43 PM
<input type="checkbox"/>	TP_AdditionalDocuments	Lease/Rental Agreement/RAP Notices	2018 Lease - 472 38th b.pdf	Matthew Alvarez i	7-11-2018 3:43 PM
<input type="checkbox"/>	TP_LostService		2018 Lease - 472 38th b.pdf	Matthew Alvarez i	7-11-2018 1:54 PM
<input type="checkbox"/>	TP_LostService		472 38th Leases '16 p 11,12.pdf	Matthew Alvarez i	7-11-2017 12:50 AM
	TP_AdditionalDocuments				

<input type="checkbox"/>	TITLE	DESCRIPTION	FILE NAME	CHECKED IN BY	DATE STAMP
<input type="checkbox"/>		Adjoining apartment (unit1) Email RE: RAP Notice	MarcC - RAP Notice.pdf	Matthew Alvarez	7-12-2018 1:24 PM

10 records

Owner Response		Tenant Response	Transalation Request
ID	RESPONSE FROM	AGREE TO CITY MEDIATION	DATE STAMP ACTIONS
No responses to show...			

0 records

For more information regarding the Rent Adjustment Program, Please contact: City of Oakland, Rent Adjustment Program, Dalziel Building 250 Frank H. Ogawa Plaza Suite - 5313 Tel: (510) 238-3721

Sullivan, Margaret

RECEIVED
CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM

From: Matthew Alvarez <matt.alvarez@gmail.com>
Sent: Thursday, December 13, 2018 3:37 PM
To: Sullivan, Margaret
Subject: RAP Case Number T18-0379

2018 DEC 13 PM 4:17

Margaret,

I've left a couple of voicemails for you and I just figured out the email format so that I could reach out electronically.

My Case Number is T18-0379 and I wanted to let you know of a couple of clarifications. My mailing address has changed to 1134 Adeline St, Oakland, CA 94607 from 472 38th Street. I wanted to make sure any mailed documents find me directly.

I submitted my petition in July when the system was changing over to the system that is in use today. A couple of details seem to have been incorrectly carried over:

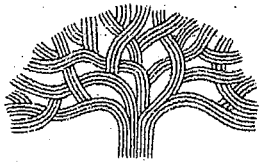
Did the property owner provide you with a RAP Notice, a written notice of the existence of the Rent Adjustment Program? Yes **Should read as 'No', as indicated in the Grounds section.**

Are you claiming any serious problems with the condition of your unit? Yes **Should read as 'No'; there were no major condition issues.**

I just looked in the system and also saw that an owner response was submitted on 11/28. Is this something I will have an opportunity to see, or is it something that I will not be able to view?

Thank you,
Matthew

--
Matthew Alvarez



CITY OF OAKLAND

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

For date stamp:
CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM
2018 NOV 13 AM 11:10

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 T18-0379

Your Name Stanley E. Geary Lauretta A. Geary	Complete Address (with zip code) 1046 Sunnybrook Drive Lafayette, CA 94549	Telephone: 925.283.5576 Email: stanleygeary@gmail.com
Your Representative's Name (if any) LAWRENCE M. Geary	Complete Address (with zip code) 1022 Lakeside Place.	Telephone: 925.735.6935 Email: lgeary@ix.netcom.com
Tenant(s) Name(s) LAWRENCE BETH ALVAREZ	Complete Address (with zip code) 472 38th Street Apt B. Oakland, CA 94609	Email: elby.alvarez@gmail.com
Property Address- (If the property has more than one address, list all addresses). 472 38th Street, Apt B, Oakland, CA 94609 " " " Apt A, " " "		Total number of units on property 3

3802 CLARK Street, Oakland, CA 94609

Have you paid for your Oakland Business License? Yes No Lic. Number: 00040256
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: 2711109
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: 11-1-2000

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

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

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

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

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

<u>Date of Contested Increase</u>	<u>Banking (deferred annual increases)</u>	<u>Increased Housing Service Costs</u>	<u>Capital Improvements</u>	<u>Uninsured Repair Costs</u>	<u>Debt Service</u>	<u>Fair Return</u>
2016 3rd	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2017	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2018	<input type="checkbox"/>	<input checked="" 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 01/11/13.

The tenant's initial rent including all services provided was: \$ 1,295 / 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? 01/10/13

Is the tenant current on the rent? Yes No

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

Date Notice Given (mo./day/year)	Date Increase Effective	Rent Increased		Did you provide the "RAP-NOTICE" with the notice of rent increase?
		From	To	
05/31/18	07/01/18	\$ 1,404.00	\$ 1,451.73	<input type="checkbox"/> Yes <input type="checkbox"/> No
05/31/17	07/06/18	\$ 1,372.00	\$ 1,404.00	<input type="checkbox"/> Yes <input type="checkbox"/> No
04/29/16	07/06/18	\$ 1,295.00	\$ 1,372.00	<input type="checkbox"/> Yes <input type="checkbox"/> No
01/10/13	01/11/13	\$ 1,295.00	\$ -	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No

III. EXEMPTION

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

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

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

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

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

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

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

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

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

IV. DECREASED HOUSING SERVICES

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

V. VERIFICATION

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


Property Owner's Signature

11/11/18
Date

IMPORTANT INFORMATION:

Time to File

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

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

File Review

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

Mediation Program

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

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

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

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

Property Owner's Signature

Date

4

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

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: T18-0379, Alvarez v. Geary
PROPERTY ADDRESS: 472 38th Street, Unit B, Oakland, CA
DATE OF HEARING: January 29, 2019
DATE OF DECISION: February 27, 2019
APPEARANCES: Matthew Alvarez Tenant
Stanley Geary, Owner
Laura Geary, Owner witness

SUMMARY OF DECISION

The Tenant's petition is granted, in part.

INTRODUCTION

The tenant filed the petition on July 23, 2018, which contests rent increases effective 2016, 2017 and 2018 on the following grounds:

- Rent Increase Exceeds CPI¹ or more than 10%;
- No Pre-Approval of Increase;
- No Concurrent RAP Notice;

¹ Consumer Price Index.

- No RAP Notice at Inception or 6 Months Prior;
- The owner did not give a summary of the justification for the increase despite a written request; and
- That the owner was providing fewer housing services or that conditions had changed.

The owner filed a timely response to the tenant's petition on November 13, 2018. The owner's response indicated rent increases but not whether they provided a RAP Notice with the notice of rent increase.

ISSUE(S) PRESENTED

1. When, if ever, was the tenant given written notice of the Rent Adjustment Program (RAP Notice)?
2. What, if any, rent increases can the tenant contest?
3. Has the tenant suffered decreased housing services decreased?
4. Can the owner split utilities?
5. What is the allowable rent?
6. What, if any, restitution is owed to the tenant?

EVIDENCE

Rental History

The subject unit was initially rented by the tenant on January 10, 2013, at a rate of \$1,295, per month. The rent was raised in July 2016 to \$1,430.20, per month. In 2017, the rent was increased to \$1,519.00. In 2018, the rent was increased to \$1587.72.

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The tenant vacated the unit on December 10, 2018. The tenant testified that he paid \$1587.72 per month from July through November 2018. The tenant prorated his rent for December 2018.²

The tenant testified that they did not receive a copy of the RAP Notice from the landlord at the inception of their tenancy. The tenant also testified that he did not receive a copy of the RAP Notice with any of the rent increases.

The tenant testified that his claim of decreased housing services pertained only to being charged for shared utilities. The tenant testified that he paid shared utilities as itemized in the leases and that the amounts for share utilities are included in the amounts he paid for rent. The tenant told the landlord that they could charge for the shared utilities, but that he signed the lease and paid them anyway. The tenant testified that the initial lease did not include shared utilities.

The tenant testified that there are three units on the property and that no owner resides therein. The tenant had an email from a tenant in unit A.³

The tenant testified that when he submitted his online petition that he indicated that he did not receive a RAP Notice at the inception of his tenancy. The tenant testified that although he did not know why the online petition indicated that he said yes when he learned of the mistake, he contacted the Rent Adjustment Program to tell them of the error.⁴

The owner's daughter testified that she provided both tenant with a RA

The owner's daughter testified that she personally both tenants the RAP Notice and handed it to them in the kitchen on January 10, 2013. The owner then testified that both tenants were not present on January 10, 2013. The owner's daughter then clarified her testimony to indicate that she provided the RAP Notice to one of the tenants.

The owner's daughter testified that the wife was the tenant and that checks had both their names. The owner submitted the check the tenant provided at the inception of the tenancy, and it contained the male tenant's name only.

² The tenant was given time days to provide the exact prorated amount of the December 2018 rental payment.

³ Exhibit 1. This Exhibit was not admitted into evidence.

⁴ Exhibit 2. This Exhibit was admitted into evidence without objection. This Exhibit, and all other Exhibits to which reference is made in this Decision, were admitted into evidence without objection unless noted.

The owner and his daughter testified that neither tenant was provided a RAP Notice with the rent increase notices in 2016, 2017 and 2018. The owner provided lease agreements for 2013, 2016, 2017 and 2018.⁵

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

The Rent Adjustment Ordinance requires an owner to serve the RAP Notice at the start of a tenancy⁶ and together with any notice of rent increase or change in the terms of a tenancy.⁷

The tenant's testimony that he was not given a copy of the RAP Notice at the inception of his tenancy is undisputed. Moreover, the testimony of the tenant is supported by the testimony of the owner's daughter that she never provided him with a RAP Notice. Furthermore, the owner's daughter's testimony that the tenant's wife was provided a RAP Notice was not persuasive. Accordingly, it is found that the tenant was not given written notice of the RAP Program at the inception of the tenancy.

What, if any, rent increases can the tenant contest?

In the petition, the tenant contested rent increases in 2016, 2017, and 2018. If a tenant was not given the RAP Notice at the start of the tenancy, a tenant has 120 days to file a petition contesting a rent increase that was served with a RAP Notice.⁸

The notice of rent increase was dated May 31, 2018. Accordingly, the tenant had until September 28, 2018, to contest the rent increase. The tenant filed on July 22, 2018. Accordingly, the tenant's petition was timely filed, and he can contest the rent increases in 2016, 2017 and 2018.

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⁵ Exhibit B1.

⁶ O.M.C. § 8.22.060(A)

⁷ O.M.C. § 8.22.070(H)(1)(A)

⁸ O.M.C. § 8.22.090.

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 rent⁹ and may be corrected by a rent adjustment.¹⁰ 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 an ongoing condition (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.¹¹ Since the evidence established that the tenant did receive the RAP notice at the inception of her tenancy, the tenant is limited to restitution for 90 days before her petition was filed.

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.

Here tenant testified that his claim of decreased housing services was solely the assessment of shared utilities paid as rent.

Can the owner split utilities?

The original lease, in this case, the lease states that the tenants are responsible for electric, gas, cable and phone service. The owner did not charge the tenants for water usage when they first moved in and did not seek any payment for water usage until July of 2016.

While it was assumed in the lease that the owner could charge the tenants for water, the RAP Regulations prohibit the splitting of utilities. The Regulations specify that "when more than one rental unit shares any type of utility bill with

⁹ O.M.C. § 8.22.070(F)

¹⁰ O.M.C. § 8.22.110(E)

¹¹ O.M.C. § 8.22.090(A)(3)

another rental unit; it is illegal to divide up the bill between units.”¹² Such is the case even when the lease calls for the tenants to pay toward the water bill. Parties cannot agree to violate the Rent Ordinance.¹³

The owner cannot transfer the water bill to the tenants for two reasons. First, since the Rent Adjustment Regulations prohibit the splitting of utilities, the lease clause requiring the tenants to pay for water was an illegal contract term that cannot be enforced.

Because the contract term was illegal, and since water is a required amenity in a rental, the owner was responsible for providing for and paying for the water service from the beginning of the tenancy. Since the tenants could not legally be the responsible party for paying for water, that requirement fell on the owner. Any change to that requirement is a change in terms of tenancy that must follow the rules of the Rent Adjustment Program.

Rent Adjustment Regulation § 10.1.9 states that “The transfer of utility costs to the tenant by the landlord is not considered as part of the rent increase unless the landlord is designated in the original rental agreement to be the party responsible for such costs.”

Here, since the lease term designating the tenants as the responsible party was an illegal lease term, the owner became the responsible party to pay for the water bill. A designation does not have to be written; it can be implied. Therefore, the transfer of the water costs to the tenants must be considered as part of a rent increase.

The second reason this cost cannot be transferred to the tenants is that the attempted transfer of the cost was not adequately noticed. No RAP Notice was included.

See *Tabet v. Siu*, HRRRB, T16-0037, a case in which the Housing, Residential, Rent and Relocation Board held that an owner cannot transfer a water bill to the tenant even where there was a lease provision stating that the tenant was responsible for a water bill.¹⁴

¹² Regulations Appendix A § 10.1.10.

¹³ *Gombiner v. Swartz*, 167 Cal.App. 4th 1365 (2008)

¹⁴ In *Tabet v. Siu*, the owner installed separate meters but was not allowed to enforce the lease provision because at the time the lease was entered, there were not separate meters; so, the lease provision was illegal and unenforceable.

Based on the foregoing, the owner may not shift the cost of water to the tenants, and the tenants are entitled to restitution as noted below.

What is the allowable rent?

As noted above, all rent increase notices must be served with a RAP Notice. The tenant testified that he did not receive a RAP Notice with any rent increase. Moreover, the owner’s testimony confirmed they did not provide a RAP Notice with any rent increase. Therefore, all the rent increases given were invalid. Accordingly, the tenant’s rent is \$1,295.00 per month. Restitution for rent overpayments is limited, by Board policy, to three years prior to the filing of the tenant petition. However, in this case, the tenant’s rent was not increased until July 2016. Thus, rent overpayments are computed for the period from July 1, 2016, to November 30, 2018.

What, if any, restitution is owed to the tenant?

As indicated above, the legal rent for the unit is \$1,295.00 per month. From July 2016 to June 2017, the tenant paid \$1,430.20 per month. From July 2017 to June 2018, the tenant paid \$1,519.00 per month. From July 2018 to November 2018, the tenant paid \$1,587.72 per month. The tenant moved out and prorated his December 2018 rent.

OVERPAID RENT							
From	To	Monthly Rent paid	Max Monthly Rent	Difference per month	No. Months	Sub-total	
1-Jul-16	30-Jun-17	\$1,430.20	\$1,295	\$135.20	12	\$ 1,622.40	
1-Jul-17	30-Jun-18	\$1,519.00	\$1,300	\$219.00	12	\$ 2,628.00	
1-Jul-18	30-Nov-18	\$1,587.72	\$1,300	\$287.72	5	\$ 1,438.60	
TOTAL OVERPAID RENT						\$5,689.00	

The chart above indicates restitution for overpayment of rent valued at \$5,689.00.

