HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD REGULAR MEETING

April 13, 2017
7:00 P.M.
CITY HALL, HEARING ROOM #1
ONE FRANK H. OGAWA PLAZA
OAKLAND, CA

AGENDA

FILED
OFFICE OF THE CITY CLERK
OAKLAND
2017 APR -4 PM 3:02

1. CALL TO ORDER

2. ROLL CALL

3. CONSENT ITEMS

   i. Approval of minutes March 23, 2017

4 OPEN FORUM

5. NEW BUSINESS

   i. Appeal Hearings in cases:

      a. T15-0263; Panganiban v. Chang

      b. T16-0198; Chamales v. Farley

6. SCHEDULING AND REPORTS

   1. Board Panel minutes March 16, 2017

7. 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 services animals or emotional support animals.

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

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

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

CITY OF OAKLAND
HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD

Regular Meeting
March 23, 2017
7:00 p.m.
City Hall, Hearing Room #1
One Frank H. Ogawa Plaza, Oakland, CA

DRAFT MINUTES

1. CALL TO ORDER

The HRRRB was called to order at 7:15 p.m. by Board Chair, Jessie Warner

2. ROLL CALL

MEMBER	STATUS	PRESENT	ABSENT	EXCUSED
Noah Frigault	Tenant	X		
Ubaldo Fernandez	Tenant Alt	X		
Edward Lai	Homeowner Alt	X		
Karen Friedman	Owner	X		
Jessie Warner	Homeowner	X		
Kevin Blackburn	Homeowner Alt	X		
Ramona Chang	Owner	X		

Staff Present

Richard Illgen, Deputy City Attorney
Kent Qian, Deputy City Attorney
Connie Taylor, Rent Adjustment Program Manager

3. CONSENT ITEMS

i. Approval of minutes, March 9, 2017

N. Frigault made motion to approve consent items as amended. U. Fernandez seconded. The Board voted as follows:

Aye: N. Frigault, U. Fernandez, E. Lai, K. Friedman, J. Warner, J. Warner, R. Chang
Nay: 0
Abstained: K. Blackburn

The motion carried.

4. OPEN FORUM

Ann McClain

5. OLD BUSINESS

i. Discussion and Possible Action on Just Cause Regulations

Speakers:

James Vann
Brian Geiser

Board Discussion

After Board review and discussion of Regulations presented by Staff, N. Frigault made a motion to adopt the Regulations with the correction of typos and the removal of Section 8.22.360A9, Section C i. & ii. A and B through number viii (pages 11 and 12 date stamp of the draft). U. Fernandez seconded. The Board voted as follows:

Aye: N. Frigault, U. Fernandez, J. Warner, K. Blackburn
Nay: E. Lai, K. Friedman, R. Chang
Abstained: 0

The motion carried.

ii. Board Training

Deputy City Attorneys Richard Illgen and Kent Qian discussed Board procedures (Robert's Rules of Order) and appeal procedures.

6. NEW BUSINESS

i. Discussion and Possible Action on Placement of Board Panel Minutes

Speakers:

Brian Geiser

Board Discussion

After discussion, the Board decided that the appeal panel minutes should appear under Scheduling and Reports, once a month, as a reference item. If too much time is spent on discussing panel minutes, the Board will revisit the matter.

No vote was necessary on this matter.

7. SCHEDULING AND REPORTS

The following items to be agenized:

1. Further training for the Board regarding recent Ordinance and Regulation changes.
2. In April, present a report at a regular meeting regarding the appeal backlog.
3. Discussion/report on warehouse live/work spaces.

8. ADJOURNMENT

J. Warner made motion to adjourn. N. Frigault seconded. The meeting was adjourned by consensus at 9:55 p.m.

CHRONOLOGICAL CASE REPORT

Case No.:	T15-0263
Case Name:	Panganiban v. Chang
Property Address:	338 Lenox Ave., Apt. 2, Oakland, CA
Parties:	Kim Panganiban (Tenant) Symon and Patty Chang (Property Owners)

TENANT APPEAL:

Activity	Date
Tenant Petition filed	May 20, 2015
Landlord Response filed	June 24, 2015
Hearing Decision issued	December 8, 2015
Tenant Appeal filed	December 23, 2015

City of Oakland Residential Rent Adjustment Program 250 Frank Ogawa Plaza, Suite 5313 Oakland, California 94612 (510) 238-3721	2015 DEC 23 PM 2:14 **APPEAL**
Appellant's Name KIM PANIGANIBAN	Landlord ☐ Tenant ☑
Property Address (Include Unit Number) 338 Lenox Ave #2 Oakland, CA 94610	
Appellant's Mailing Address (For receipt of notices) 338 Lenox Ave #2 Oakland, CA 94610	**Case Number** T-15-0263 **Date of Decision appealed** 12/8/15
Name of Representative (if any) Andrew Wolff, Esq	**Representative's Mailing Address (For notices)** Law Offices of Andrew Wolff 1970 Broadway, #210 Oakland, CA 94612

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. X 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* 15. *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 DEC 23, 2005, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

Name	SYMON CHANG + PATTY CHANG
Address	1088 DOHENY TERRACE
City, State Zip	SUNNYVALE, CA 94085
Name	
Address	
City, State Zip	

SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	**DATE** 12-23-15

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.

Kim Panganiban
338 Lenox Ave #2
Oakland, CA 94610

Case No. T-15-0263

ATTACHMENT TO APPEAL

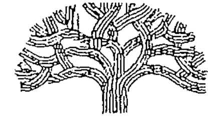
Ms. Kim Panganiban ("Tenant") appeals the decision in the above mentioned case that was issued on or around December 8, 2015. A true and correct copy of the Hearing Decision issued December 8, 2015 is attached hereto as **Exhibit A**.

Within that decision it was ruled that the tenants claims of decreased housing services was not timely filed (See page 7 of Exhibit A). However, Ms. Panganiban appeals this decision on the basis that she gave the Changs (the "Landlord") notice of various defects after which the Changs informed her that they would make the repairs. Ms. Panganiban relied the Chang's assertions that the repairs would be made and therefore did not file a Rent Board Petition within the 60 day deadline.

Attached hereto as **Exhibit B** are true and correct copies of e-mails between Symon Chang and Andrew Wolff, Esq, Ms. Panganiban's attorney in a related matter. On or around December 5, 2014, Mr. Wolff informed Mr. Chang of the repairs that needed to be made to the unit including but not limited the heater, front door gap, door locks, the shower rod, blinds, holes in the wall, cable wiring, and bedroom door. Then, on or around December 8, 2014, Mr. Chang responded stating that most of the items would be addressed as soon as possible. However the items were not addressed therefore Ms. Panganiban filed the Rent Board Petition on or around May 20, 2015.

For the above referenced reason the Rent Board should reconsider their decision as it is clear that Ms. Panganiban's petition was not untimely filed because of neglect but instead because she justifiably relied on Mr. Chang's assertions that the repairs would be made.

EXHIBIT A



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: T15-0263; Panganiban v. Chang

PROPERTY ADDRESS: 338 Lenox Ave, Apt 2, Oakland, CA

DATES OF HEARING: October 21, 2015; December 4, 2015

DATE OF DECISION: December 8, 2015

APPEARANCES: Kim Panganiban, Tenant
Gary Cloutier, Attorney for Tenant (10/21/15)
Symon Chang, Owner
Patty Chang, Owner

SUMMARY OF DECISION

The tenant's petition is denied.

CONTENTIONS OF THE PARTIES

The tenant filed a petition which alleges that a current proposed rent increase from $1,167 to $1,232.52, effective June 1, 2015, exceeds the CPI Rent Adjustment and is unjustified and that her housing services have decreased due to having to move out of the unit for six months because of flooding in the unit; because the owner removed the garbage disposal and did not replace it; because of lack of weatherproofing; because the owner removed the shower doors and did not replace them; because the heater vent is filled with dust and is a hazard; because the owner replaced a brand new stove with a broken stove; because the front screen door doesn't lock; because the cable provider was unable to install cable because the jack was near the heater; and because the phone jack in the living room does not work. The tenant also alleged that she lost property due to the flooding in July of 2014.

The owner filed a response to the petition, which alleges that the contested rent increase is justified by banking that was approved in a prior Hearing Decision (L14-0062), and denies any decreased housing services.

THE ISSUES

1. Was the rent increase approved in a prior case?
2. Were the tenant's claims for decreased housing services timely filed?
3. For those claims that were timely filed, did the tenant experience a decrease in housing services?
4. Does the Rent Adjustment Program have jurisdiction of the tenant's claims of having to move out of the unit and damage to her property due to flooding?
5. If restitution is owed, what is the tenant's rent?

EVIDENCE

History: The tenant testified that she moved into the subject unit in November of 2003 at an initial rent of $875 a month. On July 2, 2014, there was a leak in the upstairs unit that caused substantial flooding in her unit. The tenant was required to move out of her unit so that repairs could be made. She moved out of the unit while the work was being done. The work was completed in December of 2014. The tenant was given the keys to move back in sometime in late December of 2014 and began paying rent in January of 2015. The tenant further testified that because of a health condition at the time, she did not move back in to the unit right away. While she did start coming to the unit in January and February, she didn't move her things back in or start spending the night in the unit until approximately March 1, 2015.

On March 3, 2014, the owners filed a Petition in case L14-0062, in which they sought a rent increase based on banking. That case was consolidated with several tenant petitions (cases T14-0551, T14-0540 and T15-0046). A Hearing Decision was issued on April 17, 2015. In that decision the owner petition was granted and the Order allowed the owner to increase the tenant's combined rent (for her apartment and parking) to a maximum of $1,233.52 based on banking.

The owner, Symon Chang, testified that on April 23, 2015, he served a *Notice of Change of Terms of Tenancy*[1] on the tenant purporting to increase the rent to $1,233.52 per month, effective June 1, 2015. The owner testified that this rent increase was served pursuant to the Order in the prior case. The tenant testified that when she moved back into the unit she signed a new lease which specified that the rent was $1,167.00.

On January 23, 2015, the tenant filed a civil complaint in Superior Court against the owner for damages arising from the condition of her rental unit. The tenant claimed that the owners breached the implied warranty of habitability by:

> "failing to properly maintain the property, by failing and refusing to make repairs, and by delaying in making necessary repairs to the Subject Premises after

---

[1] Exhibit 1. This Exhibit and all other Exhibits referred to in this Hearing Decision other than Exhibit 7, was admitted into evidence without objection.

obtaining knowledge and/or being notified of the conditions of the subject Premises."[2]

The tenant alleged in the lawsuit that the failure to make repairs caused the flooding (see First Cause of Action and Sixth Cause of Action.)

On her petition, which the tenant filled out under penalty of perjury, the tenant stated that she first received the RAP Notice from the owner on July 3, 2014. The owners stated on their response, that they first gave the tenant the RAP Notice in December of 2012.

The tenant testified that she has been paying rent in the amount of $1,167 since June 1, 2015. The owner agreed with this testimony.

Decreased Housing Services:

Displaced for 6 months and Damaged Property: The tenant was not permitted to testify about these things because of lack of jurisdiction (See below.)

Garbage Disposal: The tenant testified that prior to the flood there was a garbage disposal in her kitchen. After the work was done in her unit after the flood there was no longer a disposal. She discovered this in December of 2014 when she, her attorney, Andrew Wolff, and the owner did a "walk through" of the premises and she complained about the loss of the disposal in that meeting and she informed the owner that she wanted him to replace it. A "Move-In/Move-Out Check List" was completed at that walk through and the lack of a garbage disposal is listed.[3]

The owner testified that he did see that the lack of a garbage disposal was on the "Move-In/Move-Out Checklist" but he was told by the tenant's attorney that the list was just to document the conditions and was not necessarily requesting a garbage disposal. Other than this list, the owner never received a complaint from the tenant about the lack of a garbage disposal.

Shower Doors: The tenant testified that before the flood there were shower doors in her bathroom shower. When she moved back in there were no longer shower doors. On the day of the pre-move in inspection (and on the first visit she made to the apartment earlier in December of 2014), she complained about the lack of shower doors. The owner said he was not going to replace the shower doors.

The owners testified that the tenant actually came to view the apartment on more than one occasion in December of 2014. On the first occasion, the tenant complained about

[2] Exhibit 7. The owner objected to the introduction of the *Complaint for Damages* into evidence as it had not been provided by either side 7 days prior to the Hearing. The Hearing Officer requested a copy of the complaint. Since both parties knew about the pending lawsuit, no one was harmed by the introduction of the document into evidence. It was requested by the Hearing Officer to determine whether or not she still had jurisdiction over the tenant's claims.

[3] Exhibit 2, page 1

the lack of a shower door. On the second occasion, which is when the tenant filled out the checklist, she did not complain about the lack of a shower door.

Heating Vent: The tenant testified that because of the construction in her unit the heating vents were very dirty when she moved back in. There is one heating vent on the floor of her unit, which she vacuumed. However, there are two other vents high up on the walls, and she was unable to reach them herself.

Because of how dirty the vent was, she did not turn on the heat at all in the winter of 2015. The tenant testified that she was not cold. She does not know if the temperature in her apartment was ever below 68°.

Mr. Chang testified that the tenant never complained to him about the condition of the heater vent. He did, however, send someone to the unit to respond to the list of problems on the tenant's petition. A handyman was sent to the unit in September of 2015. He was not able to confirm that there were any problems with the heating vent[4].

Lack of weatherproofing: The tenant testified that when she did her walk through of the premises before moving back in, there was water on the window sill. However, since that day, she has not seen any other water entry. She complained about the moisture on the day of the inspection, but not at any other time.

The owner testified that there was moisture on the window sill on the date of the inspection by the tenant, and he called the contractor who caulked the window before the tenant moved back in.

Additionally, the tenant complained that her living room windows did not close properly beginning from the time she moved into the unit. This condition continued to get worse during the time she was living there. Occasionally, in order to close the window she would have to go outside. To deal with the problem she wouldn't open these windows. About a month ago the owner sent someone to install new handles on the living room windows and they now operate properly.

The tenant testified that she has no problems relating to the security of her windows nor are there any gaps in the windows.[5]

Stove problems: The tenant testified that before the flood she had a working stove. When she returned after the flood there was a different stove in her unit which had been painted over and she was concerned about the paint. She consulted an appliance store and was told that stoves should not be painted and could cause toxins to be released. The tenant complained to the owner about this stove at the walk through and again after she moved in. The owner replaced the stove with a different stove within a few weeks after she complained. This occurred likely in January of 2015.

---

[4] See Exhibit 3.

[5] The tenant testified that she did not prepare the list of decreased services that was provided with her Tenant Petition, but that it was prepared by her attorney's office.

The tenant further testified that there was something wrong with this new stove that was provided by the owner in that whenever she tried to "bake" something the stove would operate on "broil". She complained to the owner who ordered a part for the stove. It was only a few weeks that she had this non-functioning stove. The tenant testified that it was by approximately February of 2015 that the owner had fixed the stove and it has been working correctly ever since.

Mr. and Mrs. Chang testified that the tenant did complain to them about the stove in December of 2014. They replaced the stove in mid-January. Then she complained again about the new stove in March of 2015 and Lapham, who took over management, handled the problem.

Front Screen Door: The tenant testified that she has had a problem with the front door screen not locking since she moved into the unit. The door would swing back and forth and slam. She complained to the owner about this problem in December of 2014, before she moved back into the unit. No action has been taken by the owner.

The tenant testified that she did something to fix this door and it now doesn't swing back and forth. It is no longer a problem for her.

The owner testified that the tenant never complained to him about the front door screen. The owner also produced a "*Maintenance Request*" from Lapham Company (the current managers of the property) which shows that on May 13, 2015, the tenant filed a request to fix her outside door from slamming.[6] On September 15, 2015, a repair person reviewed problems in the tenant's unit and found that the front door screen does lock.[7] A report from *APT Maintenance,* who performed the repairs, states that "Tech confirmed that screen door latches and locks, tech found latch functional when closed properly."[8]

Cable Jack: The tenant testified that before she moved out of the unit because of the flood, there were two cable jacks in her unit, one in the living room on the side of her living room opposite the heater and the other in her bedroom. After she moved back in, the cable jack in the living room was adjacent to the heater and the one in the bedroom had been removed. She noticed this change when she moved back into the unit on approximately March 1, 2015. She further testified that at one of the inspections in December she noticed that the cable jack had moved and she complained to Mr. Chang about it and asked him to move it.

The owner testified that the tenant never complained to him about the cable jack.

[6] Exhibit 4
[7] Exhibit 3
[8] Exhibit 6

Phone Jack: The tenant testified that when she moved back into the unit on approximately March 1, 2015, she noticed that her phone jack in the living room, which had worked previously, was no longer working.

The owner testified that the tenant never complained about the phone jack.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Was the rent increase approved in a prior case?

On April 17, 2015, a *Hearing Decision* was issued by the *RAP*, in cases L14-0062, T25-0540, T14-0051 and T15-0046. In those combined cases the Hearing Officer ordered that the rent remained $1,167 per month and that "The owner may increase the combined rent to a maximum of $1,233.52 per month after giving the tenant notice pursuant to Civil Code § 827 and providing the tenant with the required form Notice to Tenants."[9] The tenant did not appeal this decision and it became final.

On April 23, 2015, the owner sent a rent increase notice pursuant to the Order in the prior case.

The tenant contends that this rent increase is not valid because she had just signed a new lease in December of 2014, and hence, the rent increase was a second increase within a year. However, the Rent Adjustment Ordinance provides that "A rent increase following an owner's petition is operative on the date the decision is final and following a valid rent increase notice based on the final decision." O.M.C. § 8.22.070(D)(6). If the tenant believed that the rent increase approved in L14-0062 was a violation of the Ordinance, she needed to appeal that decision.

Allowing a tenant to contest a rent increase after a *Landlord Petition* is granted would in effect give the tenant a second bite of the apple. The Hearing Decision in the prior case is final. The rent increase is valid.

The tenant's rent, effective June 1, 2015, is $1,233.52 per month.

When did the tenant first receive the "RAP Notice"?

The Rent Adjustment Ordinance requires an owner to serve the *RAP Notice* at the start of a tenancy[10] and together with an y notice of rent increase or change in the terms of a tenancy.[11] An owner can cure the failure to give notice at the start of the tenancy, but may not raise the rent until 6 months after the first *RAP Notice* is given.[12]

---

[9] See Hearing Decision in combined cases L14-0062 (Chang v. Panganiban), and T14-0540, T14-0051 and T15-0046 (Panganiban v. Chang)
[10] O.M.C. § 8.22.060(A)
[11] O.M.C. § 8.22.070(H)(1)(A)
[12] O.M.C. § 8.22.060 (C)

While there was no testimony regarding when the tenant first received the *RAP Notice*, the tenant declared under penalty of perjury in her petition that she received it by July 2014. The owner declared under penalty of perjury that it was served in December of 2012.

As long as the *RAP Notice* was first served at least 6 months prior to the rent increase in question, then the exact date it was served is not necessary to this decision. It is found that the tenant received the *RAP Notice* as least as early as July of 2014.

Are the tenant's claims of decreased housing services timely filed?

Under the Oakland Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent[13] and may be corrected by a rent adjustment.[14] 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.

Since a decreased service is, in effect, a rent increase, the general filing limit for RAP Petitions applies: a Petition must be filed within 60 days after receipt of the RAP Notice or the knowledge of the existence of a decreased housing service, whichever is later[15]. While there is an exception for those conditions of property which get worse over time (like a roof leak), for discrete losses, the time limit applies.

As noted above, the tenant rec3eived the *RAP Notice* at least as early as July 2014.

The tenant was notified that she no longer had a garbage disposal or shower doors when she saw the unit in December of 2014. She learned about the loss of the cable jack and the broken phone jack by the time she moved back to the unit on March 1, 2015. The tenant petition was filed on May 20, 2015, longer than 60 days after March 1, 2015 (and obviously far longer than 60 days after the December 2014 inspection). Therefore, the tenant's claims about the garbage disposal, shower doors, cable jack and phone jack are denied as untimely.

Additionally, the tenant testified that the water entry into her windows occurred only on the day she inspected the property in December of 2014. The owners testified that when they saw the water entry they called the contractor and had him repair the windows. A tenant petition must be filed within 60 days after the last date that there was a decrease in housing services.[16] The tenant testified that by the time she moved into the unit on March 1, 2015, there was no more entry of water. Since there was no ongoing problem in the time period after March 21, 2015 (60 days before she filed her petition), her claim is denied.

---

[13] O.M.C. § 8.22.070(F)
[14] O.M.C. § 8.22.110(E)
[15] Board Decision in Case No. T09-0086, Lindsey v. Grimsley, et al.
[16] O.M.C. Section 8.22.090(A)(2)

The same is true with respect to the condition of the stove. While at first there was a problem with the stove, the owners corrected the problem by replacing the first stove and then fixing the second stove. The repairs were done before March 21, 2015. Since there was no time in the applicable period during which the tenant had an inoperable stove, this claim is also denied.

