

City of Oakland Residential Rent Adjustment Program 250 Frank Ogawa Plaza, Suite 5313 Oakland, California 94612 (510) 238-3721		APPEAL	
Appellant's Name Rockridge Real Estate LLC		Landlord <input checked="" type="checkbox"/> Tenant <input type="checkbox"/>	
Property Address (Include Unit Number) 1568 Madison St., #16, Oakland, CA			
Appellant's Mailing Address (For receipt of notices) 1568 Madison St. #16 Oakland, CA 94612		Case Number T15-0684 Date of Decision appealed May 20, 2016	
Name of Representative (if any) Daniel M. Bornstein, Esq.		Representative's Mailing Address (For notices) Bornstein & Bornstein 507 Polk Street #410 San Francisco, CA 94102	

I appeal the decision issued in the case and on the date written above on the following grounds:
(Check the applicable ground(s). Additional explanation is required (see below). Please attach additional pages to this form.)

1. **The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board.** You must identify the Ordinance section, regulation or prior Board decision(s) and specify the inconsistency.
2. **The decision is inconsistent with decisions issued by other hearing officers.** You must identify the prior inconsistent decision and explain how the decision is inconsistent.
3. **The decision raises a new policy issue that has not been decided by the Board.** You must provide a detailed statement of the issue and why the issue should be decided in your favor.
4. **The decision is not supported by substantial evidence.** You must explain why the decision is not supported by substantial evidence found in the case record. The entire case record is available to the Board, but sections of audio recordings must be pre-designated to Rent Adjustment Staff.
5. **I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim.** You must explain how you were denied a sufficient opportunity 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.
6. **The decision denies me a fair return on my investment.** You must specifically state why you have been denied a fair return and attach the calculations supporting your claim.

7. Other. You must attach a detailed explanation of your grounds for appeal. Submissions to the Board are limited to 25 pages from each party. Number of pages attached 21. Please number attached pages consecutively.

8. **You must serve a copy of your appeal on the opposing party(ies) or your appeal may be dismissed.** I declare under penalty of perjury under the laws of the State of California that on June 1, 2016, 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>	Ronald Miller, Jr.
<u>Address</u>	1568 Madison Street #16
<u>City, State Zip</u>	Oakland, CA 94612
<u>Name</u>	
<u>Address</u>	
<u>City, State Zip</u>	

	DATE <u>June 1</u> , 2016
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	

IMPORTANT INFORMATION:

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

- Appeals filed late without good cause will be dismissed.
- You must provide all of the information required or your appeal cannot be processed and may be dismissed.
- Anything to be considered by the Board must be received by the Rent Adjustment Program by 3:00 p.m. on the 8th day before the appeal hearing.
- The Board will not consider new claims. All claims, except as to jurisdiction, must have been made in the petition, response, or at the hearing.
- The Board will not consider new evidence at the appeal hearing without specific approval.
- You must sign and date this form or your appeal will not be processed.

EXPLANATION BY APPELLANT
Attachments 4 & 7

Appellant, Rockridge Real Estate LLC ("Appellant"), is the owner of the residential property involved in this matter, located at 1568 Madison St. #16, Oakland, CA 94612. Appellant purchased the property on December 14, 2015.

The following is relevant evidence, attached, that was presented to the Residential Rent Adjustment Program at the hearing on May 6, 2016:

- A. 9/2/05 Lease agreement
- B. 5/7/06 Resident manager job description signed by previous manager, Durrell
- C. 8/5/09 Lease agreement
- D. 2/4/10 Important notice that Respondent replaced Durrell
- E. 9/15/15 Resident's certification of terms – Estoppel certificate
- F. 12/15/15 Notice from Appellant to all tenants re new ownership

The hearing decision, issued on May 20, 2016, ignored substantial evidence of the actual rent assessed to respondent Ronald Miller, Jr. ("Respondent"). Appellant presented the following evidence, among others, to show Respondent's true rent:

- 1. 8/5/09 Lease agreement August 5, 2009, that shows that, at that time, the monthly rent was \$925.00; and
- 2. 5/7/06 Signed resident manager job description and compensation agreement with Respondent's predecessor
- 3. 2/4/10 Important notice sent to tenants
- 4. Resident's Certification of Terms – Estoppel Certification dated September 15, 2015, which Respondent signed and acknowledged that the original rent was "\$950 with a [\$]400 credit each month for manager."

The evidence shows that, when Appellant's predecessor in interest hired a manager, Denis Durrell, on May 7, 2006, they agreed in writing that Mr. Durrell "will receive \$350 per month and a free parking space as a credit towards manager's apartment rent. Upon release of this title and its duties, the manager will once again pay full rent on the apartment in which he resides." Emphasis added. On February 4, 2010, Appellant's predecessor in interest hired Respondent as the new manager. There was no further written agreement between them, and Respondent assumed the same terms and conditions of the manager position as Mr. Durrell earlier had agreed.

Thus, the actual monthly rent during the relevant period was \$950 "with a [\$]400 credit each month for [Respondent's work as the] manager," which it is undisputed that Respondent

had paid. There was no change in terms of tenancy that required a RAP notice. Respondent's monthly rent remained the same at \$950, and he still could have remained in possession had he paid the "full rent." Appellant had not increased the rent, but simply terminated the manager's position and rent credit that was part of the compensation package. Respondent acknowledged his \$950 rent as the full rent in the estoppel certification he completed and executed on September 15, 2015 (Exh. "E"), and it was the full rent that Respondent failed to pay.

In addition, the RAP improperly adjudicated the value of rent that Respondent was required to pay as such issue was necessarily decided previously in the Superior Court unlawful detainer case entitled *Rockridge Real Estate v. Miller, et al.*, Case No. RG16799790. On March 3, 2016, the Superior Court entered judgment in favor of Appellant and against Respondent for restitution of the premises. The RAP decision is inconsistent with the court's earlier decision in the following ways:

1. On January 12, 2016, Appellant filed an unlawful detainer complaint for failure to pay past due rent of \$400 in January 2016;
2. Respondent answered the complaint on or about January 27, 2016. Among the affirmative defenses he raised was item no. 7: "The three-day notice to pay rent or quit is defective because it overstates the amount of rent due."
3. On March 3, 2016, the superior court entered judgment for Appellant, thereby necessarily adjudicating that the amount of rent due was not overstated and Respondent's failure to pay justified Respondent's surrender of possession and award to Appellant of \$400 in back rent, \$950 in holdover damages, and litigation costs.

The RAP is barred by the doctrine of *res judicata* from determining this issue, and also has done so inconsistently with the superior court's determination earlier in the year.

Respondent is precluded from relitigating in this RAP action an issue that was actually litigated or necessarily determined in the unlawful detainer lawsuit that was taken to final judgment on the merits. The doctrine bars relitigation of issues "actually determined" or "necessarily decided" even if facts relevant to the issue were not brought out in the prior proceeding and even though some arguments bearing on the issue were not then made. See *Bernhard v. Bank of America Nat'l Trust & Sav. Ass'n* (1940) 19 Cal.2d 807, 810; *Parklane Hosiery Co., Inc. v. Shore* (1979) 439 U.S. 322, 326, fn. 5; *Mooney v. Caspari* (2006) 138 Cal.App.4th 704, 717-721.

In the Superior Court matter, Respondent rejected the resumption of paying full monthly rent when Appellant, the new owner, terminated Respondent's managerial services and his corresponding rent credit of \$400. In granting to Appellant judgment for possession, back rent and daily damages of \$1,350.00, the court had necessarily decided that Respondent's refusal to resume paying full rent lacked merit. The RAP may not contradict the court's earlier judgment, as it has *res judicata* effect in the RAP proceeding. See, e.g., *Gonzales v. Gem Properties, Inc.* (1974) 37 Cal.App.3d 1029, 1036-1037.

Finally, the issue is moot. Pursuant to the court judgment, Respondent has been evicted from the premises and no longer is in possession.

EXHIBIT A

LEASE AGREEMENT

THIS AGREEMENT is made and entered into this 2 day of September, 2005 between

Freda O'Brien "Owner/Agent", whose address and phone

number are 415 1568 Madison St #4 Oakland CA 94612 415 3784587

and Denis Durcell "Resident." THE PARTIES AGREE AS FOLLOWS:

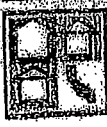
- 1. RENTAL UNIT: Subject to the terms and conditions of this Agreement, Owner rents to Resident and Resident rents from Owner, for residential use only, the premises located at: 1568 Madison St, Unit # (if applicable) 4, Oakland CA, 94612. 2. RENT: Rent is due in advance on the 1 day of each and every month, at \$ 850 per month, beginning on 9/2/05, payable at #4 1568 Madison St. 3. SECURITY DEPOSIT: Resident shall deposit with Owner/Agent, as a security deposit, the sum of \$ 1700.550 9/2.

Acceptable methods of payment: [X] Personal Check [X] Cashier's Check [] Money Order [] EFT/Credit (see Owner/Agent for details) and [X] Cash. If rent is paid after the 3 of the month, there will be a late charge of \$ 50 assessed. Pursuant to California law, if Resident passes a check on insufficient funds, Resident will be liable to Owner/Agent for the amount of the check and a service charge of \$ 25, not to exceed \$25 for the first check passed on insufficient funds, and \$35 for each subsequent check passed on insufficient funds.

Resident shall not use the security deposit to pay any month's rent. Owner/Agent may withhold from the security deposit only such amounts as are reasonably necessary to remedy Resident defaults including, but not limited to, the following: (a) defaults in the payment of rent, (b) to repair damages to the premises caused by Resident, exclusive of ordinary wear and tear, and/or (c) to clean the premises, if necessary, upon termination of the tenancy in order to return the unit to the same level of cleanliness it was in at the inception of the tenancy, and/or (d) to restore, replace, or return personal property or appurtenances, exclusive of ordinary wear and tear.

No later than 21 calendar days after Owner/Agent has regained possession of the premises, Owner/Agent shall return any remaining portion of such security deposit to Resident.

4. TERM: The term of this Agreement is for 6 months beginning on 9/2/05 and ending on 2/28/06, at which time this Lease shall terminate without further notice. Any holding over thereafter shall result in Resident being liable to Owner/Agent for daily rental damages equal to the current market value of the unit, divided by 30. A "month-to-month" tenancy subject to the terms and conditions of this agreement shall be created only if Owner/Agent accepts rent from Resident thereafter, and if so accepted, tenancy may be terminated by Resident after service upon the Owner/Agent of a written 30-day Notice of Termination. The month-to-month tenancy created thereafter may be terminated by the Owner/Agent by service upon the Resident of a written 30-day notice of termination of tenancy if Resident has been in possession of the unit for less than one year, or the month-to-month tenancy may be terminated thereafter by the Owner/Agent after service upon the Resident of a written 60-day notice of termination of tenancy if Resident has been in possession of the unit for one year or longer.



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5. **CASH PAYMENT:** The Owner/Agent may demand or require cash as the exclusive form of payment of rent or deposit of security if the tenant has previously attempted to pay the Owner/Agent with a check drawn on insufficient funds or the tenant has instructed the drawee to stop payment on a check, draft, or order for the payment of money. If the Owner/Agent chooses to demand or require cash payment under these circumstances, the Owner/Agent shall give the Resident a written notice stating that the payment instrument was dishonored and informing the Resident that the Resident shall pay in cash for a period determined by Owner/Agent, not to exceed three months, and attach a copy of the dishonored instrument to the notice.

6. **OCCUPANTS:** Premises shall be occupied only by the following named person(s):

<u>Doris Durrell</u>	<u>4/13/70</u>		
Name	Birthdate	Name	Birthdate
Name	Birthdate	Name	Birthdate

7. **PROHIBITIONS:** Without Owner/Agent's prior written permission as an addendum to this Agreement, no pets, no water beds or liquid-filled furniture or 1 cat shall be kept or allowed in or about the premises.

