

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

July 6, 2017

7:00 P.M.

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

AGENDA

1. CALL TO ORDER
2. ROLL CALL
3. OPEN FORUM
4. NEW BUSINESS
 - i. Appeal Hearing in Cases:
 - a. T15-0632; Loville v. Nassab
 - b. T16-0037; Tabet v. Siu
 - c. T16-0347; Lockhart et al v. Greer
5. ADJOURNMENT

2017 JUN 28 AM 11:43
OFFICE OF THE CITY CLERK
OAKLAND

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

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

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

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

CHRONOLOGICAL CASE REPORT

Case No.: T15-0632
Case Name: Loville v. Nassab
Property Address: 1661 16th Street, Unit B, Oakland, CA
Parties: Constance Masinga Loville (Tenant)
Karim Nassab (Landlord)

PROPERTY OWNER APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	November 23, 2015
Owner Response filed	None
Hearing Decision issued	October 12, 2016
Owner Appeal filed	October 25, 2016

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RECEIVED

OCT 25 2016

City of Oakland Residential Rent Adjustment Program 250 Frank Ogawa Plaza, Suite 5313 Oakland, California 94612 (510) 238-3721	OAKLAND RENT ADJUSTMENT <p style="text-align: center;">APPEAL</p>
Appellant's Name KARIM M. NASSAR	Landlord <input checked="" type="checkbox"/> Tenant <input type="checkbox"/>
Property Address (Include Unit Number) 1661 16 TH STREET UNIT "B" OAKLAND, CA 94607	
Appellant's Mailing Address (For receipt of notices) 1490 LIVORNA RD ALAMO, CA 94507	Case Number T15-0632 Date of Decision appealed 10-21-2016
Name of Representative (if any) KARIM M. NASSAR	Representative's Mailing Address (For notices) 1490 LIVORNA RD ALAMO, CA 94507

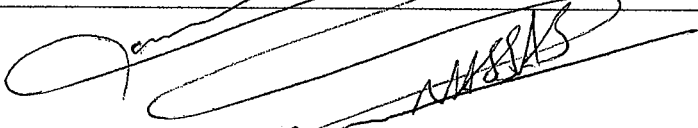
I appeal the decision issued in the case and on the date written above on the following grounds:
 (Check the applicable ground(s). Additional explanation is required (see below). Please attach additional pages to this form.)

1. The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board. You must identify the Ordinance section, regulation or prior Board decision(s) and specify the inconsistency.
2. The decision is inconsistent with decisions issued by other hearing officers. You must identify the prior inconsistent decision and explain how the decision is inconsistent.
3. The decision raises a new policy issue that has not been decided by the Board. You must provide a detailed statement of the issue and why the issue should be decided in your favor.
4. The decision is not supported by substantial evidence. You must explain why the decision is not supported by substantial evidence found in the case record. The entire case record is available to the Board, but sections of audio recordings must be pre-designated to Rent Adjustment Staff.
5. I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. You must explain how you were denied a sufficient opportunity and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue a decision without a hearing if sufficient facts to make the decision are not in dispute.
6. The decision denies me a fair return on my investment. You must specifically state why you have been denied a fair return and attach the calculations supporting your claim.

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

8. **You must serve a copy of your appeal on the opposing party(ies) or your appeal may be dismissed.** I declare under penalty of perjury under the laws of the State of California that on 10/27, 2006, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<u>Name</u>	CONSTANCE & DANA LOVILLE
<u>Address</u>	1661 16TH STREET UNIT "B"
<u>City, State Zip</u>	OAKLAND, CA 94607
<u>Name</u>	
<u>Address</u>	
<u>City, State Zip</u>	

	10-21-2016
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.

Appeal to Decision of Rent Adjustment Program Staff

Date: October 21, 2016

To: City of Oakland
Department of Housing and Community Development
Rent Adjustment Program

From: Karim Nassab (Property Owner)
1490 Livorna Rd.
Alamo, Ca 94507

Subject: Constance and Dana Loville, (Tenant)
1661 16th Street
Unit # B
Oakland, CA 94607

Reference: Case Number T15-0632

Grounds for Appeal:

Hearing Officer;

Please be advised that I am protesting your decision on reversing my rental income amount from subject tenant per following reasons.

- 1- Decrease on housing service:
 - a. Provided Garbage container is a standard size for a family of (3) based on Waste Management Company. I stated to you on hearing date of August 25, 2016.
 - b. My statement to you was under oath and you should have done your own investigation prior to rendering your decision.
 - c. The tenant owes me the reduced rent amount since rent reduction date based on your decision.
 - d. In reference to Heater. I brought to hearing proof of service and payment and I explained to you that if the unit was not operating properly after the repair the tenant had to notify the landlord via a certified letter which they did not and you agreed to my statement during hearing.
 - e. Please note heater not used all year around and no notification has been send to me. Therefore your decision must be reversed.
 - f. In spirit of cooperation since winter season is approaching I will send a service contractor to fix the unit again.
 - g. Your decision on reducing my rental income due decrease on service must be reversed.

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Appeal to Decision of Rent Adjustment Program Staff

- 2- In reference to increased rent, the tenant had agreed on amount of rent increase and had started the payments until you decided to reverse the amount.
- Please be advised that the property is mine and I rented the unit with a rental agreement with base rent of \$1,800 and I am qualified for annual rent increase.

This in an official notification to subject tenant and City of Oakland Rent Control authority that reduced rental income from subject property has created a financial hardship to me and based on my reduced income for past year I have been late on utility and mortgage payment for subject property.

The tenant must pay my rent fully effective Nov. 1st 2016 or evacuate my property within (60) day effective receipt of this notification and your decision in reference to calculation of restitution will be challenged via higher authorities.

Attached: 60-Day Notice of Termination of Tenancy

Sincerely;


Karim M. Nassab

60-Day Notice of Termination of Tenancy

(Tenancy of One Year or More)

To: CONSTANCE, DENA, all tenants, subtenants, adult occupants and others
LOVABLE
in possession of the premises at 1661 16TH STREET SU, City of
OAKLAND, County of ALAMEDA, California.

YOU ARE HEREBY NOTIFIED that effective SIXTY (60) DAYS from the date of service on you of this notice, the periodic tenancy by which you hold possession of the premises is terminated, at which time you are required to vacate and surrender possession of the premises. If you fail to do so, legal proceedings will be instituted against you to recover possession of the premises, damages and costs of suit.

Landlord/Manager

Date

10-21-2018

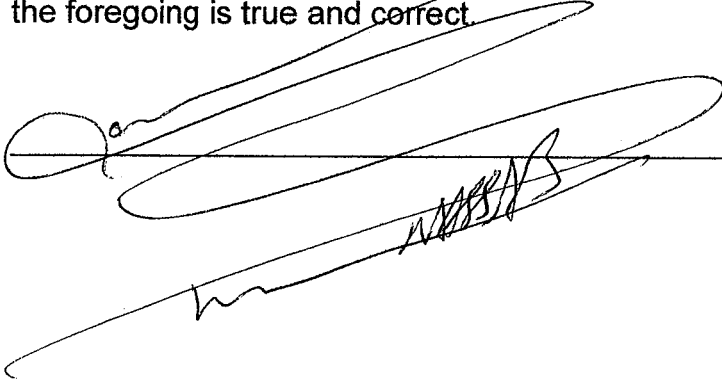
Proof of Service

I, the undersigned, being at least eighteen years of age, served this notice, of which this is a true copy, on _____, one of the occupants listed above as follows:

- On 10-21, 2018, I delivered the notice to the occupant personally.
- On _____, 20____, I delivered the notice to a person of suitable age and discretion at the occupant's residence/business after having attempted personal service at the occupant's residence, and business, if known. On _____, 20____, I mailed a second copy to the occupant at his or her residence.
- On _____, 20____, I posted the notice in a conspicuous place on _____.

the property, after having attempted personal service at the occupant's residence, and business, if known, and after having been unable to find there a person of suitable age and discretion. _____, 20__, I mailed a second copy to the occupant at the property.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke.

10-21-2016
Date



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

CITY OF OAKLAND

Department of Housing and Community Development
Rent Adjustment Program

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

HEARING DECISION

CASE NUMBER: T15-0632, Loville v. Nassab
PROPERTY ADDRESS: 1661 16th St., Unit #B, Oakland, CA 94607
DATE OF HEARING: August 25, 2016
DATE OF DECISION: October 5, 2016
APPEARANCES: Constance Masinga Loville, Tenant
Dana Loville, Tenant
Karim Nassab, Owner

SUMMARY OF DECISION

The tenant petition is granted in part.

PROCEDURAL BACKGROUND

On March 14, 2016, the Hearing was conducted in this case but the owner did not appear. The Hearing Decision was issued on April 13, 2016. On May 3, 2016, the owner filed an Appeal, alleging that he could not attend the hearing due to his wife's medical emergency. The Hearing Officer set aside the Hearing Decision and set a new hearing date for August 25, 2016, to determine whether the owner had a good cause for non-appearance at the hearing.

CONTENTIONS OF THE PARTIES

On November 23, 2015, the tenants filed a petition alleging (1) an unjustified rent increase in excess of the CPI Adjustment and/or greater than 10%; (2) no notice of Rent Program was provided with the rent increase notice and at least six months before the effective date of the rent increase; (3) decreased housing services; (4) code violation; and (5) the contested rent increase is the second rent increase in a 12-month period.

The owner did not file a written response and appeared at the hearing on August 25, 2016.

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THE ISSUES

- (1) Was there a good cause for owner's non-appearance at March 14 hearing?
- (2) Did the owner have a good cause for filing no response?
- (3) Are the two contested rent increases valid?
- (4) Have the tenant's housing services been decreased, and if so, by what amount?

EVIDENCE

Background and Rent Increase

The tenants moved into the subject unit on September 4, 2013, at an initial monthly rent of \$1,750.00. A copy of the lease agreement was admitted into evidence.¹ The subject unit is located in a residential building consisting of two (2) residential units. Prior to the contested rent increases, the monthly rent was \$1,800.00, as of April 1, 2014. The tenant confirmed at the hearing that they are contesting the following two rent increases: (1) from \$1,800.00 to \$1,900.00, effective November 2014; and (2) from \$1,900.00 to \$2,075.00, effective December 1, 2015. A copy of the most recent increase was admitted into evidence.² The tenants paid \$2,075.00 in December of 2015, and have been paying \$1,900.00 per month from November 2014 through March 2016.

The tenants stated in their petition and testified at the hearing that they have never received a notice of the existence of the Rent Adjustment Program (RAP Notice).

Non-Appearance at March 14, 2016, Hearing

At the hearing on August 25, 2016, the owner testified that his wife had to be taken to the hospital in the morning of March 14, 2016, the morning of the hearing. The owner's wife had to have a surgery as a result of serious illness that occurred on February 19, 2016. A letter from Dr. Schierman, dated March 1, 2016, confirming Mrs. Nassab's medical condition, was submitted with the owner's appeal.

No Response by Owner

On December 8, 2015, a Notice of Hearing was mailed to the owner's address indicated on the tenant petition with a proof of service. The mail was not returned as non-delivered. The owner testified at the hearing that he received the letter notifying him of the tenant petition. He testified that he did not know he had to file a written response; he thought he would just come to the hearing.

¹ Exhibit B

² Exhibit A

Decreased Housing Services

The tenants submitted a list of items as decreased services with their petition. The list was admitted into evidence.³ The tenants addressed the following items at the hearing:

Non-working wall heater: Since the tenants moved into the unit, the heater was not working. They notified the owner shortly after they moved in, the owner called a repair service but the heater was never repaired and remains broken.

Peeling paint from the bathroom walls and tub: The tenants testified that a water-based paint used in the bathroom was sometimes running on the bathtub walls into the tub when using a shower. This item was fixed in September of 2015.

Garbage container: The garbage bin was replaced with a smaller-sized container in November of 2015.

Utilities: The tenants testified that the PG&E is included in the total rent amount. This has not changed since the tenants moved in and it is stated as such on their lease agreement (Exhibit B).

Dryer: Dryer is not working but no notice was given to the owner.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Good Cause for Non-Appearance at March 14 Hearing

The Regulation states that "good cause" includes, but is not limited to:

- a. Verified illness of a party, an attorney, or other authorized representative of a party or material witness of the party;
- b. Verified travel plan scheduled before the receipt of notice of hearing;
- c. Any other reason that makes it impractical to appear at the scheduled date due to unforeseen circumstances or verified prearranged plans that cannot be changed. Mere inconvenience or difficulty in appearing shall not constitute 'good cause.'⁴

The medical emergency of Mrs. Nassab in the morning of the scheduled hearing constitutes an unforeseen circumstance. Therefore, the owner had a good cause for not appearing at the hearing on March 14, 2016, and may participate in this hearing.

No Good Cause for Filing No Response

The Rent Adjustment Ordinance requires an owner to file a response to a tenant's petition within 35 days after service of a notice by the Rent Adjustment Program that a

³ Exhibit C

⁴ O.M.C. Regulations §8.22.110(A)2

tenant petition was filed. "If a tenant files a petition and if the owner wishes to contest the petition, the owner must respond . . ." ⁵ The owner response was due on January 12, 2016. The owner filed no response. The owner did not provide any reason as to why he did not file a response. The owner does not have a good cause for filing no response. Therefore, the owner is limited to cross-examination and summation at this hearing.

No RAP Notice

The Rent Adjustment Ordinance requires an owner to serve notice of the existence and scope of the Rent Adjustment Program (RAP Notice) at the start of a tenancy ⁶ and together with any notice of rent increase. ⁷

Because the owner never provided the RAP notice to the tenants, the contested rent increases are not valid and the rent will roll back to \$1,800.00, the monthly rent amount before the contested rent increases. In addition, the tenants will receive a credit for rent overpayments for 17 months, from November 1, 2014 through March 31, 2016.

Year 2014:	Nov & Dec	2 months x \$100.00 = \$	200.00
Year 2015:	Jan – Nov	11 months x \$100.00 = \$1,100.00	
	Dec	1 month x \$175.00 = \$	175.00
Year 2016:	Jan – March	3 months x \$100.00 = \$	<u>300.00</u>
	Total amount of overpayments for 17 months:		\$1,775.00

Decreased Housing Services

Under the Oakland Rent Ordinance, a decrease in housing services is considered to be an increase in rent ⁸ and may be corrected by a rent adjustment. ⁹ However, in order to justify a decrease in rent, a decrease in housing services must be the loss of a service that seriously affects the habitability of a unit or one that is required to be provided in a contract between the parties. "Living with lack of painting, water leaks and defective Venetian blinds may be unpleasant, aesthetically unsatisfying, but does not come with the category of habitability. Such things will not be considered in diminution of the rent." ¹⁰ The tenant has the burden of proving decreased housing services by a preponderance of the evidence.

Inoperable Wall Heater: As of the date of the hearing, the tenants did not have a working heater. This claim reduces the package of housing services by 10% (\$180.00) per month from January 2014 through March of 2016. The tenants are entitled to a credit of \$4,860.00 (180.00 x 27 months).

⁵ O.M.C. §8:22.070(C)2

⁶ O.M.C. Section 8.22.060(A)

⁷ O.M.C. Section 8.22.070(H)(1)(A)

⁸ O.M.C. §8.22.070(F)

⁹ O.M.C. §8.22.110(E)

¹⁰ *Green v. Superior Court* (1974) 10 Cal. 3d 616 at p. 637

Peeling paint: The bathroom was repainted in September of 2015. This item does not affect the habitability of the subject unit. This claim is denied.

Smaller-sized trash container: This item represents a loss of service due to changed condition. Therefore, this claim reduces the package of housing services by 1% (\$18.00). The tenants are entitled to a credit of \$90.00 (\$19.00 x 5 months).

PG&E: There was no change in the PG&E payment arrangement since the tenants moved in. Therefore, this claim is denied.

Non-working dryer: The owner must be given a notice and opportunity to make repairs within a reasonable time. The owner was not notified of this problem. Therefore, compensation for this item is denied.

