

**HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD
FULL BOARD SPECIAL MEETING
September 8, 2022
5:00 P.M.
Meeting Will Be Conducted Via Zoom**

AGENDA

PUBLIC PARTICIPATION

The public may observe and/or participate in this meeting in 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 the link below:
When: Sep 8, 2022 5:00 PM Pacific Time (US and Canada)

Topic: HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD FULL BOARD MEETING- September 8, 2022

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/88358833966>

Or One tap mobile :

US: +16694449171,,88358833966# or +16699009128,,88358833966#

Or Telephone:

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

US: +1 669 444 9171 or +1 669 900 9128 or +1 719 359 4580 or +1 253 215 8782 or +1 346 248 7799 or +1 386 347 5053 or +1 564 217 2000 or +1 646 558 8656 or +1 646 931 3860 or +1 301 715 8592 or +1 309 205 3325 or +1 312 626 6799

Webinar ID: 883 5883 3966

International numbers available: <https://us02web.zoom.us/j/88358833966>

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 hearingsunit@oaklandca.gov.

HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD SPECIAL MEETING

1. CALL TO ORDER
2. ROLL CALL
3. PUBLIC COMMENT
 - a. Comments on all agenda items will be taken at this time. Comments for items not on the agenda will be taken during open forum.
4. CONSENT ITEMS
 - a. Renewal: Adoption of AB 361 Resolution (pp. 4-6)
 - b. Approval of Board Minutes, 7/28/2022 (pp. 7-12)
5. APPEALS*
 - a. T22-0048, Prosterman v. Kinfu (pp. 18-39)
6. SCHEDULING AND REPORTS
7. INFORMATION AND ANNOUNCEMENTS
8. RESOLUTION TO ADOPT REGULATIONS FOR THE RENT REGISTRY ORDINANCE AND FORWARD TO CITY COUNCIL FOR APPROVAL (pp. 13-15)
9. POLICY POSITION RESOLUTION (pp. 16-17)
10. OPEN FORUM
11. ADJOURNMENT

Note: Appeal parties do not need to comment on their case during public comment or open forum.

**Staff appeal summaries will be available on the Rent Adjustment Program's website and the City Clerk's office at least 48 hours prior to the meeting pursuant to O.M.C. 2.20.070.B and 2.20.090*

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.

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 (RAP) 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, Cantones, 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.

OAKLAND HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD (HRRRB)

RESOLUTION NO. _____

ADOPT A RESOLUTION DETERMINING THAT CONDUCTING IN-PERSON MEETINGS OF THE HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD (HRRRB) AND ITS COMMITTEES WOULD PRESENT IMMINENT RISKS TO ATTENDEES' HEALTH, AND ELECTING TO CONTINUE CONDUCTING MEETINGS USING TELECONFERENCING IN ACCORDANCE WITH CALIFORNIA GOVERNMENT CODE SECTION 54953(e), A PROVISION OF AB-361.

WHEREAS, on March 4, 2020, Governor Gavin Newsom declared a state of emergency related to COVID-19, pursuant to Government Code Section 8625, and such declaration has not been lifted or rescinded. *See* <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf>; and

WHEREAS, on March 9, 2020, the City Administrator in their capacity as the Director of the Emergency Operations Center (EOC), issued a proclamation of local emergency due to the spread of COVID-19 in Oakland, and on March 12, 2020, the City Council passed Resolution No. 88075 C.M.S. ratifying the proclamation of local emergency pursuant to Oakland Municipal Code (O.M.C.) section 8.50.050(C); and

WHEREAS, City Council Resolution No. 88075 remains in full force and effect to date; and

WHEREAS, the Centers for Disease Control (CDC) recommends physical distancing of at least six (6) feet whenever possible, avoiding crowds, and avoiding spaces that do not offer fresh air from the outdoors, particularly for people who are not fully vaccinated or who are at higher risk of getting very sick from COVID-19. *See* <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>; and

WHEREAS, the CDC recommends that people who live with unvaccinated people avoid activities that make physical distancing hard. *See* <https://www.cdc.gov/coronavirus/2019-ncov/your-health/about-covid-19/caring-for-children/families.html>; and

WHEREAS, the CDC recommends that older adults limit in-person interactions as much as possible, particularly when indoors. *See* <https://www.cdc.gov/aging/covid19/covid19-older-adults.html>; and

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WHEREAS, the CDC, the California Department of Public Health, and the Alameda County Public Health Department all recommend that people experiencing COVID-19 symptoms stay home. *See* <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/steps-when-sick.html>; and

WHEREAS, persons without symptoms may be able to spread the COVID-19 virus. *See* <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>; and

WHEREAS, fully vaccinated persons who become infected with the COVID-19 Delta variant can spread the virus to others. *See* <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated.html>; and

WHEREAS, the City's public-meeting facilities are indoor facilities that do not ensure circulation of fresh / outdoor air, particularly during periods of cold and/or rainy weather, and were not designed to ensure that attendees can remain six (6) feet apart; and

WHEREAS, holding in-person meetings would encourage community members to come to City facilities to participate in local government, and some of them would be at high risk of getting very sick from COVID-19 and/or would live with someone who is at high risk; and

WHEREAS, in-person meetings would tempt community members who are experiencing COVID-19 symptoms to leave their homes in order to come to City facilities and participate in local government; and

WHEREAS, attendees would use ride-share services and/or public transit to travel to in-person meetings, thereby putting them in close and prolonged contact with additional people outside of their households; and

WHEREAS, on October 14 and December 9, 2021; January 27, February 10, March 10, April 14, May 12, June 9, and July 28, 2022, the Housing, Residential Rent and Relocation Board (HRRRB) adopted a resolution determining that conducting in-person meetings would present imminent risks to attendees' health, and electing to continue conducting meetings using teleconferencing in accordance with California Government Code Section 54953(e), a provision of AB-361; now therefore be it:

RESOLVED: that the Housing, Residential Rent and Relocation Board (HRRRB) finds and determines that the foregoing recitals are true and correct and hereby adopts and incorporates them into this resolution; and be it

FURTHER RESOLVED: that, based on these determinations and consistent with federal, state and local health guidance, the Housing, Residential Rent and Relocation Board (HRRRB) renews its determination that conducting in-person meetings would pose imminent risks to the health of attendees; and be it

FURTHER RESOLVED: that the Housing, Residential Rent and Relocation Board (HRRRB) firmly believes that the community's health and safety and the community's right to

participate in local government, are both critically important, and is committed to balancing the two by continuing to use teleconferencing to conduct public meetings, in accordance with California Government Code Section 54953(e), a provision of AB-361; and be it

FURTHER RESOLVED: that the Housing, Residential Rent and Relocation Board (HRRRB) will renew these (or similar) findings at least every thirty (30) days in accordance with California Government Code section 54953(e) until the state of emergency related to COVID-19 has been lifted, or the Housing, Residential Rent and Relocation Board (HRRRB) finds that in-person meetings no longer pose imminent risks to the health of attendees, whichever occurs first.