The tenant's contention that her failure to timely file should be excused because of "excusable neglect" is not a correct assertion of the law. There is no excusable neglect for failing to bring a timely Tenant Petition.

For those issues that are not untimely, have the tenant's housing services been decreased?

The two remaining issues claimed by the tenant in her petition relate to her front screen door and the heating vent. Neither of these items rise to the level of a decreased housing service. With respect to the front screen door, the tenant testified that it has been a problem since she moved into the unit. 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. The broken screen door is not a habitability problem and is not a condition different from the beginning of the tenancy.

Additionally, the tenant must give the owner notice of the problems and the opportunity to repair before she is entitled to relief. With respect to the tenant's heating vent, the owner credibly testified that he was never notified about this problem.

The tenant's claims of decreased services are denied.

Does the RAP have jurisdiction over claims of loss of property or damages for having to move out?

The tenant's list of decreased housing services raises concerns about having to move out because of the flood and because of the loss of property from the flood. 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 RAP does not have jurisdiction over the tenant's claims for decreased housing services as they relate to the flood and to her loss of property. These are not claims that can be made under the Rent Adjustment Ordinance. While these acts may or may not constitute civil wrongs, these claims must be made in a court of competent jurisdiction.

Additionally, the tenant has already filed a claim about these matters in Superior Court. The *Complaint for Damages* filed against the owners in court raise claims that the owner's failure to maintain the property caused the flooding. The plaintiff seeks unspecified damages for breach of the implied warranty of habitability, breach of quiet

enjoyment, private nuisance, and premises liability amongst other claims. The tenant has ceded these matters to the jurisdiction of the Superior Court. They cannot be litigated in two places. Therefore, the tenant's claims for decreased housing services as they relate to having to move out and related to loss of her property are dismissed.

If restitution is owed, what is the tenant's rent?

The tenant's rent is $1,233.52, effective June 1, 2015. The tenant has underpaid rent since June of 2015 in the amount of $66.52 a month for a period of 7 months, for a total underpayment of $465.64. An underpayment of this amount is repaid over a six month period[17] so the rent increase is $77.60 a month. For now this $77.60 a month is added to the current legal rent of $1,233.52 for a total of $1,311.13 a month. From January of 2016 through June of 2016 the rent will be $1,311.13 a month. The rent will revert to the current rent of $1,233.52 in July of 2016.

ORDER

1. Petition T15-0263 is denied.

2. The current rent, effective June 1, 2015, is $1,233.52.

3. The tenant has underpaid rent in the amount of $465.64.

4. The tenant's rent is increased by $77.60 a month, from January 2016-June 2016, to $1,311.13 a month. The tenant's rent reverts to $1,233.52 in July of 2016.

5. Nothing in this Order prevents the owner from increasing the rent according to the rules of the Rent Adjustment Program, at any time on or after June 1, 2016, providing the rent increase notices are served pursuant to the Civil Code § 827 and the Rent Adjustment Ordinance.

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: December 8, 2015

Barbara M. Cohen
Hearing Officer
Rent Adjustment Program

[17] Regulations, Section 8.22.110(F)

PROOF OF SERVICE

Case Number(s): T15-0263

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:

Kim Panganiban
338 Lenox Ave, Apt 2
Oakland, CA 94610

Symon Chang
Patty Chang
1088 Doheny Terrace
Sunnyvale, CA 94085

Gary Cloutier
Law Office of Andrew Wolff
1970 Broadway, Suite 210
Oakland, CA 94612

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on December 8, 2015, in Oakland, California.

Barbara M. Cohen
Oakland Rent Adjustment Program

EXHIBIT B

Andrew Wolff <andrew@awolfflaw.com>

Kim P

10 messages

Andrew Wolff <andrew@awolfflaw.com> Fri, Dec 5, 2014 at 11:25 AM
To: "symonchang@gmail.com" <symonchang@gmail.com>

Sent from my iPhone

Andrew Wolff <andrew@awolfflaw.com> Fri, Dec 5, 2014 at 12:30 PM
To: "symonchang@gmail.com" <symonchang@gmail.com>

We will be at your apartment building on Wednesday, December 10 at 9 AM.

The three items that my client requires before signing the lease and taking possession back are:

1. heater must work
2. front door gap must be code compliant without draft. See Civil Code Section 1941 et seq.
3. the front and back door must have locks changed for security purposes.

The items that my client believes you have a contractual obligation to address are as follows:
1. Permanent shower rod and cover or reinstall the shower door installation.
2. Most of the blinds are not functioning properly (no top bracket on at least one of them), and all were filthy so they must function and be clean
3. Holes must be professionally patched or screens and/or screen doors must be replaced.
4. The bedroom door has paint and debris caked on it which is unsightly and evidence of unprofessional repair. Please repaint it.
5. The screen door in the back slams, and does not function properly.
6. The comcast cable needs to be installed so the cord where the TV is located does not cross the hallway, it needs to be moved.

Thank you.

On Fri, Dec 5, 2014 at 11:25 AM, Andrew Wolff <andrew@awolfflaw.com> wrote:

> Sent from my iPhone

--
Andrew Wolff, Esq.
The Law Office of Andrew Wolff, P.C.
1970 Broadway, Ste 210
Oakland, CA 94612
510-834-3300
FAX 510-834-3377

000022

PLEASE NOTE This email and any documents attached to this transmission may contain privileged and/or confidential information, and is intended solely for the addressee(s) named above. If you are not the intended addressee/recipient, you are hereby notified that any use of, disclosure, copying, distribution, or reliance on the contents of this email information is strictly prohibited and may result in legal action against you. Please reply to the sender advising of the error in transmission, and immediately delete/destroy the message and any

accompanying documents. Thank , J.

---

ymon Chang <symonchang@gmail.com> Mon, Dec 8, 2014 at 4:06 PM
o: Andrew Wolff <andrew@awolfflaw.com>

Andrew,

I have fixed the three items that you client requires before signing the lease and taking possession back, though those items should not be used as the reason for delaying to move-back. They are:

1. heater must work
2. front door gap must be code compliant without draft. See Civil Code Section 1941 et seq.
3. the front and back door must have locks changed for security purposes.

In addition, other items on your list have been addressed as many as possible. The unit is ready for move-in, and any deference in conditions between move-out and move-in can be documented on the move-in/move-out check list. Our appointment is confirmed withe the following:

When: Wednesday, December 10 at 9 AM

Where: 338 Lenox Ave. Apt2 Oakland

What: To sign the lease agreement, take the check amount $2,558.52 and turn over the key for possession.

Attached please find the move-in cost estimate. It is calculated with move-in date of 12/10/2014 with the old rent of $1,167 per Oakland "RENT ADJUSTMENT ORDINANCE", subsection 8.22.070.D.1. Unless you can cite any ORDINANCE or Regulation for the parking fee charge, and/or security deposit increase payment, please have your client pay $2,558.52 on Wednesday when signing the lease for the moving back. The actual amount charged will be adjusted after the hearing with the effective date of 12/10/2014. If the Rent Board denials the rent increase, parking fee charge, or the security deposit increase, I will adjust the overpayment accordingly.

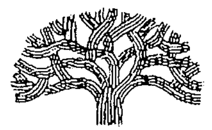
Please let me know if you have any questions on these, and looking forward to seeing your client and you on Wednesday 9:00 AM.

Best regards,

Symon Chang

510-798-1712

000023



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: T15-0263; Panganiban v. Chang

PROPERTY ADDRESS: 338 Lenox Ave, Apt 2, Oakland, CA

DATES OF HEARING: October 21, 2015; December 4, 2015

DATE OF DECISION: December 8, 2015

APPEARANCES: Kim Panganiban, Tenant
Gary Cloutier, Attorney for Tenant (10/21/15)
Symon Chang, Owner
Patty Chang, Owner

SUMMARY OF DECISION

The tenant's petition is denied.

CONTENTIONS OF THE PARTIES

The tenant filed a petition which alleges that a current proposed rent increase from $1,167 to $1,232.52, effective June 1, 2015, exceeds the CPI Rent Adjustment and is unjustified and that her housing services have decreased due to having to move out of the unit for six months because of flooding in the unit; because the owner removed the garbage disposal and did not replace it; because of lack of weatherproofing; because the owner removed the shower doors and did not replace them; because the heater vent is filled with dust and is a hazard; because the owner replaced a brand new stove with a broken stove; because the front screen door doesn't lock; because the cable provider was unable to install cable because the jack was near the heater; and because the phone jack in the living room does not work. The tenant also alleged that she lost property due to the flooding in July of 2014.

The owner filed a response to the petition, which alleges that the contested rent increase is justified by banking that was approved in a prior Hearing Decision (L14-0062), and denies any decreased housing services.

THE ISSUES

1. Was the rent increase approved in a prior case?
2. Were the tenant's claims for decreased housing services timely filed?
3. For those claims that were timely filed, did the tenant experience a decrease in housing services?
4. Does the Rent Adjustment Program have jurisdiction of the tenant's claims of having to move out of the unit and damage to her property due to flooding?
5. If restitution is owed, what is the tenant's rent?

EVIDENCE

History: The tenant testified that she moved into the subject unit in November of 2003 at an initial rent of $875 a month. On July 2, 2014, there was a leak in the upstairs unit that caused substantial flooding in her unit. The tenant was required to move out of her unit so that repairs could be made. She moved out of the unit while the work was being done. The work was completed in December of 2014. The tenant was given the keys to move back in sometime in late December of 2014 and began paying rent in January of 2015. The tenant further testified that because of a health condition at the time, she did not move back in to the unit right away. While she did start coming to the unit in January and February, she didn't move her things back in or start spending the night in the unit until approximately March 1, 2015.

On March 3, 2014, the owners filed a Petition in case L14-0062, in which they sought a rent increase based on banking. That case was consolidated with several tenant petitions (cases T14-0551, T14-0540 and T15-0046). A Hearing Decision was issued on April 17, 2015. In that decision the owner petition was granted and the Order allowed the owner to increase the tenant's combined rent (for her apartment and parking) to a maximum of $1,233.52 based on banking.

The owner, Symon Chang, testified that on April 23, 2015, he served a *Notice of Change of Terms of Tenancy*[1] on the tenant purporting to increase the rent to $1,233.52 per month, effective June 1, 2015. The owner testified that this rent increase was served pursuant to the Order in the prior case. The tenant testified that when she moved back into the unit she signed a new lease which specified that the rent was $1,167.00.

On January 23, 2015, the tenant filed a civil complaint in Superior Court against the owner for damages arising from the condition of her rental unit. The tenant claimed that the owners breached the implied warranty of habitability by:

> "failing to properly maintain the property, by failing and refusing to make repairs, and by delaying in making necessary repairs to the Subject Premises after

[1] Exhibit 1. This Exhibit and all other Exhibits referred to in this Hearing Decision other than Exhibit 7, was admitted into evidence without objection.

obtaining knowledge and/or being notified of the conditions of the subject Premises."[2]

The tenant alleged in the lawsuit that the failure to make repairs caused the flooding (see First Cause of Action and Sixth Cause of Action.)

On her petition, which the tenant filled out under penalty of perjury, the tenant stated that she first received the RAP Notice from the owner on July 3, 2014. The owners stated on their response, that they first gave the tenant the RAP Notice in December of 2012.

The tenant testified that she has been paying rent in the amount of $1,167 since June 1, 2015. The owner agreed with this testimony.

Decreased Housing Services:

Displaced for 6 months and Damaged Property: The tenant was not permitted to testify about these things because of lack of jurisdiction (See below.)

Garbage Disposal: The tenant testified that prior to the flood there was a garbage disposal in her kitchen. After the work was done in her unit after the flood there was no longer a disposal. She discovered this in December of 2014 when she, her attorney, Andrew Wolff, and the owner did a "walk through" of the premises and she complained about the loss of the disposal in that meeting and she informed the owner that she wanted him to replace it. A "Move-In/Move-Out Check List" was completed at that walk through and the lack of a garbage disposal is listed.[3]

The owner testified that he did see that the lack of a garbage disposal was on the "Move-In/Move-Out Checklist" but he was told by the tenant's attorney that the list was just to document the conditions and was not necessarily requesting a garbage disposal. Other than this list, the owner never received a complaint from the tenant about the lack of a garbage disposal.

Shower Doors: The tenant testified that before the flood there were shower doors in her bathroom shower. When she moved back in there were no longer shower doors. On the day of the pre-move in inspection (and on the first visit she made to the apartment earlier in December of 2014), she complained about the lack of shower doors. The owner said he was not going to replace the shower doors.

The owners testified that the tenant actually came to view the apartment on more than one occasion in December of 2014. On the first occasion, the tenant complained about

---

[2] Exhibit 7. The owner objected to the introduction of the *Complaint for Damages* into evidence as it had not been provided by either side 7 days prior to the Hearing. The Hearing Officer requested a copy of the complaint. Since both parties knew about the pending lawsuit, no one was harmed by the introduction of the document into evidence. It was requested by the Hearing Officer to determine whether or not she still had jurisdiction over the tenant's claims.

[3] Exhibit 2, page 1

the lack of a shower door. On the second occasion, which is when the tenant filled out the checklist, she did not complain about the lack of a shower door.

Heating Vent: The tenant testified that because of the construction in her unit the heating vents were very dirty when she moved back in. There is one heating vent on the floor of her unit, which she vacuumed. However, there are two other vents high up on the walls, and she was unable to reach them herself.

Because of how dirty the vent was, she did not turn on the heat at all in the winter of 2015. The tenant testified that she was not cold. She does not know if the temperature in her apartment was ever below 68°.

Mr. Chang testified that the tenant never complained to him about the condition of the heater vent. He did, however, send someone to the unit to respond to the list of problems on the tenant's petition. A handyman was sent to the unit in September of 2015. He was not able to confirm that there were any problems with the heating vent[4].

Lack of weatherproofing: The tenant testified that when she did her walk through of the premises before moving back in, there was water on the window sill. However, since that day, she has not seen any other water entry. She complained about the moisture on the day of the inspection, but not at any other time.

The owner testified that there was moisture on the window sill on the date of the inspection by the tenant, and he called the contractor who caulked the window before the tenant moved back in.

Additionally, the tenant complained that her living room windows did not close properly beginning from the time she moved into the unit. This condition continued to get worse during the time she was living there. Occasionally, in order to close the window she would have to go outside. To deal with the problem she wouldn't open these windows. About a month ago the owner sent someone to install new handles on the living room windows and they now operate properly.

The tenant testified that she has no problems relating to the security of her windows nor are there any gaps in the windows.[5]

Stove problems: The tenant testified that before the flood she had a working stove. When she returned after the flood there was a different stove in her unit which had been painted over and she was concerned about the paint. She consulted an appliance store and was told that stoves should not be painted and could cause toxins to be released. The tenant complained to the owner about this stove at the walk through and again after she moved in. The owner replaced the stove with a different stove within a few weeks after she complained. This occurred likely in January of 2015.

[4] See Exhibit 3.

[5] The tenant testified that she did not prepare the list of decreased services that was provided with her Tenant Petition, but that it was prepared by her attorney's office.

The tenant further testified that there was something wrong with this new stove that was provided by the owner in that whenever she tried to "bake" something the stove would operate on "broil". She complained to the owner who ordered a part for the stove. It was only a few weeks that she had this non-functioning stove. The tenant testified that it was by approximately February of 2015 that the owner had fixed the stove and it has been working correctly ever since.

Mr. and Mrs. Chang testified that the tenant did complain to them about the stove in December of 2014. They replaced the stove in mid-January. Then she complained again about the new stove in March of 2015 and Lapham, who took over management, handled the problem.

Front Screen Door: The tenant testified that she has had a problem with the front door screen not locking since she moved into the unit. The door would swing back and forth and slam. She complained to the owner about this problem in December of 2014, before she moved back into the unit. No action has been taken by the owner.

The tenant testified that she did something to fix this door and it now doesn't swing back and forth. It is no longer a problem for her.

The owner testified that the tenant never complained to him about the front door screen. The owner also produced a "*Maintenance Request*" from Lapham Company (the current managers of the property) which shows that on May 13, 2015, the tenant filed a request to fix her outside door from slamming.[6] On September 15, 2015, a repair person reviewed problems in the tenant's unit and found that the front door screen does lock.[7] A report from *APT Maintenance,* who performed the repairs, states that "Tech confirmed that screen door latches and locks, tech found latch functional when closed properly."[8]

Cable Jack: The tenant testified that before she moved out of the unit because of the flood, there were two cable jacks in her unit, one in the living room on the side of her living room opposite the heater and the other in her bedroom. After she moved back in, the cable jack in the living room was adjacent to the heater and the one in the bedroom had been removed. She noticed this change when she moved back into the unit on approximately March 1, 2015. She further testified that at one of the inspections in December she noticed that the cable jack had moved and she complained to Mr. Chang about it and asked him to move it.

The owner testified that the tenant never complained to him about the cable jack.

---

[6] Exhibit 4
[7] Exhibit 3
[8] Exhibit 6

Phone Jack: The tenant testified that when she moved back into the unit on approximately March 1, 2015, she noticed that her phone jack in the living room, which had worked previously, was no longer working.

The owner testified that the tenant never complained about the phone jack.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Was the rent increase approved in a prior case?

On April 17, 2015, a *Hearing Decision* was issued by the *RAP*, in cases L14-0062, T25-0540, T14-0051 and T15-0046. In those combined cases the Hearing Officer ordered that the rent remained $1,167 per month and that "The owner may increase the combined rent to a maximum of $1,233.52 per month after giving the tenant notice pursuant to Civil Code § 827 and providing the tenant with the required form Notice to Tenants."[9] The tenant did not appeal this decision and it became final.

On April 23, 2015, the owner sent a rent increase notice pursuant to the Order in the prior case.

The tenant contends that this rent increase is not valid because she had just signed a new lease in December of 2014, and hence, the rent increase was a second increase within a year. However, the Rent Adjustment Ordinance provides that "A rent increase following an owner's petition is operative on the date the decision is final and following a valid rent increase notice based on the final decision." O.M.C. § 8.22.070(D)(6). If the tenant believed that the rent increase approved in L14-0062 was a violation of the Ordinance, she needed to appeal that decision.

Allowing a tenant to contest a rent increase after a *Landlord Petition* is granted would in effect give the tenant a second bite of the apple. The Hearing Decision in the prior case is final. The rent increase is valid.

The tenant's rent, effective June 1, 2015, is $1,233.52 per month.

When did the tenant first receive the "RAP Notice"?

The Rent Adjustment Ordinance requires an owner to serve the *RAP Notice* at the start of a tenancy[10] and together with an y notice of rent increase or change in the terms of a tenancy.[11] An owner can cure the failure to give notice at the start of the tenancy, but may not raise the rent until 6 months after the first *RAP Notice* is given.[12]

---

[9] See Hearing Decision in combined cases L14-0062 (Chang v. Panganiban), and T14-0540, T14-0051 and T15-0046 (Panganiban v. Chang)
[10] O.M.C. § 8.22.060(A)
[11] O.M.C. § 8.22.070(H)(1)(A)
[12] O.M.C. § 8.22.060 (C)

While there was no testimony regarding when the tenant first received the *RAP Notice*, the tenant declared under penalty of perjury in her petition that she received it by July 2014. The owner declared under penalty of perjury that it was served in December of 2012.

As long as the *RAP Notice* was first served at least 6 months prior to the rent increase in question, then the exact date it was served is not necessary to this decision. It is found that the tenant received the *RAP Notice* as least as early as July of 2014.

Are the tenant's claims of decreased housing services timely filed?

Under the Oakland Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent[13] and may be corrected by a rent adjustment.[14] 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.

Since a decreased service is, in effect, a rent increase, the general filing limit for RAP Petitions applies: a Petition must be filed within 60 days after receipt of the RAP Notice or the knowledge of the existence of a decreased housing service, whichever is later[15]. While there is an exception for those conditions of property which get worse over time (like a roof leak), for discrete losses, the time limit applies.

As noted above, the tenant rec3eived the *RAP Notice* at least as early as July 2014.

The tenant was notified that she no longer had a garbage disposal or shower doors when she saw the unit in December of 2014. She learned about the loss of the cable jack and the broken phone jack by the time she moved back to the unit on March 1, 2015. The tenant petition was filed on May 20, 2015, longer than 60 days after March 1, 2015 (and obviously far longer than 60 days after the December 2014 inspection). Therefore, the tenant's claims about the garbage disposal, shower doors, cable jack and phone jack are denied as untimely.

