

**HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD
FULL BOARD SPECIAL MEETING**

February 25, 2021

5:00 P.M.

Meeting Will Be Conducted Via Video Conference

AGENDA

PUBLIC PARTICIPATION

The public may observe and/or participate in this meeting many ways.

OBSERVE:

• To observe, the public may view the televised video conference by viewing KTOP channel 10 on Xfinity (Comcast) or ATT Channel 99 and locating City of Oakland KTOP – Channel 10.

• To observe the meeting by video conference, please click on this link: You are invited to a Zoom webinar.

Topic: HOUSING, RESIDENTIAL RENT AND RELOCATION FULL BOARD MEETING February 25, 2021, 5:00 PM

Please click the link below to join the webinar:

<https://zoom.us/j/93763984290>

Or iPhone one-tap :

US: +12532158782,,93763984290# or +13017158592,,93763984290#

Or Telephone:

Dial(for higher quality, dial a number based on your current location):

US: +1 253 215 8782 or +1 301 715 8592 or +1 312 626 6799 or +1 346 248 7799 or +1 669 900 6833 or +1 929 205 6099

Webinar ID: 937 6398 4290

International numbers available: <https://zoom.us/u/axhRAKQ8s>

COMMENT:

There are two ways to submit public comments.

- To comment by Zoom video conference, click the “Raise Your Hand” button to request to speak when Public Comment is being taken on an eligible agenda item at the beginning of the meeting. You will be permitted to speak during your turn, allowed to comment, and after the allotted time, re-muted. Instructions on how to “Raise Your Hand” are available [here](#).
- To comment by phone, please call on one of the above listed phone numbers. You will be prompted to “Raise Your Hand” by pressing “*9” to speak when Public Comment is taken. You will be permitted to speak during your turn, allowed to comment, and after the allotted time, re-muted. Please unmute yourself by pressing *6.

If you have any questions, please email Bkong-brown@oaklandca.gov.

HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD

1. CALL TO ORDER

2. ROLL CALL

3. CONSENT ITEMS

- a) Approval of Board minutes from February 11, 2021

4. OPEN FORUM

5. APPEALS*

- a. T18-0218, Sund v. Vernon Street Apts, LLC
- b. T19-0186, T19-0235, Didrickson v. Commonwealth Co.
- c. T19-0301, Burnett v. Joyce

6. ACTION ITEMS

- a. Review of changes to Resolution No. 21-001 and Resolution No. 21-002
- b. Election of Board Chair

7. INFORMATION AND ANNOUNCEMENTS

- a. Rent Adjustment Program Updates (C. Franklin-Minor)
- b. Legislative Updates (Office of the City Attorney)

8. COMMITTEE REPORTS AND SCHEDULING

9. ADJOURNMENT

As a reminder, alternates in attendance (other than those replacing an absent board member) will not be able to take any action, such as with regard to the consent calendar.

*Staff appeal summaries will be available at the Rent Program website and the Clerk's office at least 72 hours prior to the meeting pursuant to O.M.C. 2.20.080.C and 2.20.090

Accessibility. Contact us to request disability-related accommodations, American Sign Language (ASL), Spanish, Cantonese, Mandarin, or another language interpreter at least five (5) business days before the event. Rent Adjustment Program staff can be contacted via email at RAP@oaklandca.gov or via phone at (510) 238-3721. California relay service at 711 can also be used for disability-related accommodations.

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 RAP@oaklandca.gov o llame al (510) 238-3721 o 711 por lo menos cinco días hábiles antes de la reunión.

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 RAP@oaklandca.gov 或致電 (510) 238-3721 或 711 California relay service.

**HOUSING, RESIDENTIAL RENT AND RELOCATION
BOARD FULL BOARD SPECIAL MEETING**

February 11, 2021

5:00 P.M.

**VIA ZOOM CONFERENCE
OAKLAND, CA**

MINUTES

1. CALL TO ORDER

The Board meeting was administered via Zoom by H. Grewal, Housing and Community Development Department. He explained the procedure for conducting the meeting. The HRRRB meeting was called to order at 5:02 p.m. by Chair R. Stone.

2. ROLL CALL

| MEMBER | STATUS | PRESENT | ABSENT | EXCUSED |
|------------------------|----------------|----------------|---------------|----------------|
| T. HALL | Tenant | X | | |
| R. AUGUSTE | Tenant | | | X |
| H. FLANERY | Tenant Alt. | X | | |
| Vacant | Tenant Alt. | | | |
| | | | | |
| R. STONE | Homeowner | x | | |
| A. GRAHAM | Homeowner | X | | |
| S. DEVIUONO- POWELL | Homeowner | X* | | |
| E. LAI | Homeowner Alt. | | | X |
| J. MA POWERS | Homeowner Alt. | | | X |
| | | | | |
| K. FRIEDMAN | Landlord | X | | |
| T. WILLIAMS | Landlord | X | | |
| B. SCOTT | Landlord Alt. | | | X |
| K. SIMS | Landlord Alt. | | | X |

*Member S. Devuono-Powell appeared at 5:30 p.m.

Staff Present

Oliver Luby
Barbara Kong-Brown
Barbara Cohen
Harman Grewal

Deputy City Attorney
Senior Hearing Officer (RAP)
Acting Senior Hearing Officer (RAP)
Business Analyst III (HCD)

3. CONSENT ITEMS

- a) Approval of Board Minutes from February 4, 2021, Full Board Special Meeting

K. Friedman moved to approve the Rent Board minutes. R. Stone Seconded.

The Board voted as follows:

Aye: K. Friedman, T. Hall, R. Stone, S. Devuono-Powell, T. Williams
Nay: None
Abstain: H. Flanery

The motion carried.

4. OPEN FORUM

James Vann, Oakland Tenants Union

- 1) Commented on the proof of service requirement in the Efficiency Ordinance, and requested full packets be served on the first named tenant and that in multiple party cases tenants should be able to request their own packets of information from the owner; 2) In capital improvement cases if there is an owner occupied unit or an employee occupied unit, these units should be included in the amortization of costs to the units; 3) Requests elimination of Banking.

Emily Wheeler, Oakland Tenants Union

- Supports the latest tenants' rights coalition letter. Requests elimination of the 5-day deadline. Both tenants and landlords benefit if the tenant can move in a new roommate and pay rent on time. Echoes James Vann's comments supporting elimination of banking or limiting it to a period of years.

John Dabor, Oakland Tenants Union

- Supports the changes in the tenants' rights coalition letter. States banking should be eliminated. If not, limit to 5 years, and do not transfer it to the new owner.

Eddie Duarte, Oakland Tenants Union

- Is a longtime resident. The rent law gets better year after year. He looked carefully at the changes in the rent regulations and requests elimination of banking, which can be 8-10% over the course of a year.

Ben Sigurest, JDW Tenants Union

- Wants to eliminate the 5-day deadline for submission of a tenant request. This makes it harder for the tenant to find a roommate. Objects to sanctions for filing maintenance requests or helping tenants to file a complaint.

Laurel Chan

- Supports the recent tenants' rights coalition letter, conforming to the screening process of the prior tenant. Disagrees with Board member K. Friedman's language on landlord harassment, which discourages tenants. Supports language prohibiting illegally gathered evidence.

Jackie Zaneri

- Referenced a third letter from ACCE, requesting removal of the 5-day deadline on Bates p. 39, sub section 5. Also, on Bates p. 40, sub section 2, to allow landlord to add new criteria. The tenant should not have to be richer or have higher standards.

Laura Everly, Oakland Tenants Union

- Discrimination against tenants' law exists for a reason. Does not want to see new tenants held to higher standards. Narrowing the time deadline creases an undue burden on tenants. She supports the recommendations.

Meena

- Thanked ACCE and tenant support group for their work to represent disenfranchised tenants. Commented on board member K. Friedman's proposed language, stating that tenants are displaced frequently due to financial demands. Contesting rent increases is not frivolous. Requests for repairs is part of the contractual obligation and landlord's responsibility to complete repairs, and part of the responsibility of owning property. Saying repairs are unnecessary places blame on tenants for following the lease agreement. This is intended to prevent tenants from exercising their rights. We already fear requesting safety and habitability repairs,

5. Committee Reports and Scheduling

a. Selection of new Board chair deferred

Chair Stone and member Friedman announced that their terms have expired as of February 11, 2021, and they will be serving possibly as alternates.

- b. Board member Friedman’s proposed language regarding Section 8.22.360 (A)(2)(d)(ii) 7-Chair Stone stated the Board would discuss the proposed language in the action items section.

6. Action Items

- a. Resolution No. 21-001-Amendments to Rent Adjustment Program Regulations & Appendix A

The Board discussed addition of language to the definition of principal residence, that “the hearing officer shall not consider evidence in support of a petition that is obtained in violation of California Civil Code §1954 or the Oakland Tenant Protection Ordinance.

A.Graham moved to amend the draft regulations for further consideration, including the change discussed. S. Devuono-Powell seconded.

Chair Stone offered a friendly amendment, to approve Resolution No. 21-001, with the changes shown in Bate pages 11 to 35, with the addition of the changes discussed in the definition of “primary residence”, and recommends that the City Council adopt these changes. A. Graham seconded. The Board voted as follows:

Aye: K. Friedman, T. Hall, H. Flanery, R. Stone, A. Graham, S. Devuono-Powell, T. Williams
Nay: None
Abstain: None

The motion was approved by consensus.

- b. Amendments to Just Cause for Eviction Ordinance

Regarding Resolution No. 21-002, the Board discussed the following changes:

- 1). 8.22.360.A.2 (d)(i) (4) where the proposed occupant will be legally `obligated to pay some or all of the rent to the Landlord and the Landlord can establish the proposed additional lack of creditworthiness, so long as the Landlord does not use more stringent criteria or processes with the proposed occupant that they or **their predecessor used with any of the original or**

subsequent occupants. Replace with "that they or their predecessor used with any of the current occupants of the subject unit." (Bate page 39).

2) Delete). 8.22.360.A.2 (d)(i) (5)

5) where the proposed occupant does not comply within five (5) days of receipt of a written request by the Landlord to complete the Landlord's standard form application or provide sufficient information to allow the Landlord to conduct a typical background check, if the Landlord's written request was made within five (5) days of receipt of the Tenant's request to add the proposed occupant. (Bate 39).

3) Proposed Regulation 8.22.360.A.2 d. ii (6)

Replace "reasonable scope of the application process." with "generally accepted application process."

Denial based on refusal to provide information or participate in processes outside generally accepted application process.

4) Add definition of creditworthiness, subsection 8.22.360.A.2 d. iv, and import to bottom of Bate page 41, as follows:

As used in O.M.C. Section 8.22.360 A.2 and Regulation 8.22.360.A.2, "creditworthiness" includes any standard of determining suitability to receive credit or reliability to pay money owed, including any financial or income standard.

5) The Board discussed member Friedman's proposed language on Section 8.22.360 (A)(2)(d)(ii) 7 of the amendments to the Just Cause Eviction Regulations:

Denial based on the Tenant's or proposed occupant's requesting repairs, contesting rent increases, or filing a complaint with a government agency, except when the Tenant or proposed occupant did so to harass a Landlord. Such harassment may take the form of burdensome or meritless filings with a municipal rent program or government agency, frivolous petitions

contesting rent increases, or a pattern of requesting unnecessary repairs.

The Board did not adopt this language and member Friedman requested that the City Attorney's office draft language to address her concerns.

The Board discussed whether to vote on Resolution No.21-002 or wait until the next Board meeting. The Board decided to vote at tonight's meeting.

Chair Stone moved to approve Resolution No. 21-002, with the changes outlined in paragraphs 1 through 4 stated above. K. Friedman seconded.

The Board voted as follows:

Aye: K. Friedman, T. Hall, H. Flanery, R. Stone, A. Graham, S. Devuono-Powell, T. Williams

Nay: None

Abstain: None

The motion was approved by consensus.

7. OPEN FORUM

James Vann

- Asked about Appendix A and was informed that it was passed in Resolution 21-001.

8. ADJOURNMENT

The meeting was adjourned at 9:20 p.m. by consensus.

CHRONOLOGICAL CASE REPORT

Case No.: T18-0018

Case Name: Sund v Vernon Street Apartments

Property Address: 633 Alma Ave., #5, Oakland, CA

Parties:

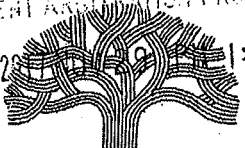
| | |
|-------------------|----------------------------|
| Jessica Sund | (Tenant) |
| Paul Kranz | (Attorney for Tenant) |
| Kim Rohrbach | (Paralegal for Petitioner) |
| Greg McConnell | (Owner Representative) |
| JR McConnell | (Owner Representative) |
| Don MacRitchie | (Witness for Owner) |
| Ursula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

TENANT APPEAL:

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

000010

T18-0018 RC/MA

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

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

Please print legibly

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

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

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

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

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

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

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

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

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

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

When did the owner first provide you with the RAP NOTICE, a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program? Date: No later than . If never provided, enter "Never."
2014-2015 or thereabout

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

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

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

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

Have you ever filed a petition for this rental unit?

Yes
 No

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

III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:

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

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

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

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

Please attach documentary evidence if available.

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

IV. VERIFICATION: The tenant must sign:

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

Ground
Tenant's Signature

11/29/17
Date

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

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

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

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

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

Tenant's Signature

Date

VI. IMPORTANT INFORMATION:

Time to File

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

File Review

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

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



Printed form provided by the owner

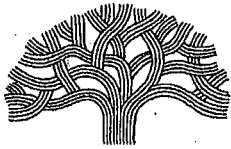
____ Pamphlet distributed by the Rent Adjustment Program

____ Legal services or community organization

____ Sign on bus or bus shelter

____ Rent Adjustment Program web site

____ Other (describe): _____



CITY OF OAKLAND

**CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM**

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

For date stamp, RECEIVED
CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM
2018 APR -2 PM 4:04

PROPERTY OWNER
RESPONSE

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

CASE NUMBER T 18-0018

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

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

** Documentation will be submitted prior to hearing

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

** Documentation will be submitted prior to hearing

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

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

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

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

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

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

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

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

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

The tenant moved into the rental unit on _____.

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

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

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

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

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

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

III. EXEMPTION

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

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

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

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

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

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

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

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

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

IV. DECREASED HOUSING SERVICES

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

V. VERIFICATION

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

Property Owner's Signature

4/2/18

Date

IMPORTANT INFORMATION:

Time to File

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

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

File Review

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

Mediation Program

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

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

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

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

Property Owner's Signature

Date

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

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

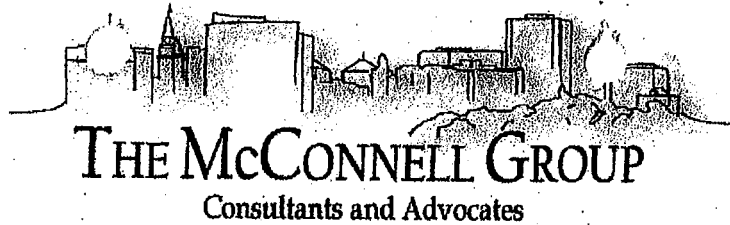
Attachment A

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

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

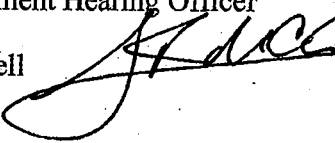
Owner denies all allegations in the petition and Owner reserves the right to supplement this response with testimony at hearing and evidentiary documentation prior to hearing, per RAP regulations.

RECEIVED
APR 2 2018
2018 APR -2 PM 4:04



2018 MAY 22 PM 1:03

Memorandum

To: Rent Adjustment Hearing Officer
From: JR McConnell 
Date: 5/22/2018
Subject: Additional documentation re: T18-0018

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

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

Thank you.

May 20, 2018

Re: Sund, Jessica Maggie - 633 Alma #5

DATA SEARCHES RE: JESSICA MAGGIE SUND

DOB:

SSN. XXX issued in California in 1985.

CONCLUSIONS:

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

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

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SUMMARY:

ADDRESS HISTORY

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

Database #1:

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

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

Database #2:

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

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

Database #3:

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

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

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

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

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

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

(See pages 9-15)

TELEPHONE NUMBER DATABASES

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

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

(See pages 15-16)

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UTILITIES

Utilities databases identified no account associated with Jessica Sund.

REAL PROPERTY OWNERSHIP RECORDS

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

ALAMEDA COUNTY RECORDER INDEXES:

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

CALIFORNIA DMV RECORDS:

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

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

(See pages 16-18)

VEHICLE SIGHTINGS:

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

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

(See pages 18-23)

VOTER REGISTRATION:

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

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

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

(See pages 24-27)

BUSINESS ENTITIES/EMPLOYMENT RECORDS:

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

(See pages 27-28)

LIENS & JUDGMENTS:

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

CALIFORNIA SUPERIOR COURT CIVIL RECORDS:

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

(See pages 28-33)

CALIFORNIA SUPERIOR COURT CRIMINAL RECORDS:

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

ARIZONA SUPERIOR COURT CIVIL & CRIMINAL RECORDS:

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

NATIONWIDE FEDERAL BANKRUPTCY, CIVIL AND CRIMINAL COURT RECORDS:

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

INTERNET SEARCHES:

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

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

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

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

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

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

(See pages 34-43)

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

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

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

(See pages 44-49)

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

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

- Cory T. Hamrick with reported dates of 05/04/1999-12/05/2017**
- Erica Winn with reported dates of 11/05/2012-11/28/2017**
- Jessica M. Sund with reported dates of 07/01/2017-07/01/2017**

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

(See pages 50-52)

SUBJECT INFO:

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

ADDRESS HISTORY

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

Database #1:

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

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

Database #2:

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

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

Database #3:

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

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

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

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

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

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

DECEMBER 5, 2017 DATABASE SEARCHES:

Database #1

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Database #2

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

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

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

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

886 CLEVELAND ST, OAKLAND, CA 94606-1568, ALAMEDA COUNTY (Feb 1999)

3445 PIERSON ST, OAKLAND, CA 94619-3425, ALAMEDA COUNTY (Aug 1991 - Mar 1993)

Database #3

| Name | Address | SSN / DOB | Phone |
|-------------------|---|--|---|
| SUND JESSICA M | 4x 633 ALMA AVE 5 OAKLAND, CA 94610-3857 Reported: 08/28/2008 - 12/05/2017 County: ALAMEDA | 556-83-XXXX Issued: 1985 in CA DOB: 01/XX/1976 Age: 41 | Cell: (510)206-5436 Cell: (510)306-5436 Landline: (510)836-0705 |
| SUND JESSICA M | 4x PO BOX 11634 OAKLAND CA 94611-0634 Reported: 06/20/2008 - 09/12/2008 County: ALAMEDA | 556-83-XXXX Issued: 1985 in CA DOB: 01/XX/1976 Age: 41 | |

NEILSON AND MACRITCHIE
INVESTIGATORS
SINCE 1953

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

NEILSON AND MACRITCHIE
INVESTIGATORS
SINCE 1953

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

MAY 18, 2018 DATABASE SEARCHES:

Database #1:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Database #2:

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

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

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

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

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

NEILSON AND MACRITCHIE
INVESTIGATORS
SINCE 1953



CITY OF OAKLAND

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

Housing and Community Development Department
Rent Adjustment Program

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

HEARING DECISION

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

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

HEARING DATE: May 30, 2018
June 4, 2018

SITE INSPECTION : June 4, 2018

DECISION DATE: December 20, 2018

APPEARANCES:

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

SUMMARY OF DECISION

The petitioner's petition is DENIED.