8. **QUIET ENJOYMENT:** Resident shall not violate any criminal or civil law, ordinance or statute in the use and occupancy of the premises, commit waste or nuisance, annoy, molest or interfere with any other Resident or neighbor. Any such action may result in the immediate termination of this Agreement as provided herein and by law.

9. **REPAIRS AND ALTERATIONS:** Except as provided by law, no repairs, decorating or alterations shall be done by Resident without Owner/Agent's prior written consent. Resident shall notify Owner/Agent in writing of any repairs or alterations contemplated. Decorations include, but are not limited to, painting and wallpapering. Resident shall hold Owner/Agent harmless and indemnify Owner/Agent as to any mechanics lien recordation or proceeding caused by Resident. Resident may not make any alterations to cable or telephone inside wiring (such as may occur when changing telecommunications providers or adding phone lines) without prior written consent of the Owner/Agent. The notice shall include the name, address, and telephone number of any new telecommunication provider. Resident agrees to pay all costs resulting from the alteration and agrees to pay to the Owner/Agent any costs associated with restoring the inside wiring to the condition at the time of move-in, except for reasonable wear and tear.

10. **ACCEPTANCE OF PREMISES:** Resident has inspected the premises, furnishings and equipment, and has found them to be satisfactory. All plumbing, heating and electrical systems are operative and deemed satisfactory.

11. **CARE, CLEANING, MAINTENANCE AND INSURANCE:** Resident agrees to leave the premises in the same condition as it was received, subject to normal wear and tear. Except as prohibited by law, Resident shall keep the premises and furniture, furnishings and appliances, and fixtures, which are rented for Resident's exclusive use, in good order and condition. Upon move-out, Resident agrees to return the unit to the same level of cleanliness it was in at the inception of the tenancy. Resident is is not (check one) responsible for the upkeep of the yard and landscaping. Resident shall pay Owner/Agent for costs to repair, replace or rebuild any portion of the premises damaged by the Resident, Resident's guests or invitees. Resident's property is not insured by Owner/Agent. Resident is not a co-insured and is expressly excluded from any insurance policy held by Owner/Agent which is now in effect or becomes effective during the term of this Agreement.

12. **UTILITIES:** Resident shall pay for all utilities, services and charges, if any, made payable by or predicated upon occupancy of Resident, except: WATER & garbage

13. **WAIVER OF BREACH:** The waiver of either party of any breach shall not be construed to be a continuing waiver of any subsequent breach. The receipt by Owner/Agent of the rent with the knowledge of any violation of a covenant or condition hereto shall not be deemed a waiver of such breach. No waiver by either party of the provisions herein shall be deemed to have been made unless expressed in writing and signed by all parties to this Rental Agreement.

14. **JOINT AND SEVERAL LIABILITY:** The undersigned Resident(s), whether or not in actual possession of the premises, are jointly and severally liable for all obligations under this Rental Agreement, and shall indemnify Owner/Agent for liability arising prior to the termination of the Rental Agreement for personal injuries or property damage caused or permitted by Resident(s), their guests and invitees. This does not waive "Owner/Agent's duty of care" to prevent personal injury or property damage where that duty is imposed by law.

15. **ENTRY:** California law allows Owner/Agent or his/her employee(s) to enter the premises for certain purposes during normal business hours. The Owner/Agent will provide written notice to the Resident prior to the entry of the dwelling unit whenever required by state law. (Civil Code Section 1954.) Resident's non-compliance with Owner/Agent's lawful request for entry is a material breach of this Agreement that may be cause for immediate termination as provided herein and by law.



16. **SUBLETTING AND ASSIGNMENT:** No portion of the premises shall be sublet nor this Agreement assigned. Any attempted subletting or assignment by Resident shall at the election of Owner/Agent, be an irremediable breach of this Agreement and cause for immediate termination as provided herein and by law.
17. **BREACH OF LEASE:** In the event that Resident breaches this Lease Agreement, Owner/Agent shall be allowed at Owner/Agent's discretion, but not by way of limitation, to exercise any or all remedies provided Owner/Agent by California Civil Code Section 1951.2 and 1951.4. Damages Owner/Agent "may recover" include the worth at the time of the award of the amount by which the unpaid rent for the balance of the term after the time of award, or for any shorter period of time specified in the Lease Agreement, exceeds the amount of such rental loss for the same period that the Resident proves could be reasonably avoided.
18. **SALE OF PROPERTY:** In the event of the sale or refinancing of the property: If Owner/Agent presents to Resident a "Resident's Certification of Terms - Estoppel Certification," or other similar Estoppel Certification form, Resident agrees to execute and deliver the certificate acknowledging that this Lease Agreement is unmodified and in full force and effect, or in full force and effect as modified with the consent of Owner/Agent, and stating the modifications, within ten (10) days of written notice. Failure to comply shall be deemed Resident's acknowledgment that the certificate as submitted by Owner/Agent is true and correct and may be relied upon by any lender or purchaser.
19. **SMOKE DETECTION DEVICE:** The premises are equipped with a functioning smoke detection device(s), and Resident shall be responsible for testing the device weekly and immediately reporting any problems, maintenance or need for repairs to Owner/Agent. If battery operated, Resident is responsible for changing the detector's battery as necessary. Owner/Agent shall have a right to enter the premises to check and maintain the smoke detection device as provided by law.
20. **NOTICE:** The California Department of Justice, sheriff's departments, police departments serving jurisdictions of 200,000 or more and many other local law enforcement authorities maintain for public access a data base of the locations of persons required to register pursuant to paragraph (1) of subdivision (a) of Section 290.4 of the Penal Code. The data base is updated on a quarterly basis and a source of information about the presence of these individuals in any neighborhood. The Department of Justice also maintains a Sex Offender Identification Line through which inquiries about individuals may be made. This is a "900" telephone service. Callers must have specific information about individuals they are checking. Information regarding neighborhoods is not available through the "900" telephone service.

21. **ADDENDA:** By initialing as provided, Resident acknowledges receipt of the following applicable addenda, as indicated, copies of which are attached hereto, and are incorporated as part of this Agreement.
- | | | |
|---|-------------------------------------|------------------------------------|
| <u>del</u> Resident Policies & Rules | <u>del</u> Smoke Detector Agreement | <u>del</u> CC & R |
| <u>del</u> Move-In/Move-Out Itemization | <u>del</u> Pet Agreement | <u>del</u> Drug Free Housing |
| <u>del</u> Pest Control Notice | <u>del</u> Asbestos Addendum | <u>del</u> Proposition 65 Brochure |
| <u>del</u> Satellite Addendum | <u>del</u> Lead Disclosure Addendum | Other: _____ |
| <u>del</u> Pool Rules | <u>del</u> Mold Addendum | Other: _____ |

22. **BATH TUB TO BE CLEANED ONLY AS STATED IN DIRECTIONS GIVEN TO TENANT**
ENTIRE AGREEMENT: This Agreement, which includes all attachments referred to above, constitutes the entire Agreement between the parties and cannot be modified except in writing and signed by all parties. Owner/Agent, nor an agent or employee of Owner/Agent has made any representations or promises other than those set forth herein.

23. **CREDIT REPORTS:** 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. Resident expressly authorizes Owner/Agent (including a collection agency) to obtain Resident's consumer credit report, which Owner/Agent may use if attempting to collect past due rent payments, late fees, or other charges from Resident, both during the term of the Agreement and thereafter.

24. **ATTORNEYS' FEES:** If any legal action or proceeding is brought by either party to enforce any part of this Agreement, the prevailing party shall recover, in addition to all other relief, reasonable attorneys' fees and court costs, unless one of the following two boxes is checked:
 the prevailing party shall recover, in addition to all other relief, attorneys' fees not to exceed \$ _____, plus court costs.
 or each party shall be responsible for their own attorneys' fees and court costs.

The undersigned Resident(s) acknowledge(s) having read and understood the foregoing, and receipt of a duplicate original.

Date 2 Sept 05 Resident [Signature]
 Date _____ Resident _____
 Date 9/1/05 Owner/Agent [Signature]



EXHIBIT B

**RESIDENT MANAGER JOB DESCRIPTION
1568 MADISON ST OAKLAND**

The following is a list of job responsibilities for the manager at 1568 Madison St.

1. **Rents:** Manager is responsible for the collection and delivery of rents and all moneys received from tenants. Rents are to be given to Brian Swayne or Freda O'Brien. Manager is responsible for accounting of rents in the building and will keep a formal record of each apartment's account. The record will be available to owners upon request.
2. **Vacancies:** Upon vacancy of apartments, manager is responsible for scheduling and showing apartments to prospective tenants. This is to include two evenings a week and also at weekends. Upon approval of prospective tenant, manager will supervise leasing arrangements, signing of agreements, doing walk through inspection, collection of moneys and transfer of keys.
3. **Tenant Service:** Manager shall act as agent for owners and shall service the needs of tenants in the building. This includes unlocking doors at a reasonable hour and a reasonable number of times, listening to complaints and forwarding information to and from tenants.
4. **Cleaning:** Manager is responsible for cleaning interior of building common areas such as vacuum hallways and stairway, cleaning laundry room, parking area and outside steps. This should be done on a regular basis.
5. **Outside Plants:** Manager is responsible for upkeep of plant area at the front of the building and includes removal of trash, trimming of plants, watering etc.
6. **Garbage:** Manager is responsible for keeping garbage area clean and compressing the trash and recycling bins when necessary to prevent overflow.
7. **Minor Maintenance:** Manager is expected to perform minor maintenance, which includes but is not limited to changing common area light bulbs, installation of washers in dripping faucets, minor plumbing on j-traps under bathroom and kitchen sinks, repair minor leaks at water


hoses, replace toilet valves, change locks and any other minor repairs deemed necessary by owner.

8. **Tenant maintenance requests:** Manager will alert owners to requests made by tenants and follow up with tenants once maintenance is done to ensure tenant satisfaction.
 9. **Tenant Communication:** Manager may be asked to deliver communications (both verbal and written) to tenants. This may include legal notices. Notices from tenants such as 30 day notices and complaints will be relayed to owners immediately.
 10. **Security:** Manager is responsible for assuring the security of the entire building
 10. **Other duties:** Manager will perform other duties as needed and deemed appropriate by Freda O'Brien and Brian Swayne.
-

COMPENSATION

Denis Durrell as manager will receive \$350 per month and a free parking space as a credit towards manager's apartment rent. This compensation is for services as resident manager and will be paid in advance of work performed. Upon release of this title and its duties, the manager will once again pay full rent on the apartment in which he resides. The parking space may not be rented out to any other tenant and may be used by people doing maintenance in the building. This is a 3 month trial and will be reviewed after 3 months.

Date 7 May 2006


Freda O'Brien and Brian Swayne



Denis Durrell

EXHIBIT C

LEASE AGREEMENT

THIS AGREEMENT is made and entered into this 5 day of August, 2009 between

Freda O'Brien "Owner/Agent", whose address and phone

number are 1568 Madison St Oakland CA 94612

and JASON Andrew Alcantara and JAIRE Guadian "Resident."

THE PARTIES AGREE AS FOLLOWS:

1. RENTAL UNIT: Subject to the terms and conditions of this Agreement, Owner rents to Resident and Resident rents from Owner, for residential use only,

the premises located at: 1568 Madison St, Unit # (if applicable) 16
Oakland, CA, 94612

2. RENT: Rent is due in advance on the 1st day of each and every month, at \$ 925 per month, beginning on 15-Aug-09, payable to Owner/Agent at 1568 Madison St. Payments made in

person may be delivered to Owner/Agent between the hours of 9AM and 9PM on the following days of the week:

Monday Tuesday Wednesday Thursday Friday Saturday Sunday Other

Acceptable methods of payment:

Personal Check Cashier's Check Money Order EFT/Credit (see Owner/Agent for details) and Cash

If rent is paid after the 3rd of the month, there will be a late charge of \$ 50 assessed. The parties agree that this late fee is presumed to be the amount of damage sustained by late payment of rent. It would be impracticable or extremely difficult to fix the actual damage. This sum represents a reasonable endeavor by the Owner/Agent to estimate fair average compensation for any loss that may be sustained as a result of late payment of rent. Pursuant to California law, if Resident passes a check on insufficient funds, Resident will be liable to Owner/Agent for the amount of the check and a service charge of \$ 25, not to exceed \$25 for the first check passed on insufficient funds, and \$35 for each subsequent check passed on insufficient funds. The Owner/Agent may refuse a personal check as the form of rent payment to cure a Three-Day Notice to Pay Rent or Quit.

