

**HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD  
APPEAL PANEL**

**March 16, 2017  
7:00 p.m.  
CITY HALL, HEARING ROOM #1  
ONE FRANK H. OGAWA PLAZA  
OAKLAND, CA**

**AGENDA**

1. CALL TO ORDER
2. ROLL CALL
3. OPEN FORUM
4. NEW BUSINESS
  - i. Appeal Hearing in cases:
    - a. T15-0544; Green v. Keith
    - b. T16-0004; Miller v. Hinds
    - c. T16-0034; Lima et al v. R & B LLC
5. SCHEDULING AND REPORTS
6. ADJOURNMENT

**Accessibility.** The meeting is held in a wheelchair accessible facility. Contact the office of the City Clerk, City Hall, One Frank Ogawa Plaza, or call (510) 238-3611 (voice) or (510) 839-6451 (TTY) to arrange for the following services: 1) Sign interpreters; 2) Phone ear hearing device for the hearing impaired; 3) Large print, Braille, or cassette tape text for the visually impaired. The City of Oakland complies with applicable City, State and Federal disability related laws and regulations protecting the civil rights of persons with environmental illness/multiple chemical sensitivities (EI/MCS). Auxiliary aids and services and alternative formats are available by calling (510) 238-3716 at least 72 hours prior to this event.

**Foreign language interpreters** may be available from the Equal Access Office (510) 239-2368. Contact them for availability. Please refrain from wearing **strongly scented products** to this meeting.

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

If your service animal lacks visual evidence that it is a service animal (presence of an apparel

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item, apparatus, etc.), then please be prepared to reasonably establish that the animal does, in fact, perform a function or task that you cannot otherwise perform.

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

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

## CHRONOLOGICAL CASE REPORT

Case No.: T15-0544  
Case Name: Green v. Keith  
Property Address: 265 Vernon Street, #214, Oakland, CA  
Parties: Morris Green (Tenant)  
Jason Keith (Property Owner)

### TENANT APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	October 12, 2015
Owner Response filed	November 20, 2015
Hearing Decision issued	March 11, 2016
Tenant Appeal filed	March 30, 2016

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<b>City of Oakland</b> <b>Residential Rent Adjustment Program</b> 250 Frank Ogawa Plaza, Suite 5313 Oakland, California 94612 (510) 238-3721		OCTOBER 30 PM 2:48 <p style="text-align: center;"><b>APPEAL</b></p>	
<b>Appellant's Name</b> Morris Green JR.		<b>Landlord</b> <input type="checkbox"/>	<b>Tenant</b> <input checked="" type="checkbox"/>
<b>Property Address (Include Unit Number)</b> 265 Vernon Street, Unit 214 Oakland, CA 94610			
<b>Appellant's Mailing Address (For receipt of notices)</b> 265 Vernon Street, Unit 214 Oakland, CA 94610		<b>Case Number</b> T15-0544	<b>Date of Decision appealed</b> March 11, 2016
<b>Name of Representative (if any)</b> N/A		<b>Representative's Mailing Address (For notices)</b>	


**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 3 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 *(Wednesday)* March 30<sup>th</sup>, 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:

<b><u>Name</u></b>	Jason Keith
<b><u>Address</u></b>	1821 Polk Street LLC/Jason Keith, 900 Van Ness Ave #102
<b><u>City, State Zip</u></b>	San Francisco, CA 94109
<b><u>Name</u></b>	
<b><u>Address</u></b>	
<b><u>City, State Zip</u></b>	

	3/30/2016
<b>SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE</b>	<b>DATE</b>

**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.

The Tenant is appealing one aspect of this decision on the ground that it is inconsistent with prior decisions of the Rent Adjustment Program.

Specifically, in T15-0544 the hearing officer determined that the tenant was not entitled to decreased housing services regarding the lack of access to the pool from July 14, 2015 to October 31, 2015. However, in Tenant's previous hearing decision T13-0189, the hearing officer found that lack of access to the pool for two weeks over the summer did constitute a decreased housing service.

The Tenant respectfully requests that the Board rule that this aspect of the decision be remanded to the hearing officer for reconsideration of the decreased housing service claim regarding access to the pool.

- The Pool: The tenant's complaints about the pool being unusable for at least two weeks over this summer does amount to a claim for a loss of a service that was previously provided by the owner. He did establish that he complained about the pool being out of service. Additionally, a pool is an amenity that is often an important consideration for rentals. However, the tenant does not use the pool frequently. He testified he only uses it when it is hot and does not use it in the winter months. He did establish that the pool was unusable on the day of the hearing and has been a problem on and off since June. Therefore, the tenant is entitled to a rent reduction of 2% (\$5.18 a month) for the months of June-October of 2013. Because this is a seasonal amenity, there will be no ongoing reduction in rent after October of 2013. If the pool continues to be a problem next summer the tenant can file a new tenant petition with the RAP.
- Pests: The tenant provided no clear testimony that there were any ongoing problems with pests since April 25, 2013. This claim is denied.
- Laundry and Parking costs: The tenant provided no testimony about any increase in laundry and parking costs since April 25, 2013. This claim is denied.

The tenant is entitled to a fully functional swimming pool, on par with the access he had when he moved into the building. The preferred method of evaluating decreased housing services is consideration of all the services provided by an owner and then determining the percentage by which the total services provided by the owner have decreased because of the lost housing services. The chart below details the tenant's loss of housing services in the past.

**Current Rent:**

The base rent for the unit remains \$1,036.45 a month. However, as of the date of the hearing the pool remains unrepaired. Because the pool is only used by the tenant during the summer and warmer months, he is entitled to a rent decrease only for the months of June -October of 2013.

**VALUE OF LOST SERVICES**

Service Lost	From	To	Rent	% Rent Decrease	Decrease /month	No. Months	Overpaid
Pool	15-Jun-13	30-Sep-13	\$1,036	2%	\$ 20.73	4	\$ 82.92
							\$ 82.92

**RESTITUTION**

MONTHLY RENT	\$1,036
TOTAL TO BE REPAID TO TENANT	\$ 82.92
TOTAL AS PERCENT OF MONTHLY RENT	8%
AMORTIZED OVER 3 MO. BY REG. IS	\$ 27.64

The chart above shows that based on a rent of \$1,036.45 the tenant has lost services valued at \$20.73 for the months of June - September. That overpayment is adjusted over a period of 3 months; so the rent decrease is \$27.64 a month.<sup>13</sup> See below for the chart that lays out how much the tenant owes in rent for each of the next three months. The rent will revert to the current legal rent in January of 2014.

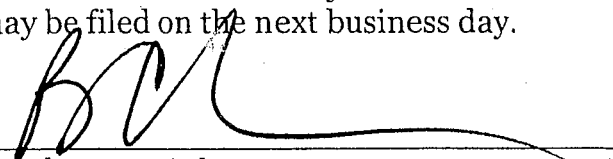
**ORDER**

1. Petitions T13-0189 is granted in part and denied in part.
2. The current base rent is \$1,036.45 a month.
3. Because the pool has not been fully operational since June, the tenant is entitled to a rent decrease in each month June – October of 2%, \$20.73 a month.
4. The tenant owes rent as follows:

Month	Base Rent	Decreased service	Refund for overpayment	Rent Due
October	\$1036.45	\$20.73	\$27.64	\$988.08
November	\$1036.45	n/a	\$27.64	\$1,008.81
December	\$1036.45	n/a	\$27.64	\$1,008.81

5. The rent returns to the base rent in January 2014.
6. **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: September 17, 2013

  
 \_\_\_\_\_  
 Barbara M. Cohen  
 Hearing Officer  
 Rent Adjustment Program

<sup>13</sup> Regulations, Section 8.22.110(F)





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:** T15-0544, Green v. Keith

**PROPERTY ADDRESS:** 265 Vernon Street, #214, Oakland, CA

**DATE OF HEARING:** February 3, 2016

**DATE OF DECISION:** March 11, 2016

**APPEARANCES:**

Morris Green	Tenant
Jason Keith	Owner
Karen Uchiyama	Attorney for Owner

### **SUMMARY OF DECISION**

The tenant's petition contesting rent increases and claiming decreased housing services is denied in part and granted in part. The legal rent for the tenant's unit is set forth below.

#### **INTRODUCTION**

The tenant filed a petition on October 12, 2015, contesting multiple rent increases on the grounds that the increases exceed the Consumer Price Index (CPI) Adjustment and are unjustified. Additionally, the tenant is contesting rent increases on the grounds that the increases were the second increases in a 12 month period.

The tenant also contends that his housing services have decreased due to a change in the property manager, dust and noise from construction, a lack of common area cleanliness, parking inconvenience associated with construction, inability to use the swimming pool because it was closed for an extended period, noise from neighbors, inoperable garage gate and front door intercom system and the absence of maintenance request forms.

The owner filed a timely response to the tenant petition in which he justified the November 2015 rent increase on the basis of fair return and capital improvements.

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## THE ISSUES

1. When did the tenant first receive the RAP Notice?
2. Did the tenant contest prior rent increases within the required time limit?
3. What is the tenant's base rent?
4. Did the owner serve the *Enhanced Notice to Tenants for Capital Improvements* as required?
5. Can the owner increase the rent based on banking if he did not allege banking as a justification for the rent increase?
6. Is the owner entitled to a banked rent increase?
7. Did the owner provide any evidence for a fair return justification?
8. 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?
9. Can the tenant raise claims at the Hearing that were not listed on his petition or list of decreased services?
10. What, if any, restitution is owed between the parties and how does it impact the rent?

## EVIDENCE

### *The rent and rental history:*

The tenant testified that he moved into this 44 unit apartment building on November 1, 2006, at an initial rent of \$850.00<sup>1</sup>. He got the *RAP Notice* when he moved into the building.

The tenant's petition contests rent increases in 2007, 2010, 2011, 2012, 2013 and 2014. On his tenant petition, the tenant admitted receiving the *RAP Notice* with each of these rent increases. Therefore he was directed to limit his testimony to the rent increase from 2015 (see below re: timeliness).

On or about September 28, 2015, the tenant received a letter from *Holyoke Alexander* purporting to increase his rent from \$1,058.21 to \$1,115.01, effective November 1, 2015,

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<sup>1</sup> Exhibit 2. These exhibits, and all other exhibits referred to in this Hearing Decision, other than Exhibit 11, were admitted into evidence without objection.

an increase of \$56.80 a month<sup>2</sup>. This increase included a banked increase of 4.04%, or \$42.74, plus a \$14.06 Capital Improvement increase for seismic repairs.

The tenant testified that since November of 2015 he has been paying rent of \$1,058.21 (his old rent) a month. He will continue to do so until he receives a Hearing Decision in this matter. This was not disputed by the owner.

The tenant testified that in a letter he wrote to the owner on October 9, 2015, after receiving the rent increase, he requested a copy of the invoice for the seismic retrofit (which was the subject of the capital improvement pass-through). This was never provided to him.

Decreased Housing Services:

Attached to the tenant's petition was a letter he had written to the owner on October 9, 2015, regarding decreased housing services<sup>3</sup>. In this letter he complained of problems with the new on-site manager associated with common area cleanliness, parking inconvenience associated with construction, loss of use of the swimming pool, problems with the garage gate and problems with the intercom system. These items are discussed individually.

*New Onsite Manager and Common Area Cleanliness:* The tenant testified that before the new ownership, the apartment complex was managed by Anthony Banks, who did a good job keeping the premises clean. After the new owner purchased the property, sometime in March of 2015, Banks was terminated and was replaced by someone named Erin Lucas. After Erin took over, she did not do as good of a job keeping the place clean as Anthony had. There were overflowing trash bins, maggots on the premises, the junk mail was not cleaned up, the hallways were dirty, and have not been power washed (as they had under Anthony.) The tenant produced photographs of maggots in the trash area<sup>4</sup> and dirty hallways<sup>5</sup> (the photographs were taken sometime in October or November of 2015).

On cross-examination the tenant could not say with specificity when he took these photographs, Jjust that they were taken both before and after his October 9, 2015, letter.

On cross-examination the tenant testified that the maggots were cleaned up by another tenant named Pauline. He does not remember when it was that the tenant did the work but believes it was in November of 2015. The maggots have not recurred since Pauline cleaned the area. He also complained to Erin Lucas about the problems with cleanliness.

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<sup>2</sup> See Exhibit 1

<sup>3</sup> This was also produced by the owner and marked as Exhibit 5.

<sup>4</sup> Exhibit 6, pages 1-2

<sup>5</sup> Exhibit 6, page 16 and 23

The tenant further testified that the hallways continue to have stains on the concrete, that were not present when Banks was manager. He used to see Banks power wash the concrete hallways, but has not seen either of the more recent managers do that work.

Erin Lucas was recently replaced by a different manager who is doing more cleaning than Lucas did. According to the tenant the conditions of the property have improved with this new manager, but there are still stains in the hallways.

