

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

June 29, 2017

7:00 P.M.

**CITY HALL, HEARING ROOM #1
ONE FRANK H. OGAWA PLAZA
OAKLAND, CA**

AGENDA

1. CALL TO ORDER
2. ROLL CALL
3. OPEN FORUM
4. NEW BUSINESS
 - i. Appeal Hearing in Cases:
 - a. T14-0119; Turner v. Lapham Company
 - b. T16-0184; Waller v. Logos Property Management Investment, LLC
 - c. T16-0365; Johnson v. Thornton
5. ADJOURNMENT

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

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

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

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

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OAKLAND

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

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

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

CHRONOLOGICAL CASE REPORT

Case No.: T14-0119
Case Name: Turner v. Lapham Company
Property Address: 262 Verona Street, Apt. 103, Oakland, CA
Parties: Aldeca A. Turner (Tenant)
Menna Tesfatsion (Landlord)

TENANT APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	March 25, 2014
Owner Response filed	May 30, 2014
Hearing Decision Issued	August 27, 2014
Tenant Appeal filed	September 10, 2014
Appeal Decision issued	May 7, 2015
Remand Decision issued	February 14, 2017
Tenant Appeal filed	February 27, 2017

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CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM

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APPEAL

City of Oakland Residential Rent Adjustment Program 250 Frank Ogawa Plaza, Suite 5313 Oakland, California 94612 (510) 238-3721	
Appellant's Name <i>Aldeca A Turner</i>	Landlord <input type="checkbox"/> Tenant <input checked="" type="checkbox"/>
Property Address (Include Unit Number) <i>262 Vernon St. Apt. 103 Oakland, CA 94610</i>	
Appellant's Mailing Address (For receipt of notices) <i>The Lapham Company 4844 Telegraph Ave. Oakland CA 94609</i>	Case Number <i>114-0119</i>
	Date of Decision appealed <i>2/10/17</i>
Name of Representative (if any)	Representative's Mailing Address (For notices)

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

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

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

8. **You must serve a copy of your appeal on the opposing party(ies) or your appeal may be dismissed.** I declare under penalty of perjury under the laws of the State of California that on February 26, 2017, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<u>Name</u>	<i>The Lapham Company</i>
<u>Address</u>	<i>4844 Telegraph Ave</i>
<u>City, State Zip</u>	<i>OAKLAND CA 94609</i>
<u>Name</u>	
<u>Address</u>	
<u>City, State Zip</u>	

<i>Aldeca A. Munoz</i>	<i>2/26/17</i>
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

IMPORTANT INFORMATION:

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

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

GROUNDS FOR APPEAL OF REMAND DECISION

CASE T14-0119, Turner v. The Lapham CO.

February 26, 2017

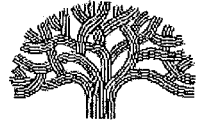
“On August 1, 2014, a change in the law related to Capital improvements went into effect prior to August 1, 2014 an owner can pass through 100 per cent of the allowable cost to the tenant over a 60 month period.”“If you file a petition to contest a capital improvement rent increase, an owner is required to produce documentation to determine the validity of claimed improvements. The documents include copies of receipts, invoices, cancelled checks or other documents that the cost were incurred.”

In April, 2001 my rent went from \$620.00 to \$660.00, the \$40.00 increase was for Capital improvements, it was implemented by a letter from Mr. Faussner, owner of property and there were no attachments to the letter. The increase began in 2001 and no ending date, it should had ended in 2006, as of today my rent has not been reduced by \$40.00. A Capital improvement for \$14.29 begun in 2004 and had no ending date, it should had ended in 2009, as of today it has not been deducted from my rent. . Capital improvements are to last for 5 years and then be deducted from the base rent. Based on Enhanced Notice To Tenants for Capital Improvements, “ (For capital improvements that began before 8/1/14 which are eligible for the grandparent clause found in Oakland City Council Resolution 84936)” Use of the form is optional; an owner may provide his or her own form that meets the requirements of the RAP Ordinance and Regulations.

Over the years several hearings were held to resolve my concerns but to no avail. Officer Stephen Kasdin ruled on more than one hearing.

Regarding the Capital improvement of 2001 in the amount of \$40.00, although I had provided evidence to prove the amount of the increase, Hearing Officer Kasdin, insist the increase was only \$8.13, he never produced any documentation to prove the amount. His decisions and calculations are based on incorrect information.

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

Department of Housing and Community Development
Rent Adjustment Program

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

REMAND DECISION

CASE NUMBER: T14-0119, Turner v. The Lapham Co.
PROPERTY ADDRESS: 262 Vernon St., #103, Oakland, CA
DATE OF HEARING: August 8, 2014
DATE OF DECISION: August 26, 2014
DATE OF APPEAL DECISION: May 6, 2015
DATE OF REMAND DECISION: February 10, 2017
APPEARANCES: Aldeca A. Turner (Tenant)
Menna Tesfatsion (Agent for Owner)

INTRODUCTION

A Hearing Decision in this case was issued on August 26, 2014. This Decision partly granted the tenant's petition. The Decision granted a rent increase based upon two capital improvement costs: seismic retrofit work in the amount of \$19,904, and the cost of re-routing a gas line, in the amount of \$3,500. The tenant then filed an Appeal, which was heard by the Board on March 12, 2015. The Board remanded the case for the Hearing Officer "to explain why \$3,500 was allowed as a capital improvement pass-through." The scope of this Remand Decision is limited to this issue.

This is an entirely new Hearing Decision, for which there is a new period of time to appeal, as set forth in the Order below.

SUMMARY OF DECISION

The tenant petition is partly granted.

CONTENTIONS OF THE PARTIES

The tenant filed a petition which alleges that a proposed rent increase from \$801.01 to \$852.60 per month, effective April 1, 2014, exceeds the CPI Rent Adjustment and is unjustified; and that her rent was never reduced following a capital improvement pass-through of \$40 per month, that began on April 1, 2001.

The owner filed a response to the petition, which alleges that the contested rent increase is justified by Capital Improvements, and further alleges that the tenant's rent was reduced following the 2001 capital improvement pass-through.

THE ISSUES

- (1) Is a rent increase justified by Capital Improvements and, if so, in what amount?
- (2) Was the tenant's rent reduced after the 2001 capital improvement pass-through expired?

EVIDENCE

Rent History: At the Hearing, the parties agreed that the tenant has continued to pay rent of \$801.01 per month.

Capital Improvements: The owner submitted the following documents with regard to a seismic retrofit project for the subject 21-unit building:

- (1) An invoice from Barrera & Associates Construction, in the amount of \$19,904.¹
- (2) A check to Barrera & Associates, dated November 7, 2013, in the amount of \$19,904.²
- (3) An invoice from Just Plumbing and Maintenance for re-routing gas lines in the amount of \$3,500. The invoice states that building is being retro-fitted with new steel beams, and gas lines ran through the area where the beams were to go. "Had to cut lines and hand thread 12 lines and route around beams."³
- (4) A check to Just Plumbing, dated December 3, 2013, in the amount of \$5,470.⁴

Prior Capital Improvement Pass-through: Official Notice is taken of the Hearing Decision in Case No. T06-0086 (Turner v. DeWolf Realty Co., Inc.), issued on June 26, 2006, in which the tenant filed a petition against the prior owner regarding the subject unit. That Decision, which was affirmed on appeal, states in part:

At the hearing, the parties agreed that the tenant's rent has twice been increased on the ground of capital improvement expenses: On April 1, 2001 her rent was increased by \$8.31 per month, and on May 1, 2004 the rent was increased by \$14.29 per month. . .

¹ Exhibit No. 2C. This Exhibit, and all other Exhibits to which reference is made in this Decision, were admitted into evidence without objection.

² Exhibit No. 2E.

³ Exhibit No. 2D.

⁴ Exhibit No. 2G.

the capital improvement increase of \$8.31 per month that began on April 1, 2001 should have been ended on April 1, 2006. However, the tenant's rent . . . was not reduced . . . and the tenant is entitled to a rent credit of \$8.31 per month for the months of April, May, and June 2006.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Capital Improvements: A rent increase in excess of the C.P.I. Rent Adjustment may be justified by capital improvement costs.⁵ 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.⁶

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. The reimbursement of capital expense must be discontinued at the end of the 60-month amortization period.⁷ The cost of gas line re-routing was necessary because that building was retrofitted with new steel beams, and gas lines ran through the area where the beams were to go. Therefore, as stated in the invoice from Just Plumbing and Maintenance, in the amount of \$3,500, this company "had to cut [gas] lines and hand thread 12 [gas] lines and route around beams."

This Table sets forth the proper calculation for a rent increase based upon the capital improvements expenses, being \$18.57 per month. Therefore, the tenant's rent may be increased by \$18.57 per month as a capital improvements increase, effective April 1, 2014.