3. SECURITY DEPOSIT: Resident shall deposit with Owner/Agent, as a security deposit, the sum of \$ 925 prior to taking possession of the unit or no later than 15-Aug-09 (check one).

Resident shall not use the security deposit to pay any month's rent. Owner/Agent may withhold from the security deposit only such amounts as are reasonably necessary to remedy Resident defaults including, but not limited to, the following:

- (a) defaults in the payment of rent,
- (b) to repair damages to the premises caused by Resident, exclusive of ordinary wear and tear, and/or
- (c) to clean the premises, if necessary, upon termination of the tenancy in order to return the unit to the same level of cleanliness it was in at the inception of the tenancy, and/or
- (d) to restore, replace, or return personal property or appurtenances, exclusive of ordinary wear and tear.

No later than 21 calendar days after Owner/Agent has regained possession of the premises, Owner/Agent shall return any remaining portion of such security deposit to Resident.

4. TERM: The term of this Agreement is for 5 Months beginning on 15-Aug-09 and ending on 31-Jan-10, at which time this

Lease shall terminate without further notice. Any holding over thereafter shall result in Resident being liable to Owner/Agent for daily rental damages equal to the current market value of the unit, divided by 30. A "month-to-month" tenancy subject to the terms and conditions of this agreement shall be created only if Owner/Agent accepts rent from Resident thereafter, and if so accepted, tenancy may be terminated by Resident after service upon the Owner/Agent of a written 30-day Notice of Termination. Except as prohibited by law, that month-to-month tenancy may be terminated by the Owner/Agent by service upon the Resident of a written 60-day notice of termination of tenancy. However, Civil Code Section 1946.1 provides that "if any tenant or resident has resided in the dwelling for less than one year", the Owner/Agent may terminate the tenancy by service upon the Resident of a written 30-day notice.



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11.

EXH. "C" 000115

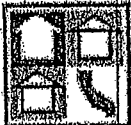
5. **UTILITIES:** Resident shall pay for all utilities, services and charges, if any, made payable by or predicated upon occupancy of Resident, except ~~Water~~ ~~Gas~~ ~~Electric~~ ~~Water~~ Resident shall have the following utilities connected at all times during the tenancy (check as applicable): Gas Electric Water Trash Sewer Other: _____ Disconnection of utilities due to non-payment is a material violation of this Agreement.
6. **CASH PAYMENT:** The Owner/Agent may demand or require cash as the exclusive form of payment of rent or deposit of security if the tenant has previously attempted to pay the Owner/Agent with a check drawn on insufficient funds or the tenant has instructed the drawee to stop payment on a check, draft, or order for the payment of money. If the Owner/Agent chooses to demand or require cash payment under these circumstances, the Owner/Agent shall give the Resident a written notice stating that the payment instrument was dishonored and informing the Resident that the Resident shall pay in cash for a period determined by Owner/Agent, not to exceed three months, and attach a copy of the dishonored instrument to the notice.
7. **OCCUPANTS:** Premises shall be occupied only by the following named person(s):

<u>Jason A Alcantara</u>	<u>3/22/87</u>		
Name	Birthdate	Name	Birthdate
<u>Jaiko A Guadian</u>	<u>10/30/87</u>		
Name	Birthdate	Name	Birthdate

8. **PROHIBITIONS:** Without Owner/Agent's prior written permission as an addendum to this Agreement, no pets, no waterbeds, no gas or charcoal grills or barbecues or _____ shall be kept or allowed in or about the premises.
9. **QUIET ENJOYMENT:** Resident shall not violate any criminal or civil law, ordinance or statute in the use and occupancy of the premises, commit waste or nuisance, annoy, molest or interfere with any other Resident or neighbor. Any such action may result in the immediate termination of this Agreement as provided herein and by law.
10. **REPAIRS AND ALTERATIONS:** Except as provided by law, no repairs, decorating or alterations shall be done by Resident without Owner/Agent's prior written consent. Resident shall notify Owner/Agent in writing of any repairs or alterations contemplated. Decorations include, but are not limited to, painting and wallpapering. Resident shall hold Owner/Agent harmless and indemnify Owner/Agent as to any mechanics lien recordation or proceeding caused by Resident. Resident may not make any alterations to cable or telephone inside wiring (such as may occur when changing telecommunications providers or adding phone lines) without prior written consent of the Owner/Agent. The notice shall include the name, address, and telephone number of any new telecommunication provider. Resident agrees to pay all costs resulting from the alteration and agrees to pay to the Owner/Agent any costs associated with restoring the inside wiring to the condition at the time of move-in, except for reasonable wear and tear.
11. **ACCEPTANCE OF PREMISES:** Resident has inspected the premises, furnishings and equipment, and has found them to be satisfactory. All plumbing, heating and electrical systems are operative and deemed satisfactory.
12. **CARE, CLEANING, MAINTENANCE AND INSURANCE:** Resident agrees to leave the premises in the same condition as it was received, subject to normal wear and tear. Resident acknowledges that the damage caused by smoking tobacco products is considered above normal wear and tear and will damage surfaces and fixtures, including, the carpet, carpet pad, wallboard, window coverings and ceilings. Depending on the severity of the damage, costs for restoration of the unit may include, but are not limited to, cleaning, sealing, painting, deodorizing, and possible replacement of fixtures and various surface materials. Except as prohibited by law, Resident shall keep the premises and furniture, furnishings and appliances, and fixtures, which are rented for Resident's exclusive use, in good order and condition. Upon move-out, Resident agrees to return the unit to the same level of cleanliness it was in at the inception of the tenancy. Resident is is not (check one) responsible for the upkeep of the yard and landscaping. Resident shall pay Owner/Agent for costs to repair, replace or rebuild any portion of the premises damaged by the Resident, Resident's guests or invitees. Resident's property is not insured by Owner/Agent. Resident is not a co-insured and is expressly excluded from any insurance policy held by Owner/Agent which is now in effect or becomes effective during the term of this Agreement.
13. **WAIVER OF BREACH:** The waiver of either party of any breach shall not be construed to be a continuing waiver of any subsequent breach. The receipt by Owner/Agent of the rent with the knowledge of any violation of a covenant or condition hereto shall not be deemed a waiver of such breach. No waiver by either party of the provisions herein shall be deemed to have been made unless expressed in writing and signed by all parties to this Rental Agreement.
14. **JOINT AND SEVERAL LIABILITY:** The undersigned Resident(s), whether or not in actual possession of the premises, are jointly and severally liable for all obligations under this Rental Agreement, and shall indemnify Owner/Agent for liability arising prior to the termination of the Rental Agreement for personal injuries or property damage caused or permitted by Resident(s), their guests and invitees. This does not waive "Owner/Agent's duty of care" to prevent personal injury or property damage where that duty is imposed by law.



15. **ENTRY:** California law allows Owner/Agent or his/her employee(s) to enter the premises for certain purposes during normal business hours. The Owner/Agent will provide written notice to the Resident prior to the entry of the dwelling unit whenever required by state law. (Civil Code Section 1954.) Resident's non-compliance with Owner/Agent's lawful request for entry is a material breach of this Agreement that may be cause for immediate termination as provided herein and by law.
16. **SUBLETTING AND ASSIGNMENT:** No portion of the premises shall be sublet nor this Agreement assigned. Any attempted subletting or assignment by Resident shall, at the election of Owner/Agent, be an irremediable breach of this Agreement and cause for immediate termination as provided herein and by law.
17. **BREACH OF LEASE:** In the event that Resident breaches this Lease Agreement, Owner/Agent shall be allowed at Owner/Agent's discretion, but not by way of limitation, to exercise any or all remedies provided Owner/Agent by California Civil Code Section 1951.2 and 1951.4. Damages Owner/Agent "may recover" include the worth at the time of the award of the amount by which the unpaid rent for the balance of the term after the time of award, or for any shorter period of time specified in the Lease Agreement, exceeds the amount of such rental loss for the same period that the Resident proves could be reasonably avoided.
18. **SALE OF PROPERTY:** In the event of the sale or refinance of the property: If Owner/Agent presents to Resident a "Resident's Certification of Terms - Estoppel Certification," or other similar Estoppel Certification form, Resident agrees to execute and deliver the certificate acknowledging that this Agreement is unmodified and in full force and effect, or in full force and effect as modified with the consent of Owner/Agent, and stating the modifications, within ten (10) days of written notice. Failure to comply shall be deemed Resident's acknowledgement that the certificate as submitted by Owner/Agent is true and correct and may be relied upon by any lender or purchaser.
19. **SMOKE DETECTION DEVICE:** The premises are equipped with a functioning smoke detection device(s), and Resident shall be responsible for testing the device weekly and immediately reporting any problems, maintenance or need for repairs to Owner/Agent. If battery operated, Resident is responsible for changing the detector's battery as necessary. Owner/Agent shall have a right to enter the premises to check and maintain the smoke detection device as provided by law.
- ~~20. **NOTICE:** Pursuant to Section 290.46 of the Penal Code, information about specified registered sex offenders is made available to the public via an Internet Web site maintained by the Department of Justice at www.meganslaw.ca.gov. Depending on an offender's criminal history, this information will include either the address at which the offender resides or the community of residence and ZIP Code in which he or she resides.~~
21. **ADDENDA:** By initialing as provided, Resident acknowledges receipt of the following applicable addenda, as indicated, copies of which are attached hereto, and are incorporated as part of this Agreement.
- | | | |
|--|--|---|
| <input checked="" type="checkbox"/> Resident Policies Addendum | <input checked="" type="checkbox"/> Smoke Detector Addendum | <input type="checkbox"/> C & Rs |
| <input checked="" type="checkbox"/> Move-In/Move-Out Itarimization | <input type="checkbox"/> Pet Addendum | <input type="checkbox"/> Unlawful Activity Addendum |
| <input type="checkbox"/> Pest Control Notice Addendum | <input checked="" type="checkbox"/> Asbestos Addendum | <input type="checkbox"/> Proposition 65 Brochure |
| <input type="checkbox"/> Satellite Addendum | <input checked="" type="checkbox"/> Lead Disclosure Addendum | <input type="checkbox"/> Other: _____ |
| <input type="checkbox"/> Pool Rules Addendum | <input checked="" type="checkbox"/> Mold Notification Addendum | <input type="checkbox"/> Other: _____ |
22. **ENTIRE AGREEMENT:** This Agreement, which includes all attachments referred to above, constitutes the entire Agreement between the parties and cannot be modified except in writing and signed by all parties, except as permitted by applicable law. Neither Owner/Agent, nor any agent or employee of Owner/Agent has made any representations or promises other than those set forth herein.
23. **CREDIT REPORTS:** 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. Resident expressly authorizes Owner/Agent (including a collection agency) to obtain Resident's consumer credit report, which Owner/Agent may use if attempting to collect past due rent payments, late fees, or other charges from Resident, both during the term of the Agreement and thereafter.



24. ATTORNEYS' FEES: If any legal action or proceeding is brought by either party to enforce any part of this Agreement, the prevailing party shall recover, in addition to all other relief, reasonable attorneys' fees and court costs, unless one of the following two boxes is checked:

- the prevailing party shall recover, in addition to all other relief, attorneys' fees not to exceed \$ _____, plus court costs.
Or each party shall be responsible for their own attorneys' fees and court costs.

