

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

**August 17, 2017
7:00 p.m.
CITY HALL, HEARING ROOM #1
ONE FRANK H. OGAWA PLAZA
OAKLAND, CA**

AGENDA

1. CALL TO ORDER
2. ROLL CALL
3. OPEN FORUM
4. NEW BUSINESS
 - i. Appeal Hearing in cases:
 - a. T16-0076; Lee v. Millar
 - b. T16-0184; Waller v. Logos Property Investment LLC
 - c. T16-0259; Barghout v. Owens
5. SCHEDULING AND REPORTS
6. ADJOURNMENT

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

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

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

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

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

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

CHRONOLOGICAL CASE REPORT

Case No.: T16-0076
Case Name: Lee v. Millar
Property Address: 848 Erie Street, Oakland, CA
Parties: Mary E. Lee (Tenant)
Bruce & Carolyn Millar (Property Owners)

TENANT APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	February 5, 2016
Owner Response filed	March 17, 2016
Hearing Decision issued	June 17, 2016
Tenant Appeal filed	July 6, 2016

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2016 JUL -5 PM 12:35

City of Oakland Residential Rent Adjustment Program 250 Frank Ogawa Plaza, Suite 5313 Oakland, California 94612 510) 238-3721	APPEAL
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Appellant's Name MARY E. LEE	Landlord <input type="checkbox"/> Tenant <input checked="" type="checkbox"/>
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Property Address (Include Unit Number) 848 ERIE ST., #2 OAKLAND, CA 94610-2205
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Appellant's Mailing Address (For receipt of notices) SAME AS ABOVE	Case Number 716-0076
	Date of Decision appealed 6/17/16

Name of Representative (if any)	Representative's Mailing Address (For notices)
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Appeal the decision issued in the case and on the date written above on the following grounds:
 (Check the applicable ground(s). Additional explanation is required (see below). Please attach additional pages to this form.)

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

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

8. **You must serve a copy of your appeal on the opposing party(ies) or your appeal may be dismissed.** I declare under penalty of perjury under the laws of the State of California that on July 6, 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	Bruce G. Miller
Address	P.O. Box 11165
City, State Zip	Oakland, Ca. 94611
Name	
Address	
City, State Zip	

<i>Mary E. Lee</i>	<i>July 6, 2016</i>
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

IMPORTANT INFORMATION:

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

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

Mary E. Lee vs. Bruce G. Millar Case #T16-0076 (appeal)

I am appealing the decision based on many reasons;

I was not given an opportunity to review all evidence. The hearing officer error over my objections. Please review the pictures that I had provided as evidence. Please review the taped session of the hearing. I was allowed to testify generally.

- 1) The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board.**
- a) This is in OMC Chapter 8.22090 A. Tenant Petitions. V. The owner decreased housing services to the tenant.**

I was left without an oven since June 25, 2014. As previously stated PG&E was working on something to do with Smart meters and ultimately had to turn off my gas for reasons related to their gas line not working properly. When the workers came in to relight my oven, they could not get it to re-light (I suppose because the Kelvinator-Montgomery Ward's stove has been there since before 1974) due its age. As a result, they gave a notice so that I could file a claim to have one of their contractors relight it. However, upon filing the claim form, when it was discovered that I was actually the tenant rather than the owner, PG&E referred me to give the notice to the landlord, which I did the next day. Mr. Bruce G. Millar never re-light it and said that he could get one of his men to do it; he didn't need PG&E's contractors. However, he never followed through.

On September 26, 2014, Mr. Bruce G. Millar came into my apartment without notice or announcement, I suppose because his worker were demolishing my deck. The deck is located through my living room. To enter my kitchen mean he went clear out of his way to get to the kitchen, which was nowhere near the deck. He went clear out of his way to enter the dining room and then the kitchen, which is located in the middle of the building and going away from the deck. As it is, my upstairs neighbor whose familiar with construction work says the workers should have never came tromping through my living room and upon my carpeting to get to the deck. This could have been done from the outside.

This stove was cleaned at the time. Contrary to the hearing officer's misunderstanding of the PG&E's hazard notice written of grease and debris in an area of an old stove in which I could not get into to clean. This was under the burners. The stove had been cleaned, except that I cannot get under the old stove's range top to get under the grating, (which was not removable) to be able clean below it. The PG&E guy says that I am not supposed to get under there to clean it, that this was the landlord's responsibility and that he

knows because his dad own property in Berkeley. He then says that he will write up the hazard notice for the land lord to replace the stove with a new one and that he will buy me a dinner of my choice. He also took off the nut to the gas line when he learned through my surmising that it must have been the landlord who turned off the gas.

The pilot light to the stove's range top had already been turned off to conserve on the gas usage. I use a match to light each burner.

Mr. Millar had just been sent, from the City of Oakland, a week prior, a notice of my filing a claim with the Rent Assistance Program, due to an unfair rent raise.

Your landlord cannot lock you out or shut off your utilities without going through a legal process.

My landlord did not notify me during, prior nor answered my phone calls on Sunday, September 28, 2014, the day after being out for my birthday about turning off the gas. His workers then verified this to me and saying that wasn't the right thing to do. On that Sunday, when I was ready to use the stove with marinated salmon ready for steaming. I had called him three times and then leaving messages, of which there were no returned phone call nor returns to my messages.

The pictures provided during the hearing in which I objected to the dates and the hearing officer error and ignored me and then instantly took the pictures away from me, where no pictures of the current condition of that stove. Those were illegally gotten pictures of which I had told Benjamin Scott (board member of the Rent Arbitration Board) and Connie Taylor (Manager of the Rent Assistance Program) that these were not legitimate pictures and they had no right to use it. They were ill gotten pictures; they were not authorized to take pictures in my apartment without asking for permission. They were taken before Mr. Bruce G. Millar owned this building.

The living room was purposefully blocked off with my shopping cart so that no entry could be made other than to go to the bedroom. They had given short notice for a seemingly puzzling entry, on a Sunday, when the window had previously been reviewed. There was no written 24 notice and it was expressly to view the old broken window that was taped up by packaging tape for decades. Yet, while the previous landlord and I were waiting for Mr. Scott by the window, Mr. Scott apparently broke through my shopping cart and ran throughout the apartment without my permission, snapping pictures throughout. I feel

disrespected and invaded. I called Connie Taylor, very shortly thereafter and reported this, making sure that the pictures were not to be used and personally called Benjamin Scott at his business notifying him of the same. Yet Mr. Millar will now use these pictures and then changed his dates to reflect 2015 in July and August, of which he never entered my apartment then.

- a) After, he receives the notice for rent adjustment program's hearing, he his demeanor had changed. He was no longer speaking to me, his worker kept my second set of keys, never returning them to me, after I had lent it to him in effort to save him time and effort; his workers took my brand new broom O'Cedar broom without my consent and used it to sweep concrete, on the outside, when this is a house broom.
- b) Out of nowhere, I would get a written note, saying that he is not retaliating, that he has been speaking to me by phone and otherwise, when what he is stating is totaling to the contrary of his actions or inactions. These letters that are written appear to be a way of providing a paper trail for himself, although, they **state that he is calling and speaking to me when he is not!** He's written a letter to say that he is not retaliation against my RAP claim when he been calling me, talking to me and etc. when he hasn't returned my phone calls nor called me, or even spoken to me during that period.
- c) While, I was cleaning up the living room and needed another week or so, he would then write yet another letter telling me to clean up, while I am in the act of cleaning up. They are baseless, strange at the time and is made to fabricate a scenario to implicate me of my home for his benefit. This is so mean and this is so hard for me to fight and keep up with. I can't keep up with this man many ways of exaggerating his good works and his exaggerations of my bad ways. As a neighbor had said, it's been clear that you have been in a rut and depressed and have been through hard time, rather than be compassionate and of help, he is out to destroy me.
- d) Recently, I went to Just Cause for assistance and found that they have him in their computer. I was told by the front desk person that if he is in their computers, this means that he is a very terrible landlord. He apparently has many real estate properties, all over the bay area and beyond. At the outset of his ownership, the neighbors had found a newspaper article, in which the Eviction Defense Center were seeking volunteers to picket his home and to call him for an eviction. The neighbors had also discovered that he is well known in the real estate world as being a very bad landlord.
- e) Previous to Mr. Millar owning this property, he was already on the property tearing down signs. When I told Benjamin Scott, board member at Rent Adjustment, he did not believe me. However, after I had asked Mr. Millar and

he confirmed his being here, then I again told Mr. Scott, who then answered, "Not to ethical is he?" There is more to come in this matter in relation to the evidence Mr. Millar produced at the hearing, in which I contested.

- f) December 22, 2015-Bruce G. Millar refused to fix kitchen pipe leak which flooded the kitchen floor. The Code Compliance officer wanted to speak with the landlord first, so I gave Mr. Millar's phone number. Upon this conversation, Mr. Shintz did not spend even 60 seconds in my apartment nor look at the pipe. Instead he kept saying that, "you're going to get evicted!" This happened on Christmas Eve, which left me very depressed and in bed all day without being able to fix anything to eat, despite being very hungry. At the urging of a friend, I went to Church for the Christmas Caroling, which helped greatly.

- g) Mr. Shintz contacted Adult Protective Services to help me. Adult Protective Services, Taurus and Stephanie (Supervision) was very helpful and supportive and said that my apartment is considered uninhabitable since Mr. Millar left me without a cooking appliance for two years. They had seen my apartment and advised me to **not move**. They had believed that Mr. Millar was going to knock out the kitchen cabinet and replace them and the kitchen tiling that had been there forever and was chipping. However this was not done, yet Mr. Millar would call this a renovation. Contrary to Mr. Miller's letter, again, he grossly exaggerated and turns the situation around to make himself look shiny and be damning to me, he claims that apartment has been condemned. I don't believe the apartment has been condemned, however Adult Protective Services got approval of their supervisor to be a witnesses on my behalf in court, should we needed to go with the Eviction Defense Center.

- h) Based on my reading of Mr. Millar's letter to the Rent Adjustment Program in defense of himself, he claims that the apartment was condemned (13P-Landlord evidence as produced during hearing). It was never condemned! He should know when it is condemned. He is very familiar with real estate, I am not! He then twist and with a big strength of his imagination falsely claims that the Supervisor, Stephanie at Adult Protective Services and her worker Taurus Johnson was claiming that the state of my apartment was uninhabitable. **They were not!** They were making reference to the stove being unusable as did other acquaintances who owns lots of property, to be without a stove for two years leaves the apartment uninhabitable. It's ironic, that Mr. Millar would choose to turn off the stove in September when it was cleaned, although right after a claim filed with the RAP rather than other times.

- i) Additionally, the refrigerator was purchased with my own funds. Mr. Millar had no right to neither take pictures of that nor even open it, as he has. More importantly, he donated my refrigerator for this refurbished used refrigerator that is more than **3 years old**. It initially did not work and perished my new good food and ice cream until I called and had them fix it in March 2016. He traded my refrigerator in for this one, without my permission. Is this nerve or what? He does not honor boundaries. Then on the day that the refurbished one was to be delivered, I could not stay home due to Mr. Millar's worker Francisco's hostility and physical abuse. I had told Santos (the other worker) to have the food from the old refrigerator moved into the new one. However, Mr. Millar took all of that food.

- j) By the way, the new stove that Mr. Millar furnished is a 2012 stove purchased in 2016. I do appreciate this refurbished refrigerator and stove though. It is just Mr. Millar's unethical presentation of his evidence and ill gotten means of achieving it.

- k) In June 2015, I would get a letter from Mr. Millar's attorney and then again in July duplicating the same letter, only the cover letter changes a bit. I responded by writing Mr. Millar's attorney with a long letter detailing my experience during my tenancy and Mr. Millar's harassment. Finally, I sent a letter from my **therapist** and then from a **hoarder's group** that I was attending and doing homework for requesting more time.

- l) Although, Mr. Millar is now claiming that he has continually sent letters to me to clean up, he had not. Just the hand written letter sent to me in June 2014. Upon, that letter, I really tried to clean up and do it a little at a time, as being overwhelmed will defeat the purpose, also recommended by the Hoarder's group.

- m) During the month of August, I cleared the living room up for the workers to come in and demolish that deck, as per request of the landlord and I was timely. Whether Mr. Millar had the workers come through my living room rather than demolish the deck from the outside is a question as to whether he chose that route as a method of harassment. My neighbor whose familiar with construction work, says that the workers did not have to come through my living room and tromping through my carpeting, rather they could have demolished it from the outside.

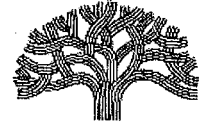
- n) I was able to clear the living room in a timely way for the workers to come through. However, then out of the clear blue, a letter from Mr. Millar in September was out of place and served no purpose, except as a found less written documentation to serve provide written documentation to appear contrary to what I was doing. (13E, 13G - evidence item from the hearing)
- o) I then seen the attorney for the RAP, who advised me to move my things into my garage, however, Mr. Millar said that I couldn't use my garage for storage. But, he has since given my combination of my lock to a neighbor whose been storing his items in my garage alongside my car.
- p) On August 4, 2015-National night-out for neighbors, Mr. Millar would have me served with an unlawful detainer. I responded in the days after having had gone to the Eviction Defense Center.

While he was chronically complaining of my messy apartment, through his lawyers letters (although, these letters were duplications of the same letters with a few lines on the front page letter changed only) yet he will have his worker scrape the hanging paint on my living room ceiling onto my new couch with clean clothes on it. They could well contain asbestos.

(The paint chips and hangings are due to the upstairs neighbor having broken an aquarium of water and flooding my apartment and with a broken apartment washer and flooding my dining room and living room of new carpeting and furniture. [This apartment still has shared piping, which means when the neighbors hair clogs my drain, then it is upon me to clear the drains.]