INTRODUCTION

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

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

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

ISSUES PRESENTED

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

EVIDENCE

Petitioner's Status as a Tenant

Testimony of Jessica Sund - Petitioner

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

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

¹ Exhibit 1

² Exhibit 2

³ Exhibit 3

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

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

Testimony of Lucky Stewart – Agent for Owner

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

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

⁴ Exhibit 4

⁵ Exhibit 5

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

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

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

⁶ Exhibit 12

⁷ Exhibit 12

⁸ Exhibit 11

⁹ Exhibit 2

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

Testimony of Property Manager – Ursula Morales

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

Testimony of Don MacRitchie - Private Investigator

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

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

¹⁰ Exhibit 1

¹¹ T16-0707 *Brown v. Wasserman*

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

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

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

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

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

Site Inspection

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

¹² Exhibits 7 and 8

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Petitioner's Status as a Tenant

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

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

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

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

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

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

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

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

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

Costa-Hawkins

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

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

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

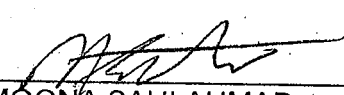
The testimony and documentary evidence constitute substantial evidence that the petitioner no longer permanently resides in the subject unit and therefore lacks standing to file this petition.

ORDER

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

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

Dated: December 20, 2018



MAIMOONA SAHI AHMAD
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE

Case Number T18-0018

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

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

Documents Included

Hearing Decision

Manager

Thomas Preston
633 Alma Avenue
Oakland, CA 94619

Manager

Ursula Morales
633 Alma Avenue
Oakland, CA 94619

Owner

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

Owner Representative

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

Owner Representative

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

Tenant

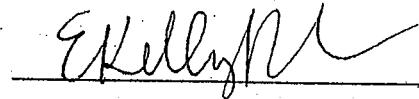
Jessica Sund
633 Alma Avenue #5
Oakland, CA 94610

000043

Tenant Representative
Paul Kranz
639 San Gabriel Avenue
Albany, CA 94706

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

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

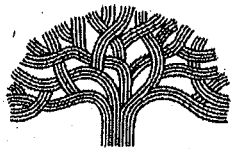


Esther K. Rush

Oakland Rent Adjustment Program

000044

CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM



CITY OF OAKLAND

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

For date stamp

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JAN 09 2019

RENT ADJUSTMENT PROGRAM
OAKLAND APPEAL

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

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

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

For more information phone (510) 238-3721.

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

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

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

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

| | |
|------------------------|--|
| Name | |
| Address | |
| City, State Zip | |
| Name | |
| Address | |
| City, State Zip | |

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| Paul L. Kenz | 01/09/2019 |
| SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE | DATE |

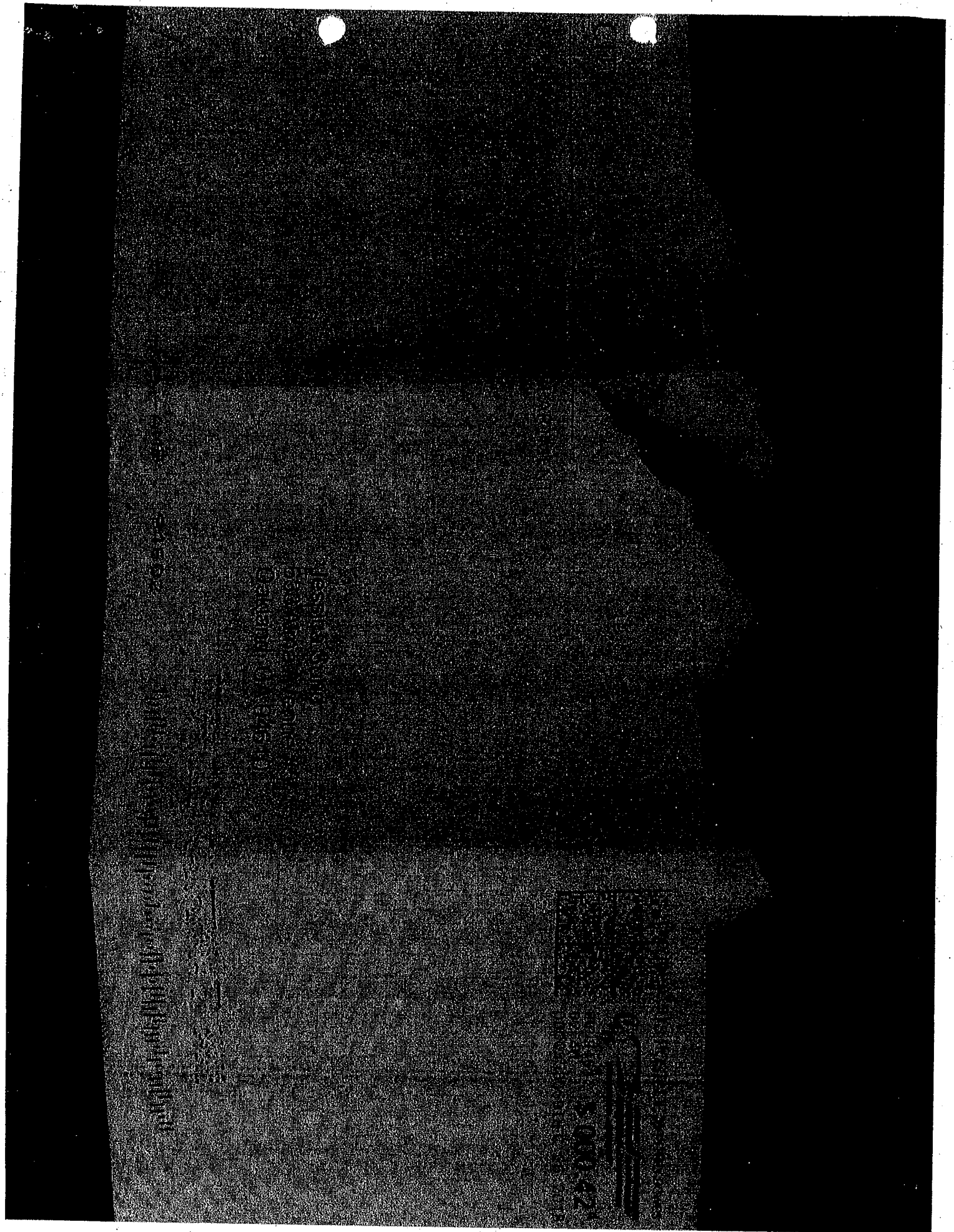
For more information phone (510) 238-3721.

ATTACHMENT 1

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

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

ATTACHMENT 2

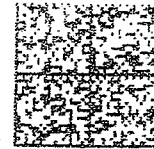


CITY OF OAKLAND

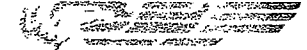


HOUSING & COMMUNITY DEVELOPMENT DEPARTMENT
RENT ADJUSTMENT PROGRAM
250 FRANK H. OGAWA PLAZA
SUITE 5313
OAKLAND, CA 94612-0234

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PROOF OF SERVICE
Case Number T18-0018

I, the undersigned, certify and attest as follows:

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

On January 9, 2019, I caused the within:

CITY OF OAKLAND RENT ADJUSTMENT-APPEAL

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

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

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

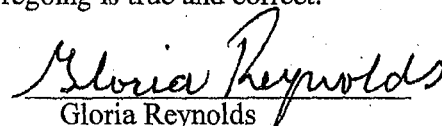
JR McConnell, The McConnell Group
300 Frank Ogawa Plaza Suite # 460
Oakland, California 94607

Thomas Preston
633 Alma Avenue
Oakland, California 94619

Ursula Morales
633 Alma Avenue
Oakland, California 94619

Executed Albany, California on January 9, 2019.

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


Gloria Reynolds

000051

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

July 5, 2019

RECEIVED

JUL 12 2019

**RENT ADJUSTMENT PROGRAM
OAKLAND**

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

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

Dear Ms. Barbara Kong-Brown

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

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

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

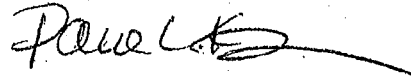
I look forward to hearing from you about these matters.

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

Thank you for your consideration.

Very truly yours,

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

Paul L. Kranz

PLK:gr

000053

Kong-Brown, Barbara

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

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

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

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

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

Jessica Sund v. Vernon Street
Apartments, LP

T18-0018
633 Alma Street
#5

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

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

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INTRODUCTION

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

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

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

Petitioner's Brief in Support of Appeal

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

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

STATEMENT OF FACTS

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

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

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

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

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

The Hearing Officer’s Decision and Findings

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

²See Exhibit 6, pp. 1–2

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

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

³See Attachment 6, p. 2

⁴See Attachment 6, pp. 2-3

⁵See Attachment 6, pp. 3, 24,

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

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

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

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

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

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

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

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

/ / /

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

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

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

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

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

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

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

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

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

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

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

MACRITCHIE: YES.

MR. KRANZ: AND WHAT DID THEY TELL YOU ?

MACRITCHIE: WHAT I JUST TOLD YOU.

ARGUMENT

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

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

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

II. The Decision Constitutes An Abuse of Discretion.

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

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

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

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

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

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

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

This evidence was, further, undisputed.

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

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

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

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

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

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

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

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

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

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

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

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

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

A. The Evidence Establishes a Case of Constructive Eviction.

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

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

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

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

B. The Evidence Establishes a Case of Retaliation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Submitted 1/24/19

Paul Kranz
Paul Kranz,
Esq

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

Attachment 1



Unread

Update

1 message

Fri, Aug 24, 2017 at 10:10 AM

[Redacted]

August 24, 2017

Jessica Sund
633 Alvin Ave #9
Oakland, CA 94610
jessica@jessicasund.com

Thomas Preston, Property Supervisor
Jama Residential LP
633 Alvin Ave
Oakland, CA 94610
(510) 775-1007
t.preston@jamares.com

Dear Mr. Preston,

Please accept this email as written notice that my apartment unit will be moving into my apartment at 633 Alvin Ave #9, Oakland, CA 94610 this weekend, on August 25th or 26th, 2017. Also, I am pregnant and my baby is expected in October 2017. I am sending this one to you because I do not have a mailing address for you.

Thank you

Sincerely,
Jessica Sund

- 8/24/17 T. Preston sent email (above) No reply
- 8/28/17 T. Preston left message re: did you receive email sent 8/24/17? No reply
- 8/29/17 T. Preston left message re: " No reply

Attachment 2

000071

Alma Apartments LP

633 Alma
Oakland, CA

Jessica Sund
633 Alma # 5
Oakland, Ca

August 26, 2017

RE: 633 Alma #5 demand.

Dear Ms. Sund:

Thank you for your email and voicemail.

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

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

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

Sincerely,



Thomas Preston

Property Supervisor

000072

ENCLAVE CARD

07 SEP 2017 01:11

Jessica Mayja Sund
All-time Champion
683 Main Street
Oakland, CA 94610

000073

Attachment 3

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

NOTICE TO CHANGE TERMS OF TENANCY
-RENT INCREASE NOTICE-

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

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

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

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

All other terms of the tenancy will remain unchanged.

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

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

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

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

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

Costa-Hawkins Rent Increase for 633 Alma Street, Unit Number 5, Oakland, CA

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

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

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

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

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

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

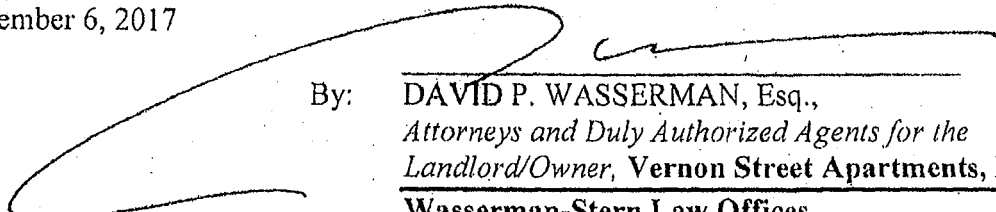
Information regarding this NOTICE may be obtained from the City of Oakland's Rent Adjustment Program. Parties seeking legal advice concerning evictions should consult with an attorney. The Rent Program is located at 250 Frank H. Ogawa Plaza, Suite 5313, Oakland, California 94612, 510.238.3721, website: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

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

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

Dated: September 6, 2017

WASSERMAN-STERN

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

Wasserman-Stern Law Offices

2960 Van Ness Avenue

San Francisco, CA 94109

Tel. No.: (415) 567-9600

Fax. No.: (415) 567-9696

Email: dwasserman@wassermanstern.com

CITY OF OAKLAND



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

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

NOTICE TO TENANTS OF THE RESIDENTIAL RENT ADJUSTMENT PROGRAM

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

TENANTS' SMOKING POLICY DISCLOSURE

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

I received a copy of this notice on _____

(Date)

(Tenant's signature)

此份屋崙(奧克蘭)市租客權利通知書附有中文版本。請致電(510) 238-3721 索取副本。

La Notificación del Derecho del Inquilino está disponible en español. Si desea una copia, llame al (510) 238-3721.

DAVID P. WASSERMAN, ESQ. (171923)
WASSERMAN-STERN LAW OFFICES
2960 Van Ness Avenue, Suite B
San Francisco, California 94109

(415) 567-9600

Attorneys for: 633 ALMA STREET
Insert name of court, judicial district and branch court, if any:

Ref. No. Or File No.
W2683460

Plaintiff:
633 ALMA STREET

Defendant:
JESSICA MAGGIE SUND (original occupant)

POS BY MAIL

Hearing Date:

Time:

Dept/Div:

Case Number:

At the time of service I was at least 18 years of age and not a party to this action.
On September 6, 2017, I served the within:

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

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

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

Person serving:
Scott Lane
Wheels of Justice, Inc.
52 Second Street, Third Floor
San Francisco, California 94105
Phone: (415) 546-6000

a. Fee for service:
d. Registered California Process Server
(1) Employee or independent contractor
(2) Registration No.: 1126
(3) County: San Francisco

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

Date: September 6, 2017

Signature: _____

Scott Lane



Attachment 4

Alma Apartments
633 Alma
Oakland, CA 94610

August 22, 2017

Jessica Sund
633 Alma Apt. 5
Oakland, CA 94610

Dear Jessica Sund,

In the short time that we have taken over the management and ownership of the building, our managers have noticed and received complaints regarding an over-staying presence of visitors coming and going from unit 5. These visitors seem to be coming and going at will and go freely, yet you are not around. What is also troubling is that some of these visitors are disturbing your neighbors and this is their home.

Your neighbors and your landlord require cooperation and respect. This lease is in your name only. Your lease does not allow for subletting of the premise.

Please review section 11. USE/OCCUPANCY and SUBLETTING in your lease as we believe this is a violation of the days.

Thank you in advance
Sincerely yours,

Management

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PROOF OF SERVICE
Case Number T18-0018

I, the undersigned, certify and attest as follows:

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

On January 24, 2019, I caused the within:

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

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

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

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

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

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

Gloria Reynolds

Gloria Reynolds

000081

CITY OF OAKLAND RENT ADJUSTMENT PROGRAM

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

CASE NO. T18-0018

JESSICA SUND,
Petitioner and Tenant

v.

**VERNON STREET APARTMENTS, LP, AKA FLYNN FAMILY HOLDINGS,
LLC.,**
Owner and Respondent.

LAW OFFICES OF PAUL L. KRANZ
PAUL L. KRANZ (BAR NO. 114999)
639 SAN GABRIEL AVENUE
ALBANY CA 94706
(510) 549-5900
kranzlaw@sbcglobal.net

ATTORNEYS FOR PETITIONER
JESSICA SUND

RECEIVED
CITY OF OAKLAND
RENT ARBITRATION PROGRAM
2019 JAN 29 AM 11:25

000082

NOTICE OF ERRATA

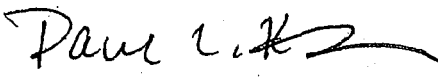
Petitioner submits this Notice of Errata and the attached amended submission in support of her appeal in case no. T18-0018. The attached submission is substantially the same as her submission filed on January 24, 2019, and primarily differs from the submission filed on January 24, 2019 by containing certain format changes, correction of typographical errors, and the inclusion of certain limited additional portions of the testimony at the subject hearing.