The owner testified that he just purchased a power washer in September of 2015. He has seen it being used at the apartment complex. The *Lapham Company*, which previously managed the premises, did not have a power washer on the premises. He has inspected the premises on several occasions since receiving Mr. Green's letter, and there are no longer stains on the cement. The owner provided photographs of the general cleanliness of the apartment complex. (See Exhibit 11). The owner testified that his photographs of the hallways don't show the exact location of Mr. Green's apartment. He testified that he would be surprised if they did not look similar to the hallways that are represented in the photographs.

The owner further testified that he did not know about the maggots on the premises until he heard about it from Erin Lucas, the onsite manager, some short amount of time before the tenant petition was filed. On the day he learned about the problem, Erin Lucas cleaned the area up and since then he has inspected it several times. There has been no recurrence of these vermin.

The owner further testified that the garbage area is kept clean and tidy, as shown in a photograph he produced. (Exhibit 11, page 14.) It is part of the job duties of the manager to keep this area, and the premises, clean.

*Seismic Retrofitting, Pool Construction and parking:* The tenant testified that seismic retrofitting was done on the premises in April of 2015 and continued into May of 2015. Letters were sent by the owner about the work.<sup>6</sup> There were also about 14 times that he had to move his car because of the seismic retrofit. In the evenings he was mostly able to park in his spot, except for the occasional debris.

The owner stipulated that he was willing to compensate the tenant \$100 for the inconvenience to his access to parking during the period of the construction.

*The pool:* The tenant testified that the pool is an amenity that he used to use on a regular basis particularly in the summer months. Prior to being notified on July 14, 2015, that the pool was being closed, he would use it approximately once a week.<sup>7</sup> He also used the common area around the pool, which was also closed. Counting both the common area around the pool for barbecuing, and the pool, the tenant's estimate was that had the area not been closed he would have used it about 4 times a week.

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<sup>6</sup> Exhibit 7, pages 1-2

<sup>7</sup> Exhibit 8

The pool area was out of use from July 14, 2015-October 31, 2015. The tenants were provided information from the management about the progress with the pool.<sup>8</sup> On October 31, 2015, they were sent a letter saying that the pool is open.<sup>9</sup> The tenant has not returned to the pool (because he does not trust that it was repaired appropriately.)

The owner testified that the pool repair began in July 2015. After the repairs began, the *Alameda County Department of Environmental Health* did an inspection and discovered that the pool had been painted with a paint allowed in residential, but not commercial, pools. Considering this was a commercial pool, he was required to remove the paint and re-plaster the pool. Both of these repairs resulted in two days where there was a substantial amount of dust and noise generated, but other than those two days, the work on the pool did not cause a lot of dirt and debris in the air nor did it generate a substantial amount of noise.<sup>10</sup>

*Dust and Noise:* The construction for the seismic retrofit and the construction at the pool caused substantial dust and inconvenience around the premises and a lot of dirt on his car. He had to go and have his car washed (which he does not normally do), at a cost of approximately \$5.75 a time, approximately once a week. The tenant provided photographs of his car covered in dust.<sup>11</sup> He does not remember if the photographs were taken when the seismic work was done (April-May of 2015) or when the pool was repaired (July-October 2015.)

The tenant further testified that it was very noisy when the seismic retrofit work and the pool work was being done. They both involved jackhammering. There was noise "all the time" during working hours from 7 a.m. to 4:00 p.m. Monday through Saturday. The tenant was unable to testify with specificity as to how many days involved jackhammering. The tenant was working during the seismic retrofit, but was off from work for vacation or sick leave during some of the days that the work was going on. He has been on leave from his work since July 30, 2015, so was present in his apartment for many of the days in which the pool repairs occurred.

The tenant also complained about noisy upstairs neighbors. On cross-examination he described the noise as sounding like they were jumping on a trampoline. He has not complained to the neighbors themselves about the noise, nor did he ever complain to the managers. The noisy neighbors were mentioned in the October 9, 2015, letter, but no details were provided.

The owner testified that the construction workers on the seismic retrofit work came on one occasion before 8:00 a.m. They were told not to do that again and never did. The work was done after 8:00 a.m.

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<sup>8</sup> Exhibits 8-10

<sup>9</sup> Exhibit 10, page 3

<sup>10</sup> Exhibit 14

<sup>11</sup> Exhibit 6, pages 14-15

*Garage Gate:* The tenant withdrew this complaint at the Hearing.

*Front Door Intercom system:* The tenant testified that the front door intercom system was out of order for a period of time while Anthony Banks was the resident manager. Banks disconnected the intercom system. It was later reconnected. The tenant didn't remember when it occurred, just that it was when Banks was manager.

*No Maintenance Request Forms:* The tenant testified that the new owner took away the old maintenance request forms that were outside of the property manager's apartment. However, he has been instructed that he can email the new owner with any complaints or contact the manager directly. The maintenance request forms were taken away when the Erin Lucas came on as manager.

*Miscellaneous Complaints:* The tenant sought to raise issues associated with a disagreement he had with the onsite manager's boyfriend and a new recent change to the front door intercom system which took away his access to it. The tenant was instructed not to give details about these things because they were not on his list of decreased services. (See below.)

*The Owner's Response:* The second page of the Owner Response form states, in part: "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 petition. . ." The only boxes checked for the November 1, 2015, rent increase are capital improvements and fair return.

*Capital Improvements:*

The owner testified that the rent increase for capital improvements was based on the seismic retrofit work. He did not provide any documentation to the Rent Adjustment Program of the invoices or proof of the payments associated with the seismic retrofit.

Additionally, the owner testified that he served the *Enhanced Notice to Tenants for Capital Improvements* that had been served with the rent increase notice (see exhibit 1) to the Rent Adjustment Program. When he served it he did not include the RAP Notice or the actual rent increase notice.

Official Notice is taken of a faxed transmission, received by the Rent Adjustment Program on October 15, 2015, from Jason Keith, which includes 13 pages of various *Enhanced Notices to Tenants for Capital Improvements* (including the one served on Mr. Green.) This documents includes only the *Enhanced Notice*. The rent increase notices and the RAP Notices are not included.

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## FINDINGS OF FACT AND CONCLUSIONS OF LAW

**The RAP Notice:** The tenant first received the RAP Notice when he moved into the premises in 2006.

**The Tenant Cannot Contest Prior Rent Increases:** O.M.C. § 8.22.090(2) provides that a tenant petition must be filed within 60 days after the date of service of a rent increase notice or the date the tenant first receives the RAP notice, whichever is later<sup>12</sup>. The tenant received the RAP notice with every increase he is contesting. The only rent increase that occurred within 60 days of the tenant's petition is the rent increase dated September 28, 2015, purported to be effective on November 1, 2015. The challenges to the past rent increases are untimely and are denied<sup>13</sup>.

**What is the tenant's base rent?** Prior to the rent increase in question, the tenant was paying rent in the amount of \$1,058.21. This is the tenant's base rent.

**Did the owner serve the *Enhanced Notice to Tenants for Capital Improvements* as required?**

The Rent Adjustment Ordinance requires that an owner who gives a rent increase on the basis of capital improvements must provide an "*Enhanced Notice*" with the rent increase and then file a copy of the *Enhanced Notice* with the Rent Adjustment Program within 10 days of the date the rent increase notice is served. O.M.C. § 8.22.070 (H)(1)(d)(ii). Official Notice is taken that an *Enhanced Notice* for the tenant involved in this case was filed with the RAP office on October 15, 2015.

The *Enhanced Notice* served in this case was not served in compliance with the RAP Ordinance. First, the rent increase at issue was served on September 28, 2015. The *Enhanced Notice* was served on the RAP Office on October 15, 2015. This is more than 10 days after the date the rent increase notice was served. Additionally, in order to be valid, the *Enhanced Notice* must be served with "all documents accompanying the notice." O.M.C. § 8.22.070 (H)(1)(d)(ii). The document served on the RAP office was only the actual *Enhanced Notice* and did not include the rent increase notice or the RAP Notice. "Failure to file the notice with this period invalidates the rent increase." *Id.*

Therefore, the portion of the rent increase notice purporting to increase the rent for capital improvements is invalid.

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<sup>12</sup> T09-0086, Lindsey v. Grimsley et al (2009)

<sup>13</sup> Additionally, these rent increases were adjudicated in the prior case between these parties. See case T12-0039 and T13-0189. The tenant cannot continually bring forth the same claims hoping for a different result.

**Can the owner increase the rent based on banking if he did not allege banking as a justification for the rent increase?**

A party has a due process right to know what claims the other party is making. The Rent Adjustment Program mails a copy of the *Tenant Petition* to the owner and a copy of the *Owner Response* to the tenant. In this way, each party is afforded due process of law. The Board has held that failure to state Banking as a basis for a rent increase on an Owner Response form precludes the owner from raising the rent on this basis.<sup>14</sup> Since the owner's response did not state banking as a justification for the proposed rent increase, no banked rent increase is allowed at this time.

Since the rent increase only increased the rent for banking and capital improvements, the entire rent increase is invalid.

**Even if the owner had checked banking as a justification, is the owner entitled to a banked rent increase?**

If an owner chooses to not increase the rent, or increase it less than the annual CPI adjustments permitted by the Ordinance, the owner is allowed to bank the unused increases, subject to certain limitations.<sup>15</sup> However, the total rent increase imposed in any one rent increase may not exceed a total of three times the then allowable CPI increase.<sup>16</sup> In no event may any banked CPI Rent Adjustments be implemented more than ten years after it accrues.<sup>17</sup>

Facts needed to calculate banked increases are: (1) The date of the start of tenancy or eleven years before the effective date of the increase at issue, whichever is later; (2) the lawful base rent in effect on said date; (3) The lawful rent in effect immediately before the effective date of the current proposed rent increase; and (4) the date(s) and amount(s) of any intervening changes to the base rent between dates (1) and (3).

A banking calculation has been performed (and attached to the Hearing Decision as Exhibit 1). The calculation is based on the tenant's rent when he moved in to the building in 2006. According to the banking calculator, no banking is available to the owner as of November 1, 2015.

**Did the owner provide any evidence for a fair return justification?**

The minimum evidentiary requirements to prove that an owner is being denied a fair return on his investment in residential rental property are as follows:<sup>18</sup>

- (1) The amount of money that the owner has invested in the property;

<sup>14</sup> *Andrew et al v. Maxwell*, T06-0270

<sup>15</sup> O.M.C.§8.22.070

<sup>16</sup> Regulations Appendix, §10.5.1

<sup>17</sup> Regulations Appendix, §10.5.3

<sup>18</sup> *Fisher v. City of Berkeley*, 37 Cal.3d 644 (1984); affirmed 475 US 260 (1986)



- (2) The amount, if any, that the property has appreciated in value during the time that it has been owned by the landlord;
- (3) The owner's net operating income during the time that the owner has owned the property; and
- (4) The average return on investments in other enterprises having risks comparable to the ownership of the subject property during the time that the owner has owned the property.

The owner provided no evidence regarding his claimed justification for a fair return justification. Therefore, this claim fails.

**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?**

Under the Oakland Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent<sup>19</sup> and may be corrected by a rent adjustment.<sup>20</sup> However, in order to justify a decrease in rent, a decrease in housing services must be the loss of a service that seriously affects the habitability of a unit or one that was provided at the beginning of the tenancy that is no longer being provided.

In a decreased services case, where the RAP notice has been given, a tenant is only allowed relief for 60 days prior to the filing of the petition<sup>21</sup>. The tenant petition was filed on October 12, 2015. Since the tenant received the RAP Notice many years ago the tenant is only entitled to relief beginning on August 13, 2015.

The tenant has the burden of proof with respect to each decreased services claim. Additionally, the tenant must establish that he has given the owner notice of the problems and the opportunity to fix the problems before he is entitled to relief. Each of the tenant's claims of decreased services is discussed separately.

*New Onsite Manager and Common Area Cleanliness:* The problems with common area cleanliness described by the tenant do not amount to a habitability violation. Therefore, they only rise to the level of a decrease in housing services if the tenant establishes that there are substantial changed conditions from when he moved into the unit.

The owner of the premises was convincing that keeping the apartment building clean is an ongoing duty of his apartment managers and that they are doing this job. While the tenant's complaints may have highlighted momentary lapses in the condition of the building, there does not seem to be a systemic problem. This claim is denied.

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<sup>19</sup> O.M.C. § 8.22.070(F)

<sup>20</sup> O.M.C. § 8.22.110(E)

<sup>21</sup> Board Decision in Case No. T09-0086, Lindsey v. Grimsley, et al.

*Seismic Retrofitting, Pool Construction and Parking:*

The work done on the seismic retrofit was completed before August 13, 2015. Therefore, the tenant's claim as to that construction is not timely and is denied.