The tenant failed to provide exact figures on the amount of prorated rent he paid in December 2018. However, based upon the legal rent for the unit, he should have paid \$431.67 for the prorated rent. Accordingly, the amount of restitution owed for December 2018 is to be adjusted by the parties with jurisdiction reserved.

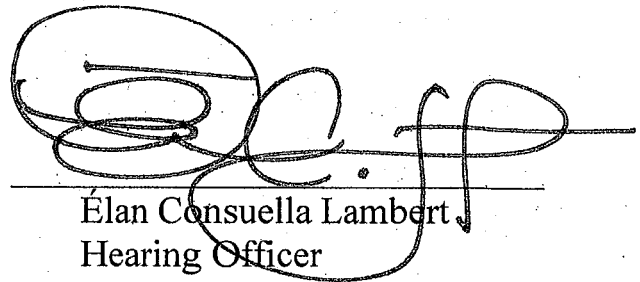
Usually, restitution is awarded against future rent. Here the tenant has vacated the unit. Accordingly, the tenant is owed \$5689.00.

ORDER

1. Petition T18-0379 is granted, in part.
2. The current base rent for the subject unit is \$1,295.00.
3. The owner may not charge the tenants for utilities because the RAP Regulations prohibit the splitting of utilities.
4. The owner owes restitution to the tenants in the amount of \$5,689.00 for overpayment of rent from July 2016 to November 2018.
5. The amount of restitution due the tenant for his prorated rent paid in December 2018 is to be adjusted by the parties with jurisdiction reserved.

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 7, 2019



Elan Consuella Lambert
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE

Case Number T18-0379

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

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

Documents Included

Hearing Decision

Owner

Lauretta and Stanley Geary
1046 Sunnybrook Dr.
Lafayette, CA 94549

Tenant

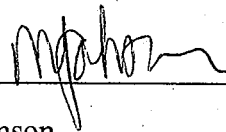
Laura and Matthew Alvarez
1134 Adeline St.
Oakland, CA 94607

Tenant

Matthew Alvarez
472 38th St Apt B - Downstairs
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.

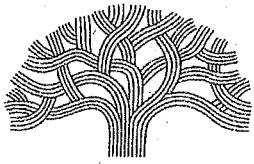
I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **March 14, 2019** in Oakland, CA.



Nia Johnson

Oakland Rent Adjustment Program

000030



CITY OF OAKLAND

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

For date stamp: 2019 APR -2 PM 1:13

APPEAL

Appellant's Name <i>Stanley E. Geary</i>		<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant	
Property Address (Include Unit Number) <i>472 38th Street, Apt B., Oakland, CA 94609</i>			
Appellant's Mailing Address (For receipt of notices) <i>1046 Sunnybrook Drive</i>		Case Number <i>778-0379, Alvarez v. Geary</i>	
		Date of Decision appealed	
Name of Representative (if any) <i>Laura Geary</i>		Representative's Mailing Address (For notices) <i>1022 Lakewood Place San Ramon, CA 94583-4817</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.)*

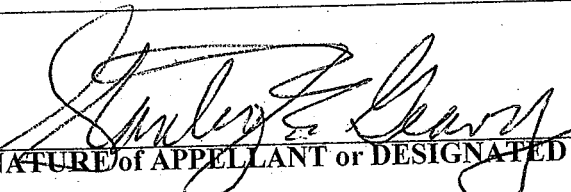
For more information phone (510) 238-3721.

- 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: 16.

• 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 April 2, 2019, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

Name	Matthew Alvarez
Address	1134 Adeline Street.
City, State Zip	Oakland, CA 94607
Name	Laura Alvarez.
Address	1134 Adeline Street.
City, State Zip	Oakland, CA 94607

	4/2/19
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

For more information phone (510) 238-3721.

April 2, 2019

CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM
2019 APR -2 PM 1:13

City of Oakland
250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612
Housing and Community Development Department
Rent Adjustment Program

Case Number: T18-0379, Alvarez v. Geary
Property Address: 472 38th Street, Unit B, Oakland, CA 94609

Subject: Rent Adjustment Program Appeal (Rev. 06/18/2018)

OWNERS RESPONSE TO HEARING DECISION

Below follows the Hearing decision outline
Owners Comments in Blue

SUMMARY OF DECISION

The Tenant's petition is granted, in part.

The Owner is appealing the final decision of the Rent Adjustment Program Hearing Officer.

- 1) Owner provided a RAP Program Notice (Rev. 04/09/08) to the Tenant at inception of tenancy.
- 2) The Tenant received notification from the Owner all rental increases were in accordance with the Allowable Annual Rent Increase CPI per the Oakland Rent Adjustment Ordinance.
- 3) Owner disputes there was a decrease in housing services to the Tenant.

INTRODUCTION

- Rent increase exceeds CPI¹ or more than 10%

Rent increases for 2016, 2017 & 2018 were in accordance with the Allowable Annual Rent Increase CPI per the Oakland Rent Adjustment Ordinance.

- No Pre-Approval of Increase

Owner's Representative provided RAP Program Notice (Rev. 04/09/08) at inception of tenancy.

- No Concurrent RAP Notice

- No RAP Notice at Inception or 6 Months Prior

Owner provided Tenant with a RAP Program Notice (Rev. 04/09/08) on January 10, 2013.

- The owner did not give a summary of the justification for the increase despite a written request

Owner provided timely notification to the Tenant the rent for 472 38th Street, Unit B, Oakland, CA 94609 would be increased in accordance with the Allowable Annual Rent Increase CPI per the Oakland Rent Adjustment Ordinance.

- That the owner was providing fewer housing services or that conditions had changed

Owner disputes there was a decrease in housing services to the Tenant.

ISSUE(S) PRESENTED

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

Owner provided Tenant with a RAP Program Notice (Rev. 04/09/08) on January 10, 2013.

2. What, if any, rent increases can the tenant contest?

3. Has the tenant suffered decreased housing services decreased?

Owner disputes there was a decrease in housing services to the Tenant.

4. Can the owner split utilities?

5. What is the allowable rent?

Lease Year	Lease Effective Date	Lease Termination Date	Tenant Moved Out	Monthly Rent Paid
2013	01/11/13	12/31/13		\$1,295.00
2016	07/06/16	07/05/17		\$1,372.70
2017	07/06/17	07/05/18		\$1,404.00
2018	07/01/18	06/30/19	12/10/18	\$1,451.73

6. What, if any, restitution is owed to the tenant?

EVIDENCE

Rental History

The subject unit was initially rented by the tenant on January 10, 2013, at a rate of \$1,295, per month. The rent was raised in July 2016 to \$1,430.20, per month. In 2017, the rent was increased to \$1,519.00. In 2018, the rent was increased to \$1587.72.

Owner disputes the above rent calculations. The subject unit was initially leased by the Tenant effective January 11, 2013, at a rate of \$1,295.00, per month. The rent increased in July 2016 to \$1,372.70, per month. In 2017, the rent increased to \$1,404.00, per month. In 2018, the rent increased to \$1,451.73. See chart below.

Lease Year	Lease Effective Date	Lease Termination Date	Tenant Moved Out	Monthly Rent Paid
2013	01/11/13	12/31/13		\$1,295.00
2016	07/06/16	07/05/17		\$1,372.70
2017	07/06/17	07/05/18		\$1,404.00
2018	07/01/18	06/30/19	12/10/18	\$1,451.73

Tenant vacated the unit on December 10, 2018. The Tenant testified that he paid \$1587.72 per month from July through November 2018. The Tenant prorated his rent for December 2018.

The Tenant vacated 472 38th Street, Unit B, Oakland, CA 94609 December 10, 2018. Owner disputes monthly rent paid from July through November, 2018. July, 2018, rent per month was \$1,451.73. Tenant did not pay the correct rent amount for the month of December 2018 thus violating the Tenant's 2018 lease agreement and the City of Oakland, Department of Housing and Community Development, Rent Adjustment Program, Rent Adjustment Ordinance, Article 1 – Residential Rent Adjustment Program, Chapter 8.22.070.

The Tenant testified that they did not receive a copy of the RAP Notice from the landlord at the inception of their tenancy. The tenant also testified that he did not receive a copy of the RAP Notice with any of the rent increases.

Owner disputes the above. Owner provided Tenant with a RAP Program Notice

(Rev. 04/09/08) on January 10, 2013.

The tenant testified that his claim of decreased housing services pertained only to being charged for shared utilities. The tenant testified that he paid shared utilities as itemized in the leases and the amounts for shared utilities are included in the amounts he paid for rent. The tenant told the landlord that they could charge for the shared utilities, but that he signed the lease and paid them anyway. The tenant testified that the initial lease did not include shared utilities.

Rental agreement states "Renter (Tenant) to pay for all utility services furnished to the premises.

The tenant testified that there are three units on the property and that no owner resides therein. The tenant had an email from a tenant in unit A.

The tenant testified that when he submitted his online petition that he indicated that he did not receive a RAP Notice at the inception of his tenancy. The tenant testified that although he did not know why the online petition indicated that he said yes when he learned of the mistake, he contacted the Rent Adjustment Program to tell them of the error.

The Tenant Petition submitted by the Tenant July 22, 2018 states the Tenant

responded Yes to the following question: Did the property owner provide you with a RAP Notice, a written notice of the existence of the Rent Adjustment Program?

(Case # T18-0379 – Petition #9879 submitted into evidence by the Hearing Officer)

The owner's daughter testified that she provided both tenant with a RA

The owner's daughter testified that she personally both tenants the RAP Notice and handed it to them in the kitchen on January 10, 2013. The owner then testified that both tenants were not present on January 10, 2013. The owner's daughter then clarified her testimony to indicate that she provided the RAP Notice to one of the tenants.

The owner and his daughter testified that neither tenant was provided a RAP Notice with the rent increase notices in 2016, 2017 and 2018. The owner provided lease agreements for 2013, 2016, 2017 and 2018.

The owner's daughter testified that the wife was the tenant and that checks had both their names. The owner submitted the check the tenant provided at the inception of the tenancy, and it contained the male tenant's name only.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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

The tenant's testimony that he was not given a copy of the RAP Notice at the inception of his tenancy is undisputed. Moreover, the testimony of the tenant is supported by the testimony of the owner's daughter that she never provided him with a RAP Notice. Furthermore, the owner's daughter's testimony that the tenant's wife was provided it RAP Notice was not persuasive. Accordingly, it is found that the tenant was not given written notice of the RAP Program at the inception of the tenancy.

Owner disputes the above comments. Owner is unclear how the hearing officer determined that the Tenant's testimony is "undisputable" when the Tenant Petition submitted by the Tenant July 22, 2018 states the Tenant responded Yes to the following question: Did the property owner provide you with a RAP Notice, a written notice of the existence of the Rent Adjustment Program? (Case # T18-0379 – Petition #9879 submitted into evidence by the Hearing Officer)

What, if any, rent increases can the tenant contest?

In the petition, the tenant contested rent increases in 2016, 2017, and 2018. If a tenant was not given the RAP Notice at the start of the tenancy, a tenant has 120 days to file a petition contesting a rent increase that was served with a RAP Notice.

The notice of rent increase was dated May 31, 2018. Accordingly, the tenant had until September 28, 2018, to contest the rent increase. The tenant filed on July 22, 2018. Accordingly, the tenant's petition was timely filed, and he can contest the rent increases in 2016, 2017 and 2018.

Owner disputes the above statements. Tenant failed to file a petition contesting rent increases for 2016 & 2017 within 120 days of the Notice of Rent increase (To contest a rent increase, Tenant must file a petition with the RAP using the Rent Program's form within 120 days of the Notice of Rent increase. Tenant had 120 days to file a Tenant Petition to contest the rent increase).

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 and may be corrected by a rent adjustment. 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.

Tenant failed to file a petition contesting a decrease in housing services for 2016 & 2017 in a timely manner. At the Hearing Tenant testified he did not suffer decreased housing services.

If the decreased housing service is for an ongoing condition (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. Since the evidence established that the tenant did receive the RAP notice at the inception of her tenancy, the tenant is limited to restitution for 90 days before her petition was filed.

Owner is in agreement with the Hearing Officers statement above "Since the evidence established that the tenant did receive the RAP notice at the inception of her tenancy."

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.

Here tenant testified that his Claim of decreased housing services was solely the assessment of shared utilities paid as rent.

Can the owner split utilities?

The original lease, in this case, the lease states that the tenants are responsible for electric, gas, cable and phone service. The owner did not charge the tenants for water usage when they first moved in and did not seek any payment for water usage until July of 2016.

While it was assumed in the lease that the owner could charge the tenants for water, the RAP Regulations prohibit the splitting of utilities. The Regulations specify that "when more than one rental unit shares any type of utility bill with another rental unit; it is illegal to divide up the bill between units. Such is the case even when the lease calls for the tenants to pay toward the water bill. Parties cannot agree to violate the Rent Ordinance.

The owner cannot transfer the water bill to the tenants for two reasons. First, since the Rent Adjustment Regulations prohibit the splitting of utilities, the lease clause requiring the tenants to pay for water was an illegal contract term that cannot be enforced. Because the contract term was illegal, and since water is a required amenity in a rental, the owner was responsible for providing for and paying for the water service from the beginning of the tenancy. Since the tenants could not legally be the responsible party for paying for water, that requirement fell on the owner. Any change to that requirement is a change in terms of tenancy that must follow the rules of the Rent Adjustment Program.

Rent Adjustment Regulation § 10.1.9 states that "The transfer of utility costs to the tenant by the landlord is not considered as part of the rent increase unless the landlord is designated in the original rental agreement to be the party responsible for such costs."

Owner was not designated in the original rental agreement to be the party

responsible for such costs, therefore the transfer of utility costs to the tenant by the

landlord is not considered part of the rent increase.

Here, since the lease term designating the tenants as the responsible party was an illegal lease term, the owner became the responsible party to pay for the water bill. A designation does not have to be written; it can be implied. Therefore, the transfer of the water costs to the tenants must be considered as part of a rent increase.

The second reason this cost cannot be transferred to the tenants is that the attempted transfer of the cost was not adequately noticed. No RAP Notice was included.

Tenant failed to file a petition contesting a decrease in housing services for 2016 & 2017 in a timely manner.