- 2) Mr. Kasdin, hearing officer did not even make introductions at the beginning of the hearing and it appears that Mr. Kasdin and my landlord Mr. Bruce G. Millar has had previous encounters and is familiar with each other. This made it difficult for me, then in effort to be polite, I had to ask Mr. Kasdin for his business card in order to know whom I am speaking to (or to whom was hearing this case)
- 3) It even appeared, (though the file was upside down for me) that there was a letter in the file addressed to Mr. Kasdin written by my landlord previous to this hearing.
- 4) Mr. Kasdin allowed Caryn Millar (witness for landlord) to take apart the case file remove and put additional papers into it.
- 5) Mr. Bruce G. Millar's whole team of supporters stayed behind to speak to the hearing officer while I excused myself after the hearing ended.
- 6) During the hearing, the Mr. Kasdin allowed Mark Bitzer (BGM witness) and Bruce G. Millar to insult and demean me during the hearing.

- 7) Mr. Millar and Mr. Bitzer made these extremely exaggerated, fabricated twisted lies about me, that it has and is very difficult for me to keep up and handled, during the hearing.
 - a) These same things happen in my apartment. They arrive in two's, three's and sometimes more people, while there is just me, myself and alone. They will spread and fan out on me, at the same time. They will invade my home, (space) and get into the most personal of my spaces without reservations, consciousness, or ethics. They cause me to feel overwhelmed and upset, like I just want to cry, they are so mean and unethical and audacious! Mr. Millar seems much practiced in his practices and behaviors with his intimidation and his harassment of me.
- 8) The bulk of Mr. Millar's evidence are of Mr. Millar's creation with his mixing and crossing of dates on pictures that are illegitimately gotten. His pictures are angled in way that makes his evidence look damning for me, i.e. while the pictures looks like I have more than 2 inches of clutter, yet the space does not even measure an allowance of 24 inches. Another word, Mr. Millar's pictures are design to be damning, rather than a report of a real problem.
- 9) Mr. Millar fabricated dates of entry, when he had never made entries on the dates that he claims.
- 10) Many of the pictures were taken by a Rent Arbitration Board member who had entered my apartment to view the broken window in my bedroom when it was still under previous ownership. The areas of pictures were blocked off and the board member was not allowed to enter, yet he went rampaging throughout my apartment snapping pictures for Mr. Millar in order to complete a sale. The previous owner and the board member did not give a 24 hour written notice to come in and I had blocked off the area that was not allowed to them.



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

CITY OF OAKLAND

Department of Housing and Community Development
Rent Adjustment Program

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

HEARING DECISION

CASE NUMBER: T16-0076, Lee v. Millar
PROPERTY ADDRESS: 848 Erie St., #2, Oakland, CA
DATE OF HEARING: June 1, 2016
DATE OF DECISION: June 17, 2016
APPEARANCES: Mary E. Lee (Tenant)
Bruce G. Millar (Owner)
Carolyn S. Millar (Owner)
Mark B. Izer (Witness for Owners)
Caryn Millar (Witness for Owners)

SUMMARY OF DECISION

The tenant's petition is denied.

CONTENTIONS OF THE PARTIES

The tenant filed a petition on February 5, 2016, which alleges that at present there exists a health, safety, fire or building code violation in her unit; and that her housing services have been decreased, as follows:

- Loss of use of stove
- Black grease in stove vent pipe
- Grease, stains, and chipped paint on walls
- Kitchen floor cannot be cleaned
- Spiders and ants
- Kitchen – missing cabinet knobs; cabinet doors chipping; chipped grout
- Windows don't close well

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- Bathroom vanity
- Inadequate hot water

The owners filed a response to the petition, which denies that the tenant's housing services have decreased.

THE ISSUES

- (1) When, if ever, did the tenant receive the form Notice to Tenants (RAP Notice)?
- (2) Have the tenant's housing services been decreased and, if so, by what percentage of the total housing services that are provided by the owner?
- (3) What is the legal effect, if any, of the tenant's Answer and a Stipulation signed by the parties in an Unlawful Detainer action between the parties?

EVIDENCE

RAP Notice: At the Hearing, the tenant testified that, as stated in her petition, she received the RAP Notice on July 29, 2014.

Rent History: At the Hearing, the parties agreed that the tenant has been paying rent of \$545 per month since April 2015.

Decreased Housing Services: The tenant testified that the unit in which she lives has not been inspected by a City Building Inspector. The tenant's petition states that she has lived in the unit since July 1, 1982.

Stove: The tenant testified that the oven in her unit stopped working on June 25, 2014, and the burners stopped working on September 28, 2014. The tenant submitted two PG&E Service Reports. The first, dated, June 25, 2014, states, with regard to the stove: "range two left and back right lit. Found range pilot valve off. . . Unable to get oven pilot to light."¹ The second, dated September 28, 2014, is subtitled "Hazard Notice."² This Notice states, in part: "Due to grease and additional debris in range unsafe to operate range/oven. Advised landlord to replace range/oven immediately." The Notice further states that the PG&E technician disconnected the stove. The owner installed a new stove in March 2016.

Mr. Millar testified that in September 2014, he was in the tenant's unit to inspect window installation. While there, he went into the kitchen, and saw that the top of the stove was covered with grease, as well as various objects. Mr. Millar turned off the gas line to the stove. He then sent a letter to the tenant, dated September 27, 2014.³ The letter states, in part: "I also checked out your kitchen as I have written to you many times about its condition and you have promised many times to clean it up. I turned off the gas to the stove. This was done in the interest of

¹ Exhibit No. 1A. This Exhibit, and all others to which reference is made in this Decision, were admitted into evidence without objection, unless otherwise noted.

² Exhibit No. 1B.

³ Exhibit No 13D. The tenant objected to the admission of this Exhibit into evidence because she did not receive it. The objection was overruled, and the letter was admitted into evidence.

safety . . . I think we are fortunate that there has been no grease fire to date. Three of the burners were covered with garbage, paper and cooking pots, all grease covered.” On October 7, 2014, Mr. Millar again wrote to the tenant: “I asked you to clean the kitchen, and then call PG&E to turn on the gas. I will now reverse my request. Clean your kitchen and your entire apartment and I will purchase for you a brand new stove.”⁴

Mr. Millar submitted photographs of a portion of the kitchen including the stove that were taken on May 20, 2014 and July 15, 2015.⁵ Both of these photos reflect various items, including cooking utensils and plastic bags on top of the stove – which appears to be very dirty – as well as what can only be described as garbage nearly covering the floor and piled on an adjacent counter.

Grease in stove pipe: The tenant testified that there was black grease on the stove vent pipe, and that some grease had dripped onto the wall behind the stove. She submitted photographs that support this testimony.⁶

Walls: The tenant testified that there is grease on the walls of her unit. She further testified that she has never cleaned the walls. Photographs of several rooms taken in 2015 and 2016 reflect a nearly unbelievable amount of objects – sometimes several feet high – which would appear to make it literally impossible to walk from one wall to the opposite side of a room.⁷

Kitchen floor: The tenant testified that the kitchen floor surface was in such poor condition that she was unable to clean it. She submitted a photograph that reflects a filthy, crumbling floor surface.⁸ In addition to those photographs mentioned above, the owner also submitted photographs of the kitchen counter and a large area of the floor that were taken on September 25, 2015.⁹ These photos reflect a pile of what can only be described as debris approximately 2 feet high on the counters, and so much of what appears to be garbage on the floor that it is not possible to see the floor surface.

Spiders and ants: The tenant testified that there has been an infestation of spiders and ants in her unit. She has sprayed in an effort to kill the ants.

Kitchen - cabinet knobs; cabinet doors chipping; chipped grout: The tenant testified that all of these conditions had existed for some time. The kitchen was totally remodeled as of March 8, 2016, as reflected in photographs taken that day.¹⁰

Windows: The tenant testified that the wood frame windows were warped and rotted, which made it hard to open and close them. These windows were replaced in the Fall of 2014.

⁴ Exhibit No. 13C.

⁵ Exhibit Nos. 10A & 10B.

⁶ Exhibit Nos. 2A & 2B.

⁷ Exhibit Nos. 10D and 12B.

⁸ Exhibit No. 3.

⁹ Exhibit No. 10E.

¹⁰ Exhibit Nos. 11A & 11B.

Walls: The tenant testified that the walls were never painted, and they became stained due to steam from the bathroom and an accumulation of dust.

Bathroom vanity: The tenant testified that the bathroom vanity cabinet had become dilapidated over the years. She submitted a photograph that reflects chipped and peeling paint on several surfaces of the cabinet. The cabinet was replaced as part of a bathroom remodel as of March 8, 2016, as reflected in photographs taken that day.¹¹

Hot water: The tenant dismissed this claim at the Hearing.

Photographs: Copies of photographs of the unit mentioned above are attached to this Decision, as Attachments "A" through "E."

Answer to Unlawful Detainer Complaint: The owner submitted a copy of a document entitled "Answer to Complaint" bearing Case No. RG15-780571 in an Alameda County Superior Court action entitled "Bruce G. Millar et al. v. Mary Lee." This document bears the tenant's name as "Defendant in Pro Per," and is attached to a Proof of Service to the owners' lawyer dated August 6, 2015.¹²

Paragraph 3 of this document states, in part: "Plaintiff has breached the warranty of habitability. The habitability defects include but are not limited to: inadequate weatherproofing on doors and windows; defective heater; no operable stove or oven; . . . dilapidated flooring; cracks and holes in walls; peeling paint; . . . ant/insect infestation; dilapidated vanity in bathroom; dilapidated kitchen sink."

Court Stipulation: On November 20, 2015, the parties entered into a written Stipulation for Judgment and Settlement Agreement (Unlawful Detainer Action) in the above captioned case, which was approved by a Judge of the Superior Court.¹³ This Stipulation provided, among other things, that the tenant pay back rent, clean the unit, and allow the owner to make regular inspections of the unit.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

RAP Notice: It is found that the tenant received the RAP Notice on July 29, 2014.

Unlawful Detainer Action: This case was concluded by the Stipulation signed on November 20, 2015. This date was before the tenant filed her petition and, therefore, the Answer and Stipulation have no effect upon the tenant's claims of decreased housing services after that date.

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¹¹ Exhibit Nos. 11A & 11B.

¹² Exhibit Nos. 8A through 8E.

¹³ Exhibit Nos. 9A through 9F

Decreased Housing Services: Under the Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent¹⁴ and may be corrected by a rent adjustment.¹⁵ However, in order to justify a decrease in rent, a decrease in housing services must be either the elimination or reduction of a service that existed at the start of the tenancy or a violation of the housing or building code which seriously affects the habitability of the tenant's unit. A tenant will only be given relief for an owner's failure to make repairs if an owner has notice of a problem, a reasonable opportunity to do the needed work, and access to the appropriate area of the rental unit.

There is also a time limit for claiming decreased housing services. A tenant petition must be filed within 60 days after the date of service of a rent increase notice or change in the terms of a tenancy or the date the tenant first receives the RAP Notice, whichever is later.¹⁶ However, when a tenant complains of ongoing problems with his or her unit, the Board has declared that such claims should not be completely denied if the tenant received the RAP Notice more than 60 days before the petition was filed.

The tenant first received the RAP Notice in the year 2014, far more than 60 days before filing her petition on February 5, 2016. Therefore, in accordance with the Regulations and Board decision,¹⁷ the tenant can only be granted relief on her claims for decreased housing services beginning 60 days before the date on which she filed her petition. Allowable claims of decreased housing services therefore begin on December 5, 2015.

Stove: It is found that, when the owner disconnected the gas service to the stove, the condition of the stove, and the objects in and around it, presented an obvious fire hazard. Therefore, under these particular circumstances, the owner was justified in turning off the gas until such time as a new stove could be safely installed in the kitchen. The claim is denied.

Stove Pipe: A tenant is responsible for the routine cleaning of his or her unit. If the stovepipe was dirty, it was not the owners' duty to clean it, and the claim is denied.

Walls: Cleaning of walls is also the responsibility of a tenant, and the claim is denied.

Kitchen Floor: The photograph submitted by the tenant indeed reflects disintegration of the linoleum surface. However, the tenant's testimony that she was therefore unable to clean the floor is belied by the fact it would appear from the photographs that no portion of the unit had been cleaned for many months, if not years. Those portions of the floor that were not covered with debris appear to be absolutely filthy. Therefore, under these circumstances, the condition of the floor had no effect upon the tenant's housing services, and the claim is denied.

Spiders and Ants: In view of the condition of the unit before it was renovated, it is not surprising that insects and other pests would have found a home there. The claim is denied.

¹⁴ O.M.C. Section 8.22.070(F)

¹⁵ O.M.C. Section 8.22.110(E)

¹⁶ O.M.C. Section 8.22.090(A)(2)

¹⁷ Appeal Decision in Case No. T09-0086, Lindsey v. Grimsley, et al.

Kitchen - Misc.: The photographs reflect a kitchen in such a filthy and cluttered condition that relatively minor problems could hardly be noticed, and access to any area would be difficult. The claim is denied.

Windows: Since the windows were replaced in 2014, the claim is time-barred, and is denied.

Walls: Given the condition of the unit before renovation, it is would be surprising if the walls were not stained. Further, cleaning of walls is the responsibility of a tenant. The claim is denied.

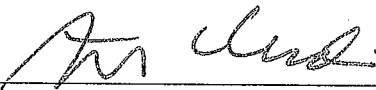
Bathroom Vanity: Although the paint on sections of the vanity had peeled, in view of the overall condition of the unit, peeling paint on a vanity cabinet had little or no effect upon the tenant's use or enjoyment of the unit. This claim is denied.