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

July 28, 2022

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 by Chair Ingram at 5:04 p.m.

2. ROLL CALL

MEMBER	STATUS	PRESENT	ABSENT	EXCUSED
R. NICKENS, JR.	Tenant	X		
P. VIRAMONTES	Tenant	X		
J. DEBOER	Tenant Alt.			X
M. REAGAN	Tenant Alt.			X
D. INGRAM	Undesignated	X		
C. OSHINUGA	Undesignated	X		
E. TORRES	Undesignated			X
Vacant	Undesignated Alt.			
Vacant	Undesignated Alt.			
T. WILLIAMS	Landlord	X		
N. HUDSON	Landlord	X		
Vacant	Landlord Alt.			
K. SIMS	Landlord Alt.			X

Staff Present

Oliver Luby
Harman Grewal
Briana Lawrence-McGowan
Mike Munson

Deputy City Attorney
Business Analyst III (HCD)
Administrative Analyst I (RAP)
KTOP

3. PUBLIC COMMENT

- a. James Vann from the Oakland Tenants Union spoke and congratulated the Board on getting through another year, and mentioned that he hopes the Board is able to refresh and enjoy themselves during their summer recess. Mr. Vann also extended an invitation to the Board to attend and observe the Oakland Tenants Union’s regular monthly meetings.

4. CONSENT ITEMS

- a. Renewal—Adoption of AB 361 Resolution & Approval of Board Minutes, 6/9/2022: Chair Ingram moved to renew the adoption of AB 361 resolution and to approve the Board Minutes from 6/9/2022. Vice Chair Oshinuga seconded the motion.

The Board voted as follows:

Aye: D. Ingram, C. Oshinuga, N. Hudson, T. Williams, P. Viramontes, R. Nickens, Jr.
Nay: None
Abstain: None

The motion and minutes were approved.

5. APPEALS*

- a. T22-0024, Leshne v. Meriau

Appearances:	Kai Leshne Matthew Quiring	Tenant Owner Representative
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This case involved a tenant petition that was filed in January 2022, contesting a rent increase that was scheduled to take effect within the same month. The owner filed a timely response and denied that there was a rent increase. Both parties agreed to mediation and electronic service by the Rent Adjustment Program. A notice was sent via regular mail on February 25, 2022 by RAP to the parties, and a settlement conference and hearing was scheduled for April 27, 2022. The notice informed the parties that a Zoom link would be sent prior to the hearing on March 16, 2022. Two different notices were sent by RAP to the parties via e-mail and provided the Zoom link to the April 27, 2022 Settlement Conference and Hearing and the scheduled mediation for April 20,2022, which was one week prior to the hearing—and informed the parties that the April 27, 2022 hearing would be held as originally scheduled if the mediation was not successful. The notice also informed the parties about consequences for failure

to attend the scheduled mediation, by order dated April 20, 2022 and served to the parties on April 22, 2022. The Hearing Officer dismissed the petition because the tenant failed to appear at April 20, 2022 mediation. The tenant filed a timely appeal on the grounds of denial of a sufficient opportunity to present a claim. On appeal, the tenant stated that they never received a physical notice for the mediation hearing, stating that their mail often gets misdelivered, and requested that future correspondence be delivered to their representative's P.O. box.

The following issue was presented to the Board:

1.) Did the tenant have good cause for failure to appear at the mediation?

The tenant contended that on April 15, 2022, he noticed an e-mail from RAP dated for April 12, 2022, which included a notice of hearing that was dated for April 27, 2022. The tenant argued that there was no statement on that e-mail regarding anything about mediation, and that two days before the date of the hearing, he went back into his e-mail to confirm the exact time of the hearing and found an Order of Dismissal that was sent three days prior (five days before the scheduled hearing). The tenant contended that the cause of dismissal was due to missing the mediation that was scheduled for April 20, 2022 and that he was very confused. The tenant argued that he went back into his e-mail and searched through all correspondences received from RAP, and noticed that there was an e-mail dated for April 5, 2022 that had a mediation and hearing date listed. The tenant argued that the e-mail that was seen on April 15, 2022, which was sent by RAP on April 12, 2022 only had the hearing date of April 27, 2022. The tenant contended that he would like the opportunity to actually have his case heard regarding the illegal rent increase and harassment of the of the current owners. The tenant argued that there has been on-going issues with physical mail correspondences being received, that he has had several pieces of mail not be received, and that he did not receive any physical correspondence regarding the hearing or mediation.

The owner representative contended that the Oakland municipal code states that in the event of a noticed mediation hearing, if the petitioner fails to appear at the hearing, the Hearing Officer may dismiss the petition. The owner representative argued that parties agreed to mediation, a hearing was set, the notices were issued electronically, the petitioner failed to appear at the mediation, and that the Hearing Officer dismissed the petition as a result. The owner representative argued that the petitioner consented to electronic service, specified his preferred e-mail address, and that the petition form includes a disclaimer, stating that consent to electronic service means that certain documents may only be served that way. The owner representative contended that electronic service of the notice of mediation and notice of hearing were provided, that the petitioner had a fair chance to have a hearing, but failed to attend the mediation and that the petition was rightfully dismissed.

After parties' arguments, questions to the parties, and Board discussion, Member P. Viramontes moved to affirm the Hearing Officer's decision on the grounds that the appellant did not show good cause for failure to appear at the mediation. Member T. Williams seconded the motion.

The Board voted as follows:

Aye: D. Ingram, C. Oshinuga, N. Hudson, T. Williams, P. Viramontes,
R. Nickens, Jr.

Nay: None

Abstain: None

The motion was approved.

b. L21-0054, Winters Marital Trust v. Tenants

Appearances: John Winters Owner Representative

This case involved an owner petition requesting a rent increase for capital improvements, which was filed in October 2021. No tenants filed a response to the petition. After conducting two hearings, the Hearing Officer issued a decision on May 27, 2022, stating that based on the evidence, tenants in two of the four units (units one and three) were not given the initial RAP notice in required languages other than English. Since the decision found that all of the affected tenants were not given the complete RAP notices required, the owner's petition was dismissed.