For the following reasons, Petitioner also asserts that this submission should be considered and that it should not be considered late. First, as stated in and evidenced by Petitioner's previous filings, the hearing officer's decision was not served by mail until December 26, 2018, as evidenced by the postmarks on the envelopes in which the hearing officer's decision was mailed and received by both Petitioner and her attorney. An appellant is permitted 35 days from the date of mail service to file a notice of appeal and any submissions in support of the appeal (20 days to file the notice of appeal and 15 days thereafter to file submissions). Thirty five days from the date the decision was mailed is January 30, 2019.

Therefore, this submission should be considered timely. Second, Petitioner's attorney Paul L. Kranz has been out of his office and out of state because of the recent very serious illness of an immediate family member. For this reason, he was out of his office, from December 21, 2018 to January 6, 2019 and again from January 21, 2019 to January 25, 2019. Therefore, Petitioner's attorney's very limited availability during this period when the appeal had to be prepared and finalized constitutes good cause to permit this amended submission.

Dated: January 28, 2019

Respectfully submitted,

By: 
Paul L. Kranz

000083

Petitioner Jessica Sund appeals from the decision of Hearing Officer Maimoona Sah Ahmad. Petitioner notes for the record that her petition was filed on November 29, 2018. The hearing commenced six months later, on May 30, 2018, and concluded on June 4, 2018. The decision did not issue for more than six months, on December 20, 2018. According to the proof of service attached to it, it was mailed on December 20, 2018, but the envelopes in which it was contained were postmarked December 26, 2018.

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

INTRODUCTION

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

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

The landlord did not present any evidence to contradict these facts. Instead, the landlord contrived the story that Ms. Sund was residing with her boyfriend because she was subletting her unit in order to take advantage of its below-market rent and make a profit. But the landlord did not present an iota of credible and competent evidence to support its claim. With the exception

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

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

STATEMENT OF FACTS

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

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

Attachment 2.) Per Mr. Preston, any request had to be made “well in advance of the requested move-in date, and thereafter providing necessary information and documentation to management.” (*Ibid.*) On the same day Ms. Sund made her request, and on the following day, August 29, 2017, Ms. Sund called Preston three times to further discuss her request. (See Attachment 5 at 1–2; Attachment 1.) Neither Preston nor anyone else responded on behalf of the landlord; Preston did not return her phone messages; and, he did not respond by email or by letter. (See *ibid.*) Instead, the very next communication Ms. Sund received from the landlord was on or about September 6, 2017, when the landlord personally served Ms. Sund with a Notice of Change Terms of Tenancy-Rent Increase Notice [Costa-Hawkins], increasing her rent from \$908.67 to \$2,095, and stating that “Jessica Maggie Sund no longer resides at the Premises and that all current occupants are subsequent occupants and subleases” (See Attachment 3; Attachment 5 at 3.) In fact, there were no other current or subsequent occupants and subleases at the subject premises and Ms. Sund still resided there by herself (See Attachment 5 at 2.)

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

Ms. Sund also continued to stay with her boyfriend after the baby was born because of medical issues the baby suffered that required 24-hour monitoring. (See Attachment 5 at 4–6.) These were serious medical problems; potentially life-threatening for her newborn daughter. (See *id.* at 6.)

The Hearing Officer’s Decision and Findings

The hearing officer’s decision relies on testimony from the landlord’s “asset manager” Lucky Stewart stating that the subject property was acquired by his employer in June 2017; that shortly thereafter, he received reports from tenants that Ms. Sund was subletting and that there

were strangers with keys to her unit and that Ms. Sund was no longer there²; that he personally observed a tall blond couple with luggage coming out of the unit speaking a foreign language, who ignored him when he tried to speak to them³; and that, based on this information, he had attorney conduct an investigation involving LexisNexis, which identified a second address (the California Street address) "linked to" Ms. Sund and which prompted his attorney to say, "Yeah, she's no longer living there."⁴ He also testified this led him to conduct an internet search in which he located a baby registry connected to Ms. Sund and her boyfriend, Cory Hamrich⁵; and that he also located on-line "couchsurfing[.com]" listings "from them renting out apartments in, under her or Cory's name."⁶ And that, based on this information, he issued a letter dated August 22, 2017, warning Ms. Sund not to sublet.

The August 22 warning letter, signed "The Management," stated that property managers had noticed and received complaints of an "overwhelming amount of random visitors coming and going from [her] unit, and with keys to the unit." (See Attachment 4.) Ms. Sund testified that she never received the letter. (See Attachment 5 at 10.) With the exception of Lucky Stewart's testimony that he had personally observed what he believed to be an "international" couple (tall, blonder, speaking a foreign language), nothing else he testified to was supported by admissible evidence. There was no evidence of any internet search conducted by him or by the landlord's attorney; no evidence of "managers" noticing any suspected sublessees⁷; no evidence of an "overwhelming amount of random visitors." (See Attachments 6-8, inclusive.) As for the

²See Attachment 6 at 1-2

³See Attachment 6 at 2, 15

⁴See Attachment 6 at 2-3

⁵See Attachment 6 at 3, 24,

⁶See Attachment 6 at 3; see also *id.* at 10-11, 7-8

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

"couchsurfing"⁸ posts (unsupported by any evidence), Stewart later changed his testimony, saying that he didn't recall or see any reference to any specific address. (See Attachment 6 at 9–10.) He also changed his testimony and said that he did not couchsurfing listing pertaining to Ms. Sund. (See Attachment 6 at 7–8.) The couchsurfing testimony was also hearsay.

Stewart characterized the August 22nd letter, sent after his claimed "international" couple sighting, as a "warning". (See Attachment 6 at 4, 7.) Stewart went on to explain, "Then when we saw that it [subletting] was still continuing, and it was observed that there were still people coming and going and not the tenant, we resorted to serving the Costa-Hawkins [rent increase]." (See *id.* at 4.) Not only were there no documents or declarations or notes to support *any* subletting (persons "coming and going" from Ms. Sund's unit) after August 22 or at *any* time, but there were *no firsthand accounts whatsoever of any person(s) coming and going*, other than the "international" couple Mr. Stewart claimed he'd seen. (See Attachments 6–8.) The only property manager who testified—the landlord's 24/7 on-site property manager Ursula Morales—stated that *she never saw anyone coming and going from Ms. Sund's unit, either.* (See Attachment 7 at 7.) Yet, the lack of evidence of anybody coming and going is nowhere cited or acknowledge in the hearing officer's decision.

Also, after initially testifying that she'd been informed of "strangers coming in and out of" Ms. Sund's unit, Ms. Morales later testified that she'd received just *one* such complaint from a single tenant, in around November or December 2017. (See Attachment 7, inclusive.) The complaining tenant had reported "smoke and noise," apparently attributed to Ms. Sund's unit. (See *id.* at 2.) When Ms. Morales went downstairs to investigate, she found "nothing out of the ordinary" and just some TV noise. (See Attachment *id* at 3.) The purported complaint was also inadmissible; plainly hearsay. Although Morales testified that this complaint was sent to her by email (See *id* at p. 5), no email was offered as evidence. And on cross-examination, Morales testified that the complaint was "more about" noise than anything else. (See Attachment 7 at 6.) Finally, when asked by the hearing officer if the extent of the complaint was limited to smoke

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

and noise, Ms. Morales replied, "M-hm" (See *id.* at 7.). However, none of these obvious inconsistencies or lapses in testimony are cited or acknowledged in the hearing officer's decision.

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

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

There were also surveillance cameras at the property. According to Stewart's testimony, at the time of the hearing there were about five cameras total. (See Attachment 6 at 18.) These included a camera at the back of the first floor, where Ms. Sund's unit is located. (See *ibid.*) There were also multiple cameras in front of the building. (See *ibid.*) Mr. Stewart testified that he never checked any cameras for recordings of people coming in and out of Ms. Sund's apartment. (See Attachment 6 at 20–21.) When asked why, his incredible answer was, "If I thought it ["whether she's subletting"] was an important issue, I would have presented the footage. We didn't produce the footage." (See *id.* at 21.) Yet, the decision contains *no reference to the landlord's failure to produce any footage, despite the fact that there were multiple recording cameras on the property.*

Apart from the hearing officer's misplaced reliance on Mr. Stewart's testimony, she also

relied on the testimony of Don MacRitchie, a private investigator hired by the owner. The hearing officer's summary of this testimony concludes, "MacRitchie opined that a preponderance of the evidence supports a conclusion that Ms. Sund's permanent place of residence is not the subject property . . . [.]".⁴ (See Hearing Decision ("Decision") at 6.)

"Permanent place of residence" in the context of Costa-Hawkins is a legal issue, and an expert is prohibited from testifying as to a legal conclusion. "There are limits to expert testimony, not the least of which is the prohibition against admission of an expert's opinion on a question of law. (*Ferreira v. Workmen's Comp. Appeals Bd.* (1974) 38 Cal.App.3d 120; *Summers v. A.L. Gilbert Co.* (1999) Cal. App. 4th 1155, 1178.)

More importantly, the landlord's expert, MacRitchie—after testifying that he'd conducted extensive data-base searches in the course of investigating Ms. Sund's status—testified that he was unable to identify a single individual who'd ever sublet Ms. Sund's unit. (See Attachment 8 at 1.) And he stated that *he had not been able to find any evidence that Ms. Sund was subletting.* (See Attachment 8, inclusive.) *Therefore, his opinion was Ms. Sund was not subletting.* Once again, reference to this testimony is omitted from the decision.

Further, after the first day of testimony, at which he was present throughout, MacRitchie was asked to interview four tenants from the subject premises. (The first day of testimony was Friday, May 30th; the second was June 4th.) He did so. And none of them had knowledge of any other persons associated with Ms. Sund's unit, according to his testimony as follows:

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

MACRITCHIE: THEY DIDN'T, THEY THOUGHT IT POSSIBLE.

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

MACRITCHIE: ALL DIDN'T HAVE DEFINITE KNOWLEDGE, AND THEY ALL WERE AWARE THAT THERE WERE PEOPLE THAT WERE IN THE BUILDING THAT WEREN'T ASSOCIATED WITH APARTMENTS, AND THEY DIDN'T KNOW FOR

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

CERTAIN WHAT APARTMENT THEY WERE ASSOCIATED WITH. SO THEY THOUGHT THEY WERE SOME TYPE OF SUBTENANTS, BUT THEY COULD NOT DEFINITELY ASSOCIATE WITH MS. SUND'S APARTMENT.

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

MACRITCHIE: YES.

MR. KRANZ: AND WHAT DID THEY TELL YOU ?

MACRITCHIE: WHAT I JUST TOLD YOU.

(See *id.* at 1.)

ARGUMENT

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

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

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

II. The Decision Constitutes An Abuse of Discretion.

An abuse of discretion is a plain error, discretion exercised to an end not justified by the

evidence, a judgment that is clearly against the logic and effect of the facts as are found. (*Rabkin v. Oregon Health Sciences Univ.* (9th Cir. 2003) 350 F.3d 967, 977; *In re Korean Air Lines Co., Ltd.* (9th Cir. 2011) 642 F.3d 685, 698 n.11.)

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

The hearing officer's exercise of discretion reflects judgment that was clearly against the logic and effect of the facts. The selective use of evidence, the mischaracterizations and misstatements of other of evidence, and the plain lack of objectivity, as evinced by the decision, demonstrates a judgment inconsistent with logic and the facts. The decision consistently relied on evidence that was inadmissible, while at the same entirely ignoring other material; evidence, much of which was submitted on behalf of the Respondent.

The decision thus reflects an abuse of discretion, demonstrates a lack of objectivity and a prejudice towards Petitioner.

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

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

Ms. Sund testified that she and her boyfriend had been together just two years; that they were not married; that she did not know if the relationship would be permanent. (See Attachment 5 at 13.) For these reasons, she was not certain about where she would live. She also testified that her baby was born with and still suffered from a serious, even potentially life-threatening condition that required around-the-clock monitoring, a circumstance that required her

to live with her boyfriend. (See Attachment 5 at 5.) This evidence was, further, undisputed.

The phenomena of single women choosing to have children is commonplace in our society, and hardly novel. This is reflected in, for example, the fact that it is now illegal to discriminate based on marital or familial status. In addition, the phenomena of children splitting their time between parents who live in different locations is ubiquitous in our society. Therefore, the hearing officer's above conclusions are unsupported by evidence, are tone-deaf to contemporary realities, and are inconsistent with the evidence that was submitted. Each conclusion was altogether unwarranted.

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

California Civil Jury Instruction (CACI) No. 203, entitled *Party Having Power to Produce Better Evidence*, provides as follows:

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

Examples of Respondent's failures to provide stronger evidence when it could have produced stronger evidence are numerous and have been recounted above. They included, but are not limited to, Respondent's failure to produce employee witnesses claimed to have relevant information; its failure to produce documents, video footage, etc. Indeed, testimony from Respondent's *own* witnesses was sufficient to defeat, and should have defeated, its claims. Respondent called three witnesses. Each offered significant evidence contradicting or inconsistent with Respondent's claims. Some examples are:

Respondent's asset manager testified that the sighting of the "international" couple was *not* itself the cause of the rent increase. Respondent's 24/7 on-site property manager testified that she never saw a possible a sublessee and in effect had no evidence that Respondent ever sublet. And Respondent's private investigator, who Respondent and the hearing officer insisted was an expert, could not find any evidence of subletting.

Also, Respondent offered no explanation for why it never responded to the emails and phone calls Ms. Sund made to discuss her boyfriend and their baby staying in her unit.

Moreover, Respondent never explained why its August 28th letter stated that it would be "amenable" to considering Ms. Sund's request when it allegedly already believed that she was subletting and was allegedly already investigating as much. Either the August 28th letter was disingenuous, or the landlord did not believe that Petitioner was subletting—if not *both*.

Ms. Sund testified on the first day of the hearing that she never received an August 22nd letter warning her about subletting. The letter was anonymously signed, "The Management." And why didn't Stewart, who said he wrote the letter, testify that *he* posted and mailed it? (See Attachment 5 at 3.) Also, given the weight Respondent places on that letter, why didn't its private investigator interview Mr. Stewart about the details it contained? Why wasn't a declaration from Mr. Stewart presented, at least by the second day of the hearing, five days later?

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

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

A. The Evidence Establishes a Case of Constructive Eviction.

The evidence here establishes a constructive eviction of Ms. Sund because the rent increase Respondent sought meant that Ms. Sund would no longer be able to reside in her unit.

She testified she cannot afford a more than doubling of her rent. The Rent Board cannot meaningfully monitor or regulate the grounds of this eviction without examining the reasons for it. Petitioner contends that the reason was her request that her boyfriend and baby's father, and later their child, be able to reside in her unit.

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

It is illegal to discriminate in housing based on pregnancy or family status, under both state (FEHA, DFEH) and federal (FHA, HUD) law and agency regulations. The landlord cannot impose conditions on Petitioner's exercise of that right. That Respondent ignored the phone calls Petitioner made in an effort to exercise that right was unreasonable—especially after it had stated that it would consider her request, i.e., that it would "revisit this issue". The landlord never responded except by way of a notice of rent increase. This was despite the fact that it had already independently verified that Petitioner was pregnant and who the father was. (See Attachment 5 at 6.) Respondent never asked for any additional information. This evidence establishes an attempted illegal eviction.

B. The Evidence Establishes a Case of Retaliation.

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

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

The laws of the State of California and the Housing Element of the General Plan of the City of Oakland prohibit arbitrary discrimination by landlords." (OMC § 8.22.300.) Basic fairness requires that a landlord must not terminate the tenancy of a residential tenant without good, just, non-arbitrary, non-discriminatory reasons. (*Ibid.*) The rising market demand for rental housing in Oakland creates an incentive for some landlords to engage in harassing behavior, including:

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

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

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

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

The effect of section 1954.53, subdivision (a)⁵ of Costa-Hawkins is to permit landlords

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

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

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

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

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

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

CONCLUSION

For the foregoing reasons, this appeal should be granted.

Dated: January 28, 2019

Respectfully submitted,

LAW OFFICES OF PAUL L. KRANZ

By: 

Paul L. Kranz

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

PROOF OF SERVICE

(Case Number T18-0018)

I, the undersigned, certify and attest as follows:

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

On January 29, 2019, I caused the within:

**NOTICE OF ERRATA AND AMENDED SUBMISSION IN SUPPORT
OF APPEAL OF HEARING OFFICER'S DECISION**

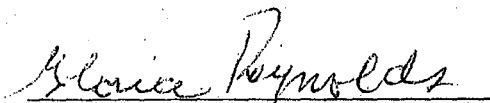
to be served by first class mail, postage prepaid, on Respondent's representatives. addressed as follows:

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

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

Executed Albany, California on January 29, 2019.

