

**HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD  
PANEL MEETING  
November 2, 2017  
7:00 P.M.  
CITY HALL, HEARING ROOM #1  
ONE FRANK H. OGAWA PLAZA  
OAKLAND, CA**

**AGENDA**

1. CALL TO ORDER
2. ROLL CALL
3. OPEN FORUM
4. NEW BUSINESS
  - i. Appeal Hearing in Cases:
    - a. T15-0423; Moon v. Varela
    - b. T16-0104; Meyer v. Harris
5. ADJOURNMENT

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

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

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

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

2017 OCT 24 PM 3: 37

OFFICE OF THE CITY CLERK  
OAKLAND

on letterhead from a licensed mental health professional, not more than one year old, stating that you have a mental health-related disability, that having the animal accompany you is necessary to your mental health or treatment, and that you are under his or her professional care.

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

## CHRONOLOGICAL CASE REPORT

Case No.: T15-0423  
Case Name: Moon v. Varela  
Property Address: 5509 Lowell Street, No. B, Oakland, CA  
Parties: Michael Moon (Tenant)  
Rafael Varela (Owner)

### PROPERTY OWNER APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	August 14, 2015
Owner Response filed	None
Dismissal issued	January 4, 2016
Owner Appeal filed	January 23, 2017

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RECEIVED

JAN 23 2017

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

RENT ADJUSTMENT PROGRAM  
OAKLAND

APPEAL

**Appellant's Name** BRAD VAUGHN

Landlord xD      Tenant D

**Property Address (Include Unit Number)** 550 FAIRMOUNT AVENUE #D, OAKLAND, CA 94611

**Appellant's Mailing Address (For receipt of notices)**  
1290 HOWARD AVENUE, BURLINGAME, CA 94010

**Case Number** T15-0423  
**Date of Decision appealed** 12-06-2016

**Name of Representative (if any)**  
MELISSA BAIS & CARLOS HERNANDEZ  
AGENTS FOR OWNER

**Representative's Mailing Address (For notices)**  
377 SANTA CLARA AVENUE. PH#1  
OAKLAND, CA 94610

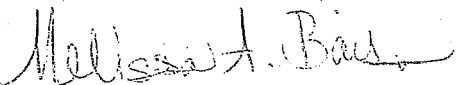
I appeal the decision issued in the case and on the date written above on the following grounds: (Check the applicable ground(s). Additional explanation is required (see below). Please attach additional pages to this form.)

1. D 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. D 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. D 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. D 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. D 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. D 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. **XD 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 (1) ONE. Please number attached pages consecutively. \*Responding to tenant appeal. In agreement with initial decision. Request to dismiss tenant appeal.

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**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 JANUARY 20, 2017, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<b><u>Name</u></b>	MOURAD HABAREK
<b><u>Address</u></b>	550 FAIRMOUNT AVENUE #D
<b><u>City, State Zip</u></b>	OAKLAND, CA 94611
<b><u>Name</u></b>	
<b><u>Address</u></b>	
<b><u>City, State Zip</u></b>	

	
<b>SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE</b>	<b>DATE 1-20-2017</b>

**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.

January 12, 2017

RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM

2017 JAN 18 PM 3:50

Rent Adjustment Board, City of Oakland

Case Number: T15-0423

Habarek – Petitioner and Tenant / Vaughn – Owner

550 Fairmount, Unit #D, Oakland, CA 94611

Dear Appeal Board,

We ask that the original decision to grant a rent increase based on capital improvements be upheld. The resident has been treated fairly and equally. Mr. Habarek was not the only resident given an increase. All capital improvements directly benefit Mr. Habarek.

The 10-unit building at 550 Fairmount Avenue, was purchased in dilapidated condition and major renovation was needed. The complex went under a 3-month construction project that left neighbors and residents complimenting the improvement. The following list are work items done, not all of which were included in the increase:

- New unit Interior Electrical panels
- New double pane windows and patio doors
- New wood railings for patios and walkways
- Landscape cleanup
- New exterior LED lighting
- New address and individual door numbers/letters
- New Paint along with fixing any stucco areas needing work and drainpipes
- Updated laundry room and added new machines
- Replaced or fixed all broken stairs and uneven cement walkways
- Added parking lot stripes for assigned parking
- New exterior signage
- New enclosed trash, recycle and compost area
- New community locks/keys for laundry and trash areas
- New mail box area and boxes

Mr. Habarek did not previously bring up the carpet request. Since it was not included in this current case, we will need to schedule a time to view his carpet and discuss it as a separate matter. Also, Mr. Habarek's lease term was not changed. Most of Oakland, and this building are rent controlled, therefore, there is not a need to re-sign a new lease as tenants stay month to month after initial lease term expires. Mr. Habarek was not encouraged to move out. Compensation was offered for a short time only, if residents elected to relocate since the construction was going to be extensive.

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CITY OF OAKLAND  
HUMAN ASSISTANCE PROGRAM  
2017 JAN 18 PM 3:50

With ownership of multiple buildings in Oakland, for decades we have worked alongside our tenants to make sure their living experience is stress free. We take ourselves on well-kept and professionally managed buildings always working in unison with the tenants.