See *Tabet v. Siu*, HRRRB, T16-0037, a case in which the Housing, Residential, Rent and Relocation Board held that an owner cannot transfer a water bill to the tenant even where there was a lease provision stating that the tenant was responsible for a water bill.

Based on the foregoing, the owner may not shift the cost of water to the tenants, and the tenants are entitled to restitution as noted below.

What is the allowable rent?

As noted above, all rent increase notices must be served with a RAP Notice. The tenant testified that he did not receive a RAP Notice with any rent increase. Moreover, the owner's testimony confirmed they did not provide a RAP Notice with any rent increase. Therefore, all the rent increases given were invalid. Accordingly, the tenant's rent is \$1,295.00 per month. Restitution for rent overpayments is limited, by Board policy, to three years prior to the filing of the tenant petition. However, in this case, the tenant's rent was not increased until July 2016. Thus, rent overpayments are computed for the period from July 1, 2016, to November 30, 2018.

Owner disputes the above statements. Tenant failed to file a petition contesting rent increases for 2016 & 2017 within 120 days of the Notice of Rent increase (Tenant had 120 days to file a Tenant Petition to contest the rent increase).

What, if any, restitution is owed to the tenant?

As indicated above, the legal rent for the unit is \$1,295.00 per month. From July 2016 to June 2017, the tenant paid \$1,430.20 per month. From July 2017 to June 2018, the tenant paid \$1,519.00 per month. From July 2018 to November 2018, the tenant paid \$1,587.72 per-month. The tenant moved out and prorated his December 2018 rent.

OVERPAID RENT							
From	To	Monthly Rent paid	Max Monthly Rent	Difference per month	No. Months	Sub-total	
1-Jul-16	30-Jun-17	\$1,430.20	\$1,295	\$135.20	12	\$ 1,622.40	
1-Jul-17	30-Jun-18	\$1,519.00	\$1,300	\$219.00	12	\$ 2,628.00	
1-Jul-18	30-Nov-18	\$1,587.72	\$1,300	\$287.72	5	\$ 1,438.60	
TOTAL OVERPAID RENT						\$5,689.00	

The chart above indicates restitution for overpayment of rent valued at \$5,689.00. The tenant failed to provide exact figures on the amount of prorated rent he paid in December 2018. However, based upon the legal rent for the unit, he should have paid \$431.67 for the prorated rent. Accordingly, the amount of restitution owed for December 2018 is to be adjusted by the parties with jurisdiction reserved.

Usually, restitution is awarded against future rent. Here the tenant has vacated the unit. Accordingly, the tenant is owed \$5,689.00.

Owners disputes the amount determined by the Hearing Officer.

- 1) The Tenant did not file a Tenant Petition regarding rent increases for 2016 and 2017 in a timely manner
- 2) The Monthly Rent Paid presented in the chart on page 9 is incorrect (see chart below for correct Monthly Rent Paid amounts)

Lease Year	Lease Effective Date	Lease Termination Date	Tenant Moved Out	Monthly Rent Paid
2013	01/11/13	12/31/13		\$1,295.00
2016	07/06/16	07/05/17		\$1,372.70
2017	07/06/17	07/05/18		\$1,404.00
2018	07/01/18	06/30/19	12/10/18	\$1,451.73

- 3) The amount awarded by the Hearing Officer exceeds the Estimated Loss provided by the Tenant on their Tenant Petition

OWNERS RESPONSE

The Owner's appeal is based upon the following:

- 1) Hearing Decision contains mathematical errors, clerical errors, inconsistent statements of facts and incomplete sentences.

Mathematical Errors: page 2 paragraph 1 (2016, 2017 & 2018 rent amounts are in error); page 7 overpaid rent chart (2016, 2017 & 2018 rent amounts are in error); page 7 last paragraph December 2018 prorated rent is wrong

Clerical Errors: page 3 paragraph 4 (not admitted into evidence); page 3 paragraph 6 (statement incomplete); page 3 paragraph 7 sentence 1 (statement incomplete);

- 2) Owner found the "settlement conference statements" by the Hearing Officer to be confusing since this was a hearing in response to a Tenant Petition.

- 3) Hearing Officer was not neutral, objective, fair, balanced or impartial with the Owner.

- 4) Rental increases for 2016, 2017 & 2018 were in accordance with the Allowable Annual Rent Increase CPI per the Oakland Rent Adjustment Ordinance.

- 5) Tenant Petition submitted by the Tenant July 22, 2018 states the Tenant responded

Yes to the following question: Did the property owner provide you with a RAP

Notice, a written notice of the existence of the Rent Adjustment Program? (Case #

T18-0379 – Petition #9879 submitted into evidence by the Hearing Officer)

- 6) The amount awarded by the Hearing Officer exceeds the Estimated Loss provided by the Tenant on their Tenant Petition.

- 7) Tenant failed to file a petition contesting rent increases for 2016 & 2017 within 120 days of the Notice of Rent increase (To contest a rent increase, Tenant must file a petition with the RAP using the Rent Program's form within 120 days of the Notice of Rent increase. Tenant had 120 days to file a Tenant Petition to contest the rent increase).
- 8) Hearing Officer stated to the Tenant that the RAP Program cannot award any money to the Tenant which was the Owners understanding since this is a rent adjust hearing. Prior to the hearing on January 29, 2019, the Owner met with their assigned Rent Adjustment Program Analyst III and she stated – “Since the Tenant has vacated 472 38th Street, Unit B, Oakland, CA 94609 on December 10, 2018, there is no rent to adjust.” At the Hearing, the Owner stated to the Hearing Officer “the Tenant moved out on December 10, 2018 and since there is no rent to adjust the Tenant Petition should be dismissed.”
- 9) Tenant Credibility became an issue when he altered the 2018 lease agreement without the Owners knowledge.

April 2, 2019

2019 APR -2 PM 1:14

City of Oakland
250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612
Housing and Community Development Department
Rent Adjustment Program

Case Number: T18-0379, Alvarez v. Geary
Property Address: 472 38th Street, Unit B, Oakland, CA 94609

Subject: Rent Adjustment Program Appeal (Rev. 06/18/2018)

Grounds for appeal

1) There are math/clerical errors that require the Hearing Decision to be updated.

Hearing Decision contains mathematical errors, clerical errors, inconsistent statements of facts and incomplete sentences.

Mathematical Errors: page 2 paragraph 1 (2016, 2017 & 2018 rent amounts are in error); page 7 overpaid rent chart (2016, 2017 & 2018 rent amounts are in error); page 7 last paragraph December 2018 prorated rent is wrong.

Clerical Errors: page 3 paragraph 4 (not admitted into evidence); page 3 paragraph 6 (statement incomplete); page 3 paragraph 7 sentence 1 (statement incomplete).

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**
- b. The decision is inconsistent with decisions issued by other Hearing Officers.**
- c. The decision raises a new policy issue that has not been decided by the Board.**
- d. The decision violates federal, state and local law.**
- e. The decision is not supported by substantial evidence.**
- f. I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim.**
- g. The decision denies the Owner a fair return on my investment.**
- h. Other.**

The Owner's appeal is based upon the following: (See Owner Hearing Decision Response document)

- 1) Owner found the "settlement conference statements" by the Hearing Officer to be confusing since this was a hearing in response to a Tenant Petition.
- 2) Hearing Officer was not neutral, objective, fair, balanced or impartial with the Owner.
- 3) Rental increases for 2016, 2017 & 2018 were in accordance with the Allowable Annual Rent Increase CPI per the Oakland Rent Adjustment Ordinance.
- 4) Tenant Petition submitted by the Tenant July 22, 2018 states the Tenant responded Yes to the following question: Did the property owner provide you with a RAP Notice, a

written notice of the existence of the Rent Adjustment Program? (Case # T18-0379 – Petition #9879 submitted into evidence by the Hearing Officer)

- 5) The amount awarded by the Hearing Officer exceeds the Estimated Loss provided by the Tenant on their Tenant Petition.
- 6) Tenant failed to file a petition contesting rent increases for 2016 & 2017 within 120 days of the Notice of Rent increase (To contest a rent increase, Tenant must file a petition with the RAP using the Rent Program's form within 120 days of the Notice of Rent increase. Tenant had 120 days to file a Tenant Petition to contest the rent increase).
- 7) Hearing Officer stated to the Tenant that the RAP Program cannot award any money to the Tenant which was the Owners understanding since this is a rent adjust hearing. Prior to the hearing on January 29, 2019, the Owner met with their assigned Rent Adjustment Program Analyst III and she stated – “Since the Tenant has vacated 472 38th Street, Unit B, Oakland, CA 94609 on December 10, 2018, there is no rent to adjust.” At the Hearing, the Owner stated to the Hearing Officer “the Tenant moved out on December 10, 2018 and since there is no rent to adjust the Tenant Petition should be dismissed.”
- 8) Tenant Credibility became an issue when he altered the 2018 lease agreement without the Owners knowledge.

Subject: Response to Owner's Appeal to Hearing Decision (T18-0379)

This is a response to an owner's appeal (for Case Number T18-0379) to the Hearing Decision issued March 30, 2019.

Fundamental question: Was the RAP notice served to tenants?

The tenant was never served RAP Notice. As recorded in the Hearing Decision and per the owner and his daughter's testimony, they admitted to failing to give the RAP Notice to the tenant at the inception of the lease in January 2012 as well as for rent increases in July of 2016, 2017, and 2018. The owner has failed to provide evidence of providing the RAP Notice from the lease inception or for rent increases. All rent increases should be invalid, as indicated in the Hearing Decision.

Were rent increases calculated incorrectly?

Owner claims that the rent calculations in 'the chart' from the Hearing Decision (titled "Overpaid Rent" on Page 7) is calculated incorrectly, because the owner believes rent increases attributed to increased utility costs should not be included. This was ruled on in the Hearing Decision:

"The owner may not charge the tenants for utilities because the RAP Regulations prohibit the splitting of utilities."

This was clarified in the body of the Hearing Decision titled "Can the owner split utilities?" and is considered a part of the rent calculation, which exceeds the CPI calculations. This refutes the owner assertion that "*Rental Increases were in accordance with CPI*".

Why does the tenant claim the online form changed a response on the petition form?

In the hearing and the owner's appeal, the owner references the form they received for the petition that indicates an answer of "YES" was shown for the question of:

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

Before the hearing, the tenant noticed the discrepancy and sent an email informing the RAP Analyst for the case that this was not how the form was filled, which was noted in the Hearing Decision.

As clarified by the Administrative Hearing Officer in the hearing, the RAP implementation of the (new) online form in 2018 has been issue prone and known to change entries independently of what was entered by the individual filling the online form. The Hearing Officer clarified that specifically for the "YES" answer in question, the online form prohibits further progress/entries in the form until an associated date is entered, which was absent/blank on the form. This corroborates the tenant's assertion that the entry was entered as "NO". This matter was discussed and explained thoroughly by the Hearing Officer during the hearing.

Furthermore, it is likely that this online form error led to this hearing, rather than the owner's response to the tenant's petition being dismissed outright. It seems that submittal of this evidence of notice was not a universal requirement in the process for setting a hearing date. However, it is required per Rent Ordinance language in Chapter 8.2:

"B. Evidence of Giving Notice. When filing an owner's response to a tenant petition or an owner's petition for a rent increase, the owner must submit evidence that the owner has given the notice required by this section to the affected tenants in the building under

dispute in advance of the filing...If an owner fails to submit the evidence and the subject dwelling unit is not exempt, then the...response to a tenant's petition must be dismissed." (Section 8.22.050:

<http://www2.oaklandnet.com/oakca1/groups/ceda/documents/agenda/oak050309.pdf>).

According to the Rent Ordinance, the petition should have proceeded with the response to the tenant's petition as being dismissed.

Are there mathematical and/or clerical errors?

The owner's appeal states that there are mathematical errors in the rent calculation. This is based on the owner incorrectly asserting that rent increases attributed to increased utility costs should not be included in the rent calculation. This is fully addressed in the earlier section of this response: 'Were rent increases calculated incorrectly?'

The owner disputes the calculation of last month's rent as a mathematical error. The calculation of December rent should be the legal rent (\$1295.00) prorated by multiplying the number of days from December 1 to December 10 (10) divided by the total days in the month of December (31). This prorate method results in a December 2018 rent of \$417.74. This differs from the Hearing Decision calculation (listed as \$431.67), which was calculated assuming a 30 day month.

Tenant will point out in this response to the owner's appeal that there does seem to be a clerical error of minor consequence in the Hearing Decision which states:

"...the evidence established that the tenant did receive the RAP notice at the inception of her tenancy..." (Page 5, Paragraph 3)

This is inconsistent with the entirety of the Hearing Decision. It appears to be standard/template language that may have been copied and incompletely modified from an unrelated case. Rather than "did", the sentence should state "did not". Since this section pertains to cases where there are issues "for an ongoing condition (e.g., a leaking roof)", which is not present in this case, it should be inconsequential. However, it should be addressed since the owner's appeal attempts to agree with it, rather than point out the error. The owner's appeal states:

"Owner is in agreement with the Hearing Officers statement above "Since the evidence established that the tenant did receive the RAP notice at the inception of her tenancy.""

Additionally the tenant will point out that there is a clerical error in 'the chart' (Page 7 of Hearing Decision) entries whereby the rent was adjusted upwards to \$1300 from \$1295 for all but the first rent increase period. This increases the owed to the tenant by \$85 (see reference charts at bottom/appendix of this response). If this adjustment will trigger another formal response/rebuttal/appeal process, the tenant will gladly forgive this difference, in order to bring closure to this case/appeal.

Did the tenant file according to all deadline requirements?

The owner's appeal states that the tenant did not file a petition within the deadline(s). This is incorrect. Since the owner has never provided written notice including the existence and scope of the Rent Adjustment Ordinance (as required by 8.22.060), the petition was successfully filed before the required sixty (60) day limit following the tenant first receiving written notice. This applies to all occurrences of increased rent, including in 2016, 2017, and 2018.

Anything else?

The owner's appeal alleges that the Administrative Hearing Officer was "not neutral, objective, fair, balanced, or impartial with the owner." Listening to the tape or viewing the transcript from the hearing will unequivocally exonerate the Administrative Hearing Officer.