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


Gloria Reynolds

000098

Attachment 1

THE NEW YORK PUBLIC LIBRARY

[REDACTED]

[REDACTED]

Department of the City of New York, New York, N.Y.
10007

RECEIVED
MAY 21 1964

000100

Attachment 2

Alma Apartments LP

123 Ave
Culver, CA

123 Ave
Culver, CA
94501

RE: Alma Apartments

Dear Sir:

I am writing to you regarding

the information that you have provided to me regarding

the information that you have provided to me regarding

the information that you have provided to me regarding

the information that you have provided to me regarding

the information that you have provided to me regarding

the information that you have provided to me regarding

the information that you have provided to me regarding

the information that you have provided to me regarding

please review the above information and let me know if

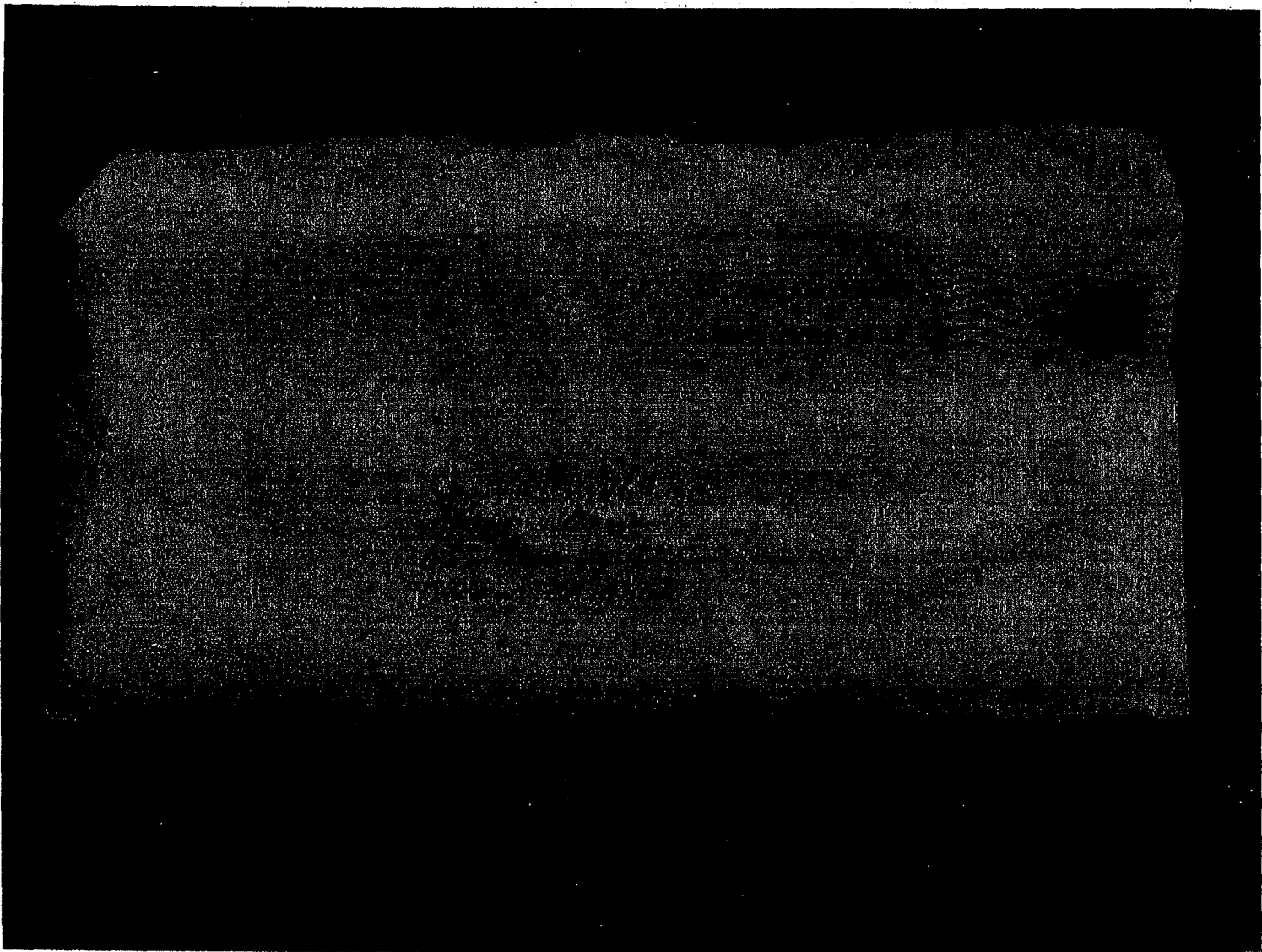
Sincerely,



Thomas Priddy

Property Supervisor

000102



000103

Attachment 3

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

NOTICE TO CHANGE TERMS OF TENANCY
- RENT INCREASE NOTICE -

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

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

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

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

All other terms of the tenancy will remain unchanged.

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

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

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

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

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

Costa-Hawkins Rent Increase for 633 Alma Street, Unit Number 5, Oakland, CA

000105

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

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

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

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

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

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

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

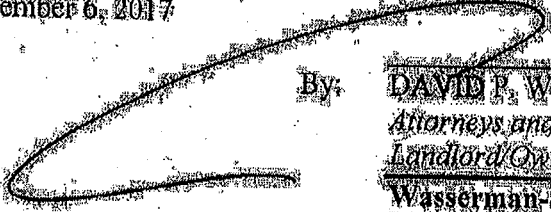
Rent increases imposed pursuant to the Costa-Hawkins Rental Housing Act are effective upon the expiration of the notice period prescribed by California Civil Code section 827 and are not governed by the Rent Adjustment Program.

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

Dated: September 6, 2017

WASSERMAN STERN

By:


DAVID P. WASSERMAN, Esq.
*Attorneys and Duly Authorized Agents for the
Landlord/Owner, Vernon Street Apartments, LP*
Wasserman-Stern Law Offices
2960 Van Ness Avenue
San Francisco, CA 94109
Tel. No.: (415) 567-9600
Fax No.: (415) 567-9696
Email: dwasserman@wassermanstern.com

Costa-Hawkins Rent Increase for 633 Alma Street, Unit Number 5, Oakland, CA

CITY OF OAKLAND



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

TEL (510) 238-3721
FAX (510) 238-6181
TDD (510) 238-3264

NOTICE TO TENANTS OF THE RESIDENTIAL RENT ADJUSTMENT PROGRAM

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

TENANTS' SMOKING POLICY DISCLOSURE

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

I received a copy of this notice on _____

(Date)

(Tenant's signature)

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

| | | | | |
|--|------------|------------------|--------------------|-------------|
| Attorney or Party Without Attorney (Name and Address) | | Telephone | FOR COURT USE ONLY | |
| DAVID P. WASSERMAN, ESQ. (171-23) WASSERMAN STERN LAW OFFICES 2960 Van Ness Avenue, Suite B San Francisco, California 94109 | | | | |
| Attorney for: 633 ALMA STREET | | RA7607 OF FILING | W2683460 | |
| Insert name of court, judge, district, and branch court, if any. | | | | |
| Plaintiff: | | | | |
| 633 ALMA STREET | | | | |
| Defendant: | | | | |
| JESSICA MAGGIE SUND (original occupant) | | | | |
| POS BY MAIL | Filed Date | Time | Payment | Case Number |

At the time of service, I was at least 18 years of age and not a party to this action.
 On September 6, 2017, I served the within:

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

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

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

Person serving:
 Scott Lane
 Wheels of Justice, Inc.
 52 Second Street, Third Floor
 San Francisco, California 94105
 Phone: (415) 546-6000

a. Fee for service:
 d. Registered California Process Server
 (1) Employee or independent contractor
 (2) Registration No. 1126
 (3) County: San Francisco

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

Date: September 6, 2017

Signature: _____
 Scott Lane



Printed on recycled paper

Judicial Council form, GM 902(9) (29)

000108

CONSOLIDATED CHRONOLOGICAL CASE REPORT

Case No.: T19-0186, T19-0235
Case Name: Didrickson v. Commonwealth Company
Property Address: 2230 Lakeshore Ave., Unit #7, Oakland, CA
Parties: Glenda Didrickson, (Tenant)
Carlos Didrickson, (Tenant)
Allen Sam, (Property Manager)

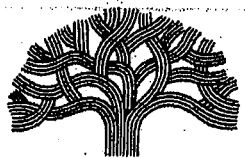
TENANT APPEAL:

| <u>Activity</u> | <u>Date</u> |
|--------------------------------|-------------------|
| Tenant Petition filed | February 5, 2019 |
| Tenant Petition filed | March 26, 2019 |
| Owner Response filed | July 11, 2019 |
| Hearing Decision mailed | December 23, 2019 |
| Tenant Appeal filed | January 13, 2020 |
| Owner Response to Appeal filed | January 15, 2020 |
| Tenant Narrative filed | January 15, 2020 |
| Tenant Appeal Filed | January 27, 2020 |

000109

T19-0186 PC/MA

RECEIVED
CITY OF OAKLAND
RENT ARBITRATION PROGRAM

| | | |
|--|--|---|
|  CITY OF OAKLAND | CITY OF OAKLAND RENT ADJUSTMENT PROGRAM P.O. Box 70243 Oakland, CA 94612-0243 (510) 238-3721 | For date stamp: 2019 FEB -5 AM 11:50 |
| | <u>TENANT PETITION</u> | |

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

Please print legibly

| | | |
|--|--|------------|
| Your Name Carlos & Glenda Didrickson | Rental Address (with zip code) 2230 Lakeshore Av #7 Oakland Ca 94606 | Telephone: |
| | | E-mail: |
| Your Representative's Name | Mailing Address (with zip code) | Telephone: |
| | | Email: |
| Property Owner(s) name(s) Commonwealth Co Ted Dang | Mailing Address (with zip code) 1305 Franklin St Oakland Ca 94612 Suite 500 | Telephone: |
| | | Email: |
| Property Manager or Management Co. (if applicable) | Mailing Address (with zip code) | Telephone: |
| | | Email: |

Number of units on the property: 8

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

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

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

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

| |
|--|
| (d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2006) |
| (e) The property owner did not give me the required form "Notice of the Rent Adjustment Program" at least 6 months before the effective date of the rent increase(s). |
| (f) The rent increase notice(s) was (were) not given to me in compliance with State law. |
| (g) The increase I am contesting is the second increase in my rent in a 12-month period. |
| (h) There is a current health, safety, fire, or building code violation in my unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance. (Complete Section III on following page) |
| ✓ (i) The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner. (OMC 8.22.070(F): A decrease in housing services is considered an increase in rent. A tenant may petition for a rent adjustment based on a decrease in housing services.) (Complete Section III on following page) |
| (j) My rent was not reduced after a prior rent increase period for a Capital Improvement had expired. |
| (k) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014). |
| (l) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake. (OMC 8.22, Article I) |
| (m) The owner did not give me a summary of the justification(s) for the increase despite my written request. |
| (n) The rent was raised <u>illegally</u> after the unit was vacated as set forth under OMC 8.22.080. |

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

Date you moved into the Unit: December 2006 Initial Rent: \$ 2,500.⁰⁰ /month

When did the owner first provide you with the RAP NOTICE, a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program? Date: Nov. 2012 If never provided, enter "Never."

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

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

| Date you received the notice (mo/day/year) | Date increase goes into effect (mo/day/year) | Monthly rent increase | | Are you Contesting this Increase in this Petition?* | Did You Receive a Rent Program Notice With the Notice Of Increase? |
|--|--|-----------------------|----|--|--|
| | | From | To | | |
| | | \$ | \$ | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | | \$ | \$ | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | | \$ | \$ | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | | \$ | \$ | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | | \$ | \$ | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | | \$ | \$ | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No |

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

Have you ever filed a petition for this rental unit?

- Yes
- No

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

T13, T14, T15, T16, T17, T18

III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:

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

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

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

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

Please attach documentary evidence if available.

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

IV. VERIFICATION: The tenant must sign:

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

Blenda Didriksom
Tenant's Signature Carls D. D.

Feb 5, 2019
Date

[Empty rectangular box]

- 1) gas heater not working from Nov. 2018 to Jan 31, 2019 (repaired 1-31-19)
- 2) patio not replaced - patio boards removed Feb 2017, with NO legal permit.
- 3) bedroom vent leaks rainwater when heavy rain.
- 4) patio door handle broken, patio door frame separates from Glass.

[Empty rectangular box]

RECEIVED
CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM

RECEIVED
FEB 5 11:50

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

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

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

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

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

Tenant's Signature

Date

VI. IMPORTANT INFORMATION:

Time to File

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

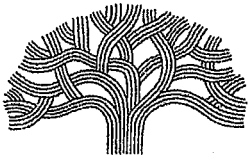
File Review

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

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

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

RC/MA



CITY OF OAKLAND

**CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM**

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

For date stamp
RECEIVED
CITY OF OAKLAND
RENT ARBITRATION PROGRAM

2019 JUL 11 PM 2:10

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 T 19-0186

| | | |
|--|--|---|
| Your Name <i>421 Associates</i> | Complete Address (with zip code) <i>1305 Franklin Ste #500 Oakland CA 94612</i> | Telephone: Email: _____ |
| Your Representative's Name (if any) <i>Allen Sam</i> | Complete Address (with zip code) <i>1305 Franklin Ste #500 Oakland CA 94612</i> | Telephone: <i>510-832-2628</i> Email: |
| Tenant(s) Name(s) <i>Carlos & Blenda Didrickson</i> | Complete Address (with zip code) <i>2230 Lakeshore Ave #7 Oakland CA 94612</i> | |
| Property Address (If the property has more than one address, list all addresses) | | Total number of units on property |

Have you paid for your Oakland Business License? Yes No Lic. Number: _____
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: _____
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: 8/15/12

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> |
|-----------------------------------|--|--|-----------------------------|-------------------------------|--------------------------|-------------------------------------|
| 7/1/18 | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

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 12/15/06.

The tenant's initial rent including all services provided was: \$ 2500 / 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? 9/17/2012

Is the tenant current on the rent? Yes No

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

| <u>Date Notice Given (mo./day/year)</u> | <u>Date Increase Effective</u> | <u>Rent Increased</u> | | <u>Did you provide the "RAP NOTICE" with the notice of rent increase?</u> |
|---|--------------------------------|-----------------------|------------|---|
| | | <u>From</u> | <u>To</u> | |
| 5/14/18 | 7/1/18 | \$ 2983.31 | \$ 3084.74 | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 3/25/17 | 7/1/17 | \$ 2699.14 | \$ 2983.31 | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| | | \$ | \$ | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | | \$ | \$ | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | | \$ | \$ | <input type="checkbox"/> Yes <input type="checkbox"/> No |

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

Date

7/11/19

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

Commonwealth Companies

– REAL ESTATE –

BRE#: 0442390

July 11th, 2019

City of Oakland
Rent Adjustment Program
PO Box 70243
Oakland, CA 94612

RE: T19-0186

Commonwealth Companies recently received a notice from the City of Oakland dated June 26th, 2019 regarding Case No. T19-0186, notifying us that one of our residents, Carlos & Glenda Didrickson has filed a petition to the Rent Adjustment Board alleging a decrease in housing services, specifically citing the four issues below:

1. Gas Heater not working from Nov. 2018 – Jan. 2019
2. Patio not replaced – patio boards removed Feb. 2017 with no legal permit
3. Bedroom vent leaks rainwater when heavy rain
4. Patio door handle broken, patio door frame separates from glass

Our position for each issue:

1. Gas Heater not working from Nov. 2018 – Jan. 2019

By tenant's own admission, we successfully repaired the gas heater. Coordination between residents and contractors proved to be difficult due to a variety of reasons:

- a. Resident's insistence on being present for all work.
- b. Resident's refusal to communicate via email or phone.
- c. Ownership not receiving notice of malfunction from tenant in a timely manner. Claims malfunction in November, but verbal notice from manager not received until December, and written notice not received until January.
- d. Difficulty in aligning time when tenants would be present and contractor's availability.
- e. Multiple visits required. First contractor we hired was unable to fix the heater, which exacerbated the issue. We were able to find another contractor who was able to fix the heater.

2. Patio not replaced

The City of Oakland inspected the patio years ago and ruled that it was not up to code. Current owner was unaware that the previous owner installed the patio without any permits. This issue was addressed in Case No. T17-0327, ruling in favor of the tenant. Effective July 1, 2017, tenant was granted an ongoing rent decrease of \$298.33 unless the patio was properly rebuilt. The owner has honored the ruling of the Rent Adjustment Board since the day it took effect.

3. Bedroom vent leaks rainwater when heavy rain

MNJ Roofing and AT Mechanical independently address the roofing and venting systems in the past to complete repairs. In April 2019, our in-house repairman inspected the unit and verified that the bedroom vent was in working order and no longer leaking. We received no follow-up from the tenants since that time.

4. Patio door handle broken, patio door frame separates from glass

Quoting from the hearing decision dated February 6th, 2019 on case T18-0305:

"In T17-0327, the Hearing Officer conducted a site inspection again held that the repair was sufficient and the door operated far better than it was in prior inspection. *This claim was denied in T17-0327 and the decision became final when the tenants dismissed their appeal on October 10th, 2018.*"

In April 2019, our in-house repairman inspected the unit and verified that the patio door and the handle was functioning without issue. We received no follow-up from the tenants since that time.

We hope that after reviewing the evidence, as well as all previous judgments between Commonwealth and the Didricksons, that the Hearing Officer will come to the conclusion that we have been acting in good faith and complying with each and every part of the previous rulings.

Commonwealth Companies

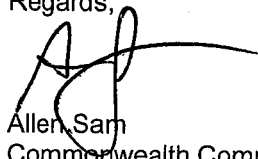
– REAL ESTATE –

BRE#: 0442390

We request that the owner be paid for the outstanding rent amount of \$2847.10 (not including any late fees or interest accrued). Attached to the letter is a chart of rent payments as of January 2018, which includes all the adjustments provided from the rulings of T17-0327, T18-0238, T18-0305, and the pending case of T19-0186. We feel that this back rent is properly owed to us based on prior judgments, but have held off on pursuing the difference while this case is being appealed again, and do not wish to complicate the matter until the Rent Adjustment Board confirm the previous Final Decision.

We also request the City of Oakland consider issuing sanctions to the Didricksons to prevent any further attempts at appealing the Rent Adjustment Board's ruling regarding the patio. This multi-year dispute has already been heard and ruled on multiple times, with several in-person mediation sessions between both parties in front of a hearing officer. The Didricksons continue to appeal and act as if these previous hearings were somehow unjust, despite any new evidence or rationale. At this point it's just a waste of time and resources for all parties, and shows a complete lack of respect towards the process and judgments of the Rent Adjustment Board.