CAPITAL IMPROVEMENTS

Effective Date of Increase	1-Apr-14
Number of Residential Units on Property	21

<u>Improvements and repairs benefitting all units</u>					
IMPROVEMENT OR REPAIR	DATE COMPLETED	COST ALLOWED	NUMBER OF UNITS BENEFITTED	MONTHLY COST PER UNIT	VALIDITY CHECKS
Seismic retro-fit	7-Nov-13	\$19,904.00	21	\$15.80	OK
Gas line re-routing	3-Dec-13	\$3,500.00	21	\$2.78	OK
Total				\$18.57	OK

Prior Capital Improvement Pass-throughs: The above-quoted language in the prior case clearly shows that the tenant's rent was increased by a capital improvement pass-through in 2001 by

⁵ O.M.C. Section 8.22.070(C)

⁶ Regulations Appendix, Section 10.2.2(5)

⁷ Regulations Appendix, Section 10.2

\$8.31 per month, not \$40 per month as the tenant claims. Further, per the Order in that case, the rent was appropriately reduced by that amount 5 years after the increase.

However, the second capital improvement increase cited in that prior case states that on May 1, 2004, the rent was increased by \$14.29 as a capital improvement pass-through. The owner's ledger for the tenant's unit,⁸ which covers the time period from December 31, 2007 through May 9, 2014, does not reflect a rent decrease of \$14.29 per month at any time after May 1, 2009. The rent should have been decreased by \$14.29 per month on May 1, 2009.

The owner is bound by the Order in Case No. T06-0086. The Rent Adjustment Ordinance requires a rent reduction on the expiration of a capital improvement pass-through; it is self-executing. When the rent was not reduced after 60 months, this amounted to an illegal rent increase, without the benefit of either a rent increase notice or notice of the existence and scope of the Rent Ordinance. In effect, this increase became a permanent part of the base rent, rather than being a temporary pass-through.

The tenant has overpaid rent of \$14.29 per month for the past 64 months. However, a tenant's claim for rent overpayments is limited, by Board decision, to three years.⁹ Therefore, the tenant is awarded restitution in the amount of \$514.44.

The Current Rent: Before adding the current capital improvement pass-through, the base rent is first reduced by \$14.29 per month to \$786.72 per month. To this amount is added a capital improvement pass-through of \$18.57 per month, for a total of \$805.29 per month. However, the tenant has overpaid rent in the amount of \$514.44 due to the owner's failure to properly reduce the rent.

The tenant paid rent of \$801.01 per month for the 5 months from April through August 2014. This is an underpayment of \$4.28 per month, a total of \$21.40. The total overpayment is therefore \$493.04, which is ordered repaid over a period of 9 months.¹⁰ The rent is temporarily decreased by \$54.78 per month, to \$750.51 per month, beginning with the rent payment in September 2014 and ending with the rent payment in May 2015.

ORDER

1. Petition T14-0019 is partly granted.
2. The Base Rent is \$786.72 per month.
3. A Capital Improvements pass-through is granted, in the amount of \$18.57 per month, for a period of 60 months.
4. The effective date of the rent increase is April 1, 2014. This pass-through expires on April 1, 2016. On April 1, 2019, the rent will be reduced by \$18.57 per month.

⁸ Exhibit No. 4.

⁹ T06-0051, Barajas/Avalos v. Chu; T08-0139, Jackson-Redick v. Burks

¹⁰ Regulations, Section 8.22.110(F)


5. The current monthly rent, before a temporary decrease due to overpaid rent, is \$805.29 per month. However, the tenant has overpaid rent in the total amount of \$493.04. This underpayment is adjusted over a period of 9 months.

6. The rent is temporarily decreased by \$54.78 per month, to \$750.51 per month, beginning with the rent payment in September 2014 and ending with the rent payment in May 2015. In June 2015, the rent will return to \$805.29 per month.

7. The Anniversary Date for future rent increases is April 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: February 10, 2017



Stephen Kasdin
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE

Case Number T14-0119

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 Remand 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

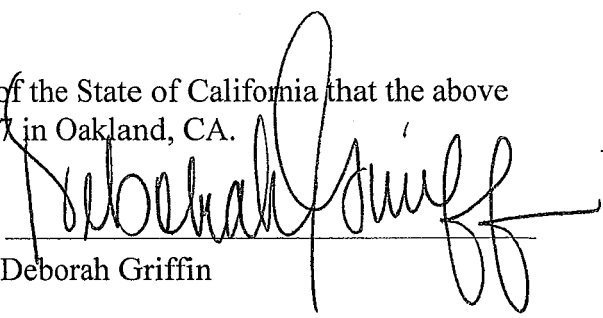
Aldeca A. Turner
262 Vernon St #103
Oakland, CA 94610

Owner

The Lapham Company
4844 Telegraph Ave
Oakland, CA

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 February 14, 2017 in Oakland, CA.



Deborah Griffin

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CITY OF OAKLAND



P.O. BOX 70243, OAKLAND, CA 94612-2043
Department of Housing and Community Development
Rent Adjustment Program

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

**Housing, Residential Rent
and Relocation Board (HRRRB)**

APPEAL DECISION

CASE NUMBER: T14-00119, Turner v. The Lapham Company

APPEAL HEARING March 12, 2015

PROPERTY ADDRESS: 262 Vernon Street, No. 103
Oakland, CA

APPEARANCES: Aldeca Turner Tenant
The Lapham Company Owner

Procedural Background

The tenant filed a petition on April 25, 2014, contesting a rent increase from \$801.01 to \$852.60, on the grounds that the increase exceeded the annual CPI adjustment; and that her rent was not reduced after the expiration of a capital improvement increase of \$40.00 that began in April 2001.

Hearing Decision

The Hearing Decision determined that this capital improvement pass-through expired and the tenant's rent was reduced by \$8.31, which was the amount of the pass-through, not \$40.00. However, the owner passed through a second capital improvement in 2004 in the amount of \$14.29, which was not removed from the tenant's rent in 2009. The tenant was awarded restitution in the amount of \$514.44, offset by a tenant underpayment of \$4.28, and a new capital improvement pass-through in the amount of \$18.57. The rent was set at \$805.29.

Grounds for Appeal

The tenant filed an appeal on September 10, 2014, and contends that the

decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior Board decisions; and that the decision is not supported by substantial evidence.

Appeal Decision

After discussion and questions put to both parties, E. Lai moved to affirm the Hearing Decision based on the Hearing Officer's rationale. B. Scott seconded.

The Board voted as follows:

Aye: E. Lai
Nay: T. Singleton, B. Scott, B. Williams
Abstain: 0

The motion failed.

T. Singleton moved to remand the decision to explain why \$3,500 was allowed as a capital improvement pass-through. B. Williams seconded. The Board voted as follows:


Aye: T. Singleton, B. Scott, B. Williams
Nay: E. Lai
Abstain: 0

The motion carried.

NOTICE TO PARTIES

Pursuant to Ordinance No(s). 9510 C.M.S. of 1977 and 10449 C.M.S. of 1984, modified in Article 5 of Chapter 1 of the Municipal Code, the City of Oakland has adopted the ninety (90) day statute of limitations period of Code of Civil Procedure, Section 1094.6.

YOU ARE HEREBY NOTIFIED THAT YOU HAVE NINETY (90) DAYS FROM THE DATE OF MAILING OF THIS DECISION WITHIN WHICH TO SEEK JUDICIAL REVIEW OF THE DECISION OF THIS BOARD IN YOUR CASE.



CONNIE TAYLOR
BOARD DESIGNEE
CITY OF OAKLAND
HOUSING, RESIDENTIAL RENT AND
RELOCATION BOARD

5/6/15

DATE

PROOF OF SERVICE

Case Number T14-0119

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 Appeal 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:

Owner

The Lapham Company
4844 Telegraph Ave
Oakland, CA

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on May 07, 2015 in Oakland, CA.



Connie Taylor

Oakland Rent Adjustment Program

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PROOF OF SERVICE

Case Number T14-0119

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.

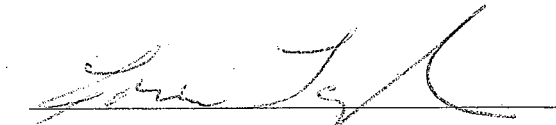
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Tenant

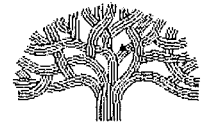
Aldeca A. Turner
262 Vernon St #103
Oakland, CA 94610

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on May 07, 2015 in Oakland, CA.


Connie Taylor
Oakland Rent Adjustment Program

000016



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

CITY OF OAKLAND

Department of Housing and Community Development
Rent Adjustment Program

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

HEARING DECISION

CASE NUMBER: T14-0119, Turner v. The Lapham Co.

PROPERTY ADDRESS: 262 Vernon St., #103, Oakland, CA

DATE OF HEARING: August 8, 2014

DATE OF DECISION: August 26, 2014

APPEARANCES: Aldeca A. Turner (Tenant)
Menna Tesfatsion (Agent for Owner)

SUMMARY OF DECISION

The tenant petition is partly granted.

CONTENTIONS OF THE PARTIES

The tenant filed a petition which alleges that a proposed rent increase from \$801.01 to \$852.60 per month, effective April 1, 2014, exceeds the CPI Rent Adjustment and is unjustified; and that her rent was never reduced following a capital improvement pass-through of \$40 per month, that began on April 1, 2001.

The owner filed a response to the petition, which alleges that the contested rent increase is justified by Capital Improvements, and further alleges that the tenant's rent was reduced following the 2001 capital improvement pass-through.

THE ISSUES

- (1) Is a rent increase justified by Capital Improvements and, if so, in what amount?
- (2) Was the tenant's rent reduced after the 2001 capital improvement pass-through expired?