The owner filed a timely appeal on the grounds of denial of a sufficient opportunity to present a claim, the decision was based on a technicality—as the Hearing Officer did not accept the owner's offer of proof that that the RAP notices were provided at the inception of tenancy or prior to petitioning, and that the deficiency was being corrected by delivering new RAP notices. The Rent Ordinance requires owners to provide a tenant with a RAP notice at the commencement of tenancy and with any notice of rent increase, and in 2016 the RAP notice requirement was amended to require that the RAP notice provided at the inception of tenancy be provided in English, Spanish, and Chinese. Therefore, beginning September 21, 2016, a RAP notice provided only in English is not satisfactory for the notice requirement at the commencement of tenancy. The Rent Ordinance further requires that the initial RAP notice requirement must be fulfilled for each affected tenant in order for an owner to be able to petition or respond to a tenant's petition—and when an owner fails to provide the complete RAP notice in advance of petitioning, the ordinance mandates dismissal of the petition. The hearing decision in this case determined that tenants in two of the

four units initially received English only RAP notices, despite translations in Spanish and Chinese being required.

The owner contended that the primary reason for the capital improvement rent increase was the soft story seismic retrofit of the entire building, which is required by law and an accepted capital improvement cost. The owner argued that the petition was denied based on a technicality, as Hearing Officers have adopted a higher standard for the service of RAP notices, and require additional evidence of proof of service for each notice. The owner contended that the Hearing Officer did not accept signed draft notices, which were signed at the start of each tenancy in the building. The owner argued that he submitted the signed notices as evidence of compliance, as regulation 8.22.060 requires a notice be delivered at the start of tenancy, but does not specifically require that it be given with a proof of service, and only notes that tenants can challenge whether RAP notices were properly given to them. The owner contended that no resident disputed whether the notices were properly given to them at the time that they signed their initial rental agreement and that he did provide RAP notices in Spanish, English, and Chinese for tenancies that were enacted since 2016. The owner argued that these residents only have English speakers—therefore, they only signed the English translation of the RAP notice, which is what was retained. The owner argued that regulation 8.22.060 gives no guidance about reporting RAP notices in all three languages, and only states that the signed and retained one should be in the resident’s main language.

The owner contended that the RAP notices signed by the current residences at the inception of their tenancies should have been accepted as evidence and argued that if Hearing Officers can reject legitimate evidence due to the proof of service not being attached to the RAP notice, then the regulations should clearly state this expectation. The owner argued when he attended a workshop for property owners in July, there was only the recommendation to have a written rental agreement, and that there was no specific detail about the need to send RAP notices with a proof of service—nor was there information provided about the need to retain evidence of presenting the RAP notice in all three languages. The owner contended that it was only explained that the signed RAP notice should be in the language that the resident primarily uses.

After parties’ arguments, questions to the parties, and Board discussion, Vice Chair Oshinuga moved to affirm the Hearing Officer’s decision. Member R. Nickens, Jr. seconded the motion.

The Board voted as follows:

Aye: D. Ingram, C. Oshinuga, N. Hudson, T. Williams, R. Nickens, Jr.,
P. Viramontes

Nay: None
Abstain: None

The motion was approved.

6. SCHEDULING AND REPORTS

- a. Board Recess 2022: Chair Ingram moved to have a Board recess during the month of August. Member N. Hudson seconded the motion.

The Board voted as follows:

Aye: D. Ingram, C. Oshinuga, T. Williams, N. Hudson, R. Nickens, Jr.,
P. Viramontes

Nay: None

Abstain: None

The motion was approved.

7. INFORMATION AND ANNOUNCEMENTS

- a. Board Training Session—Robert's Rules of Order: Deputy City Attorney Oliver Luby administered a Board training session. Topics discussed included, but were not limited to:

- Introduction to Robert's Rules
- The Chair
- Minutes
- Committees
- Motions
- Adjournment

8. OPEN FORUM

- a. John deBoer spoke and stated that he is in favor and loves the idea of getting to hang out and meet fellow Board members in person, getting off the Zoom screen, and seeing everyone in real life.

9. ADJOURMENT

- a. The meeting was adjourned at 7:00 p.m.


CITY ATTORNEY'S OFFICE

**CITY OF OAKLAND HOUSING,
RESIDENTIAL RENT AND
RELOCATION BOARD (HRRRB)**

RESOLUTION NO. _____

**RESOLUTION TO ADOPT REGULATIONS FOR THE RENT REGISTRY
ORDINANCE AND FORWARD TO CITY COUNCIL FOR APPROVAL**

WHEREAS, on June 21, 2022, the City Council adopted Ordinance No. 13695, which amended the Rent Adjustment Ordinance and Just Cause for Eviction Ordinance to create an annual registration requirement for units covered by the Rent Adjustment Ordinance or the Just Cause Ordinance (“Rent Registry Ordinance”); and

WHEREAS, the Rent Registry Ordinance requires owners of residential rental property to register their properties by March 1 every year and imposes penalties if owners fail to substantially comply with the registration requirement; and

WHEREAS, the Rent Registry Ordinance directed the City Administrator to work with the Rent Board develop regulations defining substantial compliance and directives on mandatory and optional fields, to return to Council for approval; and

WHEREAS, clarifying the concept of substantial compliance in regulations would benefit property owners in complying with the rental registration requirements; and now, therefore, be it

RESOLVED: That the Housing, Residential Rent and Relocation Board asks the City Council to ratify the amendments to the Rent Adjustment Regulations contained in Exhibit A.

APPROVED BY THE FOLLOWING VOTE

AYES:

NOES:

ABSENT:

ABSTENTION:

Date:

ATTEST _____
BRIANA LAWRENCE-MCGOWAN
Rent Adjustment Program, Housing &
Community Development Department

Exhibit A: Amendment to Rent Adjustment Regulations

Section 8.22.510


A Rental Property Owner shall be found in substantial compliance with Registration requirements when: (1) the Rental Property Owner has made a good faith effort to comply with the Registration Requirement in OMC 8.22.510; and (2) the Rental Property Owner has cured any defect in compliance in a timely manner after receiving notice of a deficiency from the Rent Adjustment Program. An owner who cures a defect within the time period indicated in the notice of deficiency shall have complied in timely manner.