With respect to the work done on the pool, the California Court of Appeal considered the question of whether repair and replacement of tenant's decks—which resulted in the temporary loss of use of the decks and ventilation from the doorways to the decks—was a decrease in housing services under the San Francisco rent control ordinance. The Court stated:

[A] landlord who undertakes to perform reasonably necessary repair and maintenance work on rental property, which has the effect of temporarily interfering with or preventing the tenant's full use of housing services, but does not substantially interfere with the right to occupancy of the premises as a residence, does not effectuate a decrease in housing services within the meaning of the San Francisco rent control ordinance.<sup>22</sup>

While this case interprets the San Francisco rent control ordinance, this principle applies to the present situation. The tenant is complaining about his access to the pool and deck area during the period of time when the owner had to keep tenants out so that repairs could be made.

The Oakland Housing Residential Rent and Relocation Board has adopted the finding in the above case. See *Maxwell v. Krawiec*, T12-0295, wherein the Board approved the finding of the Hearing Officer that a temporary loss of use of a parking space because of construction did not amount to a decrease in housing services. See also *Sardelich v. Vernon Apartments*, T03-0045, wherein the Board found that a temporary loss of electric services because of maintenance in the building was not a decrease in housing services.

The tenant's claim for decreased housing services related to the pool is denied.

As to parking, the owner stipulated that the value of the tenant's lost access to parking during the construction was worth \$100. This is a reasonable reimbursement for the tenant's lost access to uninterrupted parking during the construction.

*Dust and Noise:* The analysis discussed above regarding the construction on the pool area is relevant here. Dust and noise caused by necessary repairs, if not unreasonable, are an implicit part of the construction work that was required to be done. Since the work was in almost all cases done during normal work hours, the tenant is not entitled to a rent credit caused by the dust and noise. This claim is denied.

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<sup>22</sup> Golden Gateway Center v. San Francisco Residential Rent Stabilization and Arbitration Board, (1999) 73 Cal.App. 4<sup>th</sup>, 1204, 1206.

With respect to the tenant's complaint about noisy upstairs neighbors, this claim is also denied. Noisy neighbors are an unfortunate but common problem faced by urban apartment dwellers. While it may be true that the upstairs neighbors make more noise than the tenant would like, there is no proof that the upstairs neighbors make more noise than the average tenant.

Finally, the RAP is an administrative agency whose power is limited to enforce the provisions of the Rent Adjustment Ordinance. In the case of Larson v. City and County of San Francisco, (2011) 192 Cal.App.4th 1263, the court examined the authority of San Francisco's Rent Board. The court held that the jurisdiction of administrative agencies is limited to those claims that are quantifiable in nature.

The tenant's claims for decreased housing services as they relate to the noise made by the upstairs neighbors is really a claim for damages and not a claim that can be made under the Rent Adjustment Ordinance.

For all these reasons, the tenant's claim for decreased housing services as it relates to the upstairs neighbor being too noisy is denied.

*Garage Gate:* The tenant withdrew this complaint at the Hearing.

*Front Door Intercom system:* Since Mr. Banks was still working at the property when this temporary loss of use of the intercom system happened, and he left in March of 2015, this obviously happened earlier than August 2015. Therefore, it is time barred. This claim is denied.

*No Maintenance Request Forms:* The owner did dispense with the maintenance request forms. However, the purpose of the forms is to provide a way for tenants to communicate with the owner and management. Instead of the forms, the tenant has been provided with telephone numbers and email addresses with which to communicate his concerns. There is no reason to hold that a maintenance request form is a superior form of communication than a phone call or an email. As long as the owner is adequately maintaining the property, and the evidence shows that he is, there is no decrease in services. This claim is denied.

### **Can the tenant raise claims at the Hearing that were not listed on his petition or list of decreased services?**

At the Hearing the tenant sought to raise issues associated with an argument he had with the building manager's boyfriend and with a new loss of use of the intercom system. These items were not on his list of decreased housing services and therefore, to allow him to discuss these at the Hearing, would violate the owner's due process rights to know and understand the claims being made against him before attending the Hearing. The tenant was not permitted to discuss these claims.

**What, if any, restitution is owed between the parties and how does it impact the rent?**

Current Rent: Since the rent increase notice is invalid, the base rent for the unit remains \$1,058.21 a month.

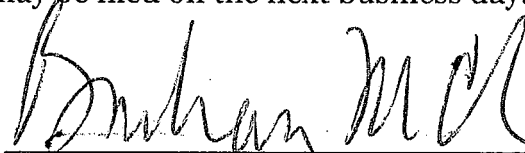
The tenant is owed \$100 for the value of the loss of access to parking during the construction period. While normally restitution is paid over a period of months, since the restitution owed to the tenant is so small, the tenant can deduct it from his rental payment in April 2016. His rent due in April 2016 is therefore \$958.21. His rent returns to his base rent of \$1,058.21 in May of 2016.

Nothing in this Hearing Decision prevents the owner from increasing the rent, at any time, according to the laws of the Rent Adjustment Program and the State of California.

**ORDER**

1. Petition T15-0544 is granted in part and denied in part.
2. The current base rent is \$1,058.21 a month. The rent increase notice is invalid.
3. The tenant is owed \$100 for loss of access to parking during the construction. Therefore, his rent for April 2016, is \$958.21. His rent returns to his base rent in May 2016.
4. Nothing in this Hearing Decision prevents the owner from increasing the rent, at any time, according to the laws of the Rent Adjustment Program and the State of California.
5. **Right to Appeal:** This decision is the final decision of the Rent Adjustment Program Staff. Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within twenty (20) calendar days after service of the decision. The date of service is shown on the attached Proof of Service. If the Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.

Dated: March 11, 2016



Barbara M. Cohen  
Hearing Officer  
Rent Adjustment Program

# 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-Nov-2006	<b>MUST FILL IN D9, D10, D11 and D14</b>	Case No.:	T15-0544	<b>CHANGE YELLOW CELLS ONLY</b>
Effective date of increase	1-Nov-2015		Unit:	214	
Current rent (before increase)	\$1,058				
Prior cap. imp. pass-through					
Date calculation begins	1-Nov-2006				
Base rent when calc. begins	\$850	If the planned increase includes other than banking put an X in the box → <input style="width: 50px; height: 15px;" type="text"/>			

## ANNUAL INCREASES TABLE

Year Ending	Debt Serv. or Fair Return increase	Housing Serv. Costs increase	Base Rent Reduction	Annual %	CPI Increase	Rent Ceiling
11/1/2015				1.7%	\$ 17.41	\$ 1,041.73
11/1/2014				1.9%	\$ 19.10	\$ 1,024.32
11/1/2013				2.1%	\$ 20.68	\$ 1,005.22
11/1/2012				3.0%	\$ 28.68	\$ 984.55
11/1/2011				2.0%	\$ 18.74	\$ 955.87
11/1/2010				2.7%	\$ 24.64	\$ 937.13
11/1/2009				0.7%	\$ 6.34	\$ 912.49
11/1/2008				3.2%	\$ 28.10	\$ 906.15
11/1/2007				3.3%	\$ 28.05	\$ 878.05
11/1/2006				-	-	\$850

## Calculation of Limit on Increase

Prior base rent	NO BANKING
Banking limit this year (3 x current CPI and not more than 10%)	5.1%
Banking available this year	\$ -
Banking this year + base rent	\$ 1,041.73
Prior capital improvements recovery	\$ -
Rent ceiling w/o other new increases	\$ 1,041.73

**Notes:**

1. You cannot use banked rent increases after 10 years.
2. CPI increases are calculated on the base rent only, excluding capital improvement pass-throughs.
3. The banking limit is calculated on the last rent paid, excluding capital improvement pass-throughs.
4. Debt Service and Fair Return increases include all past annual CPI adjustments.
5. An Increased Housing Service Cost increase takes the place of the current year's CPI adjustment.
6. Past increases for unspecified reasons are presumed to be for banking.
7. Banked annual increases are compounded.
8. The current CPI is not included in "Banking", but it is added to this spreadsheet for your convenience.

Green v. Keith  
T15-0544

Exhibit 1

000021

**PROOF OF SERVICE**

**Case Number T15-0544**

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:**

**Tenant**

Morris Green Jr.  
265 Vernon St #214  
Oakland, CA 94610

**Owner**

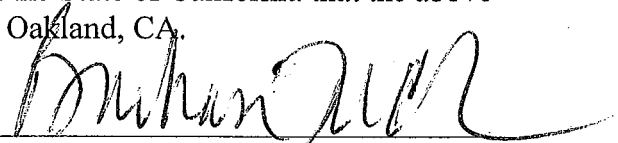
1821 Polk Street LLC/ Jason Keith  
900 VanNess Ave #102  
San Francisco, CA 94109

**Owner Representative**

Karen Y. Uchiyama, Esq.  
1439 Baker St  
San Francisco, CA 94115

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on March 11, 2016 in Oakland, CA.



Barbara M. Cohen

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KM

<b>CITY OF OAKLAND</b> <b>RENT ADJUSTMENT PROGRAM</b> P.O. Box 70243 250 Frank H. Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721	For filing stamp. RENT ADJUSTMENT PROGRAM 2015 NOV 20 AM 9:02
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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 T - 15-0544**

**OWNER RESPONSE**

**Please print legibly.**

<b>Your Name</b> Jason Keith	<b>Complete Address (with zip code)</b> 1821 Polk Street, LLC c/o Jason Keith, manager 900 Van Ness Ave, Ste. 102 San Francisco, CA 94109	<b>Phone:</b> (415) 272-9029 <b>Email:</b> jkeith@holyokeyalexander.com
<b>Your Representative's Name (if any)</b> Karen Y. Uchiyama, Esq.	<b>Complete Address (with zip code)</b> 1439 Baker Street San Francisco, CA 94115	<b>Phone:</b> (415) 563-9300 <b>Fax:</b> (415) 563-9304 <b>Email:</b> Karen@uchlegal.com
<b>Tenant(s) name(s)</b> Morris Green Jr.	<b>Complete Address (with zip code)</b> 265 Vernon St. #214 Oakland, CA 94610	

Have you paid for your Oakland Business License? Yes  No  Number 201500012  
 (Provide proof of payment.)

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

FAXED

There are 44 residential units in the subject building. I acquired the building on 11/20/14.

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

**I. RENTAL HISTORY**

The tenant moved into the rental unit on 11/1/2006.

The tenant's initial rent including all services provided was \$ 900 / 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? 11/01/2006

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? Sept. 28, 2015 . 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	
9/28/2015	11/1/2015	\$1,058.21	\$1,115.01	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
4/25/2014	6/1/2014	\$1,036.45	\$1,058.21	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
4/25/2013	6/1/2013	\$1,006.27	\$1,045.05	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
12/21/2011	2/1/2012	\$ 974.12	\$1,006.27	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
12/23/2010	2/1/2011	\$ 948.51	\$ 974.12	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
12/23/2009	2/1/2010	\$ 929.00	\$ 948.51	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
9/5/2007	11/1/2007	850.00	929.00	<input checked="" type="checkbox"/> Yes

## 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)
11/1/2015	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" 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"/>	<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.

### **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, 6<sup>th</sup> 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**

RENT ADJUSTMENT PROGRAM

2015 NOV 20 AM 9:03

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

11/12/15  
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

11/12/15  
Date

T15-0544 KM/BC

<p><b>CITY OF OAKLAND</b>  <b>RENT ADJUSTMENT PROGRAM</b>          Mail To: P. O. Box 70243          Oakland, California 94612-0243          (510) 238-3721</p>	<p>For date stamp          RENT ADJUSTMENT PROGRAM          2015 OCT 12 PM 5:02</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 <b>Morris Green Jr.</b>	Rental Address (with zip code) <b>265 Vernon St Apt #214 Oakland, CA 94610</b>	Telephone <b>510-350-7672</b>
Your Representative's Name	Mailing Address (with zip code)	Telephone
Property Owner(s) name(s) <b>Jason Keith, Owner/Principal Holyoke Alexander Real Estate and 1821 Polk Street, LLC Managers</b>	Mailing Address (with zip code) <b>900 Van Ness Ave, Ste 102 San Francisco, CA 94109 and 425 California St, 2nd FL San Francisco, CA 94104</b>	Telephone <b>415-795-2282</b>

Number of units on the property: **44**

Type of unit you rent (circle one)	House	Condominium	<b>Apartment</b> Room, or Live-Work
Are you current on your rent? (circle one)	<b>Yes</b>	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 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 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 checked="" type="checkbox"/> (g) The contested increase is the second rent increase in a 12-month period.
<input checked="" 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: November 1<sup>st</sup>, 2006 Initial Rent: \$ 850 /month

2015 OCT 16 PM 5:02

When did the owner first provide you with a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program (RAP NOTICE)? Date: November 1<sup>st</sup>, 2006. 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 <sup>15 fee added</sup>		
September 28, 2014 <sup>8:02pm</sup>	11/1/2015	\$ 1,058.21	\$ 1,130.01	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
April 25, 2014	6/1/2014	\$ 1,036.45	\$ 1,058.21	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
April 25, 2013	6/1/2013	\$ 1,006.27	\$ 1,045.05	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
12/21/2011	2/1/2012	\$ 974.12	\$ 1,006.27	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
12/23/2010	2/1/2011	\$ 948.51	\$ 974.12	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
12/23/2009	2/1/2010	\$ 929	\$ 948.51	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
9/5/2007	11/1/2007	\$ 850	\$ 929	<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Yes

\* 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: T12-0039, T13-0189 and T14-0207

**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, 2<sup>nd</sup> Floor, Oakland, CA 94612. Phone: (510) 238-3381

See Attached Letters received by Holyoke Alexander Real Estate w/ 1821 Polk Street, LLC and my letter detailing the decreased in housing services with photos and California Civil Code Section 1927 "Warranty of Quiet Possession" and justifications for Rent Increase higher than the CPI Increase



October 9, 2015

Holyoke Alexander Real Estate or 1821 Polk Street, LLC  
900 Van Ness Ave, Ste 102 or 425 California St, 2<sup>nd</sup> Floor  
San Francisco, CA 94109 or San Francisco, CA 94104

To Jason Keith, Principal and/or to the Owner of the 265 Vernon Street Property:

I am writing this letter in response to the recent letter received (9/28/2015) regarding my rent increase of \$56.80 per month from my total current rent of \$1,058.21 to \$1,115.01 effective November 1<sup>st</sup>, 2015. This increase includes rent increases of 2.1%, 1.9% and New Capital Improvement Pass Through of \$14.06 per month for the next 5 years, which totals over a 5% increase. I am seriously confused why I am being charged a \$56.80 rent increase per month considering I already been charged a rent increase last year from The Lapham Company, which is a company that represented the previous property owners.