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EVIDENCE

Rent History: At the Hearing, the parties agreed that the tenant has continued to pay rent of \$801.01 per month.

Capital Improvements: The owner submitted the following documents with regard to a seismic retrofit project for the subject 21-unit building:

- (1) An invoice from Barrera & Associates Construction, in the amount of \$19,904.¹
- (2) A check to Barrera & Associates, dated November 7, 2013, in the amount of \$19,904.²
- (3) An invoice from Just Plumbing and Maintenance for re-routing gas lines in the amount of \$3,500. The invoice states that building is being retro-fitted with new steel beams, and gas lines ran through the area where the beams were to go. "Had to cut lines and hand thread 12 lines and route around beams."³
- (4) A check to Just Plumbing, dated December 3, 2013, in the amount of \$5,470.⁴

Prior Capital Improvement Pass-through: Official Notice is taken of the Hearing Decision in Case No. T06-0086 (Turner v. DeWolf Realty Co., Inc.), issued on June 26, 2006, in which the tenant filed a petition against the prior owner regarding the subject unit. That Decision, which was affirmed on appeal, states in part:

At the hearing, the parties agreed that the tenant's rent has twice been increased on the ground of capital improvement expenses: On April 1, 2001 her rent was increased by \$8.31 per month, and on May 1, 2004 the rent was increased by \$14.29 per month. . .

the capital improvement increase of \$8.31 per month that began on April 1, 2001 should have been ended on April 1, 2006. However, the tenant's rent . . . was not reduced . . . and the tenant is entitled to a rent credit of \$8.31 per month for the months of April, May, and June 2006.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Capital Improvements: A rent increase in excess of the C.P.I. Rent Adjustment may be justified by capital improvement costs.⁵ 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.⁶

The improvements must primarily benefit the tenant rather than the owner. Capital improvement

¹ Exhibit No. 2C. This Exhibit, and all other Exhibits to which reference is made in this Decision, were admitted into evidence without objection.

² Exhibit No. 2E.

³ Exhibit No. 2D.

⁴ Exhibit No. 2G.

⁵ O.M.C. Section 8.22.070(C)

⁶ Regulations Appendix, Section 10.2.2(5)

costs are to be amortized over a period of five years, divided equally among the units which benefited from the improvement. The reimbursement of capital expense must be discontinued at the end of the 60-month amortization period.⁷

The owner submitted satisfactory evidence of payment for work performed for qualified capital improvements, as itemized in the following Table. This Table sets forth the proper calculation for a rent increase based upon the capital improvements expenses, being \$18.57 per month. Therefore, the tenant's rent may be increased by \$18.57 per month as a capital improvements increase, effective April 1, 2014.

CAPITAL IMPROVEMENTS

Effective Date of Increase	1-Apr-14
Number of Residential Units on Property	21

<u>Improvements and repairs benefitting all units</u>					
IMPROVEMENT OR REPAIR	DATE COMPLETED	COST ALLOWED	NUMBER OF UNITS BENEFITTED	MONTHLY COST PER UNIT	VALIDITY CHECKS
Seismic retro-fit	7-Nov-13	\$19,904.00	21	\$15.80	OK
Gas line re-routing	3-Dec-13	\$3,500.00	21	\$2.78	OK
			Total	\$18.57	OK

Prior Capital Improvement Pass-throughs: The above-quoted language in the prior case clearly shows that the tenant's rent was increased by a capital improvement pass-through in 2001 by \$8.31 per month, not \$40 per month as the tenant claims. Further, per the Order in that case, the rent was appropriately reduced by that amount 5 years after the increase.

However, the second capital improvement increase cited in that prior case states that on May 1, 2004, the rent was increased by \$14.29 as a capital improvement pass-through. The owner's ledger for the tenant's unit,⁸ which covers the time period from December 31, 2007 through May 9, 2014, does not reflect a rent decrease of \$14.29 per month at any time after May 1, 2009. The rent should have been decreased by \$14.29 per month on May 1, 2009.

The owner is bound by the Order in Case No. T06-0086. The Rent Adjustment Ordinance requires a rent reduction on the expiration of a capital improvement pass-through; it is self-executing. When the rent was not reduced after 60 months, this amounted to an illegal rent increase, without the benefit of either a rent increase notice or notice of the existence and scope of the Rent Ordinance. In effect, this increase became a permanent part of the base rent, rather than being a temporary pass-through.

⁷ Regulations Appendix, Section 10.2

⁸ Exhibit No. 4.

The tenant has overpaid rent of \$14.29 per month for the past 64 months. However, a tenant's claim for rent overpayments is limited, by Board decision, to three years.⁹ Therefore, the tenant is awarded restitution in the amount of \$514.44.

The Current Rent: Before adding the current capital improvement pass-through, the base rent is first reduced by \$14.29 per month to \$786.72 per month. To this amount is added a capital improvement pass-through of \$18.57 per month, for a total of \$805.29 per month. However, the tenant has overpaid rent in the amount of \$514.44 due to the owner's failure to properly reduce the rent.

The tenant paid rent of \$801.01 per month for the 5 months from April through August 2014. This is an underpayment of \$4.28 per month, a total of \$21.40. The total overpayment is therefore \$493.04, which is ordered repaid over a period of 9 months.¹⁰ The rent is temporarily decreased by \$54.78 per month, to \$750.51 per month, beginning with the rent payment in September 2014 and ending with the rent payment in May 2015.

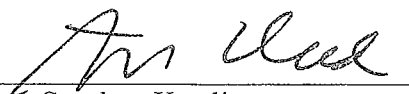
ORDER

1. Petition T14-0019 is partly granted.
2. The Base Rent is \$786.72 per month.
3. A Capital Improvements pass-through is granted, in the amount of \$18.57 per month, for a period of 60 months.
4. The effective date of the rent increase is April 1, 2014. This pass-through expires on April 1, 2016. On April 1, 2019, the rent will be reduced by \$18.57 per month.
5. The current monthly rent, before a temporary decrease due to overpaid rent, is \$805.29 per month. However, the tenant has overpaid rent in the total amount of \$493.04. This underpayment is adjusted over a period of 9 months.
6. The rent is temporarily decreased by \$54.78 per month, to \$750.51 per month, beginning with the rent payment in September 2014 and ending with the rent payment in May 2015. In June 2015, the rent will return to \$805.29 per month.
7. The Anniversary Date for future rent increases is April 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.

⁹ T06-0051, Barajas/Avalos v. Chu; T08-0139, Jackson-Redick v. Burks

¹⁰ Regulations, Section 8.22.110(F)

Dated: August 26, 2014



Stephen Kasdin
Hearing Officer
Rent Adjustment Program

000021⁵

PROOF OF SERVICE

Case Number T14-0119

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.

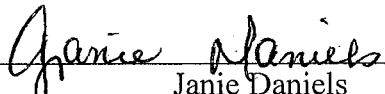
Today, I served the attached **Hearing Decision** by placing a true copy of it in a sealed envelope in City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California, addressed to:

Aldeca A. Turner
262 Vernon Street, #103
Oakland, CA 94610

The Lapham Company
4844 Telegraph Avenue
Oakland, CA 94609

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 **August 27, 2014** in Oakland, California.



Janie Daniels
Oakland Rent Adjustment Program

000022

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.
JUN 20 11 12:00

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

CASE NUMBER T/4-119

LANDLORD RESPONSE

Your Name Menna Testabron Agent for Owner	Complete Address (with zip code) 4844 Telegraph Ave Oakland, CA	Phone: <u>510 5947600</u> Email: <u>Menna@laphamcompany.com</u>
Your Representative's Name (if any)	Complete Address (with zip code)	Phone: _____ Fax: _____ Email: _____
Tenant(s) name(s) A. Turner	Complete Address (with zip code) 262 Vernon, Unit 103 Oakland, CA 94609	

Have you paid for your Oakland Business License? Yes No Number 2719886

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

There are 21 residential units in the subject building. I acquired the building on ___/___/___.

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.

<u>Date of Increase</u>	<u>Banking (deferred annual increases)</u>	<u>Increased Housing Service Costs</u>	<u>Capital Improvements</u>	<u>Unmeasured Repair Costs</u>	<u>Debt Service</u>	<u>Fair Return</u>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

See Attached Tenant Ledger

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 _____.

The tenant's initial rent including all services provided was: \$ _____ / 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 _____ No _____ I don't know _____

If yes, on what date was the Notice first given? _____

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

<u>Date Notice Given (mo./day/year)</u>	<u>Date Increase Effective</u>	<u>Rent Increased</u>		<u>Did you provide NOTICE TO TENANTS with the notice of rent increase?</u>	
		<u>From</u>	<u>To</u>	<u>Yes</u>	<u>No</u>
		\$ _____	\$ _____	Yes	No
		\$ _____	\$ _____	Yes	No
		\$ _____	\$ _____	Yes	No
		\$ _____	\$ _____	Yes	No
		\$ _____	\$ _____	Yes	No
		\$ _____	\$ _____	Yes	No
		\$ _____	\$ _____	Yes	No

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.

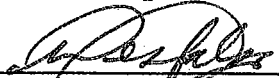
_____ The unit is located in a building with three or fewer units. The owner occupies one of the units continuously as his or her principal residence and has done so for at least one year.