Thank you for giving us the opportunity to explain why the correct decision of granting a rent increase was made in the first place. We ask that you please uphold the initial ruling.

Sincerely,

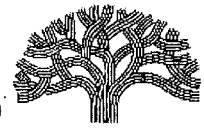


Melissa Bais

510-206-2474

Property Manager

Agent for Owner



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

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

**DISMISSAL**

**CASE NUMBER:** T15-0423, Moon v. Varela  
**PROPERTY ADDRESS:** 5509 Lowell Street, No. B, Oakland, CA  
**PARTIES:** Michael Moon Petitioner  
Rafael Varela Owner  
**DATE OF HEARING:** January 4, 2016  
**APPEARANCES:** No Appearance by Tenant or Owner

**SUMMARY OF DECISION**

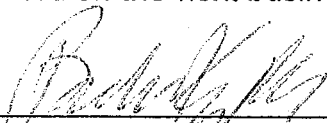
The tenant's petition is dismissed.

**INTRODUCTION**

The tenant filed a petition on August 14, 2015, which contested a rent increase on the grounds that he never received the Notice of the Existence of the Rent Adjustment Program (RAP);that it exceeded 10% and he also alleged decreased housing services. The tenant did not appear at the Hearing. The notice of the hearing was sent to the parties on August 19, 2015, with a proof of service and has not been returned to the Rent Adjustment Program. Therefore, the tenant petition is dismissed for his non appearance.

**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: January 4, 2016

  
BARBARA KONG BROWN, ESQ.  
Senior Hearing Officer  
Rent Adjustment Program



**PROOF OF SERVICE**

**Case Number T15-0423**

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

**Today, I served the attached Notice of Dismissal 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:**

**Tenant**

Michael D. Moon  
5509 Lowell St #B  
Oakland, CA 94608

**Owner**

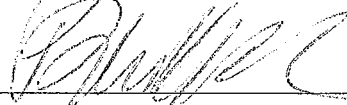
Rafael F. Varela  
2170 Sutter St  
San Francisco, CA 94115

**Owner Representative**

Law Offices of Sacramento and Foran Inc.  
1489 Webster Sr Ste. 248  
San Francisco, CA 94115

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 January 04, 2016 in Oakland, CA.



Barbara Kong-Brown

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**PROOF OF SERVICE**

**Case Number T15-0423**

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.

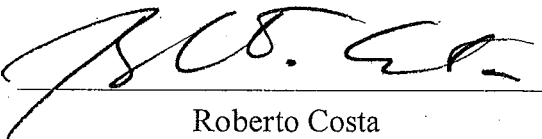
**Today, I served the attached Copy of Landlord Petition by placing a true copy of it in a sealed envelope in City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California, addressed to:**

**Tenant**

Michael D. Moon  
5509 Lowell St #B  
Oakland, CA 94608

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 20, 2015 in Oakland, CA.



Roberto Costa  
Oakland Rent Adjustment Program

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<b>CITY OF OAKLAND</b> <b>RENT ADJUSTMENT PROGRAM</b> P.O. Box 70243 250 Frank H. Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721	For filing stamp.  2015 OCT 14 PM 2:56
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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/S-0423

**OWNER RESPONSE**

Please print legibly.

Your Name <u>Rafael E. Varela</u> <u>BTV Properties LLC</u>	Complete Address (with zip code) <u>2170 Sutter St</u> <u>San Francisco, CA 94115</u>	Phone: <u>415-225-7422</u> Email: <u>rafael.varela@btvproperties.com</u>
Your Representative's Name (if any) <u>Law Offices of</u> <u>Sacramento and Foran, Inc.</u>	Complete Address (with zip code) <u>1459 Webster St, Ste. 248</u> <u>San Francisco, CA</u> <u>94115</u>	Phone: <u>415-775-0891</u> Fax: <u>415-775-1350</u> Email: <u>jsacramento@eql.com</u>
Tenant(s) name(s) <u>Michael Moon</u>	Complete Address (with zip code) <u>5509 Lowell St. #B</u> <u>Oakland, CA 94608</u>	

Have you paid for your Oakland Business License? Yes  No  Number 28052741  
(Provide proof of payment.) See attached receipt

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

There are 3 residential units in the subject building. I acquired the building on 12/19/2013

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

**I. RENTAL HISTORY**

The tenant moved into the rental unit on See attached letter

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

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

Is the tenant current on the rent? Yes  No

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

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

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

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

**II. JUSTIFICATION FOR RENT INCREASE** COSTA-HAWKINS

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)? *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, she left voluntary*
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? *No*
6. Did the petitioning tenant have roommates when he/she moved in? *No*
7. If the unit is a condominium, did you purchase it? If so: 1) from whom? 2) Did you purchase the entire building? *No*

\_\_\_\_\_ 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. *No*

\_\_\_\_\_ The unit was **newly constructed** and a certificate of occupancy was issued for it on or after January 1, 1983. *No*