*(See Lapham Co. April 24, 2014 attached document)*

I am contesting the rent increase because I feel that it is unfair to increase the rent every year considering the economic situation in America and that I have been a loyal tenant for over five plus (5+) years at this apartment complex. During my years here I have consistently paid my rent on time every month. In addition, I take good care of the property and am considerate to my neighbors. Since I am a loyal resident and the complex has a high turnover rate, I feel that it is unfair to continually impose a rent increase considering all the issues I have experienced while living here.

Ever since you and your real estate agency, Holyoke Alexander Real Estate or 1821 Polk Street, LLC took over the 265 Vernon Street property on Thursday, November 20, 2014 and the replacement of a wonderful, onsite property manager, Anthony Banks in March 2015 with an unqualified person, there has been a drastic decline in housing services.

A list of declined or decreased housing services includes: *(See Attached Photos)*

1. The cleanliness within the 265 Vernon Street property that have been outrageous;
2. Parking inconvenience and loss of services with no compensation during the seismic retrofitting work, which fees were never told to me before are now being imposed onto me as a capital improvement pass-through for the next 5 years;
3. The inability to use the swimming pool because it was closed for an extended period of time due to ongoing maintenance issues;
4. Dust and air quality issues, in which dust covered many vehicles on the property (again no compensation from the owner for car wash expenses, etc.);
5. Noise issues disturbing my peace of comfort or "Quiet Enjoyment" of living, which is a Law in California, resulting from the various construction activity that occurred on the property (i.e., seismic retrofitting work and swimming pool repairs), and unruly and inconsiderate neighbors living above me;
6. Maintenance issues with the garage gate being inoperable and the *temporary* elimination of the front door intercom system; and
7. No maintenance request forms.

In regards to the noise issues, according to California Civil Code Section 1927, it states that a rental agreement binds the landlord to provide their tenant with quiet possession during the term of the agreement. This means that I have the right to be free from interference in using and enjoying my home during the time I am living here (See attached Warranty of Quiet Possession, California Civil Code Section 1927).

All of these declined decreased housing services previously mentioned affected my living situation at this property and I never received any compensation from the owner until now, which is a rent increase of \$56.80 per month. I feel that this rent increase, which includes a capital improvement pass-through fee and decrease in housing services, is unfair and a disservice to long time residents like myself at this apartment complex.

According to the City of Oakland's Justifications for Rent Increase Higher than the CPI Increase, "**Note: An owner may take the CPI Increase OR any combination of individual adjustments, but not both.**" Therefore, since I and most likely other tenants are being charged for both, I feel that is unjust (See Attached the City's "Justifications for Rent Increase Higher than the CPI Increase" sheet).

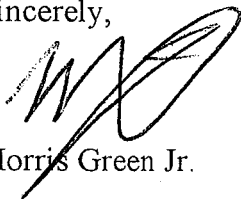
With all of the new construction activity that has occurred, I am requesting a receipt copy in writing and invoice for total payment cost for the work that was performed by the contractor, for example the seismic retrofitting, the swimming pool repairs and other future projects that you might choose to claim as a capital improvement pass-through.

Furthermore, I feel that the mistreatment and replacement of our past onsite property manager, Anthony Banks with an unqualified person and what I see is a bullying approach to removing good and loyal tenants from the 265 Vernon Street property, in hopes of increasing the rent to an exorbitant amount for profit is shameful. You mentioned in your introductory letter (dated November 21, 2014) that you have a wife, Hilary and 2 kids. How would you feel if you and your family experienced the same conditions/treatment that good and loyal residents face under that style of management?

Despite all of these issues I've experienced living at this complex and the little improvements performed onto individual units within 265 Vernon St complex, I continue to be a loyal resident.

Overall, I am not asking for much. I like living in this area and the professionalism and character of the previous onsite Property Manager, Anthony Banks. I am requesting several options: (1) I prefer my rent not to be increased; (2) To receive a reduction to my rent back to a reasonable cost as a result of the current economic situation and the decreased housing conditions; (3) To get Mr. Anthony Banks back under his previous agreement and restore the apartment complex to respectable housing conditions; and/or (4) To meet with the owner of the complex to discuss options for my continual stay here as a loyal tenant. Please consider my request, so I don't have to relocate to another apartment complex, or protest and file a petition with the City of Oakland. If you have any questions, please contact me at 510-350-7672.

Sincerely,

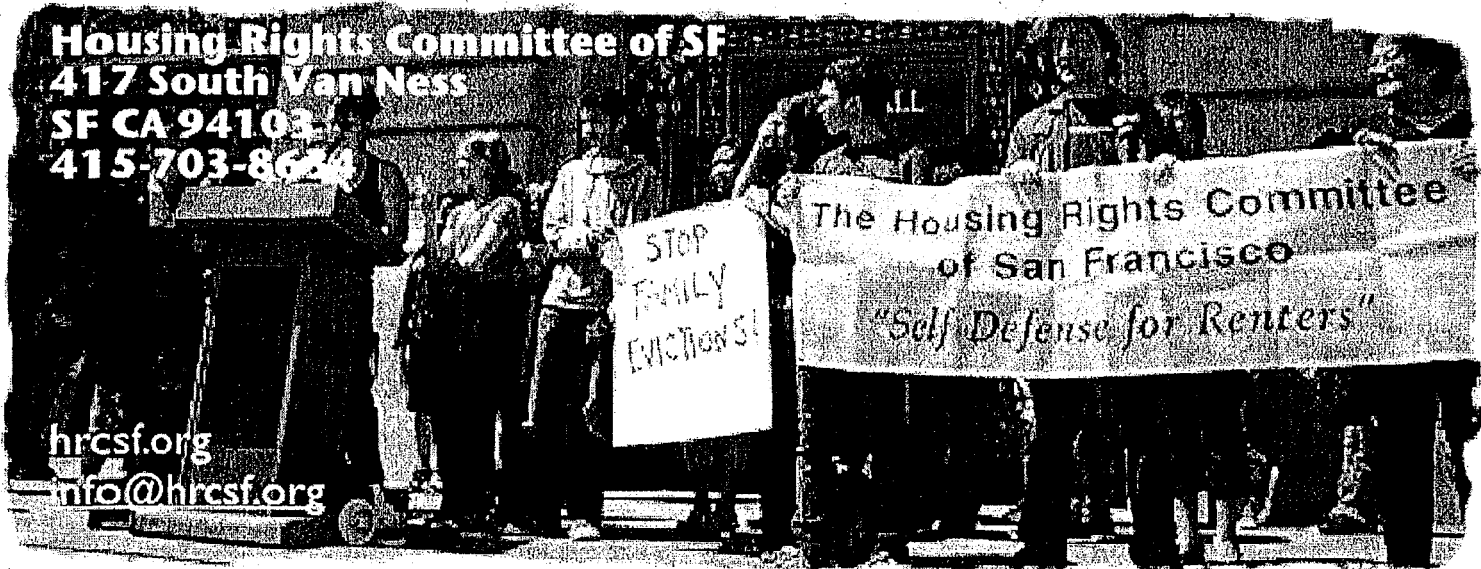


Morris Green Jr.

000031

**Housing Rights Committee of SF**  
**417 South Van Ness**  
**SF CA 94103**  
**415-703-8644**

**hrcsf.org**  
**info@hrcsf.org**



home tenants rights counseling membership Sect.8 resources staff volunteers news  
newsletter

## Noise

According to the Warranty of Quiet Possession, California Civil Code Section 1927, tenants have an implied right to quiet enjoyment in their rental agreement. Section 2915 of the San Francisco Police Code establishes guidelines for noise regulations: It is unlawful for any person to make, continue, cause or permit any unnecessary, excessive or offensive noise. This includes vocal or instrumental music and related sounds, live or produced mechanically, which disturbs the peace or causes the annoyance or discomfort of any reasonable person.

Article 1, Section 49 of the San Francisco Police Code states that devices such as stereos and TVs must be "inaudible within a distance of 50 feet" from the property line between 10 p.m. and 7 a.m. These complaints can be referred to the San Francisco Police Department. To determine whether or not the noise is in violation of the Warranty of Quiet Possession you should consider the following questions:

- How loud is the noise?
- How intensive is the noise?
- Is the noise repetitive?
- What time of day does the noise usually occur and does it reflect normal activity?
- Does the noise last over a long period of time? Is the noise constant or intermittent?

Speak with the offenders, explaining that the noise must be controlled.

Complain to the offenders in writing, referencing specific dates and times of the incidents. Request that these incidents stop, explaining that your landlord has an obligation to provide you with a reasonable quiet atmosphere. Send a copy of this letter to your landlord.



You can also call us during our counseling hours: Monday through Thursday, 1-5pm, 415-703-8644

### Some Quick Tips

Tenants have an implied right to quiet possession.

Devices such as stereos and TVs must be inaudible within a distance of 50 feet from



## CHRONOLOGICAL CASE REPORT

Case No.: T16-0004  
Case Name: Miller v. Hinds  
Property Address: 1904 Myrtle Street, Oakland, CA  
Parties: Kevan L. Miller (Tenant)  
Gordon Hinds (Property Owners)

### OWNER APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	December 31, 2015
Landlord Response filed	January 22, 2016
Hearing Decision issued	May 26, 2016
Owner Appeal filed	June 15, 2016

<b>City of Oakland</b> <b>Residential Rent Adjustment Program</b> 250 Frank Ogawa Plaza, Suite 5313 Oakland, California 94612 (510) 238-3721		<b>APPEAL</b>	
Appellant's Name <i>FORROR HANDS</i>		<input checked="" type="checkbox"/> Landlord <input type="checkbox"/> Tenant	
Property Address (Include Unit Number) <i>1904 Myrtle Street - Oakland</i>			
Appellant's Mailing Address (For receipt of notices) <i>3465 Mt Diablo Blvd B15          Lafayette Ca 94549</i>		Case Number <i>7-16-0004</i>	
		Date of Decision appealed	
Name of Representative (if any)		Representative's Mailing Address (For notices)	

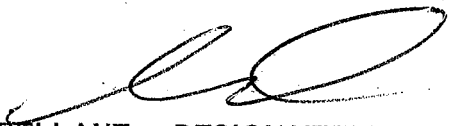
I appeal the decision issued in the case and on the date written above on the following grounds:  
 (Check the applicable ground(s). Additional explanation is required (see below). Please attach additional pages to this form.)

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 7. 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 6/15, 2006, 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>	KEVAN MILLER
<u>Address</u>	1924 Myrtle Street
<u>City, State Zip</u>	Oakland CA 94607
<u>Name</u>	
<u>Address</u>	
<u>City, State Zip</u>	

	6/15/06
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.

To: Rent Control Board  
From : Gordon M. Hinds  
Re: Appeal Decision Case T16-00004

I am not in agreeance on the tenant control decision to invalidate my rent increase for the following reasons.

Decreased Housing Services:

Unlike a refrigerator or stove, the lost of service of a clothes dryer does not affect the habitability of a unit. A clothes dryer is a convenience and typically is not provided in most tenancy.

The tenant stated she told the landlord the dryer was not working. The tenant has to provide written proof of such claim in order to establish the loss of such service; otherwise, this is an unsubstantiated claim.

The tenant told me about the dryer in July 2015, 3 months after ownership change. I told the tenant that per the Lease Agreement and all paperwork provided by the previous owner the dryer which is personal property was not included. The only personal proerpty item transferred was a stove as indicated on the Transfer Disclosure statement.