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: 5/30/14

May 30, 2014

City of Oakland RAP
250 Frank H Ogawa Plaza, Suite 5313
Oakland, CA 94612

Via Hand Delivery

RE: Landlord Response and Document Package/Tenant Petition T14-119 (A. Turner)

Dear Hearing Officer,

We are in receipt of your correspondence regarding the tenant's petition against the owner's capital expenditure pass through. As you are aware, a rent increase in excess of the C.P.I Rent Adjustment may be justified by capital improvement costs (Regulations 10.2.3). Capital improvement costs are those which (1) materially add to the value of the property, (2) appreciably prolong the useful life or adapt to new building codes, and (3) must primarily benefit the tenant rather than the owner. We have submitted herewith the rent increase notice with an explanatory spreadsheet of capital improvement costs totaling \$65,001.12 (Sixty Five Thousand One and 12/100 Dollars) for engineering, seismic retrofit, sewer lateral, and associated permitting costs for such work. The total cost divided by the number of benefiting units (21) and applying a 60 month amortization results in the subject \$51.59/month capital improvement pass through to the tenant. The tenant is *not* disputing that the work was done. Furthermore, the capital improvements meet the accepted definition of capital improvements as they clearly (1) materially add to the value of the property, (2) prolong the useful life of the property, and (3) primarily benefit the tenants. Therefore, the full capital improvement pass through should be permitted on all grounds.

The tenant alleges that there was a \$40 capital improvement pass through added to her rent in April of 2001 that was never removed from her rent obligation. After reviewing the record it is clear that the tenant is mistaken. Attached you will find the case file for T06-0086 which outlines, amongst other things, the capital improvement pass through that took effect in April of 2001. The hearing officer noted that the capital improvement was \$8.31 (not \$40 as the tenant alleges) and that the capital improvement should have come off as of April of 2006. As such, the hearing officer awarded the tenant a credit of \$8.31 for the months of April, May, and June of 2006. The tenant appealed the decision and the hearing officer's decision as upheld via a unanimous vote. Therefore, the issue being raised by the tenant was fully and finally resolved by the Rent Board eight years ago and should not be heard in the subject case.



REAL PROPERTY ASSET MANAGEMENT
Email: info@laphamcompany.com
www.laphamcompany.com
DRE# 00931216

000026

Finally, the petition that the tenant refers to in Paragraph 3 of her current petition is T12-216 was granted via a corrected hearing decision by hearing officer Barbara Kong-Brown. As such, there was nothing outstanding for the Rent Board to hear at appeal.

Should you have any questions or concerns regarding this cover letter or the documents enclosed, please do not hesitate to contact us.

Sincerely,



Menna Fesfatsion

000027

T14-0119 MS/SK

CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM
Mail To: P O Box 70243
Oakland, California 94612-0243
(510) 238-3721

For date stamp.

2014 APR 25 PM 12:46

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

Your Name <i>Aldeca Turner</i>	Rental Address (with zip code) <i>262 Vernon St. APT 103 OAKLAND CA 94610</i>	Telephone Day <i>(510) 763-6263</i> Evening: _____
Your Representative's Name	Mailing Address (with zip code)	Telephone Day: _____ Evening: _____
Property Owner(s) name(s) <i>The LAPHAM CO.</i>	Mailing Address where you pay your rent (with zip code) <i>4844 Telegraph Ave OAKLAND CA 94609</i>	Telephone Day <i>(510)</i> _____ Evening: _____

Number of units on the property: _____

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

I. GROUNDS FOR PETITION: Check all that apply. You must check at least one box. For all of the grounds for a petition see OMC 8.22.070.

I (We) contest one or more rent increases greater than the annual CPI increase allowed, on the grounds that:

- (a) The increase(es) exceed(s) the CPI Adjustment and is (are) unjustified;
- (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). **Not all such increases are illegal. See OMC 8.22.080.**

See attached statement of 4/25/14

I (We) contest one or more rent increases, regardless of amount, on the grounds that:

<input type="checkbox"/> (d) No written notice of Rent Program was given to me together with the notice of increase I am contesting. (only for increases noticed after July 26, 2000)
<input type="checkbox"/> (e) A City of Oakland form notice of the existence of the Rent Program was not given to me at least six months before the effective date of the rent increase I am contesting.
<input type="checkbox"/> (f1) The housing services I am being provided have decreased. (Complete Section below)
<input type="checkbox"/> (f2) At present, there exists a health, safety, fire, or building code violation in the unit <u>for which the owner has been cited in an inspection report. Please attach a copy of any citation or report.</u>
<input type="checkbox"/> (g) The contested increase is the second rent increase in a 12-month period.

II. RENTAL HISTORY You must complete this section.

Date you moved into the Unit: 10/1995 Initial Rent: \$ Will provide 1996
 When did your landlord first provide you with a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program? Date: ?? If never provided, enter "Never."

- Is your rent subsidized or controlled by any government agency, including HUD (Section 8)? Yes No
- If you are challenging a rent paid to a former owner, what is his or her name and address?

List all rent increases received. Begin with the most recent and work backwards. If you need additional space, please attach another sheet. You must check "Yes" next to each increase that you are challenging.

Date Notice Served (mo/day/year)	Date Increase Effective (mo/day/year)	Amount Rent Increased		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?	Landlord's name.
		From	To			
2/28/14	4/1/14	\$ 801.01	\$ 852.60	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	LAPHON
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	

See attached statement

* 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)

List case number(s) of all Petitions you have ever filed for this rental unit: T05-0116, T06-0086
T12-151, T12-0216


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 landlord? Yes No
- Have you lost services originally provided by the landlord? Yes No
- Are you claiming any serious problem 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 or service(s) and problem(s) and explain how you calculate the dollar value of the service(s) lost or loss of use of the unit. Be sure to include at least, the following: 1) List the lost housing service or the serious problems; 2) State the date the loss began or the date you began paying for the service; 3) how you calculate the value of lost service. 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)

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

4/25/14

Date

Tenant's Signature

Date

IV. MEDIATION AVAILABLE. You have the option of mediating your complaints before going to hearing. Mediation is an entirely voluntary process to assist you in reaching an agreement with your landlord. 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.

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 agree to mediation before a Rent Adjustment Program Hearing Officer, a mediation session will take place before the hearing begins. If you and the landlord 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 petition has been filed and your landlord's response has been filed with the Rent Adjustment Program. **The Rent Adjustment Program may not schedule a mediation session if your landlord 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

V. 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

Your landlord will be 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. However, 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.

April 25, 2014

On February 28, 2014, Attached to my door was a 'NOTICE TO CHANGE TERMS OF TENANCY", dated February 28, 2014. It stated my rent would be increased \$51.59 due to a Capital Improvement. Presuming my base rent is \$801.01 my rent will be \$852.60. The increase was to take effective April 1, 2014. I am protesting the increase based on the following reasons:

1. My base rent, \$801.01, includes a previous Capital Improvement of \$40.00, which took effect April 1, 2001; and was to be effective for five years. As of today, April 25, 2014, thirteen years later, there is no evidence of a \$40.00 reduction in my rent and when I inquired about it, The Lapham Company could not located it. In fact, the amount is calculated and added with my base rent in determining increases. The carpet was torn before I moved into the apartment but gradually became worse, and that was when I informed the Owner of its condition in writing. The Owner applied the \$40.00 increase after I refused to pay a \$40.00 an illegal late fee.

2. I petitioned increases relating to the \$40.00. On November 5, 2012, a Hearing was held in regards to my petition. In making Hearing decisions I understand that, The Hearing Officer shall make written findings of fact and issue a written decision on petitions filed. Instead, the Hearing Officer, Barbara Kong-Brown ESQ, violated that regulation and based her decision on outrageous fabrications. Her irresponsible action aggravated a previous condition that caused me to be disabled. I received numerous 3-Day Notices to Quit.

3. On February 13, 2013, I filed an appeal. I understand the Board must approve written decisions. An appeal decision is not final until a written decision is approved by the Board, signed by the Chair or the Board's designee, and served on the parties. Staff shall serve decisions on the parties. In regards to the Appeal filed February 13, 2013. I never received a final decision from the staff.

By: 

Tenant

000031

CHRONOLOGICAL CASE REPORT

Case No.: T16-0184
Case Name: April 4, 2016
Property Address: 260 – 29th Street, #33, Oakland, CA
Parties: Nichelle Waller (Tenant)
Logos Property Investment (Owner)

PROPERTY OWNER APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	April 8, 2015
Owner Response filed	May 5, 2015
Administrative Decision issued	July 7, 2016
Owner Appeal filed	July 26, 2016

000032

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 JUL 26 PM 12:37 APPEAL
Appellant's Name Logos Property Investment, LLC	Landlord <input checked="" type="checkbox"/> Tenant <input type="checkbox"/>
Property Address (Include Unit Number) 260 - 29th St., #33 Oakland, CA 94611	ORIGINAL
Appellant's Mailing Address (For receipt of notices) 1061 Via Del Gato Alamo, CA 94507	Case Number T16-0184 Date of Decision appealed 7/6/2016
Name of Representative (if any) Law Office of Elaine Lee ATTN: Steve Kosta, Paralegal	Representative's Mailing Address (For notices) 405 - 14th St., #607-B 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.)

- 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.
- 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.
- 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.
- 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.
- 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.
- 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.


