

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

July 13, 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. CONSENT ITEMS
 - i. Approval of Minutes June 8, 2017
4. OPEN FORUM
5. NEW BUSINESS
 - i. Appeal Hearing in Consolidated Cases:
 - a. T15-0617; Chow v. Lew
T16-0641; Kaplan v. Lew
 - b. Appreciation Plaques to former Board members: Linda Lonay, Craig Castellanet and Noah Frigault
 - c. Discussion and Possible Action on Regulations for the Tenant Protection Ordinance Clarifying Terms "Bad Faith" and "Pattern and Practice"
6. SCHEDULING AND REPORTS
 1. For review only: Board Panel meeting minutes for June 29, 2017.
7. ADJOURNMENT

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

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OFFICE OF THE CITY CLERK
OAKLAND

sensitivities (EI/MCS). Auxiliary aids and services and alternative formats are available by calling (510) 238-3716 at least 72 hours prior to this event.

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

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

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

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

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

**CITY OF OAKLAND
HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD**

**Regular Meeting
June 8, 2017**

**7:00 p.m.
City Hall, Hearing Room #1
One Frank H. Ogawa Plaza, Oakland, CA**

MINUTES

1. CALL TO ORDER

The HRRRB was called to order at 7:05 p.m. by Board Chair, Jessie Warner.

2. ROLL CALL

MEMBER	STATUS	PRESENT	ABSENT	EXCUSED
Jessie Warner	Homeowner	X		
Debbie Mesaros	Tenant	X		
Ramona Chang	Property Owner		X	
Karen Friedman	Property Owner	X		
Terry Sandoval	Tenant	X		
Mary Jo Cook	Homeowner	X		
Robert Stone	Homeowner	X		

Staff Present

Kent Qian	Deputy City Attorney
Connie Taylor	Rent Adjustment Program Manager

3. CONSENT ITEMS

i. Approval of Minutes for May 25, 2017

K. Friedman made motion to approve minutes. R. Stone seconded. The Board voted as follows:

Aye: J. Warner, Debbie Mesaros, K. Friedman, T. Sandoval, M.J. Cook, R. Stone

Nay: 0

Abstained: 0

The motion was approved by consensus.

4. OPEN FORUM

No Speakers.

5. NEW BUSINESS

i. Appeal Hearing in cases:

a. L15-0061; 4CH, Inc. v. Tenants

Appearances: Tenant Appeal

Tenant Representative

Nancy Tam
John Chang

Property Owner

Stephen Rood

Rebuttal

All parties offered rebuttal.

Board Discussion

After Board discussion and questions to both parties, K. Friedman made a motion to affirm the Hearing Officer's decision based on substantial evidence. M.J. Cook seconded.

D. Mesaros made a motion to remand the case back to the Hearing Officer for further investigation of the issues raised in the appeal. J. Warner seconded. The Board voted as follows:

Aye: J. Warner, D. Mesaros, T. Sandoval
Nay: R. Stone, K. Friedman, M.J. Cook
Abstained: 0

The motion failed.

The Board voted on the first motion as follows:

Aye: R. Stone, M. J. Cook, T. Sandoval, K. Friedman
Nay: D. Mesaros, J. Warner
Abstained: 0

The motion passed.

b. T14-00527; Weinstein v. Baradat

Appearances: Tenant appeal

Tenants

Martha and Steve Weinstein

Property Owner Representative

John Heim, Esq.

Rebuttal

Martha Weinstein
John Heim, Esq.

Board Discussion

After Board discussion and questions to both parties, J. Warner made a motion to remand the case to the Hearing Officer to determine the amount of decreased housing services for the six-week period that the elevator was not working. A friendly amendment was offered: a reasonable amount of time should be given for the owner to repair the elevator. The Hearing Officer can conduct another hearing if necessary. The amendment was accepted. R. Stone seconded. The Board voted as follows:

Aye: R. Stone, M.J. Cook, T. Sandoval, K. Friedman, J. Warner, D. Mesaros
Nay: 0
Abstain: 0

The motion was approved by consensus.

8:45 Break (5 minutes)

ROLL CALL

Robert Stone
Debbie Meseros
Jessie Warner
Mary Jo Cook
Terry Sandoval
Karen Friedman

c. T15-0698; Diaz v. Le

Appearances: Property Owner Appeal

Property Owner

Minh Lee

Tenant

Elizabeth Diaz

Rebuttal

Both parties offered rebuttal

Board Discussion

After Board discussion and questions to both parties, J. Warner made a motion to affirm the Decision based on substantial evidence. D. Meseros seconded. The Board voted as follows:

Aye: J. Warner, R. Stone, M.J. Cook, T. Sandoval, K. Friedman, D. Meseros
Nay: 0
Abstained: 0

The motion carried by consensus.

D. Appreciation Plaque for Noah Frigault

This item moved to a future Board meeting.

6. ADJOURNMENT

J. Warner made motion to adjourn. K. Friedman seconded. The meeting was adjourned by consensus at 9:40 p.m.

CHRONOLOGICAL CASE REPORT

Case Nos.: Consolidated Cases: T15-0617 & T15-0641
Case Names: Chow v. Lew & Kaplan v. Lew
Property Address: 335 – 49th Street, Rear House & Apt. B, Oakland
Parties: Clara Chow &
Patricia & Richard Kaplan (Tenants)
Debra Lew (Property Owner)

TENANT APPEAL:

Case: T15-0617

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	November 20, 2015
Landlord Response filed	December 28, 2015
Tenant Appeal filed	April 19, 2017

Case: T15-0641:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	December 1, 2015
Owner Response filed	December 28, 2015
Tenant Appeal filed	April 18, 2016

Decisions/Documents filed regarding both cases:

Hearing Decision issued:	March 18, 2016
Corrected Hearing Decision issued:	March 30, 2016
Owner Documents submitted:	January 30, 2017
Owner Response to Petition submitted:	July 3, 2017

Hearing Decision on Remand issued
In case T14-0366; T14-0367 & T14-0380
(referenced in Hearing Decision)

000003

City of Oakland Residential Rent Adjustment Program 250 Frank Ogawa Plaza, Suite 5313 Oakland, California 94612 (510) 238-3721		2016 APR 19 PM 3:47 APPEAL	
Appellant's Name CLARA CHOW		Landlord <input type="checkbox"/>	Tenant <input checked="" type="checkbox"/>
Property Address (Include Unit Number) 335-49th Street, Rear House, Oakland, Ca 94609			
Appellant's Mailing Address (For receipt of notices) 335-49th Street, Rear House Oakland, Ca 94609		Case Number T 15-0617	Date of Decision appealed 3-29-2016
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.)

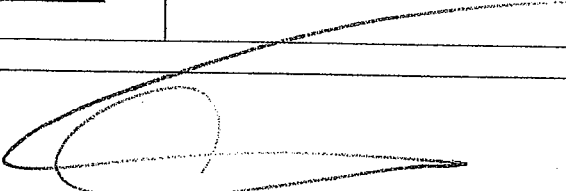
1. The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board. You must identify the Ordinance section, regulation or prior Board decision(s) and specify the inconsistency.
2. The decision is inconsistent with decisions issued by other hearing officers. 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.

000004

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 12. 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 4/19, 2016 placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

Name	Debra Lew c/o David Golden
Address	90 New Montgomery St., Ste 905
City, State Zip	San Francisco, Ca 94105
Name	
Address	
City, State Zip	

	April 19, 2016
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

IMPORTANT INFORMATION:

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

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

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Case # T15-0617

Corrected Hearing Decision = 3/29/2016

Proof Of service = 3/30/2016

Date of Hearing : 2/08/2016

A: Address correction for T15-0617

T15-0617 , Chow v. Lew (Rear Cottage) as stated on the corrected hearing decision is incorrect.

The unit where we resided since 11/1/1998 had always been recorded as

(335 - 49th St., Rear House) as our postal address and voter registration address as of 11/1/1998.

Please correct the error for case # T15-0617 (Chow v. Lew)

The Rear House is a 2 story unit. We have no access to the downstairs unit. The downstairs unit has a working toilet and sink, laundry facility (double sink with laundry hook ups). A studio is situated next to the laundry room with private access from the backyard. Our landlord and her contractors have complete control and access to the downstairs unit, which is equipped with water and electricity, and of course, many outlets throughout the area. We had been paying the utilities for the entire building (upper and lower unit) since we moved in 11/01/1998 , there are no separate meters for the upper and lower unit.

As noted on the (Notice of Hearing) executed on 11/24/2015 by Deborah Griffin from Oakland Rent Adjustment Program). The Tenant's address is :

334 49th Street, Rear Unit

Oakland, CA 94609

Case No. T15-0617

Case Title and File name is Chow v. Lew

Please make the necessary correction to our address on record. Reference to case # T14-0380 for further clarification as needed.

This is to clarify that our living unit is a shared space, where the landlord has complete access to entry. Please reference case # T14-0380 dated 04/15/2015 (page 10), where the hearing officer had physically toured the entire rear building (upper and lower units) on 2/25/2015 , with our current landlord and tenant (myself).

B: The hearing decision failed to address the validity of the rent increase. The contentions of the parties were mis-stated for T15-0617.

As stated in the original petition filed by tenant, I had questioned the validity of the CPI pass through for the year 2014. In reference to case # T14-0380, a \$205.67 Capital improvements had been granted to the owner. So, why is the owner entitled to 2 separate rent increases in a 12-month period.

Per 8.22.070(A1) An owner may increase the Rent on a covered unit occupied continuously by the same tenant only once in a 12-month period. Such rent increase cannot take effect earlier than the tenant's anniversary date.

In the corrected hearing decision dated 3/29/2016, THE ISSUES (item #1) was not answered to my understanding of the ordinance. Was the landlord entitled to 2 rent increases in a 12 month period for the year 2014 ??

The issues were stated on the petition filed by the tenant and thoroughly discussed on 2/08/2016 during the hearing. The CPI increase of \$23.06 in year 2014 should not have been be used in the calculation of the New monthly Rent Payment.

C: Base rent used for Calculation

A basement rent of \$975 was used for calculation in the (Annual Increases Table).

Please clarify as to how the base rent of \$975 was determined for year ending 10/31/2004.

At the commencement of our tenancy 11/1/98, we were not given or informed of the (City of Oakland Rent Adjustment Program, supplement required with notice increasing rent or changing terms of tenancy). Our base rent was \$850 on 11/1/1998, it was increased to \$ 1,100 by 8/1/2009 as noted by Lapham property management company. That was an increase of 29.4% from 11/1/1998 to 8/1/2009 with no proper notice requirements to the RAP program.

Thank you for your attention in this matter,

335 – 49th Street

Rear House,

Oakland, CA 94609

Sincerely yours,

Clara Chow

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. <div style="text-align: right;"> 2015 DEC 28 PM 12:15 CITY OF OAKLAND RENT ADJUSTMENT PROGRAM </div>
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Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your response being rejected or delayed.

CASE NUMBER T15-0617 MS/LM

OWNER RESPONSE

Please print legibly.

Your Name Debra Law	Complete Address (with zip code) 90 David Golden 90 New Montgomery St #905 San Francisco CA 94105	Phone: (415) 722 7527 Email: DB@LAW@AOL.COM
Your Representative's Name (if any) David Golden	Complete Address (with zip code) 90 New Montgomery St #905 San Francisco CA 94105	Phone: (415) 806 9995 Fax: _____ Email: GOLDKOP@AOL.COM
Tenant(s) name(s) Clara Chow Tom Kramamoto	Complete Address (with zip code) 335 44th St, Piedr Horse Oakland CA 94609	(510) 597-1689

Have you paid for your Oakland Business License? Yes No Number 28042043
 (Provide proof of payment.) SEE ATTACHED

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

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

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

I. RENTAL HISTORY

The tenant moved into the rental unit on 11/01/1998.

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

Have you (or a previous Owner) given the City of Oakland's form entitled **NOTICE TO TENANTS OF RESIDENTIAL RENT ADJUSTMENT PROGRAM ("RAP Notice")** to all of the petitioning tenants?

Yes No I don't know If yes, on what date was the Notice first given? 12/20/2013.

Is the tenant current on the rent? Yes No No dispute that RAP notice was not given to tenants previously. see also petition # T14-0380.

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

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

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 ^{pp2}		Did you provide NOTICE TO TENANTS with the notice of rent increase?
		*PROPOSED/PENDING ONLY From	To	
9/27/2015	11/01/2015	\$ 1220.27	\$ 1264.58*	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
7/5/2014	10/01/2014	\$ 1220.27	\$ *	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No →
7/24/2013	09/13/2013	\$ 1195.17	\$ 1220.27	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

No Final Decision to Appeal.
#TA-0380 from 10/14

Increases by prior not in dispute.
Owner etc

II. JUSTIFICATION FOR RENT INCREASE

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

Date of Notice of Increase	Banking (deferred annual increases.)	Increased Housing Service Costs	Capital Improvements	Uninsured Repair Costs	Fair Return	Debt Service (if purchased before 4/1/14)
9/27/15	<input checked="" type="checkbox"/> 2014 (Banked) 2015 (CPI)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7/5/14	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/> No CPI or banked rent requested or paid.	<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 N/A

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.