I have provided a copy of the Lease, Seller's questionnaire and Transfer Disclosure Statement, which does not indicate this item are properties of the landlord. The TDS state property has washer/dryer hookup(s).

During the walk through with the tenant before ownership changed the tenant did not indicate the clothes dryer was inoperative. The tenant indicated to myself and the realtor that everything in the unit was functioning. These matters were only raised to protest the rent

increase, furthermore; the tenant never said anything regarding critters in the attic.

If the tenant vacated the unit and removed the clothes dryer, I would not have a claim against the tenant for theft because I could not establish the dryer belonged to the landlord.

Gordon M. Hinds

A handwritten signature in black ink, appearing to read 'Gordon M. Hinds', written over the printed name.



THIS DISCLOSURE STATEMENT CONCERNS THE REAL PROPERTY SITUATED IN THE CITY OF Oakland, COUNTY OF Alameda, STATE OF CALIFORNIA, DESCRIBED AS: 1904 Myrtle Street, Oakland, Ca 94607

THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE DESCRIBED PROPERTY IN COMPLIANCE WITH SECTION 1102 OF THE CIVIL CODE AS OF (date) September 24, 2014. IT IS NOT A WARRANTY OF ANY KIND BY THE SELLER(S) OR ANY AGENT(S) REPRESENTING ANY PRINCIPAL(S) IN THIS TRANSACTION, AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE PRINCIPAL(S) MAY WISH TO OBTAIN.

**I. COORDINATION WITH OTHER DISCLOSURE FORMS**

This Real Estate Transfer Disclosure Statement is made pursuant to Section 1102 of the Civil Code. Other statutes require disclosures, depending upon the details of the particular real estate transaction (for example: special study zone and purchase-money liens on residential property).

**Substituted Disclosures:** The following disclosures and other disclosures required by law, including the Natural Hazard Disclosure Report/Statement that may include airport annoyances, earthquake, fire, flood, or special assessment information, have or will be made in connection with this real estate transfer, and are intended to satisfy the disclosure obligations on this form, where the subject matter is the same:

- Inspection reports completed pursuant to the contract of sale or receipt for deposit.
- Additional inspection reports or disclosures: \_\_\_\_\_

**II. SELLER'S INFORMATION**

The Seller discloses the following information with the knowledge that even though this is not a warranty, prospective Buyers may rely on this information in deciding whether and on what terms to purchase the subject property. Seller hereby authorizes any agent(s) representing any principal(s) in this transaction to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the property.

**THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER(S) AND ARE NOT THE REPRESENTATIONS OF THE AGENT(S), IF ANY. THIS INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF ANY CONTRACT BETWEEN THE BUYER AND SELLER.**

Seller  is  is not occupying the Home.

A. The subject property has the items checked below: \*

- |  |  |  |
|--|--|--|
| <input checked="" type="checkbox"/> Range                | <input type="checkbox"/> Wall/Window Air Conditioning                              | <input type="checkbox"/> Pool:   |
| <input checked="" type="checkbox"/> Oven                 | <input type="checkbox"/> Sprinklers  | <input type="checkbox"/> Child Resistant Barrier   |
| <input type="checkbox"/> Microwave                       | <input checked="" type="checkbox"/> Public Sewer System                            | <input type="checkbox"/> Pool/Spa Heater:  |
| <input type="checkbox"/> Dishwasher                      | <input type="checkbox"/> Septic Tank   | <input type="checkbox"/> Gas <input type="checkbox"/> Solar <input type="checkbox"/> Electric            |
| <input type="checkbox"/> Trash Compactor                 | <input type="checkbox"/> Sump Pump   | <input type="checkbox"/> Water Heater:   |
| <input type="checkbox"/> Garbage Disposal                | <input type="checkbox"/> Water Softener  | <input checked="" type="checkbox"/> Gas <input type="checkbox"/> Solar <input type="checkbox"/> Electric |
| <input checked="" type="checkbox"/> Washer/Dryer Hookups | <input type="checkbox"/> Patio/Decking   | <input type="checkbox"/> Water Supply:   |
| <input checked="" type="checkbox"/> Rain Gutters         | <input type="checkbox"/> Built-in Barbecue   | <input checked="" type="checkbox"/> City <input type="checkbox"/> Well                                   |
| <input type="checkbox"/> Burglar Alarms                  | <input type="checkbox"/> Gazebo  | <input type="checkbox"/> Private Utility or  |
| <input type="checkbox"/> Carbon Monoxide Device(s)       | <input type="checkbox"/> Security Gate(s)  | Other _____  |
| <input checked="" type="checkbox"/> Smoke Detector(s)    | <input type="checkbox"/> Garage:   | <input type="checkbox"/> Gas Supply:   |
| <input type="checkbox"/> Fire Alarm                      | <input type="checkbox"/> Attached <input checked="" type="checkbox"/> Not Attached | <input type="checkbox"/> Utility <input type="checkbox"/> Bottled (Tank)                                 |
| <input type="checkbox"/> TV Antenna                      | <input type="checkbox"/> Carport   | <input checked="" type="checkbox"/> Window Screens   |
| <input type="checkbox"/> Satellite Dish                  | <input type="checkbox"/> Automatic Garage Door Opener(s)                           | <input type="checkbox"/> Window Security Bars  |
| <input type="checkbox"/> Intercom                        | <input type="checkbox"/> Number Remote Controls _____                              | <input type="checkbox"/> Quick Release Mechanism on Bedroom Windows                                      |
| <input type="checkbox"/> Central Heating                 | <input type="checkbox"/> Sauna   | <input type="checkbox"/> Water-Conserving Plumbing Fixtures  |
| <input type="checkbox"/> Central Air Conditioning        | <input type="checkbox"/> Hot Tub/Spa:  |  |
| <input type="checkbox"/> Evaporator Cooler(s)            | <input type="checkbox"/> Locking Safety Cover                                      |  |
- Exhaust Fan(s) in one 220 Volt Wiring in Panel Fireplace(s) in \_\_\_\_\_  
 Gas Starter  Roof(s): Type: Comp Shingle Age: one (approx.)  
 Other: \_\_\_\_\_

Are there, to the best of your (Seller's) knowledge, any of the above that are not in operating condition?  Yes  No. If yes, then describe. (Attach additional sheets if necessary): \_\_\_\_\_

(\*see note on page 2)

Buyer's Initials ( GH ) ( \_\_\_\_\_ )

Seller's Initials ( SC ) ( ML )



- B. Are you (Seller) aware of any significant defects/malfunctions in any of the following?  Yes  No. If yes, check appropriate space(s) below.
- Interior Walls  Ceilings  Floors  Exterior Walls  Insulation  Roof(s)  Windows  Doors  Foundation  Slab(s)
- Driveways  Sidewalks  Walls/Fences  Electrical Systems  Plumbing/Sewers/Septics  Other Structural Components

(Describe: HEALING EXTERIOR PAINT)

If any of the above is checked, explain. (Attach additional sheets if necessary.): \_\_\_\_\_

\*Installation of a listed appliance, device, or amenity is not a precondition of sale or transfer of the dwelling. The carbon monoxide device, garage door opener, or child-resistant pool barrier may not be in compliance with the safety standards relating to, respectively, carbon monoxide device standards of Chapter 8 (commencing with Section 13260) of Part 2 of Division 12 of, automatic reversing device standards of Chapter 12.5 (commencing with Section 19890) of Part 3 of Division 13 of, or the pool safety standards of Article 2.5 (commencing with Section 115920) of Chapter 5 of Part 10 of Division 104 of, the Health and Safety Code. Window security bars may not have quick-release mechanisms in compliance with the 1995 edition of the California Building Standards Code. Section 1101.4 of the Civil Code requires all single-family residences built on or before January 1, 1994, to be equipped with water-conserving plumbing fixtures after January 1, 2017. Additionally, on and after January 1, 2014, a single-family residence built on or before January 1, 1994, that is altered or improved is required to be equipped with water-conserving plumbing fixtures as a condition of final approval. Fixtures in this dwelling may not comply with section 1101.4 of the Civil Code.

- C. Are you (Seller) aware of any the following:
- Substances, materials, or products which may be an environmental hazard such as, but not limited to, asbestos, formaldehyde, radon gas, lead-based paint, mold, fuel or chemical storage tanks, and contaminated soil or water on the subject property  Yes  No
  - Features of the property shared in common with adjoining landowners, such as walls, fences, and driveways, whose use or responsibility for maintenance may have an effect on the subject property  Yes  No
  - Any encroachments, easements or similar matters that may affect your interest in the subject property  Yes  No
  - Room additions, structural modifications, or other alterations or repairs made without necessary permits.  Yes  No
  - Room additions, structural modifications, or other alterations or repairs not in compliance with building codes  Yes  No
  - Fill (compacted or otherwise) on the property or any portion thereof  Yes  No
  - Any settling from any cause, or slippage, sliding, or other soil problems  Yes  No
  - Flooding, drainage or grading problems  Yes  No
  - Major damage to the property or any of the structures from fire, earthquake, floods, or landslides  Yes  No
  - Any zoning violations, nonconforming uses, violations of "setback" requirements  Yes  No
  - Neighborhood noise problems or other nuisances  Yes  No
  - CC&R's or other deed restrictions or obligations  Yes  No
  - Homeowners' Association which has any authority over the subject property  Yes  No
  - Any "common area" (facilities such as pools, tennis courts, walkways, or other areas co-owned in undivided interest with others)  Yes  No
  - Any notices of abatement or citations against the property  Yes  No
  - Any lawsuits by or against the Seller threatening to or affecting this real property, claims for damages by the Seller pursuant to Section 910 or 914 threatening to or affecting this real property, claims for breach of warranty pursuant to Section 900 threatening to or affecting this real property, or claims for breach of an enhanced protection agreement pursuant to Section 903 threatening to or affecting this real property, including any lawsuits or claims for damages pursuant to Section 910 or 914 alleging a defect or deficiency in this real property or "common areas" (facilities such as pools, tennis courts, walkways, or other areas co-owned in undivided interest with others)  Yes  No

If the answer to any of these is yes, explain. (Attach additional sheets if necessary.): \_\_\_\_\_

- D. 1. The Seller certifies that the property, as of the close of escrow, will be in compliance with Section 13113.8 of the Health and Safety Code by having operable smoke detector(s) which are approved, listed, and installed in accordance with the State Fire Marshal's regulations and applicable local standards.
2. The Seller certifies that the property, as of the close of escrow, will be in compliance with Section 19211 of the Health and Safety Code by having the water heater tank(s) braced, anchored, or strapped in place in accordance with applicable law.

Buyer's Initials ( JB ) ( \_\_\_\_\_ )

Seller's Initials ( SC ) ( MB )

TDS REVISED 4/14 (PAGE 2 OF 3)

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



REAL ESTATE TRANSFER DISCLOSURE STATEMENT (TDS PAGE 2 OF 3)

Property Address: 1904 Myrtle Street, Oakland, Ca 94607

Date: September 24, 2014

Seller certifies that the information herein is true and correct to the best of the Seller's knowledge as of the date signed by the Seller.

Seller [Signature] Date 9-24-14

Seller Michael B. Coldren Date \_\_\_\_\_

**III. AGENT'S INSPECTION DISCLOSURE**

(To be completed only if the Seller is represented by an agent in this transaction.)

THE UNDERSIGNED, BASED ON THE ABOVE INQUIRY OF THE SELLER(S) AS TO THE CONDITION OF THE PROPERTY AND BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY IN CONJUNCTION WITH THAT INQUIRY, STATES THE FOLLOWING:

- See attached Agent Visual Inspection Disclosure (AVID Form)
- Agent notes no items for disclosure.
- Agent notes the following items: \_\_\_\_\_

Agent (Broker Representing Seller) \_\_\_\_\_ (Please Print) By [Signature] (Associate Licensee or Broker Signature) Date 9-24-14

Kenneth Session

**IV. AGENT'S INSPECTION DISCLOSURE**

(To be completed only if the agent who has obtained the offer is other than the agent above.)