Additionally, the tenant testified that the water entry into her windows occurred only on the day she inspected the property in December of 2014. The owners testified that when they saw the water entry they called the contractor and had him repair the windows. A tenant petition must be filed within 60 days after the last date that there was a decrease in housing services.[16] The tenant testified that by the time she moved into the unit on March 1, 2015, there was no more entry of water. Since there was no ongoing problem in the time period after March 21, 2015 (60 days before she filed her petition), her claim is denied.

---

[13] O.M.C. § 8.22.070(F)
[14] O.M.C. § 8.22.110(E)
[15] Board Decision in Case No. T09-0086, Lindsey v. Grimsley, et al.
[16] O.M.C. Section 8.22.090(A)(2)

The same is true with respect to the condition of the stove. While at first there was a problem with the stove, the owners corrected the problem by replacing the first stove and then fixing the second stove. The repairs were done before March 21, 2015. Since there was no time in the applicable period during which the tenant had an inoperable stove, this claim is also denied.

The tenant's contention that her failure to timely file should be excused because of "excusable neglect" is not a correct assertion of the law. There is no excusable neglect for failing to bring a timely Tenant Petition.

For those issues that are not untimely, have the tenant's housing services been decreased?

The two remaining issues claimed by the tenant in her petition relate to her front screen door and the heating vent. Neither of these items rise to the level of a decreased housing service. With respect to the front screen door, the tenant testified that it has been a problem since she moved into the unit. 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. The broken screen door is not a habitability problem and is not a condition different from the beginning of the tenancy.

Additionally, the tenant must give the owner notice of the problems and the opportunity to repair before she is entitled to relief. With respect to the tenant's heating vent, the owner credibly testified that he was never notified about this problem.

The tenant's claims of decreased services are denied.

Does the RAP have jurisdiction over claims of loss of property or damages for having to move out?

The tenant's list of decreased housing services raises concerns about having to move out because of the flood and because of the loss of property from the flood. 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 RAP does not have jurisdiction over the tenant's claims for decreased housing services as they relate to the flood and to her loss of property. These are not claims that can be made under the Rent Adjustment Ordinance. While these acts may or may not constitute civil wrongs, these claims must be made in a court of competent jurisdiction.

Additionally, the tenant has already filed a claim about these matters in Superior Court. The *Complaint for Damages* filed against the owners in court raise claims that the owner's failure to maintain the property caused the flooding. The plaintiff seeks unspecified damages for breach of the implied warranty of habitability, breach of quiet

enjoyment, private nuisance, and premises liability amongst other claims. The tenant has ceded these matters to the jurisdiction of the Superior Court. They cannot be litigated in two places. Therefore, the tenant's claims for decreased housing services as they relate to having to move out and related to loss of her property are dismissed.

If restitution is owed, what is the tenant's rent?

The tenant's rent is $1,233.52, effective June 1, 2015. The tenant has underpaid rent since June of 2015 in the amount of $66.52 a month for a period of 7 months, for a total underpayment of $465.64. An underpayment of this amount is repaid over a six month period[17] so the rent increase is $77.60 a month. For now this $77.60 a month is added to the current legal rent of $1,233.52 for a total of $1,311.13 a month. From January of 2016 through June of 2016 the rent will be $1,311.13 a month. The rent will revert to the current rent of $1,233.52 in July of 2016.

ORDER

1. Petition T15-0263 is denied.

2. The current rent, effective June 1, 2015, is $1,233.52.

3. The tenant has underpaid rent in the amount of $465.64.

4. The tenant's rent is increased by $77.60 a month, from January 2016-June 2016, to $1,311.13 a month. The tenant's rent reverts to $1,233.52 in July of 2016.

5. Nothing in this Order prevents the owner from increasing the rent according to the rules of the Rent Adjustment Program, at any time on or after June 1, 2016, providing the rent increase notices are served pursuant to the Civil Code § 827 and the Rent Adjustment Ordinance.

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: December 8, 2015

Barbara M. Cohen
Hearing Officer
Rent Adjustment Program

[17] Regulations, Section 8.22.110(F)

PROOF OF SERVICE

Case Number(s): T15-0263

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:

Kim Panganiban
338 Lenox Ave, Apt 2
Oakland, CA 94610

Symon Chang
Patty Chang
1088 Doheny Terrace
Sunnyvale, CA 94085

Gary Cloutier
Law Office of Andrew Wolff
1970 Broadway, Suite 210
Oakland, CA 94612

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on December 8, 2015, in Oakland, California.

Barbara M. Cohen
Oakland Rent Adjustment Program

CITY OF OAKLAND **RENT ADJUSTMENT PROGRAM** P.O. Box 70243 250 Frank H. Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721	For filing stamp. 2015 JUN 24 PM 3:18

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

CASE NUMBER T15-0263

LANDLORD RESPONSE

Your Name	Complete Address (with zip code)	
Symon Chang Patty Chang	1088 Doheny Terrace Sunnyvale CA 94085	Phone: [redacted] Email: symonchang@gmail.com
Your Representative's Name (if any)	Complete Address (with zip code)	Phone: Fax: Email:
Tenant(s) name(s) Kim Panganiban	Complete Address (with zip code) 338 Lenox Ave, Apt #2 Oakland CA 94610	

Have you paid for your Oakland Business License? Yes ☒ No ☐ Number 28036474

Have you paid the Rent Program Service Fee? ($30 per unit) Yes ☒ No ☐

There are 15 residential units in the subject building. I acquired the building on 04/10/2012

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

I. JUSTIFICATION FOR RENT INCREASE You must check the appropriate justification(s) box for each increase greater than the Annual CPI adjustment contested in the tenant(s) petition. For the detailed text of these justifications, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. You can get additional information and copies of the Ordinance and Regulations from the Rent Program office in person or by phoning (510) 238-3721.

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

Rev. 7/9/08

Date of Increase	Banking (deferred annual increases)	Increased Housing Service Costs	Capital Improvements	Uninsured Repair Costs	Debt Service	Fair Return
06/01/15*	☒	☐	☐	☐	☐	☐
	☐	☐	☐	☐	☐	☐
	☐	☐	☐	☐	☐	☐
	☐	☐	☐	☐	☐	☐
	☐	☐	☐	☐	☐	☐
	☐	☐	☐	☐	☐	☐
	☐	☐	☐	☐	☐	☐

* Note: Banking increases are per Hearing Decision, dated 4/17/2015 of case L14-0062, order #3.

II. RENTAL HISTORY

If you contest the Rental History stated on the Tenant Petition, state the correct information in this section.

The tenant moved into the rental unit on 11/01/2003.

The tenant's initial rent including all services provided was: $ 895 / month.

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

If yes, on what date was the Notice first given? 12/31/2012

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

Date Notice Given (mo./day/year)	Date Increase Effective	Rent Increased From	Rent Increased To	Did you provide NOTICE TO TENANTS with the notice of rent increase?
4/23/2015	06/01/2015	$ 1,167.00	$ 1,233.52	☒ Yes ☐ No L14-0062
12/31/2012	05/01/2013	$ 1,105.00	$ 1,167.00	☒ Yes ☐ No T13-0027
02/28/2012	04/01/2012	$ 1,050.00	$ 1,105.00	☐ Yes ☐ No
unknown	04/01/2007	$ 995.00	$ 1,050.00	☐ Yes ☐ No
N/A	03/01/2006	$ 895.00	$ 995.00	☐ Yes ☐ No
N/A	11/01/2003	$	$ 895.00	☐ Yes ☐ No
		$	$	☐ Yes ☐ No

(see attach Exhibit 4 for more details for rent + parking)

III. EXEMPTION

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

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

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

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

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

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

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

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

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

IV. DECREASED HOUSING SERVICES

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

V. VERIFICATION

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

____

Landlord's Signature **Date:**

IMPORTANT INFORMATION:

Time to File

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

File Review

You should have received a copy of the petition filed by your tenant with this letter. Copies of **documents attached** to the petition form will not be provided to you. You may review these in the RAP office by appointment. For an appointment to review a file call (510) 238-3721.

Mediation Program

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

If you and the tenant 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. You may bring a friend, representative or attorney to the mediation session. Mediation will be scheduled only if both parties agree and after your response has been filed with the RAP.

It is required that both parties agree to mediation in order to have a case mediated. The tenant must have already signed the request for mediation on their petition so be sure to review their signature page of the copy that was provided within your notification package.

If you want to schedule your case for mediation and the tenant has already agreed to mediation on their petition, sign and return this form along with your Landlord Response. I agree to have my case mediated by a Rent Adjustment Program Staff member (no charge).

[signature] 6/23/2015

Landlord's Signature Date

Response to Case T15-0263

By: Symon Chang and Patty Chang

Date: June 23rd, 2015

Errors on Tenant Petition Application Form

The application form for Tenant Petition by Kim Panganiban for 338 Lenox Ave #2, dated 05/20/2015, (Case T15-0263), contains numerous errors and false information that needs to be clarified.

On Page 2, II. Rental History:

Incorrect: Initial Rent: *$875*

The truth: The initial Rent is $895.00, see Lease Agreement between Wayne Lazarus and Kim Panganiban, dated 11/01/2003 (EXHIBIT 3).

Incorrect: When did the owner first provide you with a written RAP Notice? Date: *July 3, 2014.*

The truth: The owner Symon Chang and Patty Chang first provided the tenant with a written RAP Notice is on 12/31/2012. See the copy the RAP Notice signed by the tenant on 01/01/2013 (EXHIBIT 5-1).

Note that the tenant has used this RAP Notice as the reason for contesting rent increase on Case T14-0100. The information she has provided for Case T14-0100 Petition (EXHIBIT 5-2), Case L14-0062 Response on 11/10/2014 (EXHIBIT 5-3), Case T14-0540, Case T14-0551, Case T15-0046 and this Case T15-0263 have conflict and inconsistence information on the RAP Notice. This information has demonstrated the tenant's doubtful creditability and the repudiation history. The log of RAP Notice given to this tenant and the copies of the RAP Notice signed by the tenant is attached this response (EXHIBIT 5).

Incorrect: Amount Rent Increased to $1232.52

The truth: Amount Rent Increase To **$1,233.52**

Incorrect: List case number(s) of all Petition(s) you have ever filed for this rental unit*: T14-0540, T14-0051, T15-0046, and T14-0100*.

The truth: There is also a case T13-0027 that the tenant filed for the same rental unit.

On Page 2, III. Description of Decreased or Inadequate Housing Services:

Those 3 boxes are all checked. However, this rent increase is based on the Hearing Decision, dated 04/17/2015, for the case of L14-0062, T14-0540, T14-0051 and T15-0046, Order #3. On Order #5, the tenant's claims of decreased housing services are denied. The tenant should not reclaim those decreased housing services again. The following are detailed explanations for why the tenant claim of "Lost Housing Services and Serious Problems" on the tenant petition case T15-0263 are invalid.

Address to Lost Housing Services and Serious Problems Claims

Item #1 -- Displaced for approximately 6 months (July 2014 to December 2014) and Item #2 -- Lost property due to flooding:

These two items have been addressed on the landlord response on the case of T14-0540, T14-0051 and T15-0046. The tenant is required to vacant the unit solely due to water damage resulting from flood on 07/02/2014 which is an accident outside the control of the owner. To vacate the unit is required for substantial construction works for code enforcement due to the water damage, and such damage was not caused by the acts or the negligence of the owners, or by a preexisting condition. This relocation should have nothing to do with decrease housing services what the tenant is claimed for.

The tenant's personal properties are not the housing services provided by the landlord. The tenant's personal property lost on this water damage incident should be covered by the tenant's renter insurance, instead of landlord's responsibility. While lacking of the renter insurance, the tenant should not claim for the lost housing services to the landlord.

There is no rent charged for the unit from July 2014 to December 13, 2014. Since there is no charged, the tenant's claim on decrease housing services is invalid. The owner has been made all necessary arrangements and best efforts for the relocation legally, in according to the according to the "Oakland Just Cause for Eviction Ordinance" (OMC §8.22.300) and the "Oakland Code Enforcement Relocation Program (OMC §15.60). The owner has paid the relocation benefits of $2,710 to the residential tenant who must move because of the City's enforcement of housing and building codes, per "Summary of The City of Oakland's Code Enforcement Relocation Ordinance".

Since the relocation benefits have been paid, and there is no rent is charged during the relocation period, it should not be counted as losing services originally provided by the owner. Details of evidences for those facts can be found on the Landlord response for Tenant Petition case T14-0540, T14-0051 and T15-0046. They are not repeated here for this case T15-0263.

Item #3 – Owner took out garbage disposal, Item#4 Window problems, Item #5 – Owner took out shower doors, and Item #7 – Owner replaced brand new stove:

These 4 items all have been address at the hearing on 03/27/2015. The descriptions of these 4 items can be found on the second paragraph on page 3 of the Hearing Decision, dated 04/17/2015. Since these decreased housing services are denied per the order item#5 of the Hearing Decision. Tenant cannot claim these lost of services again. Some of items were shown on the Move-in/Move-out Check List which is an indication of there are existing issues at the tenant move-in on 12/15/2015. Under the Oakland Rent Ordinance, a decrease in housing services is an increase in rent. 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[1]. Item #3 and Item #5 are not the loss of a service that seriously affects the habitability of a unit, and are not required in both old lease agreement on 11/01/2003 (EXIBIT 3) and new lease agreement on 12/12/2014 (EXIBIT 6).

When the tenant moved back on 12/12/2014, the substantial construction works for code enforcement have been completed, and the lease agreement has resigned (EXIBIT 6). The tenant moved back with new building code upgraded unit where the conditions of the unit have been changed, but the housing services are not reduced, instead the services that are provided to the tenant are increased. The following are some of increased services on 12/12/2014 when the tenant move-back:

1. Provided new energy efficient water heater
2. Provided new low-e energy saving, egress window in the bedroom
3. Provided new R-13 energy saving wall insulation to the exterior walls
4. Provided new soundproof and R-30 energy saving ceiling
5. Provided new range hood in the kitchen and new ventilation in the bathroom
6. Provided water saving toilet and faucet in the bathroom
7. Provided new energy saving lighting for the whole unit that in compliance with 2013 Title-24 CF-6R LGT01
8. Provided new digital thermostat

All of above housing service improvements were built by licensed contractors, and passed the building inspection by the inspectors from building department. When the tenant signed the lease agreement and the move-in move-out checklist on 12/12/2014, it implies that the tenant has accepted the move-in conditions with missing of garbage disposal and shower doors, in exchange to the increase services on above 8 items. Should the tenant does not like the conditions of this brand new unit, she can opt to not accept the conditions, and not move back to the unit. Tenant should not claim for reduce service on these two items after 6 months of move back.

Item#4 Window problems the window in the bedroom is replaced with new low-e energy saving, egress window per requirements on the current 2013 building code. The leaking problem on the bedroom window has been fixed in December 2014.

Item #7 – Owner replaced brand new stove is a false statement. To best of my knowledge, the stove at the unit was not replaced since April 2012, and it was not new. On 01/21/2015, per Tenant's request, a new stove is installed to replace the old one. After that, the tenant called the property management company Lapham for services on the same new stove twice, on 04/02/2015 and on 04/13/2015. All the service requests have closed in one day.

Item 6 – Heater vent is filled with dust, Item 8 – Front screen door doesn't lock, Item 9 – Cable provider was unable to install cable, and Item 10 – Phone jack in living room doesn't work:

[1] Green v. Superior Court, 202 C.A>2d 121 (1974) and Case T12-0047.

All those items are normal maintenance and repair items, the loss of a service that seriously affects the habitability does not apply. Some of those items are not even the landlord's responsibility, such as cleaning the dust, and install the cable. In addition, the tenant never notifies the landlord on any of these problems. It is the first time that the landlord leaned the tenant has complains on these issues.

Beginning on April 2015, the landlord has hired the property management company, the Lapham Co., to manage all apartment units at 338-340 Lenox Ave. Since then, Lapham only received two services requests and they all are related to stove mentioned above. There is no services request for other issues from the tenant. On 05/13/2015, Lapham conducted the first annual inspection at 338 Lenox Ave and it asked all tenants to fill out the maintenance request sheet for any items that the tenant would like inspector from Lapham to look at. The tenant at 338 Lenox Ave Apt#2 filled out the maintenance request sheet on 05/13/2015 (EXIBIT 6). However, the sheet does not contain any item that is listed on the page of "Lost Housing Services and Serious Problems" on the tenant petition case T15-0263. This is evidence for that the tenant never notifies the landlord for those so call serious problems and lost housing services problems. Those issues are only used to claim reduce services for rent reduction purpose, and they should be invalid for this rent increase petition.

T15-0263 KM|LM

STAMP: CITY OF OAKLAND RENT ARBITRATION PROGRAM

CITY OF OAKLAND RENT ADJUSTMENT PROGRAM Mail To: P. O. Box 70243 Oakland, California 94612-0243 (510) 238-3721	For date stamp 2015 MAY 20 AM 11:29

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	Rental Address (with zip code)	Telephone
KIM PANGANIBAN	338 LENOX AVE #2 OAKLAND, CA 94610	[redacted]
Your Representative's Name	Mailing Address (with zip code)	Telephone
Property Owner(s) name(s)	Mailing Address (with zip code)	Telephone
SYMON CHENG and PATTY CHANG	1088 DOHENY TERRACE SUNNYVALE, CA 94085	

Number of units on the property: ____________

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

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

X	(a) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
	(b) The owner did not give me a summary of the justification(s) for the increase despite my written request.
	(c) The rent was raised illegally after the unit was vacated (Costa-Hawkins violation).
	(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.)
	(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.
X	(f) The housing services I am being provided have decreased. (Complete Section III on following page)
	(g) At present, there exists a health, safety, fire, or building code violation in the unit. If the owner has been cited in an inspection report, please attach a copy of the citation or report.
	(h) The contested increase is the second rent increase in a 12-month period.
	(i) The notice of rent increase based upon capital improvement costs does not contain the "enhanced notice" requirements of the Rent Adjustment Ordinance or the notice was not filed with the Rent Adjustment Program (effective August 1, 2014).
	(j) My rent has not been reduced after the expiration period of the rent increase based on capital improvements.
	(k) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).

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

Date you moved into the Unit: November 1, 2003 Initial Rent: $ 875 /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: July 3, 2014. 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 From	To	Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
4/23/15	6/1/15	$ 1,167	$ 1232.52	☑ Yes ☐ No	☑ Yes ☐ No
		$	$	☐ Yes ☐ No	☐ Yes ☐ No
		$	$	☐ Yes ☐ No	☐ Yes ☐ No
		$	$	☐ Yes ☐ No	☐ Yes ☐ No
		$	$	☐ Yes ☐ No	☐ Yes ☐ No
		$	$	☐ Yes ☐ No	☐ Yes ☐ 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: T14-0590, T14-0051, T-15-0046 and T14-0100

III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:

Decreased or inadequate housing services are considered an increase in rent. If you claim an unlawful rent increase for service problems, you must complete this section.

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

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

To have a unit inspected and code violations cited, contact the City of Oakland, Code Compliance Unit, 250 Frank H. Ogawa Plaza, 2nd Floor, Oakland, CA 94612. Phone: (510) 238-3381

IV. VERIFICATION: The tenant must sign:

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

Kami Pazeh 05/18/2015
Tenant's Signature **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).

Kami Pazeh 05/18/2015
Tenant's Signature Date

VI. IMPORTANT INFORMATION:

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

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

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

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

Kim Paniganiban
338 Lenox Ave #2
Oakland, CA 94610

Rent Board Petition

Lost Housing Services and Serious Problems

1. Displaced for approximately six (6) months (July 2014 to December 2014) due to flooding in unit.
2. Lost property due to flooding in the unit (see blow)
3. Owner took out garbage disposal and it was never replaced
4. Lack of weatherproofing
   a. windows leak when raining
   b. need to go outside to shut windows
   c. windows not secure
   d. gaps in windows
5. Owner took out shower doors and they were never replaced.
6. Heater vent is filled with dust and therefore hazard when turned on.
7. Owner replaced brand new stove (that was not broken) with a broken stove.
8. Front screen door doesn't lock
9. Cable provider was unable to install cable because cable jack was near heater.
10. Phone jack in living room doesn't work.