\_\_\_\_\_ 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. *No*

\_\_\_\_\_ 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. *No*

\_\_\_\_\_ 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. *No*

\_\_\_\_\_ 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. *No*

### 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, 6<sup>th</sup> 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.*

Robert E. Smith  
Owner's Signature

10/13/2015  
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

T15-0423 RC/BKB

<p><b>CITY OF OAKLAND</b>  <b>RENT ADJUSTMENT PROGRAM</b>          Mail To: P. O. Box 70243          Oakland, California 94612-0243          (510) 238-3721</p>	<p>For date stamp.</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.**

DISPUTE RESOLUTION PROGRAM  
 2015 AUG 14 PM 2:47

**TENANT PETITION**

Please print legibly

Your Name MICHAEL D. MOON	Rental Address (with zip code) 5509 LOWE ST. #B OAKLAND, CA 94608	Telephone 510-654-4023
Your Representative's Name	Mailing Address (with zip code)	Telephone
Property Owner(s) name(s) RAFAELE VARELA	Mailing Address (with zip code) 2170 SUTTER ST. SF, CA 94115	Telephone 415-225-7422

Number of units on the property: 3

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

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

<input checked="" type="checkbox"/>	(a) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
<input type="checkbox"/>	(b) The owner did not give me a summary of the justification(s) for the increase despite my written request.
<input type="checkbox"/>	(c) The rent was raised <u>illegally</u> after the unit was vacated (Costa-Hawkins violation).
<input checked="" type="checkbox"/>	(d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.)
<input checked="" type="checkbox"/>	(e) A City of Oakland form notice of the existence of the Rent Program was not given to me at least six months before the effective date of the rent increase(s) I am contesting.
<input type="checkbox"/>	(f) The housing services I am being provided have decreased. (Complete Section III on following page)
<input checked="" type="checkbox"/>	(2) At present, there exists a health, safety, fire, or building code violation in the unit. If the owner has been cited in an inspection report, please attach a copy of the citation or report.
<input checked="" type="checkbox"/>	(g) The contested increase is the second rent increase in a 12-month period.
<input type="checkbox"/>	(h) The notice of rent increase based upon capital improvement costs does not contain the "enhanced notice" requirements of the Rent Adjustment Ordinance or the enhanced notice was not filed with the RAP.
<input type="checkbox"/>	(i) My rent was not reduced after the expiration period of the rent increase based on capital improvements.
<input checked="" 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: 06-01-07 Initial Rent: \$ 1100 /month

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

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

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

Date Notice Served (mo/day/year)	Date Increase Effective (mo/day/year)	Amount Rent Increased		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
07-09-15	09-01-15	\$ 1190	\$ 1210	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
07-15-15	10-01-15	\$ 1190	\$ 2000	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

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

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

**III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:**

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

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

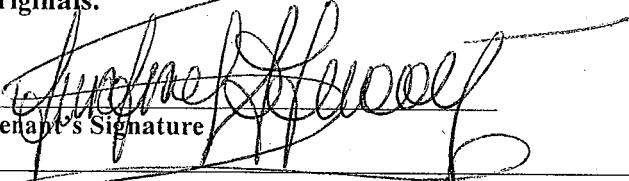
If you answered "Yes" to any of the above, please attach a separate sheet listing a description of the reduced service(s) and problem(s). Be sure to include at least the following: 1) a list of the lost housing service(s) or serious problem(s); 2) the date the loss(es) began or the date you began paying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

To have a unit inspected and code violations cited, contact the City of Oakland, Code Compliance Unit, 250 Frank H. Ogawa Plaza, 2<sup>nd</sup> 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 

08-14-15  
Date

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

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

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

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

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

\_\_\_\_\_  
Tenant's Signature

\_\_\_\_\_  
Date

**VI. IMPORTANT INFORMATION:**

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

**File Review**

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

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

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

KAT

SERIOUS PROBLEMS WITH THE SHOWER THAT MR. RAFAEL IS DEFINITELY AWARE OF, AS LEAKING WATER DESTROYED THE DOWNSTAIRS APTA, PROMPTING A FULL RESTORATION.

I'M NOT ACCEPTING A RAISE IN RENT UNTIL THE ISSUE IS RESOLVED, IT'S OUTSTANDING AND INADEQUATE. THERE'S DISGUSTING MOLD INSIDE THE WALLS WHERE THE SUB-PAR MATERIALS AND WORKMANSHIP ARE CREATING, AND HAVE CREATED, A HEALTH HAZARD.

SEND THE CODE COMPLIANCE UNIT TO HAVE THE UNIT/S INSPECTED AND CODE VIOLATIONS CITED.