ORDER

1. Tenant Petition T15-0632 is granted in part.
2. The rent increases are not valid.
3. The monthly rent is \$1,800.00.
4. The tenant is entitled to a total credit of \$6,725.00 due to rent overpayments for paying increased rent (\$1,775.00) and for past decreased services (\$4,950.00). This amount may be adjusted by a rent decrease for the next twenty (20) months in the amount of \$336.25 per month as follows:

Base Rent	\$1,800.00
- tenant rent overpayments for past decreased housing services & rent overpayments (\$6,725.00 divided by 20 months)	336.25
- rent to be paid in November 2016 through August 2018 (20 months)	\$1,463.75
- current decreased housing services (11% of \$1,800.00) – heater and garbage container	198.00
Net current monthly rent	\$1,265.75

5. If the owner wishes to pay the tenant restitution in a lump sum (\$6,725.00), the owner may do so.

6. The tenant's base rent will be further reduced by \$198.00 (11%), to \$1,265.75, due to the current decreased services for as long as the decreased housing services continue. Upon correcting the problems identified in this decision as the

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

Dated: October 5, 2016



Linda M. Moroz, Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE

Case Number T15-0632

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

Constance Loville
1661 16th St #B
Oakland, CA 94607

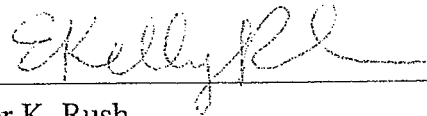
Dana Loville
1661 16th St #B
Oakland, CA 94607

Owner

Karim M. Nassab
1688 Terrace Rd
Walnut Creek, CA 94597

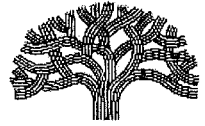
I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first 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 October 12, 2016 in Oakland, CA.



Esther K. Rush

000016



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

Department of Housing and Community Development
Rent Adjustment Program

TEL (510) 238-3721
FAX (510) 238-3691
TDD (510) 238-3254

ORDER RE HEARING DECISION AND NEW HEARING DATE

CASE NUMBER: T15-0632, Loville v. Nassab

PROPERTY ADDRESS: 1661 16th St., Unit #B, Oakland, CA 94607

Background

The owner did not appear at the hearing scheduled for March 14, 2016. The hearing was completed as scheduled and the Hearing Decision was issued on April 13, 2016. The owner filed an Appeal on May 3, 2016, which states that the owner's wife had an unforeseen medical incident that prevented him to attend the hearing on March 14, 2016.

GOOD CAUSE APPEARING, and in the interest of justice, the Hearing Decision dated April 13, 2016, is set aside, and a new Hearing will be held to determine whether the owner had a good cause for not appearing at the hearing on March 13, 2016.

The Hearing is scheduled as follows:

DATE: August 25, 2016
TIME: 10:00 a.m.
PLACE: 250 Frank H. Ogawa Plaza, 5th Floor, Oakland, CA 94612

IT IS HEREBY ORDERED.

Dated: May 6, 2016

A handwritten signature in black ink, appearing to read 'L. Moroz', written over a horizontal line.

Linda M. Moroz
Hearing Officer
Rent Adjustment Program

000017

PROOF OF SERVICE

Case Number T15-0632

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.

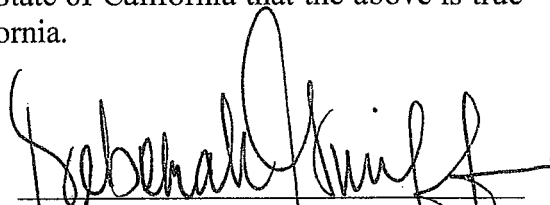
Today, I served the attached **Order RE Hearing Decision and New Hearing Date** by placing a true copy of it in a sealed envelope in City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California, addressed to:

Constance Loville
Dana Loville
1661 16th Street #B
Oakland, CA 94607

Karim M. Nassab
1688 Terrace Road
Walnut Creek, CA 94597

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **May 6, 2016** in Oakland, California.


Deborah Griffin
Oakland Rent Adjustment Program

000018



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

CITY OF OAKLAND

Department of Housing and Community Development
Rent Adjustment Program

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

HEARING DECISION

CASE NUMBER: T15-0632, Loville v. Nassab
PROPERTY ADDRESS: 1661 16th St., Unit #B, Oakland, CA 94607
DATE OF HEARING: August 25, 2016
DATE OF DECISION: October 5, 2016
APPEARANCES: Constance Masinga Loville, Tenant
Dana Loville, Tenant
Karim Nassab, Owner

SUMMARY OF DECISION

The tenant petition is granted in part.

PROCEDURAL BACKGROUND

On March 14, 2016, the Hearing was conducted in this case but the owner did not appear. The Hearing Decision was issued on April 13, 2016. On May 3, 2016, the owner filed an Appeal, alleging that he could not attend the hearing due to his wife's medical emergency. The Hearing Officer set aside the Hearing Decision and set a new hearing date for August 25, 2016, to determine whether the owner had a good cause for non-appearance at the hearing.

CONTENTIONS OF THE PARTIES

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The owner did not file a written response and appeared at the hearing on August 25, 2016.

000019

THE ISSUES

- (1) Was there a good cause for owner's non-appearance at March 14 hearing?
- (2) Did the owner have a good cause for filing no response?
- (3) Are the two contested rent increases valid?
- (4) Have the tenant's housing services been decreased, and if so, by what amount?

EVIDENCE

Background and Rent Increase

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No Response by Owner

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¹ Exhibit B

² Exhibit A

Decreased Housing Services

The tenants submitted a list of items as decreased services with their petition. The list was admitted into evidence.³ The tenants addressed the following items at the hearing:

Non-working wall heater: Since the tenants moved into the unit, the heater was not working. They notified the owner shortly after they moved in, the owner called a repair service but the heater was never repaired and remains broken.

Peeling paint from the bathroom walls and tub: The tenants testified that a water-based paint used in the bathroom was sometimes running on the bathtub walls into the tub when using a shower. This item was fixed in September of 2015.

Garbage container: The garbage bin was replaced with a smaller-sized container in November of 2015.

Utilities: The tenants testified that the PG&E is included in the total rent amount. This has not changed since the tenants moved in and it is stated as such on their lease agreement (Exhibit B).

Dryer: Dryer is not working but no notice was given to the owner.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Good Cause for Non-Appearance at March 14 Hearing

The Regulation states that "good cause" includes, but is not limited to:

- a. Verified illness of a party, an attorney, or other authorized representative of a party or material witness of the party;
- b. Verified travel plan scheduled before the receipt of notice of hearing;
- c. Any other reason that makes it impractical to appear at the scheduled date due to unforeseen circumstances or verified prearranged plans that cannot be changed. Mere inconvenience or difficulty in appearing shall not constitute 'good cause.'"⁴

The medical emergency of Mrs. Nassab in the morning of the scheduled hearing constitutes an unforeseen circumstance. Therefore, the owner had a good cause for not appearing at the hearing on March 14, 2016, and may participate in this hearing.

No Good Cause for Filing No Response

The Rent Adjustment Ordinance requires an owner to file a response to a tenant's petition within 35 days after service of a notice by the Rent Adjustment Program that a

³ Exhibit C

⁴ O.M.C. Regulations §8.22.110(A)2

tenant petition was filed. "If a tenant files a petition and if the owner wishes to contest the petition, the owner must respond . . ."⁵ The owner response was due on January 12, 2016. The owner filed no response. The owner did not provide any reason as to why he did not file a response. The owner does not have a good cause for filing no response. Therefore, the owner is limited to cross-examination and summation at this hearing.

No RAP Notice

The Rent Adjustment Ordinance requires an owner to serve notice of the existence and scope of the Rent Adjustment Program (RAP Notice) at the start of a tenancy⁶ and together with any notice of rent increase.⁷

Because the owner never provided the RAP notice to the tenants, the contested rent increases are not valid and the rent will roll back to \$1,800.00, the monthly rent amount before the contested rent increases. In addition, the tenants will receive a credit for rent overpayments for 17 months, from November 1, 2014 through March 31, 2016.

Year 2014:	Nov & Dec	2 months x \$100.00 = \$	200.00
Year 2015:	Jan – Nov	11 months x \$100.00 = \$	1,100.00
	Dec	1 month x \$175.00 = \$	175.00
Year 2016:	Jan – March	3 months x \$100.00 = \$	<u>300.00</u>
	Total amount of overpayments for 17 months:		\$1,775.00

Decreased Housing Services

Under the Oakland Rent Ordinance, a decrease in housing services is considered to be an increase in rent⁸ and may be corrected by a rent adjustment.⁹ However, in order to justify a decrease in rent, a decrease in housing services must be the loss of a service that seriously affects the habitability of a unit or one that is required to be provided in a contract between the parties. "Living with lack of painting, water leaks and defective Venetian blinds may be unpleasant, aesthetically unsatisfying, but does not come with the category of habitability. Such things will not be considered in diminution of the rent."¹⁰ The tenant has the burden of proving decreased housing services by a preponderance of the evidence.

Inoperable Wall Heater: As of the date of the hearing, the tenants did not have a working heater. This claim reduces the package of housing services by 10% (\$180.00) per month from January 2014 through March of 2016. The tenants are entitled to a credit of \$4,860.00 (180.00 x 27 months).

⁵ O.M.C. §8.22.070(C)2

⁶ O.M.C. Section 8.22.060(A)

⁷ O.M.C. Section 8.22.070(H)(1)(A)

⁸ O.M.C. §8.22.070(F)

⁹ O.M.C. §8.22.110(E)

¹⁰ *Green v. Superior Court* (1974) 10 Cal. 3d 616 at p. 637

Peeling paint: The bathroom was repainted in September of 2015. This item does not affect the habitability of the subject unit. This claim is denied.

Smaller-sized trash container: This item represents a loss of service due to changed condition. Therefore, this claim reduces the package of housing services by 1% (\$18.00). The tenants are entitled to a credit of \$90.00 (\$19.00 x 5 months).

PG&E: There was no change in the PG&E payment arrangement since the tenants moved in. Therefore, this claim is denied.

Non-working dryer: The owner must be given a notice and opportunity to make repairs within a reasonable time. The owner was not notified of this problem. Therefore, compensation for this item is denied.

ORDER

1. Tenant Petition T15-0632 is granted in part.
2. The rent increases are not valid.
3. The monthly rent is \$1,800.00.
4. The tenant is entitled to a total credit of \$6,725.00 due to rent overpayments for paying increased rent (\$1,775.00) and for past decreased services (\$4,950.00). This amount may be adjusted by a rent decrease for the next twenty (20) months in the amount of \$336.25 per month as follows:

Base Rent	\$1,800.00
- tenant rent overpayments for past decreased housing services & rent overpayments (\$6,725.00 divided by 20 months)	336.25
- rent to be paid in November 2016 through August 2018 (20 months)	\$1,463.75
- current decreased housing services (11% of \$1,800.00) – heater and garbage container	198.00
Net current monthly rent	\$1,265.75

5. If the owner wishes to pay the tenant restitution in a lump sum (\$6,725.00), the owner may do so.

6. The tenant's base rent will be further reduced by \$198.00 (11%), to \$1,265.75, due to the current decreased services for as long as the decreased housing services continue. Upon correcting the problems identified in this decision as the

decreased housing services, the owner may increase the monthly rent by \$198.00 in accordance with the notice requirements of California Civil Code §827.

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

Dated: October 5, 2016



Linda M. Moroz, Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE

Case Number T15-0632

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

Constance Loville
1661 16th St #B
Oakland, CA 94607

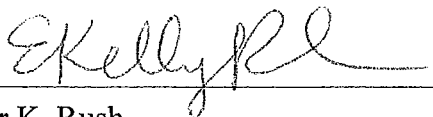
Dana Loville
1661 16th St #B
Oakland, CA 94607

Owner

Karim M. Nassab
1688 Terrace Rd
Walnut Creek, CA 94597

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 October 12, 2016 in Oakland, CA.

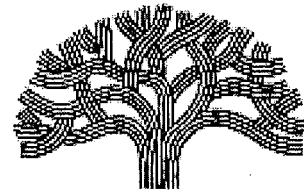


Esther K. Rush

000025

CITY of OAKLAND

P.O. BOX 70243, Oakland, CA 94612 2043
Community and Economic Development Agency
Rent Adjustment Program



(510) 238-372
FAX (510) 238-618
TDD (510) 238-325

December 08, 2015

Owner

Karim M. Nassab
1688 Terrace Rd
Walnut Creek, CA 94597

The Rent Adjustment Program received the petition(s) attached to this letter on November 23, 2015. One or more of your tenant(s) are protesting one or more rent increases alleging that they exceed the maximum rent permitted by Oakland Municipal Code Chapter 8.22. For details please see the attached copy of the petition.

YOU MUST FILE A WRITTEN RESPONSE TO THE ATTACHED TENANT PETITION(S) WITHIN THIRTY-FIVE (35) DAYS FROM THE DATE OF MAILING OF THIS NOTICE OR A DECISION MAY BE MADE AGAINST YOU. THE RESPONSE MUST BE FILED ON THE PROPER FORM AND MUST BE RECEIVED AT THE CITY OF OAKLAND'S RENT ADJUSTMENT PROGRAM OFFICE ON OR BEFORE THE DUE DATE. The proposed rent increase is not effective until the decision in this case is final. If the amount of the current CPI increase is stated separately in the notice of increase, the tenant must pay the current CPI increase.

Oakland Municipal Code Chapter 8.22 (Rent Adjustment Ordinance) limits the annual permissible rent increases that can be imposed on a rental unit covered by the Ordinance. If a unit is voluntarily vacated, or the tenant is evicted for cause, the rent may be raised without restriction upon re-renting. The new tenancy is again subject to the rent increase limitations in the Oakland Municipal Code.

The Ordinance requires that you provide a written notice of the existence of the Residential Rent Adjustment Program to tenants in covered units at the start of the tenancy. You must use the Rent Adjustment Program form titled "Notice to Tenants." The Ordinance also requires that you serve the same notice together with a notice of rent increase or notice of change in terms of tenancy.

Rent increases less than, or equal to, the annual CPI increase need not be justified. Rent increases in excess of the annual CPI increase may be justified on one or more of the following grounds:

<http://www.oaklandnet.com/government/hcd/rentboard/docs/NoticeToTenants.pdf>

The following are summaries ONLY. For complete information, please see Oakland Rent Adjustment Ordinance and the Rent Adjustment Regulations. You may call the Rent Program Office to have your questions answered or to obtain a written copy of the Ordinance and Regulations.

1. EXEMPTION: (OMC Section 7.22.030)

You may prove exemption from application of the Oakland Rent Adjustment Ordinance. The exemptions are found in the Rent Adjustment Ordinance. The most common exemption is that the unit is government subsidized housing. Other common exemptions are for units constructed after January 1, 1983 (new construction) and single family houses exempt under the Costa Hawkins Rental Housing Act. See the Ordinance for a complete list and details.

2. CAPITAL IMPROVEMENT/UNINSURED REPAIR COST (Regulations Section 10.

Capital improvements increases may only be granted for improvements that have been completed and paid for during any 12 month period within the 24-months immediately before the effective date of the proposed rent increase. To justify a rent increase for capital improvements expenditures or uninsured repair expense you must provide, along with your response, copies of receipts, invoices, bid contracts or other documentation showing the costs were incurred to improve the property and benefit the tenants, and evidence to show that the incurred costs were paid.

3. INCREASED HOUSING SERVICE COSTS: (Regulations Section 10.

Housing Service Costs are expenses for services provided by the landlord related to the use or occupancy of a rental unit. In determining whether an increase in housing service costs justifies a rent increase in excess of the annual CPI increase, the annual operating expenses related to the property for the most recent two years are compared. Year two costs must exceed year one costs by more than the current annual increase. The expenses considered include property taxes, business license/taxes, and insurance, P.G. E., water, garbage, maintenance and repairs, managerial costs and other legitimate annually recurring expenses to operate the rental property, except debt service. Evidence is required to prove each of the claimed housing costs.

4. DEBT SERVICE COSTS (Regulations Section 10.

Debt service costs are the payments on a purchase-money loan or for a loan to make improvements to the property that primarily benefit the tenants secured by a Deed of Trust. Eligible debt service costs are the actual principal and interest on a qualifying loan. No more than 95% of the eligible debt service may be passed on to the tenants. An increase in rent based on debt service costs may only be granted when the total income is insufficient to cover the combined housing service and debt service costs

Evidence of the following is required to justify a rent increase based on Debt Service Costs:

Proof of the gross operating income from the property, including, but not limited to, rents received for all units, laundry income, and parking charges;

Copies of the signed and recorded deed of trust, promissory note and closing statement;

<http://www.oaklandnet.com/government/hcd/rentboard/ordinance.html>
<http://www.oaklandnet.com/government/hcd/rentboard/rules.html>

Invoices, bills, or other evidence of payment of operating expenses such as property taxes, water and sewer costs, City of Oakland business license tax, garbage and refuse service, insurance, maintenance, utilities, legal and accounting fees, cost of on-site manager, and rental property service fee.

If the current owner and the immediate prior owner have owned the property for a combined period of less than twelve months, an increase in rent for increased debt service is not available.

5. BANKING/RENTAL HISTORY:

“Banking” refers to deferred annual general rent increases (CPI increases) that were not imposed, or were not imposed in full, and carried forward to future years. Subject to certain limitations, imposition of annual general increases may be deferred up to 10 years. After 10 years, general increases that were not imposed, expire. Evidence of the rental history of the subject unit is required.