2016 JUL 26 PM 12:37
RECEIVED
CITY OF OAKLAND
RENT ARBITRATION PROGRAM

000033

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

8. You must serve a copy of your appeal on the opposing party(ies) or your appeal may be dismissed. I declare under penalty of perjury under the laws of the State of California that on July 25, 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	Nichelle Waller
Address	260 - 29th St., #33
City, State Zip	Oakland, CA 94611
Name	
Address	
City, State Zip	

 Dennis Chen	7/25/2016
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

IMPORTANT INFORMATION:

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

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

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 DIVISION PROGRAM
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1 ELAINE R. LEE
2 Attorney at Law (SBN 139889)
3 405 14th St., #607-B
4 Oakland, CA 94612
5 (510) 251-8024

6 Attorney for: RESPONDENT,
7 LOGOS PROPERTY INVESTMENT, LLC

8 NICHELLE WALLER,
9 Tenant/Petitioner,

CASE NO.: T16-0184

10 vs.

**MEMORANDUM OF POINTS
& AUTHORITIES IN SUPPORT
OF APPEAL**

11 LOGOS PROPERTY
12 INVESTMENT, LLC,
13 Landlord/Respondent.

14 I. STATEMENT OF FACTS

15 On/about 5/31/06, tenant NICHELLE WALLER (hereinafter "WALLER") moved into the
16 subject premises at 260 29th St., #33, Oakland, CA which, on 7/22/15, plaintiff LOGOS PROPERTY
17 INVESTMENT, LLC (hereinafter "LOGOS") had acquired.

18 On 7/29/15, WALLER was served with ORAP Notice¹ #1.

19 On 2/25/16, WALLER was served with notice increasing rent (capital improvements), from \$891
20 to \$966.56, effective 4/1/16, together with ORAP Notice #2.

21 On 4/8/16, WALLER filed a petition with ORAP challenging a rent increase by LOGOS.

22 On 4/11/16, ORAP notified LOGOS that 7/25/16 @ 10:00 am was set for the date and time of
23 the administrative hearing.

24 Within 35 days of 4/11/16, LOGOS served and filed its response to WALLER's petition.

25
26
27 ¹ Notice of existence and scope of Oakland's Rent Adjustment Program.

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RENT ADJUSTMENT PROGRAM

1 However, on 7/6/16 (long before 7/25/16, the scheduled hearing date), Hearing Officer
2 STEPHEN KASDIN entered an administrative decision on the matter; and, it is based on inaccurate facts
3 —i.e., that LOGOS served ORAP Notice #1 on 2/21/16 (instead of 7/29/15) and that WALLER received
4 ORAP Notice #2 on 2/23/16 (instead of 2/25/16). The parties do stipulate that the effective date of the
5 rent increase was to be 4/1/16.

6 **II. LEGAL ARGUMENT**

7 An ORAP notice must be served at the beginning of the tenancy and together with any rent
8 increase. A property owner may cure the failure to provide an ORAP Notice at the beginning of the
9 tenancy by thereafter serving an ORAP Notice. If the owner so cures, then a rent increase, given 6
10 months after service of the ORAP Notice, is not invalid for lack of ORAP Notice. OMC §8.312.060(C).

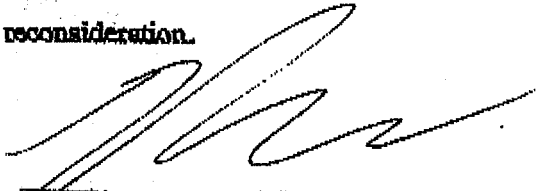
11 LOGOS, in its timely response, had provided substantial evidence to support its positions that:
12 1) services of the ORAP Notice(s) and rent increase were properly accomplished by "post + mail"
13 pursuant to CCP §1162(a)(3); and 2) LOGOS served ORAP Notice #1 on 7/29/15 (not 2/21/16) and
14 ORAP Notice #2 was served on 2/25/16 (not 2/23/16). The time period between 7/29/15 and 4/1/16, the
15 effective date of the rent increase notice, is more than 6 months. See "Owner Response" on file herein.

16 Therefore, OMC §8.312.060(C) cannot be applied to invalidate the rent increase.

17 **III. CONCLUSION**

18 The matter should be remanded for reconsideration.

19
20 DATED: 7/25/16



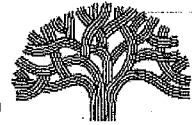
21 **ELAINE R. LEE**
22 Attorney for Respondent LOGOS

23
24
25
26
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28 P&As in Support of Appeal

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MENT ARBITRATION PROGRAM

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CITY OF OAKLAND



250 FRANK H. OGAWA PLAZA, SUITE 5313, OAKLAND, CALIFORNIA 94612-2034

Community and Economic Development Agency(510) 238-3721
Rent Adjustment Program

FAX (510) 238-3691
TDD (510) 238-3254

ADMINISTRATIVE DECISION

CASE NUMBER: T16-0184, Waller v. Logos Property Investment, LLC
PROPERTY ADDRESS: 260 - 29th St., #33, Oakland, CA
PARTIES: Nichelle Waller (Tenant)
Logos Property Investment, LLC (Owner)

INTRODUCTION

The tenant filed a petition that contests a rent increase from \$891 to \$966.56 per month, effective April 1, 2016, which exceeds the CPI Rent Adjustment. The tenant's petition states that she first received the City of Oakland form Notice to Tenants (RAP Notice) on February 23, 2016. The owner filed a response to the tenant's petition, which states that the tenant first received the RAP Notice on February 21, 2016, and that the contested rent increase was to be effective on April 1, 2016.

This Decision is based upon the sworn petition of the tenant and the sworn response of the owner.

Reason for Administrative Decision: An Administrative Decision is a decision issued without a Hearing. The purpose of a Hearing is to allow the parties to present testimony and other evidence beyond the information contained in the petition and/or response. However, in this case, sufficient uncontested facts have been presented to issue a Decision without a Hearing and there are no material facts in dispute. Therefore, an Administrative Decision is being issued.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Notice Requirements: The Rent Adjustment Ordinance requires an owner to serve a RAP Notice at the beginning of a tenancy and together with any notice of rent increase. An owner may cure the failure to provide notice at the start of a tenancy, but a rent increase

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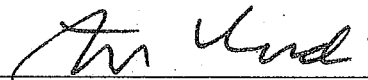
notice with an effective date less than six months after the owner first provides such notice is invalid.¹

The tenant petition and owner response both state that the tenant was first given the RAP Notice in February 2016, together with a rent increase notice to be effective on April 1, 2016. This is far less than 6 months after the tenant was first given the RAP Notice. Therefore, the notice of rent increase has no legal effect.

ORDER

1. Petition T16-0184 is granted.
2. The rent for the tenant's rental unit remains \$891 per month.
3. The Hearing scheduled for July 25, 2016 is cancelled.
4. 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 6, 2016



Stephen Kasdin
Hearing Officer
Rent Adjustment Program

¹ O.M.C. 8.22.060(C)

PROOF OF SERVICE

Case Number T16-0184

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 Administrative 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

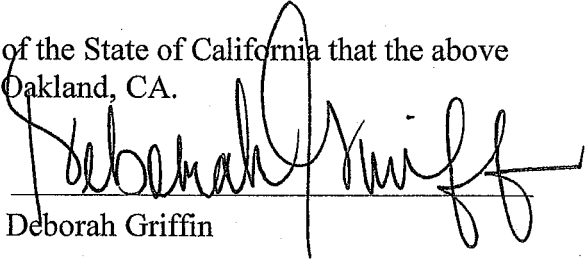
Nichelle Waller
260 29th St #33
Oakland, CA 94611

Owner

Logos Property Investment, LLC
1061 Via Del Gato
Alamo, CA 94507

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 07, 2016 in Oakland, CA.


Deborah Griffin

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CITY OF OAKLAND RENT ADJUSTMENT PROGRAM P.O. Box 70243 250 Frank H. Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721	For filing stamp. 2016 MAY -5 AM 11:44
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Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your response being rejected or delayed.

CASE NUMBER T16 - 0184

OWNER RESPONSE

Please print legibly.

Your Name Deann's Chen	Complete Address (with zip code) 1061 VIA DEL GIATO ALAMO, CA. 94507	Phone: 925-820-7535 Email: info@logospm.net
Your Representative's Name (if any)	Complete Address (with zip code)	Phone: _____ Fax: _____ Email: _____
Tenant(s) name(s) Nichelle Waller	Complete Address (with zip code) 260 29th St. Unit 33 Oakland, Ca. 94611	

Have you paid for your Oakland Business License? Yes No Number 28060940
 (Provide proof of payment.)

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

There are 40 residential units in the subject building. I acquired the building on 7/22/15.

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

I. RENTAL HISTORY

The tenant moved into the rental unit on 5/31/06.

The tenant's initial rent including all services provided was \$ 850.⁰⁰ / 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? 2/21/16

Is the tenant current on the rent? Yes No

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

If a contested increase was based on **Capital Improvements**, did you provide an **Enhanced Notice to Tenants for Capital Improvements** to the petitioning tenant(s)? Yes No . If yes, on what date was the Enhanced Notice given? 2.25.16 . Did you submit a copy of the Enhanced Notice to the RAP office within 10 days of serving the tenant? Yes No . Not applicable: there was no capital improvements increase. _____

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

Date Notice Given (mo/day/year)	Date Increase Effective (mo/day/year)	Amount Rent Increased		Did you provide NOTICE TO TENANTS with the notice of rent increase?
		From	To	
2.25.16	4.1.16	\$ 891	\$ 966.56	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No

II. JUSTIFICATION FOR RENT INCREASE

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

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

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

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.