ORDER

1. Petition T16-0076 is denied.

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

Dated: June 17, 2016



Stephen Kasdin
Hearing Officer
Rent Adjustment Program

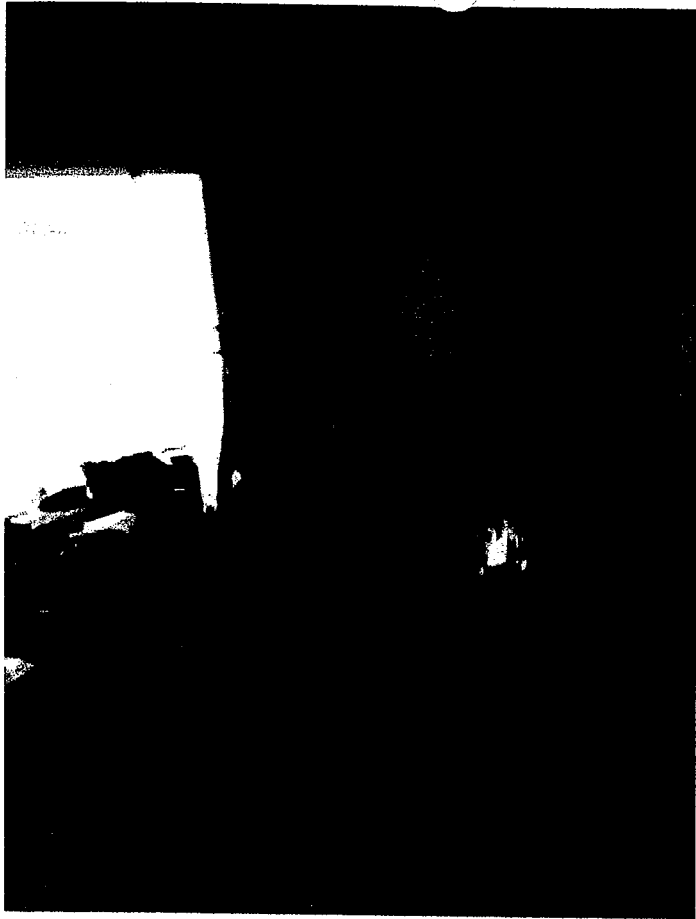
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ATTACHED TO 20

5/20/14

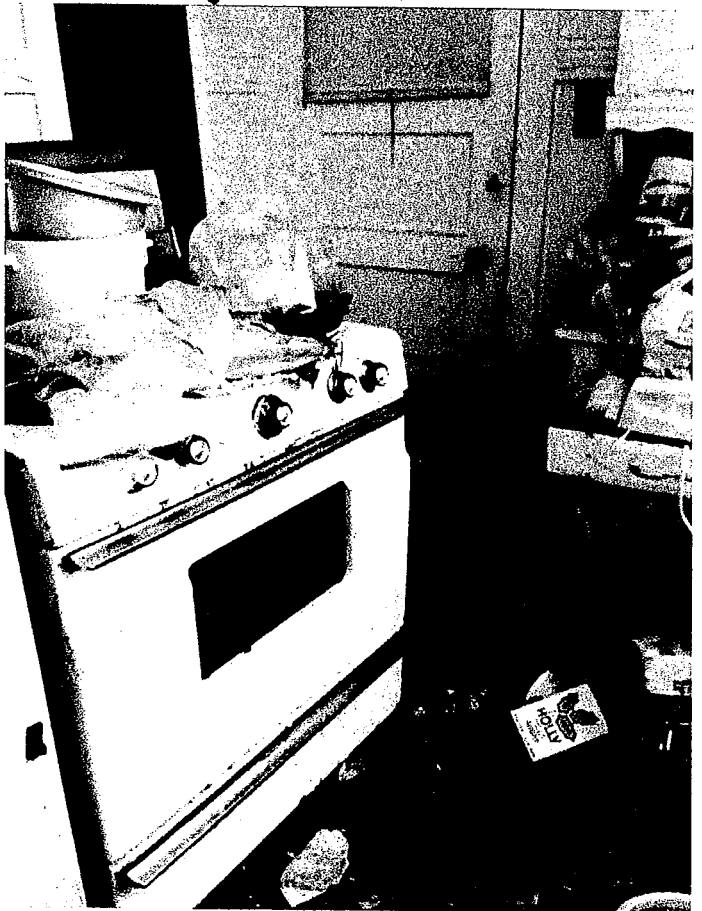


5/20/14

5/20/14



7/15/15



000020 ATTACHMENT NO 11

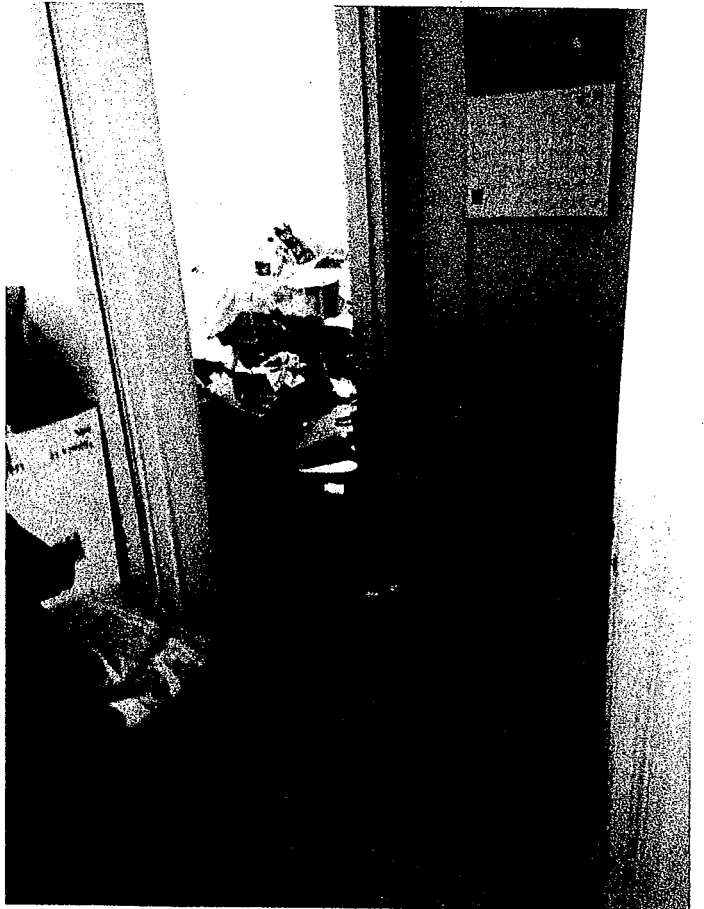
11/29/18



000021

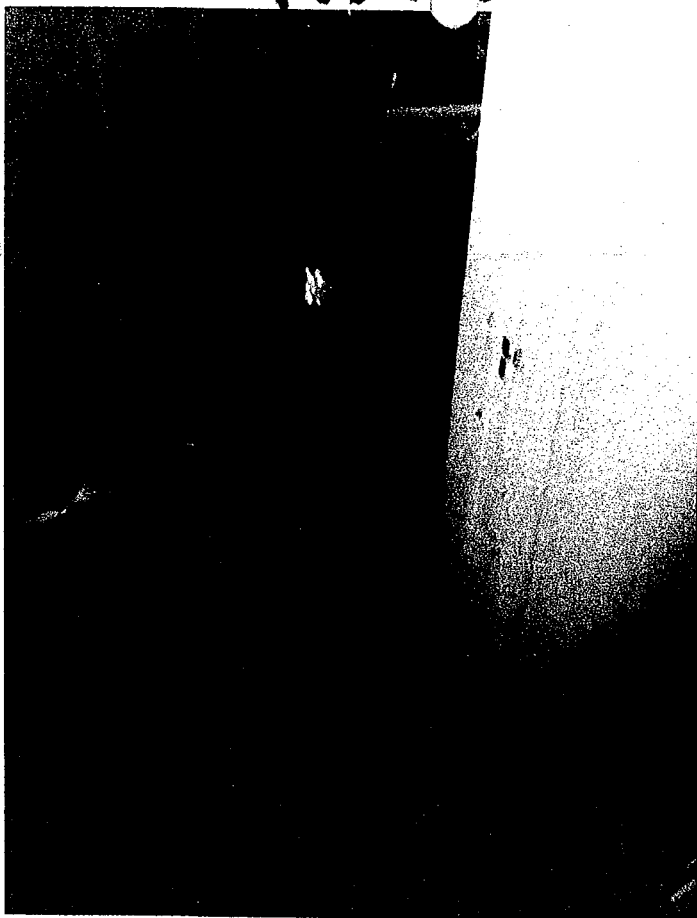
Handwritten signature or mark

7119/15



000022 ATTACHMENT 5 u1 n

8/26/15



8/26/15

8/26/15



8/26/15



000023 ATTACHED TO FILE

PROOF OF SERVICE

Case Number T15-0076

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.

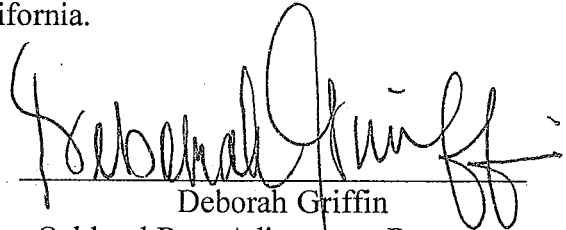
Today, I served the attached **Hearing Decision** by placing a true copy of it in a sealed envelope in City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California, addressed to:

Mary E. Lee
848 Erie Street #2
Oakland, CA 94610

Bruce G. Millar
P.O. Box 11165
Oakland, CA, 94611

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **June 17, 2016** in Oakland, California.


Deborah Griffin
Oakland Rent Adjustment Program

000024

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

For filing stamp.

RECEIVED

MAR 17 2016

**RENT ADJUSTMENT PROGRAM
OAKLAND**

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

CASE NUMBER T 16-0096

OWNER RESPONSE

Please print legibly.

Your Name <u>Bruce G. Millar</u>	Complete Address (with zip code) <u>P.O. BOX 11165 Oakland, CA 94611</u>	Phone: <u>925-855-0419</u> Email: _____
Your Representative's Name (if any) <u>self</u>	Complete Address (with zip code)	Phone: _____ Fax: _____ Email: _____
Tenant(s) name(s) <u>Mary Lee</u>	Complete Address (with zip code) <u>848 Erie St. #2 Oakland, CA 94611</u>	

Have you paid for your Oakland Business License? Yes No Number 28045835
(Provide proof of payment.)

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

There are 4 residential units in the subject building. I acquired the building on 5/15/14.

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

I. RENTAL HISTORY

The tenant moved into the rental unit on 7/1/1982.

The tenant's initial rent including all services provided was \$ 215 / 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? 4/02/14

Is the tenant current on the rent? Yes No

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

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

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

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

II. JUSTIFICATION FOR RENT INCREASE

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

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

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

III. DECREASED HOUSING SERVICES

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

IV. EXEMPTION

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

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

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

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

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

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

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

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

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

V. IMPORTANT INFORMATION

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

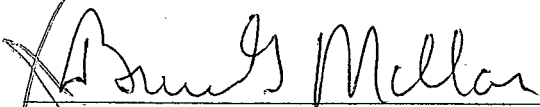
NOTE: If you do not file a timely Response, you will not be able to produce evidence at the Hearing, unless you can show good cause for the late filing.

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

VI. VERIFICATION

Owner must sign here:

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



Owner's Signature

3/04/10

Date

VII. MEDIATION AVAILABLE

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

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

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

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

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

Owner's Signature

Date

March 9, 2016

RECEIVED
MAR 17 2016
OAKLAND RENT ADJUSTMENT

City of Oakland
RENT ADJUSTMENT PROGRAM
250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor
Oakland, CA 94612

To Whom It May Concern,

I am writing in response to a letter I received from the City of Oakland Rent Adjustment Program in regards to a tenant petition from my tenant, Mary E. Lee. Ms. Lee resides at 848 Erie St., Apt. 2, a building that I purchased 5/15/2014.

Ms. Lee is protesting a "Decrease in Housing Services". Ms. Lee has listed off a number of items, beginning with No Working Oven since June 25, 2014. Since purchasing this building in May of 2014, I have sent Ms. Lee numerous letters requesting that she clean her apartment (enclosed). The condition she kept it in was uninhabitable and was a *severe fire hazard*, endangering the lives of her neighboring tenants (pictures enclosed). After many requests for her to clean her apartment, I turned off the gas to her stove on 9/26/2014 because her kitchen and living space was a fire hazard. There continued to be garbage, paper and grease covered cooking pots littering her stove top and her kitchen remained in an unusable condition. I advised her to clean her kitchen and call PG&E to turn the gas back on. When she called PG&E, they refused to turn the gas back on due to grease and debris on the range and advised replacement of the unit (service report enclosed). I told Mary when she cleaned her kitchen and it wasn't a fire hazard, I would replace her stove. I offered to pay for a professional service to help Ms. Lee clean her apartment, she refused. Ms. Lee continued to ignore my requests; which forced me to take legal action. Throughout the legal process and up until one of the last inspections before eviction, Ms. Lee refused to clean her apartment and *continued to put people's lives at risk due to the condition she kept her apartment in* (dated pictures enclosed). Her apartment was deemed uninhabitable by Adult Protective Services on 1/19/2016. A threat of eviction was eminent and Ms. Lee finally cleaned her apartment. I have been more than accommodating to Ms. Lee, I offered to pay for a cleaning service to help her, I waited over a year to take legal action and I granted several extensions on the inspection time so that she could get her apartment in order and avoid an eviction (letters enclosed).

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Some of her other protests, the black grease leaking out of metal pipe from stove, grease on the walls, kitchen floor being not cleanable, spiders and ants, brown walls from steam and dust, this is all is due to the condition that she kept her apartment in. She, as a tenant, is expected to maintain a clean and orderly living space.

The remaining protests, kitchen walls need painting, missing knobs on cabinet doors, grout chipping, bathroom has rotten vanity, chipping paint in bathroom and living room ceiling, etc... I planned on renovating Ms. Lee's kitchen and bathroom as soon as she cleaned up, then I received this complaint. Since then, I have done the following renovations to Ms. Lee's apartment (pictures enclosed):

- I had a professional cleaning service clean the kitchen and bathroom before renovations began.
- Kitchen: new linoleum floor, knob replacement on cabinet doors, new stove, reconditioned refrigerator, grease covered pipe removed.
- Living room: painted ceiling
- Bathroom: new vanity, painted walls

I have enclosed my letters requesting that Ms. Lee clean her apartment, her responses to those letters, PG&E's service reports, Legal letters from My Attorney and Ms. Lee's attorney during legal proceedings and pictures of Ms. Lee's apartment over the past 2 years. All serves as tangible evidence that supports my position.