Conclusions:

It is the opinion of the tenants that the owner's appeal is frivolous and should be dismissed. Critically, the owner has failed to provide Evidence of Giving Notice and testified to not serving RAP notice. The response to the tenant's appeal should have been dismissed without an initial hearing. An appeal hearing is not called for or appropriate. The Owner clearly has failed to meet the requirements of the RAP Notice process and has failed to follow Rent Ordinance. All rent increases are invalid per the Hearing Decision and the full restitution is still sought by the tenants of \$5689 (or \$5774 including clerical adjustment).

Thank you,

Matthew Alvarez

Appendix: 'The Chart'

		Overpaid Rent		From Hearing Decision		
From	To	Rent Paid	Max Monthly Rent	Difference per month	Number Months	Sub-Total
July 1, 2016	June 30, 2017	\$1,430.20	\$1,295.00	\$135.20	12	\$1,622.40
July 1, 2017	June 30, 2018	\$1,519.00	\$1,300.00	\$219.00	12	\$2,628.00
June 30, 2018	Nov 31, 2018	\$1,587.72	\$1,300.00	\$287.72	5	\$1,438.60
Total Overpaid Rent:						\$5,689.00
		CORRECTED Overpaid Rent		Response to owner's appeal		
From	To	Rent Paid	Max Monthly Rent	Difference per month	Number Months	Sub-Total
July 1, 2016	June 30, 2017	\$1,430.20	\$1,295.00	\$135.20	12	\$1,622.40
July 1, 2017	June 30, 2018	\$1,519.00	\$1,295.00	\$224.00	12	\$2,688.00
June 30, 2018	Nov 31, 2018	\$1,587.72	\$1,295.00	\$292.72	5	\$1,463.60
Total:						\$5,774.00

CHRONOLOGICAL CASE REPORT

Case No.: L18-0127
Case Name: Pelly v. Tenants
Property Address: 3424 64th Avenue Place, Oakland, CA
Parties: Shavonnee Clark (Tenant, Unit 'C')
Steven Pelly (Owner Representative)

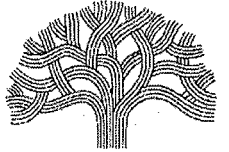
OWNER APPEAL:

<u>Activity</u>	<u>Date</u>
Owner Petition filed	July 9, 2018
Tenant Response filed	November 7, 2018
Hearing Decision issued	March 21, 2019
Owner Appeal filed	April 22, 2019

RECEIVED

JUL 09 2018

118-0127 MS/ECL



CITY OF OAKLAND

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

For date stamp.

RENT ADJUSTMENT PROGRAM
OAKLAND

PROPERTY OWNER
PETITION FOR
APPROVAL OF RENT
INCREASE

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

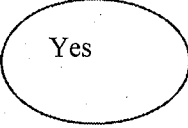
Your Name Steven Pelly	Complete Address (with zip code) PO Box 8422 Berkeley, CA 94707	Daytime Telephone: 201-317-9333
		E-mail: stevenpelly@gmail.com
Your Representative's Name (if any)	Complete Address (with zip code)	Daytime Telephone:
		E-mail:
Property Address (If the property has more than one address, list all addresses) 3424 64th Avenue Place, Oakland, CA 94605		

Total number of units on property: 4

Date on which you acquired the building: January 15, 2014

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

Have you (or a previous Owner) given the City of Oakland's form entitled Notice to Tenants of Residential Rent Adjustment Program ("RAP Notice") to the tenants in each unit affected by the petition?	<input checked="" type="radio"/> Yes	<input type="radio"/> No
On what date was the RAP Notice first given?	AptA 2/19/14, AptB 5/19/14, Apt C 4/24/15, Apt D 5/21/14	
Have you paid your Oakland Business License? The property owner must have a current Oakland Business License. If it is not current, an Owner Petition may not be considered in a Rent Adjustment proceeding. (Provide proof of payment.)	<input checked="" type="radio"/> Yes	<input type="radio"/> No
Oakland Business License number.	00166465	

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

REASON(S) FOR PETITION.

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

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

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

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

Have you ever filed a petition for this property?

- Yes
- No

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

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

Address	Unit #	Tenant Name(s)	Phone	E-mail	Current Rent
3424 64th Avenue Place Oakland, CA 94605	A	Beatriz Torress	510-906-7021	BMT2119@caa. columbia.edu	\$1,405.77
3424 64th Avenue Place Oakland, CA 94605	B	Marian McNairy	510-753-0192	marianmcnairy1 234@gmail.com	\$1,268.86
3424 64th Avenue Place Oakland, CA 94605	C	Shavonnee Clark	510-213-3495	shavonnee@gm ail.com	\$1,061.20
3424 64th Avenue Place Oakland, CA 94605	D	Randolph Brown	707-567-2360	randolphbrown0 196@att.net	\$1,077.32

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

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

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

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

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

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

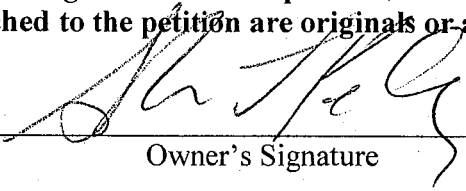
- If your petition contains capital improvements for which permits are first issued on or after February 1, 2017, capital improvements will be amortized according to an amortization schedule (attached at the end of this form).
- If the petition includes only work where permits were issued before February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

Building-Wide Capital Improvements CATEGORY (attach separate sheet if needed)	TOTAL COSTS	DATE COMPLETED	DATE PAID FOR
New Roof	23,360.40	6/9/2018	6/9/2018
SUBTOTAL:	23,360.40		

Unit-Specific Capital Improvements CATEGORY (attach separate sheet if needed)	TOTAL COSTS	DATE COMPLETED	DATE PAID FOR	AFFECTED UNITS
SUBTOTAL:				

Verification (Each petitioner must sign this section):

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



Owner's Signature

6/22/18

Date

Owner's Signature

Date

Millsmont Properties, LLC

PO Box 8422
Berkeley, CA 94707
(201) 317-9333
Email: stevenpelly@gmail.com

RECEIVED

JUL 09 2018

RENT ADJUSTMENT PROGRAM
OAKLAND

City of Oakland
Department of Housing and Community Development
Rent Adjustment Program
PO Box 70243
Oakland, CA 94612+2043

RE: Capital Improvement - City of Oakland Rent Adjustment Program
New Roof
Address - 3424 64th Avenue Place, Oakland, CA 94605
4 – Family Building
Date Roof Completed: June 9, 2018

We are requesting a Rent Adjustment for the above non-owner occupied building as follows:

Cost of Roof:	\$16,400.00
PNC Bank Financing at 7.5% over 10 years:	\$6,960.40* (See below)
FULL COST:	\$23,360.40

Attached please find the “Capital Improvement Calculator” forms that have been completed.

The check to the roofer was cashed by the roofer on June 14, 2018 as full payment. A copy of this check is attached.

Also attached, is a copy of the last rental increase based on CPI for each of the 4 apartments.

The following is a schedule of the most recent CPI rent increases:

Apartment A: February 1, 2018
Apartment B: May 1, 2018
Apartment C: May 1, 2018
Apartment D: May 1, 2018

*The roof repair was 100% financed from the Bay Financial and Insurance Services account at PNC Bank. Enclosed please find records that show that a total of \$18,450 was loaned to Millsmont Properties, of which \$16,400 was used to pay for the roof. Also attached please find the PNC Bank statement that shows the interest charge is 7.5%.

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RECEIVED
NOV -7 2018
RENT ADJUSTMENT PROGRAM
OAKLAND

RENT ADJUSTMENT PROGRAM

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

CASE NUMBER L18-0127

TENANT RESPONSE CONTESTING RENT INCREASE

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

Your Name <i>Shavonne Clark</i>	Complete Address (with Zip Code) <i>3124 64th Avenue Place APT C Oakland, CA 94605</i>	Telephone <i>(510) 213-3495</i>
Your Representative's Name	Complete Address (with Zip Code)	Telephone

Number of Units on the parcel: 4

Are you current on your rent? Yes No

Rental History:

Date you entered into the Rental Agreement for this unit: 05/2015

Date you moved into this unit: 05/01/2015

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

Yes No

Initial Rent: \$ 1,000

Initial rent included (please check all that apply)

() Gas () Electricity () Water (Garbage (Parking () Storage () Cable TV () Other
(if other please specify)

Did you receive the City of Oakland's NOTICE TO TENANTS OF RESIDENTIAL RENT ADJUSTMENT PROGRAM at any time during your tenancy in this unit?

Yes No

Please list the date you first received the Notice to Tenants 04/11/2016

List all increases your received. Begin with the most recent and work backwards. Attach most recent rent increase notice. If you need additional space please attach another sheet.

Date Notice Given (Mo/Day/Yr)	Date Increase Effective	Rent Increased		Did you receive a NOTICE TO TENANTS with the notice of rent increase?	
		From	To	Yes	No
6/15/2018	2/1/2019	\$1061.20	\$1097.28	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
6/15/2018	8/1/2018	\$1037.34	\$1061.20	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
6/27/2017	8/1/2017	\$1017	\$1037.34	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
4/11/2016	5/1/2016	\$1,000	\$1017	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"/>

Contested Justification(s) for Rent

Please attach a brief statement explaining why the owner is not entitled to the proposed increase. The legal justifications are Banking, Capital Improvements, Increased Housing Service Costs, Debt Service, Uninsured Repair Costs, and Necessary to Meet Constitutional Fair Return requirements.

- Banking
- Capital Improvements
- Increased Housing Service Costs
- Debt Service
- Uninsured Repair Costs
- Constitutional Fair Return

For the detailed text of these justifications, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. The property owner has the burden of proving the contested rent increase is justified.

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.

[Signature]
 Tenant's Signature
[Signature]
 Tenant's Signature

10/24/2018
 Date
10/31/2018
 Date

Important Information

This form must be received at the following address within the time limits prescribed by Oakland Municipal Code, Chapter 8.22. City of Oakland, Housing Residential Rent & Relocation Board, Dalziel Building, 250 Frank H. Ogawa Plaza Suite 5313, Oakland, CA 94612. For more

information, please call: 510-238-3721.

You cannot get an extension of time to file your Response by telephone.

File Review

You should have received with this letter a copy of the landlord petition.

Copies of attachments to the petition will not be sent to you. However, you may review these in the Rent Program office. Files are available for review by appointment ONLY.

For an appointment to review a file call (510) 238-3721.

MEDIATION PROGRAM

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

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).

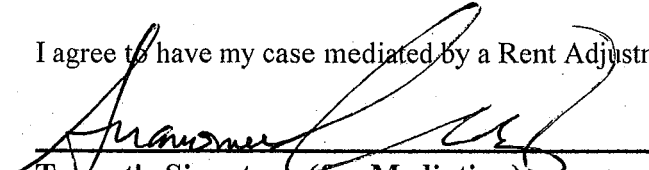
You may choose to have the mediation conducted by a Rent Adjustment Program Hearing Officer or select an outside mediator. Rent Adjustment Program Hearing Officers conduct mediation sessions free of charge. If you and the owner agree to an outside mediator, please call (510) 238-3721 to make arrangements.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

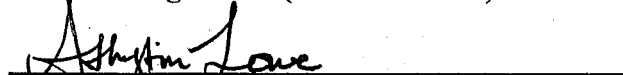
If you want to schedule your case for mediation, sign below.

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



Tenant's Signature (for Mediation)

10/31/2018
Date



Tenant's Signature (for Mediation)

10/31/2018
Date

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

HEARING DECISION

CASE NUMBER: L18-0127, Pelly v. Tenants
PROPERTY ADDRESS: 3424 64th Avenue Place, Oakland, CA
DATE OF HEARING: February 6, 2019
DATE OF DECISION: March 15, 2019
APPEARANCES: Shavonnee Clark, Tenant Unit C
Steven Pelly, Representative for Owner

SUMMARY OF DECISION

The Landlord's petition is dismissed.

INTRODUCTION

The landlord filed the petition on July 9, 2018, to obtain approval of a capital improvement rent increase. The owner alleged that the capital improvement was a new roof costing \$23,360.40.

The tenant in Unit C filed a timely response to the petition and appeared at the hearing.

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ISSUE(S) PRESENTED

1. Is there good cause for the Owner's failure to provide evidence 14 days before the Hearing?
2. When, if ever, was the tenant given written notice of the Rent Adjustment Program (RAP Notice)?
3. Can the owner increase the rent based on capital improvement and if yes, in what amount?

EVIDENCE

Late Evidence

Millsmont LLC owns the subject property. Mr. Pelly is the representative of Millsmont, LLC.

At the time of the Hearing, the owner's representative was unable to provide a receipt corresponding to the credit card statement which is alleged to show the payment of the 2018 RAP fees. No evidence of proof of payment of the 2019 RAP fees was provided.

The owner's representative testified that the 2019 RAP Fees were paid but did not provide proof of payment at the Hearing.¹ After the Hearing, the owner provided a copy of their 2019 Business License but not the RAP Fees.

The owner's representative offered a copy of the permit application worksheet, including the contractor's number, the contract, the paid roofing bill, and the canceled check.² The owner's representative testified that the documents in Exhibit D were submitted with the petition. The owner's representative then testified that the permit application worksheet was dated October 13, 2018.³

The owner's representative did not have a reason for not providing the Exhibits 14 days in advance of the Hearing as indicated in the Notice of Hearing.

¹ The owner was given 7 days to provide the additional documentation regarding the 2018 and 2019 RAP Fees.

² Exhibit D. The tenant objected to this Exhibit and it was not admitted.

³ The petition herein was filed July 9, 2018.

The owner's petition contained copies of the RAP Notices that were provided to the tenants.⁴ The tenant, who attended the Hearing, admitted that she received a copy of the RAP Notice at the inception of her tenancy in 2015.

The owner's representative testified that he consulted with an attorney regarding his capital improvement petition. He also testified that he had no difficulty understanding the Notice of Hearing and the section indicating that Exhibits are to be provided 14 days in advance. He testified that he did not provide Exhibits because the City did not ask for them.

The tenant reiterated that the burden of proof for this capital improvement was on the owner. She was adamant that she wanted to exercise her rights, and not agree to allow an additional opportunity for him to submit further documentation. She noted that the owner's representative testified that he consulted with an attorney, unlike herself, and that there was no reason that he was unprepared.

Current Rents

The owner requests a capital improvement pass-through for four tenants and provided the following information regarding the tenants:

Unit	Tenant(s)	Rent	RAP Notice
A	Beatriz Torres	\$ 1,405.77	12/20/2017
B	Marian McNairy	\$ 1,268.86	03/10/2018
C	Shavonnee Clark	\$ 1,061.20	May 2015 ⁵
D	Randolph Brown	\$ 1077.32	03/05/18

Capital Improvements

The owner's representative testified that they replaced the roof instead of patching it. The owner offered proof of payment for the re-roofing certificate, the re-roofing certificate and a copy of his 2018 Business License.⁶

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⁴ The RAP Notices submitted with the petition were not marked and admitted at the Hearing, but are credited herein.