The undersigned Resident(s) acknowledge(s) having read and understood the foregoing, and receipt of a duplicate original.

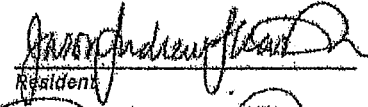

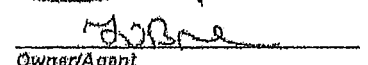
<u>08/05/09</u> Date	 Resident	_____	_____
<u>08/05/09</u> Date	 Resident	_____	_____
<u>8/5/09</u> Date	 Owner/Agent		



EXHIBIT D

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000119

2/4/2010 IMPORTANT NOTICE

We have a new manager in the building. His name is Ronnie Miller and he is living in unit #16. He will take over all duties from Deni. His phone # is 510 837 2012 and only use it in an emergency. Please fill out work requests when you need anything fixed and indicate if it is ok for him or Brian to enter the apt or leave a phone number to arrange a suitable time.

Any rents that are still outstanding for this month may be left under his door.

We are in the process of painting the interior of the building. Sorry about any inconvenience. We are getting bids for painting the exterior of the building and will let you know in advance when it is starting.

~~We have had numerous complaints recently about noise level being~~ excessive. Please keep the noise level down. Part of the Residents policy specifically addresses this issue, so please be courteous of your neighbors.

Please avoid putting garbage out after 9pm and if you do try and avoid letting the back door and the garbage containers bang as there are people sleeping close by.

Thanks

Freda O'Brien

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EXH. "D"

000120

EXHIBIT E

Resident's Certification of Terms Estoppel Certification

Enclosed is a statement of terms of the Rental Agreement/Lease for the premises you are renting located at:

1568 Madison St Unit 16, (If applicable)
(Address)
Oakland, California, 94612
(City) (Zip)

~~Resident please return this complete form within (5) days after receipt:~~

Owner states the following:

a. You are in possession of the above described premises on (check correct response):

1. Month-to-Month Rental Agreement

NO written rental agreement

2. Lease Agreement, beginning on 1/1/10, ending on 1/1/10

b. Original date of possession (move-in date): 2/1/10

c. Original rent (at time of move-in): \$ 950 with a 400 credit each

d. Last rent increase date: 1/1/10 month for manager

e. The rental payment due date is: 1st of each month; 15th of each month; other: _____

f. Current rent: \$ SAME paid monthly; other: _____

g. Rent has been paid to: Freda O'Brien

h. The following is included in the rent: _____

1. Parking space, please describe: HAS a parking

2. Garage, please describe: SPACE

3. Storage space, please describe: _____

4. Other, please describe: _____

i. The security deposit is: \$ _____

j. If a separate "last month's rent deposit" was given, that amount is:

\$ _____

The names and ages of all Residents are:

Ronald Miller 1/22-72

Are there any repairs needed? Yes ; No ; If Yes, please describe; if not enough space use the back of this form to describe.

The enclosed is a true copy of the Rental/Lease Agreement and modifications if any, except as stated under exceptions below:

The above information is correct as of:

9/12/15
(Date)

Freda O'Brien
(Owner/Agent)

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EXH. "E"

Form provided by the East Bay Rental Housing Association®

www.ebrha.com

Form Resident's Certification of Terms - Estoppel Certificate © (11/11)



000122

Resident's Certification of Terms Estoppel Certification

Resident:

I do certify that, except as stated under exceptions below:

- a. The above is true and correct.
- b. The Rental/Lease Agreement is in full force and effect without modification.
- c. No rent is paid more than 30 days in advance.
- d. There are no charges, liens or claims of offset.
- e. All improvements required under the Rental/Lease Agreement have been made.
- f. All issues of habitability described herein have been addressed and corrected.
- g. I am in possession of the above described property.
- h. I have received the City of Oakland's Notice to Tenants of Residential Rent Adjustment Program.
- i. In the block below I have furnished my best recollection of all past rent increases.

If none, please state so. If in residence for more than ten years, please state your rent as of ten years ago: \$ _____.

Exceptions to the above list here:

9/15/15 *[Signature]*

Date Resident Date Resident



EXHIBIT F

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000124

ROCKRIDGE REAL ESTATE LLC
1565 MADISON STREET
OAKLAND, CA 94612

15 December 2015

To all Tenants at 1568 Madison Street:

Effective yesterday, December 14, 2015, the building was purchased by Katherine, Alan and Nat Reinke. All security deposits were transferred to the new owners as part of the purchase. Going forward rent should be paid to the property manager, Rockridge Real Estate LLC, at 1565 Madison Street, Suite B, Oakland, CA 94612. Right across the street, ground floor. Their office hours are 9-5, Monday through Friday.

Problems with the building or any needed repairs in your unit should be put in writing and sent to Rockridge Real Estate LLC at that address. You may also email requests to rockridge.re@gmail.com. If there is an immediate issue needing attention please call me on my cell phone (415) 710-7284.

You will notice workers in the building over the next several weeks as we renovate several units and modernize the interiors.

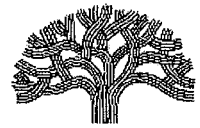
Yours truly,

Nat Reinke

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EXH. "F"

000125



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

CITY OF OAKLAND

Department of Housing and Community Development
Rent Adjustment Program

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

HEARING DECISION

CASE NUMBER: T15-0684 Miller v. Rockridge Real Estate LLC

PROPERTY ADDRESS: 1568 Madison St., #16, Oakland, CA

DATE OF HEARING: May 6, 2016

DATE OF DECISION: May 20, 2016

APPEARANCES: Ronald Miller, Jr. (Tenant)
Alan Reinke (Owner)
Nathaniel Reinke (Agent for Owner)
Daniel Bornstein (Attorney for Owner)

SUMMARY OF DECISION

The tenant's petition is granted.

CONTENTIONS OF THE PARTIES

The tenant filed a petition which alleges that a proposed rent increase from \$550 to \$950 per month, effective January 1, 2016, exceeds the CPI Adjustment and is unjustified or is greater than 10%, and that he has never received the form Notice to Tenants (RAP Notice).

The owner filed a response to the petition, which alleges that no rent increase notice was ever issued, and that the rent was, and remains, \$950 per month.

THE ISSUES

- (1) When, if ever, did the tenant receive the RAP Notice?
- (2) If the tenant did not receive the RAP Notice together with a change in terms of tenancy, what is the legal effect?
- (3) Has the tenant's rent been increased?

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EVIDENCE

The Tenant as Resident Manager: At the Hearing, the tenant testified that he moved into the unit when the 18-unit building was owned by the prior owner. The arrangement was that he paid rent of \$550 per month, and he was to do small repairs in the building and collect rent from other tenants. There was no written lease or rental agreement. The current owner bought the building in December 2015.

The Letter to the Tenant: The tenant received a letter from the new owner, dated December 18, 2015.¹ This letter states, in part: "This is to inform you that effective December 31, 2015, we will no longer require your services as resident manager at 1568 Madison. Consequently, the credit of \$400 you currently receive against each month's rental amount will no longer apply. On January 1, 2016 your rent will revert to \$950 per month. Also the parking spot you have been using will cost \$100 per month if you wish to retain it."

RAP Notice: At the Hearing, the tenant testified that the December 18 letter was posted on his door and a copy was mailed to him. However, he received only this one document, and he has never received the RAP Notice. The owner's agent testified that a copy of the RAP Notice was enclosed with the December 18 letter, and that the tenant has also been given the RAP Notice since that time.

The owner submitted a copy of an estoppel certificate signed by the tenant on September 15, 2015.² Page 2 of this document contains printed language in a small typeface which begins, "I [tenant] certify that, except as stated under exceptions below" and then lists 9 statements, one of which says: "I have received the City of Oakland's Notice to Tenants of Residential Rent Adjustment Program."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

State Law: "[I]n all leases . . . from month to month or other period less than a month, the landlord may, upon giving notice in writing to the tenant . . . change the terms of the terms of the lease . . . to take effect at the expiration of not less than 30 days . . ."³ The letter from the owner to the tenant dated December 18, 2015, for a change in terms of the tenancy to be effective on December 31, 2015, provides only 13 days' notice, and clearly does not comply with State law. Therefore, on this basis alone, the subject letter is invalid.

RAP Notice: The Rent Adjustment Ordinance requires an owner to serve the RAP Notice at the start of a tenancy⁴ and together with any notice of rent increase or change in the terms of a tenancy.⁵

¹ Exhibit No. 1, which was admitted into evidence without objection.

² Exhibit No. 2. The tenant objected to the admission of this document into evidence because sections of the document were blank when he signed it. The objection was overruled, and the document was admitted into evidence.

³ Civil Code, Section 827.

⁴ O.M.C. Section 8.22.060(A)

⁵ O.M.C. Section 8.22.070(H)(1)(A)

The testimony of the owner's agent and the tenant with regard to service of the RAP Notice is clearly in direct conflict. Since it is impossible to prove a negative, the tenant could do no more than deny receiving the notice. By contrast, the owner could have presented more convincing evidence by producing a copy of the notice that he claims to have served upon the tenant, or a sworn Proof of Service. He failed to do so. Tenants rarely read estoppel certificates, and one of 9 items in small type on a "boilerplate" document is not persuasive.

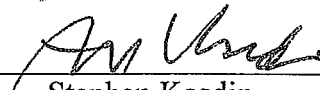
Since the testimony of the parties was otherwise equally credible, the owner has not met his burden of proof on the issue of service of the RAP Notice, and the issue is decided in favor of the tenant. This is an additional reason to declare the contested notice to be invalid.

Conclusion: For either of the reasons stated above, the notice changing the terms of the tenant's tenancy is invalid. The rent remains \$550 per month.

ORDER

1. Petition T15-0684 is granted.
2. The rent remains \$550 per month.
3. Right to Appeal: **This decision is the final decision of the Rent Adjustment Program Staff.** Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within twenty (20) calendar days after service of the decision. The date of service is shown on the attached Proof of Service. If the Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.

Dated: May 20, 2016



Stephen Kasdin
Hearing Officer
Rent Adjustment Program

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PROOF OF SERVICE

Case Number T15-0684

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

Today, I served the attached **Hearing Decision** by placing a true copy of it in a sealed envelope in 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:

Ronald Miller Jr.
1586 Madison Street #16
Oakland, CA 94612

Alana Reinke
1565 Madison St. #B
Oakland, CA 94612

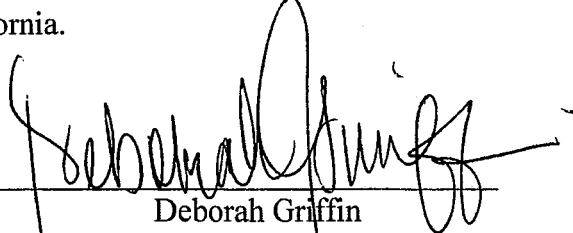
Katherine Reinke
1565 Madison St. #B
Oakland, CA 94612

Nat Reinke
1565 Madison St. #B
Oakland, CA 94612

Rock Ridge Real Estate LLC
1565 Madison St #B
Oakland, CA 94612

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 **May 20, 2016** in Oakland, California.


Deborah Griffin
Oakland Rent Adjustment Program

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CITY OF OAKLAND RENT ADJUSTMENT PROGRAM P.O. Box 70243 250 Frank H. Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721	For filing stamp. 2016 JAN 27 PM 12:33
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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 T15-0684

OWNER RESPONSE

Please print legibly.