Sincerely,



Bruce G. Millar

Enclosure: Letters
Legal documents
Photos

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T16-0076 RCL/SK

<p>CITY OF OAKLAND RENT ADJUSTMENT PROGRAM Mail To: P. O. Box 70243 Oakland, California 94612-0243 (510) 238-3721</p>	<p>For date stamp. RENT ADJUSTMENT PROGRAM 2016 FEB -5 PM 4:41</p>
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Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed.

TENANT PETITION

Please print legibly

Your Name <i>MARY E. LEE</i>	Rental Address (with zip code) <i>848-ERIE ST, #2 OAKLAND, CA 94612-2205</i>	Telephone <i>415-894-7262</i>
Your Representative's Name <i>N/A</i>	Mailing Address (with zip code) <i>N/A</i>	Telephone <i>N/A</i>
Property Owner(s) name(s) <i>Bruce G. Melan</i>	Mailing Address (with zip code) <i>P.O. Box 11165 Oakland, Ca. 94611</i>	Telephone <i>925-855-0419</i>

Number of units on the property: 4

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

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

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

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

Date you moved into the Unit: July 1, 1982 Initial Rent: \$ 215.00 /month

When did the owner first provide you with a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program (RAP NOTICE)? Date: 7/29/14. 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		
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

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

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

III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:

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

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

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

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

IV. VERIFICATION: The tenant must sign:

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

Mary E. Lee
Tenant's Signature

Feb. 5, 2016
Date

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

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

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

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

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

Tenant's Signature

Date

VI. IMPORTANT INFORMATION:

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

File Review

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

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

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

1) **No working oven** since June 25th, 2014.

PG&E – 2 workers working on smart meter turned off my gas to oven. Came into re-light and could not re-light, as a result gave hazard notice. When Bruce G. Millar (in upstairs apartment overheard this and misunderstanding believed that I had called PG&E, he told me to move or we will fight this out in court.) When I filed claim form with PG&E to have my oven re-light, they learned I was not owner and told me to turn over to owner with hazard notice. I was not aware that I needed to make a copy, since, owner never re-light, but continue to make nuisance complaints of not having an immaculate apartment for re-lighting the oven.

- a) September 28, 2014- Bruce G. Millar came in apartment, while I was not home, and turned off pilot light to top burners. I did not know until I was ready to steam marinated salmon for cooking. I, then called Bruce G. Millar 3 times, without success of a return phone call. I then called PG&E, whom came out and took off the nut to the gas line and wrote hazard notice for owner to replace with a new stove. To date, I do not have use of a stove.
 - b) January 19th, 2016 – Adult Protective Services came and inspected my apartment and says it is uninhabitable.
- 2) There's **black grease leaking out** of silver metal pipe leading from the stove to the outside.
 - 3) There's grease on walls in the kitchen over the stove-never a paint job since 1974.
 - 4) The kitchen floor is not cleanable; it has become paste upon mopping.
 - a) There was a leak in the kitchen sink pipe that Bruce G. Millar refused to fix until I called City of Oakland's Code & Compliance. January 6, 2016.
 - 5) There are Black Widow spiders, spiders and a huge ant infestation, all in the kitchen, bathroom, and living room.
 - 6) There's missing knobs on cabinet doors, the wood on cabinet drawers are chipping saw dust, rotten away and spitted up and cracked. There's grout that has chipped away on the kitchen since having me worried the sink may drop.
 - 7) There's rotten wood windows that won't close well in the dining room and bedroom that he has know of before he bought this building.
 - 8) There is chipping and peeling paint in the living room, occupying a fourth of the living room and also in the opposite side of the room. The owner had come in while he suing me for eviction and had someone scrapped the paint onto my clothing on my couch and on the floors without clean up.
 - 9) The hall wall has brown walls from steam and dust.
 - 10) The bathroom has a rotten vanity and it is unlevelled, consequently I have had to keep 2 sponges on the edge continuously in order for water not to drain onto my neighbor's garage. Bruce G. Millar was going to cite me for these sponges as a clause in his eviction points, until he realized why they were there.
 - 11) There is chipped paint and walls are brown from steam and dust in the bathroom.
 - 12) The hot water heater does not give enough hot water to complete a short shower.
 - 13) These are among some of the items of concern and not just limited to these.

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CITY OF OAKLAND
COMMUNITY DEVELOPMENT DEPARTMENT

CHRONOLOGICAL CASE REPORT

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

PROPERTY OWNER APPEAL:

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

RECEIVED
CITY OF OAKLAND
RENT ARBITRATION PROGRAM

City of Oakland Residential Rent Adjustment Program 250 Frank Ogawa Plaza, Suite 5313 Oakland, California 94612 (510) 238-3721	2016 JUL 26 PM 12:37 APPEAL
Appellant's Name Logos Property Investment, LLC	Landlord <input checked="" type="checkbox"/> Tenant <input type="checkbox"/>
Property Address (Include Unit Number) 260 - 29th St., #33 Oakland, CA 94611	
Appellant's Mailing Address (For receipt of notices) 1061 Via Del Gato Alamo, CA 94507	Case Number T16-0184 Date of Decision appealed 7/6/2016
Name of Representative (if any) Law Office of Elaine Lee ATTN: Steve Kosta, Paralegal	Representative's Mailing Address (For notices) 405 - 14th St., #607-B Oakland, CA 94612

ORIGINAL

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

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

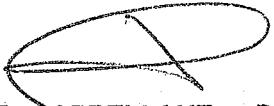
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CITY OF OAKLAND
RENT ARBITRATION PROGRAM

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

8. You must serve a copy of your appeal on the opposing party(ies) or your appeal may be dismissed. I declare under penalty of perjury under the laws of the State of California that on July 25, 2016, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

Name	Nichelle Waller
Address	260 - 29th St., #33
City, State Zip	Oakland, CA 94611
Name	
Address	
City, State Zip	

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

IMPORTANT INFORMATION:

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

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

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 RENT ADJUSTMENT PROGRAM
 CITY OF OAKLAND
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 000037

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

4 Attorney for: RESPONDENT,
LOGOS PROPERTY INVESTMENT, LLC

8 NICHELLE WALLER,
9 Tenant/Petitioner,

CASE NO.: T16-0184

10 vs.

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

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

14 I. STATEMENT OF FACTS

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

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

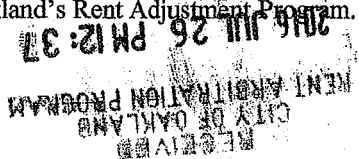
19 On 2/25/16, WALLER was served with notice increasing rent (capital improvements), from \$891
20 to \$966.56, effective 4/1/16, together with ORAP Notice #2.

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

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

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

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



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

6 **II. LEGAL ARGUMENT**

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

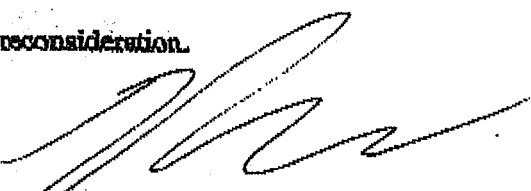
11 LOGOS, in its timely response, had provided substantial evidence to support its positions that:
12 1) services of the ORAP Notice(s) and rent increase were properly accomplished by "post + mail"
13 pursuant to CCP §1162(a)(3); and 2) LOGOS served ORAP Notice #1 on 7/29/15 (not 2/21/16) and
14 ORAP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

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

17 **III. CONCLUSION**

18 The matter should be remanded for reconsideration.

20 DATED: 7/25/16

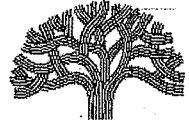


21 **ELAINE R. LEE**
22 Attorney for Respondent LOGOS

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KENT ARBITRATION PROGRAM

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CITY OF OAKLAND



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

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

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

ADMINISTRATIVE DECISION

CASE NUMBER: T16-0184, Waller v. Logos Property Investment, LLC

PROPERTY ADDRESS: 260 - 29th St., #33, Oakland, CA

PARTIES: Nichelle Waller (Tenant)
Logos Property Investment, LLC (Owner)

INTRODUCTION

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

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

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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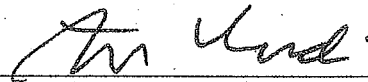
notice with an effective date less than six months after the owner first provides such notice is invalid.¹

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

ORDER

1. Petition T16-0184 is granted.
2. The rent for the tenant's rental unit remains \$891 per month.
3. The Hearing scheduled for July 25, 2016 is cancelled.
4. **Right to Appeal:** **This decision is the final decision of the Rent Adjustment Program Staff.** Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within twenty (20) calendar days after service of the decision. The date of service is shown on the attached Proof of Service. If the Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.

Dated: July 6, 2016



Stephen Kasdin
Hearing Officer
Rent Adjustment Program

¹ O.M.C. 8.22.060(C)

PROOF OF SERVICE

Case Number T16-0184

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

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

Tenant

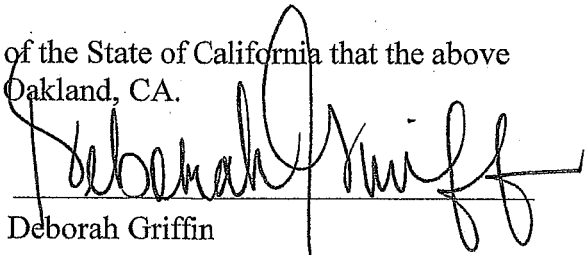
Nichelle Waller
260 29th St #33
Oakland, CA 94611

Owner

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

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on July 07, 2016 in Oakland, CA.


Deborah Griffin

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

CASE NUMBER T16 - 0184

OWNER RESPONSE

Please print legibly.

Your Name Dennis Chen	Complete Address (with zip code) 1061 VIA DEL GATO ALAMO, CA. 94507	Phone: 925.820-7535 Email: info@logospm.net
Your Representative's Name (if any)	Complete Address (with zip code)	Phone: _____ Fax: _____ Email: _____
Tenant(s) name(s) Nichelle Waller	Complete Address (with zip code) 260 29th St. Unit 33 Oakland, Ca. 94611	

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

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

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

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

I. RENTAL HISTORY

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

The tenant's initial rent including all services provided was \$ 850.⁰⁰ / month.

Have you (or a previous Owner) given the City of Oakland's form entitled **NOTICE TO TENANTS OF RESIDENTIAL RENT ADJUSTMENT PROGRAM ("RAP Notice")** to all of the petitioning tenants?
 Yes No I don't know If yes, on what date was the Notice first given? 2/21/16

Is the tenant current on the rent? Yes No

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

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

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

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

II. JUSTIFICATION FOR RENT INCREASE

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

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

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

III. DECREASED HOUSING SERVICES

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

IV. EXEMPTION

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

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

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

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

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

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

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

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

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

V. IMPORTANT INFORMATION

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


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

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

VI. VERIFICATION

Owner must sign here:

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



Owner's Signature

5/5/16

Date

VII. MEDIATION AVAILABLE

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

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

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

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

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

Owner's Signature

Date

T16-0184 MS/BK

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

TENANT PETITION

Please print legibly

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

Number of units on the property: About 40.

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

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

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

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

Date you moved into the Unit: March 2006 Initial Rent: \$ 850⁰⁰ /month

When did the owner first provide you with a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program (RAP NOTICE)? Date: 2/23/16. If never provided, enter "Never."

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

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

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

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

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

III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:

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

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

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

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

IV. VERIFICATION: The tenant must sign:

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

Nichelle Waller
Tenant's Signature

March 30, 2016
Date

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

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

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

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

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

Nichelle Waller
Tenant's Signature

March 30, 2016
Date

VI. IMPORTANT INFORMATION:

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

File Review

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

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

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

CHRONOLOGICAL CASE REPORT

Case No.: T16-0259
Case Name: Barghout v. Owens
Property Address: 3420 Rubin Dr., Oakland, CA
Parties: Lauren Barghout (Tenant)
Jonathan Owens (Property Owner)

TENANT APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	May 23, 2016
Owner Response filed	March 13, 2008
Hearing Decision issued	September 19, 2016
Tenant Appeal filed	October 10, 2016
Owner Appeal filed	October 24, 2016

2016 OCT 10 PM 4:48

City of Oakland Residential Rent Adjustment Program 250 Frank Ogawa Plaza, Suite 5313 Oakland, California 94612 (510) 238-3721		APPEAL	
Appellant's Name Lauren Barghast		Landlord <input type="checkbox"/>	Tenant <input checked="" type="checkbox"/>
Property Address (Include Unit Number) 3420 Rubin Drive Oakland, CA 94602			
Appellant's Mailing Address (For receipt of notices) 3420 Rubin Drive Oakland CA 94602		Case Number T16-0259	
		Date of Decision appealed 9/19/2016	
Name of Representative (if any)		Representative's Mailing Address (For notices)	

appeal the decision issued in the case and on the date written above on the following grounds:

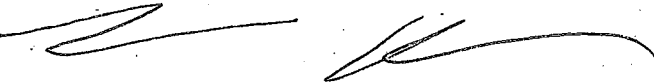
(Check the applicable ground(s). Additional explanation is required (see below). Please attach additional pages to this form.)

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

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

8. **You must serve a copy of your appeal on the opposing party(ies) or your appeal may be dismissed.** I declare under penalty of perjury under the laws of the State of California that on 10/20, 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	Alana Conner Esq. Williams C. Lyon
Address	3420 Robin Drive Oakland CA
City, State Zip	Oakland CA 94602
Name	
Address	
City, State Zip	

	10/20/16
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.

Attachment 4:

Tenant was current on rent when she filed the petition

The written, timely and properly submitted exhibits, must take precedence over the misapprehension of the albeit confusing testimony that resulted in the incorrect calculation in the "Current on Rent" section within the **Finding of Fact and Conclusions of Law**. The further fact that the testimony of both landlord and tenant agree on amounts paid {Audio time: 16:40 through 25 minutes}, which in turn matched the paypal and cash receipts attached¹. The receipts and undisputed testimony of both Landlord and Tenant show that the tenant paid \$18,706.25 for the period of 7/7/15 through 5/23/16, which exceed the \$18,110.50 calculated by the hearing officer. The evidence and testimony show unequivocally that the tenant was current on rent when she filed her petition.

