HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD
REGULAR MEETING

January 11, 2018
7:00 P.M.
CITY HALL, HEARING ROOM #1
1 FRANK H. OGAWA PLAZA
OAKLAND, CA

AGENDA

1. CALL TO ORDER

2. ROLL CALL

3. CONSENT ITEMS

   i. Approval of minutes, November 9, 2017

4. OPEN FORUM

5. NEW BUSINESS

   i. Appeal Hearings in cases:

      a. L16-0038; Ludwig v. Tenants

      b. L16-0056; Khanna v. Tenants

      c. T16-0423; Habarek v. Vaughn

   ii. Proposed Regulations

      a. Report, Resolution, and Regulation Text for Owner Occupancy Exemption Regulation

      b. Report, Resolution, and Regulation Text for Owner Move-In Notice to Include Relocation and a Copy of the Ordinance.

6. SCHEDULING AND REPORTS

7. ADJOURNMENT

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

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

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

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

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

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

CITY OF OAKLAND

OFFICE OF THE CITY ATTORNEY

SUPPLEMENTAL REPORT

To: Chairperson Jessie Warner and Members of the Housing Residential Rent and Relocation Board

FROM: Kent Qian, Deputy City Attorney

DATE: January 2, 2018

SUBJECT: Revisions to Owner Occupancy Exemption Regulations

At the October 26, 2017 meeting, the Board considered Just Cause for Eviction Regulations regarding owner occupancy exemption ("Regulations") brought forward by staff. During the Board's discussion of the proposed amendments to the Regulations, the Board advised that it would like to make certain changes to the proposed regulations. These include requiring annual proof of occupancy, providing a list of acceptable documents for proof of residency, and adding penalty for submission of false information.

This supplemental report identifies the changes made in response to requests by the Board and one further change to add a documentation requirement for ownership interest (1/3 required):

1. Revised definition of "Rental Unit" to specifically include live-work units or other types of non-conforming units consistent with the Relocation Ordinance [8.22.340];
2. Added requirement for existing owner-occupants to file certificate with the Rent Program within 30 days of the regulations [8.22.350F.c.vi];
3. Added annual certification requirement [8.22.350F.d];
4. Added documentation requirement for ownership interest [8.22.350F.g.iii];
5. Added a list of supporting documents the owner must attach to the certificate. The list was adopted from documentation requirement of the Oakland Unified School District for residence verification (http://www.ousd.org/enroll) as well as documentation required for Owner Move-In evictions by the San Francisco Rent Board (S.F. Rent Board Rule 12.14(f)) [8.22.350F.g.iv]; and
6. Added penalty for submission of false information [8.22.350F.h].

We ask that the Rent Board consider and adopt these proposed regulations as revised in Attachment B (revisions from October version are reflected in track changes).

CITY OF OAKLAND

HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD

RESOLUTION

RESOLUTION NO. R18-001

RESOLUTION APPROVING AMENDMENTS TO JUST CAUSE FOR EVICTION REGULATIONS TO REQUIRE CERTICATIONS FOLLOWING OWNER OCCUPANCY OF PROPERTIES WITH TWO OR THREE UNITS

WHEREAS, Oakland's Just Cause Ordinance (O.M.C. 8.22.300) exempts buildings with two or three units from just-cause protections if a property owner lives in one of the units as a primary residence; and

WHEREAS, this means that renters in buildings with two or three units risk no-fault eviction, should an owner move into one of the units; and

WHEREAS, this exemption has the benefit of helping mom and pop landlords, who live in buildings with two or three units, but is susceptible to abuse; and

WHEREAS, false owner-move ins and owner-occupied exemptions are increasing in the City of Oakland as a tactic to push out existing tenants and raise rents; and

WHEREAS, such false owner-move ins and owner-occupied exemptions is exacerbating Oakland's severe housing supply and affordability crisis, and threatens the public health, safety and/or welfare of our residents; and

WHEREAS, currently, tenants may not know their rights and/or lack the resources to fight for them to be enforced or access the information to determine if an owner-occupancy is valid; and

WHEREAS, currently, the City of Oakland lacks adequate regulations to ensure that owner-occupancy claims being used for exemptions to the just cause for eviction law are legitimate;