Regards,



Allen, Sam
Commonwealth Companies

| | Base Rent | Patio Adjustment | Other Adjustments | Rent Owed | Resident Payment | Notes | Difference |
|--|------------|------------------|-------------------|------------|------------------|----------------------------|-------------------|
| Jan-18 | \$2,983.31 | \$298.33 | \$167.03 | \$2,517.95 | \$2,517.95 | past rent overpayment adj. | \$0.00 |
| Feb-18 | \$2,983.31 | \$298.33 | \$167.03 | \$2,517.95 | \$2,517.54 | past rent overpayment adj. | \$0.41 |
| Mar-18 | \$2,983.31 | \$298.33 | \$167.03 | \$2,517.95 | \$2,517.54 | past rent overpayment adj. | \$0.41 |
| Apr-18 | \$2,983.31 | \$298.33 | \$167.03 | \$2,517.95 | \$2,517.54 | past rent overpayment adj. | \$0.41 |
| May-18 | \$2,983.31 | \$298.33 | \$167.03 | \$2,517.95 | \$2,517.54 | past rent overpayment adj. | \$0.41 |
| Jun-18 | \$2,983.31 | \$298.33 | \$167.03 | \$2,517.95 | \$2,517.54 | past rent overpayment adj. | \$0.41 |
| Jul-18 | \$3,084.74 | \$298.33 | \$167.03 | \$2,619.38 | \$2,517.54 | past rent overpayment adj. | \$101.84 |
| Aug-18 | \$3,084.74 | \$298.33 | \$167.03 | \$2,619.38 | \$2,517.54 | past rent overpayment adj. | \$101.84 |
| Sep-18 | \$3,084.74 | \$298.33 | \$167.03 | \$2,619.38 | \$2,517.54 | past rent overpayment adj. | \$101.84 |
| Oct-18 | \$3,084.74 | \$298.33 | \$149.17 | \$2,637.24 | \$2,517.54 | tarp ruling reimbursement | \$119.70 |
| Nov-18 | \$3,084.74 | \$298.33 | | \$2,786.41 | \$2,517.54 | | \$268.87 |
| Dec-18 | \$3,084.74 | \$298.33 | | \$2,786.41 | \$2,517.54 | | \$268.87 |
| Jan-19 | \$3,084.74 | \$298.33 | | \$2,786.41 | \$2,517.54 | | \$268.87 |
| Feb-19 | \$3,084.74 | \$298.33 | | \$2,786.41 | \$2,517.54 | | \$268.87 |
| Mar-19 | \$3,084.74 | \$298.33 | | \$2,786.41 | \$2,517.54 | | \$268.87 |
| Apr-19 | \$3,084.74 | \$298.33 | | \$2,786.41 | \$2,517.54 | | \$268.87 |
| May-19 | \$3,084.74 | \$298.33 | | \$2,786.41 | \$2,517.54 | | \$268.87 |
| Jun-19 | \$3,084.74 | \$298.33 | | \$2,786.41 | \$2,517.54 | | \$268.87 |
| Jul-19 | \$3,084.74 | \$298.33 | | \$2,786.41 | \$2,517.54 | | \$268.87 |
| NOTE: July 2018 base rent increase of 3.4% from \$2983.31 to \$3084.74 per the City of Oakland allowable CPI adjustment | | | | | | | \$2,847.10 |

T19:0235 PC/MA



CITY OF OAKLAND

CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM
 250 Frank H. Ogawa Plaza, Ste. 5313
 Oakland, CA 94612-0243
 (510) 238-3721

For date stamp.
 26 PM 2:21

TENANT PETITION

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

Please print legibly

| | | |
|---|--|--------------------------------------|
| Your Name Carlos & Glenda Oidrickson | Rental Address (with zip code) 2230 Lakeshore Av. Oakland Cal #7 94606 | Telephone: _____ E-mail: _____ |
| Your Representative's Name | Mailing Address (with zip code) | Telephone: _____ Email: _____ |
| Property Owner(s) name(s) Commonwealth Inc Ted Dang | Mailing Address (with zip code) 1305 Franklin St. Oak Cal Suite 500 94612 | Telephone: _____ Email: _____ |
| Property Manager or Management Co. (if applicable) | Mailing Address (with zip code) | Telephone: _____ Email: _____ |

Number of units on the property: 8

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

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

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

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

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

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

Date you moved into the Unit: Dec 2006 Initial Rent: \$ 2500.00 /month

When did the owner first provide you with the RAP NOTICE, a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program? Date: Nov 2012 If never provided, enter "Never."

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

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

| Date you received the notice (mo/day/year) | Date increase goes into effect (mo/day/year) | Monthly rent increase | | Are you Contesting this Increase in this Petition?* | Did You Receive a Rent Program Notice With the Notice Of Increase? |
|--|--|-----------------------|----|---|--|
| | | From | To | | |
| <u>8-13-18</u> | <u>UNKNOWN</u> | \$ | \$ | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | | \$ | \$ | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | | \$ | \$ | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | | \$ | \$ | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | | \$ | \$ | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | | \$ | \$ | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No |

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

Have you ever filed a petition for this rental unit?

- Yes
 No

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

T-13 - T-14 - T-15 - T-16 - T-17 - T-18

III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:

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

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

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

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

Please attach documentary evidence if available.

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

IV. VERIFICATION: The tenant must sign:

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

Carly Didi
Tenant's Signature

3-26-19
Date

[Empty rectangular box]

[Empty rectangular box]

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

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

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

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

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

Tenant's Signature

Date

VI. IMPORTANT INFORMATION:

Time to File

This form must be received at the offices of the Rent Adjustment Program ("RAP") within the time limit for filing a petition set out in the Rent Adjustment Ordinance (Oakland Municipal Code, Chapter 8.22). RAP staff cannot grant an extension of time by phone to file your petition. **Ways to Submit.** **Mail to:** Oakland Rent Adjustment Program, 250 Frank H. Ogawa Plaza, Ste. 5313, Oakland, CA 94612; **In person:** Date stamp and deposit in Rent Adjustment Drop-Box, Housing Assistance Center, Dalziel Building, 250 Frank H. Ogawa Plaza, 6th Floor, Oakland; or through the **RAP Online Petitioning System:** <https://apps.oaklandca.gov/rappetitions/Petitions.aspx>. For more information, call: (510) 238-3721.

File Review

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

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

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

The following is verification of health and safety violations previously reported on numerous petitions with the Oakland Rent Adjustment Board.

Please refer to the following pages of written report of health and safety violations at 2230 Lakeshore Ave Oakland Ca 94606 unit 7

- 1) no legal permit to remove the patio deck
- 2) no legal permit to install heating duct on the roof above bedroom.
- 3) Oakland building inspector found the following violations
 - 3a) water dripping from heater duct in the bedroom
 - 3b) sliding patio frame handle broken, and the frame shows a large gap - door frame separates from glass door
 - 3c) main electrical breaker trips if the stove (oven) and microwave or dishwasher and tv are on
 - 3d) no smoke/carbon dioxide detector in living room.

These have been on going violations that have been reported on numerous petitions and verified by a qualified Oakland Building Inspector

We are requesting that any past increase previously allowed during these violation issues be reexamined based on these issues never having been properly repaired/replaced.

I Requested A Dismissal of Appeal on Oct 10 2018 After speaking To the CO OWNER of the property of 2230 Lakeshore Ave, JOHN WILLIAMS ABOUT REPLACING THE PATIO DECK AND He SAID THAT he would TALK TO Ted Dang. and still no patio Deck Replaced As of this Date

Carls Daduke Blendalidinkeen

WE ARE IN

MAILED TO Wrong APT ... sent TO APT 5 --- APT 7

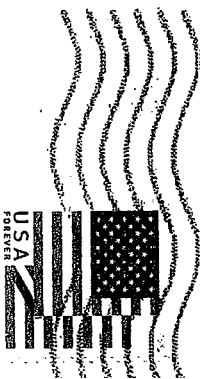
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Commonwealth Companies

REAL ESTATE
1305 Franklin Street, Suite 500
Oakland, CA 94612

OAKLAND CA 94612

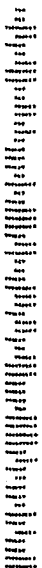
04 JAN 2019 PM 3 1

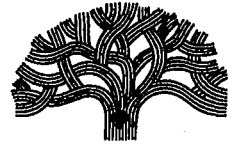


Carlos & Glenda Pedersen
2230 Lakeshore Ave #15
Oakland CA 94606



94606-105105





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

Housing and Community Development
Department Rent Adjustment Program

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

HEARING DECISION

CASE NUMBER: T19-0186, Didrickson v. Commonwealth Company
T19-0235, Didrickson v. Commonwealth Company

PROPERTY ADDRESS: 2230 Lakeshore Ave., Unit #7, Oakland, CA

DATE OF HEARING: September 24, 2019

DATE OF DECISION: December 20, 2019

APPEARANCES: Glenda Didrickson, Tenant
Carlos Didrickson, Tenant
Allen Sam, Property Manager

SUMMARY OF DECISION

The Tenant Petition is denied.

CONTENTIONS OF THE PARTIES

On February 5, 2019, the tenants filed a Tenant Petition, alleging code violations and decreased housing services. On March 26, 2019, the tenants filed another Tenant Petition alleging additional decreased housing services.

On July 11, 2019, the owner filed a timely response, denying the allegations.

ISSUES

(1) Have the tenants' housing services decreased, and if so, by what amount?

EVIDENCE

Background and Rent History

The tenants' unit is located in a residential building consisting of eight (8) units. The tenants moved into their unit in December of 2006, at an initial monthly rent of \$2,500.00. The tenants filed several petitions in the past that addressed the same issues raised in the current petition, including setting the base rent, reduction for certain

decreased housing services and ongoing reduction due to the loss of the deck.¹ Official Notice is taken of the prior cases and Orders in those cases will be honored.

RAP Notice

It is undisputed that the tenants received their first notice of the existence of the Rent Adjustment Program (RAP Notice) in 2012 and they also received the RAP Notice with subsequent rent increases.

Prior Hearing Decisions Regarding Decreased Housing Services

At the time of the hearing, the parties agreed that the loss of the wooden patio deck, issues with the patio door and handle, and heating vent leak were previously raised, addressed, and adjudicated in cases T15-0374, T16-0175, T17-0327, T18-0238, and T18-0305. As such, the only remaining issues to be addressed are as follows: (1) Gas Heater; (2) CO/Smoke Detector; and (3) Electric Breaker.

Gas Heater: The tenants testified that their gas heater stopped working in November of 2018, and wasn't repaired until January 31, 2019. They reported the issue to the owner in November of 2018, and the owner attempted repairs but the gas heater stopped working again. A new contractor was hired and the gas heater was repaired on January 31, 2019.

The property manager testified that he was not notified of the issue with the gas heater until December of 2018. He further testified that the repair required multiple visits and the delay in completing repairs was due to difficulty coordinating repairs with the tenants. He confirmed that the gas heater was repaired on January 31, 2019.

CO/Smoke Detectors: The tenants testified that an Inspector from the City of Oakland Code Enforcement Services conducted an inspection of the subject unit on March 11, 2019, and noted that a CO/Smoke detector was missing in the living room. The owner installed a CO/Smoke detector in July of 2019, but installed it on the support beam instead of the ceiling.

The property manager testified that he was not aware that the CO/Smoke detector in the living room was missing until the inspection on March 11, 2019. Prior to that, it was his understanding that all CO/Smoke detectors were in working order. Once he became aware of the issue, he attempted to coordinate installation of a new CO/Smoke detector on multiple occasions but the tenants were unresponsive and it was very difficult to schedule a time with them to install the CO/Smoke detector. He was eventually able to coordinate repairs and a CO/Smoke detector was installed in the living room and in the hallway in July of 2019.

Electric Breaker: The tenants testified that the electric breaker short circuits if the stove, dishwasher, and television are all on at the same time. The property manager

¹ T15-0374, T16-0175, T17-0327, T18-0238 and T18-0305.

testified that his electrician looked at the problem and told him that the tenants are overloading the circuit breaker. If the tenants don't turn everything on at once, they won't have any issues with the circuit breaker.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Decreased Housing Services

Under the Oakland Rent Ordinance, a decrease in housing services is considered an increase in rent² and may be corrected by a rent adjustment.³ However, in order to justify a decrease in rent, a decrease in housing services must be the loss of a service that seriously affects the habitability of a unit or a service that was provided and is no longer being provided or one that is required to be provided in a contract between the parties. The tenants have the burden of proving decreased housing services by a preponderance of the evidence.

In a decreased services case, the tenants must establish they have given the owner notice of the problems and the opportunity to fix the problems before they are entitled to relief.

Gas Heater: The property manager testified credibly that he was notified of this issue in December of 2019 and the gas heater was repaired in January of 2019. The property manager was responsive and any delay in completing repairs was due to difficulty coordinating and communicating with the tenants. The property manager's response was reasonable and compensation for this claim is denied.

CO/Smoke Detectors: A CO/Smoke detector was installed in the living room after the property manager was notified that it was missing. The property manager testified credibly that the delay in installing the CO/Smoke detector was due to difficulty communicating and coordinating with the tenants, who insisted on being present for all repairs. The issue has been resolved and compensation for this claim is denied.

Electric Breaker: The tenants testified that the circuit breaker short circuits if multiple appliances are on at the same time. The property manager testified credibly that the tenants are overloading the circuit breaker, and if they stop turning everything on at once, the circuit breaker won't short circuit. This issue does not affect the habitability of the unit, and compensation for this claim is denied.

ORDER

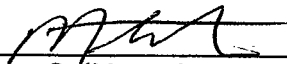
1. The Tenant Petitions T19-0186 and T19-0235 are denied.
2. The claims for decreased housing services are denied.

² O.M.C. §8.22.070(F)

³ O.M.C. §8.22.110(E)

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

Dated: December 20, 2019



Maimoona S. Ahmad
Hearing Officer
Rent Adjustment Program

000130

PROOF OF SERVICE

Case Number T19-0186; t19-0235

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

Ted Dang, 421 Associates
1305 Franklin Street Suite 500
Oakland, CA 94612

Owner Representative

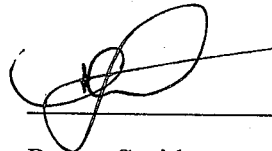
Allen Sam
1305 Franklin Street #500
Oakland, CA 94612

Tenant

Carlos & Glenda Didrickson
2230 Lakeshore Avenue Unit 7
Oakland, CA 94606

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

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

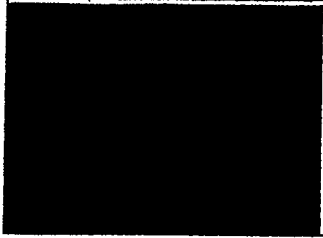


Raven Smith

Oakland Rent Adjustment Program

000131

CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM

| | | |
|---|--|--|
|  | CITY OF OAKLAND RENT ADJUSTMENT PROGRAM 250 Frank Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721 | For date stamp. 2020 JAN 13 AM 9:50 |
| | <u>APPEAL</u> | |

| | | |
|--|--|---|
| Appellant's Name CARLOS Glenda Didrickson | | <input type="checkbox"/> Owner <input checked="" type="checkbox"/> Tenant |
| Property Address (Include Unit Number) 2230 Lakeshore Ave #7 OAKLAND, CA. 94606 | | |
| Appellant's Mailing Address (For receipt of notices) SAME | | Case Number T19-0186 T19-0235 |
| | | Date of Decision appealed 1-13-2020 |
| Name of Representative (if any) | | Representative's Mailing Address (For notices) |

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

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

PLEASE Refer to Letter Dated 1-14-20

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.)

(PLEASE Refer to Letter Dated 1-14-20)

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

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

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

| | |
|------------------------|-----------------------------|
| Name | TEO DANG 421 ASSOCIATES |
| Address | 1305 FRANKLIN ST. SUITE 500 |
| City, State Zip | OAKLAND, CA. 94612 |
| Name | Allen Sam |
| Address | 1305 FRANKLIN ST. ST 500 |
| City, State Zip | OAKLAND, CA 94612 |

| | |
|-------------------------------|---------|
| Carlos D. Dick Blenky Dick | 1-13-20 |
|-------------------------------|---------|

SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE

DATE

BOYE

W Please Refer to Letter Dated 1-14-20 which Refers to
Me trying to get copies of AUDIO FOR THE SEPT 24 HEARING IN 2014
AND Discrepancies in the Hearing Decision - WAS Denied to
SPEAK About UNResolved ISSUES Along with the BUILDING INSPECTOR'S
Report on Health & Safety Violations

Carls Rind

1-13-20

Commonwealth Management
- REAL ESTATE -
BRE#: 00821583

RECEIVED
CITY OF OAKLAND
RENT ARBITRATION PROGRAM

2020 JAN 15 AM 11:57

January 15th, 2020

City of Oakland
Rent Adjustment Program
PO Box 70243
Oakland, CA 94612

RC/MA

RE: T19-0186 & T19-0235 Appeal Response

421 Associates recently received a copy of an appeal dated January 13th, 2020 from Carlos & Glenda Didrickson, protesting the decisions of previous cases T19-0186 & T19-0235. They allege the decisions made by the Rent Adjustment Board is not supported by substantial evidence.

Ironically, their appeal lacks in anything substantive to respond to.

On the appeal that we received dated 1-13-2020, they attached a letter dated 1-13-2020 asking the reader to refer to "the letter dated 1-14-2020" – which was not included. They either forgot to or decided not to include "the letter dated 1-14-2020". It is also possible that the letter wasn't written yet (assuming that the dates on all the documents are accurate). There seemed to be plenty of space on the letter attached for Carlos & Glenda Didrickson to state their case, but they elected not to.

421 Associate's position on the matters previously adjudicated by the RAP Board remain consistent. We continue to comply with all the terms of the previous decisions, and will defend ourselves against further appeals.

421 Associates expects that Carlos & Glenda Didrickson will continue to appeal as long as they have the ability to, as they have had for several years now. We reluctantly participate out of respect for the RAP Board's procedural process, but we hope the RAP Board can review the progression of this dispute over time, and see how silly and redundant having to deal with this situation has become.

Regards,


Allen Sam
Commonwealth Management

PS: We have attached our copy of the appeal sent to us by the Didricksons for your review.

January 14, 2020

RECEIVED
CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM

RC/MA

Ms. Chanée F. Minor
Manager/Director
Oakland Rent Adjustment Program
250 Frank Ogawa Plaza, Suite 5313
Oakland, Calif. 94612

2020 JAN 15 PM 1:03

Regarding: Appeal T19-0186
Appeal T19-0235

Dear Ms. Minor:

In response to my tenant petitions submitted in the above-referenced matters, your office sent me a copy of the hearing decision denying both petitions.