6. NECESSARY TO MEET CONSTITUTIONAL FAIR RETURN REQUIREMENT

“Banking” refers to deferred annual general rent increases (CPI increases) that were not imposed, or were not imposed in full, and carried forward to future years. Subject to certain limitations, imposition of annual general increases may be deferred up to 10 years. After 10 years, general increases that were not imposed, expire. Evidence of the rental history of the subject unit is required.

Additional Requirements

- 1. have a current Oakland Business License**
- 2. be current on payment of the Rent Adjustment Program’s Service Fee**
- 3. file a timely response on the Landlord Response form and submit the required documentati**

If you have questions not answered by this notice, please contact the Residential Rent Adjustment Office at (510) 238-3721 between the hours of 8:30 a.m. and 5:00 p.m.

PROOF OF SERVICE

Case Number T15-0632

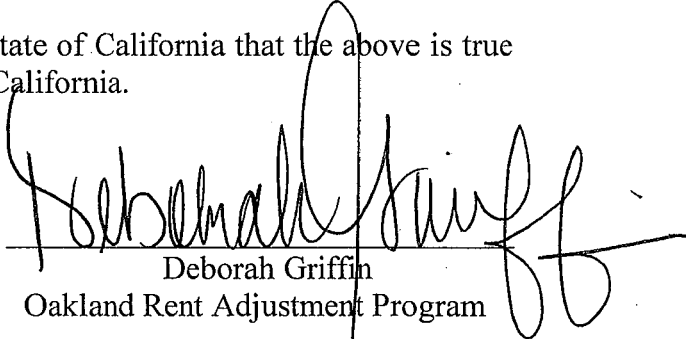
I am a resident of the State of California at least eighteen years of age. I am not a party to the Residential Rent Adjustment Program case listed above. I am employed in Alameda County, California. My business address is 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California 94612.

Today, I served the attached **Notice of Tenant Contesting a Proposed Rent Increase and/or Decrease in Housing Services, Copy of Tenant Petition and Landlord Response Packet** 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:

Dana & Constance Loville
1661 16th Street #B
Oakland, CA 94607

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

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


Deborah Griffin
Oakland Rent Adjustment Program

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T15-0632 RE/LM

<p>CITY OF OAKLAND RENT ADJUSTMENT PROGRAM Mail To: P. O. Box 70243 Oakland, California 94612-0243 (510) 238-3721</p>	<p>For date stamp 2015 NOV 23 AM 11:51</p>
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Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed.

TENANT PETITION

Please print legibly

Your Name Dana & Constance Louville	Rental Address (with zip code) 1661 16 th St B 94607	Telephone 510 338-3227 510 219-4310
Your Representative's Name	Mailing Address (with zip code)	Telephone
Property Owner(s) name(s) Karim M. Nassab	Mailing Address (with zip code) 1688 Terrace Rd	Telephone Walnut Creek 94597

Number of units on the property: 2

~~510~~ 377 4130

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

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

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

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

Date you moved into the Unit: Sept 4th 2013 Initial Rent: \$ 1,750.00 /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 Pétition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
<u>3.2013</u>	<u>9.10.13</u>	\$ <u>1,750</u>	\$ <u>1,800</u>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<u>10.2014</u>	<u>11.2014</u>	\$ <u>1,850</u>	\$ <u>1,900</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<u>11.01.15</u>	<u>12.01.15</u>	\$ <u>1,900</u>	\$ <u>2,075</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

* 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.

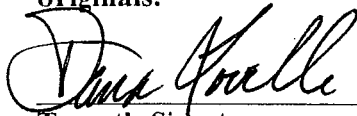
- Are you being charged for services originally paid by the owner? Yes No
- Have you lost services originally provided by the owner or have the conditions changed? Yes No
- Are you claiming any serious problem(s) with the condition of your rental unit? Yes No

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.



Tenant's Signature

 Nov 23rd 2015

Date

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

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

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

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

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

Tenant's Signature

Date

VI. IMPORTANT INFORMATION:

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

File Review

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

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

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

Dana & Constance Leveille NOV 23rd 2015

Sept 2013 Upon move in there was no heat brought to landlords attention. Sent someone out to look at it but nothing ever came of it

Sept 2013 Shortly after move in brought to landlords attention day 2 the tub and shower were both painted with a water base paint that was running down off both wall and tub. Eventually started to chip, peel and was impossible to clean. Tub & wall redone last week 11.16.15
2 cracked windows in bathroom water does come in when it rains hard

Nov 2015 Trash can facilities not adequate we have a small can. Original can stolen replaced with a smaller one

Landlord charges separately for utilities

April 2013 Landlord requested we pay additional \$400 for our son who we did inform on move that he would be living with us and he stated that would be fine Sept 2013

Nov 2015 Dryer reported to landlord not working burning smell while running and clicking noise. Reported in Oct 2015

Constance Marie Leveille
Dana Leveille

000033

CHRONOLOGICAL CASE REPORT

Case No.: T16-0037
Case Name: Tabet v. Siu
Property Address: 6349 Broadway Terrace, Oakland, CA
Parties: Margo Tabet (Tenant)
John Fleming (Landlord)

PROPERTY OWNER APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	January 21, 2016
Owner Response filed	March 3, 2016
Hearing Decision issued	June 21, 2016
Landlord Appeal filed	July 11, 2016

000034

2016 JUL 11 PM 11:29

City of Oakland Residential Rent Adjustment Program 250 Frank Ogawa Plaza, Suite 5313 Oakland, California 94612 (510) 238-3721		APPEAL	
Appellant's Name JOHN FLEMING / DOUGLAS SIU		Landlord <input checked="" type="checkbox"/> Tenant <input type="checkbox"/>	
Property Address (Include Unit Number) 6349 BROADWAY TERRACE OAKLAND, CA 94618			
Appellant's Mailing Address (For receipt of notices) 60 CASTLE CREST ROAD ALAMO, CA 94507		Case Number T16-0037	
		Date of Decision appealed 07/08/2016	
Name of Representative (if any)		Representative's Mailing Address (For notices)	

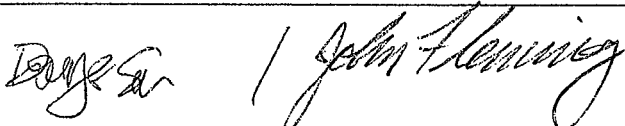
I appeal the decision issued in the case and on the date written above on the following grounds:
(Check the applicable ground(s). Additional explanation is required (see below). Please attach additional pages to this form.)

1. **The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board.** *You must identify the Ordinance section, regulation or prior Board decision(s) and specify the inconsistency.*
2. **The decision is inconsistent with decisions issued by other hearing officers.** *You must identify the prior inconsistent decision and explain how the decision is inconsistent.*
3. **The decision raises a new policy issue that has not been decided by the Board.** *You must provide a detailed statement of the issue and why the issue should be decided in your favor.*
4. **The decision is not supported by substantial evidence.** *You must explain why the decision is not supported by substantial evidence found in the case record. The entire case record is available to the Board, but sections of audio recordings must be pre-designated to Rent Adjustment Staff.*
5. **I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim.** *You must explain how you were denied a sufficient opportunity and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue a decision without a hearing if sufficient facts to make the decision are not in dispute.*
6. **The decision denies me a fair return on my investment.** *You must specifically state why you have been denied a fair return and attach the calculations supporting your claim.*

7. Other. You must attach a detailed explanation of your grounds for appeal. Submissions to the Board are limited to 25 pages from each party. Number of pages attached 17. 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 11, 20016, 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>	MARGO TABET
<u>Address</u>	6349 BROADWAY TERRACE
<u>City, State Zip</u>	OAKLAND, CA 94618
<u>Name</u>	
<u>Address</u>	
<u>City, State Zip</u>	

	07/08/2016
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.

APPEAL to T16-0037 – 07/08/2016

RESPONSE TO TOPIC OF CAPITAL IMPROVEMENTS

We had met and talked on the phone with your RAP Analysts to understand timelines, process and guidelines. When we met with Roberto F. Costa, Program Analyst II, RAP, he said that we have 2 years from the project end date to submit Capital Improvement Pass-Thru. He specifically said the project ends when the last payment to a vendor is completed and that we must include the receipts from the project

- The project started on 9/10/2013 and ended on 1/25/2014.
- The Capital Improvement paperwork was filed with RAP on 11/30/2015 at 3:39PM
- Filing per Robert must be done by the end of the project 2-year timeframe which was 2/25/2016. We ARE within 24 months of submitting this paperwork – approximately 2.5 months early, again the Pass-Thru was submitted on 11/30/2015 well within the 2-year timeframe.
- I compiled all the receipts for this project and did not know you also wanted cancelled checks from all the transactions. I contacted my bank and compiled all the cancelled checks and am attaching them here.
- James Morris' work ended when he finalized the project, gave me an invoice and was paid for his project management services. His work continued and completed in January as he was modifying plant placement, assuring the new irrigation system was properly functioning, spray heads set, timer set, as well as pruning of the trees.

RESPONSE TO TOPIC OF RENT INCREASE

The result of the Hearing Decision T15-0221 was to payback the tenant a total of \$1,820.26 for water utility paid, not rent. We preferred to pay the tenant back in full by check but we followed the Order as the RAP said. This is a NOT a rent increase issue, it is a payback for water usage which varies month to month, not a rent adjustment, therefore you cannot consider this a rent change.

We have appealed this decision and are still awaiting an appeal date. Appeal T15-0221 was delivered to RAP on 10/07/2015 at 4:28PM.

Deborah Griffin indicates in her decision T16-0037 that Appeal T15-0221 is scheduled for June 30, 2016 in which we have not received a date, time, place from RAP to this effect.

RESPONSE TO TOPIC OF WATER BILL

We did not illegally charge this tenant for water. If you carefully review Regulation 10.1.10, it clearly references documents specifically and only to PG&E. Since PG&E does not deliver water we have not done anything illegal. We have reviewed all the RAP Regulations and have found nothing related to water/EBMUD. We are awaiting the RAP to provide supporting documents substantiating EBMUD in your regulations.

1 of 17

000037

See attached:

Decision 01-05-058, May 14, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the Commission's own motion into the rates, charges, and practices of water and sewer utilities providing service to mobile home parks and MULTIPLE UNIT RESIDENTIAL complexes and the circumstances under which those rates and charges CAN be passed to the end user.

Investigation 98-12-012 (Filed December 17, 1998)

The tenant was informed when she viewed and applied for this unit to rent in February 2012 and agreed in writing in her lease that water was NOT included in her rent. Therefore, her rent amount is not reflective of water usage billing and we chose this in order to give the tenant a lower base rent and allow for tenant accountability of water usage which is what EBMUD is encouraging. Again, water is a usage based item, and rent is a fixed item. Two separate categories as we cannot change the tenants monthly rent each month.

Furthermore, we have again consulted with your RAP Analysts and with EBMUD then followed the order in T15-0221 from RAP, "the best way to remedy the bill is to install individual meters", so had extensive modifications including tearing open a newly remodeled bathroom wall to fully separate plumbing between the units and then had individual meters installed, inspected and finalized by EBMUD. We are following what the RAP is telling us to do and are getting conflicting messages.

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000038



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View Check Copy

Check Number	Date Posted	Check Amount	Account Number
134	09/16/13	\$300.00	Broadway Terrace XXXXXX0963

DOUGLAS SIU
 JOHN L FLEMING
 60 CASTLE CREST RD
 ALAMO, CA 94507-2668

134

11-4296/1210 4368
7530000963

SEP 10, 2013

DATE

Pay to the Order of ANTONIO CARDENAS
THREE HUNDRED EXACTLY

\$ 300.00

Dollars



Wells Fargo Bank N.A.
California
wellsfargo.com

For WATER TO EXT OF 6347

Douglas

John Cardenas

Equal Housing Lender

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000039
3 of 17



Wells Fargo Online®

View Check Copy

Check Number	Date Posted	Check Amount	Account Number
145	11/20/13	\$2,000.00	Broadway Terrace XXXXXX0963

DOUGLAS SIU
 JOHN L. FLEMING
 60 CASTLE CREST RD
 ALAMOG, CA 94507-2668

145
 11-4289/1210 4368
 7530060963

NOV 13, 2013 DATE

Pay to the Order of DOUG SIU \$ 2,000.00
TWO THOUSAND EXACTLY Dollars



For FORRES LANDSCAPE DEPOSIT DOUG SIU

PRINTED ON

>121076470<

ATM ID: 00541011
 Date: 11/20/2013
 Trans #: 4698
 \$2000.00

Equal Housing Lender

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000040

4 of 17



View Check Copy

Check Number	Date Posted	Check Amount	Account Number
147	11/18/13	\$3,150.00	Broadway Terrace XXXXXX0963

DOUGLAS SIU
JOHN L FLEMING
60 CASTLE CREST RD
ALAMO, CA 94507-2668

147
11-4268/1210 4368
7590007963

NOV 15, 2013

Pay to the Order of ADRIAN FLORES \$ 3,150.00

THREE THOUSAND ONE HUNDRED FIFTY EXACTLY Dollars

WELLS FARGO Well Fargo Bank N.A. California well.fargo.com

For BROADWAY TERR LANDSCAPE Douglas Siu

A. Flores

11 NOV 17 PM 1:48

Pay To The Order of
Wells Fargo Bank
NA Concord 94518
12/10/2002
Le Aurora Liquor Grocery
0794879072

WELLS FARGO BANK
20131118 1506N
1221-050-1281
1010700000

Equal Housing Lender

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5 of 17
000041

DATE

\$ 2,000.00

DOLLARS

TWO THOUSAND EXACTLY

Spatelco President Office, Merced, CA
4515 Rosewood Drive, San Jose, CA
CREDIT UNION Merced, CA 95368
415-442-6500

DAYS SA

FOR 631 SPOKANE / DEPOSIT BY



15 11/11/2013

A. Flores

\$ 2,000

1

'13 DEC 3 PM

Pay to the Order of
Sonoma Bank

La Aurora Liquor & Groc
68998758593

141109000058593

... and include
...
...
...
...
...
...

6 of 17
000042



Devil Mountain Wholesale Nursery
 9885 Alcosta Blvd.
 San Ramon, CA 94583
 www.devilmountainnursery.com
 (925) 829-6006

CUST NO: 2162 **JOB NO:** 000
BILL TO: JAMES MORRIS
 4250 HORTON ST. #8
 EMERYVILLE CA 94608

DOCUMENT NUMBER
 D56414

PAGE NO
 1

CLERK	SALESPERSON	DATE / TIME
VH	LARRY	12/9/13 10:31
TERMINAL	REFERENCE	
577	PO # SIU	

COD INVOICE

SHIP TO: JAMES MORRIS
 ADRIAN FLORES

SHIP VIA	PO NUMBER	ORDER NO
Will Call	SIU	351961
DEL / WC DATE	TERMS	
11/22/13	C.O.D	
TAX CODE	DUE DATE	
001 CONTRA COSTA COUNTY		

LN#	ITEM	UM	DESCRIPTION	ORDERED	B/O	SHIPPED	PRICE /PER	EXTENSION
1	104183	EA	ACER P FIREGLOW 10	1		1	97.75 /EA	97.75
2	63450	EA	DYMONDIA MARGARETAE FLAT	8		8	16.75 /EA	134.00
3	161771	EA	SEDUM SPURIUM DRAGONS BLOOD FLAT	6		6	11.95 /EA	71.70
4	177930	EA	WESTRINGIA FR MORNING LIGHT 1	8		8	4.95 /EA	39.60
5	78650	EA	HEBE WIRI BLUSH 5	2		2	17.75 /EA	35.50
6	78620	EA	HEBE VARIEGATA 5	2		2	15.50 /EA	31.00
7	113760	EA	LOROPETALUM C PURP MAJESTY 3 / 5	2		2	22.75 /EA	45.50
8	134860	EA	PHORMIUM JACK SPRATT 1	8		8	7.25 /EA	58.00
9	142820	EA	POLYSTICHUM MUNITUM 1	20		20	7.25 /EA	145.00
10	35000	EA	BLECHNUM SPICANT 1	20		20	7.25 /EA	145.00
11	124640	EA	NEPHROLEPIS LEMON BUTTON 1	12		12	6.25 /EA	75.00
12	27670	EA	ASPARAGUS DENSIFLORUS MYERS 1	9		9	6.25 /EA	56.25
13	140490	EA	PITTOSPORUM T MARJ CHANNON 5	2		2	20.75 /EA	41.50
14	134840	EA	PHORMIUM GUARDSMAN 15	1		1	79.75 /EA	79.75
15	113800	EA	LOROPETALUM C RAZZLEBERRI 3 / 5	1		1	19.95 /EA	19.95
16	127500	EA	OXALIS OREGANA 4"	48		48	3.15 /EA	151.20

** PAID IN FULL **

1330.97 TAXABLE 1226.70
 NON-TAXABLE 0.00
 SUBTOTAL 1226.70

BANKCARD PAYMENT
 BKCRD# XXXXXXXXXXXX2001
 APR 22 2014 XR:356414

^
 b 2162000D56414131001N

1330.97 TOTAL TAX 104.27
 TOTAL AMOUNT 1,330.97

PULLER:

DRIVER:

X _____
 By signing this box you accept the terms
 on the back of the invoice.