⁵ The tenant's testimony admits receipt of the RAP Notice at the inception of her May 2015 tenancy.

⁶ Exhibits AA, A, and C. These Exhibits were admitted without objection.

The owner's petition indicated that the new roof cost \$23,360.40 and was paid for on June 9, 2018. The owner provided a copy of the check to Williams Roofing in the amount of \$16,400.00.⁷

The owner's representative testified that the cost of the new roof was \$16,400.00 and that the financing was 7½%, which has increased since the filing of the petition. The owner representative testified that the cost of the financing was 7.5% and has gone up to 8%. The owner provided the re-roofing certificate.

The owner's representative then testified that on December 5, 2017, before the work was done, they submitted a bid for the work and payment for the work.

During cross-examination, the owner's representative testified that he was aware that the roof was leaking in the apartment occupied by a tenant referred to as Beatrice. After discussing the leak with tenant Beatrice, the intention was to patch the roof. Ultimately, the owner decided to replace the roof instead of patching the roof. The owner's representative testified that they purchased materials to patch the roof but did not do so.

The owner's representative testified that they acquired the building in 2014 and that they received the original report of the roof leaking was in 2015. The roof was a tar and gravel roof. The representative testified that a tar a gravel roof is an old-fashioned type of roof prone to leaking. They attempted to level the gravel, but that did not stop the leaking. The owners decided that the roof would be replaced instead of attempting further repair. The new roof has not leaked. The owner's representative denied that the prior roof was no longer serviceable.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Is there good cause for the Owner's failure to provide evidence 14 days before the Hearing?

The Notice of Hearing mailed to the owner and his representative on January 9, 2018 states in part: "ALL PROPOSED TANGIBLE EVIDENCE, INCLUDING BUT NOT LIMITED TO DOCUMENTS AND PICTURES, MUST BE SUBMITTED TO THE RENT ADJUSTMENT PROGRAM NOT LESS THAN FOURTEEN (14) DAYS PRIOR TO THE HEARING. PROPOSED EVIDENCE PRESENTED LATER MAY BE EXCLUDED FROM CONSIDERATION." The

⁷ Exhibit B. This Exhibit was admitted without objection.

Notice of Hearing states that the hearing would be held on February 6, 2019. The landlord failed to submit some documentary evidence until the Hearing on February 6, 2019.

At the Hearing, the owner's representative was given an opportunity to explain his failure to provide additional exhibits, including the permits, invoices, and proof of payments for the roofing work. His testimony was that the Program Analyst assigned to the file failed to ask him, in advance, for the necessary documentation to establish the capital improvement rent increase. If the landlord's representative was given improper advice from an employee of the Rent Adjustment Program, this does not override the requirements of the Ordinance and Regulations, as well as the clear wording in the notices sent to the owner and his representative. Moreover, the tenant present objected to the owner's representative being given additional time considering his testimony that he had an opportunity to consult with an attorney and that his admission that the roof was leaking.

Accordingly, the owner's representative failed to establish good cause for their failure to provide evidence 14 days before the hearing.

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

The Rent Adjustment Ordinance requires an owner to serve the RAP Notice at the start of a tenancy⁸ and together with any notice of rent increase or change in the terms of a tenancy.⁹ When an owner petitions for a rent increase for capital improvements he or she must establish that the RAP Notice was served.¹⁰

The evidence establishes that the owner served a RAP notice on the tenant in Unit C. The owner's petition included copies of the RAP Notices that were provided to the tenants in Units A, B, and D. Therefore, it is found that all of the units were given RAP Notices prior to the filing of the petition to increase the rent based on capital improvements.

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⁸ O.M.C. § 8.22.060(A)

⁹ O.M.C. § 8.22.070(H)(1)(A)

¹⁰ O.M.C. § 8.22.090(B)(1)(c)

Can the owner increase the rent based on capital improvement and if yes, in what amount?

A rent increase in excess of the C.P.I. Rent Adjustment may be justified by capital improvement costs.¹¹ Capital improvement costs are those improvements which materially add to the value of the property and appreciably prolong its useful life or adapt it to new building codes. Normal routine maintenance and repair is not a capital improvement cost, but a housing service cost.¹² For a capital improvement to be allowed, the improvement must primarily benefit the tenant rather than the owner.¹³

In 2016, the Oakland City Council passed an Ordinance amending the Rent Adjustment Ordinance and changing the way capital improvement costs were passed on to tenants. The prior Ordinance required that as long as the capital improvement pass-through does not exceed 10% of the rent, the costs are to be amortized over a period of five years, divided equally among the units which benefit from the improvement.¹⁴ Where a 5-year amortization period would result in a rent increase greater than 10%, the owner is entitled to a longer amortization period.¹⁵ The Ordinance change in 2016, stated that:

“The revised amortization period for Capital improvements as outlined in amended section 8.22.020 shall be effective for all Capital improvements for which permits are first issued on or after February 1, 2017.”¹⁶

In this case, all the work is alleged to have occurred after February of 2017; therefore, this changes applies. Additionally, for work which was started after September 20, 2016, the owner is also entitled to imputed financing for the cost of the capital improvements.¹⁷

“Costs for work or portion of work that could have been avoided by the landlord’s exercise of reasonable diligence in making timely repairs after the landlord knew or should reasonably have known of the problem that caused the damage leading to the repair claimed as a capital improvement” may not be considered as a capital

¹¹ O.M.C. § 8.22.070(C)

¹² Regulations Appendix, § 10.2.2(4)(e)

¹³ Regulations Appendix § 10.2.2(1)

¹⁴ Oakland City Council Ordinance # 13391, Section 4.

¹⁵ Regulations Appendix § 10.2.3 (2)

¹⁶ See Oakland City Council Ordinance Number 13391

¹⁷ Regulations § 8.22.020

improvement.¹⁸ The existence of the roof leak which necessitated the repair of the roof was likely the result of unreasonably deferred maintenance.

An owner has the burden of proving every element of their case by a preponderance of the evidence. The applicable rules of evidence are stated in Government Code Section 11513:¹⁹

Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs . . .

Hearsay evidence may be used for the purpose of supplementing or explaining other evidence by over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

Self-serving testimony by the owner's representative falls far short of these standards. The testimony of the parties was otherwise equally credible. The landlord did not meet his burden of proof regarding repair and maintenance of the roof.

Furthermore, the owner herein acknowledged that the roof required repair since 2015. No further evidence of repair was provided. Moreover, the owner's attempt to level the gravel was insufficient and nothing further was done until the roof was replaced, three years later. The replacement of the roof, absent evidence of repair and maintenance is found to be deferred maintenance. Thus, the costs associated with replacing the roof are deferred maintenance and not capital improvement costs. Therefore, the costs associated with replacing the roof are not allowed as capital improvement costs. Thus, the issue must be decided in favor of the tenant.

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¹⁸ Regulations Appendix, Section 10.2.2(3)(c)

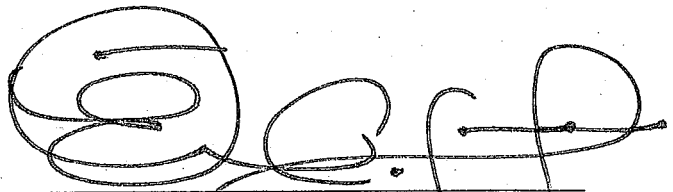
¹⁹ Regulations, Section 8.22.110(E)(4)

ORDER

1. Petition L18-0127 is denied.

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

Dated: March 15, 2019



Elan Consuella Lambert
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE

Case Number L18-0127

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

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

Documents Included

Hearing Decision

Owner

Millsmont Properties, LLC
PO Box 8422
Berkeley, CA 94707

Owner Representative

Steven Pelly
P.O. Box 8422
Berkeley, CA 94707

Tenant

Beatriz Torress
3424 64th Avenue Place #A
Oakland, CA 94605

Tenant

Marian McNairy
3424 64th Avenue Place #B
Oakland, CA 94605

Tenant

Randolph Brown
3424 64th Avenue Place #D
Oakland, CA 94605

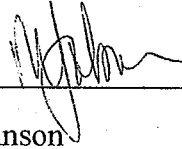
Tenant

Shavonnee Clark
3424 64th Avenue Place #C
Oakland, CA 94605

000072

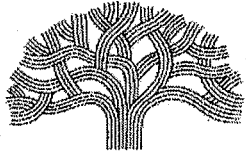
I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first 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 21, 2019** in Oakland, CA.



Nia Johnson

Oakland Rent Adjustment Program



CITY OF OAKLAND

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

For date stamp

APR 22 2019

RENT ADJUSTMENT PROGRAM
OAKLAND

APPEAL

Appellant's Name Milkmont Properties, LLC		<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant	
Property Address (Include Unit Number) 3424 64 th Avenue Place, Apt A,B,C,D, Oakland, CA 94605			
Appellant's Mailing Address (For receipt of notices) PO Box 8422 Berkeley, CA 94707		Case Number L18-0127	
		Date of Decision appealed 4/18/19	
Name of Representative (if any) Steven Pelly, Property Manager		Representative's Mailing Address (For notices) PO Box 8422 Berkeley, CA 94707	

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.

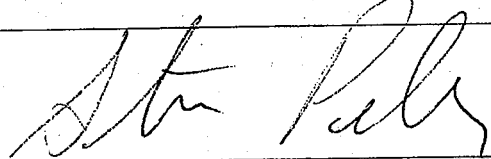
- f) I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. (In your explanation, you must describe how you were denied the chance to defend your claims and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue 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: 12 - excluding copies of service copies

• 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 4/19/19, 20 19, 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:

and medical extension request

<u>Name</u>	
<u>Address</u>	(all next pages, please)
<u>City, State Zip</u>	
<u>Name</u>	
<u>Address</u>	
<u>City, State Zip</u>	

	<u>4/19/19</u>
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

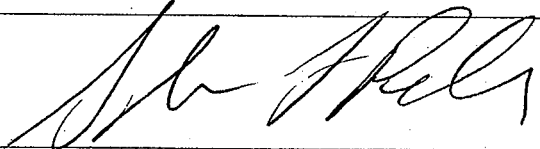
For more information phone (510) 238-3721.

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- h) Other. (In your explanation, you must attach a detailed explanation of your grounds for appeal.)

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• 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 4/19/19, 2019, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

Name	Beatriz Torrez
Address	3424 64th Avenue Place, Apt A.
City, State Zip	Dakland, CA 94605
Name	
Address	
City, State Zip	

	<u>4/19/19</u>
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

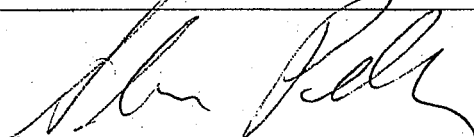
For more information phone (510) 238-3721.

- 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.)
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- h) Other. (In your explanation, you must attach a detailed explanation of your grounds for appeal.)

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• 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 4/19, 2019, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

Name	Marian McNairy
Address	3424 64th Avenue Place, Apt. B
City, State Zip	Dakland, CA 94605
Name	
Address	
City, State Zip	

	4/19/19
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

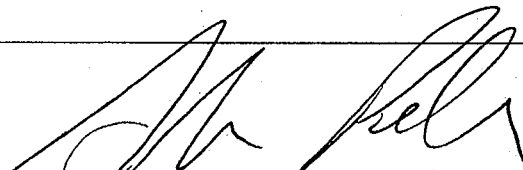
For more information phone (510) 238-3721.

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

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

• You must serve a copy of your appeal on the opposing parties or your appeal may be dismissed. • I declare under penalty of perjury under the laws of the State of California that on 4/19, 2019, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

Name	Shavonnee Clark
Address	3424 64th Avenue Place, Apt. C
City, State Zip	Oakland, CA 94605
Name	
Address	
City, State Zip	

	4/19/19
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

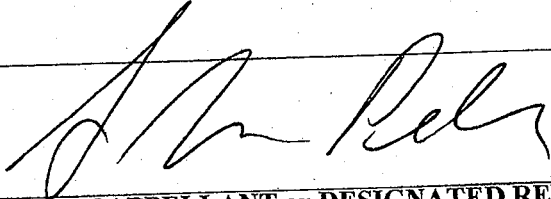
For more information phone (510) 238-3721.

- 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 4/19, 2019, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

Name	Randolph Brown
Address	3424 64th Avenue Place, Apt. D
City, State Zip	Oakland, CA 94605
Name	
Address	
City, State Zip	

	<u>4/19/19</u>
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

For more information phone (510) 238-3721.

Millsmont Properties, LLC
Box 8422
Berkeley, CA 94708
Email: Millsmontproperties@gmail.com
Bldg. Mngr. Tel.-201-317-9333

Date: April 18, 2019

Re: Case # L18-0127 ("Pelly Vs. Tenants")-

Property Address: 3424 64th Avenue Place, Oakland, CA 94605

City of Oakland
Department of Housing and Community Development
Rent Adjustment Program
250 Frank H. Ogawa Plaza- Suite 5313
Oakland, CA 94707

Basis for Appeal of Decision to Obtain a Capital Improvement Rent Increase

Note: [Reference]s are to the page numbers of the Hearing Decision

1. [PAGE 1] We never "alleged" that the roof cost was \$23,360.40. We provided a paid bill from the roofer showing that we paid Williams Roofing \$16,400.00 for the roof, and that bank financing was at 7-1/2% when we first filed for the improvement on July 9, 2018, was raised to 8% as of the day of the hearing (February 6, 2019), and is now 8-1/4% (Today, April 18, 2019). The \$16,400 capital improvement bank loan is tied to the Prime Rate, and is thus subject to increases. The difference between \$23,360.40 and \$16,400.00 is the actual interest cost of financing the \$16,400 capital improvement over the ten-year amortization allowed for a new roof at the original 7-1/2% rate. We provided full schedules to document this cost.
2. [PAGE 2] We did not "fail to provide evidence 14 days before the hearing." Rather, we were in contact *at least* five separate times over 6 months by telephone with "Sylvia" and others at the Rent Adjustment Program who advised us what forms and proofs were needed for our hearing. We brought what we were asked to bring to the hearing, and we provided whatever forms and proofs we were asked in our original filing. If we had been instructed to bring anything additional to the meeting, we certainly would have brought it. Only at the hearing, were we advised that the hearing officer wanted signed RAP notices and credit card receipts for our RAP fees going back to 2014, and a copy of our business certificate. All of this was provided on the same day as the hearing, *within 3 hours* of the morning request, which I personally delivered to the RAP office in Room 531.