Lost Property due to flooding in July 2014

1. Bathroom Shelving and toiletries (approximate value $50)
2. Mattress and box spring (approximate value $750)
3. Headboard and night stands (approximate value $500)
4. Clothes and shoes (approximate value $200)
5. Drapes (approximate value $100)
6. Lamps (approximate value $50)
7. Towels (approximate value $40)

CHRONOLOGICAL CASE REPORT

Case No.:	T16-0108
Case Name:	Chamales v. Farley
Property Address:	4244 Gilbert Street, Oakland, CA
Parties:	George & Jana Chamales (Tenants) Barbara Farley (Landlord)

OWNER APPEAL:

Activity	Date
Tenant Petition filed	February 19, 2016
Landlord Response filed	March 19, 2016
Hearing Decision Issued	July 28, 2016
Owner Appeal filed	August 4, 2016
Supplemental Appeal Statement filed	March 1, 2017

RECEIVED
CITY OF OAKLAND
RENT ARBITRATION PROGRAM

City of Oakland **Residential Rent Adjustment Program** 250 Frank Ogawa Plaza, Suite 5313 Oakland, California 94612 (510) 238-3721	2016 AUG -4 AM 9:58 **APPEAL**

Appellant's Name	
FARLEY LEVINE PROPERTIES LLC	**Landlord** ☑ **Tenant** ☐
Property Address (Include Unit Number)	
4244 Gilbert Street, Oakland, CA 94611	
Appellant's Mailing Address (For receipt of notices)	**Case Number** T16-0108
7 KING AVE. PIEDMONT, CA 94611	**Date of Decision appealed** JULY 28, 2016
Name of Representative (if any)	**Representative's Mailing Address (For notices)**
Barbara S. Farley	7 King Ave Piedmont, CA 94611

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

1. ☑ **The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board.** *You must identify the Ordinance section, regulation or prior Board decision(s) and specify the inconsistency.*

2. ☑ **The decision is inconsistent with decisions issued by other hearing officers.** *You must identify the prior inconsistent decision and explain how the decision is inconsistent.*

3. ☑ **The decision raises a new policy issue that has not been decided by the Board.** *You must provide a detailed statement of the issue and why the issue should be decided in your favor.*

4. ☑ **The decision is not supported by substantial evidence.** *You must explain why the decision is not supported by substantial evidence found in the case record. The entire case record is available to the Board, but sections of audio recordings must be pre-designated to Rent Adjustment Staff.*

5. ☐ **I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim.** *You must explain how you were denied a sufficient opportunity and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue a decision without a hearing if sufficient facts to make the decision are not in dispute.*

6. ☐ **The decision denies me a fair return on my investment.** *You must specifically state why you have been denied a fair return and attach the calculations supporting your claim.*

7. ☑ Other. *You must attach a detailed explanation of your grounds for appeal. Submissions to the Board are limited to 25 pages from each party. Number of pages attached* [9]. *Please number attached pages consecutively.*

8. <u>You must serve a copy of your appeal on the opposing party(ies) or your appeal may be dismissed.</u> I declare under penalty of perjury under the laws of the State of California that on August 4, 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:

Name	George and Jana Chamales
Address	4244 Gilbert Street
City, State Zip	Oakland, CA 94611
Name	
Address	
City, State Zip	

Barbara S. Farley	8-4-16
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

IMPORTANT INFORMATION:

This appeal must be <u>received</u> 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 <u>must</u> 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 <u>must</u> sign and date this form or your appeal will not be processed.

Farley Levine Properties LLC
7 King Avenue
Piedmont, CA 94611
510-652-8291
Bsuzanne7@aol.com

August 4, 2016

City of Oakland
Department of Housing and
Community Development
Rent Adjustment Program
P.O. Box 70243

Re: **Case Number T16-0108, Chamales v. Farley Levine Properties, LLC**
Property Address: 4244 Gilbert St., Oakland, CA
Date of Hearing: June 15, 2016
Date of Decision: July 28, 2016

NOTICE OF APPEAL

Owners, Farley Levine Properties LLC, hereby appeal the Hearing Decision and Order entered by Stephen Kasdin, Hearing Officer of the Rent Adjustment Board (RAB) entered July 28, 2016. The Appeal is made on the following grounds:

The ruling by the Rental Adjustment Board in this instance creates new, arbitrary and subjective standards for defining what is and is not a "capital improvement," ignoring the ramifications of such categorizations for tax purposes to the owners, applying new and different definitions to the Oakland statute making it inconsistent with both state and federal law and violating Oakland's own Charter requiring Oakland to comply with the general laws of California and the United States. The Decision must be reversed.

1. The decision is inconsistent with OMC Chapter 8.22 Rent Board Regulations or prior decisions of the Board

Oakland Municipal Code §8.22 defines "Capital Improvements" as "those improvements to a covered unit or common areas that materially add to the value of the property and appreciably prolong its useful life or adapt it to new building codes. Those improvements must primarily benefit the tenant rather than the owner."

The Rent Adjustment Board hearing officer has improperly classified construction upgrades, new construction, and new components and improvements as "repairs" rather than "capital improvements." While the pest report identified approximately $25,000.00 of termite and dry rot work, the authorized building permit for repair did not preclude construction

including major upgrades, new construction, seismic retrofit and building code compliance to 2015 building standards of over $116,000.00. The hearing officer has classified **all** such work as "repairs." Such classification ignores the work performed, the purpose of the work, upgrades and modifications, additions, improvements, quality, capacity, strength, betterment, and better operating condition as a result of said work.

The "purpose" of the construction and upgrades required on the 107 year old building required that the owner bring all such construction in compliance with 2015 building code requirements. Moreover the building had deteriorated in the areas of work so much after 107 years that further repair was not practical.

Nor did such construction preclude improvement and and upgrade to eliminate existing safety and health hazards, provide new amenities, and improvement to the building to modern standards. All such upgrades benefited the tenants, removed structural deficiencies in the building never addressed, strengthened the building, added new structural components, provided new seismic retrofit, added space shared by all tenants for laundry service, upgraded stairs, porches and walkways for safer ingress and egress to their units, provided new venting and doors for maintenance and extended the life of the building by over 50 to 60 years. In every instance the work was not "maintenance" to simply repair the building but because of the buildings age constituted improvement to bring the building into compliance with 2015 building code standards.

Oaklands own ordinance includes as capital improvements the very work done on the property in that it " materially add[ed] to the value of the property and appreciably prolong[ed] its useful life or adapt[ed] it to new building codes."

While the tenants unit specifically had dry rot in one of their bathrooms the bathroom was not simply repaired. The dry rot and termite damage encompassed part of the floor and the corner of the east wall. Yet the underpinnings to the bathroom were old and sagging causing instability in the original building structure. The work done in this case represented the replacement of major parts gutting the entire bathroom, floor, subfloor and support beams in an overhaul which included installation of new cross beams, subfloor, new flooring and marble, new wall, tile, tub, fixtures, vanity, mirror and lighting in a complete renovation of the bathroom to current building code standards. This work cannot be classified simply as "maintenance."

The definition of "capital improvements" has been misinterpreted by the Rent Adjustment Board and its ruling is inconsistent with existing applicable California and Federal law. The RAB has improperly classified virtually all of the the owners work as "repair" when repairs references "maintenance" or maintaining operating condition while "improvements" encompass significant work that upgrades, prolonging the life, installation of new parts and components. All of the owners work on the building not only removed dry rot and termite damage but replaced and upgraded every aspect of the building with new parts, new components, and new materials for a structural overhaul.

2. The decision raises new policy issues that have not been decided by the Board.

The "decision" of the rental board in this case appears to create a new and unique definition of the term "capital improvements." The new owner had no ability to check the records of the Oakland Rental Adjustment Board to determine how it was interpreting this term. On 8-1-16 the owner went to the rental adjustment board and asked to review "all" rental board decisions including: T09-0217-T09-0218; T02-0209; T02-0136, 0146; T00-0268-0449; LI10-0006/7;T08-0206; T99-0176; T12-0162 that referenced the term "capital improvement" so as to determine the parameters of the Boards rulings and definitions, but none of the decisions were accessible to the public.

The RAB decision has adopted an arbitrary allocation denying "capital improvement" status to "all" improvements made by the owner based on a failed classification of "maintenance" and "repair." The rationale of the hearing officer for such denial is as follows:

> "Common experience tells us that these problems certainly existed for a number of years before the owners purchased the building in December 2014. There is no doubt that at least the majority of these problems would have been noted during reasonable annual inspections by the prior owners. A ressonably diligent Owner would then have taken steps to undertake maintenance and make timely repairs that would have avoided the extensive work performed by the current owners.
>
> Therefore applying the standards cited above, none of the work that was performed to correct damage caused by dry rot or insect is eligible as a capital improvement cost. This includes the cost of building permits which [are] disallowed. " (7-28-16 decision p. 7 Þ 3-4).

In other words, the new owner is somehow charged with maintaining a building it had not yet purchased. Equally troubling, the RAB hearing officer has denied "capital improvement" status to a complete renovation and expansion of the apartment laundry room which services all tenants asserting:

> "The purpose of the laundry room is for the use of coin operated washers and dryers. Since the cost of the machines is not an eligible capital imporovement cost neither is the cost associated with the use of these machines. Therefore none of the cost of Mr. Monahan's labor is allowed." (Hearing Decision p. 7 Þ7).

Such rationale is nonsensical. The hearing officer is denying "capital improvement" status to construction to the floor and building based on the appliances housed inside the building? Under state and federal tax law whatever is housed inside a structure has no relevance to whether building improvements constitute capital improvements.

The RAB hearing officer advised the owners at the hearing that "he" was the one who determined whether work constituted a "repair" or a "capital improvement." The owner voiced concern that the owner had followed established Oakland, California and Federal tax law regarding the allocation of expenses, attributing improvements to the separate units on the

property and others to repairs and then capital improvements consistent with said statutes. Nonetheless the hearing officer ignored all such classifications attributing all the construction work to "repairs." The hearing officers allocation is both legal and factual error.

If Oakland it leaving to the hearing officer the decision of what is and is not a "capital improvement" with no reference either to California or Federal tax law and no reliance or reference to prior rulings of the RAB (because they are not available) it places the property owner and taxpayer at risk for challenges by the IRS to deductions taken for "repairs" determined by the RAB when the IRS classifies such work differently as "capital improvements." It places the property owner in a "Catch 22" for loss at each City, State and Federal level.

3. The decision is not supported by substantial evidence.

The hearing officer improperly attibuted to the "new" owner the neglect of the prior owner, implying to the new owner some obligation to have maintained a building it did not own. The fact that the prior owner/s did not upgrade or maintain the 1909 building made the work of the new owner more onerous in upgrading the building to meet current building code requirements.

The RAB classified all of the following work as "repair"

The RAB hearing officer improperly denied all of the following charges:

"**Home Depot**: Many of the charges are for work caused by extensive dry rot or terminte damage

Alfred Williams: The labor primarily involved repair due to dry rot and the cost is not allowed

Michael Monahan: Much of Mr. Monahan's work was due to dry rot. The remainder of the work was either routine maintenance and repair…or involved work on the laundry room. The purpose of the laundry room is for the use of coin operated wahers and dryers. Since the cost of the machines is not an eligible capital improvement cost, neither is the cost associated with the use of these machines. Therefore none of the cost of Mr. Monahan's labor is allowed.

Francisco Nunez, Roofer: This work was either routine maintenance or work in connection with the laundry room. Therefore this cost is denied.

Economy Lumber: Wood shingles and handrails were part of the dry rot work and no part of the cost for this work or the work on another unit is allowed.

Regal Home Services: Work on the bathroom was the result of long standing dry rot and this cost is not allowed.

Dale Zimmerman: This work was routing maintenance- not a capital improvement and the cost is denied

Lee J. Deslippe Construction: The majority of this work was either necessitated by dry rot and or termintes including earth wood contact at the foundation , work associated with the laundry room or was routine maintenance and repair.

Brickhouse Construction: All charges in connection with dry rot, both in and outside the tenants unit are denied as are those associated with the laundry room.

Granite Expo: Tile and replacement of the bathroom vanity was all necessitated by the extensive dry rot. Therefore the cost is denied."

This listing includes literally every contractor and workman at the site including the building permits which authorized such work. In effect "all" of the work was denied and classified as "repair." The RAB ruling is inconsistent with existing law and places the Oakland capital improvement definition at odds with established California and Federal law.

To "repair" a building means to "maintain" it in operational order, while "improving" the building encompasses all of the work undertaken by this owner.

The new owner tore out not only the dry rot and damaged wood and replaced it with new upgraded materials and jacked up the building to apply sister beams to sagging support beams' removed rotted sills on crumbled foundation, replaced sills with new wood, foundation caps as well as completed a seismic bolting retrofitting the new wood sills to the frame of the building. The owner as well added vertical supports every 12 inches to comply with new building code requirements. The owner tore out all the shingles and wood around the entire base of the building installing new vent work and doors for access to preclude further termite infestation. None of this work was required for simple maintainance but was performed to update, upgrade and rehabilitate the deteriorating building.

Dry rotted entry stairs on 3 units including the petitioners were torn out because many of the boards were over 100 years old, sagging with dry rot, and age and unsafe. Instead of just replacing the damaged area with new boards, the owner opted to tear out the entire stairways of each unit and replace it with contrete and brick creating entirely new porches, patios and stairs. Because of the tear out, new railings were commissioned and installed consistent with 2015-16 building code requirements. The owner also broke out old walkways and stairs to the street to match the new porches on each unit. New handrails were commissioned and installed and wrought iron railings installed to protect tenants and guests from slippage or falls on the walkways. All of this constitutes new upgrades to the building and capital improvements under state and federal law.

Where dry rot was found in the laundry room floor, again the floor, subfloor and support beams were substantially worn out. Instead of simply replacing the old wood with new, the owner tore out the floor, subfloor, cross beams replacing them with new upgraded materials and exended for safety ingress and egress the floor by 16 square feet which allowed a new door, stair and access to the laundry room. This required new wood beams, flooring , tiling outside wall construction , roof, gutter shingle and lighting. These constitute new components and new construction above simple maintenance.

The east wall and floor of Petitioners bathroom had dry rot and termite damage. Instead of simply replacing the damaged wood, floor and dry wall, the owner with the Petitioners support gutted the bathroom, floor, subfloor, and cross beams and installed new cross beams, supports, an entirly new marble flooring, installed a new tub and fixtures, new shower tile, new window and sill, new vanity, lighting, sink and fixtures. Because of the age of the building the construction had deteriorated so that further repair was not practical. Such work is classified as capital improvement.

Similarly new windows were installed with new framing, not just replacing old windows where dry rot had damaged the aluminum and frame but the frames were taken out and replaced with upgraded wood and trim. The windows were designed to match other framing on the older part of the building making it architecturally consistent. The windows were upgraded to replace old aluminum windows which had no sills or trim to new wood framed windows with trim and sills to match. Such work cannot be characterized as maintenance. Instead they are "capital improvements" as a matter of state and federal law.

While the dry rot and termite damage provided the the basis for construction in the first instance, the work done encompassed more than $116,000 in work and upgrade of a 107 year old dilapidated building. Receipts for all of the above work were submitted to the hearing officer but rejected as "repair" due to failed maintenance. The work did not constitute "repair" under any city, state or federal definition. The work constituted "capital improvements" and should have been classified as such by the RAB.

4. Other Grounds for Appeal

Perhaps the most significant objection by the owner to the decision of the RAB is that the RAB decision is contrary to the facts and to the law. There already exists significant case law that defines when work is capitalized rather than deducted as a repair.

As stated in *American Bemberg Corp. v. Commissioner*, 10 T.C 361, 376 (1948) aff'd 177 f 2d 200 (6th Cir 1949) "[i]t is appropriate to consider the purpose, the physical nature and the effect of the work for which the expenditures were made" in determining whether the work is a capital improvement or repair." In an article "IRS clarifies capital improvement vs. repair espense" by Thomas R. Tartaglia CPA (March 2012) of the firm of Dermody, Burke & Brown CPAs LLC, Mr Tartaglia summarizes the considerations the IRS takes into consideration when determining capital improvement versus repair:

"Capital Improvement	**Repair**
Improvements that put property in a better operating condition.	Restores the property to a "like new" condition
Improvements that "keep" property in efficient operating condition	Restores the property to its previous condition

Addition of new or replacement components material sub components to property	Protects the underlying property through routine maintenance
Addition of upgrades or modifications to Property	Incidental Repair to property
Enhances the value of the property in the nature of a betterment	
Extends the useful life of the property	
Improves the efficiency of the property	
Improves the quality of the property	
Increases the strength of the property	
Increases the capacity of the property	
Ameliorates a material condition or defect	
Adapts the property to a new use	
Plan of Rehabilitation Doctrine."	

The RAB states: "none of the work that was performed to correct damage caused by dry rot or insects is eligible as a capital improvement cost."

California, adopts federal law on this subject and the IRS through revenue rulings and the courts through federal decision have already determined what constitutes a "repair" versus "capital improvement." The courts have distinguished on the basis of whether the expenditure "puts" or "keeps" the property in an ordinary efficient operating condition. As stated by the Third Circuit in *Estate of Walling v. Commissioner* 373 F. 2d 190, 192-193 (3rd Cir 1967):

> "the relevant distinction between capital improvements and repairs is whether the expenditures were made to "put" or "keep" property in ordinary operating condition. If improvements are made that "put" the particular capital asset in efficient operating condition then they are **capital** in nature. If however they are made merely to keep the asset in efficient operating condition, they constitute **repairs** and are deductible as such. (See also *Moss v. Commissioner*, 831 F.2d 833, 835 (9th Cir 1987)(Quoting *Estate of Walling*).

In the established tax case of *Illinois Merchants Trust Co. v Commissioner* 4 B.T.A 103, 106 (1926) acq, C.B.V-2,2 in a determination whether an expenditure was a capital one the court

held it necessary to keep in mind the "*purpose*" for which the expenditure was made. If the purpose was simply to maintain the property it constituted a repair but where the expenditure replaces, alters or improve the property or prolongs its life or increases its value it is a capital improvement.

In *Phillips & Easton Supply Co. v. Commissioner*, 20 T.C. 455 (1953) installing a new floor in the taxpayers bulding was a **capital** expenditure where the old floor was 46 years old and had derteriorated so that further repairs were not practical. Similarly in *Denver & "Rio Grande W. R.R. Co. v. Commissioner*, 279 F. 2d 368 (10th Cir) substantial restoration, strengthening and improvement of a viaduct was not for incidental repairs but for a replacement of a major portion of the viaduct which could no longer be repaired. Hence it was deemed a **capital** improvement. Extensive case law deals with building improvements , where new additions, structural parts, replacing existing components with upgraded components or sub components that imrpove utility and longevity all constitute **capital** improvements. *Smith v. Commissioner* 300 F 3rd 1023 (9th Cir 2002).

When new property is added to already existing propery, "**capitalization**" is required. So too when replacement components or material sub components are installed these costs must be **capitalized**. *Smith v Commisioner* 300 F 3d 1023 (9th Cir 2002); *Portland Gasoline Co. v Commissioner* 8 T. C. M (CCH) 449 (1949) aff'd on other issues 181 F 2d 538 (5th Cir 1950). So too, replacing and installing new components and structural parts constitute **capita**l improvements. (See *Blue Creek Coal, Inc. v. Commissioner, T.C Memo.* 1984-579; *Swig Investment Co. v. United States*, US 98 F.3rd (1359) (Fed. Cir 1996); *Trenton-New Brunswick Theatres Co. v. Commissioner,* T.C. Memo 1954-69; Teitelbaum v. Commissioner 294 F 2d 541 (7th Cir 1961).

In the 9th Circuit case of *Smith v. Commissioner* 300 F 3d 1023 (9th Cir 2002) the court concluded that replacement of an aluminum smelting cell lining was a replacement of an essential component of the cell extending the life of the cell and requiring **capitalizaation**. Also adding new building components that improve utility are **capital** improvements. In *R.K.O Theatres, Inc v. United States* 163 F. Supp 598 (Ct. Cl. 1958) the court opined that new fire doors and escapes added to a theater increased the value of the property for use in the taxpayer's theatre business and thus were "**capital"** improvements. The case law is extensive in holding that addition of new components or structural parts, replacing existing components with upgraded components (or sub components) that improve utility requires **capitalization**. *Smith v. Commissioner* 300 F 3rd 1023 (9th Cir. 2002); See also *Ingram Industries Inc. v Commissioner* T.C Memo 2000-323.

5. Benefit to the Tenant

The Oakland Ordinance provides that "Those improvements must primarily benefit the tenant rather than the owner." (OMC Chapter 8.22 Rent Board Regulations)

The hearing officer in the instant case did not make any finding that any of the capital improvements did not benefit the tenant. In fact the RAB found that all landscaping and exterior

lighting replaced and installed by the landlord on the entire property were indeed capital improvements despite the fact that only some of the lighting was for the Petitioner's unit.

The construction referenced in this appeal was directly under the Petitioners unit or inside the petitioners unit in the form of support, retrofit, installation of support beams under Petitioners bathroom, living room and dining room. So too the complete overhaul renovation of the Petitioners bathroom updated their bathroom to 2015 standards. Similarly the installation of new stairs for a porch, stairway, and walkway directly benefitted the Petitioners. Further the general improvement of the building including structural installation , renovated laundry room, and windows on the building makes the building more attractive and significantly more useable. It also eliminates safety issues which had long been unaddressed.