Your Name NATHANIEL REINKE ROCKRIDGE REAL ESTATE LLC	Complete Address (with zip code) 1565 MADISON, UNIT B OAKLAND CA 94612	Phone: 510-250-0828 Email: NREINKE@BAMA-PROADVISORS.COM
Your Representative's Name (if any) DANIEL BORNSTEIN, ESQ.	Complete Address (with zip code) BORNSTEIN + BORNSTEIN 507 POLK #410 SAN FRANCISCO CA 94102	Phone: 415-409-7611 Fax: 415-409-9345 Email: DANIEL@BORNSTEINANDBORNSTEIN.COM
Tenant(s) name(s) RONNIE MILLER	Complete Address (with zip code) 1586 MADISON, #16 OAKLAND CA 94612	

Have you paid for your Oakland Business License? Yes No Number _____
 (Provide proof of payment.)

Have you paid the Rent Adjustment Program Service Fee? (\$30 per unit) Yes No
 (Provide proof of payment.)

There are 18 residential units in the subject building. I acquired the building on 12/14/2015

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

I. RENTAL HISTORY

The tenant moved into the rental unit on PER TENANT'S ESTOPPEL, 2/1/10

The tenant's initial rent including all services provided was \$ 950 / 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

If you believe your unit is exempt from Rent Adjustment you may skip to **Section IV. EXEMPTION.**

If a contested increase was based on **Capital Improvements**, did you provide an **Enhanced Notice to Tenants for Capital Improvements** to the petitioning tenant(s)? Yes N/A No A. If yes, on what date was the Enhanced Notice given? _____. Did you submit a copy of the Enhanced Notice to the RAP office within 10 days of serving the tenant? Yes N/A No A. Not applicable: there was no capital improvements increase. _____

Begin with the most recent rent increase and work backwards. Attach another sheet if needed.

Date Notice Given (mo/day/year)	Date Increase Effective (mo/day/year)	Amount Rent Increased		Did you provide NOTICE TO TENANTS with the notice of rent increase? <input type="checkbox"/> Yes <input type="checkbox"/> No
		From	To	
2/1/10	2/1/10	\$ 950	\$ 950	<u>N/A</u> <input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No

***NO RENT INCREASE EVER ISSUED - RENT WAS AND**

II. JUSTIFICATION FOR RENT INCREASE

**REMAINS \$950
SEE ATTACHMENT A**

You must prove that each contested rent increase greater than the Annual CPI Adjustment is justified and was correctly served. Use the following table and check the applicable justification(s) box for each increase contested by the tenant(s) petition. For a summary of these justifications, please refer to the "Justifications for Increases Greater than the Annual CPI Rate" section in the attached Owner's Guide to Rent Adjustment.

Date of Increase	Banking (deferred annual increases)	Increased Housing Service Costs	Capital Improvements	Uninsured Repair Costs	Fair Return	Debt Service (if purchased before 4/1/14)
_____	<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"/>
_____	<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"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

For each justification checked, you must submit organized documents demonstrating your entitlement to the increase. Please see the "Justifications" section in the attached Owner's Guide for details on the type of documentation required. In the case of Capital Improvement increases, you must include a copy of the "Enhanced Notice to Tenants for Capital Improvements" that was given to tenants. Your supporting documents do not need to be attached here, but are due in the RAP office no later than seven (7) days before the first scheduled Hearing date.

2010 JAN 27 PM 12:38

III. 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 on a separate sheet. Submit any documents, photographs or other tangible evidence that supports your position.

IV. 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** for 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.

V. IMPORTANT INFORMATION

Time to File. This form **must be received** by the Rent Adjustment Program, P.O. Box 70243, Oakland, CA 94612-0243, within 35 days of the date that a copy of the Tenant Petition was mailed to you. (The date of mailing is shown on the Proof of Service attached to the Tenant Petition and other response documents mailed to you.) A postmark does not suffice. 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. If you wish to deliver your completed Owner Response to the Rent Adjustment Program office in person, go to the City of Oakland Housing Assistance Center, 250 Frank H. Ogawa Plaza, 6th Floor, Oakland, where you can date-stamp and drop your Response in the Rent Adjustment drop box. The Housing Assistance Center is open Monday through Friday, except holidays, from 9:00 a.m. to 5:00 p.m. **You cannot get an extension of time to file your Response by telephone.**

NOTE: If you do not file a timely Response, you will not be able to produce evidence at the Hearing, unless you can show good cause for the late filing.

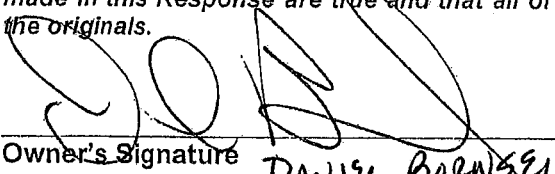
File Review. You should have received a copy of the petition (and claim of decreased services) filed by your tenant with this packet. Other documents provided by the tenant will not be mailed to you. You may review additional documents in the RAP office by appointment. For an appointment to review a file or to request a copy of documents in the file call (510) 238-3721.

2015 JUN 27 PM 12:33

VI. VERIFICATION

Owner must sign here:

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.


Owner's Signature

DANIEL BORNSTEIN, ESQ

OWNER'S ATTORNEY + DULY AUTHORIZED AGENT

1/26/14
Date

VII. MEDIATION AVAILABLE

Your tenant may have signed the mediation section in the Tenant Petition to request mediation of the disputed issues. Mediation is an entirely voluntary process to assist the parties to reach an agreement on the disputed issues in lieu of a Rent Adjustment hearing.

If the parties reach an agreement during the mediation, a written Agreement will be prepared immediately by the mediator and signed by the parties at that time. If the parties fail to settle the dispute, the case will go to a formal Rent Adjustment Program Hearing, usually the same day. A Rent Adjustment Program staff Hearing Officer serves as mediator unless the parties choose to have the mediation conducted by an outside mediator. If you and the tenant(s) agree to use an outside mediator, please notify the RAP office at (510) 238-3721. 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. (There is no charge for a RAP Hearing Officer to mediate a RAP case.)

Mediation will be scheduled only if both parties request it – after both the Tenant Petition and the Owner 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).

Owner's Signature

Date

THE LAW OFFICES OF
**BORNSTEIN
BORNSTEIN**

Daniel Marc Bornstein
Jonathan Herschel Bornstein

Kathryn Quetel
Daniel Cheung

January 26, 2016

ATTACHMENT A/CASE NUMBER T15-0684

Oakland Rent Adjustment Program
PO Box 70243
250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612

Owner Rockridge Real Estate LLC purchased the subject building December 14, 2015. Owner received estoppel certificate completed by petitioner Ronnie Miller in the course of the sale. Neither Owner nor Owner's predecessor in interest is in possession of any lease.

See Estoppel Certificate attached hereto wherein Mr. Miller assert a move in date of 2/1/10, and an initial rent of \$950.00 per month for which he received a rent credit of \$400.00 per month for acting as the building's residential manager.

Owner terminated Mr. Miller as building manager. Owner asked for rent in the amount of \$950.00 as stated in the petitioner's estoppel. Mr. Miller refused to pay same. Owner has not served any notice of rent increase. Mr. Miller's rent remains the same as it was on the date of his occupancy in 2010, \$950.00 per month.

Should you have any questions regarding the foregoing, please do not hesitate to contact me.

Very truly yours,


Daniel Bornstein

enc.

T15-0684 KM/SK

CITY OF OAKLAND RENT ADJUSTMENT PROGRAM Mail To: P. O. Box 70243 Oakland, California 94612-0243 (510) 238-3721	For date stamp. 2015 DEC 23 AM 11:52
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Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed.

TENANT PETITION

Please print legibly

Your Name Ronald Miller Jr	Rental Address (with zip code) 1568 Madison St Apt #16 94612	Telephone (510) 837-2012
Your Representative's Name	Mailing Address (with zip code)	Telephone
Property Owner(s) name(s) Katherine Alawt Nat Reinke Rock Rigde Real Estate LLC	Mailing Address (with zip code) 1565 Madison St Suite #B 94612	Telephone (415) 710-7284

Number of units on the property: 18

Type of unit you rent (circle one)	House	Condominium	<u>Apartment</u> , Room, or Live-Work
Are you current on your rent? (circle one)	<u>Yes</u>	No	Legally Withholding Rent. You must attach an explanation and citation of code violation.

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 increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
<input type="checkbox"/>	(b) The owner did not give me a summary of the justification(s) for the increase despite my written request.
<input type="checkbox"/>	(c) The rent was raised <u>illegally</u> after the unit was vacated (Costa-Hawkins violation).
<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) A City of Oakland form notice of the existence of the Rent Program was not given to me at least six months before the effective date of the rent increase(s) I am contesting.
<input type="checkbox"/>	(f1) The housing services I am being provided have decreased. (Complete Section III on following page)
<input type="checkbox"/>	(f2) At present, there exists a health, safety, fire, or building code violation in the unit. <u>If the owner has been cited in an inspection report, please attach a copy of the citation or report.</u>
<input type="checkbox"/>	(g) The contested increase is the second rent increase in a 12-month period.
<input type="checkbox"/>	(h) The notice of rent increase based upon capital improvement costs does not contain the "enhanced notice" requirements of the Rent Adjustment Ordinance or the enhanced notice was not filed with the RAP.
<input type="checkbox"/>	(i) My rent was not reduced after the expiration period of the rent increase based on capital improvements.
<input type="checkbox"/>	(j) 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"/>	(k) I wish to contest an exemption from the Rent Adjustment Ordinance (OMC 8.22, Article I)

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

Date you moved into the Unit: July 2010 Initial Rent: \$ 550⁰⁰ /month

When did the owner first provide you with a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program (RAP NOTICE)? 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. You must check "Yes" next to each increase that you are challenging.

Date Notice Served (mo/day/year)	Date Increase Effective (mo/day/year)	Amount Rent Increased		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
12/23/2015	01/11/2016	\$ 550 ⁰⁰	\$ 950	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

* You have 60 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 never got the RAP Notice you can contest all past increases.

List case number(s) of all Petition(s) you have ever filed for this rental unit: _____

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 service problems, 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, please attach a separate sheet listing a description of the reduced service(s) and problem(s). Be sure to include at least the following: 1) a list of the lost housing service(s) or serious problem(s); 2) the date the loss(es) began or the date you began paying for the service(s); and 3) how you calculate the dollar value of lost problem(s) or service(s). Please attach documentary evidence if available.

To have a unit inspected and code violations cited, contact the City of Oakland, Code Compliance Unit, 250 Frank H. Ogawa Plaza, 2nd Floor, Oakland, CA 94612. Phone: (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.

Ronald Miller Jr
Tenant's Signature

12/23/2015
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 Rent Adjustment Program Hearing Officer the same day.

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).

Ronald Miller Jr
Tenant's Signature

12/23/2015
Date

VI. IMPORTANT INFORMATION:

Time to File This form must be received at the offices of the City of Oakland, Rent Adjustment Program, Dalziel Building, 250 Frank H. Ogawa Plaza Suite 5313, Oakland, CA 94612 within the time limit for filing a petition set out in the Rent Adjustment Ordinance, Oakland Municipal Code, Chapter 8.22. Board Staff cannot grant an extension of time to file your petition by phone. For more information, please call: (510) 238-3721.