THANKS,

MICHAEL D. MOON

5509 LOWELL ST. #B

OAKLAND, CA 94608

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## CHRONOLOGICAL CASE REPORT

Case No.: T16-0104  
Case Name: Meyer v. Harris  
Property Address: 2509 109<sup>th</sup> Avenue, Oakland, CA  
Parties: Simone Meyer (Tenant)  
Fareed Traylor (Tenant)  
Rob Harris (Property Owner)

### PROPERTY OWNER APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Appeal filed	February 16, 2016
Owner Response filed	None
Hearing Decision issued	September 28, 2016
Owner Appeal filed	October 14, 2016

2016 OCT 14 PM 12:26

<b>City of Oakland</b> <b>Residential Rent Adjustment Program</b> 250 Frank Ogawa Plaza, Suite 5313 Oakland, California 94612 (510) 238-3721		<b>APPEAL</b>	
<b>Appellant's Name</b> Roderick Harris, Jr.		Landlord <input checked="" type="checkbox"/> Tenant <input type="checkbox"/>	
<b>Property Address (Include Unit Number)</b> 2509 109th AVE #0 Oakland, CA 94603		(510) 593-9094	
<b>Appellant's Mailing Address (For receipt of notices)</b> 1953 102nd AVE Oakland, CA 94603		<b>Case Number</b> T16-0104	
		<b>Date of Decision appealed</b> September 28, 2016	
<b>Name of Representative (if any)</b>		<b>Representative's Mailing Address (For notices)</b>	

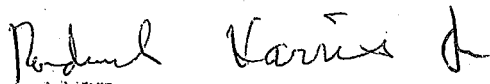
appeal the decision issued in the case and on the date written above on the following grounds:  
(Check the applicable ground(s). Additional explanation is required (see below). Please attach additional pages to this form.)

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 OCT 14, 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:

<b><u>Name</u></b>	Simone Meyer and Fareed Traylor
<b><u>Address</u></b>	2509 109 <sup>th</sup> AVE #D
<b><u>City, State Zip</u></b>	Oakland, CA 94603
<b><u>Name</u></b>	
<b><u>Address</u></b>	
<b><u>City, State Zip</u></b>	

	10/14/16
<b>SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE</b>	<b>DATE</b>

**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.

**Appellant's Name:** Roderick Harris, Jr. **Landlord**

**Property Address:** 2509 109<sup>th</sup> Ave #D Oakland, CA 94603

**Appellant's Mailing Address:** 1953 102<sup>nd</sup> Ave Oakland, CA 94603

**Case Number:** T16-0104

**Date of Decision appealed:** September 28, 2016

I appeal the decision issued in the case and on the date written above on the following grounds. I was denied sufficient opportunity to present my claim or respond to the petitioner's claim. Notification regarding this case was mailed to me at the incorrect address which did not afford me the 35 days which should have been granted for a written response to be filed. The notice was sent to the property address and not my mailing address. The notice was given to me on September 2, 2016 by the tenant at 2509 109<sup>th</sup> Ave Apt. A. Furthermore, not receiving the notification in a timely manner made it impossible to submit evidence to support my case to the Rent Adjustment Board.

As a result, there were several issues presented to which I was not able to provide evidence for dispute:

1. The security door on the immediate doorway entrance to the unit had a working lock to which they had the key.
2. The sewage leak was repaired four days after the owner was notified. The complainants were the only tenants in the building at the time. The plumber found a backup cause by feminine products and rice. *Tenant notified city before landlord*
3. The wall heater was operable, the pilot light just need to be lit.
4. While the tenants were current on rent at the time the petition was filed, they began falling behind two months after they moved in.

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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:** T16-0104, Meyer v. Harris  
**PROPERTY ADDRESS:** 2509 109<sup>th</sup> Ave, #D, Oakland, CA  
**DATE OF HEARING:** September 22, 2016  
**DATE OF DECISION:** September 28, 2016  
**APPEARANCES:** Simone Meyer, Tenant  
Fareed Traylor, Tenant  
Rob Harris, Owner

## **SUMMARY OF DECISION**

The tenant's petition is granted. The legal rent for the subject unit is listed in the Order below.

## **CONTENTIONS OF THE PARTIES**

Tenants Simone Meyer and Fareed Traylor filed a petition which alleges that their housing services have decreased and that at present there exists a health, safety, fire, or building code violation in the unit. Their list of decreased services included no refrigerator in their unit; no working heater; dirty rug; back door does not open; no lock on front door; bathroom sink leaked and they had to repair it themselves; hot water heater broken; and a sewer leak in the laundry room.

The owner never filed a response to the petition.

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## THE ISSUES

1. Is there good cause for the failure of the owner to file a response to the tenant petition?
2. When, if ever, was the *RAP Notice* first served on the tenants?
3. Have the tenant's housing services been decreased, and if so, by what percentage of the total housing services that are provided by the owner?
4. What restitution is owed between the parties and how does it affect the rent?

## EVIDENCE

Owner Response: The owner testified that he received the *Tenant Petition* along with a letter informing him that he had to file a response within 35 days of receipt of the tenant petition. He did not file a response. The owner did not have an explanation about why he did not file a response.

Rental History: The tenants testified that they moved into the unit in October of 2015 at an initial rent of \$1,250 a month. It is a four plex. When they moved in the owner told them that the unit was being rented "as is." They were never provided with a *RAP Notice*.