In light of the overwhelming authority against the RAB's position the the RAB Decision in case T16-0108, Chamales v. Farley Levine Properties LLC cannot stand and must be reversed holding all such improvements capital improvements as opposed to repairs.

Conclusion

For the foregoing reasons it is respectfully requested that all listed items previously categorized as "repair" be reclassified as "capital improvements" and the rental increase changed to appropriately reflect said change.

Dated: August 4, 2016

Respectfully Submitted,

Barbara S. Farley
Owner/Manager
Farley Levine Properties LLC

RECEIVED
CITY OF OAKLAND
RENT ARBITRATION PROGRAM
2017 MAR -1 PM 2:34

Farley Levine Properties LLC
7 King Avenue
Piedmont, CA 94611
510-652-8291
Bsuzanne7@aol.com

February 28, 2017

City of Oakland
Department of Housing and
Community Development
Rent Adjustment Program
P.O. Box 70243

Attention: Residential Rent and Relocation Board

Re: **Case Number T16-0108, Chamales v. Farley Levine Properties, LLC**
Property Address: 4244 Gilbert St., Oakland, CA
Date of Hearing: June 15, 2016
Date of Decision: July 28, 2016

I. SUPPLEMENTAL APPEAL STATEMENT

This statement is submitted as part of the Submission to the Board consistent with the August 4, 2016 Appeal filed by Farley Levine Properties LLC (Landlord or Farley Levine) from a de cision rendered by the Oakland Rental Board entered July 28, 2016.[i]

Farley Levine has received notice from the City of Oakland Rent Adjustment Program that it is delaying any further rental increase on other units in Appellants property pending the outcome of this appeal. Such notice also advised that hearing in the above matter is scheduled for March 23, 2017, although Owner has not received such notice from the Residential Rent and Relocation Board of such hearing.

II. STATEMENT OF FACTS

On December 28, 2015 Landlord sent a notice of increased rent to the tenant based on Capital improvements raising the rent from $2746.00 to $3,002.67 as of March 1, 2016. Petitioner, Jana and George Chamales challenged the rental increase on the following grounds:

> "The increase(s) exceed(s) the CPI Adjustment and is(are) unjustified or is (are) greater than 10% (OMC 8.22.070 and OMC 8.22.090)[ii]

Landlord filed a timely response to the petition claiming that the rental increase was based upon capital improvements. All notices were timely made and Tenant timely received notice of the Rent Adjustment Program.

The rental increase was based on Capital Improvements to the 2 story building in which Petitioner occupies the entire first floor. The rental increase calculation is below 10% and is based on the Oakland Rental Board's rental increase calculation formula.

Tenants, have been living in the subject property since October 1, 2013 and have had only one rental increase before the subject increase. Tenants live in a three bedroom two bathroom unit. There are two units in their building. There is a townhouse directly attached to the back of the two units. There are also two separate units in a different building on the same property for a total of 5 units in the rental property each having their own direct ingress and egress. All units share the same laundry room which also houses three water heaters, one of which services Tenants unit.

Landlord, Farley Levine purchased the subject property in December 2014. As part of the disclosures for acquisition of the subject property a termite report reflected approximately $29,000 damage to the property from dry rot and termite infestation. The building was constructed in 1909.

Farley Levine initially undertook to repair the building, but found in most instances it was not practical to simply repair the building as the repairs would be temporary to a later required upgrade. The Landlord determined to upgrade and improve the building by removing structural deficiencies, strengthening the building, adding new structural components of cross support beams, crimping, new drainage around the perimeter of the building, providing new seismic retrofit, adding new space for laundry service and water heaters, tearing out and upgrading with new brick stairs, porches and walkways for safer ingress and egress, providing new venting and doors for maintenance, installing new fencing, new handrails, new windows and framing and extending the life of the building by over 50 to 100 years. New lighting and landscaping and irrigation systems were also installed. Specifically to the Tenants unit a bathroom was gutted down to the floor boards and wall beams and the underpinning of the bathroom reconstructed with new cross beams and new flooring walls, new shower and tub, new lighting, vanity, sink, fixtures, tiling on floors and shower. A new front porch was installed and walkway with railings of wrought iron and brick. Over **$116,000** in **capital improvements** were made to the building and surrounding landscape that directly relate to the Petitioner's unit. Other capital improvements not relating to Petitioners unit were not included in the calculation for Petitioner's rent increase.

Submitted to the hearing officer on June 16, 2016 were receipts, permits and construction contracts that addressed the work undertaken. "Repairs" that were undertaken were <u>not</u> included in the rental calculation for rental increase as Capital Improvements.

III. ISSUE

The hearing officer on June 16, 2016 classified virtually all work by every contractor and workman at the site including building permits authorizing such work as "repair" and not capital improvements.

The Landlord challenges this finding as inconsistent with the facts and applicable law governing capital improvements to real property in California.

Further, since the time of the Rental Board's ruling in June 2016, The Oakland Rental Board has identified all of the Owners improvements as "capital improvements" under their new law. This change acknowledges the items listed by the Landlord as capital improvements rather than repairs as determined by the Rental Board hearing officer.

IV. RULE

Oakland Municipal Code §8.22 defines "Capital Improvements" as "those improvements to a covered unit or common areas that materially add to the value of the property and appreciably prolong its useful life or adapt it to new building codes. Those improvements must primarily benefit the tenant rather than the owner."

Oakland is bound by the Charter of the City of Oakland to follow California Law (Article 1§ 106). While adopting a charter gives a city control over its municipal affairs, charter cities are subject to state law. (Section 6 Article XI Constitution of the State of California). The State of California in turn is subject under the Supremacy Clause of the United *States* Constitution (Article VI, Clause 2) to *federal law* and treaties, which constitutes the supreme *law* of the land. Since the I.R.S. and Federal Courts have already defined *what is and is not a "Capital Improvement", the Oakland Rental Board is bound to follow established law on this subject.*

Federal law, 26 US Code § 263 provides that the owner of a building may deduct expenses for "repairs" against income, but cannot deduct expenses characterized as "capital improvements" from income except on an amortized schedule over time. A mischaracterization of an expense by the owner attributable to its property can subject them to fines and penalties from the IRS. As such a characterization by the Oakland Rental Board of these same expenses must be consistent with Federal law or such inconsistency places the Owner in jeopardy of fines from the federal government.

The IRS indicates what constitutes real property "capital improvement" as follows:

- Fixing a defect or design flaw
- Creating an addition, physical enlargement or expansion
- Creating an increase in capacity, productivity or efficiency
- Rebuilding property after the end of its economic useful life
- Replacing a major component or structural part of the property
- Adapting property to a new or different use (T.D 9564; REG-168745-03).

The Federal courts as well have elaborated on the above definition. When new property is added to already existing propery, "**capitalization**" is "**required**." So too when replacement components or material sub components are installed these costs must be **capitalized**. *Smith v Commisioner* 300 F 3d 1023 (9th Cir 2002); *Portland Gasoline Co. v Commissioner* 8 T. C. M (CCH) 449 (1949) aff'd on other issues 181 F 2d 538 (5th Cir 1950). So too, replacing and installing new components and structural parts constitute **capital** improvements. (See *Blue Creek Coal, Inc. v. Commissioner, T.C Memo.* 1984-579; *Swig Investment Co. v. United States*, US 98 F.3rd (1359) (Fed. Cir 1996); *Trenton-New Brunswick Theatres Co. v. Commissioner,* T.C. Memo 1954-69; Teitelbaum v. Commissioner 294 F 2d 541 (7th Cir 1961).

In California the 9th Circuit Court of Appeal in the case of *Smith v. Commissioner* 300 F 3d 1023 (9th Cir 2002) concluded that replacement of an aluminum smelting cell lining was a replacement of an essential component of the cell extending the life of the cell and requiring **capitalization**. Also adding new building components that improve utility are **capital** improvements. In *R.K.O Theatres, Inc v. United States* 163 F. Supp 598 (Ct. Cl. 1958) the court opined that new fire doors and escapes added to a theater increased the value of the property for use in the taxpayer's theatre business and thus were "**capital**" improvements. The case law is extensive in holding that addition of new components or structural parts, replacing existing components with upgraded components (or sub components) that improve utility **requires capitalization**. *Smith v. Commissioner* 300 F 3rd 1023 (9th Cir. 2002); See also *Ingram Industries Inc. v Commissioner* T.C Memo 2000-323.)

In *Phillips & Easton Supply Co. v. Commissioner*, 20 T.C. 455 (1953) installing a new floor in the taxpayers bulding was a **capital** expenditure where the old floor was 46 years old and had derteriorated so that further repairs were not practical. Similarly in *Denver & "Rio Grande W. R.R. Co. v. Commissioner*, 279 F. 2d 368 (10th Cir) substantial restoration, strengthening and improvement of a

viaduct was not for incidental repairs but for a replacement of a major portion of the viaduct which could no longer be repaired. Hence it was deemed a **capital** improvement. Extensive case law deals with building improvements , where new additions, structural parts, replacing existing components with upgraded components or sub components that imrpove utility and longevity all constitute **capital** improvements. *Smith v. Commissioner* 300 F 3rd 1023 (9th Cir 2002).

The distinction made between a capital improvement and a "repair" has been described in various cases as "keeping" something operational as opposed to adding improvements which increases the life, longevity, and operating proficiency of the property." *Estate of Walling v. Commissioner* 373 F. 2d 190, 192-193 (3rd Cir 1967):

In the established tax case of *Illinois Merchants Trust Co. v Commissioner* 4 B.T.A 103, 106 (1926) acq, C.B.V-2,2 in a determination whether an expenditure was a capital one the court held it necessary to keep in mind the "*purpose*" for which the expenditure was made. If the purpose was simply to maintain the property it constituted a repair but **where the expenditure replaces, alters or improves the property or prolongs its life or increases its value it is a "capital improvement."**

When new property is added to already existing propery, "**capitalization**" is required. *Smith v Commisioner* 300 F 3d 1023 (9th Cir 2002); *Portland Gasoline Co. v Commissioner* 8 T. C. M (CCH) 449 (1949) aff'd on other issues 181 F 2d 538 (5th Cir 1950). (See *Blue Creek Coal, Inc. v. Commissioner, T.C Memo*. 1984-579; *Swig Investment Co. v. United States,* US 98 F.3rd (1359) (Fed. Cir 1996); *Trenton-New Brunswick Theatres Co. v. Commissioner,* T.C. Memo 1954-69; Teitelbaum v. Commissioner 294 F 2d 541 (7th Cir 1961).

In the instant case there can be no argument that the work performed constitutes capital improvements. The hearing officer's classification otherwise is contrary to existing law and must be reversed.

V. Application of Law to Current Facts

The work for which the rental increase is applied constitutes "capital improvements" to the building which improved the property for all tenants, prolonged the life of the building and constituted upgrades with new material and new components installed. The major building reconstruction was in the building which has two stories and two apartments. Petitioner inhabits the entire first floor of this building.

The new property owner in the purchase of 4242 – 4246 Gilbert Street Oakland, CA obtained a termite and pest report as a condition of sale. The pest report (which is submitted herewith as Exhibit A) reflected dry rot and infestation at around $29,000 of work. Owner purchased the property in December 2014 and undertook immediately to remedy the areas of infestation and instability.

The Owner hired contractors to address the represented work and during the course of repair determined that the proposed repair of a 107 year old building did not bring the building into compliance with existing building code requirements or significantly improve the property so it would not require further repair in a relatively short period of time. The Owner determined to bring the building up to code, replace, reconstruct, alter and upgrade the building where necessary to prolong the life of the building for another 50 to 100 years. (see *Illinois Merchants Trust Co. v Commissioner* 4 B.T.A 103, 106 (1926) acq, C.B.V-2,2). Such work constitutes "Capital Improvements" which require amortization. (Full back up receipts and cancelled checks for all charges were submitted to the hearing officer.)

A. New Drainage

The contractors retained by Owner were requested to address a pool of water which was flowing under the building (which houses petitioners apartment) causing dampness and destruction to the foundation and underpinnings of the building. In this regard the contractor tore out existing walkways on the north and east side of the building and excavated along the north side of the building, to a level of 3-4 feet below the foundation of the building and installed new drainage and a sump pump to redirect water flowing under the building into new drains to the street. No drainage had previously been installed in these areas. Existing drainage on the north side of the building had to be removed and replaced with new and upgraded drainage pipe. This work substantially improved the building and property eradicating a source of continuing deterioration of the building and is a "capital improvement." (*Illinois Merchants Trust Co. v Commissioner* 4 B.T.A 103, 106 (1926) acq, C.B.V-2,2) This work was improperly classified as a "repair" by the Rental Board hearing officer. Under the new law recognition is given to sump pump, new paving, plumbing etc. none of which was allowed by the hearing officer as a capital improvement.

B. Underpinning and Foundation Work

Once the drainage work had been completed the Contractors were instructed to address the dry rot and termite damage to the building. (The building in which Petitioners live) Again repairs were determined to be stop gap measures before a major overhaul of the foundation was required. The Owner elected not to undertake simple repairs as they would be temporary to a later required major foundational reconstruct. The owner determined to address the problem now. As a result, the entire perimeter of the building was deconstructed, shingles, support beams, sills, and cross beams were removed with the building being jacked up off its foundation so the work could be completed. New sills, supports and cross beams were installed. All damaged sills were removed and new sills installed on the entire perimeter of the foundation, with new retrofit bolting to the foundation performed. New walls were constructed and new studs installed with pressure treated 3 x 6 inch wood. Top plate and bottom plates were installed for the retrofit. 160 new perimeter supports were installed with each dowelled and anchored as part of the seismic retrofit. Bolts were embedded deep into concrete with epoxy in compliance with building code regulations. New foundation cap of 10-12 inches was constructed at the driveway edge and #4 rebar was dowelled into existing foundation 6 inches and a new horizontal #4 rebar was installed on top for approximately 25 feet and bolted and ancored providing new support for the building. This work alone constituted $50,000 in improvements. (See Exhibit C) All such constuction constitutes Capital Improvements. (See *Phillips & Easton Supply Co. v. Commissioner*, 20 T.C. 455 (1953) *Smith v Commisioner* 300 F 3d 1023 (9th Cir 2002); *Portland Gasoline Co. v Commissioner* 8 T. C. M (CCH) 449 (1949) aff'd on other issues 181 F. 2d 538 (5th Cir 1950).

During the course of the work, what originally was not work that required building permits expanded so building permits were required. Owner obtained all applicable building permits for this new work. The hearing officer improperly classified all of the above work as "repair" work. Oaklands new law lists all of the above work as "Capital Improvements." The ruling of the rental board is in error and should be reversed.

C. Bathroom Renovation unit 4244

The termite report identified the north east corner of the Tenant's apartment as having dry rot in the wall and corner of the room under the tub. When the dry rot was torn out it was discovered that the support beams under the tub and bathroom had not been constructed properly so the entire floor and walls were taken out and the bathroom demolished. The fixtures were old so all fixtures were replaced and upgraded. New construction took out the existing window, walls, flooring, plumbing and electrical

outlets. The bathroom was completely redone with new floors, walls, tiling, lighting, plumbing, new tub, sink, fixtures and shower. The rental board hearing officer improperly classified all of this work as "repair." Oaklands new law recognizes all of the work done as "capiatl improvements." Under any definition this did **not** constitute a "repair" but constituted capital improvements. This was in the tenants unit and a direct benefit to them.

D. Stairs and Walkways

Outside stairways providing ingress and egress specific to Petitioners apartment and an additional stairway and porch leading to unit 4246 over Petitioner's apartment suffered dry rot and termite damage in the main building. Again rather than repairing and restoring the damaged stairways the Owner elected to tear out the entire porches, stairways and walkways in a complete renovation and upgrade from wood to concrete and brick stairways and brick walkways. New porches and stairs were framed with water proofed wood and poured concrete under lamenent brick and then mortered. Old walkways of concrete were torn out and new concrete layed and brick walkways installed on the new 4" concrete slab. New stairs were constructed of concrete and brick. New railings were commissioned out of redwood for the porches and new wrought iron railings were commissioned and installed to avoid tripping or falling hazards along the new walkways and stairs. Petitioners unit was one of the units which benefitted from this upgrade and new construction. This constituted approximately $15,000 of the new construction. (See Exhibit C) These improvements constitute "Capital Improvements." (*Smith v Commisioner* 300 F 3d 1023 (9th Cir 2002); *Portland Gasoline Co. v Commissioner* 8 T. C. M (CCH) 449 (1949) aff'd on other issues 181 F 2d 538 (5th Cir 1950). *Blue Creek Coal, Inc. v. Commissioner, T.C Memo.* 1984-579; *Swig Investment Co. v. United States*, US 98 F.3rd (1359) (Fed. Cir 1996); *Trenton-New Brunswick Theatres Co. v. Commissioner,* T.C. Memo 1954-69; *Teitelbaum v. Commissioner* 294 F 2d 541 (7th Cir 1961).)

Petitioner directly benefits from the new, walkway, stairs and porch directly off their apartmetn unit. They are provided with a new porch and safe ingress and egress as well as a much upgraded access to their unit. They also benefit from the renovation of the walkways in that it appreciably makes their unit and the apartment as a whole more attractive for use and living. The rental board hearing officer classified all the construction of the stairs and porch and walk as "repairs." Oaklands new law recognizes all of the work done as capital improvements. The ruling of the rental board must be reversed.

E. Laundry and Water Heater Room

As part of the original repair work, the tenant complained of problems with their bathroom. The bathroom is situated directly next to a room which houses laundry facilities and 3 water heaters, one of which services Petitioners apartment. Originally it was determined when the washer and dryer were removed that the flooring of the room housing the appliances was rotted expanding into the wall adjacent the tenants bathroom. Originally the flooring was removed, exposing dry rot extending under the building and to the adjacent bathroom in Petitioners unit. The stairs into the laundry room were also rotted.

Ultimately it was determined that the dry rot could not be repaired and again a major reconstuct and renovation was required. The wall of the laundry/water heater room was torn out and wall and entire bathroom of 4244 completely torn out including the underpinning cross beams supporting the laundry/water heater room removed. The laundry/water heater room was extended by approximately 9 square feet with new foundation, floor joist, subfloor, walls, 1 new door 1 new window, new sheer walls, roof, rafters, roof sheeting and new entry light and exterior switch installed with all new flooring The new roof required shingling, and new gutters installed and the renovated room required sheet rocking, baseboards and finishing. All of the above reflects "capital improvements." (*Smith v Commisioner* 300 F 3d 1023 (9th Cir 2002); *Portland Gasoline Co. v Commissioner* 8 T. C. M (CCH) 449 (1949) aff'd on other issues 181 F 2d 538 (5th Cir 1950). *Blue Creek Coal, Inc. v. Commissioner, T.C Memo.* 1984-579;

Swig Investment Co. v. United States, US 98 F.3rd (1359) (Fed. Cir 1996); *Trenton-New Brunswick Theatres Co. v. Commissioner,* T.C. Memo 1954-69; *Teitelbaum v. Commissioner* 294 F 2d 541 (7th Cir 1961).) . So too the owner determined to install new a new washer and dryer in the newly constructed space. The Rental Board hearing officer disallowed as repair all of this new construction. All of this work is now classified under the new laws of Oakland as capital improvements.

Petitioner utilizes the laundry room and access to and from the laundry room. Trip hazards have been removed, drainage issues have been corrected, and stairs and railings into and out of the room have been newly constructed for safety. The tenant directly benefits from having a safe, clean and renovated room where they can do their laundry and service providers can easily access the water heater that services their unit. These constitute capital improvements and the rental boards ruling otherwise must be reversed.

F. New Window Installation

As part of the dry rot and termite work it was discovered that 5 of the windows in the building were suffering from dry rot including the tenants bathroom window. Once it was determined that again repairs to the building would cost almost as much as a complete renovation and replacement, the Owner determined to upgrade the damaged windows to replace silver aluminum windows that did not architecturally match the windows in the front of the building with upgraded new bronze aluminum alloy windows, new framing, new trim and shingles to architecturally match the windows in the front of the building. Fixing a defect or design flaw constitutes a capital improvement (T.D 9564; REG-168745-03).

This was an upgrade with new component parts to correct not only damaged windows but an effort to overcome design flaws not addressed by prior owners, this all constitutes capital improvements. (*Smith v Commisioner* 300 F 3d 1023 (9th Cir 2002); *Portland Gasoline Co. v Commissioner* 8 T. C. M (CCH) 449 (1949) aff'd on other issues 181 F 2d 538 (5th Cir 1950). *Blue Creek Coal, Inc. v. Commissioner, T.C Memo.* 1984-579; *Swig Investment Co. v. United States*, US 98 F.3rd (1359) (Fed. Cir 1996); *Trenton-New Brunswick Theatres Co. v. Commissioner,* T.C. Memo 1954-69; *Teitelbaum v. Commissioner* 294 F 2d 541 (7th Cir 1961).) The hearing officer classified such work as repair. The work done was clearly capital improvements and now recognized as such by the new Oakland ordinance.