Owner's Signature

5/5/16

Date

VII. MEDIATION AVAILABLE

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

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

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

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

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

Owner's Signature

Date

Tile 0184 MS/SK

CITY OF OAKLAND RENT ADJUSTMENT PROGRAM Mail To: P. O. Box 70243 Oakland, California 94612-0243 (510) 238-3721	For date stamp. <div style="text-align: center;"> RECEIVED APR 08 2016 OAKLAND RENT ADJUSTMENT </div>
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Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed.

TENANT PETITION

Please print legibly

Your Name Nichelle Waller	Rental Address (with zip code) 260 29th St, # 33 Oakland, CA 94611	Telephone (415) 610-9617
Your Representative's Name N/A	Mailing Address (with zip code)	Telephone
Property Owner(s) name(s) Logos Property Investment Co, LLC	Mailing Address (with zip code) 1061 Via Del Bato Alamo, CA 94507	Telephone (925) 820-7535

Number of units on the property: About 40.

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

I. GROUNDS FOR PETITION: Check all that apply. You must check at least one box. For all of the grounds for a petition see OMC 8.22.070 and OMC 8.22.090. **I (We) contest one or more rent increases on one or more of the following grounds:**

	(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 <u>illegally</u> 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.)
X	(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.
	(f1) The housing services I am being provided have decreased. (Complete Section III on following page)
	(f2) At present, there exists a health, safety, fire, or building code violation in the unit. <u>If the owner has been cited in an inspection report, please attach a copy of the citation or report.</u>
	(g) The contested increase is the second rent increase in a 12-month period.
	(h) The notice of rent increase based upon capital improvement costs does not contain the "enhanced notice" requirements of the Rent Adjustment Ordinance or the enhanced notice was not filed with the RAP.
	(i) My rent was not reduced after the expiration period of the rent increase based on capital improvements.
	(j) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).
	(k) I wish to contest an exemption from the Rent Adjustment Ordinance (OMC 8.22, Article I)

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

Date you moved into the Unit: March 2006 Initial Rent: \$ 850⁰⁰ /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: 2/23/16. If never provided, enter "Never."

- Is your rent subsidized or controlled by any government agency, including HUD (Section 8)? Yes No

List all rent increases that you want to challenge. Begin with the most recent and work backwards. If you need additional space, please attach another sheet. You must check "Yes" next to each increase that you are challenging.

Date Notice Served (mo/day/year)	Date Increase Effective (mo/day/year)	Amount Rent Increased		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
02/23/16	04/01/16	\$ 891	\$ 966.56	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

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

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

III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:

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

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

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

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

IV. VERIFICATION: The tenant must sign:

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

Nichell Waller

Tenant's Signature

March 30, 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).

Nichell Waller

Tenant's Signature

March 30, 2016

Date

VI. IMPORTANT INFORMATION:

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

File Review

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

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

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

CHRONOLOGICAL CASE REPORT

Case No.: T16-0365
Case Name: Johnson v. Thornton
Property Address: 361 105th Avenue, Oakland, CA
Parties: Sharon Johnson (Tenant)
Candi Thornton (Owner)

TENANT APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	July 7, 2016
Owner Response filed	July 14, 2016
Hearing Decision issued	November 10, 2016
Tenant Appeal filed	November 17, 2016

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City of Oakland Residential Rent Adjustment Program 250 Frank Ogawa Plaza, Suite 5313 Oakland, California 94612 (510) 238-3721	2016 NOV 17 AM 11:23 APPEAL
Appellant's Name Sharon Johnson	Landlord <input type="checkbox"/> Tenant <input checked="" type="checkbox"/>
Property Address (Include Unit Number) 361 105th Avenue Oakland, CA	
Appellant's Mailing Address (For receipt of notices) PO Box 6262 Oakland, CA 94603	Case Number T16-0365 Date of Decision appealed November 9, 2016
Name of Representative (if any)	Representative's Mailing Address (For notices)

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

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

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

8. You must serve a copy of your appeal on the opposing party(ies) or your appeal may be dismissed. I declare under penalty of perjury under the laws of the State of California that on NOV 17, 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	Candi Thornton	
Address		
City, State Zip	PO Box 5520 Oakland, CA, 94605	3998 Altamont Avenue Oakland, CA 94605
Name		
Address		
City, State Zip		

<u>Sharon Johnson</u>	November 16, 2016
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

IMPORTANT INFORMATION:

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

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

2016 NOV 17 AM 11:23

1. Decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the board

Based on the regulations and previous decisions of the Board, the landlord should not have been allowed to provide evidence or testimony as she had not properly filed her response to the petition. As a result, the hearing officer should only have considered the tenant's testimony in assessing the decreased housing services claims.

Further, the landlord's Owner Response states that she had not paid her Rent Adjustment Program fee at the time she filed her petition, and did not attach proof of payment of her Oakland Business License to her Owner Response. The regulations clearly state that "in order for an owner to file a response to tenant petition...the owner must provide the following: (a) evidence of possession of a current city business license..." O.M.C. § 8.22.090(B). Furthermore, "[a]n owner's petition...is not considered filed until the following has been submitted: (a) evidence that the Owner has paid his or her City of Oakland Business License Tax." O.M.C. § Regulations 8.22.90(C)(1). Previously, the Board has held that an owner response that lacks a filing fee and copy of the business license, and also includes failure to provide RAP notices, does not meet minimum standards for response. *Mateer v. Green*, Case No. T02-0089-0090.

Previous decisions and the regulations very clearly state that failure to file a response precludes a landlord from entering evidence into the record. O.M.C. § 8.22.090(B); *see also Hill v. Brown*, Case No. T01-0099 (Board upheld Hearing Officer's ruling precluding Landlord from introducing evidence at the hearing below on the grounds that the Landlord had failed to file a timely response to the petition); *see also Santiago v. Vega*, Case No. T02-0404, and *Adams/Baca v. RMD Services*, Case No. T10-0075.

More recently, in Cases T15-0202 and T15-0203 the Hearing Officer ruled that the landlord's response was untimely, precluding him from introducing evidence, for failure to pay business tax fees. *Rodriguez v. Taplin*, Case No. T15-0202; *Lopez v. Taplin*, Case No. T15-0203. In particular, the decision stated that the landlord's failure to pay the tax meant that his response had not been validly filed. Therefore, the Hearing Officer did not consider his evidence or testimony, limiting his participation to cross-examination and presenting a summation. The Board affirmed this ruling at the July 28, 2016 appeal hearing.

2. Decision is inconsistent with decisions issued by other hearing officers.

The tenant testified that there was no central heating and she had just a portable heater, while the landlord testified that there was central heating. The Hearing Officer found their testimony "equally convincing" and held that the tenant had not met her burden of proof; however, as discussed above only the tenant's testimony should have been admitted. The decision acknowledges that tenant's portable heater was taken away in July of 2016. However, California Civil Code Section 1941(a)(4) requires that landlords provide tenants with "heating facilities... maintained in good working order."

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Explanation of Grounds for Appeal

T16-0365

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RENT ARBITRATION PROGRAM

2016 NOV 17 AM 11:23

The Hearing Officer herself noted that “normally a portable heater is not sufficient heat,” but declined to find the lack of central heating a decreased housing service because the tenant did not pay PG&E. The Hearing Officer further acknowledged that the space heater was removed in July, but stated that “a heater is not normally needed in Oakland, CA in July.” However, this past July saw a number of cold periods in Oakland, with temperatures going down to the low 50s at night.¹ As a result, the decision is inconsistent with previous decisions at other times of the year that did hold landlords to their statutory obligations to provide adequate heat.

3. Decision is not readily supported by substantial evidence

In denying the tenant’s petition, the decision fails to address the photos of the bathroom the tenant provided, that she claimed showed urine on the floor. The decision is also silent on the testimony from the tenant that there was often feces in the bathrooms, claims of decreased housing services based on not having access to usable bathrooms. This evidence should have been considered and at least addressed in arriving at the decision.

¹ See <http://www.accuweather.com/en/us/oakland-ca/94612/july-weather/347626> for more information.

000051



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: T16-0365, Johnson v. Thornton
PROPERTY ADDRESS: 361 105th Ave, Oakland, CA
DATE OF HEARING: October 24, 2016
DATE OF DECISION: November 9, 2016
APPEARANCES: Candi Thornton, Owner
Sharon Johnson, Tenant

SUMMARY OF DECISION

The tenant's petition is denied.

CONTENTIONS OF THE PARTIES

The tenant filed a petition which alleges that a rent increase from \$350 to \$650 a month exceeds the Consumer Price Index allowable rent increase and is unjustified or is greater than 10%; that no written notice of the Rent Program (*RAP Notice*) was given to her together with the notice of increase and that no *RAP Notice* was given to her at least six months before the effective date of the rent increase she is contesting.