If certain information is unknown to a Rental Property Owner, and the Rental Property Owner is not able to ascertain exact information through legal means and reasonable efforts (including, but not limited to, inquiring existing tenants and requesting City records, as applicable), the Rental Property Owner may report requested information on information and belief, or note that information provided is approximate, or state that the requested information is unknown. A Rental Property Owner who reports the required information in accordance with the foregoing shall be deemed to have substantially complied with the reporting requirements of OMC 8.22.510.

Accordingly, when a Rental Property Owner reports information required by OMC 8.22.510 under penalty of perjury, such information shall be considered to be reported on information and belief where the owner does not have direct, firsthand knowledge of the requested information, and an owner or manager shall not be penalized for failure to report information accurately or stating it is unknown, so long as they have reported the requested information “to the best of the owner’s or manager’s knowledge.”

The form of certification under penalty of perjury shall be as follows:

I have used all reasonable diligence in preparing this statement. I have reviewed the statement and, to the best of my knowledge, the information contained herein is true and complete. To the extent I was unable, despite the use of reasonable diligence, to ascertain the exact information to be reported, I have provided the most accurate approximation possible based on information and belief where possible or, where such approximation is not feasible, I have stated that the information is unknown. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



CITY ATTORNEY'S OFFICE

INTRODUCED BY ALTERNATE BOARD MEMBER JOHN deBOER
BOARD CHAIR DENARD INGRAM

**CITY OF OAKLAND HOUSING,
RESIDENTIAL RENT AND
RELOCATION BOARD (HRRRB)
RESOLUTION NO. _____**

**RESOLUTION TO RECOMMEND AMENDMENT OF THE TENANT
FILING REQUIREMENTS IN THE RENT ADJUSTMENT
ORDINANCE**

WHEREAS, the Housing, Residential Rent and Relocation Board may make recommendations to the City Council or appropriate City Council committee pertaining to Chapter 8.22 of the Oakland Municipal Code (O.M.C.) or City housing policy when requested to do so by the City Council or when the Board otherwise acts to do so, pursuant to O.M.C. 8.22.040 D.4; and

WHEREAS, in order for a tenant to file either a petition with the Rent Adjustment Program that alleges violation of the Rent Adjustment Ordinance or a response to a petition, O.M.C. Section 8.22.090 A.4, and the corresponding Rent Adjustment Program Regulation Section 8.22.090 B, require that the tenant must provide “Evidence that the tenant's rent is current or that the tenant is lawfully withholding rent;” and

WHEREAS, the Housing, Residential Rent and Relocation Board seeks to ensure that all covered Oakland tenants and property owners have equitable access to the protections and relief provided by the Rent Adjustment Ordinance; now, therefore, be it

RESOLVED: That the Housing, Residential Rent and Relocation Board recommends the City Council amend O.M.C. Section 8.22.090 by removing the subsection A.4.b filing requirement, which would allow any covered tenant to file a petition or respond to petitions with the Rent Adjustment Program regardless of their rent payment status, provided they meet all other filing requirements.

APPROVED BY THE FOLLOWING VOTE

AYES:

NOES:

ABSENT:

ABSTENTION:

Date:

ATTEST _____

BRIANA LAWRENCE-MCGOWAN
Rent Adjustment Program, Housing &
Community Development Department

000017

CHRONOLOGICAL CASE REPORT

Case No.: T22-0048

Case Name: Prosterman v. Kinfu

Property Address: 3700 Lincoln Avenue, Unit 3, Oakland, CA 94602

Parties: H. Scott Prosterman (Tenant)
Aren Ash (Tenant Representative)
Sam Kinfu (Owner)

TENANT APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	February 1, 2022
Owner Response filed	-----
Notice of Incomplete Petition mailed	April 19, 2022
Administrative Decision e-mailed	June 20, 2022
Tenant Appeal filed	July 6, 2022

000018



City of Oakland Rent Adjustment Program
 250 Frank H. Ogawa Plaza, Suite 5313
 Oakland, CA 94612
 (510) 238-3721

T22-0048 EL/BL
TENANT PETITION

RECEIVED

FEB -1 2022

5/31

RENT ADJUSTMENT PROGRAM
OAKLAND

Property Address: 3700 LINCOLN AV
Case: Petition: 15005
Date Filed: 02-01-2022

Parties

Party	Name	Address	Mailing Address	
Owner	Sam Kinfu	3700 Lincoln Avenue 3 OAKLAND, CA 94602	3700 Lincoln Avenue 3 OAKLAND, 94602	samkinfu@vividvinc.com
Representative	Aren Ash Housing and Economic Rights Advocates	P.O. Box 29435 OAKLAND, CA 94604	P.O. Box 29435 OAKLAND, 94604	(510) 707-6029 aash@heraca.org
Tenant	H. Scott Prosterman	3700 Lincoln Avenue 3 Oakland, CA 94602		(510) 395-2856 scottp33@earthlink.net

Number of units on the property 1

Type of unit you rent Apartment, Room or Live-work

Are you current on your rent? Yes

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.)

Grounds for Petition

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:

The initial rent amount when I first moved in was unlawful because the property owner was not permitted to set the initial rent without limitation. O.M.C. § 8.22.080 (C).

Rental History

Date you moved into the Unit	8/21/2020
Initial Rent	\$ 1,100.00 /month
Current Rent	\$ 1,100.00 /month
Is your rent subsidized or controlled by any government agency, including HUD (Section 8)?	No

List the case numbers of any relevant prior Rent Adjustment case(s):

** 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)*

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

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.

Mediation

Mediation is an optional process offered by the Rent Adjustment Program to assist parties in settling the issues related to their Rent Adjustment case as an alternative to the formal hearing process. The purpose of mediation is to find a mutual agreement that satisfies both parties. A trained third party will discuss the issues with both sides, look at relative strengths and weaknesses of each position, and consider both parties' needs in the situation. If a settlement is reached, the parties will sign a binding agreement and there will not be a formal hearing process. If no settlement is reached, the case will go to a formal hearing with a Rent Adjustment Hearing Officer, who will then issue a hearing decision.

Mediation will only be scheduled if both parties agree to mediate. Sign below if you want to request mediation for your case.

I/We agree to have my/our case mediated by a Rent Adjustment Program staff mediator. Yes

Consent to Electronic Service

Check the box below if you agree to have RAP staff send you documents related to your case electronically. If all parties agree to electronic service, the RAP will only send documents electronically and not by first class mail.