7 of 17
 000043



Payments and Credits

Summary

	Total
Payments	-\$574.43
Credits	\$0.00
Total Payments and Credits	-\$574.43

Detail *Indicates posting date

Payments	Amount
2/12/13* AUTOPAY PAYMENT RECEIVED - THANK YOU PATELCO CU	-\$574.43

New Charges

Summary

	Total
Total New Charges	\$2,107.15

Detail

DOUGLAS SIU
 Card Ending 1-92001

	Amount
1/19/13 COSTCO GAS #0663 000CONCORD CA 9255664010	\$38.00
1/25/13 COSTCO WHSE #0021 00DANVILLE CA 9252770407	\$84.50
1/26/13 COSTCO GAS #0663 000CONCORD CA 9255664010	\$41.65
2/04/13 COSTCO GAS #0482 000RICHMOND CA 5108982003	\$38.80
2/04/13 COSTCO WHSE #0482 00RICHMOND CA 5108982003	\$37.00
2/08/13 TRADER JOE'S #123 QWALNUT CREEK CA 626-599-3700 Description GROCERY STORES,SUPE	\$22.60
2/08/13 BEDBATH&BEYOND#0261 PLEASANT HILL CA 925-356-0400	\$43.39
2/08/13 COSTCO GAS #0663 000CONCORD CA 9255664010	\$38.00
2/09/13 DEVIL MOUNTAIN WHOLESAN RAMON CA LANDSCAPE/HORTICULTUR	\$1,330.97
2/10/13 HOPMONK TAVERN - S 5SONOMA CA 7079359100 TIP \$2.20	\$16.34
2/11/13 FASTRAK CSC OAKLAND CA 415-486-8655 Description CHARGEDESC	\$25.00

3 of 17

IGLAS SIU
STLE CREST RD
D, CA 94507

209E
11-7647/32
60

DEC 13, 2013 DATE

TO THE ROF ADRIAN FLORES \$ 550.00

FIVE HUNDRED FIFTY EXACTLY DOLLARS

Patelco Pleasant Office - Branch #60
4515 Rosewood Drive, Ste. 800
Pleasanton, CA 94568
CREDIT UNION
Only More value. Smart choice. 415-442-6200

[Handwritten Signature]

B/T FENCE



61471:2013:12:16

FOR DEPOSIT ONLY
LA CHICANA MARKET
236098036

BOFD >121125660<
Bank of Ag & Commerce
Antioch
2013-12-16
2319761471



Payments and Credits

Summary

	Total
Payments	-\$2,075.70
Credits	-\$31.45
Total Payments and Credits	-\$2,107.15

Detail *Indicates posting date

Payments	Amount
1/12/14* AUTOPAY PAYMENT RECEIVED - THANK YOU PATELCO CU	-\$2,075.70
Credits	Amount
1/05/14 COSTCO WHSE #1002 00ANTIOCH CA 9257541640	-\$31.45

New Charges

Summary

	Total
Total New Charges	\$1,075.15

Detail

DOUGLAS SIU
 Card Ending 1-92001

	Amount
1/20/13 POPYRUS #2178 000002DANVILLE CA 2162527300 Description REFER TO RECEIPT	\$16.22
1/20/13 LUNARDI'S MKT #9 000DANVILLE CA 8009342100 Description GROCERY STORE	\$50.00
1/23/13 WHOLEFDS RAM 10126 09253559000 9253559000 GROCERY STORES	\$33.67
1/23/13 SHELL OIL 5744467960WALNUT CREEK CA AUTO FUEL DISPENSER	\$6.73
1/23/13 99 RANCH #1771 00001DUBLIN CA 9258333999 Description GROCERY STORE	\$43.40
1/23/13 COSTCO WHSE #0021 00DANVILLE CA 9252770407	\$5.79
1/23/13 TARGET T0949 0949 SAN RAMON CA DISCOUNT STORE	\$34.71
1/28/13 THE HOME DEPOT 6604 SAN RAMON CA 800-326-7990	\$158.95

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Check Number	Date Posted	Check Amount	Account Number
151	02/19/14	\$480.00	Broadway Terrace XXXXXX0963

DOUGLAS SIJ
 JOHN L FLEMING
 60 CASTLE CREST RD
 ALAMO, CA 94507-2668

151

11-42967210-4868
7530060968

JAN 25, 2014

Pay to the Order of JAMES MORRIS

\$480.00

FOUR HUNDRED EIGHTY EXACTLY

Dollars



WELLS FARGO
 Wells Fargo Bank, N.A.
 California
 wells Fargo.com

For

[Signature]

11-42973734

*Pay Deposit only
0210301822*

Equal Housing Lender

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To Whom It May Concern:

Here's what I seem to be finding regarding paragraph "10.1.10"-Rent Adjustment Program Regulations (City of Oakland California) regarding rental units and utility bills.

10.1.10 - When more than one rental unit shares any time of utility bill with another rental unit, it is illegal to divide up the bill between units. Splitting the costs of utilities among tenants who live in separate units is prohibited by the Public Utilities Commission Code and Rule 18 of PG&E. The best way to remedy the bill is to install individual meters. If this is too expensive, then the property owner should pay the utility bill himself/herself and build the cost into the rent.

Regulation 10.1.10 states that an agreement to split utility costs among tenants is illegal. The next sentence indicates that the illegal status is derived from "C" PUC code (without reference) and Rule 18 of PG&E. Since PG&E does not deliver water, I think we can skip that part of the sentence.

Looking into the rental regulation's PUC reference, I can find no information that the CPUC has asserted any jurisdiction regarding rental housing units and water. In fact, the **California Department of Consumer Affairs** writes the following on their website regarding the subject

"Some buildings have a single gas or electric meter that serves more than one rental unit. In other buildings, a tenant's gas or electric meter may also measure gas or electricity used in a common area, such as the laundry room or the lobby. In situations like these, the landlord must disclose to you that utility meters are shared before you sign the rental agreement or lease.⁶¹ If you become a tenant, the landlord must reach an agreement with you about who will pay for the shared utilities.

Rental units in older buildings may not have separate water meters or submeters. California law does not specifically regulate how landlords bill tenants for water and sewer utilities. Ask the landlord if the rental unit that you plan to rent has its own water meter or submeter. If it does not, and if the landlord will bill you for water or sewer utilities, be sure that you understand how the landlord will calculate the amount that you will be billed.⁶²"

⁶¹ Civil Code Section 1940.9, Public Utilities Code Section 739.5. See California Practice Guide, Landlord-Tenant, Paragraphs 2:170.1-2:170.9 (Rutter Group 2011). See discussion of utilities billing in Moskowitz et al., California Landlord-Tenant Practice, Paragraph 4.41A-4.41E (Cal Cont. Ed. Bar 2011). There it is discussed that the California Public Utilities Commission (CPUC) has held that it has no jurisdiction in the vast majority of landlord-tenant-billing relationships. Because there is no direct regulation or guidance from the CPUC or statute, it is important that all facets of the landlord-tenant billing relationship for utilities are agreed to in writing.

⁶² See discussion of utility billing in Moskowitz et al., California Landlord-Tenant Practice, Sections 4.41A-4.41E (Cal. Cont. Ed. Bar 2009). There it is discussed that the California Public Utilities Commission (CPUC) has held that it has no jurisdiction in the vast majority of landlord-tenant billing relationships. Because there is no direct regulation or guidance from the CPUC or statute, it is important that all facets of the landlord-tenant billing relationship for utilities be agreed to in writing.

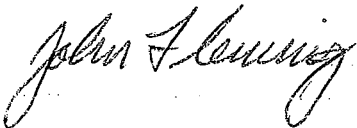
In addition, CPUC decision (01-05-058 May 14, 2001) regarding the rates, charges and practices of water and sewer utilities providing service to MobileHome Parks (MHP) and multiple unit residential complexes and the circumstances under which those rates and charges can be passed to the end user, has as part of its conclusion the following:

"As we look to the future, we emphasize that under existing law, whether an individual MHP or multi-unit apartment is a public utility subject to our regulatory control must be determined on a case by case basis. Incident to our ability to determine what entity is a public utility, we also are authorized to determine whether a MHP or a multi-unit apartment qualifies as legally exempt from CPUC control. Today, we conclude that the statute that exempts MHPs and multi-unit apartments from CPUC jurisdiction when they submeter water services does not apply when the primary utility provider is a municipal entity. Similarly, in most instances the CPUC lacks jurisdiction to regulate the non-submetered water or sewer service that is provided to the MHP or multi-unit apartment by a municipal entity."

The last sentence describes our situation and states that the CPUC lacks jurisdiction to regulate non-submetered water or sewer service that is provided by a municipal entity and in our case that municipal entity is EBMUD. EBMUD is not regulated by the CPUC.

So I have not found any CPUC documentation that Oakland's "10.1.10" regulation references to support the statement from 10.10.10 that *"Splitting the costs of utilities among tenants who live in separate units is prohibited by the Public Utilities Commission Code ..."*

Best regards,



John Fleming & Douglas Siu

Decision 01-05-058 May 14, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the Commission's own motion into the rates, charges, and practices of water and sewer utilities providing service to mobilehome parks and multiple unit residential complexes and the circumstances under which those rates and charges can be passed to the end user.

Investigation 98-12-012
(Filed December 17, 1998)

10. Conclusion

As a general rule, the Commission has exclusive and primary jurisdiction over the establishment of rates for water and sewer services provided by private entities. Essentially, the Commission has the authority that the Legislature says it has. To the extent that the courts have interpreted public utility laws, then Commission jurisdiction is governed by controlling case law.

Based on existing statutory and case law, the Commission has no jurisdiction over municipal entities that provide water or sewer service. Neither does the Commission have jurisdiction over entities expressly exempted by statute from CPUC regulatory control. As noted in the OII, we have previously recognized that the Commission has no rent control jurisdiction. (See *Rates, Charges, and Practices MHPs* 58 CPUC2d at 718.) The absence of rent control jurisdiction, however, does not mean that those with rent control authority or the owners of MHPs or of multi-unit apartments are free to ignore Commission rulings concerning utility rates where our jurisdiction to regulate these rates is clear. (See *Rainbow Disposal Co. vs. Escondido Mobilehome Rent Review Board*, (1998) 64 Cal.App.4th 1159, 1167.)

As we look to the future, we emphasize that under existing law, whether an individual MHP or multi-unit apartment is a public utility subject to our regulatory control must be determined on a case by case basis. Incident to our ability to determine what entity is a public utility, we also are authorized to determine whether a MHP or a multi-unit apartment qualifies as legally exempt from CPUC control. Today, we conclude that the statute that exempts MHPs and multi-unit apartments from CPUC jurisdiction when they submeter water services does not apply

when the primary utility provider is a municipal entity. Similarly, in most instances the CPUC lacks jurisdiction to regulate the non-submetered water or sewer service that is provided to the MHP or multi-unit apartment by a municipal entity.

As we review the parameters that determine our jurisdictional reach, it appears that CPUC jurisdiction is decidedly limited when it comes to the protection of tenants from allegedly unfair charges targeted for water or sewer service imposed by landlords whose practices are not presently being scrutinized by any other governmental entity. Similarly, we lack authority to address the alleged plight of landlords who reportedly are unable to recover the rising costs of water and sewer services when they are rolled into rent. The Commission has no intermediate regulatory authority over these circumstances. The Commission only has the jurisdiction to determine whether or not a MHP or multi-unit apartment is a public utility.

It is entirely possible that a private entity, which does not qualify for public utility status, may nonetheless charge tenants water or sewer rates that, in other circumstances, might be considered unfair or unreasonable. By the same token, if a MHP or multi-unit apartment is determined to be a public utility, the regulatory laws that control the development of rates will result in charges that are legally just and reasonable but may be higher than the tenant would pay if the primary utility provider were charging them directly for water or sewer service.²³

²³ The regulatory formula for establishing rates allows for reasonable expenses, including the use fee paid to the Commission, depreciation of facilities and a fair rate of return on the capital investment. Thus, the same formula that is

Footnote continued on next page

Finally, we are concerned that in deciding that a MHP or multi-unit apartment is a public utility, the Commission would be adding to the number of small water corporations. That practice seems contrary to recent legislative policy which appears to promote the elimination of small utilities through merger or sale to their larger counterparts. (See footnote 8.) There can be no doubt that small utilities do not benefit from the economies of scale that, in larger organizations, could produce just and reasonable charges that are more customer friendly. Furthermore, increased awareness and concern about contamination create additional problems and costs for small water utilities. As we know from the proceeding initiated by our Water Quality OII (I.98-03-013), virtually all MHPs and numerous multi-unit apartments that resell water service qualify as public water systems subject to the panoply of Safe Drinking Water laws and regulations administered by the Department of Health Services. (See Health & Saf. Code § 116275(h).)

Comments on Draft Decision

The draft decision was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. The revised draft decision was also mailed for comment.

employed to set the rates of the water company that sells water to the MHP or multi-unit apartment will again be used to set the rates that will be charged to the end user tenants. The tenant is likely to pay more to a MHP or multi-unit apartment with public utility status than it would be required to pay the water provider for that MHP or apartment if the primary water provider charged the tenant directly. At a minimum, the primary water provider's rates would only include the CPUC user fee of 1.4% of its gross revenues and would not include an additional CPUC user fee 1.4% of the gross revenues of the MHP or multi-unit apartment.

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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: T16-0037, Tabet v. Siu

PROPERTY ADDRESS: 6349 Broadway Terrace, Oakland, CA

DATES OF HEARING: May 10, 2016, June 13, 2016

DATE OF DECISION: June 21, 2016

APPEARANCES: Margo Tabet (Tenant)
John Fleming (Owner)
Douglas Sui (Owner, June 13, 2016 only)

SUMMARY OF DECISION

The tenant's petition is granted in part. The legal rent for the unit is set forth in the Order below.

CONTENTIONS OF THE PARTIES

The tenant, Margo Tabet, filed a petition which alleges that a rent increase from \$1,771.31 to \$1,847, effective January 1, 2016, exceeds the CPI Rent Adjustment and is unjustified or is greater than 10%; that her rent was also increased by requiring her to pay the water bill; that the water bill rent increase was the second rent increase in a 12 month period; and that she is being charged for services originally paid for by the owner.

The tenant additionally created her own "grounds for petition" by writing the following on the first page of the tenant petition: "(L) Capital improvements beyond 24 month, (M) Do not improve my unit in any way, (O) No written notice for sub-meters for water starts January 1, 2016, and (P) Refrigerator or replacement." The tenant attached a

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separate page to her petition in which she claimed that the refrigerator in her unit is very unhealthy and needs to be replaced.¹

The owners, Douglas Siu and John Fleming, filed a response to the petition in which they justified the increase based on capital improvements and denied that the tenant's housing services had decreased. Additionally, the owners contend that passing the water bill on to the tenant is allowed pursuant to the Rent Adjustment Regulations.

PROCEDURAL HISTORY

On April 16, 2015, the tenant filed a prior petition in case T15-0221. A Hearing Decision was issued in that case. In that Hearing Decision it was determined that:

1. The tenant was first given the RAP Notice on June 5, 2015;
2. That the tenant's lease specified that she will pay one half of the water bill for the duplex;
3. That there were not individual water meters on the premises;
4. That based on paying for water, the tenant had overpaid rent in the amount of \$1,820.26.
5. That the tenant was entitled to restitution of overpaid rent by temporarily reducing her rent by \$151.69 a month, to \$1,771.31 per month, from October 2015-September 2016; and,
6. That the owners may not require the tenant to pay any portion of the water bill for the entire subject building.

The owners have appealed the Hearing Decision in that case to the *Housing, Residential Rent and Relocation Board (HRRB)*. The appeal is currently scheduled to be heard on June 30, 2016.

THE ISSUES

- (1) What claims are raised by the tenant's petition?
- (2) Can the owners transfer the water bill to the tenant?
- (3) Did the owners serve the *Enhanced Notice to Tenants of Capital Improvements* on the Rent Adjustment Program?
- (4) Are the owners entitled to a rent increase based on capital improvements?
- (5) Have the tenant's housing services decreased and if so, by what percentage of the total housing services that are provided by the owners?

EVIDENCE

Rent History and Rent Increase Notice: The tenant testified that she moved into the subject unit in March of 2012 at an initial rent of \$1,850 a month. Prior to the Hearing

¹ The tenant's attachment also raised some of the same issues raised by her petition—that there were two rent increases in one month; that the capital improvements were done over 24 months ago, did not benefit her and did not include actual bills; and that the water costs increase was given without written notification.

in case T15-0221, she was paying rent of \$1,923 a month. As a result of the Hearing Decision in T15-0221, she has been paying decreased rent of \$1,771.31 a month.