THE UNDERSIGNED, BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY, STATES THE FOLLOWING:

- See attached Agent Visual Inspection Disclosure (AVID Form)
- Agent notes no items for disclosure.
- Agent notes the following items: \_\_\_\_\_

Agent (Broker Obtaining the Offer) \_\_\_\_\_ (Please Print) By [Signature] (Associate Licensee or Broker Signature) Date 9-24-14

**V. BUYER(S) AND SELLER(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND/OR INSPECTIONS OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN BUYER AND SELLER(S) WITH RESPECT TO ANY ADVICE/INSPECTIONS/DEFECTS.**

**I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT.**

Seller [Signature] Date 9-24-14 Buyer [Signature] Date 9-24-14

Seller Michael B. Coldren Date \_\_\_\_\_ Buyer Michael B. Coldren Date \_\_\_\_\_

Agent (Broker Representing Seller) \_\_\_\_\_ (Please Print) By [Signature] (Associate Licensee or Broker Signature) Date \_\_\_\_\_

Kenneth Session

Agent (Broker Obtaining the Offer) \_\_\_\_\_ (Please Print) By \_\_\_\_\_ (Associate Licensee or Broker Signature) Date \_\_\_\_\_

**SECTION 1102.3 OF THE CIVIL CODE PROVIDES A BUYER WITH THE RIGHT TO RESCIND A PURCHASE CONTRACT FOR AT LEAST THREE DAYS AFTER THE DELIVERY OF THIS DISCLOSURE IF DELIVERY OCCURS AFTER THE SIGNING OF AN OFFER TO PURCHASE. IF YOU WISH TO RESCIND THE CONTRACT, YOU MUST ACT WITHIN THE PRESCRIBED PERIOD.**

**A REAL ESTATE BROKER IS QUALIFIED TO ADVISE ON REAL ESTATE. IF YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY.**

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525 South Virgil Avenue, Los Angeles, California 90020



Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



- 3. Ongoing or recurring maintenance on the Property (for example, drain or sewer clean-out, tree or pest control service) .....  Yes  No
- 4. Any part of the Property being painted within the past 12 months. ....  Yes  No
- 5. If this is a pre-1978 Property, were any renovations (i.e., sanding, cutting, demolition) of lead-based paint surfaces completed in compliance with the Environmental Protection Agency Lead-Based Paint Renovation Rule. ....  Yes  No

Explanation: \_\_\_\_\_

**C. STRUCTURAL, SYSTEMS AND APPLIANCES:**

**ARE YOU (SELLER) AWARE OF...**

- 1. Defects in any of the following, (including past defects that have been repaired): heating, air conditioning, electrical, plumbing (including the presence of polybutylene pipes), water, sewer, waste disposal or septic system, sump pumps, well, roof, gutters, chimney, fireplace, foundation, crawl space, attic, soil, grading, drainage, retaining walls, interior or exterior doors, windows, walls, ceilings, floors or appliances .....  Yes  No
- 2. The leasing of any of the following on or serving the Property: solar system, water softener system, water purifier system, alarm system, or propane tank (s) .....  Yes  No
- 3. An alternative septic system on or serving the Property. ....  Yes  No

Explanation: \_\_\_\_\_

**D. DISASTER RELIEF, INSURANCE OR CIVIL SETTLEMENT:**

**ARE YOU (SELLER) AWARE OF...**

- 1. Financial relief or assistance, insurance or settlement, sought or received, from any federal, state, local or private agency, insurer or private party, by past or present owners of the Property, due to any actual or alleged damage to the Property arising from a flood, earthquake, fire, other disaster, or occurrence or defect, whether or not any money received was actually used to make repairs .....  Yes  No

Explanation: \_\_\_\_\_

**E. WATER-RELATED AND MOLD ISSUES:**

**ARE YOU (SELLER) AWARE OF...**

- 1. Water intrusion into any part of any physical structure on the Property; leaks from or in any appliance, pipe, slab or roof; standing water, drainage, flooding, underground water, moisture, water-related soil settling or slippage, on or affecting the Property .....  Yes  No
- 2. Any problem with or infestation of mold, mildew, fungus or spores, past or present, on or affecting the Property .....  Yes  No
- 3. Rivers, streams, flood channels, underground springs, high water table, floods, or tides, on or affecting the Property or neighborhood .....  Yes  No

Explanation: \_\_\_\_\_

**F. PETS, ANIMALS AND PESTS:**

**ARE YOU (SELLER) AWARE OF...**

- 1. Pets on or in the Property .....  Yes  No
- 2. Problems with livestock, wildlife, insects or pests on or in the Property .....  Yes  No
- 3. Past or present odors, urine, feces, discoloration, stains, spots or damage in the Property, due to any of the above .....  Yes  No
- 4. Past or present treatment or eradication of pests or odors, or repair of damage due to any of the above. ....  Yes  No

If so, when and by whom \_\_\_\_\_

Explanation: \_\_\_\_\_

**G. BOUNDARIES, ACCESS AND PROPERTY USE BY OTHERS:**

**ARE YOU (SELLER) AWARE OF...**

- 1. Surveys, easements, encroachments or boundary disputes .....  Yes  No
- 2. Use or access to the Property, or any part of it, by anyone other than you, with or without permission, for any purpose, including but not limited to, using or maintaining roads, driveways or other forms of ingress or egress or other travel or drainage .....  Yes  No

Buyer's Initials ( ) ( )

Seller's Initials (SC) (RL)





June 15, 2016

Mr. Hinds,

As we spoke, I was the Listing Agent for the property located at 1902 Myrtle Street Oakland in which you were transferred ownership on March 14th 2015.

The upstairs tenant, Ms. Miller was very cooperative and we were able to complete a walk thru of her unit.

During the walk thru, the unit was in good condition and she stated everything was working condition. At no point in time did Ms. Miller mention that there was dryer in the unit, nor did she mention that there was anything inoperative in her unit. The transfer disclosure statement provide by the owner did not state the existence of a dryer, nor any other malfunctions in the unit. In addition, she never mentioned any complaints about pest or anything in the attic.

I am not sure where she is going with this, but I certify the above statement is true to the best of my recollection.

Regards,

*Kenneth Session*

Kenneth Session

Broker/ CEO

510-568-4200

000042



250 FRANK H. OGAWA PLAZA, SUITE 5313, OAKLAND, CA 94612

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:** T16-0004, Miller v. Hinds  
**PROPERTY ADDRESS:** 1904 Myrtle St., Oakland, CA 94607  
**DATE OF HEARING:** April 18, 2016  
**DATE OF DECISION:** May 23, 2016  
**APPEARANCES:** Kevan L. Miller, Tenant  
Gordon Hinds, Owner

### **SUMMARY OF DECISION**

The tenant petition is granted in part.

### **CONTENTIONS OF THE PARTIES**

On December 31, 2015, the tenant filed a petition contesting a rent increase and alleging a code violation, and decreased housing services.

The owner filed a timely response on January 22, 2016, alleging capital improvements as justification for the rent increase.

The 90-day moratorium on rent increases, passed by Oakland City Council on April 5, 2016, does not apply to this case because it does not apply to noticed rent increases and petitions filed prior to April 5, 2016.<sup>1</sup>

### **THE ISSUES**

- (1) Is the rent increase a valid rent increase?
- (2) Have the tenant's housing services been decreased, and if so, by what amount?

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<sup>1</sup> Oakland City Council Ordinance No. 13360 C.M.S.

000043

## EVIDENCE

### Background and Rent Increase

The tenant moved into the subject unit on May 11, 2006, at an initial monthly rent of \$1,200.00. The subject unit is located in a residential building consisting of three (3) residential units. Prior to the contested rent increases, the monthly rent was \$1,335.00.

The contested rent increase notice was served on November 4, 2015, and proposed to increase the monthly rent from \$1,335.00 to \$1,460.00, effective January 1, 2016.

The current owner purchased the subject property in March of 2015. He testified at the hearing that the rent increase was justified by capital improvements but did not submit any supporting documents. He stated that he limited the rent increase to less than 10%.

### RAP Notice

The tenant testified at the hearing that he has received the RAP Notice with the rent increase notice on November 4, 2015, but has not received the RAP Notice when he first moved in or at any time prior to November 4, 2015. The owner's response also stated that the first RAP Notice was given to the tenant on November 4, 2015.

### Decreased Housing Services

The tenant submitted a list of items as decreased services with her petition. The list was admitted into evidence.<sup>2</sup> The tenant identified the following items at the hearing: (1) loss of a dryer; and (2) critters in the attic space.

1. Dryer: The tenant testified that the previous owner provided a stove, refrigerator, washer and dryer, and that these appliances were at the subject unit when she first moved in. The dryer broke down sometime in 2014 and the previous owner refused to replace it. The tenant also testified that she requested the dryer from the new owner but he also refused to replace it. The owner testified that the lease agreement between the tenant and the previous owner did not list any appliances provided by the owner so his understanding was that he did not have any obligation to replace the dryer. To date, the tenant does not have a dryer.

2. Attic: The tenant testified at the hearing that due to holes in the roof, different critters got inside the attic space, including pigeons, kittens, and raccoons, and that the attic should be cleaned of droppings and feathers. No evidence was submitted as to the notice to the prior owner. No notice of violation was submitted. The tenant also testified that the new owner fixed the roof and that there are no longer critters in the attic and no other problems with the attic space. It is undisputed that the new owner fixed

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<sup>2</sup> Exhibit A

the roof, including sealing of all holes into the attic, immediately after he acquired the property.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### No RAP Notice

The Rent Adjustment Ordinance requires an owner to serve notice of the existence and scope of the Rent Adjustment Program (RAP Notice) at the start of a tenancy<sup>3</sup> and together with any notice of rent increase.<sup>4</sup> An owner may cure the failure to give the RAP Notice at the start of the tenancy. However, a notice of rent increase is not valid if the effective date of increase is less than six months after a tenant first receives the required RAP Notice.<sup>5</sup>

It is undisputed that the tenant received the first RAP Notice on November 4, 2015. Accordingly, the owner may not increase the rent until May 4, 2016, six months after the first RAP Notice was provided to the tenant. Therefore, the proposed rent increase, effective January 1, 2016, is not valid.

### Decreased Housing Services

Under the Oakland Rent Ordinance, a decrease in housing services is considered to be an increase in rent<sup>6</sup> and may be corrected by a rent adjustment.<sup>7</sup> However, in order to justify a decrease in rent, a decrease in housing services must be the loss of a service that seriously affects the habitability of a unit or one that is required to be provided in a contract between the parties. "Living with lack of painting, water leaks and defective Venetian blinds may be unpleasant, aesthetically unsatisfying, but does not come with the category of habitability. Such things will not be considered in diminution of the rent."<sup>8</sup> The tenant has the burden of proving decreased housing services by a preponderance of the evidence.

In a decreased services case, the tenant must establish she has given the owner notice of the problem and the opportunity to fix the problem before she is entitled to relief.

No dryer: When the tenant moved into the subject unit, she had a working dryer. The dryer broke down and needed to be repaired or replaced. It is undisputed that the tenant requested the dryer from the new owner and he refused. As of the date of the hearing, the tenant did not have a working dryer. Although the owner did not acquire the subject property until March of 2015, he stands in the shoes of the successor.

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<sup>3</sup> O.M.C. §8.22.060(A)

<sup>4</sup> O.M.C. §8.22.070(H)(1)(A)

<sup>5</sup> O.M.C. §8.22.060(C)

<sup>6</sup> O.M.C. §8.22.070(F)

<sup>7</sup> O.M.C. §8.22.110(E)

<sup>8</sup> *Green v. Superior Court* (1974) 10 Cal. 3d 616 at p. 637

*Baychester v. San Francisco*, 165 Cal.App.4<sup>th</sup> 1000 (2008). Additionally, the Board has held that a new owner stands in the shoes of a former owner and is liable for obligations of the seller. *McGhee v. Carray-Brown*, T05-0220. This claim represents a loss of service that was originally provided by the previous owner and reduces the package of housing services by 1% (\$13.35) per month from April 1, 2014, through March 31, 2016. The tenant is entitled to a credit of \$320.40 (\$13.35 x 24 months).

Critters in the attic: The tenant testified that there were no longer any problems when the new owner fixed the roof because the holes were sealed and no animals could enter the attic. There was no notice of violation, no evidence of notice to the prior owner, and no evidence was presented that the critters in the attic seriously affected habitability of the subject unit. The new owner fixed the roof and began repairs right after he acquired the property and received the notice of the problem. The owner acted reasonably to address the problem. Therefore, this claim is denied.

### ORDER

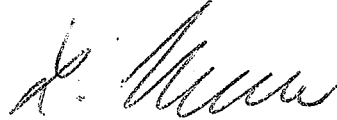
1. Tenant Petition T16-0004 is granted in part.
2. The rent increase is not valid.
3. The monthly rent remains \$1,335.00.
4. The tenant is entitled to a credit of \$320.40 due to past decreased services. This amount may be adjusted by a rent decrease for the next three (3) months in the amount of \$106.80 per month as follows:

Base Rent	\$1,335.00
- tenant rent overpayments for past decreased housing services (\$320.40 divided by 3 months)	106.80
- rent to be paid in June, July and August of 2016 (3 months)	\$1,228.20
- current decreased housing services (1% of \$1,335.00)	13.35
Net current monthly rent	\$1,214.85

5. If the owner wishes to pay the tenant restitution in a lump sum (\$320.40), the owner may do so.
6. The tenant's base rent will be further reduced by \$13.35 (1%), to \$1,321.65, due to the current decreased service for as long as the decreased service continues.
7. Upon correcting the problem identified in this decision as the decreased housing service, the owner may increase the monthly rent by \$26.70 in accordance with the notice requirements of California Civil Code §827.

Right to Appeal: This decision is the final decision of the Rent Adjustment Program Staff. Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within twenty (20) days after service of 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 23, 2016



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**Linda M. Moroz**, Hearing Officer  
Rent Adjustment Program

# PROOF OF SERVICE

**Case Number T16-0004**

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, 5<sup>th</sup> Floor, Oakland, California 94612.