Furthermore, though informed of the termination of tenancy and unlawful detainer action, the hearing officer erred by asking about and including dates post termination notice. As explained by *Hinson v. Delis*² a tenant must first notify Landlord of safety and habitability problems, allow a reasonable time for repair and only *AFTER* the Landlord fails to remedy the problem may the tenant lawfully withhold rents and notify proper agencies. If rents due after a Landlord terminates tenancy (and therefore does not accepts rents) is included in the calculation of if tenant is current on rent, that would incentivizes a landlord to terminate tenancy as soon as tenant informs Landlord of needed repairs - thereby creating a mechanism for refusing rent - and preventing a tenant from properly exercising her rights to petition.

Finally hearing officer erred by allowing Landlord to read into evidence documents that were not submitted prior to hearing as per the rules. Since the Landlord benefited from advice of a lawyer and tenant was pro per, strict adherence to RAP written instructions is the only way to insure a pro per tenant can properly prepare for a hearing. The Landlord did not enter into the file the basis by which he claimed tenant was behind on rent. It turned out that the Landlord claim of rents due was for July 2015 and a recession of contribution to the fundraising campaign of tenant daughter to cover tuition and expenses for a Full Stack Web Development Program (see Exhibit B). Had Landlord followed instructions in the petition form, tenant would have had the opportunity to bring in rent receipts and evidence and tenant would have brought Exhibit B to the hearing.

Because the \$18,110.50 paid by tenant exceeded the rents owed of \$18,110.50 calculated by the hearing officer, it's unequivocal that tenant was current on rent when she followed petition. The prohibition of accepting rents post

¹ Tenant only included rent receipts for 2016 in the petition because the Landlord did not contest that the \$2,615.00 did not cover disputed amounts due. Tenant checked the record prior to the hearing and the Landlord had not provided any documentation that he disputed that the \$2,615.00 covered outstanding amounts.

² *Hinson v. Delis*, 26 Cal. App. 3d 62, 102 Cal. Rptr. 661 (Ct. App. 1972).

termination of tenancy and failure of Landlord to follow RAP instructions by providing documents prior to hearing should require a new hearing if Landlord disputes this appeal and/or the documents included.

Statement of Undisputed Fact

Rent Period	Payment	Type
11/7/2014~ 7/15/2015	\$26,648.15	Investment in leui of rents (w/ payout of \$53,296.30)
7/15_8/15	\$1835.00	see cashed check
8/15~9/15	\$1835.00	attached receipts
9/15~10/15	\$1835.00	attached receipts
10/15~11/15	\$1835.00	attached receipts
11/15 ~12/15	\$1100.00*	attached receipts
12/15 ~1/11	\$1,875.00	attached receipts
1/15~2/16	\$1,875.00	attached receipts
2/15~3/16	\$1,875.00	attached receipts
3/15/16~4/15	\$1,775.00	attached receipts
4/15 ~ 5/23/16	\$2,615.00	attached receipts
Total	\$18,706.25	

* Though the receipts for 2016 were properly and timely included in the original petition, please find a complete set of receipts for the period 7/15/15 through 5/23/16. (Exhibit A.)

The undisputed facts in the documents and testimony show Landlord breached Warrant of Habitability.

The Landlord's attorney offered two conflicting predicates as to why the Landlord had not breached the warrant of Habitability. First she argued that the tenant knew of the lead, asbestos and electrical hazards (as the prior owner) and therefore could not claim a breach of habitability. Second she argued that the tenant had no evidence of lead, asbestos and electrical hazards (near swimming pool) - these two claims are in conflict

The undisputed facts show that (a) tenant knew of (and had sufficient evidence) potential electrical hazards, lead and asbestos hazards as the prior owner and (b) knowing of these hazards she followed the procedure as outlined by *Hinson v. Delis*³ by asking Landlord to explain safeguard in use to protect tenants from

³ *Hinson v. Delis*, 26 Cal. App. 3d 62 - Cal: Court of Appeal, 1st Appellate Dist., 3rd Div. 1972

hazards (airborne lead & asbestos) during remodeling and from electrical hazards prior to turning on swimming pool. As per Knight v. Hallsthammer, a tenants prior knowledge of Habitability defects does not waive Landlords require to remedy defects nor does it preclude tenant from the remedy of lawfully withholding rent until repairs are completed. Furthermore, the mere threat of personal injury from facilities - which if found to be defective⁴ (in this case air borne asbestos and lead during the remodeling) breaches the warrant of Habitability. "Subjecting a tenant to the fear that he may suffer injury or deterioration in health due to an unrepaired defect is best viewed as an independent basis for breach of the habitability warranty"⁵ As per Knight v Hallshamer⁶, the burden of proof falls on the Landlord once tenant has accurately specified the safety issues. Finally, the tenant has suffered health effects due to the 8 month ongoing remodeling as shown in Exhibit C - the proving that the Landlord breach Habitability and tenant has suffered medical issues as a result.

The undisputed facts show decreased housing services.

The recorded testimony of both Tenant and Landlord concur that a large section of her office (where she keeps her desks, file cabinets and reading chairs was unavailable for her use from 4/11/16 until 7/23/16. The tenant claims in the petition, supported by medical letter, that she lost use of her office due to multiple chemical sensitivity. Lost use of quiet enjoyment due to non-stop construction, lost yard space, bookshelf and cabinet space in the utility and use of the yard (for her dog).

⁴ Todd v. May, (1972-74 Transfer Binder) CCH Pov. L. REP., 1 17,949 (Conn. Cir. Ct. 1973) (failure to remove paint containing high degree of lead after having been duly warned);

⁵ Javins v. First Nat'l Realty Corp., 428 F.2d 1071, 1082-83 (D.C. Cir.), cert. denied, 400 U.S. 925 (1970); Green v. Superior Court, 10 Cal. 3d 616, 629, 517 P.2d 1168, 1177, 111 Cal. Rptr. 704, 712 (1974); Hinson v. Dells, 26 Cal. App. 3d 62, 70, 102 Cal. Rptr. 661, 666 (1st Dist. 1972); Pines v. Perssion, 14 Wis. 2d 590, 597, 111 N.W.2d 409, 413 (1961); cf. Seely v. White Motor Co., 63 Cal. 2d 9, 14-15, 403 P.2d 145, 149, 45 Cal. Rptr. 17, 21 (1965). See also Reste Realty Corp. v. Cooper, 53 N.J. 444, 462 n.1, 251 A.2d 268, 277 n.1 (1969).

⁶ Knight v. Hallsthammar, 623 P. 2d 268 - Cal: Supreme Court 1981

Exhibit A

You sent a payment

Transaction ID: 84F34356S95485141

Dear Lauren Barghout,

You sent a payment for \$2,615.00 USD to Jonathan Owens.

Please note that it may take a little while for this payment to appear in the Recent Activity list on your Account Overview.

[View the details of this transaction online](#)

Your monthly account statement is available anytime; just log in to your account at https://www.paypal.com/us/cgi-bin/webscr?cmd=_history. To correct any errors, please contact us through our Help Center at https://www.paypal.com/us/cgi-bin/webscr?cmd=_contact_us.

Amount you have sent: \$2,615.00 USD

Your total charge: \$2,615.00 USD

Jonathan Owens will receive: \$2,615.00 USD

Sent on: April 20, 2016

Message in your payment email: As you know, the unnoticed construction in my office disordered my records and papers. However, by my best reconstruction of the records I am now 100% current.

Sincerely,
PayPal

000056

You sent a payment

Transaction ID: 92K69872FP915711T

Dear Lauren Barghout,

You sent a payment for \$1,775.00 USD to Jonathan Owens.

Please note that it may take a little while for this payment to appear in the Recent Activity list on your Account Overview.

[View the details of this transaction online](#)

Your monthly account statement is available anytime; just log in to your account at https://www.paypal.com/us/cgi-bin/webscr?cmd=_history. To correct any errors, please contact us through our Help Center at https://www.paypal.com/us/cgi-bin/webscr?cmd=_contact_us.

Amount you have sent: \$1,775.00 USD

Your total charge: \$1,775.00 USD

Jonathan Owens will receive: \$1,775.00 USD

Sent on: March 17, 2016

Sincerely,
PayPal

000057

PayPal

You sent a payment

Transaction ID: 5LU38113JJ316324X

Dear Lauren Barghout,

You sent a payment for \$1,875.00 USD to Jonathan Owens.

Please note that it may take a little while for this payment to appear in the Recent Activity list on your Account Overview.

[View the details of this transaction online](#)

Your monthly account statement is available anytime; just log in to your account at <https://www.paypal.com/us/cgi-bin/webscr?cmd=history>. To correct any errors, please contact us through our Help Center at https://www.paypal.com/us/cgi-bin/webscr?cmd=contact_us.

Amount you have sent: \$1,875.00 USD

Your total charge: \$1,875.00 USD

Jonathan Owens will receive: \$1,875.00 USD

Sent on: February 19, 2016

Message in your payment email: Sorry its late. Have a ton of deadlines, even though I just finished a big one.

Sincerely,
PayPal

000058

PayPal

You sent a payment

Transaction ID: 6JC39431CG7229021

Dear Lauren Barghout,

You sent a payment for \$1,875.00 USD to Jonathan Owens.

Please note that it may take a little while for this payment to appear in the Recent Activity list on your Account Overview.

[View the details of this transaction online](#)

Your monthly account statement is available anytime; just log in to your account at <https://www.paypal.com/us/cgi-bin/webscr?cmd=history>. To correct any errors, please contact us through our Help Center at https://www.paypal.com/us/cgi-bin/webscr?cmd=contact_us.

Amount you have sent: \$1,875.00 USD

Your total charge: \$1,875.00 USD

Jonathan Owens will receive: \$1,875.00 USD

Sent on: January 16, 2016

Sincerely,
PayPal

[Help](#) [Resolution Center](#) [Security Center](#)

000059

PayPal

You sent a payment

Transaction ID: 6EL936835U913910C

Dear Lauren Barghout,

You sent a payment for \$875.00 USD to Jonathan Owens.

Please note that it may take a little while for this payment to appear in the Recent Activity list on your Account Overview.

[View the details of this transaction online](#)

Your monthly account statement is available anytime; just log in to your account at <https://www.paypal.com/us/cgi-bin/webscr?cmd=history>. To correct any errors, please contact us through our Help Center at <https://www.paypal.com/us/cgi-bin/webscr?cmd=contact-us>.

Amount you have sent: \$875.00 USD

Your total charge: \$875.00 USD

Jonathan Owens will receive: \$875.00 USD

Sent on: December 17, 2015

Message in your payment email: remainder for Dec, still outstanding balance for last month

Sincerely,
PayPal

000060

PayPal

You sent a payment

Transaction ID: 30E7062373070702Y

Dear Lauren Barghout,

You sent a payment for \$1,100.00 USD to Jonathan Owens.

Please note that it may take a little while for this payment to appear in the Recent Activity list on your Account Overview.

[View the details of this transaction online](#)

Your monthly account statement is available anytime; just log in to your account at https://www.paypal.com/us/cgi-bin/webscr?cmd=_history. To correct any errors, please contact us through our Help Center at https://www.paypal.com/us/cgi-bin/webscr?cmd=_contact_us.

Amount you have sent: \$1,100.00 USD

Your total charge: \$1,100.00 USD

Jonathan Owens will receive: \$1,100.00 USD

Sent on: November 16, 2015

Message in your payment
email: rest in cash

Sincerely,
PayPal

000061

PayPal

You sent a payment

Transaction ID: 4D347998C2536870R

Dear Lauren Barghout,

You sent a payment for \$135.00 USD to Jonathan Owens.

Please note that it may take a little while for this payment to appear in the Recent Activity list on your Account Overview.

[View the details of this transaction online](#)

Your monthly account statement is available anytime; just log in to your account at <https://www.paypal.com/us/cgi-bin/webscr?cmd=history>. To correct any errors, please contact us through our Help Center at https://www.paypal.com/us/cgi-bin/webscr?cmd=contact_us.

Amount you have sent: \$135.00 USD

Your total charge: \$135.00 USD

Jonathan Owens will receive: \$135.00 USD

Sent on: October 20, 2015

Message in your payment
email: plus \$200 in cash

Sincerely,
PayPal

000062

PayPal

You sent a payment

Transaction ID: 0CR08819J9588712A

Dear Lauren Barghout,

You sent a payment for \$1,570.66 USD to Jonathan Owens.

Please note that it may take a little while for this payment to appear in the Recent Activity list on your Account Overview.

[View the details of this transaction online](#)

Your monthly account statement is available anytime; just log in to your account at https://www.paypal.com/us/cgi-bin/webscr?cmd=_history. To correct any errors, please contact us through our Help Center at https://www.paypal.com/us/cgi-bin/webscr?cmd=_contact_us.

Amount you have sent: \$1,570.66 USD

Your total charge: \$1,570.66 USD

Jonathan Owens will receive: \$1,570.66 USD

Sent on: October 15, 2015

Message in your payment 1500 toward rent and 70.66 toward utilities. Will pay 375
email: from different account

Sincerely,
PayPal

000063

11/20/2015

receipt of \$200.00 in cash
from Lauren to Jonathan
for partial payment in settlement
of October rent.

\$1,500 already paid, ~~\$135~~
and \$135 paid today, viz pay pal

Jonathan

000064

PayPal

You sent a payment

Transaction ID: 0SX793003X324070V

Dear Lauren Barghout,

You sent a payment for \$141.83 USD to Jonathan Owens.

Please note that it may take a little while for this payment to appear in the Recent Activity list on your Account Overview.

[View the details of this transaction online](#)

Your monthly account statement is available anytime; just log in to your account at <https://www.paypal.com/us/cgi-bin/webscr?cmd=history>. To correct any errors, please contact us through our Help Center at [https://www.paypal.com/us/cgi-bin/webscr?cmd=contact us](https://www.paypal.com/us/cgi-bin/webscr?cmd=contact-us).