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OFFICE OF HOUSING ASSISTANCE PROGRAM

IV. EXEMPTION N/A

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

- The unit is a single family residence or condominium exempted by the **Costa Hawkins Rental Housing Act** (California Civil Code 1954.50, et seq.). **If claiming exemption under Costa-Hawkins, please answer the following questions on a separate sheet:**
 1. Did the prior tenant leave after being given a notice to quit (Civil Code Section 1946)?
 2. Did the prior tenant leave after being given a notice of rent increase (Civil Code Section 827)?
 3. Was the prior tenant evicted for cause?
 4. Are there any outstanding violations of building housing, fire or safety codes in the unit or building?
 5. Is the unit a single family dwelling or condominium that can be sold separately?
 6. Did the petitioning tenant have roommates when he/she moved in?
 7. If the unit is a condominium, did you purchase it? If so: 1) from whom? 2) Did you purchase the entire building?
- The rent for the unit is **controlled, regulated or subsidized** by a governmental unit, agency or authority other than the City of Oakland Rent Adjustment Ordinance.
- The unit was **newly constructed** and a certificate of occupancy was issued for it on or after January 1, 1983.
- On the day the petition was filed, the tenant petitioner was a resident of a **motel, hotel, or boarding house** for less than 30 days.
- The subject unit is in a building that was **rehabilitated** at a cost of 50% or more of the average basic cost of new construction.
- The unit is an accommodation in a **hospital, convent, monastery, extended care facility, convalescent home, non-profit home for aged, or dormitory** owned and operated by an educational institution.
- The unit is located in a building with three or fewer units. The owner occupies one of the units continuously as his or her principal residence and has done so for at least one year.

V. IMPORTANT INFORMATION

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

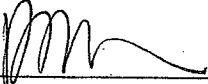
NOTE: If you do not file a timely Response, you will not be able to produce evidence at the Hearing, unless you can show good cause for the late filing.

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

VI. VERIFICATION

Owner must sign here:

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



Owner's Signature

12/23/2015

Date

RECEIVED
RENT ADJUSTMENT PROGRAM
2015 DEC 23 PM 12:35

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

T15-0617 MS/LM

CITY OF OAKLAND RENT ADJUSTMENT PROGRAM Mail To: P. O. Box 70243 Oakland, California 94612-0243 (510) 238-3721	For date stamp. 2815 NOV 20 PM 4:44 REGISTRATION PROGRAM
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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 Clara Chow	Rental Address (with zip code) 335-49th St Rear House, Oakland	Telephone 510-597-1689
Your Representative's Name James Vann	Mailing Address (with zip code) 251 Wayne Ave., Oakland, Ca 94606	Telephone 510-763-0142
Property Owner(s) name(s) Debra Lew	Mailing Address (with zip code) c/o David Golden 90 New Montgomery St. # 905	Telephone 415-722-7527

Number of units on the property: 5 S.F., Ca 94105

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

I. GROUNDS FOR PETITION: Check all that apply. You must check at least one box. For all of the grounds for a petition see OMC 8.22.070. **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"/>	(f) The housing services I am being provided have decreased. (Complete Section III on following page)
<input type="checkbox"/>	(g) 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"/>	(h) The contested increase is the second rent increase in a 12-month period.
<input type="checkbox"/>	(i) The notice of rent increase based upon capital improvement costs does not contain the "enhanced notice" requirements of the Rent Adjustment Ordinance or the notice was not filed with the Rent Adjustment Program (effective August 1, 2014).
<input type="checkbox"/>	(j) My rent has not been reduced after the expiration period of the rent increase based on capital improvements.
<input type="checkbox"/>	(k) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).

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

Date you moved into the Unit: 11-1-1998 Initial Rent: \$ 850⁰⁰ /month

When did the owner first provide you with a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program (RAP NOTICE)? Date: 12/20/2013 If never provided, enter "Never."

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

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

Date Notice Served (mo/day/year)	Date Increase Effective (mo/day/year)	Amount Rent Increased		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
9-27-2015	11-1-2015	\$ 1220.27	\$ 1264.58	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
9-27-2015	11-1-2015	\$ <u>CPI 2014 + 2015</u>	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<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: T14 - 0380

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.

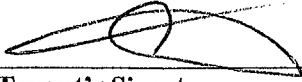
- Are you being charged for services originally paid by the owner? Yes No
- Have you lost services originally provided by the owner or have the conditions changed? Yes No
- Are you claiming any serious problem(s) with the condition of your rental unit? Yes No

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

11-20-2015
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): _____

Date : 11/20/2015

Reference Case # : **T14-0380**

To: City of Oakland, Rent Adjustment Program

This Petition is to contest the CPI increase of 1.9% for Year 2014.

In Reference to Case #T14-0380, pending hearing before the rent board on 12/10/2015, the owner of the property had already served us a notice of increase on 7/05/2014. The current base rent of \$1220.27 was increased by **35%** (\$414.72) to the final sum of \$1634.99. The rent increase was to commence on 10/1/2014, will be in effect for 60 months (5 years), to be expired on 9/01/2019.

The 35% rent increase was due to alleged capital improvements that did not benefit our family tenant). On 9/27/2015, the owner had served us another " Notice of Increase of Rent ", in the sum of \$44.31 per month effective 11/1/2015. The increase was based on 2014 CPI of 1.9% and 2015 CPI of 1.7%.

Since the current base rent is \$1220.27, The 2014 CPI of 1.9% would yield an increase of \$23.18 for a subtotal of \$1243.45. I was advised by the staff member at the RAP program, in addition, I sought additional information from the Oakland Tenant's Union. I was strongly advised to file a petition to contest the CPI increase for 2014. Since the landlord had already asked to pass through capital improvements costs of \$414.72 per month for a duration of 5 years beginning 10/1/2014, the additional CPI increase of 1.9% for 2014 was not justified . This will of course affect the calculation of the 2015 CPI increase of 1.7%.

It makes no sense to post an increase for 2015 CPI, since our base rent is under further review with the rent board, our hearing is scheduled on 12/10/2015. I am certain our Base rent will be adjusted after the final hearing.

As of 11/1/2015, I had paid the total rent amount of \$ 1,264.48 to the landlord. I will continue to do so pending the results of the petition.

Thank you for your time and patience,

Clara Chow



335 49th St., Rear house

Oakland, CA 94609

Attachment : Notice of Increase dated 9/27/2015

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2016 APR 18 AM 11:36

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

Appellant's Name Patricia and Richard Kaplan	Landlord <input type="checkbox"/> Tenant <input checked="" type="checkbox"/>
--	--

Property Address (Include Unit Number) 335 49th St. Apt. B Oakland, CA 94609

Appellant's Mailing Address (For receipt of notices) 335 49th St. Apt. B Oakland, CA 94609	Case Number T15-0641 Date of Decision appealed March 15, 2016 March 29, 2016 JK
---	---

Name of Representative (if any) James E. Vann	Representative's Mailing Address (For notices) 251 Wayne Ave. Oakland, CA 94606
---	--

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.*

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4

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 4 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 April 15, 2016, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

Name	Debra Lew c/o David Golden
Address	90 New Montgomery Street Suite 905
City, State Zip	San Francisco, CA 94105
Name	
Address	
City, State Zip	

<i>Patricia Kaplan</i> <i>Richard Kaplan</i> SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	4/14/16 4/14/16 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.

April 15, 2016

To: City of Oakland Rent Adjustment Program
From: Patricia and Richard Kaplan
335 49th St. Apt. B
Oakland, CA 94609

2016 APR 18 AM 11:36

We, the undersigned residents of 335 49th St. Apt. B, wish to appeal the March 29, 2016 Corrected Hearing Officer's decision in Case# T15-0641, served on March 30, 2016.

In the decision, the Hearing Officer did not address either of our grievances:

- 1) The landlord did not use "banking" properly to calculate the rent increase of Dec. 15, 2015;
- 2) The landlord cannot increase the rent based on BOTH Capital Improvements and CPI.

1. Banking: misapplication of the rule

The rent increase is based on faulty understanding of how the "Banking" rules should work. There are two different ways that the Hearing Officer and the landlord erred in figuring "Banking."

First, there have been no years when we did not have an increase. Our initial lease began on July 20, 2006 at a rent of \$1250. As you can see in the table below, our rent remained \$1250 until July 1, 2008. There has been only one year, 2007, that we have not received a CPI rent increase. The following year, 2008, the rent increase was for \$50 or 4% (by the previous landlord, now deceased), more than the allowed CPI for 2007 of 3.3% or 2008 of 3.2%. According to the Landlord form for Banking, "Past increases for unspecified reasons are presumed to be for banking." *Therefore, 2007 is no longer bankable. It was already used as a "banked" year.* Landlord Lew cannot use 2007 as a bankable year as she states she is doing in her Justification for Rent Increase.

Second, the 3x in the "banking" formula refers to the number of years in the last 10 years that no CPI increase has been taken, with a maximum of 3 years. It appears that Landlord Lew and the Hearing Officer interpreted the "3x" in the Banking maximum to mean that the landlord can collect 3 times the current CPI. Our contention is that the "3x" means that the landlord is limited to collecting rent increases from a maximum of 3 years of missed CPI rent increases in the last 10 years. If, for instance, the landlord failed to impose a CPI increase for 2 years of the past 10 years, then the landlord may only multiply the current CPI by 2, not 3, in order to determine the increase.

2. The landlord may charge tenants either Capital Improvements OR CPI in the same year. NOT BOTH

In October, 2014, our landlord increased our rent based on Capital Improvements. The landlord cannot take the CPI increase for a year, 2014, that she has taken a capital improvements pass-through. The RAP Landlord Resource states, "*An owner may take the CPI increase OR any combination of individual adjustments, but not both.*" —please see attached copy of that webpage.

(<http://www2.oaklandnet.com/Government/o/hcd/s/LandlordResources/DOWD008760>).

Therefore, she cannot bank this failure to increase the rent by the CPI in 2014 which is precisely what she says she is doing in her "Justification for Increase of Rent."

000018

Please note:

STATE OF CALIFORNIA
OFFICE OF THE ADMINISTRATIVE DIRECTOR

Since August 31, 2015, we have received 4 notices concerning a rent increase for 2015, including 3 "amended" notices. One of these notices was an amended notice that changed the rent by one cent. Two of these completely changed the due date for our rent. In addition, we finally received a rescission of the previous rent increases and now the current increase notice. That's 6 notices in 9 weeks. Furthermore, she has recently "appealed" the Hearing Officer's Decision based on a 14 cent typographical error.

Please overturn the Hearing Officer's Decision.

Thank you.

Patricia Kaplan
Richard Kaplan

Date Notice Served (mo/day/year)	Date Increase Effective (mo/day/year)	Amount Rent Increased		Landlord's Name
		From	To	
7/5/14	10/1/14	\$1442.14	\$1659.09	D. Lew
7/24/13	9/1/13	\$1412.48	\$1442.14	L. Leong
7/24/12	9/1/12	\$1371.34	\$1412.48	L. Leong
7/19/11	9/1/11	\$1344.45	\$1371.34	L. Leong
7/29/10	9/1/10	\$1309.10	\$1344.45	L. Leong
5/1/09	8/1/09	\$1300	\$1309.10	L. Leong
5/1/08	7/1/08	\$1250	\$1300	L. Leong

2016 APR 18 AM 11:36

2015 DEC -1 PM 2:15

Debra Lew
C/O David Golden
90 New Montgomery Street Suite 905
San Francisco, CA 94105

November 9, 2015

Patricia and Richard Kaplan
335 49th Street, Unit B
Oakland, CA 94609

RE: Notice to Change Terms of Tenancy (Notice of Increase of Rent)

Dear Mr. and Ms. Kaplan:

Notice is hereby given that the terms of tenancy under which you occupy the above premises will change. As you are aware, all prior notices of increase of rent were rescinded per the Notice of Rescission dated November 8, 2015. It has been over two (2) years since your base rental rate was reviewed or otherwise adjusted based on the cost of living and other economic factors. In order to keep up with the operating costs at the property and to offset various taxes, fees and other expenses that have been charged to the property for services enjoyed by the tenants, your rental rate will be changed as follows:

Effective December 15, 2015, your base rent will be increased by \$73.54 per month, from \$1,442.14 to **\$1,515.68** per month, payable in advance.

The CPI for 2015 is 1.7% (or \$24.51 for a total of \$1,466.65); three times the current CPI is 5.1% or \$73.54. This is the maximum banked amount allowed to be raised.