The tenant further testified that on November 30, 2015, she received a rent increase notice purporting to increase her rent by \$76.33 a month.² Because of the prior Hearing, the rent increase notice specifies that her rent would be \$1,847.64 from January 2016-September 2016, and then \$1,999.33 from October 2016-December 2016.

One of the owners, John Fleming, testified that he delivered the rent increase notice on November 30, 2015, in the tenant's mail slot in her unit. The rent increase notice included a *RAP Notice* and an *Enhanced Notice to Tenants for Capital Improvements*.³ He also served the same documents on the *Rent Adjustment Program* (RAP) on that same date. Official Notice is taken that these same documents were served on the RAP on November 30, 2015.

Because of the prior Hearing Decision, the parties agree that the tenant has been paying rent in the amount of \$1,771.31 at all relevant times and will continue to do so until she gets a Hearing Decision in this matter. Additionally, the parties agree that after the first year lease ran out the tenant's tenancy became a month to month tenancy.

Water bill: The tenant testified that in December of 2015 she was informed verbally by the owners that they had installed a sub-meter for her unit and that she would be charged for the water bill effective January 1, 2016.

This issue arose after the Hearing Decision was issued in the prior case, T15-0221, in which the Hearing Officer determined that the owners had been splitting utilities in violation of the Rent Adjustment Ordinance because there was one water meter for both units in the duplex. The owners produced two pages of the tenant's initial lease, the third page and the last page.⁴ In paragraph 9 on the third page it states "Tenants will be responsible for payment of all utility charges. Water (every two months) and garbage (every three months) are split with tenant at 6347 Broadway Terrace."

The tenant testified that she did not sign the lease until April 21, 2012, almost six weeks after she moved in. She did not know until the lease was given to her after she moved in that the owner wanted her to pay for water. Fleming testified that the original advertisement for the unit specified that the tenant would pay for utilities.

Fleming further testified that after the Hearing Decision in the prior case, the owners arranged to have separate sub-meters installed. EBMUD inspected the implementation of the water meter sub-metering and has given the owners a rebate for installing the sub-meters on the premises. Additionally, the owners provided the *Registration*

² See Exhibit 1, page 1. This Exhibit, and all exhibits referred to in this Hearing Decision, were admitted into evidence without objection.

³ Exhibit 1, pp 1-5

⁴ Exhibit 7

Certificate from Alameda County Community Development Agency, Office of Weights and Measures which shows that they installed the sub-meters for the water.⁵

Fleming testified that he informed the tenant in an email dated December 20, 2015, that she would have to start paying for water bills effective the January 4, 2016. The email dated December 20, 2015, states:

“On Tuesday, December 29, 2015 we enter Phase 2 of the water line improvements to the property. A plumbing contractor will be making water line modifications to add submeters to each of your water lines, so that water usage can be measured for each unit separately. Your water meter usage will be read on the EBMUD meter read date and once the bill arrives your usage will be calculated. I will send you a statement reflecting your usage and fixed charges on the regular EBMUD bi-monthly billing schedule.”⁶

Additionally, Fleming produced a copy of the first invoice sent to the tenant about the water bills which states that the payment is due by March 31, 2016, and covered water usage from January 4, 2016-March 3, 2016.⁷ Fleming testified that the owners will read the sub-meter on the same day as EBMUD reads its meter, and the billing to the tenant will include a copy of the EBMUD bill. The meter for the tenant’s unit was added in such a way to ensure that it is metering only the water that is used for her particular unit, and does not include the water used for watering the front or backyard.

The parties agree that the tenant has not paid for water since the sub-meters have been installed. The tenant testified that she is waiting until after the decision in the case to determine whether she is required to pay for water.

Capital Improvements: The tenant testified that she lives in a duplex. The owners did work in the backyard of the duplex in 2013. She does not believe anything was done in 2014, as the only bill dates after January 1, 2014, is for yard design work that must have been done before the yard design work was done.

Fleming testified that the vast majority of the work done in the tenant’s backyard occurred in the fall of 2013. In September of 2013, he hired a plumber to provide a water supply into the backyard. The work was completed and paid for in September of 2013. The owner provided an invoice from *Bay Handyman Plumbing* who charged \$300 for the work.⁸ The owner did not provide proof of payment. Fleming testified that the bill was paid (and there is a note on the bill which says “9/10/13 pp check # 134”.)

Fleming further testified that he hired *Flores Gardening* to do some landscaping work. The invoice from *Flores* is dated November 15, 2013, and is for \$5,150.⁹ According to the invoice, the work done included site preparation to lay pavers, sod, irrigation

⁵ Exhibit 9

⁶ Exhibit 8, page 2

⁷ Exhibit 8, page 3

⁸ Exhibit 2

⁹ Exhibit 3

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installation and planting. The owners paid the invoice in two checks, one for \$2,000 and one for \$3,150. Both these were paid in November of 2013. The owners did not produce the proof of payment. Fleming further testified that the patio was completed in November of 2013 and the plants were installed in November and December of 2013.

Fleming further testified that *Flores Gardening* also installed a fence at a cost of \$1,550.¹⁰ The invoice for this is dated December 13, 2013 and was paid for in December of 2013. No proof of payment was provided. Additionally, he testified first that he thought some portion of the fence staining "hung over" until "right around the first of the year" and that they paid *Flores* for the fence before it was completed because "he wanted to be paid before the end of the year, or something like that."¹¹ Later he testified that he paid for the fence after it was completed.

Fleming further testified that the gardener planted plants purchased from *Devil Mountain Wholesale Nursery* at a cost of \$1,330.97. He provided the invoice¹² dated December 9, 2013, which includes a proof of payment as it was paid with a bankcard. The plants were permanent shrubs and perennials, not flowers. These were planted in December of 2013.

The owner further testified that *James Morris Designs* was the project manager for the backyard project. *James Morris* designed the patio and picked the plants that were to be installed by the gardener and managed the fence and patio installation. *James Morris* billed him in January of 2014. The vast majority of the work *Morris* did on the project was in 2013. The owner could not testify with any specificity what if any work was done by *Morris* in 2014. No proof of payment was provided.

The tenant testified that she thought the owner was overcharged for the plants and that she could have gotten them for less money. She further testified that she has been watering those that she can reach and has been able to keep those alive, but the others have died from inadequate watering.

Fleming contended that *Morris*' final approval of the project, which happened in January of 2014, was the culmination of the project and that the whole project was thus not completed until January of 2014.

As to the failure of the owners to provide proof of payment, Fleming testified that he could provide the checks from *Wells Fargo* at a future date.

Decreased Housing Services: The tenant testified that when she moved into the unit there was a refrigerator that fairly immediately wasn't working properly. The first month she moved into the unit she started having problems with it in that she could either keep the freezer cold enough (which would then freeze her produce in the refrigerator compartment) or she could adjust the temperature so that the refrigerator

¹⁰ Exhibit 5

¹¹ Tape Recording 24:11-25:18

¹² Exhibit 4

was the correct temperature but the freezer was too warm. She cannot keep produce like cucumbers, lettuce or melons in her house without them spoiling quickly because of this problem. She complained to the owners who at first tried to clean the unit.

The owners did try to bring in a different refrigerator but it turned out that it too was not working properly.

The owners have offered her another refrigerator that is smaller than the current one. The tenant wants a functioning refrigerator of comparable size.

Fleming testified that the owners did try to replace her unit but the replacement did not work properly. Sometime in approximately 2015, they sent an appliance repair person to check the refrigerator and were told that it is functioning appropriately except that there were too many things in the freezer which acted to block a key area of air movement.

Since then, the owners have offered to install another somewhat smaller refrigerator in the basement that the tenant can use as overflow. The tenant testified that she did not understand that that unit was being offered in addition to the unit she currently has, but she is not comfortable going down into the basement (because of steep stairs) so that is not an acceptable solution to her.

Fleming produced a letter from the tenant dated February of 2016, in which she complained about the noisy refrigerator and a follow up note in which she wrote "Refrigerator doing better since noisy motor died?!!"¹³ The tenant testified that this note was about the noise the refrigerator was making, but it still spoils her vegetables by over cooling them.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

What claims are raised by the tenant's petition?

The tenant's petition clearly contested the capital improvement rent increase and the rent increase associated with the requirement that she pay for the water bill. However, the tenant did not check the box that says "The housing services I am being provided have decreased." Even though she did not check that box, the tenant wrote on page one of her petition "Refrigerator or replacement." Additionally, she provided a list of problems that was served with her petition which lists the refrigerator as one of her complaints.

Each party has the right to know what claims the adverse party is making. The issues are framed by the Petition and Response, and the scope of the Hearing is limited to these issues. Even though the tenant did not check the box that she was claiming "decreased housing services" the fact that she both wrote on her petition that there was an issue with the refrigerator and then provided a list of problems on which she listed the refrigerator, made it clear from the outset that the tenant was making a claim about

¹³ Exhibit 10, page 1

her refrigerator. The tenant's petition contests the two rent increases and makes a valid claim for decreased housing services associated with the refrigerator.

Can the owners transfer the water bill to the tenant?

The owners cannot transfer the water bill to the tenant for two reasons. First, since the Rent Adjustment Ordinance prohibits the splitting of utilities, the original lease clause requiring the tenant to pay for utilities was an illegal contract term that cannot be enforced. Even though the owners have now arranged to have sub-meters installed, this later act does not change the fact that the original contract term was illegal. Since it was illegal at the time it was made, it cannot be enforced.

Since the original contract term was illegal, and since water is a required amenity in a rental, the owners were responsible for providing for and paying for the water service from the beginning of the tenancy. Since the tenant could not legally be the responsible party for paying for water, that requirement fell on the owners. Any change to that requirement is a change in terms of tenancy that must follow the rules of the Rent Adjustment Program.

Rent Adjustment Regulation § 10.1.9 states that "The transfer of utility costs to the tenant by the landlord is not considered as part of the rent increase unless the landlord is designated in the original rental agreement to be the party responsible for such costs."

Here, since the lease term designating the tenant as the responsible party was an illegal lease term, the owners became the responsible parties to pay for the water bill. A designation does not have to be written, it can be implied. Therefore, the transfer of the utility costs to the tenant must be considered as part of a rent increase.

At the time the owners sought to transfer this cost, the tenant was paying a base rent of \$1,923 a month. The monthly cost of the first water bill the owners sought to have the tenant pay was \$43.92. If that cost was passed on to the tenant, it would amount to a 2.28% increase for that month. Since the allowable CPI rent increase in January of 2016 was 1.7%, the owners cannot pass this cost on to the tenant.

Additionally, even if the first month's cost was under the 1.7%, a water bill fluctuates, and there is actually no way to determine completely that passing a water bill on to the tenant would stay as a cost that did not exceed the CPI.

The second reason this cost cannot be transferred to the tenant is that the attempted transfer of the cost was not adequately noticed. On December 20, 2016, the owners sent an email to the tenant in which they informed her that they were making modifications to the water lines to add sub-meters. The email additionally says that the tenant's water meter usage will be read on the EBMUD meter read date. It does not say when the tenant will have to pay the first water bill, or what day the tenant will initially be charged for water. The owner testified at the Hearing that he was charging the tenant for water starting January 4, 2016, once the sub-metering was approved by EBMUD and an initial meter read was possible.

California law requires that any *Notice to Change the Terms of Tenancy* be made by giving notice to the tenant in writing, served in person or by substitute service (by giving it to someone else at the premises and then also serving by mail, or by posting and serving by mail), at least 30 days before the change is to take place (in a month to month tenancy). See Civil Code § 827(a) and Code of Civil Procedure § 1162. Additionally, rent increase notices, which this effectively is, must be served in person or by mail. Civil Code § 827(b).

The owners' notice to the tenant regarding the water bill is not a valid notice for multiple reasons. Firstly, it was served by email. Email notice is invalid. Secondly, it was not served with 30 days' notice. While the tenant was not asked to pay any bill until March 31, 2016, she was being asked to pay for water service beginning January 4, 2016. This is not sufficient notice. Thirdly, the email notice is not entirely clear as to what day the tenant would be paying for water. A change in terms of tenancy has to be clear and easy to understand.

For all these reasons, the owners may not shift the cost of water to the tenant.

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

The Rent Adjustment Ordinance requires that an owner who gives a rent increase on the basis of capital improvements must provide an "*Enhanced Notice*" with the rent increase and then file a copy of the *Enhanced Notice* with the Rent Adjustment Program within 10 days of the date the rent increase notice is served. O.M.C. § 8.22.070 (H)(1)(d)(ii). Official Notice is taken that an *Enhanced Notice* for the tenant involved in this case was filed with the RAP office on November 30, 2015.

The *Enhanced Notice* was timely filed.

Can an owner produce documents at the Hearing that were not produced to the Rent Adjustment Program 7 days prior to the Hearing?

At the Hearing, when the owner was questioned about whether or not he had produced any documents reflecting proof of payment, he said he could provide them from Wells Fargo. He was informed that it was too late.

The Rent Adjustment Program *Notice of Hearing* in this case states:

"Order to Produce Evidence

All proposed tangible evidence, including but not limited to documents and pictures, must be submitted to the Rent Adjustment Program not less than seven (7) days prior to the Hearing."

Parties are required to produce documents prior to the Hearing so that each side has the option to review the evidence in the file prior to the Hearing.

The original letter sent to the owners with the *Tenant's Petition*, states:

“Rent increases in excess of the annual CPI increase may be justified on one or more of the following grounds:

2. **CAPITAL IMPROVEMENT/UNINSURED REPAIR COST** (Regulations Section 10.)To justify a rent increase for capital improvement expenditures or insured repair expense you must provide, along with your response, copies of receipts, invoices, bid contracts or other documentation showing the costs were incurred to improve the property and benefit the tenants, and **evidence to show that the incurred costs were paid.**” (Emphasis added)

The owners were required to produce the documents prior to the Hearing.

Is the owner entitled to a rent increase on the basis of capital improvements?

A rent increase in excess of the C.P.I. Rent Adjustment may be justified by capital improvement costs.¹⁴ Capital improvement costs are those improvements which materially add to the value of the property and appreciably prolong its useful life.¹⁵ The improvements must primarily benefit the tenant rather than the owner. Normal routine maintenance and repair is not a capital improvement cost, but a housing service cost.¹⁶

An owner has discretion to make such improvements, and does not need the consent or approval of tenants. Additionally, the improvements must have been completed and paid for within 24 months prior to the date of the proposed rent increase.¹⁷ An owner has the burden of proving every element of his/her case by a preponderance of the evidence.

In order to justify a capital improvement rent increase an owner must produce copies of the actual invoices, contracts and proof of payment to show what work was done and the actual amount paid. These documents are required in order to allow the Hearing Officer to determine whether the work was done and paid for during the requisite 24 month period and the actual amount of the payment. Invoices alone do not establish the amount paid.¹⁸

There are two problems associated with the owners' capital improvement justification. First, the vast majority of the work done, and payments made, were all done more than 24 months before the rent increase in question. The owner sought to bootstrap all the

¹⁴ O.M.C. Section 8.22.070(C)(2)

¹⁵ Regulations Appendix, §§ 10.2 through 10.2.3

¹⁶ Regulations Appendix, §10.2.2(5)

¹⁷ Regulations Appendix, § 10.2.1

¹⁸ It is common knowledge that many people negotiate with contractor's after an invoice is provided and may pay less than the amount charged.

costs as being within 24 months by arguing that the only payment to the Project Manager, *James Morris Designs*, was made in January of 2014. Since the project manager had to approve all the work done, and he did some unspecified work in January of 2014, the owners argued that all the work done in the fall of 2013 can be passed on to the tenant.

This is not the law. The owner's clear testimony was that the vast majority of the work done on this project was done in the fall of 2013. The water supply was completed in September of 2013. The patio and plant installation was completed in November and December of 2013. The approval of the project manager in January of 2014 does not change the dates by which all the rest of the work was completed. Additionally, while the owner testified at first that some portion of the fencing was not completed until around the beginning of January of 2014, that testimony was suspect. It makes no sense that the owner would pay for a job before it was completed. And he testified that he paid the invoice for the fencing work in December of 2013. Therefore, the only charge for which any work was done in the 24 month time frame was the work of *James Morris Designs*.

The owner did not provide proof of payment for the *Invoice* produced for *James Morris Designs*. Without proof of payment, as noted above, the owner has not established his case by a preponderance of the evidence.

The tenant's base rent remains \$1,923.00 per month. Pursuant to the case T15-0221, the tenant is still entitled to a rent decrease for rent overpayments until September of 2016. The tenant's rent is \$1,771.31 until September 30, 2016. The tenant's rent reverts to \$1,923 per month, effective October 1, 2016.