WHEREAS, the Oakland City Council requested the Housing, Residential Rent and Relocation Board to consider regulations to have property owners who owner-occupy duplexes and triplexes to confirm owner-occupancy status through a certificate

of exemption or other administrative process for exemption from the Just Cause for Eviction Ordinance; and

WHEREAS, the Rent Board wishes to adopt new Regulations to require owners to certify occupancy after moving into a two or three unit building; now, therefore be it

RESOLVED: That the Board amends the Just Cause for Eviction Regulations as set out in Attachment B; and be it

FURTHER RESOLVED: That the Just Cause for Eviction regulations herein enacted shall take effect after the City Council has considered the proposed regulations for costs.

APPROVED BY THE FOLLOWING VOTE

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

NOES:

ABSENT:

ABSTENTION:

_____
Date:

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

#2227728v1

Attachment B

Amendments to Just Cause For Eviction Regulations

Reg 8.22.340 Definitions

"Appeal Panel" has the same meaning as that term is defined in O.M.C. Section 8.22.020. [existing]

"Rent Program" means the Rent Adjustment Program as defined in O.M.C. Section 8.22.020. [existing]

"Rental Unit" includes a unit in a structure that is being used for residential uses whether or not the residential use is a conforming use permitted under the Oakland Municipal Code or Oakland Planning Code. This definition applies to any dwelling space that is actually used for residential purposes, including live-work spaces, whether or not the residential use is legally permitted~~live-work units or other types of non-conforming residential units~~. [new]

Reg 8.22.350F Certifications For Owner Occupancy of Properties with Two or Three Units [new]

a. Scope of Regulations: The regulations in this section are designed to provide reporting requirements to better assure compliance with the Owner-Occupancy Exemption from Just Cause for Eviction Ordinance Contained in Section 8.22.350F of the Oakland Municipal Code.

b. Applicability: This regulation applies to any unit in a residential property that is divided into two or three units, one of which is occupied by the Owner of Record as his or her principal residence.

c. Certification to the Rent Program Following Occupancy.
   i. Within 30 days of an Owner of Record commencing occupancy of a unit as a principal residence, the Owner of Record must file a certificate with the Rent Program attesting to the occupancy in addition to any evidence of occupancy as required by the certificate. The certificate must also attest to whether the Owner of Record claims a homeowner's property tax exemption on any other real property in the State of California.
   ii. The certificate must be accompanied by a proof of service on each Tenant of the other units of the property.
   iii. A certificate must be filed within 30 days of occupancy for each subsequent new Owner of Record who occupies a unit as a principal residence.
   iv. At the commencement of each new tenancy after the initial certificate filing, the Owner of Record must serve the Tenant a copy of the certificate filed with the Rent Program with a proof of service on the Tenant.
   v. Filing of a certificate under this subsection will satisfy the filing requirement in 8.22.360.B.8.b.ii (Certification Following Occupancy After No-Fault Eviction), if the Owner of Record is also subject to the filing requirement in that subdivision.
   ~~v.~~vi. If the Owner of Record commenced occupancy before the effective date of the regulation, the Owner of Record must file a certificate with the Rent Program within 30 days after effective date of the regulation or when the forms are available from the Rent Program, whichever is later.

d. Continued occupancy certification. Following owner occupancy, the Owner of Record must submit a certificate that the Owner of Record continues to reside or not

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reside in the unit as a principal residence. The Owner must attach proof of residence in the unit. This certification must be provided every twelve (12) months from the initial move-in date until the property is no longer exempt.

~~d.~~e. Certification to the Rent Program when Property is no Longer Exempt

i. The owner-occupancy exemption continues until an Owner of Record no longer continuously occupies the property or begins claiming a homeowner's property tax exemption on any other real property in the State of California.

ii. If an Owner of Record ~~no longer occupies the unit as a principal residence or~~ no longer qualifies for the exemption, the Owner of Record must file a certificate with the Rent Program stating the reason why the property is no longer exempt within 30 days of expiration of the exemption.

iii. The certificate must be accompanied by a proof of service on each tenant of the other units of the property.