This is \$.01 less than noticed in the Second Amended Notice mailed on October 12, 2015, as there is an error in the City of Oakland RAP's online excel sheet, which rounds up. The banking years' total is 5.2% for 2007 (3.3%) and 2014 (1.9), which exceeds the 3 x current CPI by .1%. Using the CPI ceiling, 5.1% times \$1,442.14 is the \$73.54 corrected increase. The \$73.54 increase plus the \$1,442.14 base rent equals \$1,515.68. Please note, there was no increase based upon CPI in 2014. That notice for increase was solely based upon a capital improvement pass-through.

The City of Oakland Has a Residential Rent Arbitration Ordinance (RRAO) which sets forth certain guidelines for annual rent increases for rentals within the City. Should you have questions about the propriety of the subject rent increase, please feel free to contact the Oakland Rent Adjustment Program (510)238-3721. While we have provided this information to you previously, we have attached a duplicate copy of the ordinance summary herewith for your reference. It is the express intention of the Landlord that the balance of any allowed rent increases under the Ordinance are deemed banked under the provisions of the RRAO and can be added to any future increases and transferred to any future property owners.

Very truly yours,


Debra Lew, Owner/Landlord

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Justifications for Rent Increase Higher than the CPI Increase

Banking:

Saving rent increases that are not given in one year and imposing them in subsequent years.

Capital Improvements: Seeking a rent increase based on improvements that materially add to the value of the property and appreciably prolong its useful life or adapt it to new building codes. These improvements must primarily benefit the tenant. Increases are divided among all units benefited by the improvement and are amortized (spread out) over five years. The increase expires at the end of 5 years.

Uninsured Repairs: An increase for work performed to secure compliance with any state or local law to repair damage from fire, earthquake, or other casualty or natural disaster to the extent the repairs are not reimbursed by insurance. These increases are allocated and amortized like capital improvements.

Debt Service Costs: An increase that allows an owner to collect rents sufficient to cover the combined housing service and debt service costs for a loan secured by the property to finance a purchase of the property or improvements in the property that directly benefits the tenants..

Increased Housing Service Costs: An increase that compares two years of operating expenses and allows for an increase in situations where there has been an increase in those costs.

Constitutional Fair Rate of Return: By law, owners must be allowed an increase that allows them to earn a fair rate of return on their investment.

NOTE: An owner may take the CPI Increase OR any combination of individual adjustments, but not both.

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.

CITY OF OAKLAND
 RENT ADJUSTMENT PROGRAM
 2015 DEC 28 PM 12:47

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

CASE NUMBER T15-0641

OWNER RESPONSE

Please print legibly.

Your Name Debra Lew	Complete Address (with zip code) 40 David Golden 90 new Montgomery ST #905 San Francisco CA 94105	Phone: <u>(415) 722 7527</u> Email: _____
Your Representative's Name (if any) David Golden	Complete Address (with zip code) Golden Kopcke 90 new Montgomery ST #905 San Francisco CA 94105	Phone: <u>(415) 806 9995</u> Fax: _____ Email: <u>goldkop@aol.com</u>
Tenant(s) name(s) Patricia Kaplan Richard Kaplan	Complete Address (with zip code) 335 49th ST Unit B Oakland CA 94609	<u>(510) 596 8846</u>

Have you paid for your Oakland Business License? Yes No Number 280 4243
 (Provide proof of payment.)

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

There are four residential units in the subject building. I acquired the building on 12/18/13.
 Is there more than one street address on the parcel? Yes No .

I. RENTAL HISTORY

The tenant moved into the rental unit on 07/20/2006.

The tenant's initial rent including all services provided was \$ 1250.00 / 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? By me: 12/20/2015

Is the tenant current on the rent? Yes No By previous owner: since inception? - undisputed.
(see petition T14-0367, T15-0516; T15-0608 and T15-0641)

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

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.

2015 DEC 28 PM 12:48

IV. EXEMPTION MP

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.**

CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM
DEC 28 2015
PM 12:48

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.

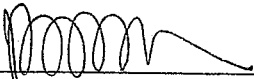
VI. VERIFICATION

Owner must sign here:

RENT ADJUSTMENT PROGRAM

2015 DEC 28 PM 12:48

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


Owner's Signature

12/23/2015
Date

(# Plus Eight Exhibits for Kaplan v. KW in total #1-37)
SEE #TIS-0608 Owners Response (attached hereto)

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

6 pages are attached hereto and incorporated as though set forth in full, for a total of 10 pages

2015 DEC 28 PM 12:48

RENT ADJUSTMENT PROGRAM

T15-0641 NS/LM

CITY OF OAKLAND RENT ADJUSTMENT PROGRAM Mail To: P. O. Box 70243 Oakland, California 94612-0243 (510) 238-3721	For date stamp: RENT ADJUSTMENT PROGRAM 2015 DEC -1 PM 2:14
--	---

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 Patricia and Richard Kaplan	Rental Address (with zip code) 335 49th St. Apt. B 94609	Telephone 510-596-8846
Your Representative's Name James Vann	Mailing Address (with zip code) 251 Wayne Ave., Oakland, CA 94606	Telephone 510-763-0142
Property Owner(s) name(s) Debra Lew	Mailing Address (with zip code) c/o David Golden 90 New Montgomery St. #905, San Francisco, CA 94105	Telephone 415-722-7527

Number of units on the property: 5

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="checkbox"/> Yes	No	Legally Withholding Rent. You must attach an explanation and citation of code violation.

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

<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"/>	(f) The housing services I am being provided have decreased. (Complete Section III on following page)
<input type="checkbox"/>	(g) 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"/>	(h) The contested increase is the second rent increase in a 12-month period.
<input type="checkbox"/>	(i) The notice of rent increase based upon capital improvement costs does not contain the "enhanced notice" requirements of the Rent Adjustment Ordinance or the notice was not filed with the Rent Adjustment Program (effective August 1, 2014).
<input type="checkbox"/>	(j) My rent has not been reduced after the expiration period of the rent increase based on capital improvements.
<input type="checkbox"/>	(k) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).

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

Date you moved into the Unit: July 20, 2006 Initial Rent: \$ 1250 /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: December 20, 2013 If never provided, enter "Never."

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

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

Date Notice Served (mo/day/year)	Date Increase Effective (mo/day/year)	Amount Rent Increased		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
11/09/2015	12/15/2015	\$ 1442.14	\$ 1515.68	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
07/05/2014	10/01/2014	\$ 1442.14	\$ 1659.09	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No **	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
07/24/2013	09/01/2013	\$ 1412.48	\$ 1442.14	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
07/24/2012	09/01/2012	\$ 1371.34	\$ 1412.48	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
07/19/2011	09/01/2011	\$ 1344.45	\$ 1371.34	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
07/29/2010	09/01/2010	\$ 1309.10	\$ 1344.45	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input checked="" 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: ** T14-0367, current T15-0516 and T15-0608

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.

Patricia Kaplan
Richard Kaplan

Tenant's Signature

11-30-2015
11-30-2015

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): _____

November 30, 2015

To: Rent Adjustment Program Hearing Officer

From: Patricia and Richard Kaplan
335 49th St. Apt. B
Oakland, CA 94609

We, the undersigned residents of 335 49th St. Apt. B, wish to petition against:

- 1) the rent increase of \$73.54 to take effect December 15, 2015.
- 2) the change in due date of the rent to the 15th of the month from the 1st.
- 3) harassment with constant and trivial amendments to her rent increases, etc.

Rent Increase

The landlord notified us of a capital improvements increase last year. The decision of the Hearing Officer in that case is still on appeal. The appeal is set to be heard on Dec. 10.

The RAP Landlord Resource states, "An owner may take the CPI increase OR any combination of individual adjustments, but not both." —please see attached copy of that webpage. (<http://www2.oaklandnet.com/Government/o/hcd/s/LandlordResources/DOWD008760>).

Landlord Lew's proposed rent increase violates two requirements:

1. The landlord cannot take the CPI increase for a year, 2014, that she has taken a capital improvements pass-through.
2. The 3x in the "banking" formula refers to the number of years in the last 10 years that no CPI increase has been taken, with a maximum of 3 years.

Our initial lease began on July 20, 2006 at a rent of \$1250. As you can see in the table below, our rent remained \$1250 until July 1, 2008. There has been only one year, 2007, that we have not received a CPI rent increase. Therefore, the calculation for "banking" should only be ONE times the current CPI of 1.7%. Our current base rent is \$1442.14. That would calculate to an increase of \$24.52.

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 to Tenants with the Notice of Increase?	Landlord's Name
		From	To			
7/5/14	10/1/14	\$1442.14	\$1659.09	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	D. Lew
7/24/13	9/1/13	\$1412.48	\$1442.14	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	L. Leong
7/24/12	9/1/12	\$1371.34	\$1412.48	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	L. Leong
7/19/11	9/1/11	\$1344.45	\$1371.34	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	L. Leong
7/29/10	9/1/10	\$1309.10	\$1344.45	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	L. Leong
5/1/09	8/1/09	\$1300	\$1309.10	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	L. Leong
5/1/08	7/1/08	\$1250	\$1300	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	L. Leong

(continued)

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Due date

Lew has changed the due date for our rent from the 1st of the month to the 15th. We are also petitioning to have the due date remain the 1st of each month, as it has been since we started renting this apartment 9 years ago, before she became the owner.

Harassment

During the summer, Lew sent us unnecessary and unsolicited copies of several additions to her appeal of the Hearing Officer's decision for the 2014 capital improvements pass-through.

Since August 31, 2015, we have received 4 notices concerning a rent increase this year, including 3 "amended" notices. Two of these completely changed the due date for our rent. In addition, we received a rescission of the previous rent increases and now the current increase notice. That's 6 notices in 9 weeks.

Please examine this rent increase, the change in the due date, and this harassment.

Thank you.

Patricia Kaplan
Richard Kaplan

Patricia Kaplan
Richard Kaplan



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: T15-0516, Kaplan v. Lew (Unit B)
T15-0608, Kaplan v. Lew (Unit B)
T15-0617, Chow v. Lew (Rear Cottage)
T15-0641, Kaplan v. Lew (Unit B)

PROPERTY ADDRESS: 335 49th St., Oakland, CA 94609

DATE OF HEARING: February 8, 2016

DATE OF DECISION: March 15, 2016

APPEARANCES: Richard Kaplan, Tenant (Unit B)
Patricia Kaplan, Tenant (Unit B)
Clara Chow, Tenant (Rear Cottage)
James B. Vann, Tenant Representative
Debra Lew, Owner

SUMMARY OF DECISION

The tenant petitions are granted in part.

CONTENTIONS OF THE PARTIES

The tenants Patricia and Richard Kaplan filed three Tenant Petitions (T15-0516 on 9/29/15, T15-0608 on 11/10/15, and T15-0641 on 12/28/15), contesting three different rent increases, alleging that the rent increases are unjustified, exceed the CPI Adjustment or greater than 10%.

The tenant Clara Chow filed a Tenant Petition (T15-0617), contesting a single rent increase, alleging that the increase exceeds the CPI adjustment and is unjustified or greater than 10%.

000031

The owner filed timely responses to all tenants' petitions, alleging banking justification for the rent increases.

The tenant petitions were consolidated into a single hearing.

THE ISSUES

- (1) Are the rent increases valid?
- (2) If so, has the banking justification been properly calculated?

EVIDENCE

Background

The subject Unit B is located in a residential building consisting of three (3) units and a Cottage unit is a separate building in the back of the property. The entire property consists of total four (4) units. It is undisputed that the tenants received their first notice of the existence of the Rent Adjustment Program (RAP) on December 20, 2013, and also with each rent increase notice.

Tenants Patricia and Richard Kaplan (Unit B): The tenants moved into the subject unit on July 20, 2006, at an initial monthly rent of \$1,250.00. It was clarified at the hearing, and confirmed by the owner, that the only pending rent increase is the rent increase proposing to increase the monthly rent from \$1,442.14 to \$1515.68, effective December 15, 2015.¹ All prior rent increases have been rescinded or superseded by this most recent rent increase. The tenant's testified that they paid \$1,466.66 on December 15, 2015, and \$1,442.14 in January and February of 2016.

Tenant Clara Chow (Rear Cottage): The tenant moved into the cottage on November 1, 1998, at an initial monthly rent of \$850.00. She was served a rent increase notice dated September 27, 2015, proposing to increase her rent from \$1,220.27 to \$1,264.58, effective November 1, 2015. The tenant has been paying the increased amount since November 1, 2015.

The owner filed timely responses to tenant petitions, alleging banking as a justification for the rent increase.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Hearing Decision After Remand

On March 3, 2016, this office issued a Decision After Remand relating to tenants' prior petitions T14-0367 and T14-0380. This Decision sets the base rents as of October 1, 2014, plus capital improvements pass-through a for five-year amortization period from October 1, 2014, through September 30, 2019. Therefore, this Hearing

¹ Exhibit A

Decision is bound by the base rent amounts and capital improvements pass-through set in the Remand Decision and will use these amounts for the banking calculations for the pending rent increases.