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3. Since the proofs were provided on February 6, 2019 and the decision was not made until March 15, 2019, there is no question that the Hearing Officer knew we were in complete compliance for many weeks before the decision. Unfortunately, the Hearing Officer failed to mention that she received all of the proofs on the same day and within a few hours of the hearing request.
4. [Page 2] Tenants were always given RAP notices in a timely manner, prior to any allowed statutory rent increases and per the requirements of the RAP program.
5. [Page 2] We *did* have a reason for not providing "exhibits" (credit card receipts for the RAP fees). We were not asked to provide them in our numerous conversations and correspondence with "Sylvia," Margaret Sullivan, Maxine Vasaya, "Kelly" and Roberto Costa. When asked at the hearing, we provided them by hand delivery within 3 hours.
6. [Page 3] The fact that Apt. C tenant Shavonnee Clark was "adamant in wanting to exercise her rights" ignores the fact that when she filed her original "objection" to the capital improvement request, she stated no reason whatsoever. There was no statement from her *or any other tenant in the building* in the case file as of January 28, 2019, when I personally visited the 6th Floor of 250 Frank Ogawa Plaza at 10 AM and personally reviewed the file prior to the hearing. It was our understanding, reinforced by several conversations with our attorney and the RAP program analysts, as well as the East Bay Rental Housing Association, that if a tenant files no written objection, documentation or statement at least 14 days before the February 6, 2019 hearing, they may not later state or produce evidence to support an objection. Unfortunately, the Hearing Office failed to mention in her decision that none of the tenants produced any statements or evidence prior to the 14 days of the scheduled hearing.
7. My appointment on January 28, 2019 to review the file at the RAP office was scheduled to be with Maxine Visaya. When I arrived, I was met by Roberto Costa who informed me that Maxine Visaya was out sick, and apparently Margaret Sullivan was also out sick, but he would get the file for me to review.
8. Mr. Costa was extremely pleasant and helpful. I did explicitly ask him to answer one question regarding a letter signed by Margaret Sullivan dated January 17, 2019, postmarked January 22, 2019 and received January 24, 2019. The letter is attached. Our question was about the phrase "Rent Adjustment Program Service Fee" for "*...the current year.*" We had emailed Margaret Sullivan on January 28, 2019 (see attached), the day of the hearing, explaining that the bill for RAP fees we received was not "delinquent until March 1, 2019." Our question to Mr. Costa was whether we should "pre-pay" the bill before the February 6, 2019 capital improvement hearing or not. He explained he would ask around the office. After several minutes he returned and stated, "You should be fine as long as you pay it

before the delinquent date.” We relied upon that advice, especially since Margaret Sullivan specifically told us to ask for advice at this January 28, 2019 meeting. In addition, “Kelly” who was directed by Roberto Costa to show us the file and speak with me, made copies of our credit card statement showing that last year’s RAP fees of \$272 that was due in March, 2018, was paid on 2/24/18.

9. [Page 3] In our opinion it is not correct to state that we were “unprepared.” Our office staff spent over 50 hours preparing forms, preparing amortization schedules, making photocopies, holding discussions with RAP staff employees, attending meeting at RAP, and writing letters and emails for clarification before our February 6, 2019 meeting. Moreover, following the meeting, we provided whatever documentation was asked for.
10. [Page 4] To the best of our knowledge we never stated at the hearing that we paid for the work before it was done. We solicited 5 separate written bids from licensed roofing companies, discussed the merits of tar and gravel Vs. elastomeric roofing with each roofer, and chose Williams Roofing as the contractor. As our cancelled check clearly shows, we paid for the roofing after it was installed, not before.
11. [Page 7] We disagree with the Hearing Officer that the “existence of the roof leak which necessitated the repair of the roof was likely the result of unreasonably deferred maintenance.” As building manager, I personally have been on the roof at least 10 times since we purchased the building in January of 2014. I am knowledgeable about construction, I have personally supervised all contractors during the “gut renovation” of seven other buildings, and I am a licensed California Licensed Real Estate Salesperson-license # 01983394. I have held a real estate sales license since 1986. I know that “deferred maintenance” on a roof is a very bad idea. In my opinion, the Hearing Officer’s conclusions about “deferred maintenance” were incorrect. Rather, we worked diligently to correct the leak.

Moreover, I do not feel that Apartment C tenant Shavonnee Clark, who has never had a leak in her apartment, did not know the circumstances of the leak in Apartment A, its exact location or its cause, nor did Shavonnee Clark have any training or experience involving the construction issues involving this small repair was in any way qualified to testify regarding roof repairs.

12. [Page 4] A leak was reported by tenant Beatrix Torres in Apartment A in 2015. We examined the roof, located one very slightly low spot in the flat roof about 1 foot wide by 6 feet long just above apartments A & B, and leveled the spot with gravel and tar. There apparently was no further leaking, nor was there any reports of leaking on any other part of the roof at that time.

[It should be noted here that roof leaks in flat roof buildings are notoriously hard to pinpoint. **[Please see attached articles].**

13. About two years later, in late 2017, after an extremely heavy rain, both Apartment A & B reported small leaks along the exact same spot we had repaired. We went up on the roof immediately, and noted that again the gravel had settled unevenly after the heavy rains and allowed the tar area to become exposed causing puddling. We leveled the gravel again and had no further leak complaints.
14. On January 5, 2018 we decided we needed to be more proactive about the possibility of this leak occurring again, and purchased "Henry Extreme Wet Patch" and a small amount of roof fabric from a supply house. We provided copies of our purchase receipts to the Hearing Officer. We had been advised in our discussions with roofers, that such a small patch [six square feet] could easily be repaired permanently with roof patching compound and fabric. At that point, one of the roofers suggested that we consider replacing the whole roof, since it would have to be done within the next 5-10 years anyway.
15. During the Spring of 2018, when there were no reports of further leaks, we solicited roofing bids, and each bidder gave an estimate of 5-10 years as the remaining "useful life" of the existing roof. They did point out that replacing the roof would lower the tenants' heating bills, as newer tar and gravel and "elastomeric" roofs were more energy efficient than old tar and gravel roofs. When I pointed out that there didn't seem to be any need to replace the whole roof at this time, one of the roofers suggested we consider applying for a capital improvement rent increase with the City of Oakland to defray the substantial cost.
16. We were advised by the successful bidder, Williams Roofing, not to apply the roofing compound we had purchased as it might interfere with his upcoming re-roofing. Once they became the successful bidder, we had to "get on their schedule" which in our area takes many months as new roofs are generally not installed until after Spring-because of rains.
17. We do not consider ourselves as landlords who "defer maintenance." It has always been our policy in managing this building that we replace, rather than repair equipment whenever possible and sensible. Since January of 2014, in this 4-unit apartment building, we have installed 2 new toilets, 2 new windows, new hot water heaters in *all* of the units, 1 new refrigerator/freezer, a new sewer lateral for the whole building, a new washing machine in the laundry room, 2 new gas heating furnaces and 4 new fire extinguishers and cabinets (there were no fire extinguishers before we took over the building). We respond to requests for service as soon as we are notified. When you consider that the average rent for the 4 units is \$1,215.23 and 3 of the 4 apartments have 2 bedrooms and 1 bath, and one apartment has 2 bedrooms and 2 baths-along with free indoor garage parking for all tenants, decks, a backyard and a tenant-only laundry room, we feel we are providing good service at a very low rent for Oakland.
18. We never previously burdened the tenants with a request for a capital improvement rent increase for any of the improvements noted above, *including the new building sewer lateral.*

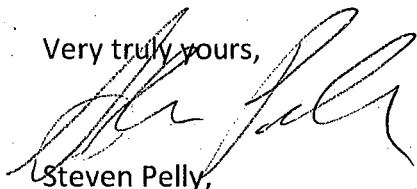
Because of the substantial cost of replacing, rather than repairing the roof, we had to file for a capital improvement rent increase this time.

19. [Page 6] If we are entitled to "imputed financing" rather than the 7-1/2% financing cost we initially bore, and the 8-1/2% financing cost we are now incurring for the roof, it would be fair for us to receive this "imputed financing" as part of the capital improvement rent calculation.
20. [Page 7] I strongly disagree with the Hearing Officer's characterization of my "testimony" as "self-serving." We had an option to repair 6 square feet of roof, once we determined the cause of the leak. We even purchased (and eventually returned) the material, at the roofer's suggestion. The cost would have been under \$100. Instead, on the advice of roofers, with a capital improvement increase as an incentive, we chose to spend \$23,360. With a useful life of 5-10 years remaining if we simply repaired the roof, we could have repaired only 0.003 (3 tenths of one percent) of the roof. [6 square feet divided by 1,795 square foot roof]. No other part of the roof had any leaking. But since we intended to keep managing the building, we chose the capital improvement as the most logical way to proceed. There never was any "deferred maintenance."

As a result, the building got a brand-new "white elastomeric roof" which benefitted all of the tenants, instead of waiting another 5 or 10 years.

We are asking that the Hearing Officer's decision be reversed and we be granted the requested capital improvement we have requested

Very truly yours,



Steven Pelly,
Building Manager.

Millsmont Properties, LLC
Box 8422
Berkeley, CA 94708
Email: Millsmontproperties@gmail.com
Bldg. Mngr. Tel.-201-317-9333

April 18, 2019

Re: Case # L18-0127 ("Pelly Vs. Tenants")

Property Address: 3424 64th Avenue Place, Oakland, CA 94605

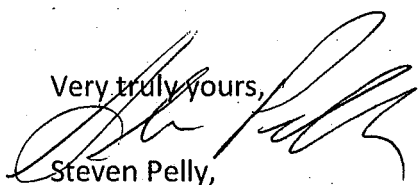
We are appealing the March 15, 2019 decision of Rent Adjustment Program Hearing Officer Elan Consuella Lambert. The *decision* was dated March 15, 2019, the *Proof of Service* signed by Nia Johnson was dated March 21, 2019, the mailing envelope was *postmarked* March 25, 2019 (see attached) and was *received* in our postal box on March 27, 2019 at our post office.

Normally a 20-day appeal time limit would apply, but a day after I began to assemble documents for our appeal, (Friday, April 5, 2019), my wife (age 70), unfortunately fell and sustained a serious fracture to her elbow in two places (*see attached documentation*). Her surgery could not be performed until Monday, April 15, 2109 in San Francisco, by her orthopedist, Dr. Patrick McGahan.

I could not return to work on the RAP appeal until today, as I had to take a leave of absence from Monday, April 8, 2019 until today to assist my wife with all of her activities of daily living, as she could not even dress herself, drive, open medication bottles, or prepare meals for herself. without assistance from me because of the pain and the cast on her entire arm.

I am asking that the 20-day appeal time be extended under the circumstances, as I am the building's manager, and the only person at my employer with personal knowledge of the facts and circumstances for the basis of our appeal.

Very truly yours,



Steven Pelly,
Building Manager



Radiology Consultation

NATIONAL RADIOLOGY INTERPRETATION SERVICES (888) 819 0808

Patient Name:	PELLY, BARBARA	DOB:	7/5/48
Patient MRN:	148295	Gender:	F
Study Date:	Apr 6, 2019 4:50:25 PM PDT	Accession:	OP-00553598278
Description:		Ref Phys:	T.K. Abraha, NP

HISTORY / PRELIM DIAGNOSIS: Patient slipped and landed on left elbow x 1.5 hours.

X-ray left elbow 3 views:

Findings:

There is a fracture through the proximal ulna that extends to the olecranon fossa and joint space. No humerus or radial fra
There is soft tissue swelling with hematoma and there is a joint effusion.

Impression: Proximal ulnar fracture.

depression on the posterior side of the humerus

Electronically signed on Apr 6, 2019 5:17:57 PM PDT (ET) by:
Erinn K. Noeth, MD
888.819.0808

*Dr. Noeth
303 3000
1000 1000 1000
1000 1000 1000*

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

HEARING DECISION

CASE NUMBER: L18-0127, Pelly v. Tenants

PROPERTY ADDRESS: 3424 64th Avenue Place, Oakland, CA

DATE OF HEARING: February 6, 2019

DATE OF DECISION: March 15, 2019

APPEARANCES: Shavonnee Clark, Tenant Unit C
Steven Pelly, Representative for Owner

SUMMARY OF DECISION

The Landlord's petition is dismissed.

INTRODUCTION

The landlord filed the petition on July 9, 2018, to obtain approval of a capital improvement rent increase. The owner alleged that the capital improvement was a new roof costing \$23,360.40.

The tenant in Unit C filed a timely response to the petition and appeared at the hearing.

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PROOF OF SERVICE
Case Number L18-0127

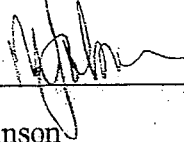
I am a resident of the State of California at least eighteen years of age. I am not a party to the Residential Rent Adjustment Program case listed above. I am employed in Alameda County, California. My business address is 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California 94612.

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

Documents Included

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 21, 2019** in Oakland, CA.



Nia Johnson

Oakland Rent Adjustment Program

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AKLAND



D COMMUNITY DEVELOPMENT
DEPARTMENT
T ADJUSTMENT PROGRAM
FRANK H. OGAWA PLAZA
SUITE 5313
AKLAND, CA 94612-0234

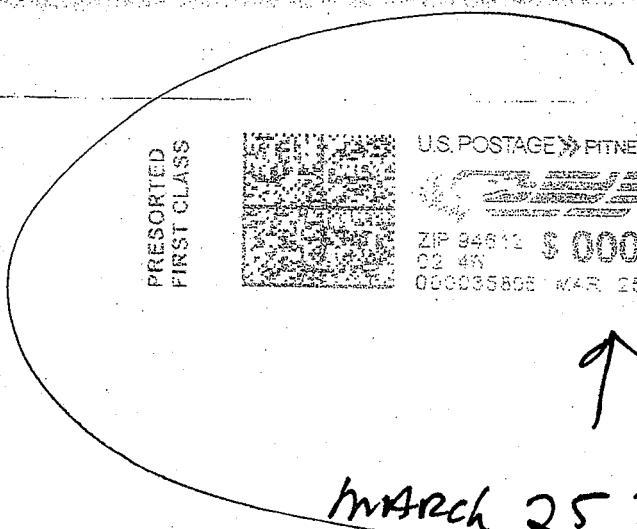
Steven Pelly
P.O. Box 8422
Berkeley, CA 94707



PRESORTED
FIRST CLASS



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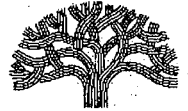


March 25, 2019

CITY OF OAKLAND

250 FRANK H. OGAWA PLAZA, STE. 5313, OAKLAND, CA 94612-2043

Department of Housing and Community Development
Rent Adjustment Program



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

January 17, 2019

Millsmont Properties, LLC
c/o Steven Pelly
PO Box 8422
Berkeley, CA 94707

Re. **Rent Adjustment Case L18-0127—Pelly v. Tenant s**

Dear Mr. Pelly:

The Rent Adjustment Program received a *Property Owner Petition for Approval of Rent Increase* from you regarding the above-referenced case on July 9, 2018.