The tenant additionally claimed that she has lost services originally provided by the owner or the conditions had changed and that there were serious problems with her unit. The tenant's claims of inadequate living conditions related to the lack of a heater in her room; that the smoke detector is broken; that the restroom she has access to doesn't work and there are water pressure problems; that the other bathrooms are not available or are filthy; and that there is barely walking space outside her unit because of clutter.

The owner timely responded to the tenant petition and claimed that the unit is exempt because it is an accommodation in a hospital, convent, monastery, extended care

000052

facility, convalescent home, non-profit home for aged, or dormitory owned and operated by an education institution.

THE ISSUES

1. Is the owner exempt from the Rent Adjustment Program (RAP) for this rental?
2. When, if ever, was the tenant provided with a *RAP Notice*?
3. Is there a rent increase at issue?
4. Can the tenant's claims of harassment be considered?
5. Have the tenant's housing services decreased?

EVIDENCE

Rental History: The tenant testified that she moved into a room in the building at 361 105th Avenue in November of 2015 for an initial rent of \$350 a month. The building is a health care facility in which the owners provide care for people with disabilities. She is not staying there as a patient. She had known the owner of the building (Candi Thornton) because she had been providing patient care for Ms. Thornton's sister. In November of 2015, she was no longer able to care for Ms. Thornton's sister, so Ms. Thornton provided her a room in her care facility.

On June 3, 2016, Ms. Thornton informed her that she would be raising the rent to \$650 a month. On June 8, 2016, she was given a letter from the co-owner that the rent was increasing to \$650 a month, effective July 1, 2016.¹ She did not pay this rent increase. The tenant last paid rent in June of 2016. She was never given the *RAP Notice*.

The *Owner's Response*, which was signed by the owner under penalty of perjury, states that she never gave the tenant the *RAP Notice*. The owner did not testify about this at the Hearing.

The tenant tried to pay rent in July of 2016, but it was returned by the owner. She sent the rent check by certified mail and it was returned to her.² The owner testified that she never got paid for July of 2016 and that she did not accept the envelope because it was sent to her home, not her business address.

The tenant moved out of the facility in July 22, 2016, because Ms. Thornton had gotten a restraining order against her. Even when the matter was cleared up in Court she was afraid to go back to the unit.

The owner testified that she runs an independent living facility from this property with 27 bedrooms. She is not licensed as a health care provider, and does not provide health care. She does have a business license. People come in who don't have a place to stay. The room she rented to Ms. Johnson had previously been an office, and she made it into

¹ The tenant had not produced this document prior to the Hearing, but at the Hearing she showed it to the Hearing Officer. Because it had not been produced prior to the Hearing, it was not admitted into evidence.

² The tenant claimed to have sent to the RAP the proof of attempted payment of her July rent. These documents were not in the file.

a bedroom because Ms. Johnson needed housing or would be homeless. Ms. Johnson is not a client of the facility, but instead she was helping her out because of the work Ms. Johnson had done for her sister.

The owner was asked whether the business she runs is a hospital, a convent, a monastery, an extended care facility, a convalescent home, a non-profit home for aged, or a dormitory and she replied no. Her business, Arsola's House, is a 501(c)(3) non-profit, but it does not fall into any of the above categories. Ms. Thornton did not provide any documents to establish that she runs a non-profit.

Harassment: The tenant attempted to testify about harassment she suffered after filing her claim. She sought to bring in evidence regarding a scratch to her car and other incidents which occurred after she filed, including an altercation with the owner's brother. The tenant was informed not to testify about these matters and the documents regarding the damage to her car were not admitted. (See below.)

Decreased Housing Services:

Heater: The tenant testified that when she moved into the room it did not have a central heating supply other than a portable heater which the owner provided. The owner testified that there was central heating, and that the thermostat was outside the room in the office area (although she never told the tenant how it operated). The tenant denied that there was a thermostat that controlled a heater in her room. The tenant further testified that in July the owner took away the portable heater. The owner admitted to taking the heater because she did not appreciate the tenant's behavior.

Smoke Detector: The tenant testified that the smoke detector in her room was not working properly. There was a beep that kept going on. She tried to take it out, but it was stuck. Then, after some time, the beeping stopped. She believes it wasn't working because at one time she cooked something in her room and there was a fair amount of smoke but the detector did not go off. She informed Ms. Thornton's brother, who kept saying he would fix it, but he did not.

Ms. Thornton testified that the smoke detector was working properly.

Bathrooms: The tenant testified that she was given a key to use the office bathroom. That toilet would break all the time, and they put grey tape around it to keep people from using it.³ There are other bathrooms for the clients but she didn't like using the clients' bathrooms because they were often dirty—with blood on the toilet or the floor. The tenant provided photographs of the clients' bathroom which she testified shows that there was urine on the floor.⁴ This would happen every day. She also did not want to use the clients' bathrooms because there were no seat coverings. She would use a bucket in her room to urinate.

³ See Exhibit 3, #3. This Exhibit, and all other exhibits referred to in this Hearing Decision, were admitted into evidence without objection.

⁴ Exhibit 3, #1-2

The tenant further testified that the office bathroom did not have a usable shower. She did not like to take showers in the clients' bathroom, she would take showers at the gym instead. Additionally, the sink in that bathroom had really low water pressure.

The owner testified that the tenant was given a key to use the office bathroom, but that at one point the toilet was out of order for approximately two weeks. There were two additional bathrooms right down the hall, that the tenant had access to. These bathrooms are kept clean. She has cleaning people who work in the building and the bathrooms are not generally dirty.

The owner further testified that the office bathroom does have a working sink and that while the water pressure is a little low, it is because the building is so large. She is able to use that sink all the time without a problem.

Clutter: The tenant testified that there were often boxes blocking her way outside her room.

The owner testified that these are supplies coming into the business and that these supplies were there temporarily. Also, she is very aware of safety issues associated with the premises and takes great care to make sure that access is not blocked.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Is the owner exempt from the Rent Adjustment Program (RAP) for this rental?

The owner sought an exemption from the RAP alleging that the unit is an accommodation in a "hospital, convent, monastery, extended care facility, convalescent home, non-profit home for the aged, or dormitory." However, when asked whether her facility was any one of these things, she replied "no" to each. Additionally, when she rented a room to the tenant, she did not consider the tenant as a client of the Arsola's House. In fact, the room she rented to the tenant was previously used as office space.

Ms. Thornton did not establish that she is exempt from the RAP with respect to Ms. Johnson. She provided her a room for which she was required to pay monthly rent. The unit is a covered unit and the RAP Ordinance applies to these parties.

When, if ever, was the RAP Notice first served on the tenant?

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

⁵ O.M.C. § 8.22.060(A)

tenancy.⁶ 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.⁷

The tenant testified that she never received a *RAP Notice* from the owner. The *Owner Response* states that the owner never gave the *RAP Notice*. It is found that the tenant has never been served with the *RAP Notice*.

Is there a rent increase at issue?

The tenant and the owner testified that the owner sought to increase the rent by giving the tenant oral notice that the rent was going up from \$350 to \$650 a month. Rent increase notices must be given in writing. Civil Code § 827. Additionally, 30 days' notice is required for increases that are 10% or less, and 60 days' notice is required for any increase over 10%. Therefore, the rent increase at issue was not valid.

Nonetheless, the tenant did not pay the rent increase, and she moved out of the unit in mid-July of 2016. While she had attempted to pay July rent, she never actually paid rent in July because the owner did not accept the certified letter that was mailed to her. Therefore, since the tenant moved out of the unit, the rent increase is moot.

Can the tenant's claims of harassment be considered?

At the Hearing the tenant raised concerns about the way she was treated by the owner, and her brother. These claims concern the tenant's right to the covenant of quiet enjoyment of her apartment and to be free from harassment. The RAP is an administrative agency whose power is limited to enforce the provisions of the Rent Adjustment Ordinance. In the case of *Larson v. City and County of San Francisco*, (2011) 192 Cal. App. 4th 1263, the court examined the authority of San Francisco's Rent Board. The court held that the jurisdiction of administrative agencies is limited to those claims that are quantifiable in nature. The Court specifically held that the loss of quiet enjoyment is not such a claim. *Larson* at p. 1281. Neither are claims of harassment.

The Residential Rent and Relocation Board has also stated that the RAP does not have jurisdiction over any such claims. See the *Housing, Residential Rent and Relocation Board Decision in Aswad v. Fields*, T03-0377. The tenant's claims for decreased housing services as they relate to the covenant of quiet enjoyment and harassment are not claims that can be made under the Rent Adjustment Ordinance. While these acts may well constitute civil wrongs, these claims must be made in a court of competent jurisdiction. The tenant's claims as they relate to the covenant of quiet enjoyment and harassment are dismissed.

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⁶ O.M.C. § 8.22.070(H)(1)(A)

⁷ O.M.C. § 8.22.060 (C)

Have the tenant's housing services decreased?

Heater: The owner and the tenant were equally convincing that there was central heating in the tenant's room, and that the thermostat to control the heat was in the office outside the tenant's unit. Since the tenant has the burden of proof of a decreased housing services claim, when the parties are equally convincing, the tenant has not met her burden of proof.

Additionally, the tenant was provided a portable heater when she first moved into the unit. While normally a portable heater is not sufficient heat, in this case the tenant was not responsible for paying for PG&E. Therefore, there were no additional costs with running a space heater. While the space heater was removed in July, a heater is not normally needed in Oakland, CA, in July. Therefore, this claim is denied.