~~e.~~f. Rent Program Dispute Resolution

i. The Rent Program has concurrent jurisdiction with the court over disputes over the Owner's eligibility for the owner-occupancy exemption.

ii. Either an Owner of Record or a Tenant may petition the Rent Program at any time to address Owner of Record's exemption eligibility.

iii. Rent Program hearings contesting an Owner of Record's exemption eligibility are conducted in accordance with the procedures set forth in Rent Adjustment Program Regulations 8.22.090.

iv. The Owner has the burden of proving exemption eligibility.

~~f.~~g. Forms and Information Required as Part of Certification.

i. Staff shall develop forms for required certificates.

ii. The certificates shall be filed under penalty of perjury.

iii. The certificates must include the name(s) and ownership interest of the current owner occupant(s) of the unit, and the date such occupancy commenced. The Owner of Record must submit supporting documentation of the ownership interest.

iv. Supporting Documentation. The Owner of Record shall attach to the Certificate Following Occupancy or Continued Occupancy at least three of the following forms of supporting documentation. Confidential information may be redacted from the supporting documentation prior to filing it with the Rent Program.

i. current motor vehicle registration, plus a copy of the current insurance policy for the vehicle that shows the name of the insured, the address of the unit and the period of coverage, with proof of payment;

ii. current driver's license, official California ID card from the Department of Motor Vehicles (DMV), or comparable government issued identification with the address of the unit;

iii. official letter from a social services/government agency within last 45 days;

iv. current voter registration;

v. current homeowner's exemption;

vi. current homeowner's insurance policy for the contents of the unit showing the name of the insured, the address of the unit and the period of coverage, with proof of payment; and/or

vii. utility bill dated within 45 days.

~~ii.~~v. Staff is authorized to request supplemental information consistent with the purpose of each of these certifications.

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g.h. Penalties for Failing to File Certificate.

i. An Owner of Record who fails to timely file or serve a certificate after notice of the filing requirement or submits false information may be assessed administrative citation pursuant to O.M.C. Chap. 1.12.

ii. An Owner of Record who fails to timely file or serve a certificate on more than one occasion after notice of the filing requirement or submits false information on more than one occasion, may be assessed a civil penalty pursuant to O.M.C. Chap. 1.08.

CITY OF OAKLAND

HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD

RESOLUTION

RESOLUTION NO. R18-002

RESOLUTION APPROVING AMENDMENTS TO JUST CAUSE FOR EVICTION REGULATIONS TO PROVIDE NOTICE OF NEW RELOCATION REQUIREMENT FOR OWNER MOVE-IN EVICTIONS

WHEREAS, the City Council passed on first reading the Uniform Residential Tenant Relocation Ordinance; and

WHEREAS, the Ordinance will establish a uniform schedule of relocation payments for no-fault evictions that conforms with the amounts required for Ellis and Code Compliance Relocation evictions; extend relocation payments to tenants displaced by owner or relative move-in evictions; and extend relocation payments to tenants displaced by condominium conversions; and

WHEREAS, the City Council will consider the Ordinance for final passage on January 16; and

WHEREAS, the Rent Board wishes to adopt new Regulations to require eviction notices to inform tenants of the new relocation requirement and the payments they are entitled to; now, therefore be it

RESOLVED: That the Board amends the Just Cause for Eviction Regulations as set out in Attachment C; and be it

FURTHER RESOLVED: That the regulations herein enacted shall take effect when the Uniform Tenant Relocation Ordinance becomes effective.

APPROVED BY THE FOLLOWING VOTE

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

NOES:

ABSENT:

ABSTENTION:

_____

Date:

ATTEST_____

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

#2286258v1

CITY OF OAKLAND

HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD

RESOLUTION

RESOLUTION NO. R18-002

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WHEREAS, the City Council will consider the Ordinance for final passage on January 16; and

WHEREAS, the Rent Board wishes to adopt new Regulations to require eviction notices to inform tenants of the new relocation requirement and the payments they are entitled to; now, therefore be it

RESOLVED: That the Board amends the Just Cause for Eviction Regulations as set out in Attachment C; and be it

FURTHER RESOLVED: That the regulations herein enacted shall take effect when the Uniform Tenant Relocation Ordinance becomes effective.