In reviewing your case file, I noted that we have not received the following documents for your petition to be considered complete, pursuant to *Rent Adjustment Program Regulations, Petition and Response Filing Procedures, Sec. 8.22.90.C*:

Evidence that you paid the current year's Rent Adjustment Program Service Fee (\$68 per unit) for the subject building. **Please submit documentation that you have paid your Rent Adjustment Program Service Fee for the subject building for the current year.**

The requested documentation must be submitted to this office **within ten (10) calendar days from the date of this letter**, or your Petition may be dismissed. Please **write the Case Number** above on all of your correspondence with this office.

If you have any questions, you can reach me at **510-238-7387** or by email at: msullivan@oaklandca.gov

Sincerely,

A handwritten signature in black ink that reads "Margaret Sullivan".

Margaret Sullivan, Program Analyst III
Residential Rent Adjustment Program

Encl. Proof of Service

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CEILING STAINED? ROOF LEAKS OFTEN ARE HARD TO TRACE

Bernard Gladstone, New York Times Special Features CHICAGO TRIBUNE

Q--I have a water stain on the ceiling of my upstairs bedroom, which is apparently due to a roof leak. I cannot seem to locate the source even though I inspected all roof flashing and shingles over the area where the leak appears and patched every place that looked even the least bit doubtful. The leak still shows up after every heavy rain.

My attic is unfinished, but it is insulated and I cannot see any places where daylight shines through or where there is any kind of crack or open seam. What can you suggest?

A--Roof leaks are often very difficult to locate because water does not necessarily fall straight down through a hole or open seam. In many cases, water that seeps in can travel horizontally along roof sheathing or even the underside of a rafter until it runs down a stud or other structural member. Then it may travel farther along that joist or beam until it finally drips down onto the ceiling below.

YOUR HOME; How to Fix Roof Leak: First, Find It

By **JAY ROMANO** SEPT. 28, 2003 NY Times

REPAIRING a leaky roof is a challenge under the best of circumstances. Just pinpointing the leak's location often takes persistence, detective work and a fair amount of luck.

"Leaks often aren't easy to find," Mr. Varone said. While water will sometimes leak from a hole or crack in the surface of a roof deck directly into the ceiling or wall of the apartment below, it more often moves around a bit before making its way out."

Writs Filed or Litigated Against HRRRB
 January 1, 2017 to July 16, 2019

Case Name	Issue	HRRRB Decision and Date	Superior Court Decision and Date
<p>1 <i>Dezerega v. City of Oakland,</i> RG19017611 Owner Writ</p>	<p>Are units constructed in 1999 in same footprint as burned-down residential units considered new construction under RAP and Costa Hawkins?</p>	<p>November 29, 2018 – Affirmed hearing officer’s decision that the properties constructed in 1999 did not constitute “new construction” because they were constructed in a space that was previously residential and only replaced the previous residential units.</p>	<p>Litigation Pending</p>
<p>2 <i>Wiebe v. City of Oakland,</i> RG1908666 Owner Writ</p>	<p>What proof must owner provide to substantiate expenses in a substantial rehabilitation petition? Due process claims based on alleged misinformation by RAP, lost documents, and lack of quorum by HRRRB.</p>	<p>September 27, 2018 – Affirmed hearing officer’s decision that owner is required to submit both invoices AND receipts to support substantial rehabilitation petition. Board did not reach due process claims</p>	<p>Litigation Pending</p>
<p>3 <i>Lantz v. City of Oakland,</i> RG19008583 Owner Writ</p>	<p>Was elevator invoice marked “paid” and listing two check payments sufficient documentation to support a capital improvements rent increase.</p>	<p>October 18, 2018 – Affirmed the hearing officer’s decision that the owner had not presented proof of payment because an invoice marked “paid” appeared to have been prepared by the petitioner instead of the elevator company.</p>	<p>Litigation Pending</p>
<p>4 <i>Fanfu v. City of Oakland,</i> RG19012876 Owner Writ</p>	<p>Interpretation of Costa Hawkins condominium exemption</p>	<p>November 8, 2018 – Affirmed hearing officer’s decision that condominium units were not covered by exemption because units had not been “sold separately,” but in one large transaction.</p>	<p>Litigation Pending</p>

Writs Filed or Litigated Against HRRRB
January 1, 2017 to July 16, 2019

Case Name	Issue	HRRRB Decision and Date	Superior Court Decision and Date
<p>5 <i>Fong v. City of Oakland</i> RG18930130 Owner Writ</p>	<p>Interpretation of Costa Hawkins condominium exemption</p>	<p>November 8, 2019 – Affirmed hearing officer’s decision that condominium units were not covered by rent control because units had not been “sold separately,” but in one transaction to a new owner</p>	<p>June 6, 2019 – Superior Court Granted Writ. “Sold separately” in Costa Hawkins only refers to units that have title “alienable separate from the title to any other dwelling unit” and not whether the units were sold in separate transactions or to separate owners.</p>
<p>6 <i>Turner v. City of Oakland</i> RG17878757 Tenant Writ</p>	<p>Was there substantial evidence for granting capital improvement pass-through?</p>	<p>July 7, 2017 – Gas line re-routing constituted capital improvement and could be passed through.</p>	<p>April 18, 2019 – Superior Court denied writ. Finds that petitioner has not clearly laid out her claim, but that there appears to be substantial evidence in record for establishing a capital improvement pass-through.</p>
<p>7 <i>Owens v. City of Oakland</i> RG18914638 Owner Writ</p>	<p>Does Costa Hawkins’ “separately alienable” language exempt rooms rented out separately in a single family home?</p>	<p>March 21, 2018 - HRRRB Affirmed decision finding that individual rooms in a single-family home were not exempted because the rooms were not “separately alienable” units under Costa Hawkins.</p>	<p>May 2, 2019 – Superior Court Denied Owner’s writ. RAP applies to rooms rented out in a single-family home. The court interpreted “dwelling unit” as the area of exclusive possession of the tenant. In this case it was a room, and the room was not separately alienable from other dwelling units in the single-family home, and therefore not subject to the Costa Hawkins exemption from rent control. Owner has appealed Superior Court Decision</p>

Writs Filed or Litigated Against HRRRB
January 1, 2017 to July 16, 2019

Case Name	Issue	HRRRB Decision and Date	Superior Court Decision and Date
<p>8 <i>525 Hyde Street, CNML Properties v. City of Oakland</i> <i>RG17-862841</i> Owner Writ</p>	<p>Can tables issued by the Chief Building Inspector pursuant to O.M.C. 8.22.030.B.2.b. be modified by RAP to more accurately reflect current cost estimates for construction?</p>	<p>December 8, 2016 – HRRRB affirmed hearing officer’s decision on substantial rehabilitation petition. Hearing officer had modified the City-issued “City of Oakland Building Services Construction Valuation,” which was years out of date, with a “Quarterly Cost Indexes” to make the tables accurately reflect the costs at the time project started.</p>	<p>December 12, 2018 - Owner writ granted by Superior Court. Superior Court interpreted O.M.C. 8.22.030.B.2.b. to require that table used for calculation be 1) “issued by the chief building inspector” and; 2) “be applicable for the time period when the substantial rehabilitation was completed.” The Cost index had not been issued by the chief building inspector and therefore could not be lawfully used for the substantial rehabilitation calculation</p>
<p>9 <i>Golden State Ventures v. City of Oakland</i> <i>RG16834166</i> <i>A151421</i> Owner Writ</p>	<p>Interpretation of Costa Hawkins condominium exemption</p>	<p>July 9, 2016 – HRRRB affirmed decision that former apartments, converted to condominiums by developer, and sold in separate transactions to same purchaser did not satisfy the “sold separately” requirement in Costa Hawkins because they had all been sold to the same purchaser on the same day, and therefore were still subject to RAP.</p>	<p>Real Parties in Interest have appealed. City is not taking part in appeal. March 21, 2017 – Superior Court Trial court granted plaintiff’s writ petition. The “plain meaning” of the “sold separately” only refers to the title of the condominium. Nothing in the statute or legislative intent suggests that the condominiums in a building are not sold separately if they are sold at the same time to the same buyer. Jan. 25, 2018 – Court of Appeal Affirmed</p>

Writs Filed or Litigated Against HRRRB
January 1, 2017 to July 16, 2019

Case Name	Issue	HRRRB Decision and Date	Superior Court Decision and Date
<p>10 <i>Bader v. City of Oakland</i> RG16809738 Owner Writ</p>	<p>Interpretation of "date of proposed increase" under former Regulation 10.2.1 in situation where an owner both noticed a rent increase and petitioned the board to pass thorough a capital improvement</p>	<p>November 12, 2015 – HRRRB affirmed hearing officer's decision denying capital improvement pass-through because the work took place more than two years before "date of proposed increase." The hearing officer had found that the earliest date the owner could have proposed the rent increase was the 120 days after filing the petition for rent increase, based on the Ordinance's goals for hearing petitions. The owner had argued that the hearing officer should use a date that the owner had actually noticed the rent increase.</p>	<p>January 18, 2018 – Superior Court Granted Writ Court determined that the date of the proposed rent increase was the date that the owner's notice of rent increase would have gone into effect, regardless of whether the landlord also filed a petition for capital improvements pass through</p>
<p>11 <i>Barragano v. City of Oakland</i> RG14732655 A148852 Tenant Writ</p>	<p>Can a seismic retrofit be considered a capital improvement</p>	<p>April 17, 2014 – HRRRB affirmed hearing officer's decision that seismic retrofit work primarily benefited the tenant, and therefore could be considered a capital improvement.</p>	<p>Superior Court – March 18, 2016. HRRRB had substantial evidence to determine that seismic retrofit work primarily benefited the tenant and therefore was a valid capital improvement expense. Appeal dismissed by Barragano 10/03/2017</p>

Writs Filed or Litigated Against HRRRB
January 1, 2017 to July 16, 2019

Case Name	Issue	HRRRB Decision and Date	Superior Court Decision and Date
<p>12 <i>Sherman v. City of Oakland</i> RG15785257 No. A147769 Tenant Writ</p>	<p>Can evidence submitted to HRRRB and not to Hearing Officer be excluded by HRRRB? Substantial evidence for finding of exemption.</p>	<p>July 2014 – HRRRB affirmed hearing officer’s decision exempting the property and refused to hear tenant’s new evidence showing owner was not entitled to exemption</p>	<p>Superior Court – Denied Writ entirely While CCP 1094 permits remand of a matter to an administrative agency when it appears relevant evidence exists, which, in the exercise of reasonable diligence, could not have been produced earlier or was improperly excluded at the hearing, trial court has discretion to make that decision, and the decision will not be disturbed unless abused. Substantial evidence existed that evidence could have been produced earlier, and substantial evidence existed to support decision to grant exemption</p> <p>April 26, 2017 – Court of Appeal Affirmed Denial of Writ</p>
<p>13 <i>Michelsen v. City of Oakland</i> RG14711450 Owner Writ</p>	<p>When does exemption from RAP take effect?</p>	<p>October 28, 2013 – HRRRB affirmed hearing officer’s finding that the owner’s rent increases were unlawful for failure to provide RAP notice.</p>	<p>Superior Court – Denied Writ claiming that landlord’s later- granted exemption petition barred the earlier case granting rent restitution</p> <p>Exemption did not take effect until after landlord petitioned for exemption and the Rent Board’s decision was final</p>

INTRODUCED BY COUNCILMEMBER _____

CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

AN ORDINANCE AMENDING THE RENT ADJUSTMENT ORDINANCE (O.M.C.8.22.010 ET SEQ.) TO CREATE EFFICIENCY AND REDUCE APPEAL TIMES TO (1) LIMIT THE APPEALS TO THE FULL BOARD; (2) AUTHORIZE A SINGLE APPEAL OFFICER TO HEAR SELECT APPEALS; (3) EXTEND TERM LIMITS FOR BOARD MEMBERS TO THREE TERMS AND ESTABLISH MORE STRINGENT ATTENDANCE REQUIREMENTS FOR BOARD MEMBERS; AND (4) LIMIT ORAL ARGUMENT TIME ON APPEALS; AND (5) REQUIRING PARTIES TO SERVE PETITIONS

WHEREAS, the City of Oakland intends to have fair and timely resolution of Rent Program cases in the interest of justice; and

WHEREAS, when appeals are not heard timely, or when appeal hearings are cancelled, it causes hardship to the public in Oakland, including to landlords and tenants; and

WHEREAS, in order to minimize Rent Board and Appeal Panel meeting cancellations, it will be helpful to clarify attendance requirements for both regular and alternate Board members; and

WHEREAS, currently Board members with excellent attendance records may not be reappointed due to term limits; and

WHEREAS, extending term limits to three terms would allow Board members to continue service while retaining Mayoral discretion on reappointments; and

WHEREAS, in order to resolve and prevent a backlog of cases, the use of Appeal Panel for most appeals and a single hearing officer to resolve simple appeals should be encouraged; and

WHEREAS, the City Council wishes to allow the Rent Board to consider appeals more quickly in order to resolve and prevent a backlog of appeals; and

WHEREAS, this action is exempt under the California Environmental Quality Act ("CEQA") pursuant to, but not limited to the following CEQA Guidelines: §15378

(regulatory actions), § 15061 (b)(3) (no significant environmental impact), and § 15183 (actions consistent with the general plan); and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. Modification of Section 8.22.040 of the Oakland Municipal Code. Section 8.22.040 of the Oakland Municipal Code is hereby amended to read as follows (additions are shown as double underline and deletions are shown as ~~strikethrough~~):

8.22.040 - Composition and functions of the Board.