Banking

An owner is allowed to bank increases and use them in subsequent years, subject to certain limitations.² However, the total of CPI adjustments imposed in any one rent increase, including the current CPI rent Adjustment, may not exceed three times the allowable CPI Rent Adjustment on the effective date of the rent increase notice.³ The banking calculations set forth in the attached Tables indicate the allowable banking amounts for each unit.

Unit B: The maximum allowable Banking is \$73.54. The new base rent is \$1,515.54. This is the new base rent before the capital improvement pass-through of \$213.81.

Rear Cottage: The maximum allowable Banking is \$37.53. The new base rent is \$1,257.53. This is the new base rent before the capital improvement pass-through of \$205.67.

Unit #	Base rent	Banking allowed	New base rent	CI Pass-Through	New Monthly Rent Payment
B	\$1,442.00	\$73.54	\$1,515.54	\$213.81	\$1,729.35 as of 12/15/15
Cottage	\$1,220.00	\$37.53	\$1,257.53	\$205.67	\$1,463.20 as of 11/1/15

ORDER

1. The Tenant Petitions T15-0516, T15-0641, and T15-0608 (Unit #B) are granted in part. The rent increase based on banking is allowed in the amount of \$73.54. The new base rent is \$1,515.54 before the capital improvement pass-through of \$213.81. On October 1, 2019, the rent will be reduced by \$213.81.
2. The Tenant Petition T15-0617 (Rear Cottage) is granted in part. The rent increase based on banking is allowed in the amount of \$37.53. The new base rent is \$1,257.53 before the capital improvement pass-through of \$205.67. On October 1, 2019, the rent will be reduced by \$205.67.

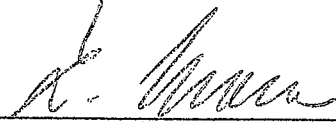
² O.M.C. Section 8.22.070(B)(5)

³ RAP Regulations 10.5

3. Any overpayments or underpayments should be determined by the parties and adjusted over a six-month period.

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

Dated: March 15, 2016



Linda M. Moroz
Hearing Officer
Rent Adjustment Program

CITY OF OAKLAND



**Department of Housing and Community Development
Rent Adjustment Program**

<http://www2.oaklandnet.com/Government/o/hcd/o/RentAdjustment/>

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

CALCULATION OF DEFERRED CPI INCREASES (BANKING)

Initial move-in date	1-Nov-1998		
Effective date of increase	1-Nov-2015		
Current rent (before increase and without prior cap. improve pass-through)	\$1,220		
Prior cap. imp. pass-through	\$ 205.67		
Date calculation begins	31-Oct-2004	Case No.:	T15-0617
Base rent when calc. begins	\$975	Unit:	Cottage

**CHANGE
YELLOW
CELLS ONLY**

If the planned increase includes other than banking put an X in the box →

ANNUAL INCREASES TABLE

Year Ending	Debt Serv. or Fair Return increase	Housing Serv. Costs increase	Base Rent Reduction	Annual %	CPI Increase	Rent Ceiling
10/31/2015				1.7%	\$ 21.02	\$ 1,257.53
10/31/2014				1.9%	\$ 23.06	\$ 1,236.51
10/31/2013				2.1%	\$ 24.96	\$ 1,213.46
10/31/2012				3.0%	\$ 34.62	\$ 1,188.50
10/31/2011				2.0%	\$ 22.63	\$ 1,153.88
10/31/2010				2.7%	\$ 29.74	\$ 1,131.26
10/31/2009				0.7%	\$ 7.66	\$ 1,101.52
10/31/2008				3.2%	\$ 33.92	\$ 1,093.86
10/31/2007				3.3%	\$ 33.86	\$ 1,059.94
10/31/2006				3.3%	\$ 32.78	\$ 1,026.08
10/31/2005				1.9%	\$ 18.52	\$ 993.30
10/31/2004				-	-	\$975

Calculation of Limit on Increase

Prior base rent	\$1,220.00
Banking limit this year (3 x current CPI and not more than 10%)	5.1%
Banking available this year	\$ 37.53
Banking this year + base rent	\$ 1,257.53
Prior capital improvements recovery	\$ 205.67
Rent ceiling w/o other new increases	\$ 1,463.20

Notes:

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

PROOF OF SERVICE

Case Number T15-0516, T15-0608, T15-0617, T15-0641

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:

Owner

Debra Lew c/o David Golden
90 New Montgomery St #905
San Francisco, CA 94105

Tenant

Richard and Patricia Kaplan
335 49th St #B
Oakland, CA 94609

Tenant Representative

James Vann
251 Wayne Ave
Oakland, CA 94606

Tenant

Clara Chow
335 49th St.- Rear Unit
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 **March 18, 2016** in Oakland, California.



Esther K. Rush
Oakland Rent Adjustment Program

000037-



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

CORRECTED HEARING DECISION

CASE NUMBER: T15-0516, Kaplan v. Lew (Unit B)
T15-0608, Kaplan v. Lew (Unit B)
T15-0617, Chow v. Lew (Rear Cottage)
T15-0641, Kaplan v. Lew (Unit B)

PROPERTY ADDRESS: 335 49th St., Oakland, CA 94609

DATE OF HEARING: February 8, 2016

DATE OF DECISION: March 29, 2016

APPEARANCES: Richard Kaplan, Tenant (Unit B)
Patricia Kaplan, Tenant (Unit B)
Clara Chow, Tenant (Rear Cottage)
James B. Vann, Tenant Representative
Debra Lew, Owner

REASON FOR CORRECTED DECISION

On March 18, 2016, a Hearing Decision was mailed to all parties. On March 25, 2016, the owner filed an Appeal stating that there was a calculation error in the Hearing Decision with respect to the banking calculation and the base rent. The banking calculator left out two decimal points of 'current rent before increase.' This Decision corrects this error. Other than the correction of the banking calculation, the Hearing Decision remains the same.

This CORRECTED HEARING DECISION sets out a new appeal period.

SUMMARY OF DECISION

The tenant petitions are granted in part.

000038

CONTENTIONS OF THE PARTIES

The tenants Patricia and Richard Kaplan filed three Tenant Petitions (T15-0516 on 9/29/15, T15-0608 on 11/10/15, and T15-0641 on 12/28/15), contesting three different rent increases, alleging that the rent increases are unjustified, exceed the CPI Adjustment or greater than 10%.

The tenant Clara Chow filed a Tenant Petition (T15-0617), contesting a single rent increase, alleging that the increase exceeds the CPI adjustment and is unjustified or greater than 10%.

The owner filed timely responses to all tenants' petitions, alleging banking justification for the rent increases.

The tenant petitions were consolidated into a single hearing.

THE ISSUES

- (1) Are the rent increases valid?
- (2) If so, has the banking justification been properly calculated?

EVIDENCE

Background

The subject Unit B is located in a residential building consisting of three (3) units and a Cottage unit is a separate building in the back of the property. The entire property consists of total four (4) units. It is undisputed that the tenants received their first notice of the existence of the Rent Adjustment Program (RAP) on December 20, 2013, and also with each rent increase notice.

Tenants Patricia and Richard Kaplan (Unit B): The tenants moved into the subject unit on July 20, 2006, at an initial monthly rent of \$1,250.00. It was clarified at the hearing, and confirmed by the owner, that the only pending rent increase is the rent increase proposing to increase the monthly rent from \$1,442.14 to \$1515.68, effective December 15, 2015.¹ All prior rent increases have been rescinded or superseded by this most recent rent increase. The tenant's testified that they paid \$1,466.66 on December 15, 2015, and \$1,442.14 in January and February of 2016.

Tenant Clara Chow (Rear Cottage): The tenant moved into the cottage on November 1, 1998, at an initial monthly rent of \$850.00. She was served a rent increase notice dated September 27, 2015, proposing to increase her rent from \$1,220.27 to \$1,264.58, effective November 1, 2015. The tenant has been paying the increased amount since November 1, 2015.

¹ Exhibit A

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The owner filed timely responses to tenant petitions, alleging banking as a justification for the rent increase.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Hearing Decision After Remand

On March 3, 2016, this office issued a Decision After Remand relating to tenants' prior petitions T14-0367 and T14-0380. This Decision sets the base rents as of October 1, 2014, plus capital improvements pass-through a for five-year amortization period from October 1, 2014, through September 30, 2019. Therefore, this Hearing Decision is bound by the base rent amounts and capital improvements pass-through set in the Remand Decision and will use these amounts for the banking calculations for the pending rent increases.

Banking

An owner is allowed to bank increases and use them in subsequent years, subject to certain limitations.² However, the total of CPI adjustments imposed in any one rent increase, including the current CPI rent Adjustment, may not exceed three times the allowable CPI Rent Adjustment on the effective date of the rent increase notice.³ The banking calculations set forth in the attached Tables indicate the allowable banking amounts for each unit.

Unit B: The maximum allowable Banking is \$73.55. The new base rent is \$1,515.69. This is the new base rent before the capital improvement pass-through of \$213.81.

Rear Cottage: The maximum allowable Banking is \$37.55. The new base rent is \$1,257.82. This is the new base rent before the capital improvement pass-through of \$205.67.

Unit #	Base rent	Banking allowed	New base rent	CI Pass-Through	New Monthly Rent Payment
B	\$1,442.14	\$73.55	\$1,515.69	\$213.81	\$1,729.50 as of 12/15/15
Cottage	\$1,220.27	\$37.55	\$1,257.82	\$205.67	\$1,463.49 as of 11/1/15

² O.M.C. Section 8.22.070(B)(5)

³ RAP Regulations 10.5

CITY OF OAKLAND



**Department of Housing and Community Development
Rent Adjustment Program**

<http://www2.oaklandnet.com/Government/o/hcd/o/RentAdjustment/>

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

CALCULATION OF DEFERRED CPI INCREASES (BANKING)

Initial move-in date	1-Nov-1998	MUST FILL IN D9, D10, D11 and D14	Case No.: T15-0617	CHANGE YELLOW CELLS ONLY
Effective date of increase	1-Nov-2015		Unit: cottage	
Current rent (before increase and without prior cap. improve pass-through)	\$1,220.27			
Prior cap. imp. pass-through	\$ 205.67			
Date calculation begins	31-Oct-2004			
Base rent when calc. begins	\$975.00			

If the planned increase includes other than banking put an X in the box →

ANNUAL INCREASES TABLE

Year Ending	Debt Serv. or Fair Return increase	Housing Serv. Costs increase	Base Rent Reduction	Annual %	CPI Increase	Rent Ceiling
10/31/2015				1.7%	\$ 21.03	\$ 1,257.82
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10/31/2013				2.1%	\$ 24.96	\$ 1,213.73
10/31/2012				3.0%	\$ 34.62	\$ 1,188.77
10/31/2011				2.0%	\$ 22.63	\$ 1,154.14
10/31/2010				2.7%	\$ 29.75	\$ 1,131.51
10/31/2009				0.7%	\$ 7.66	\$ 1,101.76
10/31/2008				3.2%	\$ 33.93	\$ 1,094.11
10/31/2007				3.3%	\$ 33.87	\$ 1,060.18
10/31/2006				3.3%	\$ 32.79	\$ 1,026.31
10/31/2005				1.9%	\$ 18.53	\$ 993.53
10/31/2004				-	-	\$975.00

Calculation of Limit on Increase

Prior base rent	\$1,220.27
Banking limit this year (3 x current CPI and not more than 10%)	5.1%
Banking available this year	\$ 37.55
Banking this year + base rent	\$ 1,257.82
Prior capital improvements recovery	\$ 205.67
Rent ceiling w/o other new increases	\$ 1,463.49

Notes:

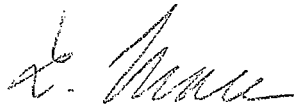
1. You cannot use banked rent increases after 10 years.
2. CPI increases are calculated on the base rent only, excluding capital improvement pass-throughs.
3. The banking limit is calculated on the last rent paid, excluding capital improvement pass-throughs.
4. Debt Service and Fair Return increases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

ORDER

1. The Tenant Petitions T15-0516, T15-0641, and T15-0608 (Unit #B) are granted in part. The rent increase based on banking is allowed in the amount of \$73.55. The new base rent is \$1,515.69 before the capital improvement pass-through of \$213.81. On October 1, 2019, the rent will be reduced by \$213.81.
2. The Tenant Petition T15-0617 (Rear Cottage) is granted in part. The rent increase based on banking is allowed in the amount of \$37.55. The new base rent is \$1,257.82 before the capital improvement pass-through of \$205.67. On October 1, 2019, the rent will be reduced by \$205.67.
3. Any overpayments or underpayments should be determined by the parties and adjusted over a six-month period.