Petitioner benefits from an upgraded building, new bathroom window and attractive place to live. The building has been improved with design consistency which makes it a more attractive place to bring friends and to live.

G. New Lighting

The owner determined that the lighting around the units were sub par providing little safety or night lighting . Exterior lighting for all of the units were replaced with ungraded matching fixtures in an effort to provide safety and consistent available lighting. New fixtures were installed on the walkway to the laundry/water heater room for safety and easy ingress and egress. Adding new building components that improve utility are **capital** improvements. *Smith v. Commissioner* 300 F 3d 1023 (9th Cir 2002)

H. New Landscaping/Fencing

As part of an upgrade to the apartment complex the landscaping for the building was torn out, and new soil, new sprinkler systems installed, new flowers and plants in an overall upgrade of the building and units was undertaken. Approximately 28 new rose bushes and 8 new rose trees were planted with 6

new cherry trees, 1 crabapple, 4 potatoe trees and dozens of iris, agapanthas, salvia, camellia, hybiscus, ceanothus, and others in the new landscaping. A new lawn was put in and a new short brick perimeter wall was constructed in front of the building to provide a border for new roses and landscaping. 90 % of this new landscaping is next to or in front of Petitioners unit. They benefit directly from these upgrades and now have a beautiful entry to their unit.

Fencing along the perimeter of the east walkway to the laundry room was dilapidated and falling down. It was determined that the fencing was hazardous to those using the walkway, and could not be economically repaired so it was torn out and new fencing and trellis were installed. Again this is a capital improvement consistent with applicable law. *Smith v. Commissioner* 300 F 3d 1023 (9th Cir 2002).

VI. Conclusion

The Owner has complied with all Oakland Rental Board requirements for a rental increase in unit 4244, Gilbert Street, Oakland. The Petitioner has enjoyed a low rent well below market rate for many years. Even with the proposed increase the rent will be significantly below market rate for their unit. Petitioner's unit is a direct beneficiary of the improvements to the subject property in that the work undertaken for upgrade and improvement directly relates to the two story 107 year old building in which their apartment is located. They have received the benefit of safety measures making their unit structurally safe, and the benefits of a new porch, walkways, lighting, bathroom and landscaping making their unit more desirable, safe and accessable. For the foregoing reasons the rental increase from $2746.00 to $3,002.67 as of March 1, 2016 (Increase of $256.67) is justified and the ruling of the Rental Appeal Board should be reversed.

Exhibits Submitted

Submitted herewith are exhibit pictures reflecting some of the capital improvements to 4244 Gilbert Street and to the building which houses Petitioner's Apartment.

Submitted herewith as Exhibit A is a picture of the building 4244 Gilbert Street around the time of purchase in December 2014. Submitted with Exhibit A is as well a picture of the work that was reflected in the termite report. (Exhibit A)

Submitted herewith as Exhibit B are 2 pictures of the work undertaken on Petitioners unit walkway, railing, wrought iron railing, front porch and garden landscaping. (Exhibit B)

Submitted herewith as Exhibit C is one picture which include the double walkway, stairs, porch, landscaping, and railing and sprinkler system installed as capital improvements in the front of the building. (Exhibit C)

Submitted herewith as Exhibit D are pictures of the new front porch, stairs and railing of the unit In back of Petitioner's unit which was done to consistently address the dry rot and reconstruction relating to the Petitioners unit. (Exhibit D)

Submitted herewith as Exhibit E are pictures of the new walkways, drainage, fencing and landscaping as well as entry to new expanded laundry and water heater room with new brick stairs, new railing, new walls, roof and door. (Exhibit E)

Submitted herewith as Exhibit F are pictures of the 6 new windows installed. (Exhibit F)

All foundation and retrofit work as well as under building beams are reflected in the receipts and work contracts submitted with the original brief filed March 23, 2016.

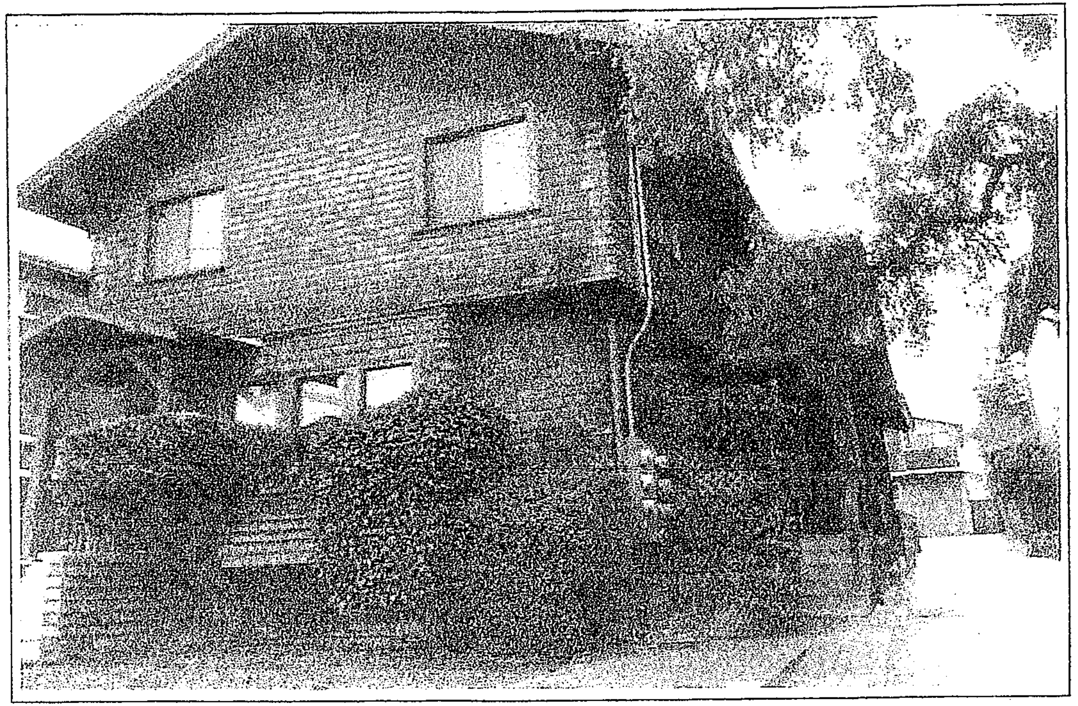
Dated: February 28, 2017

Respectfully Submitted

Barbara S. Farley
Manager/Owner

[i] The appeal provides for a submission of 25 pages by any party. Farley Levine submitted 9 pages with its appeal. The balance of its submission is submitted herewith.
[ii] The appeal also cited health, safety and fire code or permit violation which proved to have no merit. All permits were submitted at the hearing and no finding was made that there was a violation.

Inspection Reports 2014



Prepared For: Suzanne Farley

Property Address: 4244-4246 Gilbert
Oakland, CA 94611

Inspector: Sal D'Onofrio
Company: Sal D'Onofrio
dba WIN Home Inspection Piedmont
(510) 599-6244

Services Included in this Report:

Multiplex Inspection

EXHIBIT A

WOOD DESTROYING PESTS AND ORGANISMS INSPECTION REPORT

Building No.	Street	City	Zip	Date of Inspection	Page
4244	GILBERT STREET	OAKLAND	94611	10/13/14	1 of 13

Giant Jim Inspection Services
PO Box 1346
Manteca, CA 95336
Phone: (800) 231-8517 Fax: (800) 836-0350
giantjims@gjis.comcastbiz.net
Registration # PR2242

Report # 421261 T

Ordered by:	Property Owner and/or Party of Interest:	Report sent to:
MARCUS & MILLICHAP ELI DAVIDSON 555 12ST ST #1750 OAKLAND, CA 94067	BRIAN TOM 3 CRAIG AVE, FREMONT, CA 94611	

COMPLETE REPORT ☒ LIMITED REPORT ☐ SUPPLEMENTAL REPORT ☐ REINSPECTION REPORT ☐

General Description:
Two story Complex.

Inspection Tag Posted:
Subarea.

Other Tags Posted:
None found.

An inspection has been made of the structure(s) shown on the diagram in accordance with the Structural Pest Control Act. Detached porches, detached steps, detached decks and any other structures not on the diagram were not inspected. Diagram is not to scale. Locations are only approximate.

Subterranean Termites ☐ Drywood Termites ☐ Fungus / Dryrot ☐ Other Findings ☐ Further Inspection ☐

If any of the above boxes are checked, it indicates that there were visible problems in accessible areas. Read the report for details on checked items.

KEY: 1 - Subterranean Termites 2 - Drywood Termites 3 - Fungus/Dryrot 4 - Other Findings 5 - Unknown Further Inspection

DIAGRAM NOT TO SCALE, LOCATIONS ARE APPROXIMATE

FRONT

Inspected by: RICHARD HICKS State License No. OPR 10936 Signature

You are entitled to obtain copies of all reports and completion notices on this property reported to the Structural Pest Control Board during the preceding two years. To obtain copies contact: Structural Pest Control Board, 2005 Evergreen Street, Suite 1500, Sacramento, California, 95815-3831.
NOTE: Questions or problems concerning the above report should be directed to the manager of the company. Unresolved questions or problems with services performed may be directed to the Structural Pest Control Board at (916) 561-8708, (800) 737-8188 or www.pestboard.ca.gov.

43M-41 (REV. 10/01)