File Review

The owner is required to file a Response to this petition within 35 days of notification by the Rent Adjustment Program. You will be mailed a copy of the Landlord's Response form. Copies of documents attached to the Response form will not be sent to you. However, you may review these in the Rent Program office by appointment. For an appointment to review a file call (510) 238-3721; please allow six weeks from the date of filing before scheduling a file 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
- Other (describe): _____

CHRONOLOGICAL CASE REPORT

Case No.: T16-0018
Case Name: Yabor v. Fixler
Property Address: 3071 Flordia Street, #2, Oakland, CA
Parties: Yvette Yarbor (Tenant)
Ella Fixler (Property Owner)

LANDLORD APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	January 2, 2016
Landlord Response filed	January 29, 2016
Hearing Decision issued	May 12, 2016
Landlord Appeal filed	June 1, 2016

City of Oakland Residential Rent Adjustment Program 250 Frank Ogawa Plaza, Suite 5313 Oakland, California 94612 (510) 238-3721		2016 JUN - 1 10:27 APPEAL	
Appellant's Name Ella Fixler		Landlord <input checked="" type="checkbox"/> Tenant <input type="checkbox"/>	
Property Address (Include Unit Number) 3071 Florida Street #2 Oakland, CA 94602			
Appellant's Mailing Address (For receipt of notices) c/o Wellington Property Company 6400 Moraga Ave. Oakland CA 94611		Case Number T16-0018 Date of Decision appealed May 12, 2016	
Name of Representative (if any) Wellington Property Company		Representative's Mailing Address (For notices) 6400 Moraga Ave. Oakland, CA 94611	

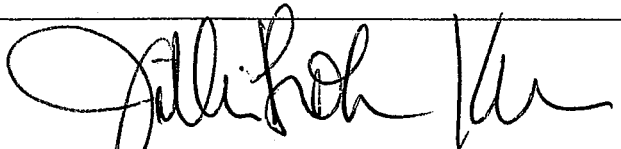
I appeal the decision issued in the case and on the date written above on the following grounds:
(Check the applicable ground(s). Additional explanation is required (see below). Please attach additional pages to this form.)

1. **The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board.** You must identify the Ordinance section, regulation or prior Board decision(s) and specify the inconsistency.
2. **The decision is inconsistent with decisions issued by other hearing officers.** You must identify the prior inconsistent decision and explain how the decision is inconsistent.
3. **The decision raises a new policy issue that has not been decided by the Board.** You must provide a detailed statement of the issue and why the issue should be decided in your favor.
4. **The decision is not supported by substantial evidence.** You must explain why the decision is not supported by substantial evidence found in the case record. The entire case record is available to the Board, but sections of audio recordings must be pre-designated to Rent Adjustment Staff.
5. **I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim.** You must explain how you were denied a sufficient opportunity 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.
6. **The decision denies me a fair return on my investment.** You must specifically state why you have been denied a fair return and attach the calculations supporting your claim.

7. Other. You must attach a detailed explanation of your grounds for appeal. Submissions to the Board are limited to 25 pages from each party. Number of pages attached . Please number attached pages consecutively.

8. **You must serve a copy of your appeal on the opposing party(ies) or your appeal may be dismissed.** I declare under penalty of perjury under the laws of the State of California that on May 31, 2014, 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>	Yvette Yarnor
<u>Address</u>	3071 Florida St. #2
<u>City, State Zip</u>	Oakland, CA 94602
<u>Name</u>	
<u>Address</u>	
<u>City, State Zip</u>	

	5/31/14
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

IMPORTANT INFORMATION:

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

- Appeals filed late without good cause will be dismissed.
- You must provide all of the information required or your appeal cannot be processed and may be dismissed.
- Anything to be considered by the Board must be received by the Rent Adjustment Program by 3:00 p.m. on the 8th day before the appeal hearing.
- The Board will not consider new claims. All claims, except as to jurisdiction, must have been made in the petition, response, or at the hearing.
- The Board will not consider new evidence at the appeal hearing without specific approval.
- You must sign and date this form or your appeal will not be processed.



WELLINGTON
Property Company

6400 Moraga Avenue
Suite Eight
Oakland, California
94611

Phone 510.338.0588
Facsimile 510.339.3807

wellingtonpropertyco.com

Ella Fixler, the Landlord, would like to appeal this decision based on the grounds that Regulation 10.2.2 (3) as stated to be the reason why this portion of the petition was not granted, does not fall in line with the improvements that were made. "Cost of work that could have been avoided...making timely repairs after the landlord should have known of the problem that caused the damage leading to the repair claimed as capital improvement" is only one of the windows that had a crack in bottom right corner in the 2nd bedroom according to the move in move out checklist and one window in kitchen with a loose panel. The Landlord voluntarily replaced all existing aluminum windows with vinyl dual glaze low e glass energy star certified windows and one patio door. This would fall in line with the City's definition of "Capital Improvement" – costs are those improvements which materially add to the value of the property and appreciably prolong its useful life or adapt it to new building codes. That being said, rather than repair as required by the violation of the windows, the Landlord replaced the windows, and not just the damaged windows or those in need or repair, but all windows and sliding door. And rather than replacing with aluminum windows which is what she could have chosen for much, much less, she replaced with higher quality windows to prolong their useful life. Due to this, the Landlord would like to appeal that this decision be reconsidered. Again, the existing windows could have just been repaired. Rather, the Landlord not only chose to replace existing damaged windows that needed repair but replaced them with a higher quality window and sliding glass door. The Landlord also would like to submit the attached letters from herself and the handyman she was using on the premises at the time.

Thank you,



Wellington Property Company

000141

I am the landlord
of the property on 3071
Florida St.

When I had to change
the windows, I talked to
the City of Oakland rent
adjustment on
Aug 30 and 31 2015

to Mr Roberto Costo.

He advised me if I
install new window that
is Capital Improvement
and I can the rent only
for 5 years.

I am Carlo Mendoza my Telephone number is (510) 688-5093.

I have been doing some work for Mr. & Mrs. Fixler on their triplex for many years. They have 1 tenant for 15 years and 1 for 10 years.

Since Ms. Yorborough moved in I did a lot of work; changed 3 toilets. Put in a new cooktop before she moved in. Replaced a fridgidare.

In 2014 she flooded the downstairs. I replaced the floor.

In 2015 she started a fire on cook top by forgetting that she had something cooking. The fire department had to come out to extinguish the fire. The kitchen cabinets I had to refinish. The cooktop I changed and painted the kitchen and living room.

On August 27, Mrs. Fixler called me to go to the property to check and fix the windows. I went to the property, checked the windows. At the time I did not think I could do it. A few days later, I asked a professional window man, so we went to see. He told me he was quite busy for a while, so I told Mrs. Fixler.

At that tme her husband came up with cancer; he was in hospice care. She told me she tried a few companies; it was around the holidays. I know she had a glass man from Home Depot. Eventually, she picked Romero Glass.

Also, I would like to state that Mr. & Mrs. Fixler very very prompt if anything had to be done.

The 3 tenants also have my phone number and they call me if anything has to be done

Thank You,

Carlo Mendoza

A handwritten signature in black ink, appearing to read 'Carlo Mendoza', written over the printed name.

000143



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
www.oaklandnet.com

Inspector **AP R SCHIMM**

e-mail rschimm@oaklandnet.com
238-3846 (o)
914-9409 (cell)

(510) 238-6402
FAX: (510) 238-2959
TDD: (510) 238-3254

NOTICE OF VIOLATION

August 25, 2015

Certified and Regular mail

To: FIXLER LEOPOLD & ELLA TRS
5810 BALMORAL DR
OAKLAND CA 94619-2404

Code Enforcement Case No.: 1502663
Property: 3071 FLORIDA ST, Unit #2
Parcel Number: 028 -0939-025-00
Re-inspection Date: September 28, 2015

extend

e-mail

Code Enforcement Services inspected your property on August 3, 2015 and confirmed:

- that the violations of the Oakland Municipal Code (OMC) marked below are present.
- 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.

Photo	Description of Violation	Location	OMC Section
	Property Maintenance		
	Building Maintenance (Code)		
Yes	Windows in kitchen, living room and bedroom do not seal, lock and/or are broken. Repair/replace in an approved manner. If replacing window unit, obtain permits, inspections and approvals	Living room/kitchen/bedroom	15.08.050 15.08.240 15.08.140
Yes	Sliding glass door installed incorrectly. Replace sliding glass door with correct door/frame in an approved manner. Obtain permits, inspections and approvals.	Lower floor	15.08.240 15.08.140

000144



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

CITY OF OAKLAND

Department of Housing and Community Development
Rent Adjustment Program

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

HEARING DECISION

CASE NUMBER: T16-0018, Yarbor v. Fixler
PROPERTY ADDRESS: 3071 Florida St., #2, Oakland, CA
DATE OF HEARING: April 27, 2016
DATE OF DECISION: May 12, 2016
APPEARANCES: Yvette Yarbor (Tenant)
Ella Fixler (Owner)
Jillian Loh Kearns (Owner Representative)

SUMMARY OF DECISION

The tenant's petition is partly granted.

CONTENTIONS OF THE PARTIES

The tenant filed a petition on January 12, 2016, which alleges that a proposed rent increase from \$1,744.05 to \$1,872.43 per month, effective January 1, 2016, exceeds the CPI Adjustment and is unjustified or is greater than 10%; that the proposed rent increase would exceed an overall increase of 30% in 5 years; that at present there exists a health, safety, fire or building code violation in her unit; and that her housing services have been decreased due to the condition of the windows in her unit.

The owner filed a response to the petition, which alleges that the proposed rent increase is justified by Banking and Capital Improvements, and denies that the tenant's housing services have decreased.

THE ISSUES

(1) When did the tenant receive the form Notice to Tenants (RAP Notice)?

000145

- (2) Is a rent increase justified by Banking and, if so, in what amount?
- (3) Is a rent increase justified by Capital Improvements and, if so, in what amount?
- (4) Have the tenant's housing services been decreased and, if so, by what percentage of the total housing services that are provided by the owner?

EVIDENCE

RAP Notice: At the Hearing, the tenant testified that she first received the RAP Notice on February 1, 2012.

Rent History: The tenant's petition and owner's response both state that the tenant moved into the unit on February 1, 2012, at a rent of \$1,650 per month. At the Hearing, the tenant testified that in the year 2014 she paid monthly rent of \$1,744, and that she paid rent of \$1,872.43 in the months of January through April 2016. The owner agreed with this testimony. The tenant further testified that she intends to pay \$1,872.43 for the May 2016 rent.

Capital Improvement Costs: The owner submitted invoices from Romero Glass Studios for all windows and a sliding patio door for the tenant's unit in the total amount of \$8,464.20,¹ and proof of payment by check for this amount.² The parties agreed that all windows and the sliding glass door were replaced in November 2015.

The tenant testified that the windows and door were a problem from the time she moved into the unit. One window was cracked, and the windows did not fasten or lock. There were significant gaps between the edges of the windows and the window frames – an estimated ½ to 1 inch – which caused cold air and rain to enter during the winter months. The tenant placed tape at the window edges so they would not rattle.

The tenant testified that she first reported this problem to the owner in July 2013, following a break-in through the sliding glass door, and told the owner more than once after that time. The tenant submitted a copy of a letter from herself to the owner, dated February 2, 2015, which she testified she delivered personally to the owner.³ The owner denied receiving this document. The letter states, in part: "All windows need to be replaced. My PG&E bill triples in the winter and many of the windows do not close securely. . . we have had to tape the windows to keep the elements out and the heat in."

The tenant submitted a copy of a Notice of Violation issued by the City inspection services agency on August 25, 2015, following an inspection of the tenant's unit on August 2, 2015.⁴ This document states, in part: "Windows in kitchen, living room and bedroom do not seal, lock and/or are broken. Repair/replace in approved manner. . . Sliding glass door installed incorrectly. Replace sliding glass door with correct door/frame in an approved manner."

¹ Exhibit Nos. 2A & 2B.

² Exhibit No. 7.

³ Exhibit No. 5. The owner's representative, who is the property manager, objected to the admission of this document into evidence because it is not in the tenant's file. The objection was overruled, and the document was admitted into evidence.

⁴ Exhibit No. 6.

The owner submitted a copy of a document entitled "Move-in / Move out Itemized Statement," which the tenant testified contained her writing, and which she signed on February 3, 2012.⁵ In the section "Kitchen," following "Windows," the tenant wrote "loose panel." Under the heading "2nd Bedroom," following "Windows," the tenant wrote "crack in bottom right hand corner."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

RAP Notice: It is found that the tenant first received the RAP Notice in the year 2012.