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

Dated: March 29, 2016



Linda M. Moroz
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE

Case Number T15-0516, T15-0608, T15-0617, T15-0641

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 **Corrected 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:

Owner

Debra Lew c/o David Golden
90 New Montgomery St #905
San Francisco, CA 94105

Tenant

Richard and Patricia Kaplan
335 49th St. #B
Oakland, CA 94609

Tenant

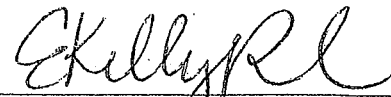
Clara Chow
335 49th St. Rear Unit
Oakland, CA 94609

Tenant Representative

James Vann
251 Wayne Ave.
Oakland, CA 94606

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **March 30, 2016** in Oakland, California.



Esther K. Rush

Oakland Rent Adjustment Program

000044

IP286
House

PROOF OF SERVICE

RECEIVED
CITY OF OAKLAND
RENT ARBITRATION PROGRAM
2017 JAN 30 PM 1:09

TO T. Kumamoto & Y. Clara Chow, TENANT IN POSSESSION
335 49th STREET # House, OAKLAND, CALIFORNIA.

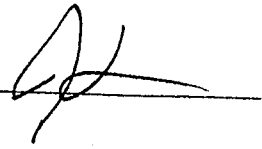
RE: DISTRIBUTION OF:

1. 30 DAY NOTICE OF CHANGE OF TERMS OF TENANCY
2. PROTECT YOUR FAMILY FROM LEAD IN YOUR HOME PAMPHLET
3. LEAD DISCLOSURE FORM
4. LAPHAM BUILDING EMERGENCY PROCEDURES
5. HOUSE RULES
6. CITY OF OAKLAND RESIDENTIAL RENT ARBITRATION NOTICE
7. MEGAN'S LAW
8. MOLD ADDENDUM
9. PEST CONTROL ADDENDUM
10. NO CASH POLICY

I, the undersigned, being at least 18 years of age, declare under penalty of perjury that I served the Notice of Change of Terms of Tenancy, of which this is a true copy, on the above mentioned Tenant in Possession in the manner(s) indicated below:

- () On _____, 20___, I handed the Notice to the tenant
- () I handed the Notice to a person of suitable age and discretion at the tenant's residence/business on _____, 20___.
- () I posted the Notice in a conspicuous place at the tenant's residence on _____, 20___.
- I sent by first class mail a true copy of the Notice to the tenant at his place of residence on 5-6-, 2009

Executed on 5-6-, 2009 at Oakland



Proof of RAP Notices 5/6/2009

Chow v Lew Appeal
TIG-0617 P.1 of 7

000045



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JAN 30 PM 1:10

NOTICE TO TENANTS OF RESIDENTIAL RENT ADJUSTMENT PROGRAM

The City of Oakland has a Residential Rent Adjustment Program ("RAP") (Oakland Municipal Code Chapter 8.22) that covers most residential rental units built before 1983. It does not apply to units rented under section 8, most single family dwellings and condominiums and some other types of units. For more information on which units are covered, call the RAP office. This Program limits rent increases and some changes in terms of tenancy for covered residential rental property in Oakland.

You have a right to file a petition with the RAP to contest a rent increase that is greater than the annual general rent increase (the CPI increase). A landlord can increase rent more than the CPI rate, but with some limits, for: capital improvements, operating expense increases, debt service, and deferred annual rent increases. You can also complain about other violations of the Rent Adjustment Ordinance. The landlord must provide you with a written summary of the reasons for any increase greater than the CPI rate if you request one in writing.

If there is a decrease in the housing services provided to you, this may be considered an increase in your rent. A decrease in housing service includes substantial problems with the condition of a unit.

To contest a rent increase, you must file a petition with the RAP using the Rent Program's form, within sixty (60) days after first receiving written notice of the RAP or within sixty (60) days of receiving a notice of rent increase or change in terms of tenancy, whichever is later. You can obtain information and the petition forms from the Rent Adjustment Program office or online at <http://www.oaklandnet.com/government/hcd/rentboard/tenant.html>.

If you contest a rent increase, you must pay your rent, with the contested increase, until you file a petition. After you file your petition, you may pay only the portion of the increase due to the CPI Rent Adjustment percentage if the CPI increase amount has been stated on the notice of rent increase. If it has not been stated separately, you may pay only the rent you were paying before the notice of rent increase. If the increase is approved and you did not pay the increase as noticed, you will owe the amount of the increase retroactive to the date it would have been effective under the notice.

Eviction controls are in effect in the City of Oakland (the Just Cause for Eviction Ordinance, O.M.C. 8.22.200, et seq.). You cannot be arbitrarily evicted if your rental unit is covered by the Just Cause for Eviction Ordinance. For more information call the Rent Adjustment Office.

Oakland charges landlords a Rent Program Service Fee of \$30 per unit per year. If the landlord pays the fee on time, the landlord is entitled to get half of the fee (\$15) per unit from you. The \$15 you pay of the annual fee is not part of the rent.

The Nuisance Eviction Ordinance (O.M.C. Chapter 8.23) may require that a tenant who commits or permits certain illegal acts in the Rental Unit or on the land on which the unit is located or in the common areas of the rental complex must be evicted. If the owner does not evict, the City Attorney may do so.

TENANTS' SMOKING POLICY DISCLOSURE

Smoking MAY BE permitted in the unit you plan to rent. (See attached addendum)

Smoking IS permitted in other units of your building. (If both smoking and non-smoking units exist in the tenant's building, attach a list of units in which smoking is permitted.) [see attached addendum next page]

Smoking is PROHIBITED in all common areas, both indoors and outdoors.

There IS NOT a designated outdoor smoking area.

此份屋審 (奧克蘭) 市租客權利通知書附有中文版本。請致電 (510) 238-3721 索取副本。

La Notificación del Derecho del Inquilino está disponible en español. Si desea una copia, llame al (510) 238-3721.

Baun Thoang Baou queyan loi cuua ngöozi thua trong Oakland naoy cuong coù baeng tieang Vieät. Neá coù moät baun sao, xin goii (510) 238-3721.

15 0617

p.2 of 7

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HARBORLAND PROGRAM
JAN 30 PM 1:10

ADDENDUM
NOTICE TO TENANTS OF RESIDENTIAL RENT ADJUSTMENT PROGRAM
Tenant's Smoking Policy Disclosure (Continued)
Multi-Unit Residential Properties

Whereas on November 4, 2007, the Oakland City council amended the City's Smoking Pollution Ordinance (Chapter 8.30 of the Oakland Municipal Code (OMC)) which changes confirm and modify no smoking policies in public areas and in and around multi-family residential properties (apartment Buildings), **and**

Whereas as property managers representing owners of multifamily properties (hereinafter "Owners"), it is Lapham Company responsibility to clearly state the basic provisions of OMC regarding smoking policy in and around multi-unit residential properties and to articulate the building-specific policy of said owners regarding the status of individual apartments within the multi-unit residential property, **and**

Whereas a part of the Owner's responsibility under the Oakland Smoking Pollution ordinance is to disclose to prospective and new tenants of the smoking policy for the apartments in multi-unit housing. Because it was previously not required for Owners to know the smoking status of residents, and in order to fully provide that disclosure, Owners must gather information from all existing tenants in the building regarding their individual smoking status, which information must be disclosed to prospective and new tenants, but which information is not available at the outset of the implementation of the amended Oakland Smoking Pollution Control Ordinance, **and**

Whereas it is Owner's plan to gather that information from existing tenants and provide same to prospective and new tenants as it becomes available, **now therefore**

Owner (Lapham Company as Agent of Owner) does hereby include the following information as an Addendum to the NOTICE TO TENANT'S OF RESIDENTIAL RENT ADJUSTMENT PROGRAM - Tenant's Smoking Policy Disclosure as a part of the attached NOTICE TO TENANT'S OF RESIDENTIAL RENT ADJUSTMENT PROGRAM:

1. It is acknowledged that at the outset of the tenancy, smoking **IS NOT** permitted in the apartment which is being rented pursuant to the attached lease.
2. There has been no previous requirement to address or monitor smoking in the subject building and smoking **IS** therefore probably occurring in other units of building in which the above referenced unit is located, but owner is not aware of the detail listing of which units in the building are occupied by tenants who smoke. However, Owner is endeavoring to obtain that information and will provide same to the tenant herein when such information is available.
3. As per the OMC, Smoking is **PROHIBITED** in all indoor and outdoor common areas of the property, including but not limited to hallways, walkways, elevator, stairways, garage, laundry room, lobby/entry, decks, landings, and within 25 feet of any doorway, air intake, or operable window.

T15-0617

P.3 of 7

SINCE 1911

THE LAPHAM COMPANY, INC.

4844 Telegraph Avenue, Oakland, California 94609 • 510-594-7600 • Fax 510-594-7611

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RENT ARBITRATION PROGRAM
2017 JAN 30 PM 1:10

April 25, 2009

Tom and Clara Kumamoto
335 49th Street - Rear House
Oakland, California 94609

RE: CHANGE OF PROPERTY MANAGEMENT

Via First Class Mail

Dear Clara and Tom:

We are pleased to inform you that effective May 1, 2009, The Lapham Company has been retained as Property Managers of 335 41st Street. The Lapham Company has been in business in the East Bay since 1911, and we look forward to serving you.

With your May, 2009 rent and thereafter, please make your monthly rent obligation check payable to THE LAPHAM COMPANY and forward to our office prior to the delinquency date. We have enclosed a supply of pre-addressed rental payment envelopes for your convenience. Our office is nearby at 4844 Telegraph Avenue in the Temescal district, and you are welcome to drop your rent off at our office or you can deposit your rent in our drop box if you prefer. As Agents of the property owner, our contact information is as follows:

The Lapham Company, Inc.
4844 Telegraph Avenue
Oakland, California 94609 510-594-7600 / 594-7611 fax
www.Laphamcompany.com

As a reminder, no rent payment invoices will be sent to you, and rent is due on the first day of each month. If you have a maintenance requirement, please contact our office at 510-594-7600. For after hours emergencies (only) contact, the number is 510-649-5743.

We look forward to meeting you as we visit the property in the weeks ahead, and we are grateful for the opportunity to serve the building ownership and residents. If you have any questions about this transition in property management responsibilities, please contact Jon in our office at extension 102.

Thank you.

LAPHAM MANAGEMENT COMPANY

115-0611

p.4 of 7



REAL PROPERTY ASSET MANAGEMENT
Email: laphamcompany@laphamcompany.com
www.laphamcompany.com

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CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM
ARBITRATION PROGRAM
JAN 30 11:10
(510) 238-3721
FAX (510) 238-3697
TDD (510) 238-3254

Community and Economic Development Agency
Rent Adjustment Program

NOTICE TO TENANTS OF RESIDENTIAL RENT ADJUSTMENT PROGRAM

- The City of Oakland has a Residential Rent Adjustment Program ("RAP") (Chapter 8.22 of the Oakland Municipal Code) that covers most residential rental units built before 1983. It does not apply to units rented under section 8, most single family dwellings and condominiums and some other types of units. For more information on which units are covered, call the RAP office. This Program limits rent increases and some changes in terms of tenancy for covered residential rental property in Oakland.
- You have a right to file a petition with the RAP to contest a rent increase that is greater than the annual general rent increase (the CPI increase). A landlord can increase rent more than the CPI rate, but with some limits, for: capital improvements, operating expense increases, debt service, and deferred annual rent increases. You can also complain about other violations of the Rent Adjustment Ordinance. The landlord must provide you with a written summary of the reasons for any increase greater than the CPI rate if you request one in writing.
- If there is a decrease in the housing services provided to you, this may be considered an increase in your rent. A decrease in housing service includes substantial problems with the condition of a unit.
- To contest a rent increase, you must file a petition with the RAP using the Rent Program's form, within sixty (60) days after first receiving written notice of the RAP or within sixty (60) days of receiving a notice of rent increase or change in terms of tenancy, whichever is later. You can obtain information and the petition forms from the Rent Adjustment Program office or online at <http://www.oaklandnet.com/government/hcd/rentboard/tenant.html>
- If you contest a rent increase, you must pay your rent, with the contested increase, until you file a petition. After you file your petition, you may pay only the portion of the increase due to the CPI Rent Adjustment percentage if the CPI increase amount has been stated on the notice of rent increase. If it has not been stated separately, you may pay only the rent you were paying before the notice of rent increase. If the increase is approved and you did not pay the increase as noticed, you will owe the amount of the increase retroactive to the date it would have been effective under the notice.
- Eviction controls are in effect in the City of Oakland (the Just Cause for Eviction Ordinance, O.M.C. 8.22.200, et seq.). You cannot be arbitrarily evicted if your rental unit is covered by the Just Cause for Eviction Ordinance. For more information call the Rent Adjustment Office.

Oakland charges landlords a Rent Program Service Fee of \$30 per unit per year. If the landlord pays the fee on time, the landlord is entitled to get half of the fee (\$15) per unit from you. The \$15 you pay for the annual fee is not part of the rent.