At the time they filed their petition they were current on their rent. They started falling behind on the rent in March of 2016 because Ms. Meyer lost her job. As of the day of the Hearing they owed rent for August and September of 2016.

On cross-examination the tenants denied being behind on their rent at the time they filed their petition. The owner did not cross-examine the tenants on their testimony that they had not received the *RAP Notice*.

### Decreased Housing Services:

No refrigerator: When they moved into the rental unit the unit did not have a refrigerator. The tenants provided their own mini-fridge, about the size of a cooler, to keep food cold, but it was not sufficient for their needs. About three weeks ago they purchased a full sized refrigerator, but it only worked for a few weeks before it stopped working because the compressor failed.

The tenants spoke to Mr. Harris about the lack of a refrigerator in the unit. He told them that if they could move the refrigerator themselves they could take one from one of the empty rental units in the building. They were not able to do so.

On cross-examination the owner asked the Fared Traylor, "didn't I tell you when you moved in that there was no refrigerator in there?"<sup>1</sup> Traylor responded that he noticed there wasn't a refrigerator after he signed the lease. He further testified that "maybe" he

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<sup>1</sup> Tape recording: 24:20-24:32



was told that there wasn't a refrigerator in the unit. Additionally, Traylor testified that they were told the unit was being provided "as is."

No working heater: The tenants testified that their unit has a single wall heater in the center of their unit. This heater was not working when they moved in. The covering of the heater was not on the device. They complained about it to the owner immediately when they moved in. It was repaired in August of 2016. The tenants had no working heat for the entirety of the winter of 2015-2016. (They used the oven to heat the unit.)

Dirty rug: The tenants dismissed this claim at the Hearing.

Back door does not open: The tenants testified that when they moved into the unit their back door was locked with a deadbolt and they were not given a key to this lock. This created a situation where they had no secondary exit from their unit.

The tenants further testified that they did not complain to the owner about this, but he should have given them a key to this lock when he moved them into the unit.

After many months of living with this locked door, one month ago the tenants had a friend over who completely removed the lock from the door. They can now open and close this door and lock it from the handle.

No lock on front door: The tenants testified that since they rented the unit from the owner the front door does not lock at all and the key they have does not operate the door. There is a locking security gate. They complained to the owner when they moved in, and he informed them to just lock the security gate. This door is still in the same condition as when they moved into the unit.

On cross-examination the tenants testified that the front door has a lock, but that they don't have a key to that lock. The only lock they were given a key for is the lock on the security gate.

Bathroom sink leaked: The tenants testified that soon after they moved in, there was a major leak in the bathroom sink. The leak was from the "u" pipe underneath the drain, and only leaked when the water was turned on. The tenants did not tell the owner about the leak. Simone Meyer's dad replaced the sink and the pipes at a cost of \$550. They had to replace the sink because it was old and rusted.

The tenants further testified that they had a verbal agreement with the owner that anything that they repaired, he would reimburse the tenants. The owner found out about the leak at some point when he came to collect rent and noticed the old bathroom sink outside the unit. This was after the repair had been completed. They have not yet asked the owner to reimburse them for the money they paid to repair the sink.

Hot water heater broken: The tenants testified that when they moved into the unit the water heater worked. In late November of 2015, the water heater stopped working. Fareed tried to investigate the hot water heater, which is in the laundry room, and he

couldn't get in because there was a massive sewage leak. The sewage appeared to be coming up from the center of the laundry room floor. (See sewer leak below.) The tenants complained to the owner but he did not repair the water heater.

In March of 2016, the tenants called *PG&E*, who came and investigated the water heater. The worker was able to repair the water heater by turning the pilot light back on. When *PG&E* came, the sewer leak had been repaired so they were able to access the water heater unit in the laundry room.

Sewer leak in the laundry room: The tenants testified that the sewer leak that they discovered in the laundry room caused horrible smells throughout their unit for several months. They informed the owner about it when they first saw it in November of 2015, but it did not get repaired until March of 2016. In February of 2016, the City of Oakland had an inspector come to the building. They do not know if a *Notice of Violation* was issued.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

#### **Is there good cause for the Owner's failure to respond to the petition?**

The Rent Adjustment Ordinance requires an owner to file a response to a tenant petition within 35 days after service of a notice by the Rent Adjustment Program (RAP) that a tenant petition was filed. <sup>2</sup> "If a tenant files a petition and if the owner wishes to contest the petition, the owner must respond . . ." <sup>3</sup>

The owner did not have an explanation for why he did not respond to the tenant petition. There is no good cause for the owner's failure to file a response to the petition. Therefore, the owner's participation at the Hearing was limited to cross-examination and providing a summation. <sup>4</sup>

#### **When, if ever, were the tenants served with the *RAP Notice*?**

The Rent Adjustment Ordinance requires an owner to serve the *RAP Notice* at the start of a tenancy <sup>5</sup> and together with any notice of rent increase or change in the terms of a tenancy. <sup>6</sup> An owner can cure the failure to give notice at the start of the tenancy, but may not raise the rent until 6 months after the first *RAP Notice* is given. <sup>7</sup> The tenants credibly testified that they never received a *RAP Notice* when they moved into the unit, or at any time since. The owner did not cross-examine the tenants on this issue.