Banking: An owner is allowed to bank rent increases and use them in subsequent years, subject to certain limitations.⁶ The parties agree on the dates and rent amounts entered into the Banking calculations shown on the attached Table. The method of calculation on this Table has been approved by the Rent Board.⁷ Therefore, as set forth in this Table, rent – before consideration of other issues in this case – is \$1,768.16 per month, effective January 1, 2016.

Capital Improvements: A rent increase in excess of the C.P.I. Rent Adjustment may be justified by capital improvement costs.⁸ Capital improvement costs are those improvements which materially add to the value of the property and appreciably prolong its useful life or adapt it to new building codes. The improvements must primarily benefit the tenant rather than the landlord.

Normal routine maintenance and repair of the rental unit and the building is not a capital improvement cost, but a housing service cost.⁹

Regulation 10.2.2(3): "Except as set forth in subsection 4, repairs completed in order to comply with the Oakland Housing Code may be considered capital improvements. . .

"Costs for work or portion of work that could have been avoided by the landlord's exercise of reasonable diligence in making timely repairs after the landlord knew or reasonably should have known of the problem that caused the damage leading to the repair claimed as a capital improvement.

- i. Among the factors that may be considered in determining if the landlord knew or reasonably should have known of the problem that caused the damage:
 - (a) Was the condition leading to the repairs outside the tenant's unit or inside the tenant's unit?
 - (b) Did the tenant notify the landlord in writing or use the landlord's procedures for notifying the landlord of conditions that might need repairs?
 - (c) Did the landlord conduct routine inspections of the property?

⁵ Exhibit No. 4.

⁶ O.M.C. Section 8.22.070(C); Regulations Appendix, Section 10.5.1

⁷ Appeal Decision, Case No. 98-02, et al. Merlo v. Rose Ventures III et al. The Board has designated this decision to be a Precedent Decision.

⁸ O.M.C. Section 8.22.070(C)

⁹ Regulations Appendix, Section 10.2.2(5)

- (d) Did the tenant permit the landlord to inspect the interior of the unit?"
- ii. Among the factors that may be considered in determining if the landlord knew or reasonably should have known of the problem that caused the damage:
 - (e) Was the condition leading to the repairs outside the tenant's unit or inside the tenant's unit?
 - (f) Did the tenant notify the landlord in writing or use the landlord's procedures for notifying the landlord of conditions that might need repairs?
 - (g) Did the landlord conduct routine inspections of the property?
 - (h) Did the tenant permit the landlord to inspect the interior of the unit?
- iii. Examples: . . . (b) A problem has existed for an extended period of time visible outside tenants' units and could be seen from a reasonable inspection of the property, but the landlord or the landlord's agents either had not inspected the property for an unreasonable period of time, or did not exercise due diligence in making such inspections. In such a case, the landlord should reasonably have known of the problem. Annual inspections may be considered a reasonable time period for inspections depending on the facts and circumstances of the property such as age, condition, and tenant complaints.

iv. Burden of Proof

- (a) The tenant has the initial burden to prove that the landlord knew or should have reasonably known of the problem that caused the repair.
- (b) Once a tenant meets the burden to prove the landlord knew or should have reasonably known, the burden shifts to the landlord to prove that the landlord exercised reasonable diligence in making timely repairs after the landlord knew or should have known of the problem,"¹⁰

The tenant testified in a calm, straightforward manner, and her testimony is found to be credible. It is likely that the windows and door were in a deteriorated state when the tenant moved into the unit, and that the problem had existed for some time before that. This deterioration could have been noted on reasonable annual inspections. It is also likely that, if steps had been taken to promptly repair the windows following an annual inspection, they would not have needed to be totally replaced.

The tenant has met her burden of proof that the owner knew or reasonably should have known that the windows needed to be repaired before she moved into the unit. The owner has not sustained her burden of proving that she had exercised reasonable diligence in making timely repairs after she knew or should have known about the problem. Therefore, the cost of window and door replacement may not be passed on to the tenant.

¹⁰ Regulations Appendix, Section 10.2.2(4)(b)

Decreased Housing Services: Under the Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent¹¹ and may be corrected by a rent adjustment.¹² However, in order to justify a decrease in rent, a decrease in housing services must be either the elimination or reduction of a service that existed at the start of the tenancy or a violation of the housing or building code which seriously affects the habitability of the tenant's unit.

There is also a time limit for claiming decreased housing services. A tenant petition must be filed within 60 days after the date of service of a rent increase notice or change in the terms of a tenancy or the date the tenant first receives the RAP Notice, whichever is later.¹³

However, when a tenant complains of ongoing problems with his or her unit, the Board has declared that such claims should not be completely denied if the tenant received the RAP Notice more than 60 days before the petition was filed. The tenant first received the RAP Notice in the year 2012, far more than 60 days before filing her petition on January 12, 2016. Therefore, in accordance with the Regulations and Board decision,¹⁴ the tenant can only be granted relief on her claims for decreased housing services beginning 60 days before the date on which she filed her petition. Allowable claims of decreased housing services therefore begin on November 12, 2015.

The windows and door were replaced in November 2015. These deteriorated windows and doors undoubtedly had a significant effect upon the tenant's enjoyment of the unit, as well as adding to her heating bills. However, because of the time limit on making claims for decreased housing services, her claim must be denied.

Rent Overpayments: The rent is \$1,768.16 per month, effective January 1, 2016. As shown on the following Table, the tenant has overpaid rent in the amount of \$520. The overpayment is ordered repaid over a period of 6 months.¹⁵ The rent is temporarily reduced by \$86.67 per month, to \$1,681.49 per month, beginning with the rent payment in June 2016 and ending with the rent payment in November 2016.

OVERPAID RENT

From	To	Monthly Rent paid	Max Monthly Rent	Difference per month	No. Months	Sub-total
1-Jan-16	31-May-16	\$1,872	\$1,768	\$ 104.00	5	\$520.00
TOTAL OVERPAID RENT						\$520.00

RESTITUTION

MONTHLY RENT	\$1,768
TOTAL TO BE REPAYED TO TENANT	\$520.00
TOTAL AS PERCENT OF MONTHLY RENT	29%
AMORTIZED OVER 6 MO. BY REG. IS	\$86.67

¹¹ O.M.C. Section 8.22.070(F)

¹² O.M.C. Section 8.22.110(E)

¹³ O.M.C. Section 8.22.090(A)(2)

¹⁴ Appeal Decision in Case No. T09-0086, Lindsey v. Grimsley, et al.

¹⁵ Regulations, Section 8.22.110(F)

CITY OF OAKLAND

Department of Housing and Community Development
 Rent Adjustment Program
<http://www2.oaklandnet.com/Government/o/hcd/o/RentAdjustment/>

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

CALCULATION OF DEFERRED CPI INCREASES (BANKING)

Initial move-in date	1-Feb-2012	MUST FILL IN D9, D10, D11 and D14	Case No.:	CHANGE YELLOW CELLS ONLY
Effective date of increase	1-Jan-2016		Unit:	
Current rent (before increase and without prior cap. improve pass-through)	\$1,744			
Prior cap. imp. pass-through Date calculation begins	1-Feb-2012	If the planned increase includes other than banking put an X in the box→		
Base rent when calc. begins	\$1,650			

ANNUAL INCREASES TABLE

Year Ending	Debt Serv. or Fair Return increase	Housing Serv. Costs increase	Base Rent Reduction	Annual %	CPI Increase	Rent Ceiling
2/1/2015				1.9%	\$ 32.97	\$ 1,768.16
2/1/2014				2.1%	\$ 35.69	\$ 1,735.19
2/1/2013				3.0%	\$ 49.50	\$ 1,699.50
2/1/2012				-	-	\$1,650


Calculation of Limit on Increase

Prior base rent	\$1,744.00
Banking limit this year (3 x current CPI and not more than 10%)	5.1%
Banking available this year	\$ 24.16
Banking this year + base rent	\$ 1,768.16
Rent ceiling w/o other new increases	\$ 1,768.16

ORDER

1. Petition T16-0018 is partly granted.
2. The rent, before reduction for overpaid rent, is \$1,768.16 per month.
3. The tenant has overpaid rent in the amount of \$520.
4. The overpayment is ordered repaid over a period of 6 months. The rent is temporarily reduced by \$86.67 per month, to \$1,681.49 per month, beginning with the rent payment in June 2016 and ending with the rent payment in November 2016.
5. In December 2016, the rent reverts to \$1,768.16 per month.
6. The tenant's claim of decreased housing services is denied.
7. The Anniversary Date for future rent increases is January 1.
8. **Right to Appeal:** **This decision is the final decision of the Rent Adjustment Program Staff.** Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within twenty (20) calendar days after service of the decision. The date of service is shown on the attached Proof of Service. If the Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.

Dated: May 12, 2016



Stephen Kasdin
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE

Case Number T16-0018

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.

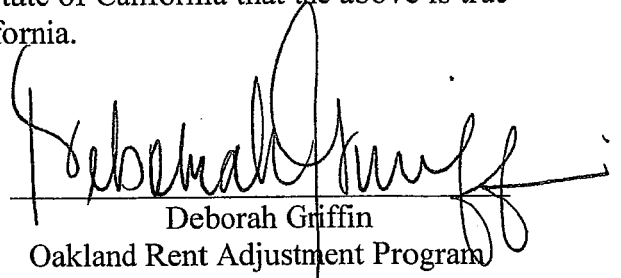
Today, I served the attached **Hearing Decision** by placing a true copy of it in a sealed envelope in City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California, addressed to:

Yvette Yarbor
3071 Florida Street #2
Oakland, CA 94602

Ella Fixler
5810 Balmoral Drive
Oakland, CA 94619

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 **May 12, 2016** in Oakland, California.


Deborah Griffin
Oakland Rent Adjustment Program

000152

CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM
P.O. Box 70243
250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612
(510) 238-3721

For filing stamp.

RECEIVED

JAN 29 2016

OAKLAND RENT ADJUSTMENT

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 16-0018

OWNER RESPONSE

Please print legibly.

Your Name Ella Fixler	Complete Address (with zip code) 40 Wellington Property Co. 6400 Moraga Ave. #8 Oakland, CA 94611	Phone: 510-338-0588 Email: _____
Your Representative's Name (if any) Wellington Property Company	Complete Address (with zip code) same as above	Phone: 510-338-0588 Fax: 510-339-3807 Email: _____
Tenant(s) name(s) Yvette Yarbor	Complete Address (with zip code) 3071 Florida St. #2 Oakland, CA 94602	

Have you paid for your Oakland Business License? (Provide proof of payment.)

Yes No Number 2605872

Have you paid the Rent Adjustment Program Service Fee? (\$30 per unit) (Provide proof of payment.)

Yes No

There are 3 residential units in the subject building. I acquired the building on ___/___/___.

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

I. RENTAL HISTORY

The tenant moved into the rental unit on 2/1/2012.

The tenant's initial rent including all services provided was \$ 1650 / 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

If you believe your unit is exempt from Rent Adjustment you may skip to **Section IV. EXEMPTION.**

If a contested increase was based on **Capital Improvements**, did you provide an **Enhanced Notice to Tenants for Capital Improvements** to the petitioning tenant(s)? Yes No . If yes, on what date was the Enhanced Notice given? 11/30/15 . Did you submit a copy of the Enhanced Notice to the RAP office within 10 days of serving the tenant? Yes No . Not applicable: there was no capital improvements increase. _____

Begin with the most recent rent increase and work backwards. Attach another sheet if needed.