A. Composition.

1. Members. The Board shall consist of seven (7) regular members appointed pursuant to Section 601 of the City Charter. The Board shall be comprised of two (2) residential rental property owners, two (2) tenants, and three (3) persons who are neither tenants nor residential rental property owners. The Board shall also have six (6) alternate members, two (2) residential rental property owners, two (2) tenants and two (2) persons who are neither a tenants nor residential rental property owners appointed pursuant to Section 601 of the Charter. An alternate member may act at Board meetings in the absence of a regular Board member of the same category, and at Appeal Panels meetings without such an absence.
2. Appointment. A Board member is deemed appointed after confirmation by the City Council and upon taking the oath of office.
3. Board members serve without compensation.

B. Vacancies and Removal.

1. A vacancy on the Board exists whenever a Board member dies, resigns, or is removed, or whenever an appointee fails to be confirmed by the City Council within two City Council meetings of nomination by the Mayor.
2. Removal for Cause. A Board member may be removed pursuant to Section 601 of the City Charter. Among other things, conviction of a felony, misconduct, incompetency, inattention to or inability to perform duties, or absence from three consecutive meetings three regular meetings in a six-month period for regular members or not being available to attend more than half of Appeal Panel meetings in a six-month period for alternate members, except on account of illness or when absent from the city by permission of the Board, constitute cause for removal.
3. Report of Attendance. To assure participation of Board members, attendance by the members of the Board at all regularly scheduled and special meetings of the Board shall be recorded, and such record shall be provided annually to the Office of the Mayor and to the City Council.

C. Terms and Holdover.

1. Terms. Board members' terms shall be for a period of three (3) years beginning on February 12 of each year and ending on February 11 three (3) years later. Board members shall be appointed to staggered terms so that only one-third (1/3) of the Board will have terms expiring each year, with no

more than one Board member who is neither a residential rental property owner nor a tenant, and no more than one rental property owner and no more than one tenant expiring each year. Terms will commence upon the date of appointment, except that an appointment to fill a vacancy shall be for the unexpired portion of the term only. No person may serve more than three(3) consecutive full terms as a board member, nor more than three(3) consecutive full terms as an alternate. Time served as a board member shall be considered separately from time served as an alternate. For purpose of this paragraph, a full term means a full-three year term or a remainder term of more than half of a full term (one and half years).

2. Holdover. A Board member whose term has expired may remain as a Board member for up to one year following the expiration of his or her term or until a replacement is appointed whichever is earlier. The City Clerk shall notify the Mayor, the Rent Program, the Board, and affected Board member when a Board member's holdover status expires. Prior to notification by the City Clerk of the end of holdover status, a Board member may fully participate in all decisions in which such Board member participates while on holdover status and such decisions are not invalid because of the Board member's holdover status.

D. Duties and Functions.

1. Appeals. The Board, ~~or an Appeal Panel,~~ or an Appeal Officer hears appeals from decisions of hearing officers under the procedures set out in O.M.C. Section 8.22.120.
2. Regulations. The Board may develop or amend the regulations, subject to City Council approval.
3. Reports. The Board shall make such reports to the City Council or committees of the City Council as may be required by this chapter, by the City Council or City Council Committee.
4. Recommendations. The Board may make recommendations to the City Council or appropriate City Council committee pertaining to this chapter or City housing policy when requested to do so by the City Council or when the Board otherwise acts to do so.
5. Regular Meetings. The Board or an Appeal Panel shall meet regularly on ~~the second and fourth Thursdays of each month unless cancelled.~~ Rent Program staff is authorized to schedule these regular meetings either for the full Board or for an Appeal Panel.
6. Special Meetings. The Board or an Appeal Panel may meet at additional times as scheduled by the Board Chair or Rent Program staff.

E. Appeal Panels.

1. Appeal Panels shall hear appeals of Hearing Officer decisions.
2. Rent Program staff shall determine whether an appeal should be heard by an Appeal Panel, ~~or the full Board,~~ or an Appeal Officer in accordance with O.M.C. 8.22.120. ~~A party to an appeal may, however, elect not to have his/her case heard by a panel and instead to be heard by the full Board. A party may so elect by notifying the Rent Adjustment Program not more than ten (10) days after the notice of the panel hearing is mailed.~~
3. All Appeal Panel members must be present for a quorum. A majority of the Appeal Panel is required to decide an appeal.

4. Membership on an Appeal Panel is determined by Rent Program staff. Membership need not be permanent, but may be selected for each panel meeting. Appeal Panels may be comprised solely of Alternate Board Members, solely of Regular Board Members, or a combination of Regular Members and Alternate Members.

F. Appeal Officer

1. Staff may designate a single Appeal Officer to hear appeals designated in O.M.C. 8.22.120(B)(2).
2. The Appeal Officer may be a Staff person not involved in the decision appealed, a contract person hired for this purpose, or a Board member who is neither a tenant nor a residential rental property owner.

SECTION 2. Modification of Section 8.22.090 of the Oakland Municipal Code. Section 8.22.090 of the Oakland Municipal Code is hereby amended to read as follows (additions are shown as double underline and deletions are shown as ~~strikethrough~~):

8.22.090 - Petition and response to filing procedures.

A. Tenant Petitions.

1. Tenant may file a petition regarding any of the following:
 - a. A rent increase was given that is not based on the CPI rent adjustment, banking; and/or a final decision in an owner petition;
 - b. The owner set an initial rent in excess of the amount permitted pursuant to Section 8.22.080 (~~Rent increases following vacancies~~);
 - c. A rent increase notice failed to comply with the requirements of Subsection 8.22.070H;
 - d. The owner failed to give the tenant a notice in compliance with Section 8.22.060 and State law;
 - e. The owner decreased housing services to the tenant;
 - f. The tenant alleges the covered unit has been cited in an inspection report by the appropriate governmental agency as containing serious health, safety, fire, or building code violations pursuant to Subsection 8.22.070 D.6;
 - g. The owner fails to reduce rent on the month following the expiration of the amortization period for capital improvements, or to pay any interest due on any rent overcharges from the failure to reduce rent for a capital improvement.
 - h. The owner noticed a rent increase of more than the ten (10) percent annual limit or that exceeds the rent increase limit of thirty (30) percent in five years.
 - i. The petition is permitted by the Just Cause for Eviction Ordinance (Measure EE) O.M.C. 8.22.300 or its regulations.

- j. The petition is permitted by the Ellis Act Ordinance, O.M.C. 8.22.400, or its regulations.
 - k. The tenant contests an exemption from this O.M.C. 8.22, Article I or Article II.
 - l. The tenant claims the owner has received reimbursements for any portion of cost or financing of capital improvements after a capital improvement rent increase has been approved, and has not prorated and refunded such reimbursement.
2. For a petition contesting a rent increase, the petition must be filed as follows:
 - a. If the owner provided written notice of the existence and scope of this Chapter as required by Section 8.22.060 at the inception of tenancy:
 - i. The petition must be filed within ninety (90) days of the date the owner serves the rent increase notice if the owner provided the RAP notice with the rent increase; or
 - ii. The petition must be filed within one hundred twenty (120) days of the date the owner serves the rent increase if the owner did not provide the RAP notice with the rent increase.
 - b. If the owner did not provide written notice of the existence and scope of this Chapter as required by Section 8.22.060 at the inception of tenancy, within ninety (90) days of the date the tenant first receives written notice of the existence and scope of this Chapter as required by Section 8.22.060.
 3. For a petition claiming decreased housing services:
 - a. If the decreased housing is the result of a noticed or discrete change in services provided to the tenant (e.g., removal of parking place, requirement that tenant pay utilities previously paid by owner) the petition must be filed within ninety (90) days of whichever of the following is later:
 - i. The date the tenant is noticed or first becomes aware of the decreased housing service; or
 - ii. The date the tenant first receives written notice of the existence and scope of this Chapter as required by Section 8.22.060.
 - b. If the decreased housing is ongoing (e.g., a leaking roof), the tenant may file a petition at any point but is limited in restitution for ninety (90) days before the petition is filed and to the period of time when the owner knew or should have known about the decreased housing service.
 4. In order to file a petition or respond to an owner petition, a tenant must provide the following at the time of filing the petition or response:
 - a. A completed tenant petition or response on a form prescribed by the rent adjustment program;
 - b. Evidence that the tenant's rent is current or that the tenant is lawfully withholding rent; and

- c. A statement of the services that have been reduced or eliminated, if the tenant claims a decrease in housing services;
 - d. A copy of the applicable citation, if the tenant claims the rent increase need not be paid because the covered unit has been cited in an inspection report by the appropriate governmental agency as containing serious health, safety, fire, or building code violations pursuant to Section 8.22.070D.6.
 - e. Proof of service that the tenant petition or response and any supporting documents were served on the owner.
5. A tenant must file a response to an owner's petition within thirty (30) days of service of the notice by the rent adjustment program that an owner petition was filed.

B. Owner Petitions and Owner Responses to Tenant Petitions.

- 1. In order for an owner to file a response to a tenant petition or to file a petition seeking a rent increase, the owner must provide the following:
 - a. Evidence of possession of a current City business license;
 - b. Evidence of payment of the rent adjustment program service fee;
 - c. Evidence of service of written notice of the existence and scope of the rent adjustment program on the tenant in each affected covered unit in the building prior to the petition being filed;
 - d. A completed response or petition on a form prescribed by the rent adjustment program; and
 - e. Documentation supporting the owner's claimed justification(s) for the rent increase or supporting any claim of exemption.
 - f. Proof of service that the owner petition or response and any supporting documents were served on the tenants of all units affected by the petition.
- 2. An owner must file a response to a tenant's petition within thirty (30) days of the service of the notice by the rent adjustment program that a tenant petition was filed.

SECTION 3. Modification of Section 8.22.120 of the Oakland Municipal Code. Section 8.22.120 of the Oakland Municipal Code is hereby amended to read as follows (additions are shown as double underline and deletions are shown as ~~strikethrough~~):

8.22.120 - Appeal procedure.

A. Filing an Appeal.

- 1. Either party may appeal the Hearing Officer's decision, including an administrative decision, within fifteen (15) days after service of the notice of decision by filing with the Rent Adjustment Program a written notice on

a form prescribed by the Rent Adjustment Program setting forth the grounds for the appeal.

2. The matter shall be set for an appeal hearing and notice thereof shall be served on the parties not less than ten days prior to such hearing.

B. Assignment of Appeals

1. Staff shall assign to the Board only those appeals that involve an Owner's petition seeking a certificate of exemption, a claim of exemption in response to a Tenant's petition, or other important decisions as determined by Staff.
2. Staff may assign to an Appeal Officer appeals that consist only of issues that meet all of the following criteria: (1) routine; (2) procedural; and (3) non-substantive. Examples include issues such as whether good cause exists for failing to appear at a hearing or failure to meet deadlines such as a petition deadline, a response deadline, or deadline to submit evidence. The Regulations may specify other appeals that may be assigned to an Appeal Officer.
3. All other cases may be assigned by Staff to Appeal Panels.

BC. Appeal Hearings. The following procedures shall apply to all Board and Appeal Panel appeal hearings:

1. ~~The Board or Appeal Panel~~ Appeal Body shall have a goal of hearing the appeal within thirty (30) days of filing the notice of appeal.
2. All appeal hearings conducted by the ~~Board or Appeal Panel~~ Appeal Body shall be public and recorded.
3. Any party to a hearing may be assisted by an attorney or any person so designated.
4. Appeals shall be based on the record as presented to the Hearing Officer unless the ~~Board or Appeal Panel~~ Appeal Body determines that an evidentiary hearing is required. If the ~~Board or Appeal Panel~~ Appeal Body deems an evidentiary hearing necessary, the case will be continued and the ~~Board or Appeal Panel~~ Appeal Body shall issue a written order setting forth the issues on which the parties may present evidence. All evidence submitted to the ~~Board or Appeal Panel~~ Appeal Body must be submitted under oath.
5. ~~Should the appellant fail to appear at the designated hearing, the Board or Appeal Panel~~ Appeal Body may dismiss the appeal.
5. The presentation time for each party is limited to three minutes, unless the regulations allow for more time. The Appeal Body or the chair of the Appeal Body may also modify the time limit in an individual appeal.

CD. ~~Board or Appeal Panel~~ Appeal Body's Decision Final. The ~~Board~~ Appeal Body's decision is final. Parties cannot appeal to the City Council. Parties cannot appeal the decision of an Appeal Panel or an Appeal Officer to the full Board.

DE. Court Review. A party may seek judicial review of a final decision of the ~~Board or Appeal Panel~~ Appeal Body pursuant to California Civil Code Section 1094.5 within the time frames set forth therein.

SECTION 4. DIRECTIONS TO RENT ADJUSTMENT BOARD. The Rent Adjustment Board shall propose changes to the Rent Adjustment Regulations to conform the regulations to the changes hereby made to the ordinance and propose such changes to the City Council within 120 days of the adoption of this Ordinance.

SECTION 5. This action is exempt under the California Environmental Quality Act ("CEQA") pursuant to, but not limited to the following CEQA Guidelines: §15378 (regulatory actions), § 15061 (b)(3) (no significant environmental impact), and § 15183 (actions consistent with the general plan).

SECTION 6. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

SECTION 7. Effective Date. This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA

PASSED BY THE FOLLOWING VOTE:

AYES - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO AND PRESIDENT KAPLAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

Date of Attestation: _____

NOTICE AND DIGEST

AN ORDINANCE AMENDING THE RENT ADJUSTMENT ORDINANCE (O.M.C.8.22.010 ET SEQ.) CREATE EFFICIENCY AND REDUCE APPEAL TIMES TO (1) LIMIT APPEALS TO THE FULL BOARD; (2) AUTHORIZE A SINGLE APPEAL HEARING OFFICER TO HEAR SELECT APPEALS; (3) EXTEND TERM LIMITS FOR BOARD MEMBERS TO THREE TERMS AND ESTABLISH MORE STRINGENT ATTENDANCE REQUIREMENTS FOR BOARD MEMBERS; AND (4) LIMIT ORAL ARGUMENT TIME ON APPEALS; AND (5) REQUIRING PARTIES TO SERVE PETITIONS

This Ordinance amends the Rent Adjustment Ordinance to (1) limit the appeals to full board to exemption cases and other important cases; (2) authorize a single appeal officer to hear select appeals involving routine, procedural, non-substantive issues; (3) extend term limits to three terms and establish more stringent attendance requirements for board members; (4) limit oral argument time on appeals to three minutes; and (5) requiring parties to serve petitions.