APPROVED BY THE FOLLOWING VOTE

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

NOES:

ABSENT:

ABSTENTION:

_____

Date:

ATTEST_____

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

#2286258v1

Attachment C: Amendment to Just Cause for Eviction Regulations

8.22.360.A.9 - Eviction for Owner or Relative Move In.

a. A notice terminating tenancy under this section must contain, in addition to the provisions required under O.M.C. 8.22.360 B 6:

i. A listing of all real property owned by the intended future occupant(s).
ii. The address of the real property, if any, on which the intended future occupant(s) claims a homeowner's property tax exemption.
iii. The lawful rent applicable for the unit on the date of the notice.
iv. A statement informing tenants as to their right to relocation payment (O.M.C. 8.22.850) and the amount of those relocation payments.

b. For the purpose of subdivision (a), real property means a parcel of real estate located in Oakland or elsewhere.

CITY OF OAKLAND

OFFICE OF THE CITY ATTORNEY

REPORT

To: Chairperson Jessie Warner and Members of the Housing Residential Rent and Relocation Board

FROM: Kent Qian, Deputy City Attorney

DATE: January 3, 2018

SUBJECT: Amending Just Cause Regulations to Provide Notice of New Relocation Requirement for Owner Move-in Evictions

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On December 18, 2017, the City Council passed on first reading the Uniform Residential Tenant Relocation Ordinance to establish a uniform schedule of relocation payments for no-fault evictions that conforms with the amounts required for Ellis and Code Compliance Relocation evictions; extend relocation payments to tenants displaced by owner or relative move-in evictions; and extend relocation payments to tenants displaced by condominium conversions. The Council will consider the Ordinance for final passage on January 16.

For a Qualifying Relocation Event, the Ordinance sets the relocation amounts as follows:

- $6,500 per studio/one bedroom units
- $8,000 per two bedroom units
- $9,875 per three or more bedroom units

Tenant households in rental units that include lower income, elderly or disabled tenants, and/or minor children shall be entitled to a single additional relocation payment of two thousand five hundred dollars ($2,500.00) per unit from the owner. For owner or relative move-in evictions under 8.22.360(A)(9), tenants who lived in the unit for less than two years will received reduced payments as follows:

- 1/3 of full payment if Tenant lived in the unit less than one year;
- 2/3 of full payment if Tenant lived in the unit one year or longer but less than two years;
- Full payment if the Tenant lived in the unit for two years or longer.

Under this proposed Ordinance, the relocation payments specified above increases annually on July 1 in accordance with the CPI Adjustment as calculated in OMC subsection 8.22.070(B)(3). The first CPI adjustment (at 2.3%) took effect on July 1, 2017 (not reflected in the numbers above).

The existing Just Cause for Eviction Ordinance and regulations require owners to notify tenants of the relocation requirements when the eviction is for Ellis withdrawal or code compliance. The Rent Board should revise the notice requirements for owner move-in evictions to reflect the new relocation requirement. We ask that the Rent Board consider and adopt these proposed regulations in Attachment C to take effect when the Ordinance becomes effective. A copy of the ordinance is provided with your packet.

APPROVED AS TO FORM AND LEGALITY

CITY ATTORNEY'S OFFICE

AS REVISED BY COUNCIL ON DEC. 18, 2017

INTRODUCED BY COUNCILMEMBER KAPLAN

OAKLAND CITY COUNCIL

ORDINANCE NO. _____C.M.S.

AN ORDINANCE TO ENACT THE UNIFORM RESIDENTIAL TENANT RELOCATION ORDINANCE TO (1) ESTABLISH AN UNIFORM SCHEDULE OF RELOCATION PAYMENTS; (2) TO EXTEND RELOCATION PAYMENTS TO TENANTS DISPLACED BY OWNER MOVE-IN EVICTIONS; (3) TO EXTEND RELOCATION PAYMENTS TO TENANTS DISPLACED BY CONDOMINIUM CONVERSIONS; AND (4) CONFORM EXISTING ELLIS ACT AND CODE COMPLIANCE RELOCATION AMOUNTS TO THOSE IN THE UNIFORM SCHEDULE

WHEREAS, all major California rent-controlled jurisdictions surveyed (including Los Angeles, San Francisco, Berkeley, Santa Monica, and West Hollywood) require relocation payments for no-fault evictions, such as owner move-in evictions and condominium conversions; and

