

**HOUSING, RESIDENTIAL RENT AND RELOCATION
BOARD SPECIAL FULL BOARD REGULAR MEETING
July 30, 2020
5:00 P.M.**

Meeting Will Be Conducted Via Video Conference

AGENDA

1. CALL TO ORDER
2. ROLL CALL
3. CONSENT ITEMS
 - a) Approval of Board Minutes from February 27, 2020
 - b) Review of Board Minutes from March 5, 2020
4. OPEN FORUM
5. INFORMATION AND ANNOUNCEMENTS
 - a. Rent Adjustment Program Updates (C. Franklin Minor)
 - b. Legislative Updates (Office of the City Attorney)
6. BOARD TRAINING: ROLE OF RENT BOARD (Office of the City Attorney)
 - a. Quasi-Judicial Body
 - b. Regulatory Body
 - c. Role of Board Members as Public Officials
7. 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.

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

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

會場有適合輪椅出入設施。需要殘障輔助設施, 手語, 西班牙語,

粵語或國語翻譯服務, 請在會議前五個工作天電郵 sshannon@oaklandca.gov 或致電 (510) 238-3715 或 711 California relay service.

請避免塗搽香氛產品。參加者可能對化學成分敏感。

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

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

If you will be accompanied by an emotional support animal, then you must provide documentation on letterhead from a licensed mental health professional, not more than one year old, stating that you have a mental health-related disability, that having the animal accompany you is necessary to your mental health or treatment, and that you are under his or her professional care. Service animals and emotional support animals must be trained to behave properly in public. An animal that behaves in an unreasonably disruptive or aggressive manner (barks, growls, bites, jumps, urinates or defecates, etc.) will be removed.

Formation of additional ad hoc committees, membership and review of issues identified in May 9, 2019, Board meeting:

- Information about the Building Code and intersection with the Regulations; (e.g. window bars-there is a code that applies to this.)
- Should dry rot be treated differently from other deferred maintenance items?
- Clarification of deferred maintenance v. items that benefit tenants?
- Ambiguous terms in the regulations and in the Ordinance;
- How is the value of the Decreased Housing Services determined?
- What constitutes a burden of proof regarding expenses for capital improvements?
- Effects of AB 1482 on Rent Adjustment Program Ordinance
- Denial of subtenant/roommate constitutes a decreased housing service?
- Seniors on fixed income

**HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD
REGULAR MEETING
FEBRUARY 27, 2020
7:00 P.M.
CITY HALL, HEARING ROOM #1
ONE FRANK H. OGAWA PLAZA
OAKLAND, CA**

MINUTES

1. CALL TO ORDER

The HRRRB meeting was called to order at 7:04 p.m. by Chair, A. Graham.

2. ROLL CALL

MEMBER	STATUS	PRESENT	ABSENT	EXCUSED
T. HALL	Tenant	X		
R. AUGUSTE	Tenant	X		
H. FLANERY	Tenant Alt.			X
C. TODD	Tenant Alt.			X
R. STONE	Homeowner			X
J. WARNER	Homeowner	X		
A. GRAHAM	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

Staff Present

Kent Qian
Kelly Rush

Deputy City Attorney
Program Analyst, Rent Adjustment Program

3. CONSENT ITEMS

- a) Approval of Board Minutes from January 9, 2020
Regular Meeting

K. Friedman provides correction on bate stamp
#7. Change "J. Friedman" to "K. Friedman."

K. Friedman motions to approve Rent Board minutes from January 9th, 2020 with the correction provided. T. Hall seconded the motion.

The Board voted as follows: (J. Warner not present for this vote)

Aye: K. Friedman, T. Williams, R. Auguste, T. Hall

Nay: None

Abstain: A. Graham

The motion was passed.

HRRRB Chair, J. Warner arrived at 7:08pm and began chairing the meeting.

4. OPEN FORUM

Nancy Conway

- Factual disputes should be heard through a hearing rather than an Administrative Decision

5. APPEALS

a) T19-0184, Beard v. Meridian Management Group

Appearances:	Nancy Conway	Tenant Representative
	Greg McConnell	Owner Representative

The tenant representative appeared and argued that the refrigerator was a decreased housing service because the noise was loud and prevented the tenant from sleeping. She introduced the fact that the refrigerator was replaced since the petition was filed and therefore this should be determined to be a decreased housing service. She stated that there was ongoing leak even after an attempt to fix the problem. She points to the memorandum that was written by the owner representative and argues that the tenant was not allowed to respond to the memorandum through a hearing. The tenant representative argued that everyone did not get to see the evidence since there was no hearing held and that a hearing should be conducted before a hearing officer with a transcript recorded.