I/We consent to receiving notices and documents in this matter electronically at the email address(es) provided in this petition. Yes

Interpretation Services

If English is not your primary language, you have the right to an interpreter in your primary language at the Rent Adjustment hearing and mediation session. You can request an interpreter by completing this section.

I request an interpreter fluent in the following language at my Rent Adjustment proceeding: No



City of Oakland Rent Adjustment Program
250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612
(510) 238-3721

PROOF OF SERVICE

TENANT PETITION



***And additional documents uploaded with the
Petition***

Electronic Petition number: 15005

I declare under penalty of perjury under the laws of the State of California that on **02-03-2022** I, **Aren Ash**, served a copy of the following document(s), Tenant Petition, the Notice to Property Owner of Tenant Petition and all attached 1 pages, to each opposing party, whose names and addresses are listed below, by **United States mail**.

Names of Served Document(s) **Summary**

Addresse(s) Information

No information provided

Aren Ash

02-03-2022

SIGNATURE OF PETITIONER OR
DESIGNATED REPRESENTATIVE

DATE: 2/3/2022

City of Oakland Rent Adjust Program

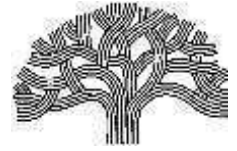
Date Printed: 02-03-2022

000023

Mr. Kinfu, the master tenant, has illegally overcharged Mr. Prosterman, the subtenant, for his tenancy, in violation of Oakland Municipal Code § 8.22.025, and has retaliated against him for asserting his right to pay a fair share of the rent.

The total rent for the 3 bedroom apartment is \$1870 per month. However, Mr. Kinfu has been charging Mr. Prosterman \$1100 for his room, which is smaller than Mr. Kinfu's room, and does not have a private bathroom, as Mr. Kinfu's room does.

CITY OF OAKLAND



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA, SUITE 5313 • OAKLAND, CALIFORNIA 94612-203

Housing and Community Development Department
Rent Adjustment Program

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

NOTICE OF INCOMPLETE TENANT PETITION

CASE NAME: Prosterman v. Kinfu

CASE NUMBER: T22-0048

PROPERTY ADDRESS: 3700 Lincoln Avenue, Unit 3, Oakland, CA 94602

The Rent Adjustment Program (hereinafter “RAP”) received a *Tenant Petition* from you on February 1, 2022.

In order to be complete and considered filed, a petition by a tenant must include:

- a. A statement that the tenant is current on his/her rent or lawfully withholding rent;
- b. A substantially completed petition on the form prescribed by the Rent Adjustment Program, signed under oath; and
- c. If your claim involves a claim of decreased housing services, a statement of the services that have been reduced or eliminated (along with a document listing the claimed value of the services.)

The petition which you attempted to file was incomplete. The chart below indicates what is missing from your filing:

Name of Document	Needed
Proof of service was not completed. The name and address of the party served is not indicated on the proof of Service.	X
A statement that the tenant is current on the rent or lawfully withholding rent	
Petition was not completed or signed under oath	
Decreased services claim did not include a statement of what services were reduced or eliminated	
Decreased services claim did not include a document listing the claimed value of the services reduced or eliminated	

000025

Since your petition is not complete, the RAP is unable to accept the petition. You have 30 days from the date of the mailing of this letter to provide a completed petition. If you do not do so, your petition will be dismissed.

If you have any questions or concerns, feel free to consult the undersigned by email or phone. The email address is blothlen@oaklandca.gov and the telephone number is 510-238-6415.

April 19, 2022

Brittini Lothlen

Brittini Lothlen
City of Oakland
Rent Adjustment Program



CITY OF OAKLAND

**CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM**

250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612-0243
(510) 238-3721
CA Relay Service 711
www.oaklandca.gov/RAP

For Rent Adjustment Program date stamp.

PROOF OF SERVICE

NOTE: YOU ARE REQUIRED TO SERVE A COPY OF YOUR PETITION OR RESPONSE (PLUS ANY ADDITIONAL DOCUMENTS) ON THE OPPOSING PARTIES.

- Use this PROOF OF SERVICE form to indicate the date and manner in which service took place, as well as the person(s) served.
- Provide a copy of this PROOF OF SERVICE form to the opposing parties together with the document(s) served.
- File the completed PROOF OF SERVICE form with the Rent Adjustment Program together with the document you are filing and any attachments you are serving.
- Please number sequentially all additional documents provided to the RAP.

PETITIONS FILED WITHOUT A PROOF OF SERVICE WILL BE CONSIDERED INCOMPLETE AND MAY BE DISMISSED.

I served a copy of:

_____ (insert name of document served)

And Additional Documents

and (write number of attached pages) _____ attached pages (not counting the Petition or Response served or the Proof of Service) to each opposing party, whose name(s) and address(es) are listed below, by one of the following means (check one):

- a. United States mail. I enclosed the document(s) in a sealed envelope or package addressed to the person(s) listed below and at the address(es) below and deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- b. 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 listed below.
- c. Personal Service. (1) By Hand Delivery: I personally delivered the document(s) to the person(s) at the address(es) listed below; or (2) I left the document(s) at the address(es) with some person not younger than 18 years of age.

PERSON(S) SERVED:

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

To serve more than 8 people, copy this page as many times as necessary and insert in your proof of service document. If you are only serving one person, you can use just the first and last page.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and the documents were served on ___/___/___ (insert date served).

PRINT YOUR NAME

SIGNATURE

DATE

PROOF OF SERVICE

Case Number: T22-0048

Case Name: Prosterman v. Kinfu

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, Oakland, California, addressed to:

Documents Included

Notice of Incomplete Tenant Petition
Proof of Service Form

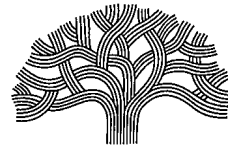
Tenant

H. Scott Prosterman
3700 Lincoln Avenue Unit 3
Oakland, CA 94602

I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first class postage thereon fully prepaid in the ordinary course of business under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **April 19, 2022** in Oakland, California.

Brittini Lothlen
Brittini Lothlen
Oakland Rent Adjustment Program

000030

**ADMINISTRATIVE DECISION****CASE NAME/NUMBER: T22-0048 Prosterman v. Kinfu****PROPERTY ADDRESS: 3700 Lincoln Avenue, Unit 3
Oakland, CA****PARTIES: H. Scott Prosterman, Tenant
Sam Kinfu, Owner****SUMMARY**

The Tenant's Petition is dismissed.