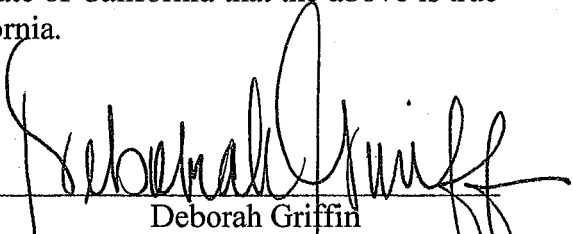
Today, I served the attached **Hearing Decision** by placing a true copy of it in a sealed envelope in City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Suite 5313, 5<sup>th</sup> Floor, Oakland, California, addressed to:

Kevan Lane Miller  
1904 Myrtle Street  
Oakland, CA 94607

Gordan Hinds  
3468 Mt. Diablo Blvd #B115  
Lafayette, CA 94549

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 26, 2016** in Oakland, California.

  
Deborah Griffin  
Oakland Rent Adjustment Program

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KM

<b>CITY OF OAKLAND</b> <b>RENT ADJUSTMENT PROGRAM</b> P.O. Box 70243 250 Frank H. Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721	For filing stamp. RENT ADJUSTMENT PROGRAM 2016 JAN 22 PM 3:37
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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 T - 16-0004**

**OWNER RESPONSE**

**Please print legibly.**

Your Name  Gordon Hinds	Complete Address (with zip code) 3468 Mount Diablo Blvd B115 Lafayette, California 94549	Phone: <u>510-290-4354</u> Email: <u>gphinds@aol.com</u>
Your Representative's Name (if any)	Complete Address (with zip code)	Phone: _____ Fax: _____ Email: _____
Tenant(s) name(s)  Kevan Lane Miller	Complete Address (with zip code) 1904 Myrtle Street Oakland, Ca. 94607	

Have you paid for your Oakland Business License? Yes  No  Number 28058343  
(Provide proof of payment.)

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

There are 3 residential units in the subject building. I acquired the building on 03/13/2015

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

**I. RENTAL HISTORY**

The tenant moved into the rental unit on 2006.

The tenant's initial rent including all services provided was \$ 1335 / 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? 11/04/2015

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 x No \_\_\_\_ . If yes, on what date was the Enhanced Notice given? 11/4/2015 . Did you submit a copy of the Enhanced Notice to the RAP office within 10 days of serving the tenant? Yes x 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	
11/4/2015	01/01/2016	\$ 1335	\$ 1460	<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

**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.

<u>Date of Increase</u>	Banking (deferred annual increases)	Increased Housing Service Costs	Capital Improvements	Uninsured Repair Costs	Fair Return	Debt Service (if purchased before 4/1/14)
01/01/2016	<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"/>
	<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.

### 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, 6<sup>th</sup> 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

1/22/16  
\_\_\_\_\_  
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

Tile-0004 KM/LM

<p><b>CITY OF OAKLAND</b>  <b>RENT ADJUSTMENT PROGRAM</b>          Mail To: P. O. Box 70243          Oakland, California 94612-0243          (510) 238-3721</p>	<p>For date stamp. <b>RENT ADJUSTMENT PROGRAM</b>          2015 DEC 31 AM 11:33</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 <i>KEVAN LAWE MILLER</i>	Rental Address (with zip code) <i>1904 MYRTLE ST. OAKLAND, CA 94607</i>	Telephone <i>510-986-1112</i>
Your Representative's Name	Mailing Address (with zip code)	Telephone
Property Owner(s) name(s) <i>GORDAN HINDS</i>	Mailing Address (with zip code) <i>3468 MT. DIABLO BLVD B115 LAFAYETTE, CA 94549</i>	Telephone <i>925-299-5390</i>

Number of units on the property: \_\_\_\_\_

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 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 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: MAY 11, 2006 Initial Rent: \$ 1200 /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		
<u>11-4-15</u>	<u>1.1.16</u>	\$ <u>1335.</u>	\$ <u>1460.</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<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, 2<sup>nd</sup> 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.

*Kevin Lane Miller*

Tenant's Signature

*12.31.15*

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).

*Kevin Lane Miller*

Tenant's Signature

*12.31.15*

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): neighbor

City of Oakland G. T. Adjustment Program  
P.O. Box 70243 Oakland, Ca. 94612

To Whom it may Concern,

I moved into the flat on Myrtle St. in May 2006. Already on the premises was a stove, refrigerator, washer and dryer. Over the years my landlord, Scott Coldren, replaced the frig and repaired the stove. In 2014 the dryer needed replacement. Landlord refused stating we, the tenants, are now responsible for appliances. Asked new landlord, Jordan Hinds, in 2015 for a dryer. He refused.

Since I moved in there have been raccoons, rodents, opossums, or pigeons in the attic. I am in the top flat. In 2015 the building was painted and eves repaired. The attic needs to be cleaned of feces, feathers, etc. Back landing has dry rot and railings are unsafe.

Sincerely  
Helen Jane Miller  
1904 Myrtle St. Oakland, Ca 94607

000056



## CHRONOLOGICAL CASE REPORT

Case No.: T16-0034  
Case Name: Lima et al v. R & B LLC  
Property Address: 2935 Coolidge Ave., Oakland, CA  
Parties: John Lima (Tenants)  
Badya Algazzali & Rahan Algazzali (Property Owners)

### OWNER APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	January 20, 2016
No Owner Response filed	
Hearing Decision Issued	May 26, 2016
Landlord Appeal filed	June 14, 2016

REGISTRATION FEE \$100  
2016 JUN 14 PM 1:04

**City of Oakland**  
**Residential Rent Adjustment Program**  
250 Frank Ogawa Plaza, Suite 5313  
Oakland, California 94612  
(510) 238-3721

**APPEAL**

**Appellant's Name**  
RAHMAN & BADIA Alqazzali

Landlord  Tenant

**Property Address (Include Unit Number)**  
2935 Coolidge Ave

**Appellant's Mailing Address (For receipt of notices)**  
1210 Estudillo Ave

**Case Number**  
T-16-0034  
**Date of Decision appealed**  
6-10-16

**Name of Representative (if any)**

**Representative's Mailing Address (For notices)**

**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.

DEAR BOARD

06/09/16

I'm making this appeal because this decision is not supported by substantial evidence. The decision was made that the tenant informed us "the owners" about the mice/rodents issue in April 2015 which is untrue because for one we were not the owners until June 2015. The first time she informed us was in december2015 and right away we started to work with tenant and hired a pest company within weeks and they were servicing the property by January. I have proof of this via text messages of the tenant during the month of January saying she came and will return for service in a couple weeks. Please look at exhibit 1. Even in the decision letter, on it was noted that the pictures submitted by the tenants of the mice they testified they took in January 2016. I believe that it was reasonable response of three months to get the pest issue under control and not 9months as was reported.

All the issues that were raised from the mice/rodent to everything else were at the same time I don't recall how the mice issue dates got out of whack. This brings me to the next issue the broken pipe, the tenant was not even aware of it nor we, it was not discovered until the contractor was there doing the work of the other issue which was on march and it was fixed that same week, during the hearing the tenant said that she was ignorant of the broken pipe. I believe that we responded it a reasonable timely matter to all the issues including these two. There were no substantial proof to support her claims and false timeframe reporting.

BADYA ALGAZZALI

LANDLORD

000059

iMessage  
Wed, Dec 16, 11:48 AM

Please can you please order my garbage can

What's the address

2935 Coolidge Ave., Oakland, CA  
94602

And I need pest control to come out here and spray and put poison in my boxes

You said I had service but no one has come

Wed, Dec 16, 4:39 PM

Can I please throw some garbage in you dumpster

Yes

Ty

Ur trash can should be there soon

Thank you so much



Text Message

Send 000060

Tue, Jan 26, 1:06 PM

What's going Terry?

Im trying to send you people to fix the problem ur taking your time to meet them so u can can city inspectors out

I'm trying to work with you but your are not working with me

I talked to Juan already, he will be here between 3-5

Tue, Feb 9, 11:46 AM

Did Terminix come by??

They should came last week!

Yes they did

They come in two weeks

Sat, Feb 27, 5:20 PM

Nvm



Text Message

Send 000061



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:** T16-0034, Lima, et al. v. R&B, LLC

**PROPERTY ADDRESS:** 2935 Coolidge Ave., Oakland, CA

**DATE OF HEARING:** May 10, 2016

**DATE OF DECISION:** May 26, 2016

**APPEARANCES:**  
John Lima (Tenant)  
Terry Lee Lima (Tenant)  
Badya Algazzali (Owner)  
Rahan Algazzali (Owner)

## **SUMMARY OF DECISION**

The tenants' petition is partly granted.

## **CONTENTIONS OF THE PARTIES**

The tenants filed a petition which alleges that a proposed rent increase from \$1,375 to \$1,800 per month, effective January 5, 2016, exceeds the CPI Adjustment and is unjustified or is greater than 10%; that they have never received the form Notice to Tenants (RAP Notice); that at present there exists a health, safety, fire or building code violation in their unit; and that their housing services have been decreased, as follows:

- Mice / rat infestation
- Broken pipe under house
- Heat does not work well due to vent problem
- No screens
- Back door has no knob or lock
- Inadequate hot water and water pressure

000062

- Toilet routinely clogged and often backs up
- Electricity cannot handle numerous appliances at once

The owners did not file a response to the tenants' petition.

### THE ISSUES

- (1) Is there a valid reason for the owners failing to file a response to the tenants' petition?
- (2) If not, what is the effect upon the owners' participation in the Hearing?
- (3) When, if ever, did the tenants receive the RAP Notice?
- (4) Is there a justification for the challenged rent increase?
- (5) Have the tenants' housing services been decreased and, if so, by what percentage of the total housing services that are provided by the owner?

### EVIDENCE

No Owner Response: At the Hearing, the owners testified that they did not file a response to the tenants' petition because this was their first experience with the Rent Adjustment Program and also that they were thinking of moving into the unit.

RAP Notice: The tenants testified that they have never received the RAP Notice. The owners did not dispute this testimony.

Rent History: The tenants' sworn petition states that they moved into the unit on September 1, 2012, at a rent of \$1,375 per month. They testified that they have continued to pay rent in this amount.

#### Decreased Housing Services:

Mice / rat infestation: The tenants testified that, beginning in early January 2013, there were "mice everywhere" in the unit. They immediately reported the problem to the prior owner, who took steps to exterminate the mice, and the situation was under control by May 2013. However, many mice again appeared in December 2014, and the tenants reported this to the owners in April 2015. The problem was under control by March 2016. The tenants submitted a number of photographs that they testified they took in their unit in January 2016.<sup>1</sup> These photographs depict a number of dead mice and a great number of what appear to be mice droppings.

Broken pipe: The tenants testified that in February 2015, they noted sewage on the ground outside their unit. They reported this to the owners at that time, and a broken pipe that caused this problem was repaired in March 2016.

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<sup>1</sup> Exhibit Nos. 4A through 4E. These Exhibits, and all others to which reference is made in this Decision, were admitted into evidence without objection.

Heat: The tenants testified that there are heat vents in 6 rooms in their unit. In January 2016, they reported to the owners that there was no heat coming from the vents in 3 of the rooms. The owners repaired the vents in March 2016.

Screens: The tenants testified that there are no screens, and there were no screens on the windows when they moved in.

Back door: The tenants testified that the only lock on the back door is a sliding bolt that is operated from the inside. This was the same when they moved in.

Hot water and water pressure: The tenants testified that the water pressure in one of the bathroom sinks had been very low and took a long time to get hot. This was the situation when they moved in. They reported this problem to the owners in January 2016, and it was repaired by March.

Toilet: The tenants testified that, beginning in December 2014, a toilet emitted a bad smell, and would frequently back up. They reported this to the present owners when they took over in April 2015, and it was repaired, along with the associated broken drain pipe, in March 2016.

Electricity: The tenants testified that fuses often blow if numerous appliances are used at the same time. They are unsure if they reported this to the owners.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

No Owner Response: The Rent Adjustment Ordinance<sup>2</sup> requires an owner to file a response to a tenant petition within 30 days after service of a notice by the Rent Adjustment Program that a tenant petition was filed. "If a tenant files a petition and if the owner wishes to contest the petition, the owner must respond . . ." <sup>3</sup> The response form allows an owner to state one or more justifications for the proposed rent increase. The owners' reason for not filing a response is not legally sufficient. Therefore, the owners' participation in the Hearing was limited to cross-examination and presenting a summation. <sup>4</sup>

Further, each party has a Due Process right to know what claims the other party is making. Since no response was filed, the tenants have no notice of a claimed justification for the proposed rent increase. Therefore, no rent increase will be allowed. Before considering the tenants' claims of decreased housing services, the rent remains \$1,325 per month.