It is found that the tenants have not received the *RAP Notice*.

<sup>2</sup> O.M.C. § 8.22.090(B)

<sup>3</sup> O.M.C. § 8.22.070(C)(2)

<sup>4</sup> Board Decision in *Santiago v. Vega, HRRRB, T02-0404*.

<sup>5</sup> O.M.C. § 8.22.060(A)

<sup>6</sup> O.M.C. § 8.22.070(H)(1)(A)

<sup>7</sup> O.M.C. § 8.22.060 (C)

## Have the tenants' housing services been decreased?

Under the Oakland Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent<sup>8</sup> and may be corrected by a rent adjustment.<sup>9</sup> However, in order to justify a decrease in rent, a decrease in housing services must be the loss of a service that seriously affects the habitability of a unit or one that was provided at the beginning of the tenancy that is no longer being provided.

In a decreased housing services case tenants must establish that they have given the owner notice of the problems and the opportunity to fix the problems before they are entitled to relief.

Further, in a decreased services case, where the *RAP Notice* has been given at the beginning of a tenancy, tenants are only allowed relief for 60 days prior to the filing of the petition<sup>10</sup>. However, where no *RAP Notice* was given before the tenant petition was filed, the tenants can seek restitution for up to three years. Here, since no *RAP Notice* was ever given, the tenants are entitled to restitution for conditions as far back as when they moved into the unit in October of 2015.

The tenants' claims of decreased services are discussed below:

No refrigerator: The tenants' have established that they were never given a refrigerator in their unit. While the owner tried to argue that the unit was provided "as is" and did not come with a refrigerator, the Oakland Building Maintenance Code requires that a refrigerator be provided with every rental unit.

"Each dwelling unit shall be provided with a kitchen. Every kitchen shall be provided with an approved kitchen sink, cooking appliance, refrigeration appliance and cabinet for storing food...."<sup>11</sup>

While it appears to be true that the tenants agreed to take the unit "as is", parties cannot agree to violate a rent control ordinance.<sup>12</sup> Nor can parties agree to violate a law established for a public reason.<sup>13</sup> Here, the Oakland Building Maintenance Code requirement that a refrigerator be provided with every dwelling, was clearly enacted for a public reason. The parties cannot agree to violate this law.

The tenants are entitled to an ongoing rent decrease of 10% (\$125) as well as restitution for overpaid rent since they moved into the unit for the lack of a refrigerator.

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<sup>8</sup> O.M.C. § 8.22.070(F)

<sup>9</sup> O.M.C. § 8.22.110(E)

<sup>10</sup> Board Decision in *Lindsey v. Grimsley, et al.*, HRRRB T09-0086

<sup>11</sup> O.M.C. § 15.08.230 (C)

<sup>12</sup> *Gombiner v. Swartz*, 167 Cal.App. 4<sup>th</sup> 1365 (2008)

<sup>13</sup> A law established for a public reason cannot be contravened by a private agreement.; see e.g. *Gruzen v. Henry* (1978) 84 Cal.App.3d 515, 517.

No working heater: The tenants were believable that they had no working heater from when they moved into their unit until August of 2016. "All habitable space shall be provided with heating facilities capable of maintaining a room temperature of 68° F at a point 3 feet above the floor." O.M.C. § 15.08.260. Failure to provide a working heater is a habitability violation.

The tenants are entitled to restitution of overpaid rent of 10% (\$125 a month) from when they moved into the unit until August of 2016, when heat was restored to their unit.

Dirty rug: The tenants dismissed this claim at the Hearing.

Back door does not open: The tenants established that when they moved into the unit, their back door was locked shut and they were not given a key. Failure to provide a key to this exit is a safety concern.

The tenants are entitled to restitution of overpaid rent of 5% (\$67.50 a month) from when they moved into the unit until August of 2016, when they took the lock off the door, providing access.

No lock on front door: The tenants established that they were not provided a key for the front door when they were rented the unit. This is a safety concern.

The tenants are entitled to an ongoing rent decrease of 2% (\$25.00 a month), as well as restitution of overpaid rent for the lack of a key to the front door.

Bathroom sink leaked: The tenants established that there was a leak in their bathroom sink. However, they did not complain to the owner about it, before they took it upon themselves to repair it. Unlike the other claims, which were in effect from the time they rented the unit and were known to the owner, this problem happened after the tenants were living in the unit for some time.

Additionally, even if they had an agreement with the owner to repair and deduct, the tenants still have to inform the owner of the problem before they do so.

This claim is denied.

Hot water heater broken: The tenants established that the water heater broke at the end of November of 2015 and they informed the owner, who did not repair it. The tenants were not able to relight the pilot themselves because of the sewage leak in the laundry room, where the water heaters are installed. Lack of hot water is a habitability violation.<sup>14</sup>

The tenants were able to have *PG&E* relight the pilot after the sewage leak was repaired.