INTRODUCTION

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

On February 1, 2022, H. Scott Prosterman submitted a Petition alleging that the amount of rent set at the inception of the tenancy was unlawful.

On April 19, 2022, a Notice of Incomplete Petition was issued in the above-referenced matter. The Notice advised that the Petition was incomplete and listed the missing information. The notice listed the missing information, provided a deadline of 30 calendar days for a response, and indicated that failure to provide the required information would result in a dismissal.

On May 12, 2022, the parties were served an Amended Notice of Remote Settlement Conference and Hearing, setting a settlement conference and hearing on June 20, 2022. The Notice of Hearing and Notice of Remote Settlement Conference and Hearing also advised that all tangible evidence must be submitted to the Rent Adjustment Program not less than seven (7) days before the hearing.

RATIONALE

The Notice of Hearing and Notice of Remote Settlement Conference and Hearing also advised that all tangible evidence must be submitted to the Rent Adjustment Program not less than seven (7) days before the hearing. To date, no admissible evidence has been received. Accordingly, there is no admissible evidence upon which the Petitioner can meet their burden and prevail. Therefore, the Tenant's petition is dismissed.

ORDER

1. Petition T22-0048 is dismissed.
2. The Remote Settlement Conference and Hearing, scheduled for June 20, 2022, is canceled.

Right to Appeal: **This decision is the final decision of the Rent Adjustment Program Staff.** Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within seventeen (17) calendar days of electronic service or twenty (20) days if served by first-class mail. If the last day to file is a weekend or holiday, the appeal may be filed on the next business day. The date and service method are shown on the attached Proof of Service.



Dated: June 17, 2022

Élan Consuella Lambert
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE BY ELECTRONIC MAIL

Case Number T22-0048

I, the undersigned, state that 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. My electronic service address is: BMcGowan@oaklandca.gov

Today, I electronically served the attached documents:

Documents Included


Administrative Decision

I electronically served the document(s) listed above to:

Sam Kinfu: samkinfu@vividvinc.com

H. Scott Prosterman: scottp33@earthlink.net

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **June 20, 2022**.



Briana Lawrence-McGowan

Oakland Rent Adjustment Program

000033



CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM
250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612-0243
(510) 238-3721
CA Relay Service 711
www.oaklandca.gov/RAP

For Rent Adjustment Program date stamp.

APPEAL

Appellant's Name H. Scott Prosterman	<input type="checkbox"/> Owner <input checked="" type="checkbox"/> Tenant
Property Address (Include Unit Number) 3700 Lincoln Avenue, Unit 3 Oakland, CA	
Appellant's Mailing Address (For receipt of notices) 3700 Lincoln Avenue, Unit 3 Oakland, CA	Case Number T22-0048
	Date of Decision appealed June 17, 2022/ Served June 20, 2022.
Name of Representative (if any) Aren Ash	Representative's Mailing Address (For notices) P.O. Box 29435 Oakland, CA 94604-0091

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.

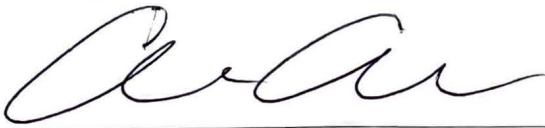
- 1) There are math/clerical errors that require the Hearing Decision to be updated. *(Please clearly explain the math/clerical errors.)*
- 2) Appealing the decision for one of the grounds below (required):
 - a) The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations, or prior decisions 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.)*

- 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 the Owner's 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.)

Supporting documents (in addition to this form) must not exceed 25 pages, and must be received by the Rent Adjustment Program, along with a proof of service on the opposing party, within 15 days of the filing of this document. Only the first 25 pages of submissions from each party will be considered by the Board, subject to Regulations 8.22.010(A)(4). Please number attached pages consecutively. Number of pages attached: 4.

- **You must serve a copy of your appeal on the opposing parties, or your appeal may be dismissed.** • I declare under penalty of perjury under the laws of the State of California that on July 6, 2022, 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	Sam Kinfu
Address	3700 Lincoln Avenue, Unit 3
City, State Zip	Oakland, CA, 94602
Name	
Address	
City, State Zip	

	7/6/22
---	--------

SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE

DATE



housing and
economic
rights advocates

Oakland Rent Adjustment Program
250 Frank H. Ogawa Plaza, Suite 5313
Oakland, California 94612
hearingsunit@oaklandca.gov

CC: Sam Kinfu

Sent via US Mail and Email

July 6, 2022

Re: Case No. T22-0048, Prosterman v. Kinfu, 3700 Lincoln Avenue, Unit 3, Oakland

To the Oakland Rent Adjustment Program:

My organization is assisting subtenant H. Scott Prosterman regarding allegations that his primary tenant overcharged him rent. It is undisputed that the primary tenant Mr. Sam Kinfu charged Mr. Prosterman rent well above the allowable limits of Oakland law. Mr. Prosterman filed a petition for unlawful overcharging with the City of Oakland Residential Rent Adjustment Program on February 1, 2022. Mr. Sam Kinfu, primary tenant, never filed a response to the petition. On June 20, 2022, he received notice of cancellation of his hearing and the Hearing Officer’s administrative decision dismissing his petition because “there is no admissible evidence upon which the Petitioner can meet their burden and prevail.”

Mr. Prosterman appeals the order dismissing his petition and canceling his hearing on the following grounds:

1) The decision is inconsistent with OMC Chapter 8.22 and Rent Board Rules and Regulations.

a. OMC Chapter 8.22 and Rent Board Rules and Regulations gives Mr. Prosterman the right to introduce exhibits at the hearing.

Oakland Municipal Code (“OMC”) Section 8.22.090(A)(4) lists the requirements a tenant must meet at the time of filing a petition. *It does not require all tangible evidence be submitted before the hearing.* OMC Section 8.22.090(A)(4). Oakland Rent Adjustment Program Regulations section 8.22.110(E)(3)(b) provides that, after filing a petition and response, each party shall have the right to “introduce exhibits” at a hearing.