The Nuisance Eviction Ordinance (O.M.C. Chapter 8.23) may require that a tenant who commits or permits certain illegal acts in the Rental Unit or on the land on which the unit is located or in the common areas of the rental complex must be evicted. If the owner does not evict, the City Attorney may do so.

TENANTS' SMOKING POLICY DISCLOSURE

- Smoking (circle one) IS or IS NOT permitted in Unit all units in the building, the unit you plan to rent.
- Smoking (circle one) IS or IS NOT permitted in other units of your building. (If both smoking and non-smoking units exist in the tenant's building, attach a list of units in which smoking is permitted.)
- Smoking is PROHIBITED in all common areas, both indoors and outdoors.
- There (circle one) IS or IS NOT a designated outdoor smoking area. It is located at _____

I received a copy of this notice on _____

此份屋脊(奧克蘭)市租客權利通知書附有中文版本。請致電(510) 238-3721 索取副本。

La Notificación del Derecho del Inquilino está disponible en español. Si desea una copia, llame al (510) 238-3721.

Bản Thông Báo quyền lợi của người thuê trong Oakland này cũng có bằng tiếng Việt. Để có một bản sao, xin gọi (510) 238-3721.

AMN
715-0611
P.6 of 7

Please see reverse for Rent Increase Information →

000050

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CITY OF OAKLAND RENT ADJUSTMENT PROGRAM
SUPPLEMENT REQUIRED WITH NOTICE INCREASING RENT OR CHANGING
TERMS OF TENANCY

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Oakland has a Rent Adjustment Program that limits rent increases.

A rental property owner may increase rent only once every 12 months. A tenant who receives a rent increase above an annual amount (CPI Rent Adjustment) may petition the Rent Adjustment Program to require the owner to justify the amount of the increase in excess of the CPI Rent Adjustment. A tenant must file the petition within 60 days of the owner's serving the rent increase notice or the tenant gives up the right to contest the increase.

When a rent increase exceeds the CPI amount allowed, a tenant may request a summary of the justifications for the rent increase from the owner. The request must be made in writing within 30 days of receipt of the notice of increase. The owner must provide a written response within 15 days of the tenant serving the request for the summary or the increase notice is invalid.

The tenant and the owner are encouraged to communicate with each other to resolve their differences without the need for filing a petition.

The current annual increase allowed is 2.1%

This notice provides limited information. For further information, contact the Rent Adjustment Program at 250 Frank H. Ogawa Plaza, 5th Floor, Oakland CA 94612 - (510) 238-3721.

Optional by owner: If you file a petition with the Rent Program on the petition is decided by the Rent Adjustment Program. This amount is \$ _____

PROOF OF SERVICE

I, the undersigned, being at least 18 years of age, declare under penalty of perjury that I served this rent increase, you must pay the amount of the increase equal to the CPI Rent Adjustment until the Change of Terms of Tenancy and Supplemental Notice, of which this is a true copy, on the above mentioned Tenant in Possession in the manner(s) indicated below:

On _____ I handed the Notice to the tenant.

I handed the Notice to a person of suitable age and discretion at the tenant's residence / business on _____

I posted the Notice in a conspicuous place at the tenant's residence on _____

I sent by 1st class mail a true copy of the Notice to the tenant at his place of residence on July 24, 2013

Executed July 24th, 2013, at Oakland, CA

at

See Reverse

CHOW
715-0617

P. 7 of 7

000051

OWNER LEW'S REPLY TO BANKING APPEAL (Chow T15-0617 and Kaplan T15-0641):

A. AS TO BOTH TENANTS: NO CPI INCREASE WAS GIVEN IN 2014 AND IS THEREFORE PROPERLY BANKED

The parties stipulated that only a Capital Improvement Pass-Through ("Cap Imp" or "CIPT") was taken in 2014. No Annual Permissible Consumer Price Index, now known as a CPI Adjustment ("CPI"), was charged or paid for 2014. The Ordinance in 2015 forbids both a Cap Imp and CPI be simultaneous taken in one year.

The purpose of a CIPT is to *reimburse* the Owner for improvements she paid for that primarily benefitted the tenants. A CIPT is only a *temporary* increase which terminates after reimbursement has been completed. On the other hand, the CPI increase is to afford the Owner with a general annual increase to keep up with *inflation, particularly giving* the Owner a minimum increase for the increased inflationary costs of *maintenance and operating costs* in light of the *rent control limitations and rent increase prohibitions*. This is a permanent increase to the base rent.

Therefore, the CPI general annual increase which represents the rate of inflation related to a fair return, for the year 2014 was postponed, saved and used for the increase 13 months later for 2015. The ordinance does not provide for a waiver of the CPI. Also, Banking addresses specifically the situations where an owner cannot or does not want to effectuate a CPI increase a Tenant's rent for the particular year. Owners would be forced to *use it or lose* in part or in whole.

B. Allegations Not Raised in the Petition or Hearing Are Improper as an Appeal is a Review

Chow and Kaplan now for the first time, raises new matter not raised in the Petition or hearing regarding the history of her increases. This is a violation of Lew's due process rights. The statements of fact in the Appeal of the tenants are not under penalty of perjury, and Chow's statement contain falsehoods, misrepresentations and half-truths that are not relevant to the current proceedings.

Chow had constantly maintained she only disputes the 2014 increase which necessarily affects the 2015 base rent. Her two Petition were executed under penalty of perjury that she was (1) "not contesting prior CPI Increase" on September 2, 2014 (see Exhibit 1, T14-0380); and (2) she was only contesting the banked rent for 2014 and CPI for 2015 on November 20, 2015 (see Exhibit 2, T16-617). Additionally, at the hearing, Chow twice expressly stated: "I am only contesting the 2014 increase but that determines what the base is for the 2015 CPI." (See Transcript at 7:55 - 10:05¹). Finally, Chow's new assertion is past the statute of limitations. OMC 8.22.090(A)(2).

¹ Marker 7:55

Chow: Okay, so for me, on my Petition, I am only contesting the CPI increase for 2014 because I have the same since situation as Pat and Rick because we got a huge capital improvement pass-through for the year. [Lew: Objection. Misstates...] [Chow: Excuse, I...] [Moroz: Go ahead, your objection is noted for the record.]

Chow: Okay, so I am contesting the increase for the year 2014 and the CPI increase for the year 2014 was, here go...1.9%.

[Moroz: Your total increase you received was 3.6%, total rent increase, right?]

Chow: You mean 1.9% plus 1.7, yeah, that would be the total, yes. But on the Petition, I am only contesting the 1.9% because 2014 was the year the capital improvements were passed through. But of course, if I am contesting

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RENT ADJUSTMENT PROGRAM
OAKLAND

1
Chow v. Lew (T15-0617)
Kaplan v. Lew (T15-0641)

000052

Kaplan filed an Appeal as to Petition T15-0641. Tenant now states the increase of 2008 exceeded the 2008 CPI, admitting in the hearing and on her Petition that no CPI increase was given in 2007. The Chart/table attached is *not the same as contained in the Petition T15-0641* as pertinent information is omitted to deliberately mislead this Board. A Copy of the Petition shows there was No Challenge to the 2007 or 2008 increase. They did not list or indicate that 2007 was disputed. They checked the box that 2008 was *not disputed*. The content of the Petition and reference to 2008, does not raise any argument related to partial banking.² (see Exhibit 3, T15-0641) The argument was not raised by Tenant in the Petition or the hearing and should not be considered.

Without waiving objection to this new matter, even if the CPI was not taken in 2007, it can carry to 2008 and the balance within a 10-year period. There is no rule that an Owner must take the full banked amount from 2007 or current CPI for 2008. The increase of 2008 did not exceed the total percentage of 2007 and 2008 so the difference may be carried over. Owner Lew now seeks a correction of Kaplan's base rent. The adjustment is properly determined by the RAP excel sheet. As indicated, to determine otherwise would force Owners to take the CPI *in full* every year or otherwise be subject to a loss by not enforcing the current year's CPI to the maximum allowed. Banking permits an Owner to skip the general annual increase or to apply it in part and capture the unused or saved CPI percentage in the future, limited to ten years. The RAP excel calculator supports the Decision in considering all of the CPI percentages and calculated the current adjusted rent.

C. Kaplan's Misinterpretation of the Maximum Increase of Three Times CPI

The C.P.I. is clearly three times the current year's C.P.I. The Board must interpret the meaning of the Ordinance in its plain language. There is no ambiguity in the limitation. Kaplan's interpretation is simply flawed and must fail.

In conclusion, the Decision of the Hearing Officer is supported by substantial evidence in each case. No part of the decision is inconsistent with the Ordinance. To the contrary, the Hearing Officer correctly followed the rules of banked rents and three times the current year's CPI. The Rent Board is a reviewing body which must be neutral and fair in the application of the law on the matters before it. It cannot go beyond the scope of the Ordinance. Owner requests a non-bias determination and adjustment of the proper base rent to know what increases have been banked or may be taken in the future. She respectfully requests that the Decision of both cases be upheld.

11/5/2016



Debra Lew, Respondent and Owner

the 2014, it is going to affect the decision, whatever you decide to make, it is going to affect the total for 2015. The calculation is based on the base rent. So my reason is simply because capital improvement was done in 2014, we have the hearing as well as the Board appeal hearing in December 2015.

[Moroz: Yeah, I'm aware of that as well.]

Chow: That's all I have to say.

² Our initial lease began on July 20, 2006 at a rent of \$1250... our rent remained \$1250 until July 1, 2008. There has been only one year that we have not received a CPI rent increase. Therefore, the calculation for "banking" should be ONE times the current CPI of 1.7%...

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000053

Debra Lew
c/o David Golden
22 Battery Street Suite 800
San Francisco, CA 94111
(415)722-7527

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RENT ADJUSTMENT PROGRAM
2016 AUG - 1 PM 1:37

July 26, 2016

Oakland Rent Adjustment Board
250 Frank Ogawa PL Suite 5313
Oakland, CA 94612

Re: Debra Lew's **New Address** and **Notice of Unavailability**
Kaplan v. Lew (T15-0516, T15 -0608, T15-0641)
Chow v. Lew (T15-0617)

Dear Clerk:

Please note and file a notice in each of the cases above, that effective immediately, my new mailing address is:

c/o David Golden
22 Battery Street Suite 800
San Francisco, CA 94111

My telephone number shall remain the same (415)722-7527.

Please also note that I am **unavailable and out of the state from October 24 – November 1, 2016**. Please do not set the appeal hearing for that day.

Thank you.

Sincerely,



Debra D. Lew

000054

CITY OF OAKLAND

REPORT

To: Housing Residential Rent and Relocation Board
ATTN: Jessie Warner, Chairperson
FROM: Richard Illgen and Kent Qian, Deputy City Attorney
Barbara Parker, City Attorney
DATE: July 5, 2017

RE: Proposed Tenant Protection Ordinance Regulations

The City Attorney requests that the Board consider adoption of regulations designed to clarify the TPO's "bad faith" standard and the extent of the City Attorney's enforcement authority under the Ordinance. The proposed regulations are set out in the attached resolution.

On November 5, 2014, the Oakland City Council enacted the Tenant Protection Ordinance (TPO) (Attachment A). The TPO prohibits property owners from engaging in certain, enumerated behaviors that the Ordinance characterizes as harassment and provides penalties for violations. The Council's express intent in enacting the TPO was "to deter harassing behavior by landlords, to encourage landlords to follow the law and uphold their responsibility to provide habitable rental properties, and to give tenants legal recourse in instances where they are subjected to harassing behavior by landlords." O.M.C. 8.22.610M. Under O.M.C. 8.22.680A, the City Council empowered the Board to adopt regulations for the TPO without return to the Council.

Private plaintiffs and the City Attorney's Office have brought multiple enforcement actions against abusive property owners under the TPO. These actions have demonstrated the Ordinance's effectiveness in vindicating tenants' rights and punishing and deterring harassing behavior by property owners, but have also underscored the need for regulations that clearly define the City Attorney's enforcement authority. During the course of litigation to enforce the ordinance, defendant property owners contesting various matters including:

- What constitutes "bad faith" under the ordinance for purposes of determining the nature of conduct that violates the ordinance (O.M.C. 8.22.640A); and
- What constitutes a "pattern and practice" for determining when the City Attorney has standing to bring TPO litigation against a property owner (O.M.C. 8.22.670A.2)

Although the City Attorney's Office was successful in the litigation, clarifying these two definitions through regulations is important in avoiding future litigation again contesting these issues, so to further streamline litigation and make it clearer to the parties and courts as to what these concepts mean in the context of the TPO.