RAP Notice: The Rent Adjustment Ordinance requires an owner to serve the RAP Notice at the start of a tenancy<sup>5</sup> and together with any notice of rent increase or change in terms of a tenancy.<sup>6</sup> An owner may cure the failure to give notice at the start of the tenancy. However, a notice of

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<sup>2</sup> O.M.C. Section 8.22.090(B)

<sup>3</sup> O.M.C. Section 8.22.070(C)

<sup>4</sup> Santiago v. Vega, Case No. T02-0404

<sup>5</sup> O.M.C. Section 8.22.060(A)

<sup>6</sup> O.M.C. Section 8.22.070(H)(1)(A)



rent increase is not valid if the effective date of increase is less than six months after a tenant first receives the required RAP notice.<sup>7</sup> The uncontested testimony of the tenants was credible. It is found that the tenants have never received the RAP Notice. This is another reason to invalidate the rent increase notice.

Decreased Housing Services: Under the Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent<sup>8</sup> and may be corrected by a rent adjustment.<sup>9</sup> 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. In order for a tenant's claim for decreased housing services to be granted, an owner must have notice of a problem and a reasonable opportunity to make necessary repairs.

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.<sup>10</sup> Where the RAP notice has never been given, such as in this case, tenants can be granted restitution for rent overpayments due to decreased housing services for a maximum of 3 years.<sup>11</sup>

It does not matter whether a problem existed before the current owner took over. A current owner "stands in the shoes" of the prior owner. Section 8.22.020 of the Rent Adjustment Ordinance defines "Owner" as the "Owner . . . of a Covered Unit that is leased or rented to another, and the representative, agent **or successor of such owner** . . ." (emphasis added). Regulation 2.3 defines "Landlord" as "synonymous with owner or lessor of real property . . . **or successor of such owner or lessor.**" (emphasis added).

Mice / rat infestation: The photographs submitted by the tenants are quite graphic, and reflect a serious problem. Rodents are a significant health risk, and if the owners had hired a professional exterminator when they were notified in April 2015, the situation would likely have been resolved by June 1, 2015. The problem continued until March 2016. This reduced the package of housing services by 10% from June 1, 2015 until March 1, 2016. As set forth on the Table below, the tenants overpaid rent during that time.

Broken pipe / Toilet: These problems are related. It is apparent that the drain under the toilet backed up because of a clog in the sewer line, which eventually caused raw sewage to emerge on the ground outside the unit. Sewage overflow on the ground surface is a Priority 1 Condition, a term defined in the Regulations as a "major hazardous or uninhabitable condition."<sup>12</sup> The situation should reasonably have been investigated and repaired by June 1, 2015; it was not repaired until March 2016. This reduced the package of housing services by

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<sup>7</sup> O.M.C. Section 8.22.060(C)

<sup>8</sup> O.M.C. Section 8.22.070(F)

<sup>9</sup> O.M.C. Section 8.22.110(E)

<sup>10</sup> O.M.C. Section 8.22.090(A)(2)

<sup>11</sup> Appeal Decision in Case No. T06-0051, Barajas/Avalos v. Chu

<sup>12</sup> Regulations Appendix, Section 2.8

10% from June 1, 2015 until March 1, 2016. As set forth on the Table below, the tenants overpaid rent during that time.

Heat: This problem was repaired within a reasonable time, and the claim is denied.

Screens: There were no screens when the tenants moved in, so their housing services were not reduced. Further, screens are not required by the Building Code. The claim is denied.

Back door: This was the situation at the start of the tenancy, and there is no evidence that this is a Code violation. Therefore, the claim is denied.

Hot water and water pressure: This condition was repaired within a reasonable time, and the claim is denied.

Electricity: This claim is denied for two reasons. First, there is no evidence that the owners were given notice. Secondly, older units frequently do not have enough electric capacity to accommodate a large number of appliances at the same time, and the condition was unchanged from the start of the tenancy.

Conclusion: As set forth on the following Table, because of decreased housing services, the tenants overpaid rent in the amount of \$2,475. The overpayment is ordered repaid over a period of 12 months.<sup>13</sup> The rent is temporarily reduced by \$206.25 per month, to \$1,168.75 per month, beginning with the rent payment in June 2016 and ending with the rent payment in May 2017.

**VALUE OF LOST SERVICES**

Service Lost	From	To	Rent	% Rent Decrease	Decrease /month	No. Months	Overpaid
Rodents	1-Jun-15	29-Feb-16	\$1,375	10%	\$137.50	9	\$1,237.50
Pipe & Toilet	1-Jun-15	29-Feb-16	\$1,375	10%	\$137.50	9	\$1,237.50
<b>TOTAL LOST SERVICES</b>							<b>\$2,475.00</b>

**RESTITUTION**

MONTHLY RENT	\$1,375
<b>TOTAL TO BE REPAYED TO TENANT</b>	<b>\$2,475.00</b>
TOTAL AS PERCENT OF MONTHLY RENT	180%
AMORTIZED OVER 12 MO. BY REG. IS	<b>\$206.25</b>

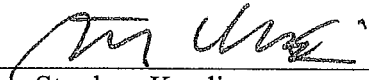
**ORDER**

1. Petition T16-0034 is partly granted.
2. The Base Rent is \$1,375 per month.

<sup>13</sup> Regulations, Section 8.22.110(F)

3. Because of past decreased housing services, the tenants overpaid rent in the amount of \$2,475. This overpayment is adjusted by a rent reduction for 12 months.
4. The rent is temporarily reduced by \$206.25 per month, to \$1,168.75 per month, beginning with the rent payment in June 2016 and ending with the rent payment in May 2017.
5. In June 2017, the rent will increase to \$1,375 per month.
6. The owners may otherwise be eligible for a rent increase, with an effective date not less than six months after the tenants are given the RAP Notice.
7. 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 26, 2016

  
\_\_\_\_\_  
Stephen Kasdin  
Hearing Officer  
Rent Adjustment Program

# PROOF OF SERVICE

Case Number T16-0034

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, 5<sup>th</sup> 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, 5<sup>th</sup> Floor, Oakland, California, addressed to:

Jennie Jones  
2935 Coolidge Avenue  
Oakland, CA 94602

John Lima  
2935 Coolidge Avenue  
Oakland, CA 94602

Rey Lopez  
2935 Coolidge Avenue  
Oakland, CA 94602

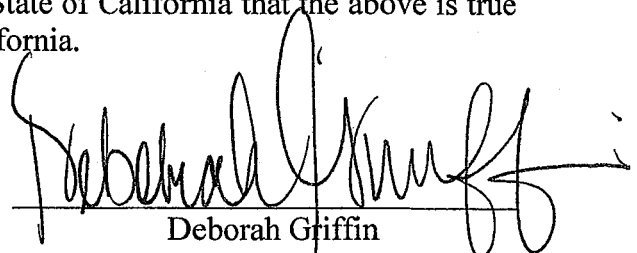
Terry Lima  
2935 Coolidge Avenue  
Oakland, CA 94602

Mike Gazzalis  
1210 Estudillo Avenue  
San Leandro, CA 94577

R&B LLC  
1210 Estudillo Avenue  
San Leandro, CA 94577

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 26, 2016** in Oakland, California.

  
Deborah Griffin  
Oakland Rent Adjustment Program

000068

Tile 00324 Re/ ~~SK~~ ~~JM~~ ~~AAA~~ SK

<b>CITY OF OAKLAND</b> <b>RENT ADJUSTMENT PROGRAM</b> Mail To: P. O. Box 70243 Oakland, California 94612-0243 (510) 238-3721	For date stamp. 2016 JAN 20 AM 10:29
--	--------------------------------------

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 <b>JOHN LIMA and TERRY LIMA, JENNIE JONES Rey Lopez</b>	Rental Address (with zip code) <b>2935 Coolidge AVE          OAKLAND, CA 94602</b>	Telephone <b>510-677-7642 or          510-227-0343</b>
Your Representative's Name	Mailing Address (with zip code)	Telephone
Property Owner(s) name(s) <b>Mike Gazzalis          R + B LLC</b>	Mailing Address (with zip code) <b>1210 Estudillo AVE          SAN LEANDRO, CA</b>	Telephone <b>510-377-1207</b>

Number of units on the property: 2

Type of unit you rent (circle one)	<input checked="" type="radio"/> House	<input type="radio"/> Condominium	<input type="radio"/> Apartment, Room, or Live-Work
Are you current on your rent? (circle one)	<input checked="" type="radio"/> Yes	<input type="radio"/> 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 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 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: Sept 1, 2012 Initial Rent: \$ 1325.<sup>00</sup> /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. via Text message

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		
<u>11/2015</u>	<u>1/5/2014</u>	<u>\$ 1325<sup>00</sup></u>	<u>\$ 1800</u>	<input type="checkbox"/> Yes <input checked="" 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.

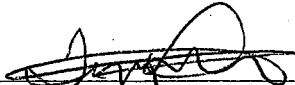
- Are you being charged for services originally paid by the owner?  Yes  No
- Have you lost services originally provided by the owner or have the conditions changed?  Yes  No
- Are you claiming any serious problem(s) with the condition of your rental unit?  Yes  No

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, 2<sup>nd</sup> 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.

  
\_\_\_\_\_  
Tenant's Signature

Jan 15 2016  
\_\_\_\_\_  
Date

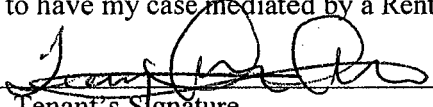
**V. MEDIATION AVAILABLE:** Mediation is an entirely voluntary process to assist you in reaching an agreement with the owner. If both parties agree, you have the option to mediate your complaints before a hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal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

Jan 5, 2016  
\_\_\_\_\_  
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): Work of Community Organization

Jan 15, 2016

Terry Lee Lima  
John M Lima  
Jennie R. Jones  
Rey Lopez  
2935 Coolidge Ave  
Oakland CA 94602

Decrease in services

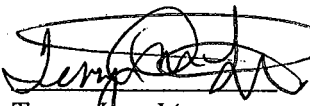
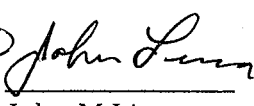
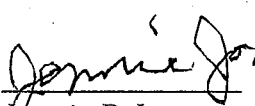
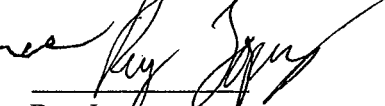
No garbage collection between August and late December  
4months x \$100=\$400

Habitability Issues

- 1) mice/rat infestation
- 2) Broken Pipe under house
- 3) Heat doesn't work well due to vent issue
- 4) No screens on any windows
- 5) Back door has no door knob or lock
- 6) hot water isn't hot (bathroom 1)
- 7) Low water pressure (bathroom 1)
- 8) Toilet routinely clogged and backs up regularly due to plumbing issue (bathroom 2)
- 9) Electricity can't handle numerous appliances at once

We feel that due to the egregious violations of California Civil Code 1941.1 (Warranty Of Habitability) that we are entitled to the full amount of rent we paid Mr Gazzali. Mr Gazzali is aware of the condition of the house. We have notified him of the most serious issues and the general state of disrepair many times since he has been the owner. Mr gazzali's only response to these serious issues has been to attempt to raise our rent and evict us via text message. We have paid, Mr. Gazzali \$1325 a month since he became the owner of our building in 3-2015

$$\begin{array}{r}
 \$1325 \\
 \times \quad 9 \text{ Months} \\
 \hline
 = \quad 11,925
 \end{array}$$

Terry Lee Lima      John M Lima      Jennie R. Jones      Rey Lopez

*I have added 22 pictures*



John Lima & Terry Lima

January 5, 2016

2935 Coolidge Ave

Oakland Ca 94602 510-677-7642

To Mike Gazallis

R & B LLC

2941 Coolidge Ave

Oakland Ca 94602

This letter is to inform you have not yet renewed our contract, so therefore we are Practicing our Legal Rights as tenants of your property at 2935 Coolidge Ave Oakland Ca 94602.

I have some information that I picked up for you that you should know. We also are seeking Legal Advice on our rights as Tenant. We feel that our rent is a big jump from \$1325.00 to 1800.00? We can see you raise our Rent a \$100.00 more a month. The Law says the Landlord or Owner can raise the rent in a 12 month period.

Also I Terry Lee gave you a copy of our Rental agreement On Dec 11, 2015. Which I thought I gave the Real Estate Agent, it was a copy that I gave. Also I am including the verbal Promise that you made to me on the things you said that would get done to the house before the rent increase.

Things That needs To be fixed the ½ bathroom in the 3<sup>rd</sup> bedroom Toilet keeps over flowing since we moved in there also the is a Broken Pipe where the waste goes.

There has never been a lock on the back bedroom door to the back yard, no Screens on any of the windows. Mice and Rat Problems Since you took over. I have asked Many times over Please and been very nice about it, knowing how busy you have been.

We have known you for 6 months and we have complied with everything you have asked us to do as good neighbors and tenants and you keep putting us at the bottom of your list.

This is how will be taking care of things the right Way with Respect.

Sincerely,

John Lima & Terry Lee Lima

000073