The Amended Notice of Hearing and Notice of Remote Settlement Conference and Hearing cited in the Administrative Decision merely requested that Mr. Prosterman submit tangible evidence within seven days before the hearing “(i)n order to minimize delays.” It noted that “any documents not submitted at least seven days prior to the hearing may cause delays in

the completion of your case.” The Amended Notice of Hearing and Notice of Remote Settlement Conference and Hearing did not state that Mr. Prosterman was required to submit further evidence before the hearing, and it did not state that he would not be given the opportunity to introduce exhibits at the hearing, as provided for by Section 8.22.110 of the Oakland Rent Adjustment Program Regulations. Moreover, the Administrative Decision states “(t)he purpose of a hearing is to allow the parties to present testimony and other evidence to allow resolution of disputes of material fact.”

Mr. Prosterman submitted all necessary documents required by OMC Chapter 8.22.090 when filing his initial petition. He had the right to introduce exhibits at the hearing pursuant to Section 8.22.110 of the Oakland Rent Adjustment Program Regulations. However, the Administrative Decision dismissing his petition denied him that right. Therefore the Hearing Officer’s decision should be reversed because it is inconsistent with OMC Chapter 8.22 and Rent Board Rules and Regulations.

- b. The Hearing Officer lacked ground to issue the Administrative Decision because Oakland Municipal Code section 8.22.110(F)(1)(e) requires both a petition and response to be filed before a petition can be decided on as a matter of law.**

Sam Kinfu, primary tenant, did not file a response to Scott Prosterman’s petition in this case. In its decision dismissing Mr. Prosterman’s petition, the Rent Adjustment Program alleges “sufficient uncontested facts have been presented to issue a decision without a hearing, and no material facts are disputed.” However, Oakland law only allows the Hearing Officer to issue an Administrative Decision based on no genuine dispute as to any material fact if “(t)he petition *and* response forms raise no genuine dispute as to any material fact, and the petition may be decided as a matter of law.” OMC section 8.22.110(F)(1)(e) (emphasis added). Therefore, *both* a Petition *and* a Response must be filed for the Hearing Officer to issue an Administrative Decision based on no genuine dispute as to any material fact. Oakland Municipal Code section 8.22.110(F)(1)(e).

Here, the primary tenant Mr. Kinfu did not file a response to Mr. Prosterman’s petition. Because Mr. Kinfu failed to file a response, the Hearing Officer lacked the authority to issue an Administrative Decision under OMC Section 8.22.110(F)(1)(e). For this reason, the decision is inconsistent with OMC Chapter 8.22 and Rent Board Rules and Regulations.

2) The decision violates local law.

Oakland Rent Adjustment Program Regulations Section 8.22.025 establishes that “(w)here one or more primary tenants reside with one or more subtenants in a covered unit, the maximum rent that a primary tenant may charge a subtenant is no more than the proportional share of the total current rent paid to the owner by the tenants for the housing and housing services to which the subtenant is entitled under the sublease.”

There is no dispute that Mr. Prosterman’s unit is regulated by both the Oakland Just Cause for Eviction and Rent Adjustment Ordinances. As noted in the Petition, Mr. Kinfu, the primary tenant, illegally overcharged Mr. Prosterman, the subtenant, in violation of the Oakland

Rent Adjustment Program Regulations and the Oakland Municipal Code. The total rent for the three-bedroom apartment is \$1,870 per month. However, Mr. Kinfu has been charging Mr. Prosterman \$1,100 for his room, which is smaller than Mr. Kinfu's room, and does not have a private bathroom, as Mr. Kinfu's room does. Therefore, the amount Mr. Kinfu was charging was well above the proportional amount allowed by the Oakland Rent Adjustment Program Regulations. For this reason, the overcharging of rent is a violation of local law.

The Hearing Officer's administrative decision dismissing Mr. Prosterman's petition allows Mr. Kinfu, the primary tenant, to flagrantly overcharge a subtenant in violation of local law. For this reason, the decision should be reversed, and Mr. Prosterman should be given an opportunity to present his case at a hearing.

3) **The decision is not supported by substantial evidence.**

As described above, the case record demonstrates that Mr. Prosterman's petition regarding illegal overcharging of rent should not be dismissed. Mr. Kinfu, the primary tenant, did not respond to the petition or dispute Mr. Prosterman's allegation that he was overcharging rent.

Because the primary tenant did not file a response or dispute Mr. Prosterman's allegations, and neither party was given the opportunity to testify or examine witnesses, the current case record, made up of only Mr. Prosterman's claims of illegal overcharging, is undisputed. Therefore, the only appropriate administrative decision should have been that Mr. Prosterman's petition was granted for failure by the primary tenant to respond to allegations against him. There are no facts or any other substantial evidence in the record that support dismissing Mr. Prosterman's petition. Thus, the Rent Adjustment Program's decision should be reversed.

4) **The decision raises a new policy issue that has not been decided by the Board.**

The Rent Adjustment Program's decision to dismiss the petition of a subtenant, without allowing the subtenant to testify or present exhibits at the hearing, creates a new policy issue regarding the pre-hearing evidentiary burden for Subtenant petitioners who wish to challenge illegal rent overcharging by Primary Tenants.

Where a primary tenant challenges an owner's illegal rent increase, the tenant will likely possess tangible evidence substantiating the illegality of the rent increase, including the original lease setting the base rental rate. A subtenant who challenges a primary tenant's illegal overcharging of rent usually does not have such necessary evidence in their possession because it was never shared by the primary tenant.

Therefore, without the opportunity to call, examine, and cross-examine witnesses, and to introduce exhibits at the hearing pursuant to the Oakland Rent Adjustment Program Regulations, a subtenant may not be able to prove a case of overcharging by a primary tenant. Without access to a hearing and the right to question the parties to the petition under oath, the subtenant may be denied their right to process entirely.

The decision to dismiss a subtenant's petition for illegal rent increase because he did not present all evidence substantiating his claims *before* a hearing proceeded raises a new policy issue regarding the pre-hearing evidentiary burden imposed on subtenant petitioners. Imposing this strict requirement that subtenants submit all tangible evidence before a hearing without an opportunity to testify, examine witnesses, or present evidence at the hearing will preclude most subtenant petitions. It will certainly preclude those petitions where the case relies on testimonial evidence or if the subtenant is unable to obtain certain evidence, for instance an original lease, because he or she was never a signor to the original document.

For this reason, the decision to dismiss Mr. Prosterman's petition raises a new policy issue on which the Board should decide.

5) **The Petitioner was denied a sufficient opportunity to present his claim.**

As described above, Mr. Prosterman was denied his right and opportunity to introduce testimony and exhibits or examine witnesses at a hearing pursuant to Section 8.22.110 of the Oakland Rent Adjustment Program Regulations. He is entitled to this right as provided for by Oakland law and therefore the Hearing Officer's decision dismissing his petition should be reversed.