Bad Faith. The TPO provides: "No Owner or such Owner's agent, contractor, subcontractor, or employee, shall do any of the following, in bad faith." O.M.C. 8.22.640A . Therefore, as part of determining when a property owner is violating the TPO is showing that the property owner's conduct was in bad faith. Clarifying bad faith will assist in complying with and enforcing the TPO. The essence of the proposed regulation to define bad faith is:

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Bad faith for purposes of the TPO represents conduct in disregard for legal requirements or in a manner indifferent to the rights of Tenants. Bad faith is an objective standard and can be inferred from the totality of the circumstances.

Pattern and practice. The TPO gives the City Attorney the authority to enforce it through civil litigation when there is a "pattern and practice" of TPO violations by a property owner. Because concept of pattern and practice is used in other litigation contexts with different constructions, it is important to clarify what it means in the TPO. Thus, the proposed regulation to define pattern and practice reads:

A pattern and practice for purposes of this Section refers to multiple violations of O.M.C. 8.22.640 against the same Tenant or one violation of O.M.C. 8.22.640 against multiple Tenants.

Conclusion

We ask that the Rent Board consider and adopt these proposed regulations.

Attachment A – Tenant Protection Ordinance

Article V. - Tenant Protection Ordinance

8.22.600 - Tenant protection ordinance.

This ordinance shall be known as the "Tenant Protection Ordinance" ("TPO").

(Ord. No. 13265, § 1, 11-5-2014)

8.22.610 - Findings and purpose.

- A. There is a very significant demand for rental housing in Oakland leading to rising rents, caused in part by the spillover of increasingly expensive housing costs in San Francisco.
- B. Rents in Oakland increased twelve percent (12%) in 2012 and 15% in 2013 (Source: East Bay Express, February 12-18, 2014, "The Rise of the New Land Lords," sourcing Oakland Department of Housing and Community Development). As noted by a February 8, 2014 Oakland Tribune article ("High prices sending Bay Area renters and homebuyers to outlying communities"), "Squeezed by astronomical home prices and rents that are almost as unaffordable, a growing number of Bay Area residents are pulling up stakes and trading long commutes for cheaper housing."
- C. According to Oakland Department of Housing and Community Development citing to Zillow Real Estate Research, the estimated rent for all homes in Oakland for June 2014 two thousand one hundred twenty-four dollars (\$2,124.00) is nearly eleven percent (11%) higher than that for the same month last year (\$1,918.00), and rents have risen every month except for one (1) since January 2013 (18 months total). If current patterns persist, the estimated rent for all homes in June 2015 will be two thousand three hundred eighty-six dollars (\$2,386.00). By comparison, the estimated median rent for all Oakland homes for June 2012 was \$1,818.00, a thirty-one percent (31%) increase in only thirty-six (36) months.
- D. On September 12, 2014, the San Francisco Examiner reported that "San Francisco and Oakland have the distinction of having some of the highest rental rate increases in the nation for the month of August," with Oakland's rents increasing fourteen and four-tenths percent (14.4%) since last year, according to data collected by Trulia.
- E. The rising market demand for rental housing in Oakland creates an incentive for some landlords to engage in harassing behavior or fail to make repairs to pressure existing tenants in rent controlled units to move so that rents can be raised. Existing remedies, such as petitioning the Rent Adjustment Program to restore a rental rate or order repairs, or employing an attorney at great cost to file a lawsuit to enforce state law of lease provisions, are insufficient deterrents to engaging in the illegal conduct in the first place.
- F. The imbalance between supply and demand creates an imbalance of bargaining power between landlords and tenants, which has resulted in many tenants, especially those not in rent controlled units, being unwilling or unable to assert their legal rights, which is detrimental to the health, safety and general welfare of Oakland because the stability, security and quality of housing opportunities are reduced.
- G. The Rent Adjustment Program office of the City of Oakland has conservatively estimated receiving one hundred (100) to two hundred (200) complaints each month from tenants claiming landlord harassment, many of which are completely outside the jurisdiction of the Rent Adjustment Program.
- H. Numerous press articles have reported on the rise of tenant harassment throughout the Bay Area.
- I. Data from organizations providing services to low-income renters in Oakland, including East Bay Community Law Center and Centro Legal de la Raza, indicate that some of their clients live in housing with habitability problems and experience landlord harassment.

- J. Of the approximately four hundred eighty (480) Oakland tenants who received legal services at Centro Legal de la Raza during fiscal year 2014 (July 1, 2013 through June 30, 2014), approximately forty percent (40%) faced harassment by their landlords. The forms of harassment varied, but included one or more of the following in each case:
1. Interrupting, terminating, failing to provide or threatening to interrupt, terminate or fail to provide housing services required by contract or by State, County or municipal housing, health or safety laws;
 2. Failing to perform required repairs and/or maintenance or threatening to fail to do so;
 3. Failing to exercise due diligence in completing repairs and maintenance once undertaken or failing to follow appropriate industry repair, containment or remediation protocols designed to minimize exposure to noise, dust, lead paint, mold, asbestos, or other building materials with potentially harmful health impacts;
 4. Abusing the owner's right of access into a rental housing unit as that right is provided by law;
 5. Unlawfully removing from the rental unit personal property, furnishings, or any other items without the prior written consent of the tenant;
 6. Influencing, or attempting to influence, a tenant to vacate a rental unit through fraud, intimidation or coercion;
 7. Attempting to coerce a tenant to vacate with offer(s) of payments to vacate which are accompanied with threats or intimidation;
 8. Threatening the tenant, by word or gesture, with physical harm;
 9. Substantially and directly interfering with a Tenant's right to quiet use and enjoyment of a rental housing unit as that right is defined by California law;
 10. Fraudulently refusing to accept or acknowledge receipt of a Tenant's lawful rent payment.
- K. A majority of Oakland residents are renters. The rental housing units in the City of Oakland include many subject to rent stabilization and some that are not. The cities of San Francisco, Santa Monica, West Hollywood, and East Palo Alto have each passed ordinances prohibiting various forms of harassment by landlords and their agents against tenants.
- L. The City Council of Oakland recognizes that displacement of tenants is a major concern and is interested in putting forth policies that help to maintain the ability of people in all income categories to live in our city. The increased housing pressures for residents across a range of lower and middle income levels warrants improved rent stabilization and tenant protection policies. The City Council finds that reasonable regulation of aspects of the landlord-tenant relationship is necessary in order to foster constructive communication, maintain an adequate supply of a variety of rental housing options, and protect health, safety, and the general welfare of the public.
- M. The purpose of this policy is to deter harassing behavior by landlords, to encourage landlords to follow the law and uphold their responsibility to provide habitable rental properties, and to give tenants legal recourse in instances where they are subjected to harassing behavior by landlords.

(Ord. No. 13265, § 1, 11-5-2014)

8.22.620 - Definitions.

"Health Facility" has the same meaning as in the Just Cause for Eviction Ordinance (O.M.C. 8.22.340).

"Owner" has the same meaning as in the Just Cause for Eviction Ordinance (O.M.C. 8.22.340).

"Owner of Record" has the same meaning as in the Just Cause for Eviction Ordinance (O.M.C. 8.22.340).

"Rent" has the same meaning as in the Just Cause for Eviction Ordinance (O.M.C. 8.22.340).

"Rent Board" has the same meaning as in the Just Cause for Eviction Ordinance (O.M.C. 8.22.340).

"Rental Agreement" has the same meaning as in the Just Cause for Eviction Ordinance (O.M.C. 8.22.340).

"Rental Unit" has the same meaning as in the Just Cause for Eviction Ordinance (O.M.C. 8.22.340).

"Tenant" has the same meaning as in the Just Cause for Eviction Ordinance (O.M.C. 8.22.340).

"Skilled Nursing Facility" has the same meaning as in the Just Cause for Eviction Ordinance (O.M.C. 8.22.340).

(Ord. No. 13265, § 1, 11-5-2014)

8.22.630 - Applicability and exemptions.

- A. The TPO shall apply to all Rental Units where there is a Rental Agreement between an Owner and one or more Tenants, unless exempted herein. The application of the TPO includes units that may not be covered under the Rent Adjustment Ordinance (O.M.C. 8.22.100, et seq.) or the Just Cause for Eviction Ordinance (O.M.C. 8.22.300, et seq.)
- B. Exemptions.
1. Exemption for nonprofit owned rental housing. Any Rental Unit owned by (a) a corporation or organization exempt pursuant to United States Internal Revenue Code §501(c)(3) or any successor legislation exempting charitable organizations from federal income tax, (b) a limited partnership where the managing general partner is a corporation or organization exempt pursuant to United States Internal Revenue Code §501(c)(3) or any successor legislation exempting charitable organizations from federal income tax, or (c) a limited partnership where the managing general partner is a limited liability company whose sole members are corporations or organizations exempt pursuant to United States Internal Revenue Code §501(c)(3) or any successor legislation exempting charitable organizations from federal income tax shall have an exemption from the TPO's civil enforcement pursuant to this article.
 2. Rental Units in any Hospital, Skilled Nursing Facility, or Health Facility.
 3. Rental Units in a nonprofit facility that has the primary purpose of providing short term treatment, assistance, or therapy for alcohol, drug, or other substance abuse and the housing is provided incident to the recovery program, and where the client has been informed in writing of the temporary or transitional nature of the housing at its inception and is licensed for such purpose where such license is required.
 4. Rental Units in a nonprofit facility which provides a structured living environment that has the primary purpose of helping homeless persons obtain the skills necessary for independent living in permanent housing and where occupancy is restricted to a limited and specific period of time of not more than twenty-four (24) months and where the client has been informed in writing of the temporary or transitional nature of the housing at its inception and is licensed for such purpose where such license is required.
 5. Rental Units exempted from Part 4, Title 4, Chapter 2 of the California Civil Code (CCC) by CCC § 1940(b) (transient occupancy in hotels/motels).
 6. A rental unit in a residential property that is divided into a maximum of three (3) units, one of which is occupied by the owner of record as his or her principal residence for a period of no less than twelve (12) months. For purposes of this section, the term owner of record shall not include any person who claims a homeowner's property tax exemption on any other real property in the State of California.

7. A rental unit in a newly constructed residential property that has a certificate of occupancy issued after the effective date of O.M.C. 8.22.600, *et seq.* For the purposes of this exemption, "newly constructed" means all units on the parcel were built from the ground up under the same certificate of occupancy and not converted from property previously used for non-residential purposes. In the event the property is not issued a certificate of occupancy, then the exemption starts on the date that the last building related permit is finalized, if after the effective date of O.M.C. 8.22.600, *et seq.* This exemption is a limited duration exemption and expires fifteen (15) years from the date the exemption commences.

(Ord. No. 13265, § 1, 11-5-2014)

8.22.640 - Tenant harassment.

- A. No Owner or such Owner's agent, contractor, subcontractor, or employee, shall do any of the following, in bad faith.
 1. Interrupt, terminate, or fail to provide housing services required by contract or by State, County or municipal housing, health or safety laws, or threaten to do so;
 2. Fail to perform repairs and maintenance required by contract or by State, County or municipal housing, health or safety laws, or threaten to do so;
 3. Fail to exercise due diligence in completing repairs and maintenance once undertaken or fail to follow appropriate industry repair, containment or remediation protocols designed to minimize exposure to noise, dust, lead paint, mold, asbestos, or other building materials with potentially harmful health impacts;
 4. Abuse the Owner's right of access into a rental housing unit as that right is provided by law;
 5. Remove from the Rental Unit personal property, furnishings, or any other items without the prior written consent of the Tenant, except when done pursuant to the procedure set forth in Civil Code section 1980, *et seq.* (disposition of Tenant's property after termination of tenancy).
 6. Influence or attempt to influence a Tenant to vacate a Rental Unit through fraud, intimidation or coercion, which shall include threatening to report a Tenant to U.S. Immigration and Customs Enforcement, though that prohibition shall not be construed as preventing communication with U.S. Immigration and Customs Enforcement regarding an alleged violation;
 7. Offer payments to a Tenant to vacate more than once in six (6) months, after the Tenant has notified the Owner in writing the Tenant does not desire to receive further offers of payments to vacate;
 8. Attempt to coerce a Tenant to vacate with offer(s) of payments to vacate which are accompanied with threats or intimidation. This shall not include settlement offers made in good faith and not accompanied with threats or intimidation in pending eviction actions;
 9. Threaten the tenant, by word or gesture, with physical harm;
 10. Substantially and directly interfere with a Tenant's right to quiet use and enjoyment of a rental housing unit as that right is defined by California law;
 11. Refuse to accept or acknowledge receipt of a Tenant's lawful rent payment, except as such refusal may be permitted by state law after a notice to quit has been served on the Tenant and the time period for performance pursuant to the notice has expired;
 12. Refuse to cash a rent check for over thirty (30) days unless a written receipt for payment has been provided to the Tenant, except as such refusal may be permitted by state law after a notice to quit has been served on the Tenant and the time period for performance pursuant to the notice has expired;
 13. Interfere with a Tenant's right to privacy;