Amount you have sent: \$141.83 USD

Your total charge: \$141.83 USD

Jonathan Owens will receive: \$141.83 USD

Sent on: October 5, 2015

Message in your payment
email: utilities

000065

PayPal

You sent a payment

Transaction ID: 4WU37895YV385271P

Dear Lauren Barghout,

You sent a payment for \$1,835.00 USD to Jonathan Owens.

Please note that it may take a little while for this payment to appear in the Recent Activity list on your Account Overview.

[View the details of this transaction online](#)

Your monthly account statement is available anytime; just log in to your account at https://www.paypal.com/us/cgi-bin/webscr?cmd=_history. To correct any errors, please contact us through our Help Center at https://www.paypal.com/us/cgi-bin/webscr?cmd=_contact_us.

Amount you have sent: \$1,835.00 USD

Your total charge: \$1,835.00 USD

Jonathan Owens will receive: \$1,835.00 USD

Sent on: September 14, 2015

Message in your payment email: *will write welsfarg0 check for utilities*

Sincerely,
PayPal

000066

PayPal

You sent a payment

Transaction ID: 9U4043445F729340F

Dear Lauren Barghout,

You sent a payment for \$1,835.00 USD to Jonathan Owens.

Please note that it may take a little while for this payment to appear in the Recent Activity list on your Account Overview.

[View the details of this transaction online](#)

Your monthly account statement is available anytime; just log in to your account at <https://www.paypal.com/us/cgi-bin/webscr?cmd=history>. To correct any errors, please contact us through our Help Center at https://www.paypal.com/us/cgi-bin/webscr?cmd=contact_us.

Amount you have sent: \$1,835.00 USD

Your total charge: \$1,835.00 USD

Jonathan Owens will receive: \$1,835.00 USD

Sent on: August 24, 2015

Message in your payment email: For aug 15 through sept 15 still owe for first two weeks in july

Sincerely,
PayPal

000067

View Check Copy

Check Number 101 Date Posted 07/23/15 Check Amount \$1,835.00 Account Number New Checking XXXXXX9740

[Adjust Image](#)

LAUREN BARGHOUT
3420 RUIHN DR
OAKLAND, CA 94602-4144

101
11-4296/7116 4002
800006740

7/20/15 Date

Pay to the Order of Jon Owen \$ 1835.00

One thousand eight hundred thirty five and 00/100 Dollars

For rent 7/15

1210428820 8556069740 00101

[Adjust Image](#)

[Faint, mostly illegible text and a signature are visible in this section.]

000068

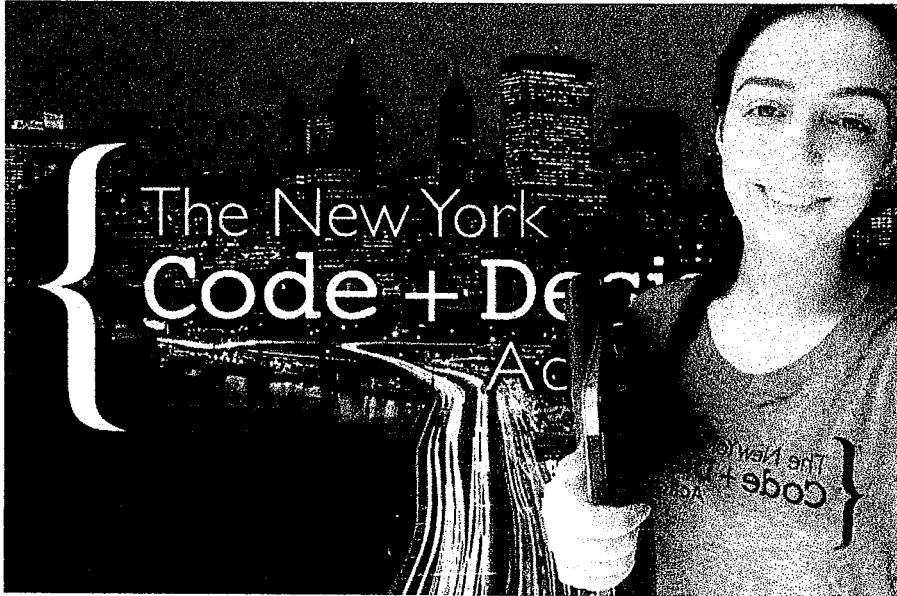
Exhibit B

Inbox !!

A blatant self-promotion for Samantha's (long time RS kid, now 19!) GoFundMe crowd funding to support her in computer programming immersion in N.Y.C.. She is 84% there w/ two weeks to go. Please also like/comment/share on facebook because it causes the news feed algorithm to surface the post! Thanks for your help!
~smiles
lauren

<http://www.gofundme.com/pnl2wc>

— SamGoFundMe.jpg —



1 attachment

000069

Exhibit C
{Put redacted Stanford Medicine Note here}

000070

City of Oakland Residential Rent Adjustment Program 250 Frank Ogawa Plaza, Suite 5313 Oakland, California 94612 (510) 238-3721		2016 OCT 24 PM 2:34 APPEAL	
Appellant's Name Jonathan Owens		Landlord <input checked="" type="checkbox"/> Tenant <input type="checkbox"/>	
Property Address (Include Unit Number) 3420 Rubin Drive, Oakland, CA 94602			
Appellant's Mailing Address (For receipt of notices) 3420 Rubin Drive, Oakland, CA 94602		Case Number T16 - 0259	
		Date of Decision appealed September 19, 2016	
Name of Representative (if any) Alana Grice Conner, Esq.		Representative's Mailing Address (For notices) Fried & Williams LLP 1901 Harrison Street, 14th Floor Oakland, CA 94612	

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

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

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

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

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

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

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

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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 2016 OCT 24 PM 2:34 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 October 24, 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:

<u>Name</u>	Lauren Barghout
<u>Address</u>	3420 Ruben Drive
<u>City, State Zip</u>	Oakland, CA 94612
<u>Name</u>	
<u>Address</u>	
<u>City, State Zip</u>	

	October 24, 2016
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

IMPORTANT INFORMATION:

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

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

2016 OCT 24 PM 2: 34

1 Alana Grice Conner, Esq. SBN 182676
Fried & Williams LLP
2 1901 Harrison Street, 14th Floor
Oakland, CA 94612
3 Telephone: 510-625-0100
aconner@friedwilliams.com

4 Attorneys for Landlord/Appellant
5 Jonathan Owens

6
7
8 COMMUNITY AND HOUSING DEVELOPMENT AGENCY
9 RENT ADJUSTMENT PROGRAM

10
11 Lauren Barghout;

12 Petitioner/Tenant,

13 v.

14 Jonathan Owens,

15 Appellant/Landlord

CASE NO: T16-0259

LANDLORD'S APPEAL

Decision Date: September 19, 2016

Hearing Date: August 25, 2016

Time: 10:00 a.m.

Suite: 5313

Hearing Officer: Steven Kasdin

16 Factual Summary

17 On August 25, 2016 Appellant/Landlord, Jonathan Owens ("Owens") and
18 Petitioner/Tenant Lauren Barghout ("Barghout") appeared before Hearing Officer Steven
19 Kasdin in regards to case number T16-0259. The tenant filed a petition seeking a
20 decrease in housing services. While no rent increase notice had been served by the
21 landlord, the tenant also alleged that the unit was not exempt from rent adjustment and
22 that she had never been served the RAP notice. The landlord argued that the property was
23 exempt from rent adjustment because it is a single family home and thus exempt under
24 Costa Hawkins and the Rent Adjustment Ordinance 8.22.030A.7.

25 On September 19, 2016, the hearing officer issued a decision denying the tenant's
26 petition because she was not current on her rent and also determined that no decreases in
27 housing services existed. Additionally, the hearing officer ruled that the single family
28 home was not exempt because the landlord had 3 roommates, and this transformed the

1 single family home into a multi-unit dwelling. The hearing decision is attached hereto as
2 Exhibit A. The landlord is only appealing the hearing officer's decision regarding the
3 exemption under Civil Code § 1954.52 ("Costa Hawkins Act"). The full text of Civil
4 Code §1954.52 is attached hereto as Exhibit B. The landlord presented evidence
5 demonstrating that the property was a single family home. That evidence included the
6 Alameda County Property Assessment Information (attached hereto as Exhibit C) and the
7 2016-2017 Notification of Assessed Value, showing the landlord is receiving the
8 Homeowner's Exemption (attached hereto as Exhibit D).

9 Argument

10 The hearing officer's decision directly contradicts the state law. The Costa
11 Hawkins Act preempted local laws and permits landlords to "establish the initial rental
12 rate for a dwelling or unit" following the vacating of the prior tenants. It also exempted
13 certain kinds of dwelling units from rent control — notably, "separately alienable" units
14 (i.e., single family houses and condominiums) and units with a certificate of occupancy
15 issued after February 1, 1995. (California Civil Code §1954.52). The Civil Code states
16 at §1954.52 (a):

17 Notwithstanding any other provision of law, an owner of residential real property
18 may establish the initial and all subsequent rental rates for a dwelling or a unit
19 about which any of the following is true: ... (3) (A) It is alienable separate from the
20 title to any other dwelling unit... Oakland's rent adjustment ordinance adopted this
21 exemption.

22 "Alienable separate" means you can sell it separately and transfer its title
23 separately from the other units. Each bedroom in this single family home is part of the
24 dwelling unit. Since the bedrooms are not separately alienable, the single family home is
25 exempt.

26 This position is further supported by the exemption process permitted under the
27 rent adjustment program. 8.22.030B allows an owner to apply for a certificate of
28 exemption. The ordinance only allows a certificate of exemption to be granted for
dwelling units that are "permanently exempt from the Rent Adjustment Ordinance as new

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construction, substantial rehabilitation, or by state law (Costa Hawkins).” If the hearing officer’s ruling were upheld it would mean that single family homes that are otherwise exempt from rent adjustment under state law could never be permanently exempt under Oakland’s rent adjustment program because the exemption would be contingent upon the number of people renting bedrooms at any given time. This uncertainty was not contemplated by the rent adjustment ordinance nor by the state law. The state law is clear: a dwelling unit that can be sold separately is exempt from rent adjustment.

Conclusion

The hearing officer’s decision as it relates to the finding that the unit is not exempt from the rent adjustment ordinance is inconsistent with OMC 8.22 and California Civil Code §1954.52. The landlord respectfully requests that the hearing officer’s decision as to the exemption of this single family dwelling be overturned.

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Department of Housing and Community Development
Rent Adjustment Program

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

HEARING DECISION

CASE NUMBER: T16-0259, Barghout-v. Owens
PROPERTY ADDRESS: 3420 Rubin Dr., Oakland, CA
DATE OF HEARING: August 25, 2016
DATE OF DECISION: September 19, 2016
APPEARANCES: Lauren Barghout (Tenant)
Jonathan Owens (Owner)
Alana Grace Conner (Attorney for Owner)

SUMMARY OF DECISION

The tenant's petition is denied.

CONTENTIONS OF THE PARTIES

The tenant filed a petition on May 23, 2016, which alleges that she has never received the form Notice to Tenants (RAP Notice); that at present there exists a health, safety, fire or building code violation in her unit; and that her housing services have been decreased due to construction noise and inconvenience, the possible presence of lead or asbestos in the house, problems with the swimming pool electrical system, and the owner's retaliatory eviction attempts.

The owner filed a response to the petition, which alleges that the tenant's unit is exempt from the Rent Adjustment Ordinance as being a single-family house, states that he has not given the tenant a RAP Notice, and denies that the tenant's housing services have decreased.

THE ISSUES

- (1) Is the subject rental unit a single-family residence that is exempt from the Rent Adjustment Ordinance?

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- (2) When, if ever, did the tenant receive the RAP Notice?
- (3) Was the tenant current on the rent, or legally withholding rent, when she filed her petition?
- (4) Have the tenant's housing services been decreased and, if so, by what percentage of the total housing services that are provided by the owner?

EVIDENCE

Exemption from the Rent Adjustment Ordinance: At the Hearing, the owner testified that he is the owner of a house containing a number of bedrooms. He lives in the house; he rents 2 rooms to the tenant, and two other people rent individual rooms in the house. All tenants pay rent separately.

RAP Notice: The parties agreed that the tenant has never received the RAP Notice.

Rent History: The tenant testified that she moved into the subject house in November 2014, at a rent of \$2,500 per month. In January 2015, after her daughter moved out, her rent changed to \$1,825 per month. However, instead of paying this amount, she "invested" in a law suit being prosecuted by the owner. In July 2015, this arrangement changed, and she began paying \$1,825 per month in cash. The owner agreed with this testimony.

The owner testified that the tenant has paid rent as follows: July through September 2015 - \$1,835 per month; October 2015 - \$2,047.49; November 2015 - \$1,100; December 2015 through February 2016 - \$1,875 per month; March 2016 - \$1,775; April 2016 - \$2,615. He testified that the tenant has paid no rent from May 2016 through the date of the Hearing. The owner further testified that, because of the construction activity, he discounted the tenant's rent in 2016 as follows: A reduction of \$100 in February; and reductions of 25% (\$456.25) in March; 50% (\$912.50) in April; and 35% (\$638.75) in May. The rent reductions total \$2,107.50.

The tenant further testified that in November 2015, the owner agreed to forgive \$725 in her rent in order to contribute to her daughter's "education campaign." She otherwise agreed with the owner's testimony, as stated above. The owner denied that he had reduced the rent aside from the rent reductions noted above.

Decreased Housing Services:

Construction Activity: The tenant testified that significant construction activity in the house began in late February 2016, and has continued. The work often lasts from 7:00 A.M. until 6:00 P.M. The tenant often works from home; and the construction noises and dust interfered with her ability to work, as well as causing health problems. Further, the construction activity temporarily limited the tenant's use of her home office and an area in the garage that she uses for storage.

Lead / Asbestos: The tenant testified that the house has an old furnace, which is located in the basement. Part of the construction activity included taking down walls and replacing the water heater in the basement. She believes that this work disturbed lead paint and/or asbestos;

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which has entered the house. However, she has no test results or other evidence to support this belief.