Have the tenant's housing services decreased and, if so, by what percentage of the total housing services that are provided by the owner?

Under the Oakland Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent¹⁹ and may be corrected by a rent adjustment. However, in order to justify a decrease in rent, a decrease in housing services must be either the elimination or reduction of a service that existed at the start of the tenancy or a violation of the housing or building code which seriously affects the habitability of the tenant's unit.

There is a time limit for claiming decreased housing services. A tenant petition must be filed within 60 days after the date of service of a rent increase notice or change in the terms of a tenancy or the date the tenant first receives the RAP Notice, whichever is later.²⁰

However, when a tenant complains of ongoing problems with his or her unit, the Board has declared that such claims should not be completely denied if the tenant received the RAP Notice more than 60 days before the petition was filed. The tenant first received

¹⁹ O.M.C. § 8.22.070(F)

²⁰ O.M.C. § 8.22.090(A)(2)

the RAP Notice in the June of 2015, far more than 60 days before filing her petition on January 21, 2016. Therefore, in accordance with the Regulations and Board decision,²¹ the tenant can only be granted relief on her claims for decreased housing services beginning 60 days before the date on which she filed her petition. Allowable claims of decreased housing services therefore begin on November 22, 2015.

Additionally, the tenant has the burden of proof with respect to her claims and she must give the owner notice of the problems and the opportunity to repair before she is entitled to relief.

The tenant's claim of decreased services relate only to her refrigerator. The owner was convincing that he had the refrigerator looked at by an appliance technician and was informed that it was working properly and that the tenant had overstuffed the freezer compartment. The tenant was convincing that there remains a problem with the refrigerator and that she cannot keep fruit and vegetables from spoiling rapidly. Since the parties were equally believable, the tenant has not met her burden of proof. This claim is denied.

ORDER

1. Petition T16-0037 is granted in part.
2. The owner is not entitled to a capital improvement rent increase at this time because all work except for the work of *James Morris Designs* was done before January 2014 and no proof of payment was provided for *James Morris Designs*.
3. The owner cannot require the tenant to pay any portion of the water bill.
4. The tenant's base rent is \$1,923 per month. Because of the prior case, the tenant is entitled to an ongoing rent decrease of \$151.69 until September 2016. Her legal rent through September 2016 is \$1,771.31. Her rent reverts to \$1,923, by operation of law, on October 1, 2016.
5. The tenant's claims of decreased housing services are denied.
6. The owner may otherwise be entitled to a rent increase providing it is served according to Civil Code § 827 and the Rent Adjustment Ordinance.
7. **Right to Appeal:** **This decision is the final decision of the Rent Adjustment Program Staff.** Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be

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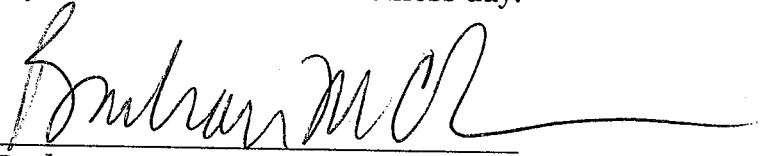
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²¹ Appeal Decision in Case No. T09-0086, Lindsey v. Grimsley, et al.

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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: June 21, 2016


Barbara M. Cohen
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE

Case Number T16-0037

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.

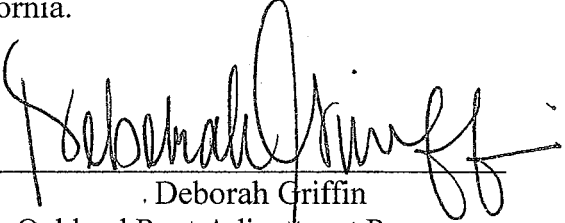
Today, I served the attached **Hearing Decision** by placing a true copy of it in a sealed envelope in City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California, addressed to:

Margo Tabet
6349 Broadway Terrace
Oakland, CA 94618

Doug Siu
John Fleming
60 Castle Crest Road
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 **June 21, 2016** in Oakland, California.



Deborah Griffin
Oakland Rent Adjustment Program

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

For filing stamp

RECEIVED
MAR 03 2016
RENT ADJUSTMENT PROGRAM
OAKLAND

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 T16-0037

OWNER RESPONSE

Please print legibly.

Your Name DOUGLAS SU JOHN FLEMING	Complete Address (with zip code) 60 CASTLE CREST ROAD ALAMO, CA 94507	Phone: 925-944-8888 Email: _____
Your Representative's Name (if any)	Complete Address (with zip code)	Phone: _____ Fax: _____ Email: _____
Tenant(s) name(s) MARGO TABET	Complete Address (with zip code) 6349 BROADWAY TERRACE OAKLAND, CA 94618	

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.) PENDING RECEIPT OF BILL FROM CITY OF OAKLAND

There are 2 residential units in the subject building. I acquired the building on 6/24/2011

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

I. RENTAL HISTORY

The tenant moved into the rental unit on 3/16/2012.

The tenant's initial rent including all services provided was \$ 1,850.00 / 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? 6/5/2015

Is the tenant current on the rent? Yes No

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

If a contested increase was based on **Capital Improvements**, did you provide an **Enhanced Notice to Tenants for Capital Improvements** to the petitioning tenant(s)? Yes No . If yes, on what date was the Enhanced Notice given? 11/30/2015 . Did you submit a copy of the Enhanced Notice to the RAP office within 10 days of serving the tenant? Yes No . Not applicable: there was no capital improvements increase. _____

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

Date Notice Given (mo/day/year)	Date Increase Effective (mo/day/year)	Amount Rent Increased		Did you provide NOTICE TO TENANTS with the notice of rent increase?
		From	To	
5/31/2014	07/01/2014	\$ 1,888	\$ 1,923	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
5/28/2013	07/01/2013	\$ 1,850	\$ 1,888	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No

II. JUSTIFICATION FOR RENT INCREASE

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

<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)
<u>1/1/2016</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<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.

Douglas Ein / John Flewiny
Owner's Signature

FEBRUARY 23, 2016
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

T16-06 11 M/BC

<p>CITY OF OAKLAND RENT ADJUSTMENT PROGRAM Mail To: P. O. Box 70243 Oakland, California 94612-0243 (510) 238-3721</p>	<p>For date stamp.</p> <p style="text-align: center;">RECEIVED</p> <p style="text-align: center;">JAN 21 2016</p> <p style="text-align: center;">OAKLAND RENT ADJUSTMENT</p>
---	---

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 MARGO TABET	Rental Address (with zip code) 6349 BROADWAY Terrace oakland 94618	Telephone 510-922-9092
Your Representative's Name	Mailing Address (with zip code)	Telephone
Property Owner(s) name(s) DOUG SIU John Fleming	Mailing Address (with zip code) 60 Cadoret Rd. ALAMO, CA 94507	Telephone 925-944-8880

Number of units on the property: 2

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

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

<input checked="" type="checkbox"/> (a) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
<input type="checkbox"/> (b) The owner did not give me a summary of the justification(s) for the increase despite my written request.
<input type="checkbox"/> (c) The rent was raised <u>illegally</u> after the unit was vacated (Costa-Hawkins violation).
<input type="checkbox"/> (d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.)
<input type="checkbox"/> (e) A City of Oakland form notice of the existence of the Rent Program was not given to me at least six months before the effective date of the rent increase(s) I am contesting.
<input 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 checked="" type="checkbox"/> (g) The contested increase is the second rent increase in a 12-month period. <i>(the water ONE would be sec)</i>
<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)

(L) Capital improvements beyond 24 month
 (M) DO NOT IMPROVE MY UNIT IN ANY WAY

Tenant Petition, effective 1-15-15

P.) Refrigerator Replacement (n)
 (o) NO WRITTEN notice for sub-meters for water - would start Jan 1 - 2016

000071

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

Date you moved into the Unit: April 2012 Initial Rent: \$ 1850 /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: August 2015. If never provided, enter "Never."

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

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

Date Notice Served (mo/day/year)	Date Increase Effective (mo/day/year)	Amount Rent Increased		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
12.1.15	1.1.16	\$ 1771.31	\$ 1847.00	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
VERBAL	1.1.16	\$ water	\$ bill	<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

* 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: This is Second (2)

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? THE BILLS for improvements 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.

Margo Sabat
Tenant's Signature

1.17.16
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).

Margo Sabat
Tenant's Signature

1.17.16
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):

a friend who is a landlord

two new ones in 1 month from landlords

1. The enclosed Capital Improvement:

- billed ^{starting} 1.1.16
- work done over 24 months ago
- Improvements increase sale value for landlords but do not improve my unit in any way.
- don't see actual bills
- Backyard unused unfortunately

2. Effective 1.1.16 water costs

- brought in a plumber to put in sub-meters for water costs.
- If both of these are oked by RAB it would be 2 increases.
- no written notification, not sure if landlords share part of set costs:

3. Refrigerator - in house when rented

- Have asked to have very unhealthy refrigerator ^{replaced} for all 4 years I've been here
- Can't have healthy temperatures in freezer and refrigerator at same time.
- Landlords brought in one used one which didn't work when plugged in. They then said I had to do it
- * - Can I buy one and subtract from rent?

6.14.16

CHRONOLOGICAL CASE REPORT

Case No.: T16-0347
Case Name: Lockhart et al v. Greer
Property Address: 820 59th Street, #B, Oakland, CA
Parties: Earnestine Lockhart (Tenant)
Irvin Smith (Tenant)
Greg Greer (Landlord)

PROPERTY OWNER APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	June 27, 2016
Owner Response filed	None
Hearing Decision issued	November 1, 2016
Owner Appeal filed	November 17, 2015

City of Oakland Residential Rent Adjustment Program 250 Frank Ogawa Plaza, Suite 5313 Oakland, California 94612 (510) 238-3721	2016 NOV 17 PM 12:43 APPEAL
Appellant's Name Corey Greer	Landlord <input checked="" type="checkbox"/> Tenant <input type="checkbox"/>
Property Address (Include Unit Number) 820 59th St. #B OAKLAND, CA, 94608	
Appellant's Mailing Address (For receipt of notices) P.O. BOX 3871 OAKLAND, Ca, 94609	Case Number T16-0347 Date of Decision appealed Oct. 31, 2016
Name of Representative (if any)	Representative's Mailing Address (For notices)

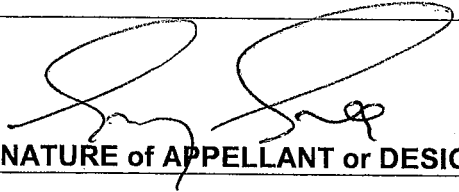
I appeal the decision issued in the case and on the date written above on the following grounds:
 (Check the applicable ground(s). Additional explanation is required (see below). Please attach additional pages to this form.)

1. The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board. You must identify the Ordinance section, regulation or prior Board decision(s) and specify the inconsistency.
2. The decision is inconsistent with decisions issued by other hearing officers. You must identify the prior inconsistent decision and explain how the decision is inconsistent.
3. The decision raises a new policy issue that has not been decided by the Board. You must provide a detailed statement of the issue and why the issue should be decided in your favor.
4. The decision is not supported by substantial evidence. You must explain why the decision is not supported by substantial evidence found in the case record. The entire case record is available to the Board, but sections of audio recordings must be pre-designated to Rent Adjustment Staff.
5. I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. You must explain how you were denied a sufficient opportunity and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue a decision without a hearing if sufficient facts to make the decision are not in dispute.
6. The decision denies me a fair return on my investment. You must specifically state why you have been denied a fair return and attach the calculations supporting your claim.

7. Other. You must attach a detailed explanation of your grounds for appeal. Submissions to the Board are limited to 25 pages from each party. Number of pages attached 15. Please number attached pages consecutively.

8. **You must serve a copy of your appeal on the opposing party(ies) or your appeal may be dismissed.** I declare under penalty of perjury under the laws of the State of California that on Nov 17, 2006, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<u>Name</u>	Ernestine Lockhart and Irvin Smith
<u>Address</u>	820 59th Street # B
<u>City, State Zip</u>	OAKLAND, CA, 94608
<u>Name</u>	
<u>Address</u>	
<u>City, State Zip</u>	

 SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE <u>Nov 17, 2016</u>
--	--------------------------

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.

APPEAL CASE NO. T16-0347

#2. The decision is inconsistent with decisions issued by other hearing officers:

In case No. T16-0176 Ramirez Vs Greer Hearing officer Linda M. Moroz, in her Hearing Decision August 30, 2016 denied the decrease in housing services for this tenant on the same property for the same issues.- **See attached Hearing Decision as Exhibit "A"**

In case No. T14-0288 Rameriz Vs Greer Hearing officer Stephen Kasdin in his Hearing Decision December 5, 2014 denied the decrease in housing services for this tenant on the same property for the same issues.- **See attached Hearing Decision as Exhibit "B"**

#4. The decision is not supported by Substantial evidence:

On or about July 10th 2016 we received a package from the Rent Adjustment Program dated July 1, 2016 requesting a response to a petition filed on June 27, 2016 by tenant Ernestine Lockhart et al on the increase of rent. Case No. T16-0553 RC/BC.

On or about July 21st We received a Warning Notice from the Rent Adjustment program dated July 14, 2016 Signed by a Susan Ma stating that the rent increase notice served to tenants on June 27, 2016 is not valid and to call the Rent Adjustment Program at 510-238-7108 with questions or concerns- **See attached copy of Warning letter received as Exhibit "C"**

On or about July 24th we called Susan Ma and asked about the Warning Notice to cancel the increase, and how we go about cancelling the Notice and responding to the Petition, Her answer to us was: "Send a letter to the tenants with a copy of the Notice of increase of rent and let them know you are cancelling your notice of increase.

We then asked her about the hearing date and response package? We asked do we return the Landlord response and will the hearing be cancelled. Her response was "Yes they will cancel the request for response and hearing date when the system is updated that the Warning Notice that the increase of rent was Invalid. We further asked if the Rent Board is going to send notice to the tenants about the hearing being cancelled or should we also mention to them in the letter that it will be cancelled? Her response was "they should get something from us but you can mention it in the letter you send them.

Thus, in our letter to the Tenant's dated August 12, 2016, we followed her instructions and passed on all the information Susan Ma provided regarding the cancelling of the Notice of Increase Rent, Hearing & Response- **See attached copy of letter as Exhibit "D"**

When I received the Hearing Decision Notice I immediately called The Rent Board and spoke to the case manager Roberto and he informed me that the Case file for T16-0347RC/BC or the rent Board system, did not show any Warning Notice from the Rent Board that the Notice was invalid, and the only way to prove I received a copy and called Susan Ma about the Warning Notice is to appeal the decision.

#5. I was denied a sufficient opportunity to present my claim or response to petitioner's claim.

See item #4 above for reason and evidence.

Additional Note: We re-served the Capital Improvements increase within the allowed time frame and tenant did Petition it, and we now have a NEW CASE NO. T16-0553 RC/BC.

(1)

000078



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

CITY OF OAKLAND

Department of Housing and Community Development
Rent Adjustment Program

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

HEARING DECISION

CASE NUMBER: T16-0176, Ramirez v. Greer
PROPERTY ADDRESS: 822 1/2 59th St., Oakland, CA 94608
DATE OF HEARING: July 18, 2016
DATE OF DECISION: August 30, 2016
APPEARANCES: Tereza Ramirez, Tenant
Vanessa Ramirez, Tenant
Greg Greer, Owner
Johnny Gillespie, Employee of the Owner

SUMMARY OF DECISION

The tenant petition is granted in part.

CONTENTIONS OF THE PARTIES

On April 1, 2016, the tenant filed a petition alleging (1) unjustified rent increase in excess of the CPI Adjustment and/or greater than 10%; (2) no notice of Rent Program was provided with the notice of increase; (3) decreased housing services; and (4) a code violation.

On May 5, 2016, the owner filed a timely response alleging that (1) the rent increase was justified by capital improvements; (2) the notice of the existence of the Rent Adjustment Program (RAP) was provided with rent increase notice; and (3) no decreased services occurred.

THE ISSUES

- (1) Is the rent increase justified by capital improvements, and if so, have the capital improvements been calculated correctly?
- (2) Have the tenant's housing services been decreased, and if so, by what amount?

(a)

EVIDENCE

Background and Rent Increase

The tenant moved into the property in July of 1985 at an initial monthly rent of \$475.00. The subject unit is located in a residential building consisting of five (5) residential units. On March 31, 2016, the tenant was served a rent increase notice, which proposed to increase the monthly rent from \$887.00 to \$972.06, effective May 1, 2016. A copy of the rent increase notice was submitted with owner's response and included the Notice to tenants of the residential Rent Adjustment Program, Enhanced Notice to Tenants for Capital Improvements and Declaration of Service.¹ The tenant testified at the hearing that she paid the increased amount of \$972.06 each month from May 1, 2016. This evidence was not disputed.