The owner representative appeared and contended that the issues were already or should have already been heard in the prior case. He states that the hearing officer was correct in deciding that the same issues cannot be relitigated due to collateral estoppel or res judicata and claims that the tenant is a serial filer. The owner representative pleaded that the Rent Board either affirm the Hearing Officer's decision or dismiss the appeal altogether. He claims that the Hearing Officer had the opportunity to review the record and that he has the right to submit a memorandum in response to the tenant petition being filed asking for a decision.

After arguments made by both parties, Board questions to the parties and Board discussion, J. Warner motions to remand to the hearing officer to hold a full hearing on the issues raised in the tenant petition. R. Auguste seconded.

K. Friedman proposed a friendly amendment to ask the Hearing Officer to determine if this was a new leak or an ongoing leak. J. Warner accepted the friendly amendment. R. Auguste also accepted the friendly amendment.

R. Auguste proposed a friendly amendment to include the refrigerator as disturbing the quiet enjoyment of the unit and as an issue of fact. J. Warner accepts the friendly amendment

K. Friedman presented a sub motion to remand to the Hearing Officer for purposes of determining if the issue is a new leak or if this was the ongoing leak. T. Williams seconded.

The Board voted on the sub-motion as follows:

Aye: A. Graham, J. Ma Powers, T. Williams, K. Friedman

Nay: T. Hall, R. Auguste

Abstain: None

The motion passed.

J. Warner motioned to request that the Hearing Officer consider factual basis on the refrigerator issue as a decreased housing service. A Graham seconded.

The Board voted as follows:

Aye: R. Auguste, J. Ma Powers, A. Graham, J. Warner

Nay: T. Hall, T. Williams, K. Friedman

Abstain: None

The motion passed.

b) T17-0221, Kaufman v. Nguyen

Appearances: Michael Kaufman Tenant Appellant
James Vann Tenant Appellant Representative
No appearances by the owner appellee

The tenant representative appeared and contended that the old owner did not serve the RAP notice and there was a prior case that determined that the banking from the prior owner was not valid. He argued that the owners should not be permitted to have a second bite at the apple. The tenant appellant appeared and contended that the case was decided wrong as a matter of law and the prior decision made by Hearing Officer, B. Kong-Brown should be reinstated. He claimed that the increases before the RAP notice was served are unlawful and the banking should be disallowed.

After arguments made by both parties, Board questions to the parties and Board discussion. K. Friedman moved to affirm the Hearing Officer's decision. T. Williams seconded the motion.

J. Warner made a sub motion to postpone this appeal for a later date to receive council on the issue from other jurisdictions before making a decision to resolve this appeal. There was no second to this motion. The motion failed.

K. Friedman withdrew her prior motion.

A. Graham motioned to postpone this appeal to the second full board meeting in March to allow staff to research other jurisdictions with the issue of banking and RAP notice. The first meeting in March should allow for public comment and Board discussion on the findings. K. Friedman seconded.

The Board voted on the sub-motion as follows:

Aye: T. Hall, R. Auguste, J. Ma Powers, A. Graham, T. Williams, K. Friedman, J. Warner

Nay: None

Abstain: None

The motion passed by consensus.

T. Hall proposed a friendly amendment to include looking at past cases that have been decided in Oakland's jurisdiction. A. Graham and K. Friedman accepted the friendly amendment.

c) E18-0012 to 0017, Homes East Bay 4 LLC v. Tenant

Appearances:	Darryl Yorkey	Owner Appellant Representative
	Rocio Toriz	Tenant Appellee Representative

The owner appellant representative appeared and contended that the owner could not start work on the units until all tenants had vacated the property and one tenant did not leave timely which caused some delay. He also provided that granting the extension of time would allow for the reality of the situation which was that permits from the City of Oakland took an extensive amount of time to obtain and that more conditions were discovered that made the work go beyond the initial scope of the work. The owner representative claims that as soon as this information was obtained, they filed the petition.

The tenant appellee representative appeared and contended that the petition was untimely and that tenants did not file a response because they vacated the units where the petition was served. The representative further contended that even though the last tenant did not vacate the unit until approximately March or April of 2018, the owners should have filed the petition in June or July of 2018 rather than November of 2018. The tenant representative provided that the owner was aware of the deadline to submit evidence was 14 days before the hearing and that they were given ample opportunity to submit further documentation. She provided that tenant's counsel was not served with a copy of the appeal and the tenants are still not in possession of the units which has forced them to pay higher rents elsewhere.

After arguments made by both parties, Board questions to the parties and Board discussion, J. Warner motioned to affirm the Hearing Officer's decision based on substantial evidence. A. Graham seconded.

The Board voted on the sub-motion as follows:

Aye: T. Hall, R. Auguste, J. Ma Powers, A. Graham, T. Williams, K. Friedman, J. Warner

Nay: None

Abstain: None

The motion passed by consensus.

6. ACTION ITEMS

- a) Formation of additional ad hoc committees, membership and review of issues identified in May 9, 2019, Board meeting (see attached list on page 3)

No further ad hoc committees were created at this time.