Swimming Pool Electric: The tenant testified that there is an electric panel on the wall of the garage, which is an estimated 5 to 8 feet from the swimming pool. She believes that this is a dangerous situation. The electric panel was in the same location at the start of her tenancy.

Retaliatory Eviction: The tenant believes that the owner has attempted to evict her in retaliation for her lawful activities.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Exemption from the Rent Adjustment Ordinance: Civil Code Section 1954.52 (Costa-Hawkins) provides that, under certain circumstances, a single-family home is exempt from local rent regulations. However, in this case, the owner has chosen to rent rooms out separately to a number of people, thereby transforming a single-unit dwelling into a multi-unit dwelling. That portion of the house rented to the tenant is therefore not exempt from the Rent Adjustment Ordinance.

RAP Notice: It is found that the tenant has never received the RAP Notice.

Current on the Rent? The tenant's petition was filed on May 23, 2016, which is 11 months after she agreed to pay rent of \$1,825 per month. The full rent for this period of time – before consideration of rent credits – was \$20,218. The rent credits total \$2,107.50, which reduced the full rent to \$18,110.50. The testimony regarding a further rent credit of \$725 was equally credible, and the tenant has not sustained her burden of proof in this regard. It is found that the tenant paid a total of \$13,192.49 from July 2015 through May 2016. She was therefore approximately \$5,000 in arrears in her rent when she filed her petition.

If the tenant was not current on her rent or legally justified in withholding her rent when she filed her petition, she did not have standing to file a petition, and her petition must be dismissed.¹

A tenant may exercise the option not to pay rent when a unit's condition is in breach of the implied warranty of habitability.² The statutory authority for rent withholding is Code of Civil Procedure Section 1174.2. It provides that a substantial breach of the implied warranty of habitability may be raised as a defense to an unlawful detainer action.

To confer standing to file a Rent Adjustment petition, a tenant must show that he or she might prevail in court in a claim for a habitability breach. That is, the tenant must present a *prima facie* case that he or she is withholding the rent legally. As discussed below, none of the tenant's claims of decreased housing services arise to the level of a habitability violation. Therefore, she was not current on the rent or legally justified in withholding rent when she filed her petition.

¹ O.M.C., § 22:090.A.3.B

² See Green v. Superior Court, (1974) 10 Cal.3d 616, 635; Code of Civil Procedure, § 1174.2.

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Decreased Housing Services: Under the Oakland Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent³ and may be corrected by a rent adjustment.⁴ However, in order to justify a decrease in rent, a decrease in housing services must be either the elimination or reduction of a service that existed at the start of the tenancy or a violation of the housing or building code which seriously affects the habitability of the tenant's unit.

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

The Court stated: "[A] landlord who undertakes to perform reasonably necessary repair and maintenance work on rental property, which has the effect of temporarily interfering with or preventing the tenant's full use of housing services, but does not substantially interfere with the right to occupancy of the premises as a residence, does not effectuate a decrease in housing services within the meaning of the San Francisco rent control ordinance."⁵

This principle applies to the construction noises and activities in this case. Further, the tenant's rent was reduced for a number of months due to the construction activity, so she has already received some compensation for the inconvenience. The claim is denied.

Lead / Asbestos: There is no evidence of lead or asbestos in the house, and the tenant's mere speculation does not meet her burden of proving her claim by a preponderance of evidence. Therefore, the claim is denied.

Swimming Pool Electric: There is no evidence that this situation is dangerous. Further, since the situation was the same when the tenant moved in, her housing services have not decreased.

Retaliatory Eviction: This is a legal defense that can be asserted in a court action. However, it is not a claim that can be considered as a decreased housing service under the Rent Adjustment Ordinance, and the claim is denied.

Conclusion: The tenant's petition is denied for two reasons. First, all of her claims of decreased housing services are denied. Secondly, as explained above, the tenant was not current on the rent when she filed her petition.

³ O.M.C. Section 8.22.070(F)

⁴ O.M.C. Section 8.22.110(E)

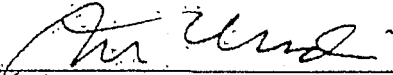
⁵ Golden Gateway Center v. San Francisco Residential Rent Stabilization and Arbitration Board, 73 Cal.App. 4th, 1204, 1206 (1999).

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ORDER

1. Petition TI6=0259 is denied.
2. Claims of decreased housing services are denied.
3. The tenant was not current on her rent when she filed her petition.
4. Right to Appeal: This decision is the final decision of the Rent Adjustment Program Staff. Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within twenty (20) calendar days after service of the decision. The date of service is shown on the attached Proof of Service. If the Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.

Dated: September 19, 2016



Stephen Kasdin,
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE

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Case Number T16-0259

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 Representative

Alana Grice Conner
Fried & Williams LLP
1901 Harrison Street, 14th Floor
Oakland, CA 94612

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **October 4, 2016** in Oakland, California.



Esther K. Rush
Oakland Rent Adjustment Program

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EXHIBIT B /

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DIVISION 3. OBLIGATIONS [1427 - 3272.9] (*Heading of Division 3 amended by Stats. 1988, Ch. 160, Sec. 14.*)

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PART 4. OBLIGATIONS ARISING FROM PARTICULAR TRANSACTIONS [1738 - 3273] (*Part 4 enacted 1872.*)

TITLE 5. HIRING [1925 - 1997.270] (*Title 5 enacted 1872.*)

CHAPTER 2.7. Residential Rent Control [1954.50 - 1954.535] (*Title 5 added by Stats. 1995, Ch. 331, Sec. 1.*)

1954.52. (a) Notwithstanding any other provision of law, an owner of residential real property may establish the initial and all subsequent rental rates for a dwelling or a unit about which any of the following is true:

(1) It has a certificate of occupancy issued after February 1, 1995.

(2) It has already been exempt from the residential rent control ordinance of a public entity on or before February 1, 1995, pursuant to a local exemption for newly constructed units.

(3) (A) It is alienable separate from the title to any other dwelling unit or is a subdivided interest in a subdivision, as specified in subdivision (b), (d), or (f) of Section 11004.5 of the Business and Professions Code.

(B) This paragraph does not apply to either of the following:

(i) A dwelling or unit where the preceding tenancy has been terminated by the owner by notice pursuant to Section 1946.1 or has been terminated upon a change in the terms of the tenancy noticed pursuant to Section 827.

(ii) A condominium dwelling or unit that has not been sold separately by the subdivider to a bona fide purchaser for value. The initial rent amount of the unit for purposes of this chapter shall be the lawful rent in effect on May 7, 2001, unless the rent amount is governed by a different provision of this chapter. However, if a condominium dwelling or unit meets the criteria of paragraph (1) or (2) of subdivision (a), or if all the dwellings or units except one have been sold separately by the subdivider to bona fide purchasers for value, and the subdivider has occupied that remaining unsold condominium dwelling or unit as his or her principal residence for at least one year after the subdivision occurred, then subparagraph (A) of paragraph (3) shall apply to that unsold condominium dwelling or unit.

(C) Where a dwelling or unit in which the initial or subsequent rental rates are controlled by an ordinance or charter provision in effect on January 1, 1995, the following shall apply:

(i) An owner of real property as described in this paragraph may establish the initial and all subsequent rental rates for all existing and new tenancies in effect on or after January 1, 1999, if the tenancy in effect on or after January 1, 1999, was created between January 1, 1996, and December 31, 1998.

(ii) Commencing on January 1, 1999, an owner of real property as described in this paragraph may establish the initial and all subsequent rental rates for all new tenancies if the previous tenancy was in effect on December 31, 1995.

(iii) The initial rental rate for a dwelling or unit as described in this paragraph in which the initial rental rate is controlled by an ordinance or charter provision in effect on January 1, 1995, may not, until January 1, 1999, exceed the amount calculated pursuant to subdivision (c) of Section 1954.53. An owner of residential real property as described in this paragraph may, until January 1, 1999, establish the initial rental rate for a dwelling or unit only where the tenant has voluntarily vacated, abandoned, or been evicted pursuant to paragraph (2) of Section 1161 of the Code of Civil Procedure.

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(b) Subdivision (a) does not apply where the owner has otherwise agreed by contract with a public entity in consideration for a direct financial contribution or any other forms of assistance specified in Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code.

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(c) Nothing in this section shall be construed to affect the authority of a public entity that may otherwise exist to regulate or monitor the basis for eviction.

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(d) This section does not apply to any dwelling or unit that contains serious health, safety, fire, or building code violations, excluding those caused by disasters for which a citation has been issued by the appropriate governmental agency and which has remained unabated for six months or longer preceding the vacancy.

(Amended by Stats. 2004, Ch. 568, Sec. 4. Effective January 1, 2005.)

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ONLINE SERVICES

Assessor's Office | Treasurer-Tax Collector | New Query

PROPERTY ASSESSMENT INFORMATION ASSESSOR'S OFFICE

2016 - 2017 Assessment Information

Parcel Number:	29-1166-4
Assessor's Map: (Map image is not to scale)	Map Disclaimer
Use Code:	1100
Description	Single family residential homes used as such
Land	\$228,431.00
Improvements	\$533,006.00
Fixtures	0
Household Personal Property	0
Business Personal Property	0
Total Taxable Value	\$761,437.00
Exemptions	
Homeowner	\$7,000.00
Other	0
Total Net Taxable Value	\$754,437.00

[Additional Assessment Information](#) | [Property Tax Information](#)

Adobe Acrobat Reader is required to view the maps. Click [here](#) to download.

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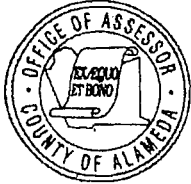
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EXHIBIT D

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1-16



OFFICE OF ASSESSOR

COUNTY OF ALAMEDA

1221 Oak St., County Administration Building

Oakland, California 94612-4288

(510) 272-3787 / FAX (510) 272-3803

RON THOMSEN

ASSESSOR

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JULY 15, 2016

OWENS JONATHAN A
3420 RUBIN DR
OAKLAND CA 94602-4144

P

OWNER ON JAN. 1, 2016:
OWENS JONATHAN A

NOTIFICATION OF 2016-2017 ASSESSED VALUE
(This is not a tax bill)

Property Location:	3420 RUBIN DR
Assessor's Parcel Number (APN):	29-1166-4
2016-2017 Factored Proposition 13 Base Year Value:	\$ 761,437
2016-2017 Assessed Value (as of January 1, 2016):	\$ 761,437
2016-2017 Homeowner's Exemption:	\$ 7,000

(Taxable business personal property and/or fixtures are not included in this assessed value calculation)

This notification is to inform you of the assessed value of the above referenced property, which has been enrolled for the 2016-2017 fiscal year. The assessed value is determined as of January 1, 2016. If you agree with your assessed value, no action on your part is needed.

The Assessed Value shown, minus any exemptions for which you may qualify, will be the basis of your 2016-2017 property tax bill. Each fiscal year, the Assessor compares the factored Proposition 13 base year value to the current year January 1 market value and enrolls the lesser of the two. We have enrolled the factored base year value which includes the mandatory California Consumer Price Index increase of 1.525% because it is less than the January 1, 2016 market value of your property. If title was transferred to you after January 1, 2016, your base year value may increase or decrease from the 2016-2017 factored base year value shown above. A separate Notice of Supplemental Assessment will be mailed to you notifying you of your new base year value as of the date ownership transferred.

The Assessor is responsible for assessing property in accordance with Article XIII A of the California State Constitution (Proposition 13). The primary provisions are as follows:

- Property that has not changed ownership or has not had new construction added since March 1, 1975 is valued as of that date. There is a 2% maximum inflation factor applied to this value for each subsequent year. This inflation factor is based on a year by year comparison of the California Consumer Price Index. The product of this application each year results in the factored base value.
- For properties that have changed ownership and/or have had new construction added since March 1, 1975, the date of transfer, the date of completion of new construction, or January 1 if partially complete is the valuation date. Properties may have multiple valuation dates if more than one re-assessable event has occurred. The appropriate inflation factor is applied to each subsequent year.

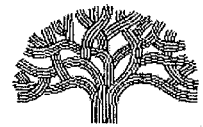
For example, the 2016-2017 factored Proposition 13 value of a property purchased on May 1, 2014 which had new construction completed on May 1, 2015 is comprised of two values. The market value of the property as of May 1, 2014 is factored for inflation for two years and the market value of the new construction as of May 1, 2015 is factored for inflation for one year. The 2016-2017 factored base year value is the sum of these two values.

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111-ITD-IEB20P (rev. 6/16)

306.251

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

CITY OF OAKLAND

Department of Housing and Community Development
Rent Adjustment Program

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

HEARING DECISION

CASE NUMBER: T16-0259, Barghout v. Owens
PROPERTY ADDRESS: 3420 Rubin Dr., Oakland, CA
DATE OF HEARING: August 25, 2016
DATE OF DECISION: September 19, 2016
APPEARANCES: Lauren Barghout (Tenant)
Jonathan Owens (Owner)
Alana Grice Conner (Attorney for Owner)

SUMMARY OF DECISION

The tenant's petition is denied.

CONTENTIONS OF THE PARTIES

The tenant filed a petition on May 23, 2016, which alleges that she has never received the form Notice to Tenants (RAP Notice); that at present there exists a health, safety, fire or building code violation in her unit; and that her housing services have been decreased due to construction noise and inconvenience, the possible presence of lead or asbestos in the house, problems with the swimming pool electrical system, and the owner's retaliatory eviction attempts.

The owner filed a response to the petition, which alleges that the tenant's unit is exempt from the Rent Adjustment Ordinance as being a single-family house, states that he has not given the tenant a RAP Notice, and denies that the tenant's housing services have decreased.

THE ISSUES

- (1) Is the subject rental unit a single family residence that is exempt from the Rent Adjustment Ordinance?

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- (2) When, if ever, did the tenant receive the RAP Notice?
- (3) Was the tenant current on the rent, or legally withholding rent, when she filed her petition?
- (4) Have the tenant's housing services been decreased and, if so, by what percentage of the total housing services that are provided by the owner?

EVIDENCE

Exemption from the Rent Adjustment Ordinance: At the Hearing, the owner testified that he is the owner of a house containing a number of bedrooms. He lives in the house, he rents 2 rooms to the tenant, and two other people rent individual rooms in the house. All tenants pay rent separately.