WHEREAS, tenants who do not have adequate funds to move and who are forced to move pursuant to no-fault eviction notice face displacement and great hardship; and

WHEREAS, tenants evicted in Oakland are forced to incur substantial costs related to new housing including, but not limited to, move-in costs to a new home, moving costs, new utility hook-ups, payments for temporary housing, and lost work time seeking housing; and

WHEREAS, the impacts of these no-fault evictions are particularly significant on elderly, disabled, and low-income tenants and tenants with minor children, justifying an additional payment for households with these tenants; and

WHEREAS, tenants who find acceptable new housing commonly find themselves required to pay substantial costs related to new housing including, but not limited to, move-in costs to a new home, moving costs, new utility hook-ups, payments for temporary housing, lost work time seeking housing, and increased rent due to vacancy decontrol; and

WHEREAS, tenants who find acceptable new housing commonly find themselves required to pay substantial move-in costs of first and last month's rent plus a security deposit equal to one month's rent; and

WHEREAS, the City Council recently approved these same relocation fee amounts for evictions pursuant to the Ellis Act, another type of no-fault eviction, and establish a schedule for relocation payments according to unit size; and

WHEREAS, the City Council finds that the proposed expansion in coverage of the relocation payments for no-fault evictions is justified and necessary for impacted Tenants to find new housing and avoid displacement; and

WHEREAS, the City Council finds that the relocation amounts for owner move-ins and condominium conversions should be set at the amounts establish by the Ellis Act Ordinance approved by the City; and

WHEREAS, with the expansion in coverage of relocation payments, the City Council finds it justified to establish an uniform schedule of relocation payments for no-fault evictions; and

WHEREAS, this action is exempt from the California Environmental Quality Act ("CEQA") pursuant to, but not limited to, the following CEQA Guidelines: § 15378 (regulatory actions), § 15061 (b)(3) (no significant environmental impact), and § 15183 (consistent with the general plan and zoning); and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. Addition of Article VII to Chapter 8.22 of the Oakland Municipal Code. That the City Council hereby adopts the addition of Section 8.22.800 et. seq. as Article VII of Chapter 8.22 of the Oakland Municipal Code, as follows.

Article VII – Uniform Residential Tenant Relocation Ordinance

8.22.800 – Purpose

The purpose of this section is to establish an uniform amount for relocation payments for tenants displaced by no-fault evictions.

8.22.810 – Definitions

"Disabled" means a person with a disability, as defined in Section 12955.3 of the Government Code.

"Elderly" means a person sixty-two (62) years old or older.

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"Lower-income Tenant Household" means Tenant Households whose income is not more than that permitted for lower income households, as defined by California Health and Safety Code Section 50079.5.

"Minor child(ren)" means a person(s) who is eighteen (18) years or younger at the time the notice is served.

"Owner" or "Property Owner" means a person, persons, corporation, partnership, limited liability company, or any other entity holding fee title to the subject real property. In the case of multiple ownership of the subject real property, "Owner" or "Property Owner" refers to each entity holding any portion of the fee interest in the property, and the property owner's obligations in this chapter shall be joint and several as to each property owner.

"Qualifying Relocation Event" means any event or vacancy that triggers a Tenant's right to relocation payments under the Oakland Municipal Code.

"Rental Unit" means a dwelling space in the city containing a separate bathroom, kitchen, and living area, including a single-family dwelling or unit in a multifamily or multipurpose dwelling, or a unit in a condominium or cooperative housing project, or a unit in a structure that is being used for residential uses whether or not the residential use is a conforming use permitted under the Oakland Municipal Code or Oakland Planning Code, which is hired, rented, or leased to a household within the meaning of California Civil Code Section 1940. This definition applies to any dwelling space that is actually used for residential purposes, including live-work spaces, whether or not the residential use is legally permitted.

"Room" means an unsubdivided portion of the interior of a residential building in the city which is used for the purpose of sleeping, and is occupied by a Tenant Household for at least thirty (30) consecutive days. This includes, but is not limited to, a rooming unit or efficiency unit located in a residential hotel, as that term is defined in accordance with California Health and Safety Code Section 50519. This definition applies to any space that is actually used for residential purposes whether or not the residential use is legally permitted. For purposes of determining the amount of relocation payments, a room is the equivalent of a studio apartment.