7. INFORMATION AND ANNOUNCEMENTS

- a) Discussion of language to include in dismissal of a single case that is consolidated with other cases (J. Warner)

J. Warner indicated that this was provided for staff to consider rather than an agenda item for Board discussion.

K. Rush provided that Senior Hearing Officer, B. Kong-Brown has stated that she will bring this topic to a Hearing Officer meeting to discuss adding new language to dismissal forms and orders for dismissals in consolidated cases.

R. Auguste requests that a training on Robert's Rules. She would like this to be prioritized this specific training topic and requests that the facilitator be independent from the City of Oakland. She would like possible dates that this could be considered.

J. Warner made a motion to continue the meeting after 10pm. There was no second. The motion failed.

8. COMMITTEE REPORTS AND SCHEDULING

- a) Report from Ad Hoc Committee – Deferred Maintenance v. Capital Improvement of Dry Rot
 - i. Handout from Dry Rot Committee (see attached handout on page 4)

9. ADJOURNMENT

The HRRRB meeting was adjourned at 10:00 p.m. by Chair, J. Warner.

**CITY OF OAKLAND
HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD**

**BOARD PANEL MEETING
March 5, 2020
7:00 p.m.
City Hall, Hearing Room #1
One Frank H. Ogawa Plaza, Oakland, CA**

MINUTES

1. CALL TO ORDER

The HRRRB Panel was called to order at 7:30 p.m. by Panel Chair, Ed Lai

2. ROLL CALL

MEMBER	STATUS	PRESENT	ABSENT	EXCUSED
Ed Lai	Homeowner	X		
Benjamin Scott	Landlord Alt.	X		
Hannah Flanery	Tenant Alt.	X		

Staff Present

Oliver Luby	Deputy City Attorney, Office of the City Attorney
Barbara Kong-Brown	Senior Hearing Officer, Rent Adjustment Program

3. OPEN FORUM

James Vann – New Board Officers

4. NEW BUSINESS

i. Appeal Hearing in cases

a. T19-0357, Martin v. Do

Appearances	David Martin	Tenant Appellant
	Khiem Do	Owner Appellee

Procedural Background

The tenant appealed from an Administrative Decision dismissing his petition on the grounds that the rent increase is justified on the basis of Banking. The Administrative

Decision set the tenant's monthly base rent at \$1,843.00, based on the Hearing Decision in T18-0370.

Grounds for Appeal

The tenant appealed the hearing decision on the following grounds:

- The decision violates federal, state or local law;
- The tenant was denied a sufficient opportunity to present his claim or respond to the petitioner's claim.

The tenant contended that he did not reside in the subject unit for a period of 14 months from 2013 to 2014. He was required to vacate his unit, due to a fire in the penthouse above his unit, which necessitated repairs to his unit. He argued that Banking should not accrue during the period when he was not living in his unit.

The owner contended that the tenant vacated the subject unit for period of 14 months from December 26, 2014, to January 1, 2015. During this period the tenant did not pay any rent and the banking calculation was correctly calculated.

Appeal Decision

After questions to the parties and Board discussion, H. Flanery moved to remand the hearing decision for a full hearing to determine whether the Banking was correctly calculated given the period of non-occupancy and tenant relocation. B. Scott seconded.

The Board panel voted as follows:

Aye: H. Flanery, E. Lai, B. Scott

Nay:

Abstain: 0

The motion was approved by consensus.

b. T19-0347, Chan v. Sequoia

Appearances	Caitlin Chan Bishwendu Paul	Tenant Appellant Owner Appellee
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Procedural Background

The tenant appealed from an Administrative Decision dismissing her petition on the grounds that the tenant admits that the rent for her unit is controlled, regulated or subsidized by a governmental unit, agency, or authority. The Hearing Office found that the subject unit exempt from the Rent Adjustment Ordinance and the Rent Adjustment Program has no jurisdiction over the subject unit.

Grounds for Appeal

The tenant filed an appeal, stating that she made a mistake on her tenant application. She answered "yes" to the question "Is your rent subsidized or controlled by any government agency, including HUD (Section 8), because she did not understand what that language meant. She thought it included the Rent Adjustment Ordinance, and she stated that her rent is not subsidized, and her unit is subject to the Rent Adjustment Ordinance.

She further contended that the issue regards her right to obtain a replacement roommate.

The owner contended that there is a "no sublet" clause in her lease agreement, and when she allowed a second person to move into her unit it increased his costs.

Appeal Decision

After questions to the parties and Board discussion. H. Flanery moved to remand the case to the hearing officer to determine whether the unit is subject to the Rent Adjustment Ordinance, and if so, to make a final determination on the underlying merits of the tenant's petition. B. Scott seconded.

The Board panel voted as follows:

Aye: H. Flanery, E. Lai, B. Scott

Nay:

Abstain: 0

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5. ADJOURNMENT

The meeting was adjourned at 8:30 p.m.