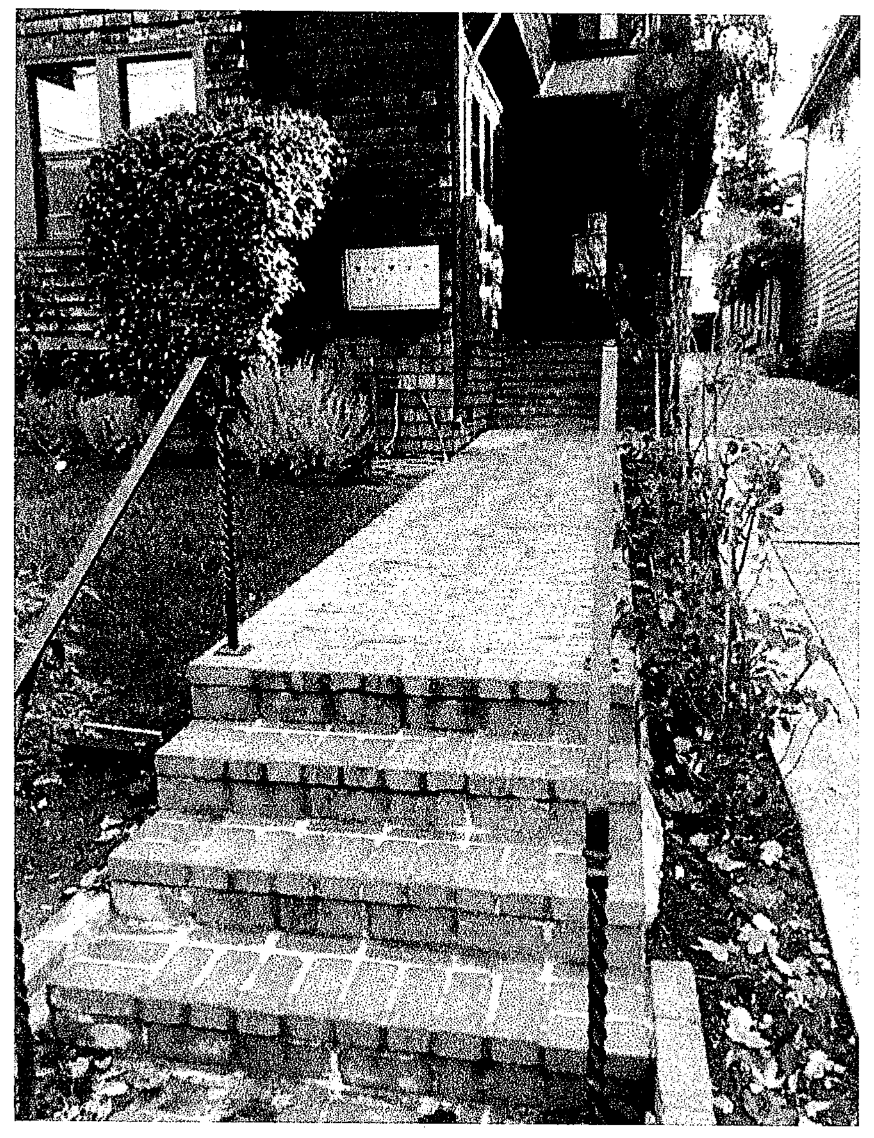


EXHIBIT B

EXHIBIT B

EXHIBIT C

EXHIBIT D

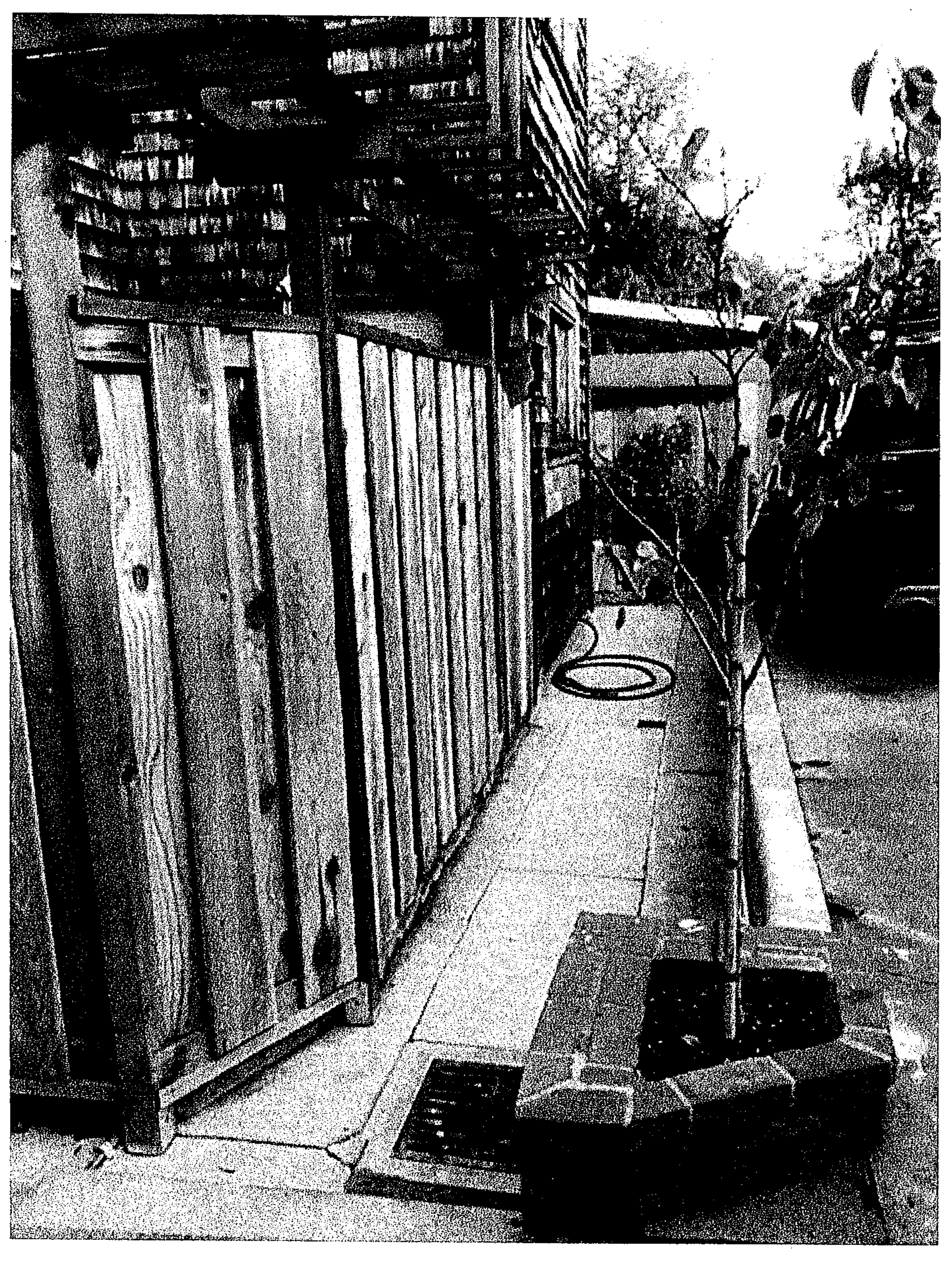


EXHIBIT E

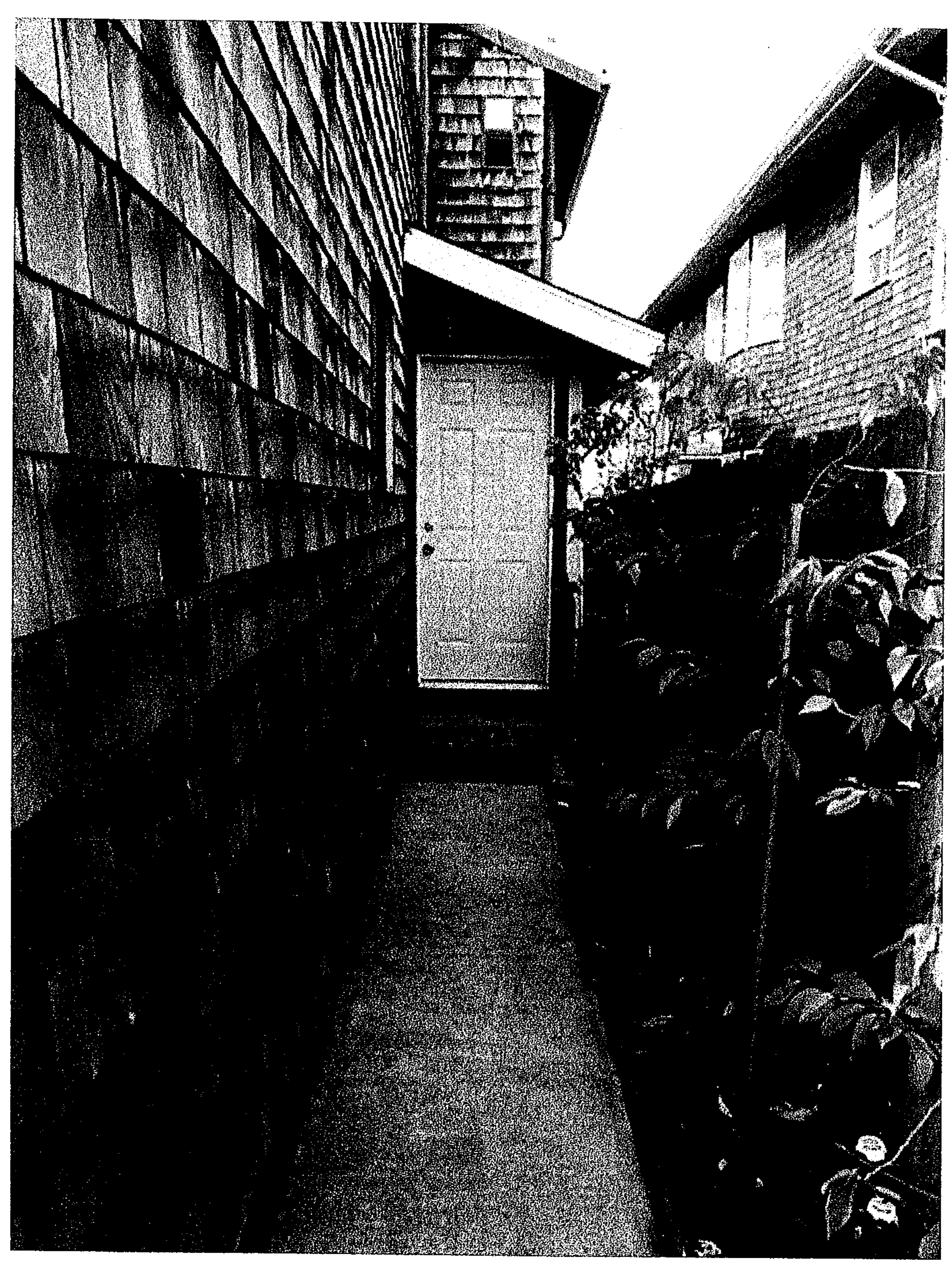


EXHIBIT E

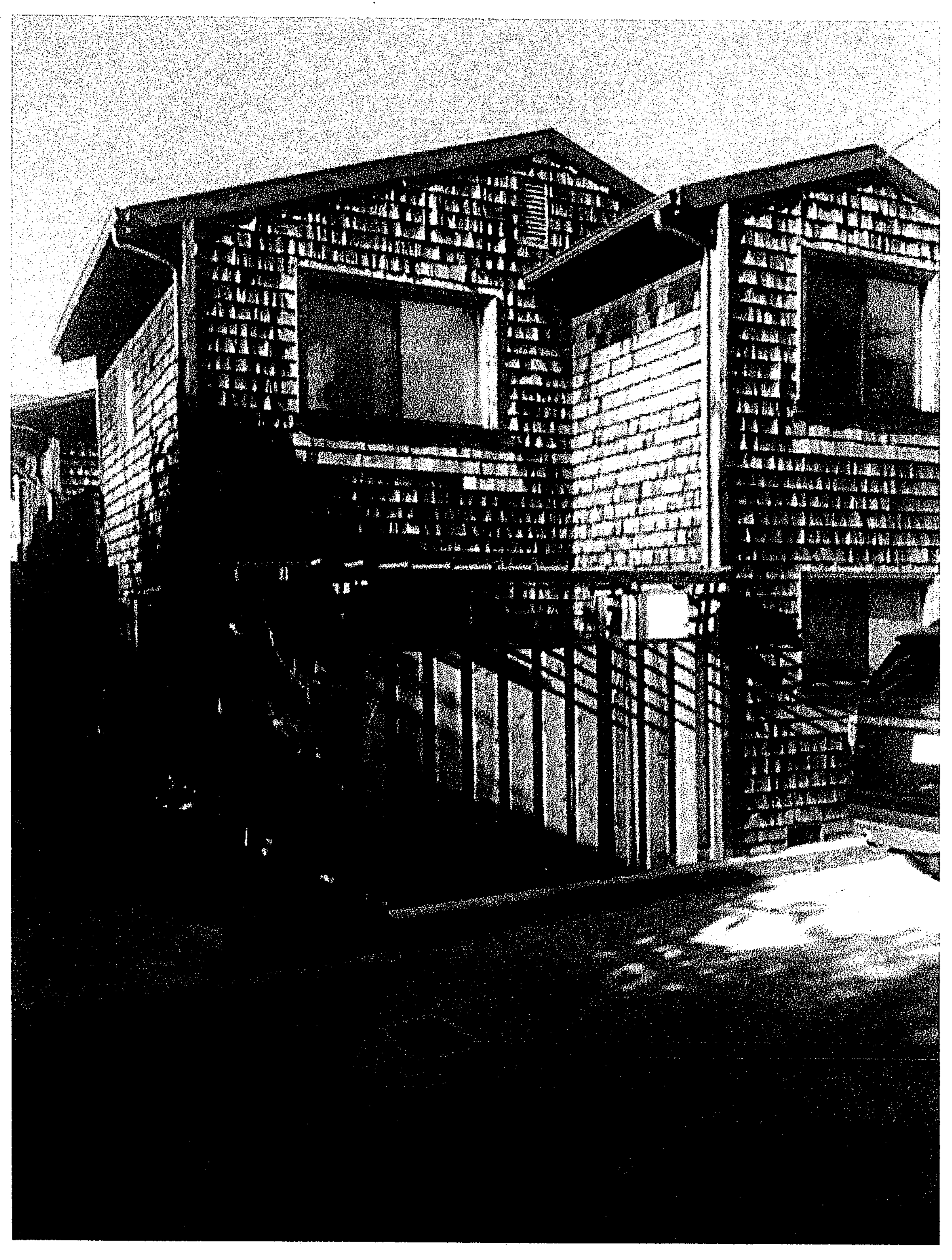


EXHIBIT F

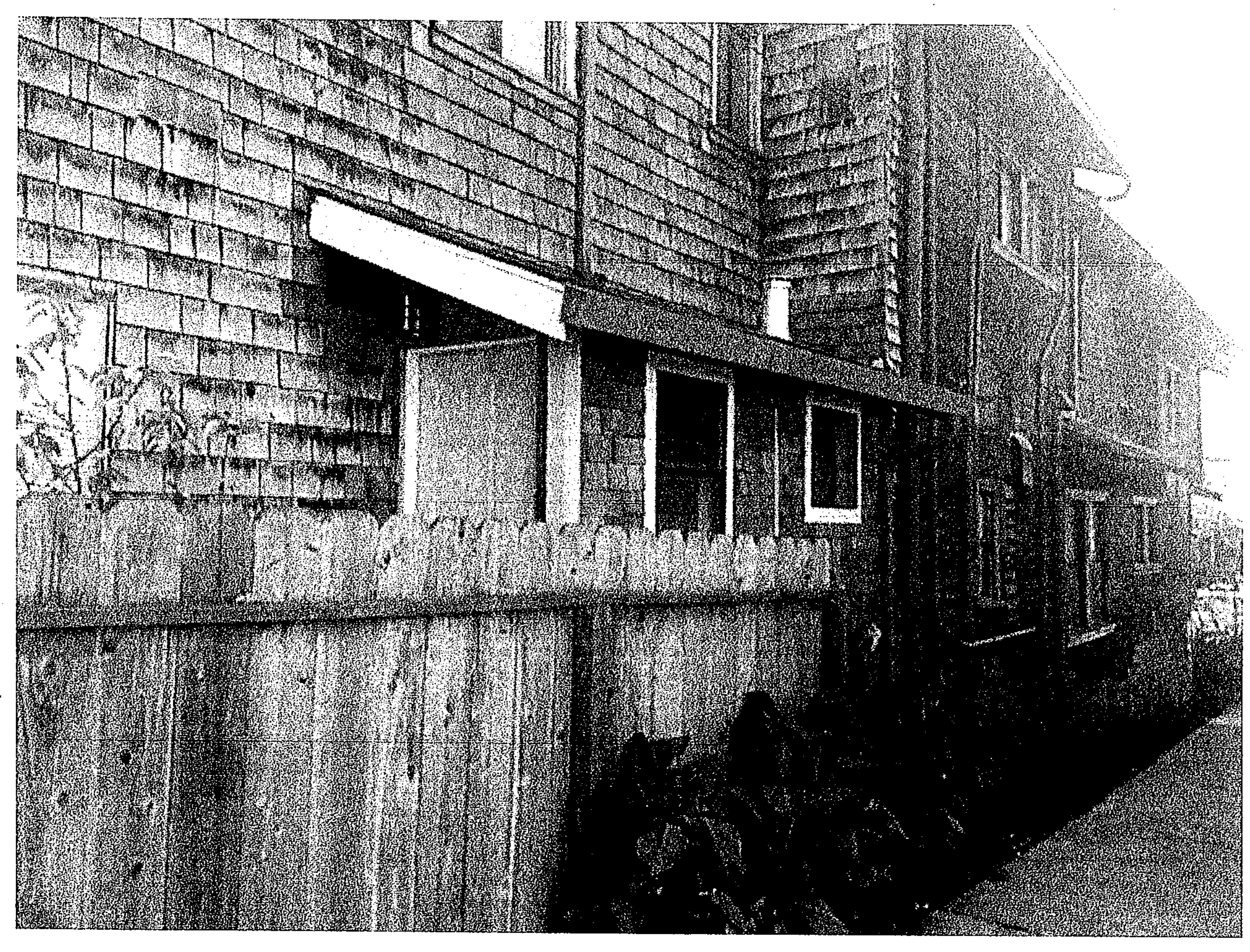


EXHIBIT F

PROOF OF SERVICE

Case Number T16-0108

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.

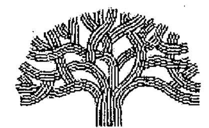
Today, I served the attached Supplemental Appeal Statement by placing a true copy of it in a sealed envelope in a City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California, addressed to:

Tenant
George &Jana Chamales
4244 Gilbert St
Oakland, CA 94611

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on April 03, 2017 in Oakland, CA.

Connie Taylor
Oakland Rent Adjustment Program



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: **T16-0108, Chamales v. Farley Levine Properties, LLC**

PROPERTY ADDRESS: **4244 Gilbert St., Oakland, CA**

DATE OF HEARING: **June 15, 2016**

DATE OF DECISION: **July 28, 2016**

APPEARANCES: **George Chamales (Tenant)**
Barbara S. Farley (Owner)
Michael Levine (Owner)

SUMMARY OF DECISION

The tenant's petition is partly granted.

CONTENTIONS OF THE PARTIES

The tenant filed a petition which alleges that a proposed rent increase from $2,746 to $3,002.67, effective March 1, 2016, exceeds the CPI Adjustment and is unjustified or is greater than 10%, and that at present there exists a health, safety, fire or building code violation in his unit.

The owners filed a response to the petition, which alleges that the proposed rent increase is justified by Capital Improvements.

THE ISSUES

(1) Did the owners serve the tenant with an "Enhanced Notice" and, if so, was a copy of the Notice filed with the Rent Adjustment Program within 10 days after it was served upon the tenant?
(2) Is a rent increase justified by Capital Improvements and, if so, in what amount?

EVIDENCE

Rent History: At the Hearing, the parties agreed that the tenant has continued to pay rent of $2,746 per month.

Enhanced Notice: The tenant's petition states that he was served with the challenged rent increase notice on December 28, 2015. Official Notice is taken that a copy of the Enhanced Notice[1] was filed with the Rent Adjustment Program on the same date.

Capital Improvement Costs: At the Hearing, the parties stipulated that there are 5 rental units in 2 separate buildings on the subject property. Three units are in the building in which the tenant lives and 2 units are in the other building.

The owners testified that they purchased the subject buildings in December 2014. They submitted the first page of a document entitled 'Wood Destroying Pests and Organisms Inspection Report" that was prepared by a licensed contractor following an inspection of the subject building on October 13, 2014.[2] This document contains more than 25 references to structural problems throughout the building in which the tenants live, including the presence of fungus, wood boring beetles, and termites throughout the building, in addition to earth-wood contact and water under floor coverings.

When the owners were asked at the Hearing if they agreed with these problems, they testified that these conditions existed, "and then some." The owners further testified that the tenant's entire bathroom was essentially removed and replaced due to dry rot in the walls and floor.

Classification of Exhibits

At the Hearing, the owners testified that not all submitted exhibits apply to the tenant's unit. Therefore, the following list includes only those items that the owners contend apply either to the tenant's unit or to common areas that benefit the tenant. Further, the owners submitted a chart of expenses, in which items are allocated to various units or to work in common areas.[3] The owners testified that this chart is accurate. The following is a list of invoices and proof of payment for claimed work in both the tenants' unit and common areas.

Building Permits: Ex. #5, 6, 8 & 9, the project description is "termite work, dry rot repair," total $2,048.[4]

Home Depot: Ex. # 20-28, 12-21-15, invoice for misc. paint & flooring materials & check for $560; Ex #90-94, 10-9-15, gardening supplies - $1,099; Ex #103-106, gardening supplies- $101, fence materials - $540; Ex #108 - Ex #189, 3-9-15, plumbing supplies for tenant's bathroom, $515 (excluding dryer vent & tool bag).

---

[1] Exhibit Nos. 2 through 4. These Exhibits, and all others to which reference is made in this Decision, were admitted into evidence without objection.
[2] Exhibit No. 7.
[3] Exhibit Nos. 203A through 203D.
[4] All cost figures in this Decision are rounded up or down to the nearest dollar.

Alfred Williams: Ex. #15; "Repair floor & dry rot in bathroom . . . until such time as replace full bathroom floor;" 11-25-15; invoice & check $150; Ex #149 invoice for misc. labor, including fence repair, $340.

Michael Monahan: Ex. #16, "Repair floor & dry rot in bathroom . . . until such time as replace full bathroom floor," 11-25-15, invoice & check $350; Ex. #34-5, "Fixing outside drain . . . hanging blinds at Gilbert," invoice & check for $100; Ex #38, note on check: "fix pump outside, work on bathrooms in front apartment, put up handrail in laundry room," $850; Ex #113: "Brick stairs off laundry room, fabricated step . . . poured concrete, mortar and block foundation, grouted & washed stair, painted meter and painted drain pipe, $650."

Francisco Nunez, Roofer: Ex. #17 & 18; "Roof repair; Gutters . . . New Roof over Laundry;" 11-18-15; invoice & check for $2,000 (the owners estimated that the repairs cost $500 and the balance of the work cost $1,500)

Economy Lumber: Ex. # 44, 11-6-15, shingles for outside repair, $510; Ex #168, 5-7-15, wood railings for tenants' unit and other unit, $284 (owners estimate apportion 2/3 to tenant's unit)

Regal Home Services: Ex. #46, Invoice for work on tenants' bathroom, 11-4-15, $2,800

East Bay Glass: Ex. #69, Invoice for windows on Unit 4244A. The owners also submitted documents regarding other windows in various units. The owners contend that a new window in a unit other than the tenant's is a capital improvement that benefits all units in the building.

Gonzalo Garcia: Ex #78, 10-13-15, check for installation of outdoor sprinkler system, $400;

Dale Zimmerman: Ex #109-110, "worked finishing back window, downspout and painting meter box and working on step;" owners testified this was not the tenant's window.

Moran Supply: Ex #133, plumbing supplies for tenants' unit, 9-14-15, $238; Ex #178, 3-27-15, plumbing supplies for tenants' unit, $330

Pottery & Beyond: Ex #135, 8-15-16, landscaping items, $219

Orchard Nursery: Ex #136, 8-15-15, rosebush & soil, $120; Ex #173, plants, $49

Grand Lake Hardware: Ex #137, 8-15-15, plants & soil, $69; Ex #170, 4-9-15, plants & soil, $56

Lee J. Deslippe Construction: Ex # 150-52, Invoice, 7-13-15, "(1) Laundry Room $2,000; (1a) . . . Susanne requested we remove existing entry porch to laundry room because this porch was also riddled with dry rot and/or termites. Laundry Room $4,800, more dry rot was discovered at old exterior wall and floor joist of bathroom at 4442 Gilbert St. . . dry rot extended

under the bath tub and up the exterior wall . . . removed bath tub . . . removed dry rot and replaced . . . replaced plumbing fixtures . . . Installed all new ceramic tile floor and tub surround . . . new dual pane opaque window . . . [tenants' unit] $6,000;

(2) "Demo & replace Approx 212 ft. of perimeter walls . . . Demo 7 replace 2 front entry porches; (3) Porches 7 steps completely coated with Red Guard . . . perimeter walls covered with . . . plywood . . . with louver vents for cross ventilation. Replaced 19 each 2 x 8 floor joist that had dry rot and/or termite damage. . . $35,400; (4) All new perimeter walls . . . $11,000. (5) French Drain . . at the rear of 4244, 4244A and 4245 Gilbert St. . . $4,500 . . . (7) A new concrete foundation cap . . . was constructed at driveway edge at 4244 Gilbert St. . . $3,750; (8) newly framed water proofed porches and steps that were first covered with concrete . . . the walkways and lower steps were all placed on a new 4" concrete slab with mortar. $9,600."

Ex #134 - check for $15,000; Ex #138, 8-12-15, check for $15,000; Ex # 166, 5-14-15, check for $4,500 w/ notation "shingles;" Ex #175, 4-4-15, check for $10,000; Ex #187, 3-15-15, check for $10,000 w/ notation "foundation repair & bathroom 4244," owners estimate $6,000 of this amount for tenants' bathroom; Ex #197, 2-26-15, w/ notation "termite work;" Ex #198, 2-20-15, check w/ notation "laundry room / drainage."

Brickhouse Construction: Ex #148, 7-29-15, Invoice for $274 for brick veneer for tenants' unit; Ex #134, 8-12-15, check for $2,074, (owner testimony – for foundation & brickwork); Ex #140, 8-3-15, check for $575 w/ notation "remove fence & flat brick veneer;" Ex #141, 7-17-15, checks for $960 (owner testimony - for tenants' unit) & $1,383, (owner testimony – dry rot under roof & window in other unit);

Ex #142, 7-10-15, check for $960 & $1,428 (notation – dry rot . . . tear out); Ex #143, 7-6-15, check for $1,536; Ex #144, 7-6-15, check for $384; Ex#153, 7-11-15, invoice - windows in tenants' bathroom - $990; Ex #155, 7-9-15, window removal tenants' unit, $80; Ex #157, 7-10-15, checks w/ notations brickwork, laundry room, dry rot; Ex # 160-165, contract: restoration at tenants' unit, $1,400, and work on laundry room and roof repair, $965, and check for $1,536.

Jesse Gonzales: Ex #145, check for $900 w/ notation "sidewalk repair"

Early CA Iron Works: Ex #166, 5-8-15, check $2,000 w/ notation railings for walkways, the owners testified that they spent this amount for railings at the tenants' unit.

A F Supply: Ex #173, 3-10-15, payment for outside light fixtures, $914

Nature Hills: Ex #174, 3-30-15, cherry trees, $416; Ex #177, 3-30-15, cherry tree, $60

Meyer Plumbing Supply: Ex #176, 3-31-15, plumbing material for tenants' bathroom, $81

1-800 Lighting: Ex #182-6, outdoor lighting brochure, $1,852 claimed, but no proof of payment.

Berkeley Lighting: Ex #188, 3-9-15, credit card payment of $354, owners testified that this was for light in tenant's bathroom; tenant agreed.

Granite Expo: Ex #179, 3-27-15, tile for tenant bathroom, $353; Ex #190-192, 3-9-15, tile for tenant bathroom, $1,251; Ex #193-195, 3-2-15, vanity for tenant bathroom, $648; Ex #179, 3-27-15, refund of $353

Antone's Appliance: Ex #199, 2-9-16, coin-operated washer & dryer, $2,483

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Rent Increase Notice: "A notice of rent increase based on a capital improvements(s) (other than after an owner's petition) must include the following:

(a) The type of capital improvement(s);
(b) The total cost of the capital improvement(s);
(c) The completion date of the capital improvement(s);
(d) The amount of the rent increase from the capital improvement(s);

ii. Within ten (10) working days of serving a rent increase notice . . . based in whole or in part on capital improvements, an owner must file the notice and all documents accompanying the notice with the Rent Adjustment Program. Failure to file the notice with[in] this period invalidates the rent increase."[5] It is found that the owners provided all of the information required by the Rent Adjustment Ordinance, and filed a copy with the Rent Adjustment Program within the required time limit.

Capital Improvement Costs: A rent increase in excess of the C.P.I. Rent Adjustment may be justified by capital improvement costs.[6] Capital improvement costs are those improvements which materially add to the value of the property and appreciably prolong its useful life or adapt it to new building codes. Normal routine maintenance and repair is not a capital improvement cost, but a housing service cost.[7]

The improvements must primarily benefit the tenant rather than the owner. Capital improvement costs are to be amortized over a period of five years, divided equally among the units which benefited from the improvement unless the annual pass-through would exceed a rent increase of more than ten percent. The reimbursement of capital expense must be discontinued at the end of the 60-month amortization period.[8]

"Equipment otherwise eligible as a capital improvement will not be considered if a 'use fee' is charged (i.e. coin-operated washers and dryers).[9]

---

[5] O. M. C. Section 8.22.070(H)
[6] O.M.C. Section 8.22.070(C)
[7] Regulations Appendix, Section 10.2.2(5)
[8] Regulations Appendix, Section 10.2
[9] Regulations Appendix, Section 10.2.2(6)

The following may not be considered as capital improvements: . . .

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

i. Among the factors that may be considered in determining if the landlord knew or reasonably should have known of the problem that caused the damage:

(a) Was the condition leading to the repairs outside the tenant's unit or inside the tenant's unit?
(b) Did the tenant notify the landlord in writing or use the landlord's procedures for notifying the landlord of conditions that might need repairs?
(c) Did the landlord conduct routine inspections of the property?
(d) Did the tenant permit the landlord to inspect the interior of the unit?

ii. Examples:

(a) A roof leaks and, after the landlord knew of the leak, did not timely repair the problem and leak causes ceiling or wall damage to units that could have been avoided had the landlord acted timely to make the repair. In this case replacement of the roof would be a capital improvement, but the repairs to the ceiling or wall would not be.
(b) A problem has existed for an extended period of time visible outside tenants' units and could be seen from a reasonable inspection of the property, but the landlord's agents either had not inspected the property for an unreasonable period of time, or did not exercise due diligence in making such inspections. In such a case, the landlord should have reasonably known of the problem. Annual inspections may be considered a reasonable time period for inspections depending on the facts and circumstances of the property such as age, condition and tenant complaints.

iii. Burden of Proof

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

The prior Ordinance allowed an owner to pass through all of the cost of qualified capital improvements. The current ordinance limits a capital improvement pass-through to 70% of the cost of the work if no substantial work was performed before August 1, 2014. All of the work in

[10] Regulations Appendix, Section 10.2.2(4)

this case was performed well after that date and, therefore, the recoverable costs are limited to 70%.[11]

Costs Allowed and Disallowed: An owner has the burden of proving that a rent increase is justified. The applicable rules of evidence in an administrative hearing are stated in Government Code Section 11513:[12] "Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs . . . ." In order to prove a capital improvement cost, both an invoice and proof of payment are necessary. Therefore, the following costs are allowed and disallowed:

Building Permits: The "termite report" details more than 25 very significant structural problems throughout the building in which the tenant lives. These problems include the presence of extensive fungus, wood boring beetles and termites, in addition to earth-wood contacts. The building permit, based upon an application by the owners, describes the proposed work as "termite work, dry rot repair." At the Hearing, the owners agreed that there was major dry rot and termite damage in the building, including the walls and floors of the tenant's bathroom.