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<sup>14</sup> O.M.C. § 15.08.230 (D)

The tenants are entitled to restitution of overpaid rent of 10% of the rent (\$125 a month) from December 2015-February of 2016, when the hot water was restored. This would have given the owner one week to restore the hot water, after he was informed of the problem in November of 2015.

Sewer leak in the laundry room: A sewage leak is a health hazard and a habitability violation. The tenants established that there was a sewage leak in the laundry room, which caused odors throughout their apartment. This leak should have been repaired within a week of the owner being informed of the problem, by the beginning of December of 2015. However, while the tenants testified that the sewer leak was repaired in March 2016, they also testified that it was repaired by the time that *PG&E* came to relight the pilot on the water heater, which was at the end of February of 2016. Therefore, it is found that this was repaired by the end of February of 2016.

The tenants are entitled to restitution of overpaid rent of 10% of the rent (\$125 a month) from December 2015-February of 2016, when the leak was repaired.

**What restitution is owed between the parties and how does it impact the rent?**

As noted above, the tenants' base rent is \$1,250 a month. As shown on the chart below, the tenant has underpaid rent in the amount of \$2,500.

Because of the ongoing problems associated with the lack of a refrigerator and the lack of a key to the front door lock, the tenant is entitled to an ongoing rent decrease of 12%, (\$150 a month.) Before consideration of restitution, the tenants' current legal rent is \$1,100 a month.

Additionally, according to the chart below, the tenants are owed restitution in the amount of \$4,612.50 for past decreased services. The total overpayment (decreased services minus rent underpayments) totals \$2,112.50.

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**VALUE OF LOST SERVICES**

Service Lost	From	To	Rent	% Rent Decrease	Decrease /month	No. Months	Overpaid
No refrigerator	1-Oct-15	30-Sep-16	\$1,250	10%	\$ 125.00	12	\$ 1,500.00
No Heater	1-Oct-15	31-Aug-16	\$1,250	10%	\$ 125.00	11	\$ 1,375.00
Back Door	1-Oct-15	31-Aug-16	\$1,250	5%	\$ 62.50	11	\$ 687.50
No Key to Front door	1-Oct-15	30-Sep-16	\$1,250	2%	\$ 25.00	12	\$ 300.00
Hot Water Heater	1-Dec-15	28-Feb-16	\$1,250	10%	\$ 125.00	3	\$ 375.00
Sewer Leak	1-Dec-15	29-Feb-16	\$1,250	10%	\$ 125.00	3	\$ 375.00
<b>TOTAL LOST SERVICES</b>							<b>\$ 4,612.50</b>

**UNDERPAID RENT**

From	To	Monthly Rent paid	Max Monthly Rent	Difference per month	No. Months	Sub-total
1-Aug-16	30-Sep-16	\$0	\$1,250	\$ (1,250.00)	2	\$ (2,500.00)
<b>TOTAL UNDERPAID RENT</b>						<b>\$ (2,500.00)</b>

**RESTITUTION**

MONTHLY RENT		\$1,250
TOTAL TO BE REPAID TO TENANT		\$ 2,112.50
TOTAL AS PERCENT OF MONTHLY RENT		169%
AMORTIZED OVER	12 MO. BY REG. IS	\$ 176.04

Overpayments of this size are normally adjusted over a period of 12 months<sup>15</sup>. For now this \$176.04 a month is subtracted from the current legal rent of \$1,100 for a total rent of \$923.96 a month. From October of 2016 through September of 2017, the tenants' rent is \$923.96.

**However**, should the owner provide a refrigerator, the owner can increase the rent by 10% or \$125.00 a month. If the owner provides a key for the front door lock, the owner can increase the rent by 2% or \$25 a month. In order to increase the rent after repairs the owner must provide the necessary notice pursuant to Civil Code § 827.

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

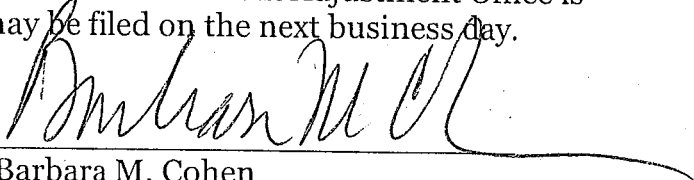
If the tenants have already paid October 2016 rent, in an amount greater than \$923.96, they can deduct any overpayment from their November 2016 rent.