RAP Notice

The tenant stated on her petition that she first received the notice of the existence of the Rent Adjustment Program (RAP Notice) in 2014 but not with the rent increase notice. At the hearing the tenant testified that she received the RAP Notice with the rent increase notice and corrected the statement made on her petition.

Capital Improvements and Enhanced Notice

The capital improvement project included a seismic upgrade on one section of the foundation, work in the attic, and a complete remodel of the common laundry room. The project lasted six months, from July through December of 2014, and was completed and paid for in December of 2014. This testimony was not disputed.

The owner testified that while he was doing his capital improvement project, he and his employees also worked on one of the apartments when the tenant moved out from that apartment for three weeks in July of 2014 that contributed to the construction noise during the overall capital improvement project.

The owner submitted invoices and purchase receipts from contractors and hardware stores, which included Bill Neill Plumbing and Heating, Ace Hardware, The Home Depot, Westside Building Material, Economy Lumber, Rubenstein Supply Company, billed to the owner Greg Greer or Greer Painting, the owner's construction company.

Copies of the following documents were submitted by the owner and admitted into evidence²:

1. Payroll Records (7/1/14 - 12/18/14): \$40,098.25

¹ Exhibit A

² Exhibit C

2. Home Depot Invoices/receipts:	\$ 6,601.81
3. Ace Hardware Invoices/receipts:	\$ 1,175.28
4. Economy Lumber Invoices/receipts:	\$ 2,810.21
5. Westside Building Material Invoices/receipts:	\$ 1,308.70
6. Mark's Paint Invoices/receipts:	\$ 1,204.77
7. Rubenstein Supply Co. Invoices/receipts:	\$ 553.68
8. Bill Neill Invoices/receipts:	\$ 1,621.68
TOTAL:	\$55,374.38

The enhanced notice attached to the rent increase notice listed \$75,000 for total cost of capital improvement, broken down as follows: \$30,000 for seismic upgrade, \$20,000 for laundry room, and \$25,000 for plumbing repipe. The amounts listed on the notice do not correspond to the amounts on the invoices submitted, which totals \$55,374.38.

Decreased Housing Services/Code Violation

The tenant identified construction noise as the decrease housing service and testified that the workers who are owner's employees use the backyard to store wood and construction materials. The workers are loading and unloading materials stored in the shed located in the backyard, and there are trucks parked in the backyard too.³ No notice of violation was submitted.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Capital Improvements

A rent increase in excess of the CPI Rent Adjustment may be justified by capital improvement costs.⁴ 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 the new building codes. Normal routine maintenance and repair is not a capital improvement cost, but a housing service cost.⁵

Effective August 1, 2014, the amendments to the Rent Adjustment Program Regulations extend amortization periods and decrease the capital improvements passing through to seventy percent (instead of 100%) of Capital Improvement costs.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

³ Exhibit B

⁴ O.M.C. Section 8.22.070(C)

⁵ Regulations, Appendix, Section 10.2.2(5)

⁶ City Council Resolution No. 84936

⁷ Regulations Appendix, Section 10.2

4.

The project was completed and paid for in December of 2014. The owner submitted invoices and purchase receipts which also showed proof of payments for the project, totaling \$15,276.13. The payroll record, showing expenses in the amount of \$40,098.25, cannot be considered in the calculation because it is a summary of payroll expenses but not proof of payments. There was no evidence submitted in support of these payroll expenses. Pursuant to the Rent Ordinance, the undocumented labor costs provided by the landlord cannot exceed 25% of the cost of materials.⁸ Accordingly, \$3,819.03 will be added for labor costs (25% of \$15,276.13).

Calculation of the Rent Increase based on Capital Improvements

The rent increase proposed by the owner is for \$85.06. The capital improvements expenses and proof of payments submitted allow the increase of \$44.56 per unit as shown on the attached calculation sheet (70% of \$19,095.16 is \$13,366.61, divided by 5 units and amortized over 60 months). Therefore, the rent increase will be limited to the amount of \$44.56.

Rent Overpayment

It is undisputed that the tenant paid the increased rent of \$972.06 from May 1, 2016. According to the capital improvement calculation, the tenant's rent is limited to \$931.56 (\$887.00 + \$44.56). Therefore, the tenant overpaid her rent by \$40.50 per month for four months. The total amount of rent overpayment is \$162.00 (\$40.50 x 4 months). This credit will be applied in two monthly installments of \$81.00 in the next two months as stated in the Order below.

Decreased Housing Services

Under the Oakland Rent Ordinance, a decrease in housing services is considered to be an increase in rent⁹ and may be corrected by a rent adjustment.¹⁰ However, in order to justify a decrease in rent, a decrease in housing services must be the loss of a service that seriously affects the habitability of a unit or one that is required to be provided in a contract between the parties. The tenant has the burden of proving decreased housing services by a preponderance of the evidence. The tenant also has the burden of proving notice to the owner about a complaint and the owner must be afforded a reasonable opportunity to respond to the complaint.

Use of Backyard by Owner and his Employees: The tenant stated that her backyard is being used by the owner and his employees who come in and out when they load and unload construction material stored in the shed located in the backyard. There was no evidence that the backyard area was designated for the tenant's exclusive use in her lease. It is the common area and can be used by all tenants,

⁸ O.M.C. Regulations Appendix A, §10.2.3(5)

⁹ O.M.C. §8.22.070(F)

¹⁰ O.M.C. §8.22.110(E)

5.

including the owner and his designees. Since the tenant can continue using the backyard, no loss of service occurred. This claim is denied.

Loss of Quiet Enjoyment of Premises: The tenant suggests that the backyard commotion caused by the owner's employees using the shed, and carrying materials in and out noise interferes with the tenant's right to the covenant of quiet enjoyment of her apartment. However, the Rent Adjustment Program (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.

The 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 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. Therefore, the tenant's claim for decreased/housing service as it relates to the covenant of quiet enjoyment is dismissed.

Construction on Attic/Laundry Room/Empty Apartment: The court in *Golden Gateway Center v. San Francisco Residential Rent Stabilization and Arbitration Board*, (1999) 73 Cal. App.4th 1204, held that a landlord who undertakes to perform reasonably necessary repair and maintenance work on rental property, which has the effect of temporarily interfering with or preventing the tenant's full use of housing services, but does not substantially interfere with the right to occupancy of the premises as a residence does not effectuate a decrease in housing services. *Id.* at p. 1213. In this case the Court held that the tenants were not allowed reduction in rent for a loss of use of their deck during a four-month period because it did not substantially interfere with the right to occupancy of the premises as a residence. *Id.* Therefore, the tenants are not entitled to reduction of rent during the construction project when the owner worked in the attic, an empty apartment or common laundry room. This claim is denied.

ORDER

1. Petition T16-0176 is granted in part.
2. The rent increase justified by capital improvements is valid but reduced to the amount of \$44.56 per unit.
3. The monthly base rent of \$887.00 is increased by a capital improvement pass-through by \$44.56, to \$931.56. The capital improvements pass-through expires on May 1, 2021, five years from May 1, 2016, the effective date of the pass-through.

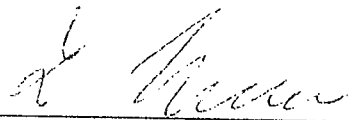
(L)

4. The tenant is entitled to a credit of \$162.00 due to rent overpayment when she paid the increased rent of \$972.06 per month for four months, May through August of 2016. This overpayment will be applied as rent reduction by \$81.00 per month in two installments. In the two months, the tenant's rent will be \$850.56 (\$931.56 - \$81.00).

5. The claim for decreased housing services is denied.

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

Dated: August 30, 2016



Linda M. Moroz
Hearing Officer
City of Oakland Rent Adjustment Program

(1)



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: T14-0288, Ramirez v. Greer
PROPERTY ADDRESS: 822 1/2 - 59th St., Oakland, CA
DATE OF HEARING: November 6, 2014
DATE OF DECISION: December 5, 2014
APPEARANCES: Teresa Ramirez (Tenant)
Greg Greer (Owner)
Johnny Gillespie (Witness 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 \$871 to \$904, to be effective on July 1, 2014, exceeds the CPI Rent Adjustment and is unjustified and that her housing services have been decreased due to wood storage on the premises, improper construction activity, and allergic reaction to fumes from the washer and dryer below her unit.

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

THE ISSUES

- (1) When was the tenant given the RAP Notice?
- (2) Is a rent increase justified by Capital Improvements and, if so, in what amount?

- (3) Have the tenant's housing services been decreased and, if so, by what percentage of the total housing services that are provided by the owner?

EVIDENCE

RAP Notice: In her petition, the tenant wrote in different places that she received the RAP Notice in July 2012 and that she first received the Notice on July 25, 2014, together with the contested notice of rent increase. At the Hearing, the tenant testified that she was given the RAP Notice in 2012.

Rent History: The parties agreed that the tenant has paid rent of \$904 each month from July through November 2014.

Capital Improvement Costs: At the Hearing, the parties stipulated that there are 5 units in the building in which the tenant lives. The owner testified that he is a licensed painting contractor, and that his company replaced an old outdoor staircase on the side of the building. The owner submitted 7 pages of documents¹ which were admitted into evidence without objection. These documents reflect the purchase of building materials, payment to workers, and payment to the owner. The payments and check to the owner were in May 2012, and the most recent of these documents is dated June 5, 2012.

Decreased Housing Services:

Wood Storage: The tenant testified that the owner stores wood in the backyard and on top of the garage, which interferes with her view and that she believes is a source of insects. She submitted a number of photographs, which she took in the months of July through October 2014.² These photographs reflect a considerable amount of lumber, bricks, and other construction materials in the back and other outdoor areas around the subject building.

Construction Activity: The tenant further testified that she has always been able to park a car on the asphalt surface behind the building. There were no designated parking spaces, but all tenants in the building shared this area for parking. However, due to construction activity and storage of construction materials, she had not been able to park there for approximately 5 months. She further testified that the owner's workers work on trucks in the back yard. The owner and his witness denied this allegation.

The tenant also submitted a Notice of Violation issued by the City Department of Planning and Building, dated October 20, 2014.³ This notice states, "Construction related materials in open storage. Remove or store in approved location." The owner testified that he has ongoing construction projects in various parts of the building. He further testified that, after receiving this Notice, he spoke with the Building Inspector who issued the Notice. The Inspector told him that, after the construction is complete, the owner must either remove the materials or store them in a shed. The owner submitted a printout from the records of the City agency that issued the

¹ Exhibit Nos. 1 through 7, which were admitted into evidence without objection.

² Exhibit Nos. 8 through 18, which were admitted into evidence without objection.

³ Exhibit No. 19, which was admitted into evidence without objection.

Notice of Violation, which refer to a subsequent inspection.⁴ Next to the date September 17, 2014, is the statement, "No Violations."

Washer and Dryer: The tenant testified that a washer and dryer were placed under a small deck beneath her unit 5 months before the Hearing. She is bothered by fumes from these appliances.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Capital Improvement Costs: A rent increase based upon capital improvements will only be given for those improvements which have been completed and paid for within 24 months prior to the date of the proposed rent increase.⁵ The most recent capital improvement cost was in June 2012, more than 24 months before the proposed rent increase that was to be effective on July 1, 2014. Therefore, the rent increase notice is invalid. Before consideration of the tenant's claims of decreased housing services, the rent remains \$871 per month.

Decreased Housing Services: Under the Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent⁶ and may be corrected by a rent adjustment.⁷ However, in order to justify a decrease in rent, a decrease in housing services must be either the elimination or reduction of a service that existed at the start of the tenancy or a violation of the housing or building code which seriously affects the habitability of the tenant's unit.

There is also a time limit for claiming decreased housing services. A tenant petition must be filed within 60 days after the date of service of a rent increase notice or change in the terms of a tenancy or the date the tenant first receives the RAP Notice, whichever is later.⁸

Wood Storage: The storage of wood has a very slight, if any, effect upon the tenant's housing services. This claim is denied.

Construction Activity: The California District Court of Appeal considered the question of whether repair and replacement of tenants' decks - which resulted in the temporary loss of use of the decks and ventilation from the doorways to the decks - was a decrease in housing services under the San Francisco rent control ordinance. The Court stated:

[A] landlord who undertakes to perform reasonably necessary repair and maintenance work on rental property, which has the effect of temporarily interfering with or preventing the tenant's full use of housing services, but does not substantially interfere with the right to occupancy of the premises as a residence, does not effectuate

⁴ Exhibit No. 20. The tenant objected to the admission of this document because she was not at home at the time of the inspection. This objection was overruled, and the document was admitted into evidence.

⁵ Regulations Appendix, Section 10.2.1

⁶ O.M.C. Section 8.22.070(F)

⁷ O.M.C. Section 8.22.110(E)

⁸ O.M.C. Section 8.22.090(A)(2)

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a decrease in housing services within the meaning of the San Francisco rent control ordinance." Golden Gateway Center v. San Francisco Residential Rent Stabilization and Arbitration Board, 73 Cal.App. 4th, 1204,1206 (1999).

The same principle applies in this case. Further, the owner and his witness denied the tenant's claim that workers also work on vehicles in the yard. The testimony is equally credible, and the tenant has not sustained her burden of proof on this issue. However, if this were true, the impact upon the tenant's use of her unit would be minimal. All of the tenant's claims regarding the back yard are denied.

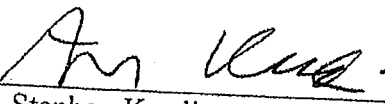
Washer and Dryer: The occasional use of these machines does not affect the habitability of the tenant's unit, and this claim is denied.

Conclusion / Rent Overpayments: The rent for the unit remains \$871 per month. The tenant paid \$904 in the 5 months from July through November 2014. This was an overpayment of \$33 per month, and a total overpayment of \$165. The overpayment is ordered repaid over a period of 3 months.⁹ The rent is temporarily reduced by \$55 per month, to \$816 per month, beginning with the rent payment in December 2014 and ending with the rent payment in February 2015.

ORDER

1. Petition T14- 0288 is partly granted.
2. The rent, before reduction for overpaid rent, is \$871 per month.
3. The tenant has overpaid rent in the amount of \$165. This overpayment is adjusted over a period of 3 months.
4. The rent is temporarily reduced by \$55 per month, to \$816 per month, beginning with the rent payment in December 2014 and ending with the rent payment in February 2015.
5. Right to Appeal: **This decision is the final decision of the Rent Adjustment Program Staff.** Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within twenty (20) calendar days after service of the decision. The date of service is shown on the attached Proof of Service. If the Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.

Dated: December 5, 2014



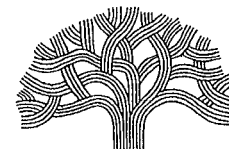
Stephen Kasdin
Hearing Officer
Rent Adjustment Program

⁹ Regulations, Section 8.22.110(F)



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EXHIBIT "C"
CITY OF OAKLAND



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA, SUITE 5313 • P.O. BOX 70243 • OAKLAND, CA 94612-2034

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

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

July 14, 2016

Greg Greer
P.O. Box 3871
Oakland, Ca 94609

Warning Notice: Your rent increase notice is invalid

Dear Sir or Madam:

On April 5, 2016, the Oakland City Council adopted a 90-day emergency ordinance. (Ordinance No. 13360 C.M.S.) The 90-day moratorium prevents owners or property managers of a residential unit from serving or giving a rent increase notice that exceeds the annual allowable CPI Rent Adjustment. (Ordinance No. 13360 C.M.S. § 5.) The annual allowable CPI adjustment is 1.7%. Effective July 1, 2016, the rate is 2.0%. Therefore, this letter serves as a warning that the notice you served on your tenants on **June, 27, 2016** is invalid and must be withdrawn. As a courtesy, I have also included a summary of the moratorium in three languages.

Please note, owners or property managers who violate the ordinance may receive a warning notice. Further violations may be subject to administrative citations. (O.M.C. § 1.12; O.M.C. 1.08.)

If you have further questions or concerns regarding this matter, you may contact the Rent Adjustment Program at (510) 238 – 7108.

Sincerely,

Susan Ma
Program Analyst I
Rent Adjustment Program

Enclosures (3)

cc:

(12)

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cc:

Roxana Cordero
5415 Bancroft Ave., #1
Oakland, Ca 94601

Carlos Borjas
5415 Bancroft Ave., #4
Oakland, Ca 94601

Walter Godoy
5415 Bancroft Ave., #3
Oakland, Ca 94601

Juan Ramos
5415 Bancroft Ave., #2
Oakland, Ca 94601

Ernestine Lockhart & Irvin Smith
820 59th Street, #B
Oakland, Ca 94608

Michael Burton, Carrine Greaves, Dawn Greaves
822 59th Street
Oakland, Ca 94608

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EXHIBIT "D"

GREG GREER
P.O. Box 3871
Oakland CA 94609

**THE CAPITAL IMPROVEMENTS
INCREASE NOTICE
EFFECTIVE AUGUST 1, 2016
HAS BEEN CANCELLED**

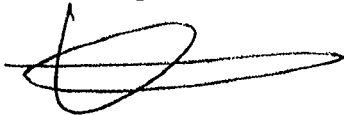
August 12, 2016

Irvine Smith and Ernestine Lockhart
820 59th Street #B
Oakland CA 94608

Dear Irvine and Ernestine,

The increase notice enclosed, showing an increase date of August 1, 2016 has been cancelled due to the City of Oakland 90 day moratorium. The Hearing Scheduled for September 26, 2016 has also been cancelled.