Conclusion

For the foregoing reasons, Mr. Prosterman respectfully appeals the Rent Adjustment Program's Order of June 20, 2022 dismissing his petition and canceling his hearing. Mr. Prosterman requests that the Rent Board reverse the dismissal and allow a hearing to proceed on this matter.

I thank you for prompt attention. Please let me know if I may provide any further documentation or information.

Sincerely,



Aren Ash
Staff Attorney
Housing and Economic Rights Advocates (HERA)
Phone: 510-707-6029
Fax: 510-380-4943
Email: aash@heraca.org



MEMORANDUM

Date: September 2, 2022
To: Members of the Housing, Rent Residential & Relocation Board (HRRRB)
From: Kent Qian, Deputy City Attorney
Re: Appeal Summary in T22-0048 Prosterman v. Kinfu
Appeal Hearing Date: September 8, 2022

Property Address: 3700 Lincoln Avenue, Unit 3, Oakland, CA

BACKGROUND

On February 1, 2022, the subtenant petitioned alleging that the primary tenant charged disproportionate amount of rent for his room. The petition alleged that the subtenant was charged \$1,100 per month for his room while the total rent for the three-bedroom apartment was \$1,870 per month.

On April 19, a notice of incomplete petition was issued, stating that the petition was missing a proof of service. On May 12, the parties were sent a notice of remote settlement conference and hearing for June 20. The notice stated that all evidence must be submitted to the Rent Adjustment Program not less than seven (7) days before the hearing.

On June 17, the hearing officer issued an administrative decision dismissing the petition on the basis that no tangible evidence was submitted at least seven days before the hearing.

GROUND FOR APPEAL

The subtenant appealed the hearing decision. The subtenant argues that:

1. The Ordinance and Regulations allow the subtenant to introduce evidence at the hearing. Dismissal of the petition without a hearing to allow submission of evidence is inconsistent with the Ordinance and Regulations.

2. An administrative decision under OMC 8.22.110.F.1.e requires both a petition and a response, so an administrative decision was not proper in this case because there was no response filed.
3. The administrative decision should be overturned because there was no response disputing the subtenant's claim of illegal overcharging.
4. Dismissing a subtenant illegal overcharge petition against a primary tenant on based on lack of tangible evidence raises a new policy issue because subtenants usually do not have documentary evidence in their possession because it is never shared by the primary tenant.

ISSUES

1. Do the Ordinance and Regulations allow a party to introduce evidence at the first time at a hearing, even if the notice of hearing requires parties to submit evidence seven (7) days before the hearing?
2. Was an administrative decision proper in dismissing the petition when there was no response disputing the overcharge allegation in the petition?

APPLICABLE LAW AND PAST BOARD DECISIONS

Applicable Law

1. Administrative Decisions and Evidence

OMC 8.22.110 Hearing procedures.

- A. Hearing Officer. A hearing shall be set before a Hearing Officer to decide the issues in the petition.
- B. Hearings.
 1. All hearings on petitions shall be open to the public and recorded;
 2. Any party to a hearing may be assisted by a representative who may be an attorney or any other person. A party must designate his or her representative in writing.
- C. Notification and Consolidation. Rent Adjustment Program staff shall notify the owner and tenant in writing of the time and place set for hearing. Representatives of parties shall also be notified of hearings, provided that the Rent Adjustment Program has been notified in writing of a party's designation of a representative at least ten days prior to the notice of the hearing being sent. Disputes involving more than one covered unit in any single building may be consolidated for hearing.
- D. Time of Hearing and Decision.
 1. The Hearing Officer shall have the goal of hearing the matter within sixty (60) days of the original petition's filing date.
 2. The Hearing Officer shall have a goal of rendering a decision within sixty (60) days after the conclusion of the hearing or the close of the record, whichever is later. The decision shall be issued in writing.
 3. The decision of the examiner shall be based entirely on evidence placed into the record.

- E. A Hearing Officer may order a rent adjustment as restitution for any overcharges or undercharges due, subject to guidelines set out in the regulations.
- F. Administrative Decisions.
 - 1. Notwithstanding the acceptance of a petition or response by the Rent Adjustment Program, if any of the following conditions exist, a hearing may not be scheduled and a Hearing Officer may issue a decision without a hearing:
 - a. The petition or response forms have not been properly completed or submitted;
 - b. The petition or response forms have not been filed in a timely manner;
 - c. The required prerequisites to filing a petition or response have not been met;
 - d. A certificate of exemption was previously issued and is not challenged by the tenant; or
 - e. The petition and response forms raise no genuine dispute as to any material fact, and the petition may be decided as a matter of law.
 - 2. A notice regarding the parties' appeal rights will accompany any decision issued administratively. Appeals are governed by Section 8.22.120.
- G. Should the petitioner fail to appear at the designated hearing, the Hearing Officer may dismiss the petition.

Regulation 8.22.110.E

E. Conduct Of Hearings Before Hearing Officers

- 1. Each party, attorney, other representative of a party or witness appearing at the hearing shall complete a written Notice of Appearance and oath, as appropriate, that will be submitted to the Hearing Officer at the commencement of the hearing. All Notices of Appearance shall become part of the record. 2. All oral testimony must be given under oath or affirmation to be admissible.
- 2. Each party shall have these rights:
 - a. To call and examine witnesses;
 - b. To introduce exhibits;
 - c. To cross-examine opposing witnesses on any matter relevant to the issues even if that issue was not raised on direct examination;
 - d. To impeach any witness regardless of which party called first called him or her to testify;
 - e. To rebut the evidence against him or her;
 - f. To cross-examine an opposing party or their agent even if that party did not testify on his or her own behalf or on behalf of their principal.
- 3. Unless otherwise specified in these Regulations or OMC Chapter 8.22, the rules of evidence applicable to administrative hearings contained in the California Administrative Procedures Act (California Government Code Section 11513) shall apply.

Past Board Decisions

1. T10-0073 Hunter-Nicholson v. Hogan & Vest

Board remanded Hearing Decision that granted tenant's challenge to rent increase based on lack of RAP Notice but denied decreased services claims for determination of whether tenant had good cause to submit documents less than seven days before

Hearing. Board also directed Hearing Officer to exclude from evidence an elevator permit that Hearing Officer observed during site inspection. On remand, Hearing Officer found no good cause for failure to submit documents on time, but partially granted tenant decreased services claim regarding elevator.