Smoke Detector: Again, the parties were equally convincing about whether or not the smoke detector in the tenant's room was working properly. The tenant has not sustained her burden of proof and this matter is denied.

Bathrooms: The tenant established that for a few weeks the normal bathroom she was expected to use did not have a working toilet. However, there were other bathrooms on the premises that were available to her. The owner established that these other bathrooms were generally usable and in working condition.

The same is true with respect to the shower. There was never a working shower in the office bathroom. The tenant was allowed to shower in the bathrooms used by the clients. This was an acceptable alternative. This claim is denied.

Clutter: The tenant established that sometimes there was clutter outside her room. However, the owner's testimony that she would get rid of the influx of boxes as soon as she could was credible. There was no testimony that the tenant was ever unable to get out of her room or have her access entirely blocked. This claim is denied.

ORDER

1. Petition T16-0365 is denied.

2. 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

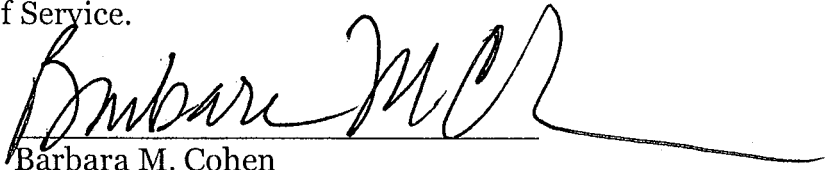
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service is shown on the attached Proof of Service.

Dated: November 9, 2016

A handwritten signature in black ink, appearing to read "Barbara M. Cohen", written over a horizontal line.

Barbara M. Cohen
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE

Case Number T16-0365

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:

Tenants

Sharon Johnson
PO Box 6262
Oakland, CA 94603

Sharon Johnson
361 105th Ave
Oakland, CA 94603

Owner

Candy Thornton
PO Box 5520
Oakland, CA 94605

Candy Thornton
361 105th Ave
Oakland, CA 94603

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 November 10, 2016 in Oakland, CA.


Deborah Griffin

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CITY OF OAKLAND RENT ADJUSTMENT PROGRAM P.O. Box 70243 250 Frank H. Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721	For filing stamp. 2015 JUL 16 11:40:01
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Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your response being rejected or delayed.

CASE NUMBER T 16-0365

OWNER RESPONSE

Please print legibly.

Your Name Candi Thornton	Complete Address (with zip code) P.O. Box 5520 Oakland, Ca. 94605	Phone: (510) 830-7851 Email: orsola.house@sbglobal.net
Your Representative's Name (if any)	Complete Address (with zip code)	Phone: _____ Fax: _____ Email: _____
Tenant(s) name(s) Sharon Johnson	Complete Address (with zip code) 361 105th Ave Oakland, Ca. 94603	

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

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

There are 27 residential units in the subject building. I acquired the building on OCT 8, 2014

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

I. RENTAL HISTORY

The tenant moved into the rental unit on NOV. 2015

The tenant's initial rent including all services provided was \$ Waived month.

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

Is the tenant current on the rent? Yes No

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

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

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

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

II. JUSTIFICATION FOR RENT INCREASE

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

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

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

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.**

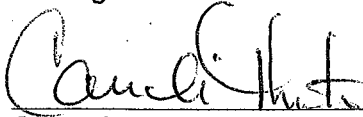
NOTE: If you do not file a timely Response, you will not be able to produce evidence at the Hearing, unless you can show good cause for the late filing.

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.



Owner's Signature

7/14/16
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

T16-0365 KC/BZ

CITY OF OAKLAND RENT ADJUSTMENT PROGRAM Mail To: P. O. Box 70243 Oakland, California 94612-0243 (510) 238-3721	For date stamp. 2016 JUL -7 PM 3:09
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Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed.

TENANT PETITION

Please print legibly

Your Name Sharon Johnson	Rental Address (with zip code) 361-105th AVE OAKLAND, CA 94603	Telephone (510) 798-9564
Your Representative's Name	Mailing Address (with zip code) P.O. Box 6262	Telephone (510) 798-9564
Property Owner(s) name(s) Ms. Candy Thornton	Mailing Address (with zip code) 361-105th AVE OAKLAND, CA 94603	Telephone (510) 830-7851

Number of units on the property: **60 or MORE**

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

I. GROUNDS FOR PETITION: Check all that apply. You must check at least one box. For all of the grounds for a petition see OMC 8.22.070 and OMC 8.22.090. **I (We) contest one or more rent increases on one or more of the following grounds:**

<input checked="" type="checkbox"/>	(a) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
<input type="checkbox"/>	(b) The owner did not give me a summary of the justification(s) for the increase despite my written request.
<input type="checkbox"/>	(c) The rent was raised <u>illegally</u> after the unit was vacated (Costa-Hawkins violation).
<input checked="" type="checkbox"/>	(d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.)
<input checked="" type="checkbox"/>	(e) A City of Oakland form notice of the existence of the Rent Program was not given to me at least six months before the effective date of the rent increase(s) I am contesting.
<input type="checkbox"/>	(f1) The housing services I am being provided have decreased. (Complete Section III on following page)
<input type="checkbox"/>	(f2) At present, there exists a health, safety, fire, or building code violation in the unit. <u>If the owner has been cited in an inspection report, please attach a copy of the citation or report.</u>
<input type="checkbox"/>	(g) The contested increase is the second rent increase in a 12-month period.
<input type="checkbox"/>	(h) The notice of rent increase based upon capital improvement costs does not contain the "enhanced notice" requirements of the Rent Adjustment Ordinance or the enhanced notice was not filed with the RAP.
<input type="checkbox"/>	(i) My rent was not reduced after the expiration period of the rent increase based on capital improvements.
<input type="checkbox"/>	(j) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).
<input type="checkbox"/>	(k) I wish to contest an exemption from the Rent Adjustment Ordinance (OMC 8.22, Article I)

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

Date you moved into the Unit: Nov 23, 2016 Initial Rent: \$ 350.00 /month

When did the owner first provide you with a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program (RAP NOTICE)? Date: NEVER. If never provided, enter "Never."

- Is your rent subsidized or controlled by any government agency, including HUD (Section 8)? Yes No

List all rent increases that you want to challenge. Begin with the most recent and work backwards. If you need additional space, please attach another sheet. You must check "Yes" next to each increase that you are challenging.

Date Notice Served (mo/day/year)	Date Increase Effective (mo/day/year)	Amount Rent Increased		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
JUNE 8, 2016	July 1-5 2016	\$ 350.00	\$ 650.00	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

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

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

III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:

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

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

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

To have a unit inspected and code violations cited, contact the City of Oakland, Code Compliance Unit, 250 Frank H. Ogawa Plaza, 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.

Sharon Johnson
Tenant's Signature

July 7, 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).

Sharon Johnson
Tenant's Signature

July 7, 2016
Date

VI. IMPORTANT INFORMATION:

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

File Review

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

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

- Printed form provided by the owner
- Pamphlet distributed by the Rent Adjustment Program
- Legal services or community organization
- Sign on bus or bus shelter
- Other (describe): People referral

July 7, 2016

City of Oakland
250 Frank Ogawa Plaza, Suite 5313
Oakland, CA 94612-0243

This is a list of Inadequate living conditions:

- My room doesn't have a heater, I'm using a portable heater
- The Smoke Detector doesn't work is broken.
- The restroom which I was given a key to use. Doesn't work have to "Hold" which causes me bad stomach cramps. Have to Leave the property to find a restroom. Sometime I'm not able to make it to the restroom on time! which has causes "accidents" it's very embarrassing. Also, the water pressure doesn't work well in Bathroom. Have to take shower at the 24 hour fitness.
- "Tenant" Myself was told to use client restroom from owner. Sometime the client restroom aren't available because of use! "by client" Also, is often fifthly and broken.
- Often lots of clutter outside of room, barley have walking space.

Arsola's Adult Residential Facility
361 1054th Oakland, CA 94603

Sincerely,

Sharon Johnson

Ms. Sharon Johnson

000067

City of Oakland
250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612

Today is July 7, 2016. I miss Sharon Johnson have not paid my rent as of July 5, 2016 because the owner of the property Ms. Candi Thornton, Founder/CEO wouldn't accept my rent. I tried to pay \$385.00 which is 10% of what I originally pay. I've tried to plead with the owner on several occasion to accept my rent. I've tried to give my portion of the rent to her Brother who is the Co-Owner of the property.

I have written notices to the owner and also, have text the owner and Co-Owner in regards to paying my portion of the rent. Neither one of them is willing to except my rent. I don't no what else to do, but request help from the City of Oakland Rent Adjustment Program. My rent was currently \$350.00 per month for a room at the property located at Arsola's Adult Residential Facility 361-105th Ave, Oakland, CA 94603. On June 8, the owner handed me a letter requesting an rent increase of \$650.00. I was shocked and scared because I know that I wouldn't be able to pay this amount.

I started asking question about what I should do? Eventually someone told me that their is a law regarding rent increase right for tenants. They suggested that I contacted the City of Oakland regarding the Rent Adjustment Program.

I dropped by the City of Oakland Rent Adjustment Program on July 6, 2016, 12:50 am. I was able to speak with Ms. Susan.

Sincerely,

Sharon Johnson

Ms. Sharon Johnson

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