In seeking to appeal that decision, however, I have experienced a number of administrative obstacles and logistical road blocks, making my appeal efforts extremely difficult.

For that reason, I am contacting you for your assistance. First, the proof of service is dated December 23, 2019 and was actually mailed on ~~December~~ December 26, 2019. However, I did not receive the decision until December 30, 2019.

On that day, I contacted Mr. Robert Costa and asked that he arrange for me to receive copies of both petitions, the landlord responses and an audio copy of the hearing proceedings. Mr. Costa then informed me that I should contact Ms. Maxine Visaya for that purpose.

Again, on the very same day, I contacted Ms. Visaya via voice mail and e-mail, requesting the above-referenced documents and a copy of the audio disk recording. Later, not having heard anything from Ms. Visaya for several days, I sent another voice mail message and e-mail notification regarding my urgent need to receive this documentation.

Finally, on January 7, 2020, Ms. Visaya sent me an e-mail notification, indicating that she no longer handled the requested duties and urged me to contact Ms. Cindy Jay for assistance. Consequently, on that day I contacted Ms. Cindy Jay via voice mail and e-mail. And after getting no response from her, I contacted her again two days later.

On the morning of Friday, January 10, 2020, I still had not been contacted regarding my request; so I decided to come down to your office. Facing a filing deadline of January 13, 2020, I now had only three days to file my appeal.

After coming down to the RAP office, I informed your front desk of my dilemma and my urgent need to obtain the requested documents and audio. However, instead of receiving help I was turned away. Specifically, I was informed that the office was closed and that they could not assist me.

000136

Frustrated and confused, I called Mr. Robert Costa and informed him that I still had received no assistance. Eventually, a few hours later, Mr. Costa contacted me and asked me to return to the RAP office. Later that afternoon, I came in, paid for everything and left. However, an hour later, I discovered that the audio disk was blank. I tested the disk on my laptop, home entertainment system and my car stereo system-nothing! I then contacted Ms. Cindy Jay.

At about 4:20 p.m., Ms. Cindy Jay informed me that she would prepare another copy for me and that I could come in on Monday, January 13, 2020. She explained further that it was just too late to give me the disk on that day.

Of course, January 13, 2020 was my official filing deadline. What does this all mean? From December 30, 2019 through January 13, 2020, a period of two weeks, I could not get anyone in your department to honor my reasonable request for document/record copies.

It also means that it was not until January 13, 2020, my actual filing deadline, that I finally received everything I had previously requested. Accordingly, given this unexpected and unfortunate set of circumstances and events ~~and events~~, I am requesting additional time (fifteen days) in order to provide my submissions to the Board/Rent Adjustment Program.

Your consideration and prompt attention to this request are greatly appreciated.

Sincerely,



Carlos Didrickson

000137

2020 JAN 27 PM 12:38

APPEAL: T19-0186
T19-0235

INTRODUCTION

Carlos and Glenda Didrickson are submitting this appeal in response to the RAP decision entered on December 20, 2019 by Maimoona S. Ahmad.

During the course of over two weeks, I, Carlos Didrickson, contacted the RAP (numerous times) in an effort to obtain the documentary record necessary to prepare this appeal. However, because of bureauratic red tape, I did not receive all of the requested record until January 13, 2020, the very last day for the timely filing of the RAP appeal form.

In the appeal record, I have included a letter to the RAP Manager/Director, dated January 14, 2020. This letter has provided (in detail) my unsuccessful efforts to receive the requested information in a reasonable and timely manner. Also, because of the bureaucratic problems I have experienced in obtaining the RAP record, I asked for additional time to submit this appeal. However, inexplicably, I was not afforded additional time.

My appeal will be based on two grounds. First, the fact that the hearing officer's decision is not supported by substantial evidence (E). And secondly, the fact that the decision (OTHER) is based on personal bias in favor of the landlord/owner (H).

ARGUMENT

According to RAP rules and Board regulations, a landlord has 35 days to respond to a petition submitted by a tenant. However,

000138

Commonwealth did not submit a response until July 11, 2019, almost five full months after the tenants' petitions were filed.

In her ruling, Ms. Ahmad indicated that Commonwealth had filed a "timely" response in this matter. However, not only is this statement erroneous and false, it clearly is not supported by substantial evidence.

This fact also is important because the landlord was afforded additional rights and privileges against me. Rights, privileges and advantages that Commonwealth would not otherwise have had. Moreover, a decisive preference of this magnitude suggests real bias against me.

I became even more aware of this bias during the course of the hearing on September 24, 2019. During the hearing, only three issues were actually addressed--even though I did present evidence of two additional issues in my petitions.

The three issues addressed at the hearing were my problems with the gas heater, CO/smoke detector and the electric breaker.

While discussing problems with my CO/smoke detector, I explained that (because I am retired) I would be at home to let the repairman in at any given time. In addition, a review of the CD recording will show that I never insisted on being present because I would actually be at home any way. More importantly, however, is Ms. Ahmad's assertion that the issue had been resolved. It has not been resolved, and I informed her of that fact.

Why did Ms. Ahmad simply ignore my claim? While it is true that a CO/smoke detector was installed, it has never worked properly and still needs to be replaced.

In addition to the above, Ms. Ahmad's ruling that the issue had been resolved is not supported by substantial evidence. When

CITY OF OAKLAND
UNION ARBITRATION
2020 JAN 27 PM 12:38

I submitted my petition (T19-0235), I attached a copy of the NOTICE OF VIOLATION issued by the City of Oakland. The notice documented the problems relating to the CO/smoke detector, the broken patio door handle, leaking bedroom vent and the defective electrical breaker. More importantly, I explained to Ms. Ahmad that these problems still remained unresolved. I am attaching another copy of the NOTICE OF VIOLATION.

On January 21, 2020, the Building Inspector, Mr. Randy Schimm, returned to my unit and noted/documented the above-referenced problems in a second NOTICE OF VIOLATION. Not much has actually changed. Furthermore, according to Mr. Schimm, the second notice will go out later this week.

In addressing the electrical breaker issue, a review of the CD recording will reveal evidence of clear bias by Ms. Ahmad. How exactly? When Allen Sam testified during the hearing, he openly admitted that he ^{was} not an electrician and actually knew nothing about electrical matters. However, as a solution to the electrical breaker problem, he suggested that we just stop turning everything on at once.

Well, there were no facts or statements suggesting that we turned everything on at once. We simply mentioned that our electricity went dead when the stove and oven were on at the same time. This is normal stuff; nothing out of the ordinary here.

In addition to the above, When Ms. Ahmad suggested that Allen Sam (Property Manager) "credibly testified" that we are overloading the circuit breaker and should stop turning everything on at once, she actually was assuming facts not in evidence. Was Allen Sam

even there? NO! Was Ms. Ahmad there? NO! More importantly, neither I nor my wife said anything about turning everything on at once. A review of the CD recording will substantiate this.

Consequently, Ms. Ahmad's determination that Allen Sam testified credibly was based on nothing short of sheer bias. In addition, there no facts to suggest that Allen Sam knew anything about how or why the electrical overload occurred. It was all speculation, and Ms. Ahmad just ate it all up. Moreover, our inability to cook meals at home does materially affect habitability. Therefore, our claim for an offset should be respected.

Also, Ms. Ahmad's ruling is not supported by substantial evidence for yet another reason. Even though the problem with my patio sliding door handle and leaking bedroom vent are specifically noted in the NOTICE OF VIOLATION (dated 3/11/19), she would not address these very real and legitimate issues at the hearing or in her decision.

CONCLUSION

Given the potential for disparate and/or material issues of fact in this matter, I am asking that this case be referred to a hearing before the Rent Board. Also, given the foregoing, I am asking that the previous ruling be reversed and that we receive decreased housing services consideration for the heater, smoke detector, electrical breaker, broken patio door handle and leaking bedroom vent.



CITY OF OAKLAND

250 FRANK H. OGAWA PLAZA ▪ SUITE 2340 ▪ OAKLAND, CALIFORNIA 94612-2031

Planning and Building Department

Bureau of Building

Building Permits, Inspections and Code Enforcement Services

inspectioncounter@oaklandnet.com

(510) 238-6402

FAX:(510) 238-2959

TDD:(510) 238-3254

NOTICE OF VIOLATION

March 19, 2019

Certified and Regular mail

To: WILLIAMS JOHN F & 421 ASSOCIATES
C/O TED W DANG
1305 FRANKLIN ST 500
OAKLAND CA 94612-3224

Code Enforcement Case No.: 1900895
Property: 2230 LAKESHORE AVE, Unit 7
Parcel Number: 023 -0414-013-00

Re-inspection Date/Correction Due Date: April 24, 2019

Code Enforcement Services inspected your property on **March 11, 2019** and confirmed:

- that the violations of the Oakland Municipal Code (OMC) identified below are present and need to be addressed as specified under "Required Actions". Photographs of the violations are enclosed where applicable.
- that work was performed without permit or beyond the scope of the issued permit and you are receiving this Notice of Violation because you did not get the required permit within three (3) days of receiving the Stop Work Order. You must contact the inspector indicated below before the Re-inspection Date to stop further code enforcement action.
- Investor Owned Program - Per OMC 8.58**
- Foreclosed and Defaulted Properties - Per OMC 8.54**

At this point, no fees or other charges have been assessed for these violations. To stop further code enforcement action, you are advised to correct the above violations and contact Inspector **Randy Schimm**, who is assigned to your case, before the re-inspection date shown above to schedule an inspection. Your inspector is available by phone at 510-238-3846 and by email at rschimm@oaklandnet.com.

If the Property Owner Certification is included in this notice you may also complete the form and include photographs of the corrected violations.

Note: If a complaint is filed regarding the same or similar violation(s) and it is confirmed within 24 months from the date of this notice an immediate assessment of \$1,176.00 will be charged as a Repeat Violation. In addition, if violation(s) remain uncorrected after you receive a 30-day Notice of Violation, further enforcement action(s) will include additional fees.


- If you do not contact your inspector to discuss why you cannot comply or if applicable, complete the Property Owner Certification form and the re-inspection verifies that all violations have not been corrected, you may be charged for inspection and administrative costs, which can total **\$2,665.00**.
- The City may also abate the violations and charge you for the contracting and administrative costs, which can also total over **\$1,000.00**.
- Priority Lien fees in the amount of **\$1,349.00** may be assessed if fees are not paid within 30 days from the date of the invoice. Charges may be collected by recording liens on your property and adding the charges to your property taxes or by filing in Small Claims Court.
- The Notice of Violation may be recorded on your property with associated fees for processing and recording.

You have a right to appeal this Notice of Violation. You must complete the enclosed Appeal form and return it with supporting documentation in the enclosed envelope. If Code Enforcement Services does not receive your written Appeal within the appeal deadline dated: **April 24, 2019** you will waive your right for administrative review. *Note: Incomplete appeals including, but not limited to an oral notification of your intention to appeal, a written appeal postmarked but not received by us within the time prescribed or a written appeal received by us without a filing fee are not acceptable and will be rejected.*

Note: The appeal period may be reduced based on prior noticing i.e., Courtesy notice, Repeat Violation and the Property Owner Certification on record.

If you choose to file an appeal no further action can be taken by Code Enforcement Inspectors until you have had the opportunity to be heard by an independent Administrative Hearing Examiner pursuant to the Oakland Municipal Code Section 15.08.380 (B)(3) and a Final Decision is determined. An appeal will be scheduled within 60 days from the end of the appeal period. A filing fee in the amount of \$110.00 is due at the time of submittal. Payments may be made in person at the Bureau of Building, 250 Frank Ogawa Plaza, 2nd Floor, or by phone by calling 510-238-4774 (Please include the receipt number and date on your appeal). MasterCard and Visa are accepted.

| Investor-Owned Residential Property OMC 8.58 | Foreclosed and Defaulted OMC 8.54 |
|---|--|
| <p>Administrative/Civil penalties will be Assessed for failure to abate (OMC Sections 8.24.020, 1.08.60, 1.12). Penalties may be assessed for up to 21 days at \$1,000 a day. You will be notified separately if penalties have accrued.</p> <p>Nuisance Abatement Lien (Notice of Violation) A Nuisance Abatement Lien may be filed with the Alameda County Clerk-Recorder for recordation on the property title which shall have the force, effect and priority of a Judgment Lien. The Nuisance Abatement Lien may be foreclosed by an action brought by the City of Oakland for a money judgment.</p> <p>(Priority Lien) (OMC 8.58.430) A Constructive notice of the pendency of a collection action for an Assessment to all other interested parties shall be established on the date a lien is recorded by the Alameda County Clerk-Recorder</p> | <p>Civil penalties will be Assessed for failure to abate (OMC Sections 8.24.020, 1.08.60, 1.12). Penalties may be assessed for up to 21 days at \$1,000 a day. You will be notified separately if penalties have accrued.</p> <p>(Priority Lien) (OMC 8.54.430) A Constructive notice of the pendency of a collection action for an Assessment to all other interested parties shall be established on the date a lien is recorded by the Alameda County Clerk-Recorder</p> |

Sincerely,

 Randy Schimm
 Specialty Combination Inspector
 Planning and Building Department

Enclosures as applicable:

- | | | |
|--|---|---|
| <input type="checkbox"/> Blight brochure | <input checked="" type="checkbox"/> Residential Code Enforcement brochure | <input type="checkbox"/> Vehicular Food Vending brochure |
| <input checked="" type="checkbox"/> Property Owner Certification | <input type="checkbox"/> Mold and Moisture brochure | <input type="checkbox"/> Pushcart Food Vending brochure |
| <input type="checkbox"/> Lead Paint brochure | <input type="checkbox"/> Undocumented Dwelling Units brochure | <input checked="" type="checkbox"/> Smoke Alarms brochure |
| <input checked="" type="checkbox"/> Photographs | <input type="checkbox"/> Stop Work brochure | <input type="checkbox"/> Condominium Conversion brochure |

cc:

| Administrative Hearing Fees | |
|--|---|
| Filing Fee | \$ 110.00 |
| Conduct Appeals Hearing | Actual Cost Appeal (Fee charged only if Appellant loses appeal) |
| Processing Fee | \$ 931.00 |
| Reschedule Hearing | \$ 329.00 |
| <i>Fee Includes 9.5% Records Management Fee and 5.25% Technology Enhancement Fee</i> | |

Property Address: 2230 LAKESHORE AVE, Unit 7

Complaint #: 1900895

Property Maintenance (Blight) - (Checklist of Violations attached)

| Description of Violation | Required Action | OMC Section |
|--------------------------|-----------------|-------------|
| | | |
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Building Maintenance (Housing)

| Description of Violation | Required Action | OMC Section |
|---|---|--|
| Water dripping from heater vent in bedroom. Newer mechanical vent ducting installed on roof from FAU to bedroom without proof of permits. | Repair leak at water intrusion source. Obtain permits, inspections and approvals. | 15.08.050 15.08.260 15.08.120 15.08.140 |
| Sliding patio door handle broken and frame showing large gap at screw location. | Replace handle/repair frame. | 15.08.050 |
| Tenant complaint of breakers tripping when using electric range. | Inspect cause of breakers tripping. If replacing upgrading of electrical service or sub panel is required, obtain permits, inspections and approvals. | 15.08.260 C 15.08.120 15.08.140 |
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Zoning

| Description of Violation | Required Action | OMC Section |
|--------------------------|-----------------|-------------|
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CHRONOLOGICAL CASE REPORT

Case No.: T19-0301

Case Name: Burnett v. Joyce

Property Address: 13033 Broadway Terrace, Oakland, CA 94611

Parties: Diane Burnett (Tenant)
Theresa Joyce (Owner)
Joshua Bevitz, Esq. (Owner Representative)

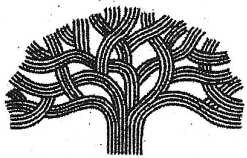
OWNER APPEAL:

| <u>Activity</u> | <u>Date</u> |
|-------------------------|--------------------|
| Tenant Petition filed | May 23, 2019 |
| Owner Response filed | September 30, 2019 |
| Hearing Decision mailed | February 5, 2020 |
| Owner Appeal filed | February 25, 2020 |

000145

T19-0301 KM/

KAM 5.23.19



CITY OF OAKLAND

**CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM**

250 Frank H. Ogawa Plaza, Ste. 5313
Oakland, CA 94612-0243
(510) 238-3721

RECEIVED CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM
For date stamp.

2019 MAY 23 PM 3:50

TENANT PETITION

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

Please print legibly

| | | |
|---|--|--|
| Your Name <i>Diane Burnett</i> | Rental Address (with zip code) <i>13033 Broadway Tier Oakland, CA 94611</i> | Telephone: <i>773-919-5656</i> |
| | | E-mail: <i>DBur4900@gmail.com</i> |
| Your Representative's Name | Mailing Address (with zip code) | Telephone: |
| | | Email: |
| Property Owner(s) name(s) <i>Theresa Joyce</i> | Mailing Address (with zip code) <i>45 Wilding Lane Oakland, CA 94618</i> | Telephone: <i>510-289-6175</i> |
| | | Email: <i>theresaandpatrick@att.net</i> |
| Property Manager or Management Co. (if applicable) | Mailing Address (with zip code) | Telephone: |
| | | Email: |

Number of units on the property: 2 *(We live in a house + there is a separate tenant living in the garage @ the same address)*

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

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

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

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

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

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

Lease Began 4/15/17

Date you moved into the Unit: April 15, 2017 Initial Rent: \$ 2200 /month

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

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

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

| Date you received the notice (mo/day/year) | Date increase goes into effect (mo/day/year) | Monthly rent increase | | Are you Contesting this Increase in this Petition?* | Did You Receive a Rent Program Notice With the Notice Of Increase? |
|--|--|-----------------------|----------------|---|---|
| | | From | To | | |
| <u>March 5, 2018</u> | <u>June 1, 2018</u> | \$ <u>2200</u> | \$ <u>2250</u> | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| <u>May 4, 2019</u> | <u>June 1, 2019</u> | \$ <u>2250</u> | \$ <u>2330</u> | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| | | \$ | \$ | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | | \$ | \$ | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | | \$ | \$ | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | | \$ | \$ | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No |

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

Have you ever filed a petition for this rental unit?