RAP Notice: The parties agreed that the tenant has never received the RAP Notice.

Rent History: The tenant testified that she moved into the subject house in November 2014, at a rent of \$2,500 per month. In January 2015, after her daughter moved out, her rent changed to \$1,825 per month. However, instead of paying this amount, she "invested" in a law suit being prosecuted by the owner. In July 2015, this arrangement changed, and she began paying \$1,825 per month in cash. The owner agreed with this testimony.

The owner testified that the tenant has paid rent as follows: July through September 2015 - \$1,835 per month; October 2015 - \$2,047.49; November 2015 - \$1,100; December 2015 through February 2016 - \$1,875 per month; March 2016 - \$1,775; April 2016 - \$2,615. He testified that the tenant has paid no rent from May 2016 through the date of the Hearing. The owner further testified that, because of the construction activity, he discounted the tenant's rent in 2016 as follows: A reduction of \$100 in February; and reductions of 25% (\$456.25) in March; 50% (\$912.50) in April; and 35% (\$638.75) in May. The rent reductions total \$2,107.50.

The tenant further testified that in November 2015, the owner agreed to forgive \$725 in her rent in order to contribute to her daughter's "education campaign." She otherwise agreed with the owner's testimony, as stated above. The owner denied that he had reduced the rent aside from the rent reductions noted above.

Decreased Housing Services:

Construction Activity: The tenant testified that significant construction activity in the house began in late February 2016, and has continued. The work often lasts from 7:00 A. M. until 6:00 P. M. The tenant often works from home, and the construction noises and dust interfered with her ability to work, as well as causing health problems. Further, the construction activity temporarily limited the tenant's use of her home office and an area in the garage that she uses for storage.

Lead / Asbestos: The tenant testified that the house has an old furnace, which is located in the basement. Part of the construction activity included taking down walls and replacing the water heater in the basement. She believes that this work disturbed lead paint and/or asbestos,

which has entered the house. However, she has no test results or other evidence to support this belief.

Swimming Pool Electric: The tenant testified that there is an electric panel on the wall of the garage, which is an estimated 5 to 8 feet from the swimming pool. She believes that this is a dangerous situation. The electric panel was in the same location at the start of her tenancy.

Retaliatory Eviction: The tenant believes that the owner has attempted to evict her in retaliation for her lawful activities.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Exemption from the Rent Adjustment Ordinance: Civil Code Section 1954.52 (Costa-Hawkins) provides that, under certain circumstances, a single-family home is exempt from local rent regulations. However, in this case, the owner has chosen to rent rooms out separately to a number of people, thereby transforming a single-unit dwelling into a multi-unit dwelling. That portion of the house rented to the tenant is therefore not exempt from the Rent Adjustment Ordinance.

RAP Notice: It is found that the tenant has never received the RAP Notice.

Current on the Rent? The tenant's petition was filed on May 23, 2016, which is 11 months after she agreed to pay rent of \$1,825 per month. The full rent for this period of time – before consideration of rent credits – was \$20,218. The rent credits total \$2,107.50, which reduced the full rent to \$18,110.50. The testimony regarding a further rent credit of \$725 was equally credible, and the tenant has not sustained her burden of proof in this regard. It is found that the tenant paid a total of \$13,192.49 from July 2015 through May 2016. She was therefore approximately \$5,000 in arrears in her rent when she filed her petition.

If the tenant was not current on her rent or legally justified in withholding her rent when she filed her petition, she did not have standing to file a petition, and her petition must be dismissed.¹

A tenant may exercise the option not to pay rent when a unit's condition is in breach of the implied warranty of habitability.² The statutory authority for rent withholding is Code of Civil Procedure Section 1174.2. It provides that a substantial breach of the implied warranty of habitability may be raised as a defense to an unlawful detainer action.

To confer standing to file a Rent Adjustment petition, a tenant must show that he or she might prevail in court in a claim for a habitability breach. That is, the tenant must present a *prima facie* case that he or she is withholding the rent legally. As discussed below, none of the tenant's claims of decreased housing services arise to the level of a habitability violation. Therefore, she was not current on the rent or legally justified in withholding rent when she filed her petition.

¹ O.M.C. 8,22.090.A.3.B

² See Green v. Superior Court, (1974) 10 Cal.3d 616, 635; Code of Civil Procedure §1174.2.

Decreased Housing Services: Under the Oakland Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent³ and may be corrected by a rent adjustment.⁴ However, in order to justify a decrease in rent, a decrease in housing services must be either the elimination or reduction of a service that existed at the start of the tenancy or a violation of the housing or building code which seriously affects the habitability of the tenant's unit.

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

The Court stated: "[A] landlord who undertakes to perform reasonably necessary repair and maintenance work on rental property, which has the effect of temporarily interfering with or preventing the tenant's full use of housing services, but does not substantially interfere with the right to occupancy of the premises as a residence, does not effectuate a decrease in housing services within the meaning of the San Francisco rent control ordinance."⁵

This principle applies to the construction noises and activities in this case. Further, the tenant's rent was reduced for a number of months due to the construction activity, so she has already received some compensation for the inconvenience. The claim is denied.

Lead / Asbestos: There is no evidence of lead or asbestos in the house, and the tenant's mere speculation does not meet her burden of proving her claim by a preponderance of evidence. Therefore, the claim is denied.

Swimming Pool Electric: There is no evidence that this situation is dangerous. Further, since the situation was the same when the tenant moved in, her housing services have not decreased.

Retaliatory Eviction: This is a legal defense that can be asserted in a court action. However, it is not a claim that can be considered as a decreased housing service under the Rent Adjustment Ordinance, and the claim is denied.

Conclusion: The tenant's petition is denied for two reasons. First, all of her claims of decreased housing services are denied. Secondly, as explained above, the tenant was not current on the rent when she filed her petition.

³ O.M.C. Section 8.22.070(F)

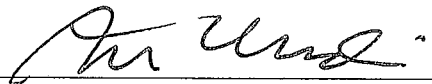
⁴ O.M.C. Section 8.22.110(E)

⁵ Golden Gateway Center v. San Francisco Residential Rent Stabilization and Arbitration Board, 73 Cal.App. 4th, 1204,1206 (1999).

ORDER

1. Petition T16-0259 is denied.
2. Claims of decreased housing services are denied.
3. The tenant was not current on her rent when she filed her petition.
4. **Right to Appeal:** **This decision is the final decision of the Rent Adjustment Program Staff.** Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within twenty (20) calendar days after service of the decision. The date of service is shown on the attached Proof of Service. If the Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.

Dated: September 19, 2016



Stephen Kasdin
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE

Case Number T16-0259

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

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

Tenant

Laurin Barghout
3420 Rubin Dr.
Oakland, CA 94602

Owner

Jon Owens
3420 Rubin Dr.
Oakland, CA 94602

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 September 19, 2016 in Oakland, CA


Deborah Griffin

000095

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.

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

CASE NUMBER T 16- 0259

OWNER RESPONSE

Please print legibly.

Your Name Jonathan Owens	Complete Address (with zip code) 3420 Rubin Drive Oakland, CA 94602	Phone: <u>510-367-7865</u> Email: <u>jowens@balancehydro.com</u>
Your Representative's Name (if any) Alana Grice Conner	Complete Address (with zip code) Fried & Williams LLP 1901 Harrison Street, 14th Floor Oakland, CA 94612	Phone: <u>510-625-0100</u> Fax: <u>510-550-3621</u> Email: <u>aconner@friedwilliams.com</u>
Tenant(s) name(s) Lauren Barghout	Complete Address (with zip code) 3420 Rubin Drive Oakland, CA 94602	

Have you paid for your Oakland Business License? Yes No Number 28061950
(Provide proof of payment.)

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

There are 1 residential units in the subject building. I acquired the building on 11/06/14.

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

I. RENTAL HISTORY

The tenant moved into the rental unit on March 9, 2015.

The tenant's initial rent including all services provided was \$ 1,825.00 / 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? N/A

Is the tenant current on the rent? Yes No

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

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

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

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

II. JUSTIFICATION FOR RENT INCREASE

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

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

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

III. DECREASED HOUSING SERVICES

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

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IV. EXEMPTION

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

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

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

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

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

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

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

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

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

V. IMPORTANT INFORMATION

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

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

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

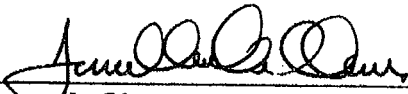
VI. VERIFICATION

Owner must sign here:

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2016 JUN 22 AM 11:34

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

6/21/2016
Date

VII. MEDIATION AVAILABLE

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

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

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

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

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



Owner's Signature

6/21/2016
Date

Attachment IV. Exemption

2016 JUN 22 AM 11:34

1. Did the prior tenant leave after being given a notice to quit (Civil Code Section 1946)? No
2. Did the prior tenant leave after being given a notice of rent increase (Civil Code Section 827)? No
3. Was the prior tenant evicted for cause? No
4. Are there any outstanding violations of building housing, fire, or safety codes in the unit or building? No
5. Is the unit a single family dwelling or condominium that can be sold separately? Yes
6. Did the petitioning tenant have roommates when he/she moved in? Yes
7. If the unit is a condominium, did you purchase it? If so: 1) from whom? 2) Did you purchase the entire building? N/A (unit is not a condominium)

000100

Tile 0259 KM/SK

CITY OF OAKLAND RENT ADJUSTMENT PROGRAM Mail To: P. O. Box 70243 Oakland, California 94612-0243 (510) 238-3721	For date stamp. 2016 MAY 23 PM 1:09
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Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed.

TENANT PETITION

Please print legibly

Your Name <i>Lauren Barghout</i>	Rental Address (with zip code) <i>3420 Rubin Drive Oakland CA 94602</i>	Telephone <i>510 919 9255</i>
Your Representative's Name	Mailing Address (with zip code)	Telephone
Property Owner(s) name(s) <i>Jon Owens</i>	Mailing Address (with zip code) <i>3420 Rubin Drive Oakland CA 94602</i>	Telephone

Number of units on the property: *Single residence, 3 tenants*

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

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

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

Retaliation not. 60 day notice

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

Date you moved into the Unit: _____ Initial Rent: \$ 1875 /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: _____. 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		
		\$	\$	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

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

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

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

5/22/16

Date

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

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

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

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

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



Tenant's Signature

5/22/16

Date

VI. IMPORTANT INFORMATION:

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

File Review

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

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

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

Rental History and Receipts for Rents in 2016

Rental history: I've lived at 3420 Rubin Drive, Oakland CA 94602, first as a tenant, then as the owner, becoming a tenant again in mid 11/14 when I sold the house to my housemate and tenant of 12 years Mr. Jon Owens. As a writer (Book Contract with O'Reilly Media), inventor and scholar I work from home. On or about 2/22/16 Chris Fortner Construction (Lic. # 832454) began major remodeling and construction conjunction with Architect the construction from 8am to 6pm severely impacts my right to quiet enjoyment and my ability to work. Mr. Owens argued that as long term tenants, we would benefit from the housing improvements and should thus not pay discounted rent. However, when I asked Mr. Owens to meet with me on 4/16/16 to discuss reduced rent and the construction that start began in my home notice (without 24 hours notice), Mr. Owens gave me 60 days notice. This was clearly retaliatory because he had advertised the house improves as being for our long term benefits as tenants. Furthermore, Mr. Owens I and I had an agreement I was to continue to rent a bedroom and my home office until the conclusion of Federal Court Case C 14-3887 plus a post litigation recovery of 6 months.

- Please take notice that fighting retaliation termination requires out of pocket legal expenses, beyond the loss of my paid rental.
- Please also take notice that the lease (attached) requires 60 days notice. By starting construction on my home office (with not even 24 hours notice) such that my office is only usable as storage (and even as a storage area part of the roof and ceiling between the is open and enabling dust and chemicals to fill the office. Construction outside the door fills the office with saw-dust when I open the door and/or window to clear the room of construction chemicals. Thus the landlord took my paid for home office from my use without 60 days notice.
- Please take notice (see attached lease per item 23) that the house was built prior to 1978 and that lead and asbestos hazards may be present. Landlord has failed to provide tenants with information about what precautions are being taken in areas now under construction to prevent air born lead and asbestos hazards.
- Please take notice the electrical system of the swimming pool is potentially exposed to water from the pool filter and other pool systems (such as underwater lighting) look questionable.

Three tenants: myself, Ralph Greg Johnson and Mark Steinburg rent rooms at 3420 Rubin Drive. Prior to my discussing rent discount with Mr. Owens, they expressed fear that they would lose long term housing if the complained about conditions to Mr. Owens. Considering that I received a 60 day termination notice within a week of my setting-up the appointment, their concerns were valid.

* In the 60 day notice, Landlord claims problems with my pets. During the 12 years he lived with me this is the first time he complained about my pets and I believe his complaint about my pets is an excuse. The real reason he gave 60day notice is in retaliation for my bringing to his attention decreased housing service.

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*In the 60 day notice, Landlord incorrectly states I was behind on rent. Attached please find receipts for rental payment 2016. Note my rent is due on or about the 15th of month of each month. I've paid \$1875/ month \$50 of which Landlord should have applied to utilities. After inspection of Landlord's claim that I paid utilities late, I reviewed my records and found that he had failed to subtract the \$50 per month (As per my lease paid \$1825 in rent, but paid \$1,875 with the understanding the \$50 be applied to utility bill) for the last 13 months. Thus I overpaid by ($\$50 \times 13$ months) = \$650.

Due Date on or about the 15th of the month	Amount Paid	
4/20/16	\$2,615	As per meeting with free counsel at Rent Adjustment Program Drop-in Services on 4/18/2016, tenant must be paid in full to file a petition with the Rent Adjustment Board. I dispute the amount the landlord claims I owe, but am paying it so that there is no question that I am in good standing while petitioning the Rent Adjustment Board.
3/17/16	\$1,775	Note \$100 discount per room to compensate for home usage during construction.
2/19/16	\$1,875	
1/16/16	\$1,875	

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