Best Regards,



Greg Greer/Owner/k.a.
510-409-2297
Email: greggreer22@gmail.com

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GREG GREER
P.O. Box 3871
Oakland CA 94609

**CANCEL THIS
NOTICE**

30 DAY NOTICE OF INCREASE OF RENT

June 21, 2016

Ernestine Lockhart and Irvin Smith
820 59th Street Unit B
Oakland CA 94608 *Personal Delivery*

Dear Ernestine & Irvin,

Due to Increase costs incurred from Building Maintenance, it is necessary to increase the rent on your unit.

As of **August 1, 2016**, your rent will effectively be **\$839.00 per month**. We have used the Capital Improvement's guidelines recommended by the Oakland Rent Control Board to determine the increase.

Best Regards,

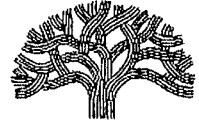


Greg Greer/Owner
510-409-2297
Email: greggreer22@gmail.com

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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

HEARING DECISION

CASE NUMBER: T16-0347, Lockhart et al v. Greer
PROPERTY ADDRESS: 820 59th Street, Unit B, Oakland, CA
DATE OF HEARING: September 26, 2016
DATE OF DECISION: October 31, 2016
APPEARANCES: Ernestine Lockhart, Tenant
Irvin Smith, Tenant

No appearance by Owner

SUMMARY OF DECISION

The tenants' petition is granted. The legal rent for the unit is set forth in the Order below.

CONTENTIONS OF THE PARTIES

The tenants, Ernestine Lockhart and Irvin Smith, filed a petition which alleges that a rent increase from \$764 to \$839, effective August 1, 2016, exceeds the CPI Rent Adjustment and is unjustified or is greater than 10%; that no written notice of the Rent Program (*RAP Notice*) was given to them at least six months before the effective date of the rent increase; that their housing services have decreased and that at present there exists a health, safety, fire or building code violation in the unit. Additionally, the tenants contested a series of prior rent increases.

The tenants' claims of decreased services include that the owner and his workers constantly park vehicles which block their front door and that the owner and his workers do loud work outside their unit.¹

The owner did not file a response to the *Tenant Petition*.

THE ISSUES

1. When, if ever, was the RAP Notice first served on the tenant?
2. Is the 2016 rent increase notice valid?
3. Can the tenants contest prior rent increases?
4. Have the tenants' housing services been decreased, and if so, by what percentage of the total housing services that are provided by the owner?
5. What, if any, restitution is owed between the parties and how does it affect the rent?

EVIDENCE

Rental History: The tenants testified that they moved into the subject rental unit in 1988 at an initial rent of \$400 a month. They were served with the *RAP Notice* at least as far back as 2011 and probably earlier. The current owner of the property is Greg Greer, who purchased the property in 2011. The prior owner was Earl Scheelar.

The tenants currently pay rent of \$764 a month. In June of 2016, they received a rent increase notice in their mailbox, purporting to increase their rent from \$764 to \$839 a month, effective August 1, 2016.² The rent increase notice was served with an *Enhanced Notice to Tenants for Capital Improvements* and a *RAP Notice*. After receipt of the rent increase notice they have continued to pay rent of \$764 a month.

In August of 2016, the tenants received a letter from the owner which stated that "The increase notice enclosed, showing an increase date of August 1, 2016 has been cancelled due to the City of Oakland 90 day moratorium. The Hearing Scheduled for September 26, 2016 has also been cancelled."³ This was signed by Greg Greer.

Decreased Housing Services: The tenants raised claims regarding the owner and his employees parking in their driveway and engaging in noisy work on the premises.

Parking: The tenants testified that their building is a 5 unit apartment house and the entrance to their unit is on the side of the house adjacent to the driveway. The owner and his employees regularly park trucks in the driveway and impede the entryway to the tenants' unit. This is particularly an issue because Mr. Smith is blind and these trucks make it harder for him to get into, and out of, his unit. These vehicles are regularly parked on the premises overnight. In a typical month, the vehicles are parked in front of

¹ See Exhibit 5, the decreased housing services letter provided with the *Tenant Petition*.

² Exhibit 3

³ Exhibit 4, page 1

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the tenants' door approximately 5-6 times. Additionally, sometimes the trucks are parked in front of the garbage bins, making it difficult to throw out the trash. From the beginning of June of 2016, the owner parked a flatbed truck in the back of the apartment building for two months and the truck's alarm would turn on at all times during the day and night, disturbing the tenants and when it happened at night, waking them up.

The tenants further testified that they complained to Mr. Greer about parking these vehicles on the premises on several different occasions since 2011.

When the tenants moved into the unit there was no one parking trucks and other utility vehicles in front of their entrance or parking trucks all night on the property and having the alarm activate.

Working on Premises: The tenants testified that the owner's workers will do work outside their unit. They repair their trucks, drill wood, and use saws and hammers. When the workers are there, it does not appear to be work being done on their apartment complex. This occurs approximately seven times a month consistently since Mr. Greer has owned the property.

The tenants further testified that they complained to Mr. Greer about the working in the driveway in 2012 and multiple times since then.

When they moved into the unit there was no one doing work in the driveway.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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 tenancy⁴ and together with any notice of rent increase or change in the terms of a tenancy.⁵ 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.⁶

The tenants testified that they received a *RAP Notice* at the latest in 2011 and this testimony is credited.

Did the owner withdraw the rent increase notice?

The owner informed the tenants that he was withdrawing the rent increase notice.⁷ It was withdrawn by the owner because it was served during the City of Oakland's 90 day

⁴ O.M.C. § 8.22.060(A)

⁵ O.M.C. § 8.22.070(H)(1)(A)

⁶ O.M.C. § 8.22.060 (C)

⁷ The owner also asserted that the Hearing was cancelled. The Owner is not in charge of cancelling a Hearing. The tenants had made other claims other than contesting the August 1, 2016, rent increase, so a Hearing was required.

moratorium on rent increases in excess of the CPI. (Oakland City Council Ordinance No. 13360.)

Since the rent increase was withdrawn, the tenants' base rent remains \$764 a month.

Can the tenants contest prior rent increases?

The tenants sought to contest a series of prior rent increases given between 2012 and 2015. However, as noted above, the tenants were served with the *RAP Notice* as early as 2011. Once the tenants are served with the *RAP Notice*, they are required to file a *Petition* contesting a rent increase within 60 days of being notified of the rent increase.⁸

According to the *Tenant Petition* which was filed under penalty of perjury, the tenants were informed of each prior rent increase 4-6 weeks prior to it going into effect. Their *Tenant Petition* was filed on June 27, 2016. This is far longer than 60 days after each rent increase they contested other than the one that the owner withdrew. The tenants' petition contesting the prior rent increases in 2012, 2013, 2014 and 2015 is denied.

Have the tenants' housing services been decreased, and if so, by what percentage of the total housing services that are provided by the owner?

Under the Oakland Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent⁹ and may be corrected by a rent adjustment.¹⁰ However, in order to justify a decrease in rent, a decrease in housing services must be the loss of a service that seriously affects the habitability of a unit or one that was provided at the beginning of the tenancy that is no longer being provided.

In a decreased housing services case a tenant must establish that he or she has given the owner notice of the problems and the opportunity to fix the problems before he or she is entitled to relief. Here, the tenants have established that they complained to the owners about their two complaints (working on the premises and parking on the premises) several years ago.

There is a time limit for claiming decreased housing services. A tenant petition must be filed within 60 days after the date of service of a rent increase notice or change in the terms of a tenancy or the date the tenant first receives the *RAP Notice*, whichever is later.¹¹ However, when a tenant complains of ongoing problems with his or her unit, the Board has declared that such claims should not be completely denied if the tenant received the *RAP Notice* more than 60 days before the petition was filed.

The tenants first received the *RAP Notice* at least as early as 2011, far more than 60 days before filing their petition. Therefore, in accordance with the Regulations and Board

⁸ O.M.C. § 8.22.090 (2)(a)

⁹ O.M.C. § 8.22.070(F)

¹⁰ O.M.C. § 8.22.110(E)

¹¹ O.M.C. § 8.22.090(A)(2)

decision,¹² the tenants can only be granted relief on their claims for decreased housing services beginning 60 days before the date on which they each filed their petition. Since they filed their petition on June 27, 2016, the tenants are entitled to bring forth claims beginning on April 28, 2016.

Additionally, the tenants have the burden of proof with respect to each claim.

Parking: The tenants established that Mr. Greer and his workers park their trucks in front of the entrance to their unit 5-6 times a month. This is a condition of property that did not exist when they first rented their unit and is a decrease in housing services. The tenants are entitled to unimpeded access to their unit.

The tenants are entitled to an ongoing rent decrease of 1% of the rent, until Mr. Greer and his employees no longer park their cars in front of the tenants' unit. They are also entitled to restitution of overpaid rent for this condition since April 28, 2016.

Working on Premises: The tenants established that when they moved into the unit the owner did not use the unit to do repair work or drill, saw or hammer outside their unit. These actions by the owner and his employees are a decrease in housing services. The tenant has complained and the owner has continued to allow his employees to work on the premises, which disturbs the tenants.

The tenants are entitled to an ongoing rent decrease of 2% of the rent for this condition of property until the owner stops doing work on the subject premises (except for work that is directly related to the subject building.) They are also entitled to restitution of overpaid rent for this condition since April 28, 2016.

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

As noted above the tenant's base rent is \$764 a month. Based on the ongoing decreased services, the tenants rent is reduced by 3% (1% for the parking on the premises, and 2% for working on the premises) for a total reduction of \$22.92. The tenant's current legal rent is therefore \$741.08 before consideration of restitution.

Additionally, according to the chart below, the tenants are owed restitution in the amount of \$183.36 for past decreased services. Overpayments of this size are normally adjusted over a period of 3 months¹³. For now this \$61.12 a month is subtracted from the current legal rent of \$741.08 for a total rent of \$679.96 a month. From December of 2016 through February of 2017, the tenants' rent is \$679.96.

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¹² Appeal Decision in Case No. T09-0086, Lindsey v. Grimsley, et al.

¹³ Regulations, Section 8.22.110(F)

VALUE OF LOST SERVICES

Service Lost	From	To	Rent	% Rent Decrease	Decrease /month	No. Months	Overpaid
Parking on premises	28-Apr-16	30-Nov-16	\$764	1%	\$ 7.64	8	\$ 61.12
Working on premises	28-Apr-16	30-Nov-16	\$764	2%	\$ 15.28	8	\$122.24
TOTAL LOST SERVICES							\$ 183.36

RESTITUTION

MONTHLY RENT	\$764
TOTAL TO BE REPAID TO TENANT	\$ 183.36
TOTAL AS PERCENT OF MONTHLY RENT	24%
AMORTIZED OVER 3 MO. BY REG. IS	\$ 61.12

However, should the owner and his employees stop parking cars in the driveway adjacent to the tenants' unit, the owner can increase the rent by 1% or \$7.64 a month. If the owner and his employees stop working on the premises (except for work related to the subject building) the owner can increase the rent by 2% or \$15.28 a month. In order to increase the rent after repairs the owner must provide the necessary notice pursuant to Civil Code § 827.

Additionally, if the owner wishes to pay the tenants the restitution in one lump sum, he has the authority to do so. If the owner pays the tenants restitution, the tenants must stop deducting the restitution.

ORDER

1. Petition T16-0347 is granted in part.
2. The base rent for the unit is \$764 a month.
3. Due to ongoing decreased housing services, the tenants are entitled to an ongoing rent decrease of 3% (\$22.92 a month.) The tenants' current legal rent, before consideration of restitution, is \$741.08 a month.
4. Due to past decreased services, the tenants are owed restitution of \$183.36. This overpayment is adjusted by a rent decrease for the next 3 months in the amount of \$61.12 a month.
5. The tenants' rent for the months of December 2016 through February of 2017 is \$679.96 per month. The rent reverts to \$741.08 a month in March of 2017 (unless the owner has stopped parking and working on the premises, and has sent a valid rent increase notice).

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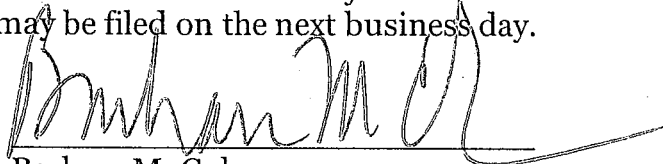
6. If the owner wishes to, he can repay the restitution owed to the tenants at any time. If he does so, the monthly decrease for restitution ends at the time the tenants are provided restitution.

7. If the owner and his employees stop parking on the premises adjacent to the tenants unit, the owner can increase the rent by 1% (\$7.64 a month.) If the owner and his employees stop working on the premises (other than for work related to the subject building), the owner can increase the rent by 2% (\$15.28 a month.) **In order to increase the rent the owner must provide the necessary notice pursuant to Civil Code § 827.**

8. Nothing in this Order prevents the owner from increasing the rent at any time, provided that the rent increase notice is served pursuant to Civil Code § 827 and the Rent Adjustment Ordinance.

9. 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: October 31, 2016



Barbara M. Cohen
Hearing Officer
Rent Adjustment Program

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PROOF OF SERVICE

Case Number T16-0347

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

Ernestine Lockhart
820 59th St #B
Oakland, CA 94608

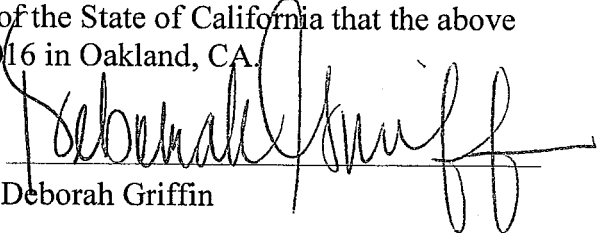
Irvin Arthur Smith
820 59th St #B
Oakland, CA 94608

Owner

Greg Greer
P.O. Box 3871
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 November 01, 2016 in Oakland, CA.


Deborah Griffin

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T16-0347 RC/BC

<p>CITY OF OAKLAND RENT ADJUSTMENT PROGRAM Mail To: P. O. Box 70243 Oakland, California 94612-0243 (510) 238-3721</p>	<p>For date stamp. 2016 JUN 27 AM 11:42</p>
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Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed.

TENANT PETITION

Please print legibly

Your Name ERNESTINE LOCKHART IRVIN ARTHUR SMITH	Rental Address (with zip code) 820 59th St #B OAKLAND, CALIF 94608	Telephone (510) 655-6847
Your Representative's Name	Mailing Address (with zip code)	Telephone
Property Owner(s) name(s) Greg Greer	Mailing Address (with zip code) P.O. Box 3871 OAKLAND, CALIF, 94609	Telephone (510) 409-2297

Number of units on the property: 5

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

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

<input checked="" type="checkbox"/> (a) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
<input type="checkbox"/> (b) The owner did not give me a summary of the justification(s) for the increase despite my written request.
<input type="checkbox"/> (c) The rent was raised <u>illegally</u> after the unit was vacated (Costa-Hawkins violation).
<input type="checkbox"/> (d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.)
<input checked="" type="checkbox"/> (e) A City of Oakland form notice of the existence of the Rent Program was not given to me at least six months before the effective date of the rent increase(s) I am contesting.
<input checked="" type="checkbox"/> (f1) The housing services I am being provided have decreased. (Complete Section III on following page)
<input checked="" type="checkbox"/> (f2) At present, there exists a health, safety, fire, or building code violation in the unit. <u>If the owner has been cited in an inspection report, please attach a copy of the citation or report.</u>
<input 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: 10/27/1988 Initial Rent: \$ 400.00 /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: 06/21/2016. 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		
06/21/2016	08/01/2016	\$ 764.	\$ 839.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
05/15/2015	07/01/2015	\$ 730.	\$ 764.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
05/31/2014	07/01/2014	\$ 704.	\$ 730.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
06/01/2013	07/01/2013	\$ 690.	\$ 704.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
03/15/2012	05/01/2012	\$ 626.50	\$ 690.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

* 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.

[Signature]
Tenant's Signature

06/27/2016
Date

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

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

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

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

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

Tenant's Signature

Date

VI. IMPORTANT INFORMATION:

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

File Review

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

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

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