- Yes
- No

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

III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:

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

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

Yes No

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

Yes No

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

Yes No

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

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


} See Attached

Please attach documentary evidence if available.

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

IV. VERIFICATION: The tenant must sign:

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


Tenant's Signature

5/22/19
Date

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

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

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

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

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

Tenant's Signature

Date

VI. IMPORTANT INFORMATION:

Time to File

This form must be received at the offices of the Rent Adjustment Program ("RAP") within the time limit for filing a petition set out in the Rent Adjustment Ordinance (Oakland Municipal Code, Chapter 8.22). RAP staff cannot grant an extension of time by phone to file your petition. **Ways to Submit.** **Mail to:** Oakland Rent Adjustment Program, 250 Frank H. Ogawa Plaza, Ste. 5313, Oakland, CA 94612; **In person:** Date stamp and deposit in Rent Adjustment Drop-Box, Housing Assistance Center, Dalziel Building, 250 Frank H. Ogawa Plaza, 6th Floor, Oakland; or through the **RAP Online Petitioning System:** <https://apps.oaklandca.gov/rappetitions/Petitions.aspx>. For more information, call: (510) 238-3721.

File Review

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

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

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

September 24, 2019

City of Oakland
Rent Adjustment Program
250 Frank Ogawa Plaza Suite 5313
Oakland, CA 94612

RECEIVED

SEP 30 2019

RENT ADJUSTMENT PROGRAM
OAKLAND

RE: File Name: **Burnett v Joyce**

Case #: T19-0301

To: City of Oakland RAP:

Please see the attached Property Owner Response.

I have completed what I can for my Mother, the property owner as she is out of town dealing with her brother who has fallen ill.

There are a few details/information I am unable to provide, however; upon my Mother's return she will send in an amended response along with a signed verification page.

I note the hearing date of 12/11/2019.

Feel free to contact me if you have any questions.



Linda Joyce
415-629-7367
lannersmj@gmail.com

For Theresa Joyce (property owner/landlord)

000150



CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM
 250 Frank H. Ogawa Plaza, Suite 5313
 Oakland, CA 94612-0243
 (510) 238-3721

RECEIVED

For date stamp.

SEP 30 2019

RENT ADJUSTMENT PROGRAM
 OAKLAND

PROPERTY OWNER
RESPONSE

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

CASE NUMBER T 19-0301

| | | |
|--|--|-----------------------------------|
| Your Name <i>Theresa Joyce</i> | Complete Address (with zip code) <i>45 wilding lane Oakland CA 94618</i> | Telephone: <i>50 289 6175</i> |
| | | Email: |
| Your Representative's Name (if any) | Complete Address (with zip code) | Telephone: |
| | | Email: |
| Tenant(s) Name(s) <i>Diane Burnett Maria Diaz</i> | Complete Address (with zip code) <i>13033 Broadway Terrace Oakland CA 94611</i> | |
| Property Address (If the property has more than one address, list all addresses) | | Total number of units on property |

Have you paid for your Oakland Business License? Yes No Lic. Number: _____
 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: _____
 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: ___/___/1985

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

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

I. JUSTIFICATION FOR RENT INCREASE You must check the appropriate justification(s) box for each increase greater than the Annual CPI adjustment contested in the tenant(s) petition. For the detailed text of these justifications, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations. You can get additional information and copies of the Ordinance and Regulations from the Rent Program office in person or by phoning (510) 238-3721.

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

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

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

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

The tenant moved into the rental unit on 5 / 2017

The tenant's initial rent including all services provided was: \$ 2200 / month.

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

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

Is the tenant current on the rent? Yes No _____

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

| <u>Date Notice Given (mo./day/year)</u> | <u>Date Increase Effective</u> | <u>Rent Increased</u> | | <u>Did you provide the "RAP NOTICE" with the notice of rent increase?</u> |
|---|--------------------------------|-----------------------|----------------|---|
| | | <u>From</u> | <u>To</u> | |
| | <u>6 / 2018</u> | <u>\$ 2200</u> | <u>\$ 2250</u> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | <u>6 / 2018</u> | <u>\$ 2250</u> | <u>\$ 2330</u> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | | \$ | \$ | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | | \$ | \$ | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | | \$ | \$ | <input type="checkbox"/> Yes <input type="checkbox"/> No |

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

III. EXEMPTION

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

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

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

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

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

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

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

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

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

IV. DECREASED HOUSING SERVICES

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

V. VERIFICATION

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

Property Owner's Signature

Date

IMPORTANT INFORMATION:

Time to File

This form **must be received** by the Rent Adjustment Program (RAP), 250 Frank H. Ogawa Plaza, Suite 5313, Oakland, CA 94612-0243, within 35 days after a copy of the tenant petition was mailed to you. Timely mailing as shown by a postmark does not suffice. The date of mailing is shown on the Proof of Service attached to the response documents mailed to you. If the RAP office is closed on the last day to file, the time to file is extended to the next day the office is open.

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

File Review

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

Mediation Program

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

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

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

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

Property Owner's Signature

Date

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

| | | |
|--|--|--|
|  CITY OF OAKLAND | CITY OF OAKLAND RENT ADJUSTMENT PROGRAM 250 Frank H. Ogawa Plaza, Suite 5313 Oakland, CA 94612-0243 (510) 238-3721 | For date stamp. |
| | | <u>PROPERTY OWNER</u> <u>RESPONSE</u> |

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

CASE NUMBER T 19-0301

| | | |
|--|--|---|
| Your Name <i>Theresa Joyce</i> | Complete Address (with zip code) <i>45 Wilding Lane Oakland CA 94618</i> | Telephone: <i>510 289 6175</i> |
| | | Email: <i>theresa and patrick @att.net</i> |
| Your Representative's Name (if any) | Complete Address (with zip code) | Telephone: |
| | | Email: |
| Tenant(s) Name(s) <i>Diane Burnett Maria Diaz</i> | Complete Address (with zip code) <i>13033 Broadway Terrace Oakland CA 94611</i> | |
| Property Address (If the property has more than one address, list all addresses) | | Total number of units on property |

Have you paid for your Oakland Business License? Yes No Lic. Number: 00179770
 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: _____
 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: 5/4/1985

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

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

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

I. JUSTIFICATION FOR RENT INCREASE You must check the appropriate justification(s) box for each increase greater than the Annual CPI adjustment contested in the tenant(s) petition. For the detailed text of these justifications, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations. You can get additional information and copies of the Ordinance and Regulations from the Rent Program office in person or by phoning (510) 238-3721.

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|-----------------------------------|--|--|-----------------------------|-------------------------------|--------------------------|--------------------------|
| _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

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The tenant moved into the rental unit on 5/2017

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

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

| <u>Date Notice Given (mo./day/year)</u> | <u>Date Increase Effective</u> | <u>Rent Increased</u> | | <u>Did you provide the "RAP NOTICE" with the notice of rent increase?</u> |
|---|--------------------------------|-----------------------|----------------|---|
| | | <u>From</u> | <u>To</u> | |
| | <u>6/2018</u> | \$ <u>2200</u> | \$ <u>2250</u> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | <u>6/2018</u> | \$ <u>2250</u> | \$ <u>2330</u> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | | \$ | \$ | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | | \$ | \$ | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | | \$ | \$ | <input type="checkbox"/> Yes <input type="checkbox"/> No |

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:

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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.

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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.

Theresa Joyce
Property Owner's Signature

2nd Dec 2019
Date

IMPORTANT INFORMATION:

Time to File

This form **must be received** by the Rent Adjustment Program (RAP), 250 Frank H. Ogawa Plaza, Suite 5313, Oakland, CA 94612-0243, within 35 days after a copy of the tenant petition was mailed to you. Timely mailing as shown by a postmark does not suffice. The date of mailing is shown on the Proof of Service attached to the response documents mailed to you. If the RAP office is closed on the last day to file, the time to file is extended to the next day the office is open.

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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.

Theresa Joyce
Property Owner's Signature

2nd Dec 2019
Date



CITY OF OAKLAND

Revenue Division - Business Tax Section
250 Frank H. Ogawa Plaza, #1320
Oakland, CA 94612
(510) 238-3704 TDD (510) 238-3254
www.oaklandnet.com

Acknowledgement of Payment Received

Date: February 08, 2019

The City of Oakland acknowledges receipt of the following payment on the date printed above.

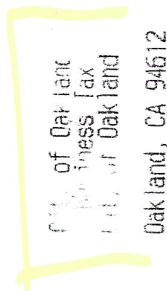
This payment will be tendered against the following account(s)

Account #: 00043983
Account Name: PATRICK & THERESA JOYCE
Account Address: 45 WILDING LN OAKLAND, CA 94618-2235
Account Paid: **RAP - RENT ADJUSTMENT PROGRAM**
Business Address: 13033 BROADWAY TER OAKLAND, CA 94611-1238

Please keep this acknowledgement for your records. Thank you.

Payment received by:

| | |
|-----------------------------|----------------|
| 2019 | |
| RAP Rent Adjustment Program | |
| <i>Visa Card</i> | \$68.00 |
| Total | \$68.00 |



Oakland, CA 94612

#238358

Feb 08 2019 11:54 am Trans#254566

TRANSACTION RECORD

Card Number : *****3122
Expiry Date : **/**
Card Entry : SWIPED
Account : VISA
Trans Type : PURCHASE
Amount : \$68.00

Auth # : 04943C
Sequence # : 600100023
Reference # : 00100023
Trace # : F2JR
Merchant ID : 000018410142
Terminal # : 00101
Date : 19/02/08
Time : 11:54:28

APPROVE.

*** CUSTOMER CO.

THIS DOCUMENT HAS A "VERIFY FIRST" TRUE WATERMARK AND VISIBLE FIBERS DISCERNIBLE FROM BOTH SIDES

CITY OF OAKLAND

BUSINESS TAX CERTIFICATE

ACCOUNT NUMBER

00043982

The issuing of a Business Tax Certificate is for revenue purposes only. It does not relieve the taxpayer from the responsibility of complying with the requirements of any other agency of the City of Oakland and/or any other ordinance, law or regulation of the State of California, or any other governmental agency. The Business Tax Certificate expires on December 31st of each year. Per Section 85.04.190A, of the O.M.C. you are allowed a renewal grace period until March 1st the following year.

DBA

PATRICK & THERESA JOYCE

EXPIRATION DATE

12/31/2019

BUSINESS LOCATION

13033 BROADWAY TER
OAKLAND, CA 94611-1238

BUSINESS TYPE

M Rental- Residential



JOYCE PATRICK & THERESA
45 WILDING LN
OAKLAND, CA 94618-2235

THIS DOCUMENT IS ALTERATION PROTECTED AND REFLECTS FLUORESCENT FIBERS UNDER UV LIGHT

CITY OF OAKLAND



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

Department of Housing and Community Development
Rent Adjustment Program

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

HEARING DECISION

CASE NUMBER: T19-0301, Burnett v. Joyce
PROPERTY ADDRESS: 13033 Broadway Terrace, Oakland, CA
DATE OF HEARING: December 11, 2019
DATE OF DECISION: February 4, 2020
APPEARANCES: Diane Burnett, Tenant
Maria Diaz, Tenant
Linda Joyce, Owner's Representative

SUMMARY OF DECISION

The tenant petition is granted in part.

CONTENTIONS OF THE PARTIES

On May 23, 2019, the tenant Diane Burnett filed a tenant petition contesting two rent increases, alleging the rent increases were unjustified and exceed the CPI amount, that the owner never provided the notice of the existence of the Rent Adjustment Program (the RAP Notice) and also claiming several decreased housing services.

On September 30, 2019, the owner filed a timely response, which stated that she has not given the RAP Notice to the tenant and that she did not receive a notice of some of the alleged decreased housing services until she received the Tenant Petition.

THE ISSUES

- (1) Did the tenant receive the RAP Notice?
- (2) Are the rent increases valid?
- (3) Have the tenant's housing services been decreased, and if so, by what amount?

000161

EVIDENCE

Background and Rent Increases

The tenant moved into the subject unit on April 15, 2017, at an initial rent of \$2,200.00.¹ The subject property is a residential building consisting of two (2) rental units. The current owner acquired the building on May 4, 1985.

The tenant contests the following rent increases:

1. from \$2,200.00 to \$2,250.00, effective June 1, 2018²; and
2. from \$2,250.00 to \$2,330.00, effective June 1, 2019.³

The tenant testified that she started paying \$2,250.00 on June 1, 2018, but did not pay the most recent rent increase. She kept paying \$2,250.00 through the date of the hearing. This evidence was not disputed.

RAP Notices

The tenant testified and stated on her petition that she never received the RAP Notice. She testified that the RAP Notice was not provided when she first moved into the subject unit or with any of the rent increases. The owner response stated that she did not provide the RAP Notice to the tenant.

Decreased Housing Services/Changed Condition

The tenant submitted a list of decreased housing services.⁴ At the hearing she identified the following as decreased housing services:

Splitting Utilities: There are no separate meters for each unit and the cost for trash, water and PG&E have been shared between the tenants. The tenant pays 2/3rds of the bill and the garage tenant pays 1/3rd of the bills. She submitted copies of PG&E bills and a worksheet listing how much the tenant paid for utilities from May 2017 through May 2019 – PG&E \$2,643.73, Water \$1,621.38, Waste Management \$736.80 - which totaled \$5,001.91⁵ This evidence was not disputed.

Rats/mice/fleas/insect: The tenant testified that they had rats and pests from the time they moved in. They notified the owner and the owner provided a regular pest control service for over one year from August 2017 through the fall of 2018, which solved the problem.

¹ Exhibit A

² Exhibit B

³ Exhibit C

⁴ Exhibit D

⁵ Exhibit E

Mold: The tenants testified that they suspects there is mold or potential mold due to a musty smell in the lower level of the house, specifically the bedrooms and the closets in the lower level. The owner supplied humidifier sometimes in 2017 and did not hear about this issue until the current petition. The owner testified that she will look into the inspection and testing for mold in the subject area.

Quiet Enjoyment: The tenants testified that they feel the owner is disrupting their quiet enjoyment of their property because the owner comes over to the property to do yard maintenance. The owner testified that she does the yard work once a week, usually on Mondays for several hours unless the tenants requests she reschedules. She testified that the subject property is locate in high fire area and the yard work is extensive to comply with the fire code.

Shared Mailbox: The tenants testified that there is one mailbox and they share the mailbox with the tenant who occupies the garage unit. They would like a separate mailbox. The owner testified that there has always been one mailbox at the property for both units.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Invalid Rent Increases - No RAP Notice

The Rent Adjustment Ordinance requires an owner to serve notice of the existence and scope of the Rent Adjustment Program (RAP Notice) at the start of a tenancy⁶ and together with any notice of rent increase.⁷

Because the owner never provided the RAP notice, the contested rent increases are not valid and the monthly rent will be rolled back to \$2,200.00, the rent amount prior to the first contested rent increase. The tenants paid the first rent increase (\$2,250.00) and are entitled to restitution which will be applied as a credit for rent overpayments from June 1, 2018, through December of 2019, as follows:

| OVERPAID RENT | | | | | | |
|----------------------------|----------|-------------------|------------------|----------------------|------------|------------------|
| From | To | Monthly Rent paid | Max Monthly Rent | Difference per month | No. Months | Sub-total |
| 1-Jun-18 | 1-Dec-19 | \$2,250 | \$2,200 | \$ 50.00 | 19 | \$ 950.00 |
| TOTAL OVERPAID RENT | | | | | | \$ 950.00 |

| RESTITUTION | |
|----------------------------------|---------------------------|
| MONTHLY RENT | \$2,200 |
| TOTAL TO BE REPAID TO TENANT | \$ 950.00 |
| TOTAL AS PERCENT OF MONTHLY RENT | 43% |
| AMORTIZED OVER | |
| 12 | MONTHS BY HRG. OFFICER IS |
| | \$ 79.17 |

⁶ O.M.C. §8.22.060(A)

⁷ O.M.C. §8.22.070(H)(1)(A)

Decreased Housing Services

Under the Oakland Rent Ordinance, a decrease in housing services is considered to be an increase in rent⁸ and may be corrected by a rent adjustment.⁹ However, in order to justify a decrease in rent, a decrease in housing services must be the loss of a service that seriously affects the habitability¹⁰ of a unit or one that was provided at the beginning of the tenancy and is no longer being provided, or one that was contracted between the parties.

In a decreased services case, the tenant has the burden of proving decreased housing services by a preponderance of the evidence and must establish she has given the owner notice of the problems and the opportunity to fix the problems before she is entitled to a relief.¹¹

Splitting Utilities: 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. Even if the parties agree to share the cost of utilities in the lease agreement, it is illegal as it violates the California law. Splitting the costs of utilities among tenants who live in separate units is prohibited by the public Utilities Commission Code and Rule 18 of PG&E.¹² The best way to remedy this situation is to install individual meters. Alternatively, the owner may choose to pay for the bill or include it into the tenant's rent as part of the rent, but it cannot be separately paid and split by the tenants.

It is undisputed that the tenants were sharing the cost for utilities with the other tenant in the garage unit. Therefore, this claim is granted and the tenants are entitled to a credit in the amount of \$5,001.91, which is the amount the tenants were charged for utilities from May of 2017 through May of 2019. The tenants will receive a credit as stated in the order below.

Rats/mice/fleas/insect: The owner acted reasonably by providing regular pest control service until the problem was solved. Therefore, this claim is denied.

Mold: The owner did not get notified until the tenant petition and testified at the hearing that she will address this issue. The owner is now on notice and has a reasonable time to remedy this issue before any relief may be ordered. Therefore, this claim is denied at this time.