Such damage does not appear overnight. Common experience tells us that these problems certainly existed for a number of years before the owners purchased the building in December 2014. There is no doubt that at least the majority of these problems would have been noted during reasonable annual inspections by the prior owners. A reasonably diligent owner would then have taken steps to undertake maintenance and make timely repairs that would have avoided the extensive work performed by the current owners.

Therefore, applying the standards cited above, none of the work that was performed to correct damage caused by dry rot or insects is eligible as a capital improvement cost. This includes the cost of building permits, which is not allowed.

Home Depot: Many of the charges are for work caused by extensive dry rot or termite damage. The following costs are allowed: gardening supplies (common area) - $1,200; fence materials (common area) - $540; plumbing supplies (tenant's bathroom) - $515.

Alfred Williams: The labor primarily involved repair due to dry rot, and the cost is not allowed.

Michael Monahan: Much of Mr. Monahan's work was due to dry rot. The remainder of the work was either routine maintenance and repair (fixing a pump, minor painting) or involved work on the laundry room. The purpose of the laundry room is for the use of coin-operated washers and dryers. Since the cost of the machines is not an eligible capital improvement cost, neither is the cost associated with the use of these machines. Therefore, none of the cost of Mr. Monahan's labor is allowed.

Francisco Nunez, Roofer: This work was either routine maintenance or work in connection with the laundry room. Therefore, this cost is denied.

[11] Ordinance No. 13226
[12] Regulations, Section 8.22.110(E)(4)

Economy Lumber: Wood shingles and handrails were a part of the dry rot work, and no part of the cost for this work, or the work on another unit, is allowed.

Regal Home Services: Work on the bathroom was the result of long-standing dry rot, and this cost is not allowed.

East Bay Glass: Windows in units other than the tenant's do nothing to enhance the structure of the building, nor do they benefit the tenant in any way. The cost of all windows in other units is denied.

Gonzalo Garcia: An outdoor sprinkler system benefits all tenants, and $400 is allowed.

Dale Zimmerman: This work was routine maintenance – not a capital improvement – and the cost is denied.

Moran Supply: Although nothing paid for work on the walls or floor of the tenant's bathroom is eligible as a capital improvement cost, the installation of new plumbing is quite different. The cost of $558 is allowed.

Pottery & Beyond: Landscaping benefits all tenants, and $219 is allowed.

Orchard Nursery: This is also a landscaping expense, and $169 is allowed.

Grand Lake Hardware: Plants and soil are a common benefit, and $125 is allowed.

Lee J. Deslippe Construction: The majority of this work was either necessitated by dry rot and/or termites (including earth-wood contact at the foundation), work associated with the laundry room, or was routine maintenance and repair. Other relatively minor expenses that might otherwise be allowed are not apportioned in the billing. However, the cost of a French Drain that benefits the 3 units in the tenant's building, in the amount of $4,500, is allowed.

Brickhouse Construction: All charges in connection with dry rot – both in and outside the tenant's unit – are denied, as are those associated with the laundry room. The following charges are allowed: $274 for brick veneer for the tenant's unit, and $575 for work on the fence and brick veneer that benefits the 3 units in the tenant's building.

Jesse Gonzales: Sidewalk repair is normal, routine maintenance; the cost is denied.

Early CA Iron Works: The installation of an iron railing outside their unit benefits the tenant, and the cost of $2,000 is allowed.

A F Supply: Outdoor light fixtures benefit all 5 units, and the cost of $914 is allowed.

Nature Hills: Trees benefit the 5 units on the property; the cost of $476 is allowed.

Meyer Plumbing Supply: The installation of new plumbing is not associated with dry rot,

and the cost of $81 benefits the tenant. The cost is allowed.

1-800 Lighting: The owners submitted an advertising brochure, but there is neither an invoice or proof of payment. The owners have not sustained their burden of proof based upon the Government Code standard cited above, and the cost is therefore denied.

Berkeley Lighting: This new light for the tenant's bathroom is an eligible expense, and the cost of $354 is allowed.

Granite Expo: Tile and replacement of the bathroom vanity was all necessitated by the extensive dry rot. Therefore, the cost is denied.

Antone's Appliance: The cost of coin-operated washers and dryers is denied.

Conclusion: The attached Table sets forth the proper calculation for a rent increase based upon both expenses that benefit the tenant's unit and those that benefit other units, being $117.75 per month. Therefore, the tenant's rent can be increased by $117.75 per month, to $2,863.75, effective March 1, 2016.

The legal rent for the 5 months from March through July 2016 was $2,863.75 per month, a total of $14,318.75. During that period of time the tenant paid $2,746 per month, a total of $13,730. This was an underpayment of $588.75. The underpayment is ordered repaid over a period of 3 months.[13] The current rent of $2,863.75 per month is temporarily increased by $196.25 per month, to $3,060 per month, beginning with the rent payment in August 2016 and ending with the rent payment in October 2016.

ORDER

1. Petition T16-0108 is partly granted.

2. A Capital Improvements pass-through is granted for in the amount of $117.75 per month, for a period of 60 months.

3. The effective date of the rent increase is March 1, 2016. This pass-through expires on February 28, 2021. On March 1, 2021, the rent will be reduced by $117.75 per month.

4. The current rent, before a temporary increase due to underpaid rent, is $2,863.75 per month. However, the tenant has underpaid rent in the total amount of $588.75. This underpayment is adjusted over a period of 3 months.

5. The rent of $2,863.75 per month is temporarily increased by $196.25 per month, to $3,060 per month, beginning with the rent payment in August 2016 and ending with the rent payment in October 2016.

6. In November 2016, the rent will return to $2,863.75 per month.

[13] Regulations, Section 8.22.110(F)

7. The Anniversary Date for future rent increases is March 1.

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

Dated: July 28, 2016

Stephen Kasdin
Hearing Officer
Rent Adjustment Program

City of Oakland Capital Improvements Calculator Worksheet

IMPROVEMENTS BENEFITING ALL UNITS BUILDING WIDE

Effective Date of Rent Increase	1-Mar-16
Number of Residential Units	5

IMPROVEMENT OR REPAIR	DATE COMPLETED	FULL COST	Amortizable Cost (70%)	# of Units		Allowable Cost per Unit (Pre Amortization)	Date Validation (2 years ago max)
Gardening materials	15-Sep-15	$2,189.00	$1,532.30	5		$306.46	OK
Sprinkler system	13-Oct-15	$400.00	$280.00	5		$56.00	OK
Lighting fixtures	10-Mar-15	$914.00	$639.80	5		$127.96	OK
Subtotal			$2,452.10			$490.42	
Place X in box if property is mixed use.							
Residential square footage							
Other use square footage							
Percent residential use							
Total Cost Per Unit Allocated to Residential Units						$490.42	

000087

IMPROVEMENTS LIMITED TO SPECIFIC UNITS

Total Allowable Unit-Specific Pass-through (Column D) $6,593.30

IMPROVEMENT OR REPAIR	DATE COMPLETED	FULL COST	Amortizable Cost (70%)	# Units	Allowable Cost per Unit (Pre-Amortization)	APPLIES TO UNITS	Date Validation (2 years ago max)
Fence	3-Aug-15	$1,115.00	$780.50	3	$260.17		OK
Plumbing supplies	31-Mar-15	$1,176.00	$823.20	1	$823.20		OK
French drain	13-Jul-15	$4,500.00	$3,150.00	3	$1,050.00		OK
Brick veneer	29-Jul-15	$274.00	$191.80	1	$191.80		OK
Iron railing	8-May-15	$2,000.00	$1,400.00	1	$1,400.00		OK
Lighting fixture	9-Mar-15	$354.00	$247.80	1	$247.80		OK
Totals			$6,593.30				

AMORTIZATION

Sum of Unit Specific Costs (Column D $6,593.30

Unit Specific Data Entry is Complete

Unit	Current Rent	Building Wide Pass through	Unit Specific Pass-through	Total Pass through on Unit	Years to Amortize (5 yrs min)	Allowable Increase $	Increase % (must be 10% or less)
	$2,746.00	$490.42	$6,593.30	$7,083.72	5	$117.75	4.29%
Totals			$6,593.30				

PROOF OF SERVICE

Case Number T16-0108

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 a City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California, addressed to:

Tenant
George &Jana Chamales
4244 Gilbert St
Oakland, CA 94611

Owner
Farley Levine Properties, LLC
7 King Ave.
Piedmont, CA 94611

Owner Representative
Barbara S. Farley
7 King Ave
Piedmont, CA 94611

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on July 28, 2016 in Oakland, CA.

Deborah Griffin

CITY OF OAKLAND RENT ADJUSTMENT PROGRAM P.O. Box 70243 250 Frank H. Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721	For filing stamp. 2016 MAR 29 AM 9:34

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 T16-0108 KM/SK **OWNER RESPONSE**

Please print legibly.

Your Name	Complete Address (with zip code)	
FARLEY LEVINE PROPERTIES LLC	7 KING AVE PIEDMONT, CA 94611	Phone: 510-652-8291 Email: bsuzanne76AOL.com
Your Representative's Name (if any)	**Complete Address (with zip code)**	
BARBARA S. FARLEY	7 KING AVE PIEDMONT, CA 94611	Phone: 510-652-8291 Fax: 510-652-9592 Email: bsuzanne76aol.com
Tenant(s) name(s)	**Complete Address (with zip code)**	
GEORGE CHAMALES JANA CHAMALES +2 CHILDREN	4244 Gilbert St. Oakland, CA 94611	

Have you paid for your Oakland Business License? Yes ☑ No ☐ Number 28050341
(Provide proof of payment.)

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

There are 5 residential units in the subject building. I acquired the building on 12/24/2014

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

I. RENTAL HISTORY

The tenant moved into the rental unit on 10-1-2013.

The tenant's initial rent including all services provided was $ 2695 / month.

Have you (or a previous Owner) given the City of Oakland's form entitled **NOTICE TO TENANTS OF RESIDENTIAL RENT ADJUSTMENT PROGRAM ("RAP Notice")** to all of the petitioning tenants?
Yes ✓ No ___ I don't know ___ If yes, on what date was the Notice first given? 9-28-13, 9-25-14, and 12-28-15

Is the tenant current on the rent? Yes ✓ No ✓ (HAS NOT PAID NOTICED INCREASE)

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

Rev. 2/23/15

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? 12·28-15 . Did you submit a copy of the Enhanced Notice to the RAP office within 10 days of serving the tenant? Yes ✓ No ____ . Not applicable: there was no capital improvements increase. 12·28·15

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 From	To	Did you provide NOTICE TO TENANTS with the notice of rent increase?
12·28·15	3·1·16	$ 2746	$ 3002.67	☑ Yes ☐ No
9·25·14	11·1·14	$ 2695	$ 2746	☑ Yes ☐ No
		$	$	☐ Yes ☐ No
		$	$	☐ Yes ☐ No
		$	$	☐ Yes ☐ No
		$	$	☐ Yes ☐ No

II. JUSTIFICATION FOR RENT INCREASE

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

Date of Increase	Banking (deferred annual increases)	Increased Housing Service Costs	Capital Improvements	Uninsured Repair Costs	Fair Return	Debt Service (if purchased before 4/1/14)
3-1-16	☐	☐	☑	☐	☐	☐
	☐	☐	☐	☐	☐	☐
	☐	☐	☐	☐	☐	☐
	☐	☐	☐	☐	☐	☐
	☐	☐	☐	☐	☐	☐
	☐	☐	☐	☐	☐	☐
	☐	☐	☐	☐	☐	☐

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, 6th Floor, Oakland, where you can date-stamp and drop your Response in the Rent Adjustment drop box. The Housing Assistance Center is open Monday through Friday, except holidays, from 9:00 a.m. to 5:00 p.m. **You cannot get an extension of time to file your Response by telephone.**

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

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

VI. VERIFICATION

Owner must sign here:

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

Barbara Suzanne Farley
Owner's Signature

3.23-16
Date

VII. MEDIATION AVAILABLE

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

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

Mediation will be scheduled only if both parties request it – after both the Tenant Petition and the Owner Response have been filed with the Rent Adjustment Program. **The Rent Adjustment Program will not schedule a mediation session if the owner does not file a response to the petition.** (Rent Board Regulation 8.22.100.A.)

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

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

Owner's Signature ____________________

Date ____________________

T16-0108 KM|SK

CITY OF OAKLAND **RENT ADJUSTMENT PROGRAM** **Mail To: P. O. Box 70243** **Oakland, California 94612-0243** **(510) 238-3721**	For date stamp. 2016 FEB 19 PM 3:28

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	Rental Address (with zip code)	Telephone
George + Jana Chamales	4244 Gilbert Oakland CA 94611	718-288-7718 (george) 510-866-1029 (Jana)
Your Representative's Name	Mailing Address (with zip code)	Telephone
Property Owner(s) name(s)	Mailing Address (with zip code)	Telephone
Barbara S. Farley	7 King Ave Piedmont CA 94611	510-652-8291

Number of units on the property: 5.

Type of unit you rent (circle one)	House	Condominium	Apartment, Room, or Live-Work (circled: Apartment)
Are you current on your rent? (circle one)	Yes (circled)	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. **I (We) contest one or more rent increases on one or more of the following grounds:**

X	(a) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
	(b) The owner did not give me a summary of the justification(s) for the increase despite my written request.
	(c) The rent was raised illegally after the unit was vacated (Costa-Hawkins violation).
	(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.)
	(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.
	(f) The housing services I am being provided have decreased. (Complete Section III on following page)
X	(g) At present, there exists a health, safety, fire, or building code violation in the unit. If the owner has been cited in an inspection report, please attach a copy of the citation or report.
	(h) The contested increase is the second rent increase in a 12-month period.
	(i) The notice of rent increase based upon capital improvement costs does not contain the "enhanced notice" requirements of the Rent Adjustment Ordinance or the notice was not filed with the Rent Adjustment Program (effective August 1, 2014).
	(j) My rent has not been reduced after the expiration period of the rent increase based on capital improvements.
	(k) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).

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

Date you moved into the Unit: 10/1/2013 Initial Rent: $ 2695 /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: 9/28/2013. 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 From	To	Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
12/28/15	3/1/16	$ 2746	$ 3002.67	☒ Yes ☐ No	☒ Yes ☐ No
		$	$	☐ Yes ☐ No	☐ Yes ☐ No
		$	$	☐ Yes ☐ No	☐ Yes ☐ No
		$	$	☐ Yes ☐ No	☐ Yes ☐ No
		$	$	☐ Yes ☐ No	☐ Yes ☐ No
		$	$	☐ Yes ☐ No	☐ Yes ☐ No

*** You have 60 days from the date of notice of increase or from the first date you received written notice of the existence of the Rent Adjustment program (whichever is later) to contest a rent increase. (O.M.C. 8.22.090 A 2) If you never got the *RAP Notice* you can contest all past increases.**

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

III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:

Decreased or inadequate housing services are considered an increase in rent. If you claim an unlawful rent increase for service problems, you must complete this section.

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

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

To have a unit inspected and code violations cited, contact the City of Oakland, Code Compliance Unit, 250 Frank H. Ogawa Plaza, 2nd Floor, Oakland, CA 94612. Phone: (510) 238-3381

IV. VERIFICATION: The tenant must sign:

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

Tenant's Signature

Feb. 16, 2016
Date

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

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

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

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

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

Tenant's Signature Date

VI. IMPORTANT INFORMATION:

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

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

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

X 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): ______________________

CITY OF OAKLAND
HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD

BOARD PANEL Meeting
March 16, 2017
7:00 p.m.
City Hall, Hearing Room #1
One Frank H. Ogawa Plaza, Oakland, CA

MINUTES

1. CALL TO ORDER

The HRRRB Panel was called to order at 7:05 p.m. by Panel Chair, Ed Lai

2. ROLL CALL

MEMBER	STATUS	PRESENT	ABSENT	EXCUSED
Ubaldo Fernandez	Tenant	X		
Ed Lai	Homeowner	X		
Benjamin Scott	Owner	X		

Staff Present

Kent Qian	Deputy City Attorney
Barbara Kong-Brown	Senior Hearing Officer

3. OPEN FORUM

No speakers

4. NEW BUSINESS

i. Hearing in appeal cases:

a. T15-0544, Green v. Keith

b. T16-0004, Miller v. Hinds

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

a. T15-0544, Green v. Keith

Appearances:

Morris Green	Tenant Appellant
Clifford Fried, Esq.	Owner Appellee Representative

Grounds for Appeal

The tenant filed an appeal on March 30, 2016, on the grounds that the decision is inconsistent with decisions issued by other hearing officers.

The Hearing Decision granted compensation for decreased housing services regarding loss of access to parking during construction and denied compensation for loss of use of the pool. The tenant filed an appeal on March 30, 2016, on the grounds that the decision is inconsistent with decisions issued by other hearing officers.

The tenant contends that his housing services were decreased because he was denied use of the pool during repairs. He had filed a prior petition in T13-0189 in which the hearing officer granted him compensation for loss of use of the pool.

The owner representative contends that in the prior case the hearing officer held that the pool needed repairs. In this case the pool was being repaired by the owner and the case of Golden Gateway, A Court of Appeals case for this circuit, as well as the Maxwell and Sardelich cases were adopted by the Rent Board, which held that interruption of services for a temporary period due to repairs is not a decreased housing service.

Board Discussion

After Board discussion and questions to the parties U. Fernando moved to remand the hearing decision for decreased housing services regarding the pool. There was no second and the motion failed. B. Scott moved to affirm the hearing decision on the grounds that the tenant is not entitled to decreased housing services when the owner was actively repairing the pool. E. Lai seconded.

The Board Appeal Panel voted as follows:

Aye: B. Scott, E. Lai
Nay: U. Fernando
Abstain: 0

The Motion carried.

000098

b. T16-0004, Miller v. Hinds

Appearances:

Gordon Hinds	Owner Appellant
Kevan Miller	Tenant Appellee

Grounds for Appeal

The Hearing Decision granted compensation to the tenant for loss of use of a dryer. The owner filed an appeal on June 15, 2016, on the grounds that the decision is not supported by substantial evidence.

The owner appellant contends that he did not own the dryer, that it was not mentioned in the purchase disclosure statement and the Lease Agreement did not state that the dryer was owned by the owner, and the dryer is owned by the tenant.

The tenant appellee contends that she had use of a dryer when she moved into her unit

Board Discussion

After Board discussion and questions to the parties U. Fernando moved to affirm the Hearing Decision based on the Hearing Officer's rationale. E. Lai seconded.

The Board panel voted as follows:

Aye: U. Fernando, E. Lai, Benjamin Scott
Nay: 0
Abstain:0

The motion was approved by consensus.

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

Appearances:

Badia Algazzali	Owner Appellant
Terry Lima	Tenant Appellee

The owner contends that he was not notified by the tenant of any issues with her apartment until late November or December. He sent a contractor to make repairs and the tenant had issues with the first contractor who came to make repairs. It took a while to find another contractor.

The tenant contends that the owner did not respond to her complaint about the rodents until after the inspection by someone from Vector Control. He got a good contractor and she was satisfied with the work.

Grounds for Appeal

The Hearing Decision granted compensation for decreased housing services regarding rodents and broken pipe and toilet. The owner filed an appeal on June 14, 2016, on the grounds that the decision is not supported by substantial evidence.

Board Discussion

After questions to the parties and Board discussion, B. Scott moved to affirm the Hearing Decision. U. Fernando seconded. The Board voted as follows:

Aye: U. Fernando, B. Scott, E. Lai
Nay: 0
Abstain: -

The motion was approved by consensus.

5. Scheduling and Reports

A Notice of Appeal Hearing was sent to Simon Chang, the owner, in T15-0263, Panganiban v. Chang, which stated that the appeal hearing in his case was scheduled for March 16,2017. However, the case was not placed was not placed on the Board panel agenda and could not be heard. Simon Chang, the owner stated that this was the fourth time that his case had been postponed. Panel Chair E.Lai requested that staff speak to Mr. Chang after the Hearing. Staff apologized for the mix-up and stated that his case would be scheduled for the next appeal hearing.

6. ADJOURNMENT

E.Lai Moved to adjourn the hearing. B. Scott seconded. The meeting was adjourned by consensus at 8:00 p.m.