Date Notice Given (mo/day/year)	Date Increase Effective (mo/day/year)	Amount Rent Increased		Did you provide NOTICE TO TENANTS with the notice of rent increase?
		From	To	
<u>9/30/14</u>	<u>9/1/14</u>	\$ <u>1650</u>	\$ <u>1744.05</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<u>11/30/15</u>	<u>11/1/16</u>	\$ <u>1744.50</u>	\$ <u>1872.43</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

II. JUSTIFICATION FOR RENT INCREASE

You must prove that each contested rent increase greater than the Annual CPI Adjustment is justified and was correctly served. Use the following table and check the applicable justification(s) box for each increase contested by the tenant(s) petition. For a summary of these justifications, please refer to the "Justifications for Increases Greater than the Annual CPI Rate" section in the attached Owner's Guide to Rent Adjustment.

Date of Increase	Banking (deferred annual increases)	Increased Housing Service Costs	Capital Improvements	Uninsured Repair Costs	Fair Return	Debt Service (if purchased before 4/1/14)
<u>9/1/14</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>11/1/16</u>	<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"/>	<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"/>

For each justification checked, you must submit organized documents demonstrating your entitlement to the increase. Please see the "Justifications" section in the attached Owner's Guide for details on the type of documentation required. In the case of Capital Improvement increases, you must include a copy of the "Enhanced Notice to Tenants for Capital Improvements" that was given to tenants. Your supporting documents do not need to be attached here, but are due in the RAP office no later than seven (7) days before the first scheduled Hearing date.

III. 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 on a separate sheet. Submit any documents, photographs or other tangible evidence that supports your position.

No explanation of decreased housing

IV. 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** for 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.

V. IMPORTANT INFORMATION

Time to File. This form **must be received** by the Rent Adjustment Program, P.O. Box 70243, Oakland, CA 94612-0243, within 35 days of the date that a copy of the Tenant Petition was mailed to you. (The date of mailing is shown on the Proof of Service attached to the Tenant Petition and other response documents mailed to you.) A postmark does not suffice. 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. If you wish to deliver your completed Owner Response to the Rent Adjustment Program office in person, go to the City of Oakland Housing Assistance Center, 250 Frank H. Ogawa Plaza, 6th Floor, Oakland, where you can date-stamp and drop your Response in the Rent Adjustment drop box. The Housing Assistance Center is open Monday through Friday, except holidays, from 9:00 a.m. to 5:00 p.m. **You cannot get an extension of time to file your Response by telephone.**

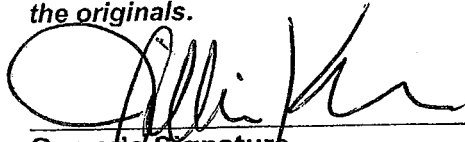
NOTE: If you do not file a timely Response, you will not be able to produce evidence at the Hearing, unless you can show good cause for the late filing.

File Review. You should have received a copy of the petition (and claim of decreased services) filed by your tenant with this packet. Other documents provided by the tenant will not be mailed to you. You may review additional documents in the RAP office by appointment. For an appointment to review a file or to request a copy of documents in the file call (510) 238-3721.

VI. VERIFICATION

Owner must sign here:

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.



Owner's Signature
owner's agent

1/20/16
Date

VII. MEDIATION AVAILABLE

Your tenant may have signed the mediation section in the Tenant Petition to request mediation of the disputed issues. Mediation is an entirely voluntary process to assist the parties to reach an agreement on the disputed issues in lieu of a Rent Adjustment hearing.

If the parties reach an agreement during the mediation, a written Agreement will be prepared immediately by the mediator and signed by the parties at that time. If the parties fail to settle the dispute, the case will go to a formal Rent Adjustment Program Hearing, usually the same day. A Rent Adjustment Program staff Hearing Officer serves as mediator unless the parties choose to have the mediation conducted by an outside mediator. If you and the tenant(s) agree to use an outside mediator, please notify the RAP office at (510) 238-3721. 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. (There is no charge for a RAP Hearing Officer to mediate a RAP case.)

Mediation will be scheduled only if both parties request it – after both the Tenant Petition and the Owner 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).

Owner's Signature

Date

T16-0018 MS/SK

<p>CITY OF OAKLAND RENT ADJUSTMENT PROGRAM Mail To: P. O. Box 70243 Oakland, California 94612-0243 (510) 238-3721</p>	<p>For date stamp. 2015 JAN 12 PM 2:22</p>
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Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed.

TENANT PETITION

Please print legibly

Your Name YVETTE YARBOR	Rental Address (with zip code) 3071 FLORIDA ST., #2 OAKLAND, CA 94602	Telephone (570) 610-3674
Your Representative's Name N/A	Mailing Address (with zip code)	Telephone
Property Owner(s) name(s) ELA FIXLER	Mailing Address (with zip code) 5810 BALMOYAL DRIVE OAKLAND, CA 94619	Telephone (570) 531-2039

Number of units on the property: 3

Type of unit you rent (circle one)	House	Condominium	<input checked="" type="radio"/> Apartment, Room, or Live-Work
Are you current on your rent? (circle one)	<input checked="" type="radio"/> Yes	No	Legally Withholding Rent. You must attach an explanation and citation of code violation.

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 increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
<input type="checkbox"/>	(b) The owner did not give me a summary of the justification(s) for the increase despite my written request.
<input type="checkbox"/>	(c) The rent was raised <u>illegally</u> after the unit was vacated (Costa-Hawkins violation).
<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) A City of Oakland form notice of the existence of the Rent Program was not given to me at least six months before the effective date of the rent increase(s) I am contesting.
<input checked="" type="checkbox"/>	(f1) The housing services I am being provided have decreased. (Complete Section III on following page)
<input checked="" type="checkbox"/>	(f2) At present, there exists a health, safety, fire, or building code violation in the unit. <u>If the owner has been cited in an inspection report, please attach a copy of the citation or report.</u>
<input type="checkbox"/>	(g) The contested increase is the second rent increase in a 12-month period.
<input type="checkbox"/>	(h) The notice of rent increase based upon capital improvement costs does not contain the "enhanced notice" requirements of the Rent Adjustment Ordinance or the enhanced notice was not filed with the RAP.
<input type="checkbox"/>	(i) My rent was not reduced after the expiration period of the rent increase based on capital improvements.
<input checked="" type="checkbox"/>	(j) 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"/>	(k) I wish to contest an exemption from the Rent Adjustment Ordinance (OMC 8.22, Article I)

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

Date you moved into the Unit: FEB. 1, 2012 Initial Rent: \$ 1,650.00 /month

When did the owner first provide you with a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program (RAP NOTICE)? Date: FEB. 1, 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. You must check "Yes" next to each increase that you are challenging.

Date Notice Served (mo/day/year)	Date Increase Effective (mo/day/year)	Amount Rent Increased		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
Nov. 30, 2015	JAN. 1, 2016	\$ 1,744.05	\$ 1,872.43	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<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

* You have 60 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 never got the RAP Notice you can contest all past increases.

List case number(s) of all Petition(s) you have ever filed for this rental unit: NONE

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 service problems, 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, please attach a separate sheet listing a description of the reduced service(s) and problem(s). Be sure to include at least the following: 1) a list of the lost housing service(s) or serious problem(s); 2) the date the loss(es) began or the date you began paying for the service(s); and 3) how you calculate the dollar value of lost problem(s) or service(s). Please attach documentary evidence if available.

To have a unit inspected and code violations cited, contact the City of Oakland, Code Compliance Unit, 250 Frank H. Ogawa Plaza, 2nd Floor, Oakland, CA 94612. Phone: (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.

Yvette Yarbore
Tenant's Signature

Jan. 12, 2016
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 Rent Adjustment Program Hearing Officer the same day.

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 City of Oakland, Rent Adjustment Program, Dalziel Building, 250 Frank H. Ogawa Plaza Suite 5313, Oakland, CA 94612 within the time limit for filing a petition set out in the Rent Adjustment Ordinance, Oakland Municipal Code, Chapter 8.22. Board Staff cannot grant an extension of time to file your petition by phone. For more information, please call: (510) 238-3721.

File Review

The owner is required to file a Response to this petition within 35 days of notification by the Rent Adjustment Program. You will be mailed a copy of the Landlord's Response form. Copies of documents attached to the Response form will not be sent to you. However, you may review these in the Rent Program office by appointment. For an appointment to review a file call (510) 238-3721; please allow six weeks from the date of filing before scheduling a file 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
- Other (describe): _____

TENANT DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES

2016 JAN 12 PM 2:23

This is my petition disputing the rent increase notice I received on or around December 1, 2015, from Wellington Property Company, on behalf of Mrs. Ella Fixler, in regards to 3071 Florida Street, Apt. #2, Oakland, CA 94602.

The portion of the increase in dispute is the Capital Improvements increase over the next 5 years. The window replacement was a needed and previously requested "repair" resulting in the "improvement." If not for the inspection done by the City of Oakland, and the Notice of Violation issued to the property owner, the windows would not have been repaired and/or replaced. Enclosed is a copy of Mrs. Fixler's letter rescinding the September 2015 rent increase, and my September 1, 2015 response in relation to the City notice received by the property owner.

Attention to the windows in Apartment #2 at 3071 Florida Street, have been at issue since my move in date of February 1, 2012 – per the attached Move-In/Move-Out Itemized Statement, per the attached letter dated July 6, 2013 (apartment burglarized), per the attached letter dated February 2, 2015, outlining a number of "needed repairs" in the apartment, all of which have some reference to the windows in the apartment.

Until the August 3, 2015 inspection of the windows by the City of Oakland, the property owner had not addressed my written requests referenced above, other than providing the window screens requested upon my moving in the apartment. So I disagree that this was a "voluntary" improvement, it was forced because of my inquiry with the City of Oakland re: energy saving programs related to windows, which prompted the August 3, 2015 inspection.

I do not have a problem paying a yearly rental increase, as that is expected as a tenant. However, I should not be made to pay for "repairs" of windows that have not been maintained over the years, that were in violation of City code per the inspection, and because the property owner did not want to incur the expense. From day one, window(s) were cracked, window(s) did not lock, window(s) could be lifted out of the track allowing entrance into the unit, window(s) allowed rain and wind into the unit requiring heavy taping, window(s) rattled to the point of cracking during wind and rain seasons, daily stress wondering whether or not someone would enter the unit with my family present, or in our absence, because the windows were not secure, etc.

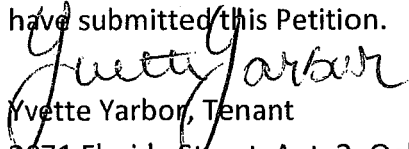
If this work was a true improvement for Capital Gain purposes, the windows would have been addressed per my "needed repairs" letter dated February 2, 2015, and I would think that the owner would have had all 3 units at 3071 Florida Street assessed for window "improvement" or "replacement", not just my apartment.

COC160

CALCULATED DOLLAR VALUE OF LOST PROBLEMS(S) OR SERVICE(S)
(W/ATTACHED EVIDENCE OF EXPENSES, AS AVAILABLE OR OBTAINABLE)

I calculate my dollar value of lost due to the window problems to be approximately \$4,700, for the years of 2013 thru 2015 - \$442.50 in lost wages having to leave work for the various assessments and window work; \$1,625.00 for the personal property loss due to the home invasion, per the enclosed Police Report; \$2,630.00 for PG&E bills (2014 and 2015), as well as space heater purchases.

I'm sure this amount could be much more, but it is not my objective in filing this Petition to gain financially, I simply want to be treated fairly and not have to pay for something that was clearly the responsibility of the owner, and was a very much overdue repair that should have been addressed years before I even took possession of the apartment. As I have tried to convey to Mrs. Fixler in the past, I would do her and the property a dis-service by not reporting or ignoring problems that come up in the unit, I would like to think that my request are not unreasonable. However, I do not think it fair that a property owner should pass on an expense to their tenant(s) as a capital improvement, when it is in fact a repair. So it is for this reason I have submitted this Petition.


Yvette Yarbor, Tenant

3071 Florida Street, Apt. 2, Oakland, CA 94602

Jan. 12, 2016

COC161