Loss of Quiet Enjoyment: The tenants seemed to suggest that when the owner comes to the property to do yard maintenance, it interferes with the tenants' right to the covenant of quiet enjoyment of their property. However, the Rent Adjustment Program is an administrative agency whose power is limited to enforce the provisions of the Rent

⁸ O.M.C. §8.22.070(F)

⁹ O.M.C. §8.22.110(E)

¹⁰ *Green v. Superior Court* (1974) 10 Cal. 3d 616 at p. 637

¹¹ Hearing Decision T11-0191, *Howard v. Smith* (2012)

¹² RAP Regs 10.1.10

Adjustment Ordinance. In the case of *Larson v. City and County of San Francisco*, (2011) 192 Cal. App. 4th 1263, the court examined the authority of San Francisco's Rent Board. The court held that the jurisdiction of administrative agencies is limited to those claims that are quantifiable in nature. The Court specifically held that the loss of quiet enjoyment is not such a claim. *Larson* at p. 1281.

The Board has also stated that the RAP does not have jurisdiction over any such claims. See the *Housing, Residential Rent and Relocation Board Decision in Aswad v. Fields*, T03-0377. The tenant's claims for decreased housing services as they relate to the covenant of quiet enjoyment are not claims that can be made under the Rent Adjustment Ordinance. While these acts may constitute civil wrongs, these claims must be made in a court of competent jurisdiction. Therefore, the tenants' claim for decreased housing service as it relates to the covenant of quiet enjoyment is denied.

Shared Mailbox: Since the tenants moved into the subject property, there was always one mailbox for both units. While it may be inconvenient, it is not a decreased housing service relating to habitability that would warrant reduction in rent. Therefore, this claim is denied.

ORDER

1. Tenant Petition T19-0301 is granted in part.
2. The rent increases are not valid. The monthly base rent is \$2,200.00.
3. The tenant is entitled to reduce the rent in accordance with the following restitution order after this Hearing Decision becomes final. The decision is final if no party has filed an Appeal within 20 days of the date this Hearing Decision is mailed to the parties.
4. The monthly base rent of \$2,200.00 is further decreased to \$1,704.01 for the next twelve (12) months per chart below.
5. The total credit is \$5,951.92, due to rent overpayments (\$950.00) and past decreased housing services due to splitting utilities (\$5,001.92). This amount may be adjusted by a rent decrease for the next 12 months as follows:

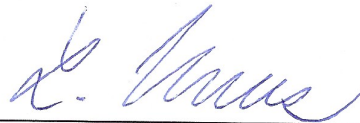
| | |
|---|------------|
| Base Rent | \$2,200.00 |
| Rent overpayments amortized over 12 months (950.00 divided by 12 months) | - 79.17 |
| | \$2,120.83 |
| Rent overpayments due to splitting utilities amortized over 12 months (\$5,001.91 divided by 12) | - 416.82 |
| Monthly Rent for the next 12 months | \$1,704.01 |

5. On March 1, 2021, the rent will increase by \$495.99 (\$79.17 plus \$416.82) as the credit for rent overpayments and past decreased services due to splitting utilities expires per chart above. This is not a rent increase.

6. The owner is otherwise eligible to increase the tenants' rent six months after proper service of the Notice of the existence of the Rent Adjustment Program and in accordance with California Civil Code §827.

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

Dated: February 4, 2020



Linda M. Moroz
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE

Case Number T19-0301

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

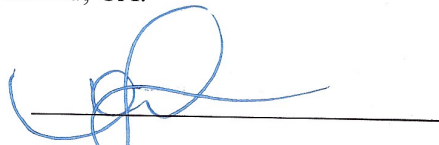
Theresa Joyce
45 Wilding Lane
Oakland, CA 94618

Tenant

Diane Burnett
13033 Broadway Terrace
Oakland, CA 94611

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 **February 05, 2020** in Oakland, CA.



Raven Smith

Oakland Rent Adjustment Program

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|  CITY OF OAKLAND RENT ADJUSTMENT PROGRAM 250 Frank Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721 | For date stamp. 2020 FEB 25 PM 2:38 |
| | <u>APPEAL</u> |

| | | | |
|---|--|--|--|
| Appellant's Name Theresa Joyce | | <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant | |
| Property Address (Include Unit Number) 13033 Broadway Terrace, Oakland, California 94611 | | | |
| Appellant's Mailing Address (For receipt of notices) c/o Joshua Bevitz, Esq. Newmeyer Dillion 1333 N. California Blvd., Suite 600 Walnut Creek, CA 94596 | | Case Number T19-0301 | Date of Decision appealed February 4, 2020 |
| Name of Representative (if any) Joshua Bevitz, Esq. | | Representative's Mailing Address (For notices) Newmeyer Dillion 1333 N. California Blvd., Suite 600 Walnut Creek, CA 94596 | |

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.)*
 See attached.
 - 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.)*
 See attached.

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.)
See attached.

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: 5.

• 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 February 25, 2020, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

| | |
|-------------------------------|----------------------------|
| <u>Name</u> | Diane Burnett & Maria Diaz |
| <u>Address</u> | 13033 Broadway Terrace |
| <u>City, State Zip</u> | Oakland, California 94611 |
| <u>Name</u> | |
| <u>Address</u> | |
| <u>City, State Zip</u> | |

| | |
|--|----------------------------------|
|  Joshua Bevitz, Esq. Appellant's Representative | February 25, 2020 DATE |
| SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE | |

For more information phone (510) 238-3721.

Attachment to Appellant Theresa Joyce's Appeal
Case No. T19-0301

Appellant Theresa Joyce respectfully submits the following information in support of her appeal of the decision of the City of Oakland's Rent Adjustment Program in Case No. T19-0301, decided February 4, 2020 (the "Decision").

Appellant appeals the Decision on the following grounds:

I. The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations and/or prior decisions of the Board (Paragraph 2(a) on Appeal Form).

A. RAP Lacks Jurisdiction.

Single family residences are exempt from Oakland's Rental Ordinance under Costa-Hawkins.¹ Based thereon, RAP did not have jurisdiction to hear Ms. Maria Diaz and Ms. Diane Burnett's petition (the "Petition") and/or to render the Decision.

The subject property, located at 13033 Broadway Terrace in Oakland, California (the "Property") is a single family residence of less than 1,200 square feet. The Property is comprised of one structure. Accordingly, as a single family residence, the Property is exempt from RAP.

It does not appear from the Decision that any evidence was presented on the issue of whether the Property constitutes a single family residence and/or whether the space rented by the other tenant meets the definition of a "dwelling unit," such that the relief sought by the Petition is within the purview of RAP. In fact, the Hearing Officer remarked at the hearing to Appellant's representative (her daughter) that PG&E would not install individual meters because the Property would not be viewed as two separate residential units. Accordingly, Appellant requests the Board reverse the Decision on this point, or at the very least, remand the matter so the Hearing Officer can determine whether RAP has jurisdiction of this matter.

B. Splitting Utilities Does Not Constitute a Decrease in Housing Services.

The portion of the Decision finding that splitting utilities constitutes a decrease in housing services in the amount of \$5,001.92 is inconsistent with OMC Chapter 8.22, the Rent Board Regulations and prior decisions of the Board.

As stated in the Decision, a decrease in housing services requires the loss of a service that either (1) seriously affects the habitability of the unit² or (2) was one that was provided at the beginning of the tenancy and is no longer provided.

Splitting utilities does not affect the habitability of the unit, let alone *seriously* affect the habitability of the unit such that a decrease in housing services can be established.

¹ Hearing Decisions T11-0105 (*Kidd et al. v. Ly*); L17-0077 (*Premji V. Tenants*); T16-0068 (*Nazzari v. Massoumeh*); T14-0150 (*Harris v. Sullivan Management*)

² *Green v. Superior Court* (1974) 10 Cal. 3d 616, 637.

Decisions of this Board have found that mold and mildew³, bugs in a light fixture⁴, removal of square footage of a unit⁵, failure to repair roof leaks⁶, failure to make timely repairs⁷, and refusal to upgrade electrical⁸, are not serious conditions impacting habitability. It follows that splitting the cost of utilities does not seriously affect the habitability of the Property and no evidence was presented to the contrary.

The relevant Rent Board Regulations state that a decrease in housing services pertains to “any items originally included as housing service costs such as water, garbage, etc.” which is thereafter eliminated, at which time the decrease in rent will be calculated as “the average cost of the service eliminated.”⁹ The undisputed evidence referenced in the Decision establishes that the costs of the water, garbage, and PG&E have been shared amongst the tenants since the outset of Ms. Diaz and Ms. Burnett’s tenancy at the Property and continuing to the present. Therefore, there has been no loss of any services to justify a finding of a decrease in housing services.

The reasoning that the Hearing Officer applied to the shared mailbox applies with equal force to shared utilities yet contradictory findings were reached on these issues as it pertains to a decrease in housing services. On the issue of the shared mailbox, the Hearing Officer concluded in her Decision that “[s]ince the tenants moved into the subject property, there was always one mailbox for both units. While it may be inconvenient, it is not a decreased housing service relating to habitability that would warrant a reduction in rent. Therefore, the claim is denied.”¹⁰

Absent from the Decision is any explanation as to why a different result was reached on the utilities. Neither the Rent Board Regulations nor any of the other authorities cited in the Decision, including PG&E Rule 18, suggest that the fact of splitting utilities constitutes a decrease in housing services. Appellant is also unaware of any prior decision of this Board reaching such a finding¹¹.

Accordingly, Appellant respectfully requests that the portion of the Decision finding that splitting utilities in this case constitutes a decrease in housing services justifying a reduction in rent in the amount of \$5,001.92 be reversed as inconsistent with OMC Chapter 8.22, the Rent Board Regulations and, prior decisions of the Board.

I. The Claim Relating to Splitting Utilities is Untimely.

The undisputed evidence is that Ms. Diaz and Ms. Burnett lived at the Property for more than two years before they filed the Petition arguing (inter alia) that splitting utilities

³ Hearing Decision T12-0187 (*Kellybrew v. Lewis*)

⁴ *Id.*

⁵ Hearing Decision T12-0133 (*Goldfarb v. McGee*)

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Rent Adjustment Board Regulation 10.1.8

¹⁰ Page 5 of Decision regarding “Shared Mailbox.”

¹¹ Appellant’s representative made several requests to RAP to obtain copies of relevant Board decisions but did not receive any response.

constitutes a decrease in housing services. Many prior decision of this Board have denied petitions as untimely, such as a petition filed in 2010 regarding decreased housing services in 2008.¹² In the present case, despite an analogous timeframe of two years in a prior decision of the Board, the Decision in this matter fails to make any findings of fact or conclusions of law on the timeliness of the Petition and reaches an inconsistent result.

The Decision's findings on the split utilities is also unsupported by substantial evidence, as discussed below.

II. The Decision is not Supported by Substantial Evidence (Paragraph 2(e) on Appeal Form).

A. There is No Evidence Ms. Joyce was Provided Notice of a Decrease in Housing Services Related to the Utilities.

The tenant has the burden of proving decreased housing services by a preponderance of the evidence and must establish she has given owner notice of the problems and the opportunity to fix the problems before she is entitled to relief.¹³

Ms. Diaz and Ms. Burnett have failed to carry their burden with respect to the utilities. The Decision is not supported by any evidence whatsoever that Ms. Diaz and/or Ms. Burnett provided notice to Ms. Joyce of any decrease in housing services related to splitting utilities. As stated at the hearing, the only notice Ms. Joyce received from Ms. Diaz and Ms. Burnett with respect to splitting utilities was when Ms. Joyce received the Petition, which more than two years into the tenancy. Ms. Diaz and Ms. Burnett did not introduce any evidence (or argument) that they provided notice to Ms. Joyce of any claim of decreased housing services based on splitting utilities nor did they provide her with the opportunity to fix the problem.

Accordingly, Ms. Diaz and Ms. Burnett have failed to meet their burden of proving a decrease in housing services by a preponderance of the evidence and are not entitled to the relief in the amount of \$5,001.92.

B. There is No Evidence to Support a Reduction in Rent in the Amount of \$5,001.92.

In accordance with the Rent Board Regulations, if a decrease in rent is granted, the "Hearing Officer shall state when the decrease commenced, the nature of the service decrease, the value of the decrease in services, and the amount to which the rent may be increased when the service is restored."¹⁴ Prior decisions of the Board reflect that careful analysis is involved in valuing a decrease in service (in one Board decision, a value of a fraction of one percent was assigned)¹⁵.

¹² Hearing Decision T10-0080 (*Cortez v. Wang*)

¹³ Hearing Decision T11-0191 (*Howard v. Smith*)

¹⁴ Oakland Municipal Code section 8.22.110(f)(3)

¹⁵ Hearing Decision T13-0093

Such careful analysis is absent here. There is no indication in the Decision that consideration was given to the value of any decrease in services, which decrease Appellant continues to dispute. Rather, the Decision, with little explanation, finds that the full amount of \$5,001.92 paid in utilities for the entirety of the tenancy leading up the filing of the Petition constitutes the decrease in services.

Accordingly, Appellant respectfully requests that if the Board finds a decrease in housing services occurred, it remand the Decision for a determination of the value of the services.

III. Other (Paragraph 2(h) on Appeal Form).

A. The Petition Exceeds the Relief Sought by the Petition Without Support Justifying the Relief

The portion of the Decision awarding Ms. Diaz and Ms. Burnett \$5,001.92 in the form of reduced rent to cover a decrease in housing services is not only contrary to applicable law and unsupported by the evidence, but it also exceeds the relief sought by the Petition, which result is only permissible when based on findings of fact and conclusions of law justifying the relief.¹⁶

The Petition claims a “decrease or inadequate services” based upon shared utility bills, but it fails to allege any decrease in housing services related thereto. The Petition is utterly silent as to the garbage (other than to mention that the cost is shared) and notes that the costs of PG&E rose in November 2018 due to an electrical issue in the garage¹⁷, as well as due to an alleged six month increase in the landlord’s use of water and electricity for what they describe as “unnecessary yard work.”¹⁸ Assuming those circumstances would cause a decrease in housing services, which Appellant disputes, the Decision awarded the tenants an amount comprised of all utilities (garbage, water and PG&E) paid by the tenants from the outset of tenancy to the date of filing the Petition, which exceeds the relief sought in the Petition and is unsupported by findings of fact and conclusions of law.

The presumably unintended result of the Decision is that Ms. Diaz and Ms. Burnett have now received a windfall insofar as they are essentially receiving more than two years’ worth of free utilities, which they consumed during that timeframe without any notice to Ms. Joyce of an issue. We presume the Board will see this result as unjust and respectfully request that the Board reverse the Decision, finding that no decrease in housing services occurred as a result of the shared utilities.

¹⁶ Hearing Decision T05-0130 (*Wright v. Christian-Miller*)

¹⁷ Ms. Joyce is willing to compensate Ms. Diaz and Ms. Burnett for the increased energy costs caused for a few months by the issue in garage. However, since she has not been provided with the PG&E bills, she cannot ascertain what that amount is.

¹⁸ The Lease permits Ms. Joyce to perform yardwork at her discretion.

B. The Decision Did Not Carefully Consider Its Consequences, Which Are Manifestly Unjust.

The other tenant of the single family home has lived there for many years and she and Ms. Joyce enjoy a harmonious landlord-tenant relationship. On the other hand, Ms. Diaz and Ms. Burnett's Petition is only the latest example of their efforts to harass Ms. Joyce, a 73 year old immigrant who is unemployed and relies on the rental income derived from the Property.¹⁹

The Board should sincerely think about the practical, unjust consequences of the Decision. That is, if the Decision is permitted to stand, not only do Ms. Diaz and Ms. Burnett receive two years of free utilities, they will be awarded free utilities for as long as they remain at the Property, all while an elderly immigrant misses income she relies on.

As the Decision states, Ms. Joyce's legal options are to have PG&E install a second meter or put the utility accounts in her name²⁰ and charge enough in rent to compensate her for the utility bills for the Property. However, the Officer conceded that PG&E will not install a second meter at the Property²¹ while also tying Ms. Joyce's hands as far as how much she can raise the rent due to rent control. Even if Ms. Joyce puts the utility accounts in her name and then raises the rent, which is impermissible for at least six months per the Decision, pursuant to the consumer price index allowance, the increased rent will never catch up and capture the cost of the utilities, which also increase every year due to inflation.

The end result of the Decision, if allowed to stand, is that Ms. Diaz and Ms. Burnett get to live at the Property in perpetuity without paying for the cost of utilities they consume while Ms. Joyce, a 73 year old immigrant and long-time resident of Oakland, loses a critical source of income and is not permitted to raise the rent of her single family home for years. All in one fell swoop. That result cannot be what the citizens of Oakland and the Oakland City Council intended when it passed laws to protect tenants. While Appellant does not dispute that tenants deserve protection, in this case it is the landlord, Ms. Joyce, who is being taken advantage of. She deserves better than this. We hope the Board does what is right. Thank you.

¹⁹ It is worth noting that Ms. Joyce was unable to attend the hearing to represent herself due to Ms. Diaz and Ms. Burnett's refusal to agree to hold the RAP hearing on a date that Appellant was available.

²⁰ Presently, the other tenant has been advising Ms. Diaz and Ms. Burnett what they owe pursuant to their respective leases as the PG&E account is in the other tenant's name.

²¹ Even if a second meter could be installed, doing so and making Ms. Diaz and Ms. Burnett have a PG&E account in their names would be a rent increase pursuant to the rationale of the Decision.

ARBITRATION
2025 FEB 25 PM 2:38

PROOF OF SERVICE

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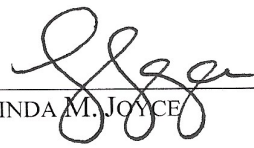
I am over the age of eighteen years.

On February 25, 2020, I served the **APPEAL AND ATTACHMENT TO APPEAL CASE No. T19-0301** on the named parties in said action as follows:

City of Oakland Rent Adjustment Program *via hand delivery 2/25/2020*
250 Frank Ogawa Plaza Suite 250
Oakland, CA 94612

Diane Burnett *via USPS Mail*
Maria Diaz
13033 Broadway Terrace
Oakland, CA 94611

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on February 25, 2020 at San Francisco, California.


LINDA M. JOYCE