<sup>15</sup> Regulations, Section 8.22.110(F)

## ORDER

1. Petition T16-0104 is granted in part.
2. The base rent for the unit is \$1,250.
3. Due to ongoing decreased housing services, the tenants are entitled to an ongoing rent decrease of 12% (\$150 a month.) The tenants' current legal rent, before consideration of restitution, is \$1,100 a month.
4. Due to past decreased services and underpaid rent, the tenants are owed restitution of \$2,112.50. This overpayment is adjusted by a rent decrease for the next 12 months in the amount of \$176.04 a month.
5. The tenants' rent for the months of October 2016 through September of 2017 is \$923.96 per month. The rent reverts to \$1,100 a month in October of 2017 (if the refrigerator has not been provided and the key to the front lock has not been provided).
6. If the tenants have already paid October rent, in an amount greater than \$923.96, they can deduct any overpayment from their November 2016 rent.
7. If the owner wishes to, he can repay the restitution owed to the tenants at any time. If he does so, the monthly decrease for restitution ends at the time the tenants are provided restitution.
8. If the owner provides a refrigerator, the owner can increase the tenants' rent by \$125.00 a month. If the owner provides a key to the front door, the owner can increase the tenants' rent by \$25 a month. **In order to increase the rent after repairs the owner must provide the necessary notice pursuant to Civil Code § 827.**
9. Nothing in this Order prevents the owner from increasing the rent at any time 6 months after the tenants are first served with the *RAP Notice*, provided that the rent increase notice is served pursuant to Civil Code § 827 and the Rent Adjustment Ordinance.
10. **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 28, 2016

  
Barbara M. Cohen  
Hearing Officer  
Rent Adjustment Program

**PROOF OF SERVICE**

**Case Number T16-0104**

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

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

**Tenants**

Fareed Traylor  
2509 109th Ave #D  
Oakland, CA 94603

Simone Meyer  
2509 109th Ave #D  
Oakland, CA 94603

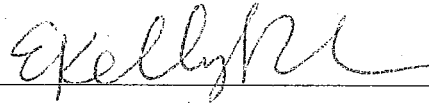
**Owner**

Rod Harris  
2509 109th Ave  
Oakland, CA 94603

Roderick Harris, Jr.  
1953 102nd Ave  
Oakland, CA 94603

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

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



Esther K. Rush

000032



Ttl. 0104 RC/BC

<b>CITY OF OAKLAND</b> <b>RENT ADJUSTMENT PROGRAM</b> Mail To: P. O. Box 70243 Oakland, California 94612-0243 (510) 238-3721	For date stamp: ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED 2016 FEB 16 PM 2:52
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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 Simone Meyer Fareed Traylor	Rental Address (with zip code) 2509 109th Ave #D Oakland CA 94603	Telephone (250) 290-1004 (510) 472-3430
Your Representative's Name	Mailing Address (with zip code)	Telephone
Property Owner(s) name(s) Rod Harris	Mailing Address (with zip code)	Telephone (510) 593-9094

Number of units on the property: 4

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

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

<input 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: Oct 2015 Initial Rent: \$ 1250 /month

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

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

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

Date Notice Served (mo/day/year)	Date Increase Effective (mo/day/year)	Amount Rent Increased		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
		\$	\$	<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

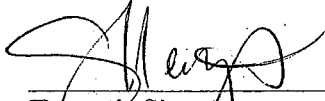
If you answered "Yes" to any of the above, please attach a separate sheet listing a description of the reduced service(s) and problem(s). Be sure to include at least the following: 1) a list of the lost housing service(s) or serious problem(s); 2) the date the loss(es) began or the date you began paying 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. Please see behind →

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

My fiance & I moved into our apt at 2509 109th Ave #D  
Oakland CA 94603 in Oct. 2015. When we originally moved in  
we waived our deposit stating that we need to clean the  
apt. & fix all that was broken or missing. We moved in there  
was no refrigerator till this day, no heater (its broken) rug was  
dirty. back door does not open its locked indefinitely. no lock  
on front door just lock for gate. The bathroom sink had a  
major leak which we eventually had to fix ourselves. Then  
in Nov. is our hot water heater just stopped working. My  
fiance called the land lord to inform him and we were told  
that it wasnt his problem that we needed to fix it our  
selves. My fiancee went downstairs to check it out and  
was appalled to find the laundry room which held the  
water heaters filled with feces and it was so bad he  
could not even step inside to fix the water heater it  
was filled up in there. it was outside the bldg as well.  
I then called the land lord and informed him again  
and still nothing was done & we were told again that  
we needed to clean and fix it up. The whole apt. bldg  
is a mess. We called the City of Oakland and inspector  
came and filed. they told us to come to the Rent Board  
and file paper work as well. We believe our loss  
is at ~~100~~ 100% we have been without hot water since  
November 2015. I'm also 5 months pregnant. The whole apt.  
living conditions are bad for anyone to live there. Thanks  
000035

**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

02/10/10  
\_\_\_\_\_  
Date

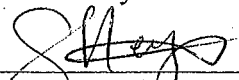
**V. MEDIATION AVAILABLE:** Mediation is an entirely voluntary process to assist you in reaching an agreement with the owner. If both parties agree, you have the option to mediate your complaints before a hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal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

2/10/10  
\_\_\_\_\_  
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): called & was referred

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and file paper work as well. We believe our loss  
is at ~~\$~~ 100% we have been without hot water since  
November 2015. I'm also 5 months pregnant. The whole apt.  
is in terrible condition and we are forced to live there. Thanks