14. Request information that violates a Tenant's right to privacy, including but not limited to residence or citizenship status or social security number, except as required by law or, in the case of a social security number, for the purpose of obtaining information for the qualifications for a tenancy, or not release such information except as required or authorized by law;
 15. Other repeated acts or omissions of such significance as to substantially interfere with or disturb the comfort, repose, peace or quiet of any person lawfully entitled to occupancy of such dwelling unit and that cause, are likely to cause, or are intended to cause any person lawfully entitled to occupancy of a dwelling unit to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy;
 16. Removing a housing service for the purpose of causing the Tenant to vacate the Rental Unit. For example, taking away a parking space knowing that a Tenant cannot find alternative parking and must move.
- B. Retaliation Prohibited. Retaliation against a Tenant because of the Tenant's exercise of rights under the TPO is prohibited. Retaliation claims may only be brought in court and may not be addressed administratively. A court may consider the protections afforded by the TPO in evaluating a claim of retaliation.
 - C. Evictions. Nothing in the TPO shall be construed as to prevent an Owner from lawfully evicting a Tenant pursuant to state law or Oakland's Just Cause for Eviction Ordinance. (O.M.C. 8.22.300, et seq.).
 - D. Rent Adjustments. Nothing in the TPO shall be construed as to prevent an Owner from lawfully increasing a Tenant's rent pursuant to state law or Oakland's Rent Adjustment Ordinance (O.M.C. 8.22.100, et seq.), and such increases shall not be deemed violations of Section 8.22.640 of the TPO.
 - E. Notice to Tenants.
 1. Commencement.
 - a. For Rental Units covered by the Rent Adjustment Ordinance the Notice at Commencement of Tenancy required by O.M.C. 8.22.06 shall include a reference to the TPO.
 - b. For all Rental Units that are not covered by the Rent Adjustment Ordinance, Owners are required to provide a notice regarding the TPO to all Tenants using the required form prescribed by the City staff.
 2. Common area. If Rental Units subject to this ordinance are located in a building with an interior common area that all of the building's Tenants have access to, the Owner must post a notice in at least one (1) such common area in the building via a form prescribed by the City staff.
 - F. Repairs and maintenance. Nothing in the TPO shall be construed as requiring different timelines or standards for repairs or maintenance, as required by contract or State, County or municipal housing, health, and safety laws, or according to appropriate industry protocols.

(Ord. No. 13391, § 1, 9-20-2016; Ord. No. 13265, § 1, 11-5-2014)

8.22.650 - General remedies.

- A. Violations of the TPO. Violations of section 8.22.640 may be enforced by civil remedies as set forth in this section or as otherwise specifically set out in this O.M.C article.
- B. Notice requirement for Tenants. Before a Tenant may file an a civil suit alleging a violation of subsection 8.22.640.A.1., 2., 3., 10., 11., 12, or 13., the affected Tenant must first notify the Owner or his or her designated agent regarding the problem. If the allegation is a violation of subsections 8.22.640.A.1., 2., 3.,11., or 12, the Tenant must allow fifteen (15) days for the Owner to correct the problem, unless the Owner notifies the Tenant that the repairs will take more than fifteen (15) days and provides for a reasonable time period for completion. If the repair takes more than fifteen (15)

days, the Tenant may file the civil suit if the Owner does not take reasonable steps to commence addressing the problem or the Owner does not follow through to complete the repairs with reasonable diligence.

- C. In addition to the remedies provided in the TPO, a violator is liable for such costs, expenses, and disbursements paid or incurred by the City in abatement and prosecution of the violation.
- D. The remedies available in the TPO are not exclusive and may be used cumulatively with any other remedies in this chapter or at law.

(Ord. No. 13265, § 1, 11-5-2014)

8.22.660 - Reserved.

8.22.670 - Civil remedies.

A. General Civil Remedies.

- 1. Enforcement by Aggrieved-Tenant. An aggrieved Tenant may bring a civil action for injunctive relief or damages, or both, for any violation of 8.22.540.
- 2. Enforcement by City Attorney. The City Attorney may enforce the TPO through civil action for injunctive relief or damages, or both, for when the party against whom enforcement is sought has a pattern and practice of violating the TPO. The City Attorney may also request that an administrative citation or civil penalty be issued by the City. The City Attorney has the sole discretion to determine the cases appropriate for enforcement by the City Attorney's Office.

B. Treble and Exemplary Damages.

- 1. Any person who violates, aids, or incites another person to violate subsection 8.22.640.A or E. is liable in a court action for each and every such offense for money damages of not less than three times actual damages suffered by an aggrieved Tenant (including damages for mental or emotional distress), or for minimum damages in the sum of one thousand dollars (\$1,000.00), whichever is greater, and whatever other relief the court deems appropriate. In the case of an award of damages for mental or emotional distress, said award shall only be trebled if the trier of fact finds that the Owner acted in knowing violation of or in reckless disregard of the TPO.
- 2. A court may award punitive damages in a proper case as set out in Civil Code Section 3294 and pursuant to the standards set forth in that Code Section or any successor thereto, but may not award both punitive damages and treble damages.

C. Injunctive Relief. Any person who commits an act, proposes to commit an act, or engages in any pattern and practice which violates the TPO may be enjoined therefrom by any court of competent jurisdiction. An action for injunction under this subsection may be brought by any aggrieved Tenant, by the City Attorney (for a pattern and practice only), or by an aggrieved Tenant who will fairly and adequately represent the interest of the protected class.

D. Attorney's Fees and Costs

- 1. Action by City Attorney. In any administrative, civil, or special proceeding brought pursuant to the TPO, the City may, at the initiation of the proceeding, seek an award of attorney's fees. If the City seeks an award of attorney's fees, the award shall be made to the prevailing party. Provided however, that no award may be made to a prevailing party that exceeds the amount of reasonable attorney's fees incurred by the City in the action or proceeding. Court costs may be awarded to a prevailing party pursuant to state law.
- 2. Action by Tenant. In any civil action brought pursuant to the TPO, the prevailing Tenant is entitled to recover the Tenant's reasonable attorney's fees. A defendant Owner may recover reasonable attorney's fees if the complaint brought by the Tenant was devoid of merit and brought in bad faith. Court costs may be awarded to a prevailing party pursuant to state law.

3. Costs of Investigation. In the event the City Attorney brings an administrative, civil, or special proceeding pursuant to the TPO, the City Attorney may recover its costs of investigation.

(Ord. No. 13265, § 1, 11-5-2014)

8.22.680 - Miscellaneous.

- A. Regulations and Forms. The Rent Board has the authority to make such regulations to implement this O.M.C. Chapter 8.22 Article V as are not inconsistent with the TPO, provided, however, that if the Rent Board has not issued initial regulations within such time as the City Council may proscribe, the City Administrator is authorized to make interim regulations.

Within ninety (90) days of the effective date of the TPO, the City Administrator shall develop forms to implement subsection 8.22.640.E. Any changes to the initial forms shall be effective thirty (30) days after they are made available to the public at the Rent Adjustment Program offices, unless the City Administrator makes a finding that an earlier or later date is necessary. All Forms required by the TPO are vital communication documents and shall be translated and distributed in accordance with the Equal Access to Services Ordinance, O.M.C Chapter 2.30.

- B. Non-waiverability. Any provision, whether oral or written, in or pertaining to a rental agreement whereby any provision of the TPO is waived or modified, is against public policy and void.

(Ord. No. 13265, § 1, 11-5-2014)

Exhibit A

REGULATIONS FOR THE TENANT PROTECTION ORDINANCE (CODIFIED IN THE OAKLAND MUNICIPAL CODE at 8.22.600, *et seq.*)

Introduction.

The following regulations address portions of the Tenant Protection Ordinance (“TPO”). Only those sections where the Housing, Residential Rent and Relocation Board (“Rent Board”) adopted regulations are included. The numbering system follows the codified version of the Tenant Protection Ordinance.

8.22.640 – Tenant Harassment

8.22.640A.

Bad faith for purposes of the TPO represents conduct in disregard for legal requirements or in a manner indifferent to the rights of Tenants. Bad faith is an objective standard and can be inferred from the totality of the circumstances. This includes, for example, failure to respond to requests for repairs by Tenants or failure to respond to citations by city or county officials. It also encompasses engaging in repairs in a fashion that unreasonably impinges upon a Tenant’s use or enjoyment of the property.

8.22.670 – Civil Remedies

8.22.670A.2.

A pattern and practice for purposes of this Section refers to multiple violations of O.M.C. 8.22.640 against the same Tenant or one violation of O.M.C. 8.22.640 against multiple Tenants.

CITY OF OAKLAND
HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD
RESOLUTION

RESOLUTION No. R17-002

RESOLUTION ADOPTING REGULATIONS FOR THE TENANT PROTECTION ORDINANCE (O.M.C. 8.22.600, et seq.) TO CLARIFY THE TERMS “BAD FAITH” AND “PATTERN AND PRACTICE” AS USED IN THAT ORDINANCE

WHEREAS, in November 2015, the Oakland City Council enacted the Tenant Protection Ordinance (“TPO”) (O.M.C. 8.22.600, et seq.);

WHEREAS, the purpose of the TPO is to deter property owners from engaging in certain, enumerated behaviors that the Ordinance characterizes as harassment and to provide penalties for violations;

WHEREAS, the TPO authorizes the City Attorney to bring civil actions against property owners the City Attorney believes are violating the ordinance; and

WHEREAS, the City Attorney brought litigation against property owners for TPO violations; and

WHEREAS, in TPO litigation, some property owners defended using definitions of the “bad faith” requirement for determining a TPO violation that differed from the City’s concept of bad faith; and

WHEREAS, in TPO litigation, some property owners contested the City’s definition of the “pattern and practice” threshold for the City Attorney to bring a TPO action against a property owner; and

WHEREAS, clarifying the concepts of bad faith and pattern and practice through TPO regulations would benefit property owners in complying with the TPO, tenants in recognizing violations, and the City Attorney to clarify when that office can bring TPO litigation; now, therefore, be it

RESOLVED: That the Housing, Residential Rent and Relocation Board enacts the regulations to clarify the terms “bad faith” and “pattern and practice” in the TPO as set out in Exhibit A; and be it

FURTHER RESOLVED: That the TPO regulations herein enacted shall take effect immediately upon passage of the resolution.

APPROVED BY THE FOLLOWING VOTE

AYES: CHANG, COOK, FRIEDMAN, MESAROS, SANDOVAL, STONE, AND CHAIRPERSON
 WARNER

NOES:

ABSENT:

ABSTENTION:

Date:

ATTEST _____
 JESSIE WARNER
 Chairperson of the Housing, Residential
 Rent and Relocation Board

#2183621v2

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**CITY OF OAKLAND
HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD**

**PANEL MEETING
June 29, 2017
7:00 p.m.
City Hall, Hearing Room #1
One Frank H. Ogawa Plaza, Oakland, CA**

MINUTES

1. CALL TO ORDER

The HRRRB Panel was called to order at 7:07 p.m. by Panel Chair, Kevin Blackburn.

2. ROLL CALL

MEMBER	STATUS	PRESENT	ABSENT	EXCUSED
Ubaldo Fernandez	Tenant	X		
Kevin Blackburn	Homeowner	X		
Karen Friedman	Owner	X		

Staff Present

Kent Qian	Deputy City Attorney
Linda M. Moroz	Hearing Officer

3. OPEN FORUM

James Vann

4. NEW BUSINESS

- i. Appeal Hearing in cases:
 - a. T14-0119; Turner v. Lapham Company
 - b. This item was continued (T16-0184)
 - c. T16-0365; Johnson v. Thornton

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a. T14-0119; Turner v. Lapham Company

Appearances:

Tenant Appellant

Aldeca A. Turner Tenant

No appearance by Owner

Tenant contends that the prior capital improvement in the amount of \$40.00 incurred in 2001 and 2004 was never deducted from her rent and she continued to pay it after the amortization period ended. She also contends that the receipts were not provided for that capital improvement.

Board Discussion as to Tenant's appeal

After questions to the appellant and Board discussion, U. Fernandez moved to affirm the Hearing Officer's Remand Hearing Decision as it appropriately addresses the Board's instruction from the Appeal Decision of March 12, 2015, because the capital improvement amount of \$3,500.00 was supported by substantial evidence and reason why it was included. K. Friedman seconded.

The Board panel voted as follows:

Aye: U. Fernandez, K. Blackburn, K. Friedman

Nay: 0

Abstain: 0

The Motion was approved by consensus.

c. T16-0365, Johnson v. Thornton

Appearances:

Candi Thornton Owner

No appearance by Tenant Appellant

U. Fernandez moved to dismiss the appeal subject to showing of good cause for non-appearance by the appellant. K. Friedman seconded.

The Board Appeal Panel voted as follows:

Aye:	U. Fernandez, K. Blackburn, K. Friedman
Nay:	0
Abstain:	0

The Motion was approved by consensus.

5. ADJOURNMENT

The meeting was adjourned by consensus at 7:29 p.m.