"Tenant" means a Tenant as that term is defined in O.M.C. 8.22.020 and also includes a lessee.

"Tenant Household" means one or more individual Tenants who rent or lease a Rental Unit or Room as their primary residence and who share living accommodations. In the case where an individual Room is rented to multiple Tenants under separate agreements, each individual Tenant of such Room shall constitute a "Tenant Household" for purposes of this article.

8.22.820 Amount of relocation payments

A. Unless otherwise specified in a Section of the Oakland Municipal Code requiring relocation payments, Tenant Households who are required to move as a result of a Qualifying Relocation Event shall be entitled to a relocation payment from the Owner in the sum of six thousand five hundred dollars ($6,500.00) per unit for studios and one-bedroom apartments; eight thousand dollars ($8,000.00) per unit for two-bedroom apartments; and nine thousand eight hundred seventy-five dollars ($9,875.00) per unit for units with three or more bedrooms. The payment shall be divided equally among all Tenants occupying the Rental Unit at the time of service on the Tenants of the notice of termination of tenancy.

B. Unless otherwise specified in a Section of the Oakland Municipal Code requiring relocation payments, Tenant Households in Rental Units that include lower income, elderly or disabled Tenants, and/or minor children shall be entitled to a single additional relocation payment of two thousand five hundred dollars ($2,500.00) per unit from the Owner. If a household qualifies for this additional payment, the payment shall be divided equally among eligible (lower-income, elderly, disabled, parents/guardians of minor children) Tenants.

C. In the case of temporary relocations under O.M.C. 15.60.110(B), the amounts in paragraphs A-B shall be a cap on relocation payments.

D. The relocation payments specified in subsection 8.22.820(A) shall increase annually on July 1 in accordance with the CPI Adjustment as calculated in OMC subsection 8.22.070(B)(3). The first increase shall take place on July 1, 2017.

SECTION 2. Addition of Article VIII to Chapter 8.22 of the Oakland Municipal Code. That the City Council hereby adopts the addition of Section 8.22.850 et. seq. as Article VIII of Chapter 8.22 of the Oakland Municipal Code, as follows.

Article VIII – Relocation Payments for Owner or Relative Move-Ins

8.22.850 – Relocation Payments for Owner or Relative Move-Ins

A. Applicability. An Owner who evicts a Tenant pursuant to O.M.C. Section 8.22.360(A)(9) or where a Tenant vacates following a notice or other communication stating the Owner's intent to seek recovery of possession of the unit under this O.M.C. Sections must provide relocation payment under this Section. Relocation payment procedures pursuant to code compliance or Ellis Act evictions will be governed by the Code Compliance Relocation Ordinance and the Ellis Act Ordinance.

B. The property Owner shall be responsible for providing relocation payments, in the amounts specified in Section 8.22.820, to an eligible Tenant Household in the form and manner prescribed under this article and any rules and regulations adopted under this article.

C. Tenant Eligibility for Payment. Tenants will be eligible for relocation payments according to the following schedule based on the effective date of ay notice to terminate:

1. Upon taking possession of the Rental Unit, the Tenant will be eligible for one-third (1/3) of the total payment pursuant to subsection B above.

2. After one year of occupancy of the Rental Unit, the Tenant will be eligible for two-thirds (2/3) of the total payment pursuant to subsection B above.
3. After two years of occupancy of the Rental Unit, the Tenant will be eligible for the full amount of the total payment pursuant to subsection B above.

D. Time for payment
1. The Owner must pay the Tenant half of the relocation payment provided for in Section 8.22.820(A) when the termination notice is given to the household and the remaining half when the Tenant vacates the unit provided that the Tenant agrees, in writing, not to contest an unlawful detainer based on the notice to terminate tenancy for the Owner or relative moving in to the Tenant's Rental Unit. If the Tenant does not so agree, then the entirety of the relocation payment is not due unless the Owner prevails in the unlawful detainer. If the Owner prevails in the unlawful detainer, the relocation payment must be paid to the Tenant prior to the Owner seeking a writ of possession for the Tenant to vacate the unit.
2. The Owner must pay the Tenant the additional payment provided for in Section 8.22.820(B) within fifteen (15) days of the Tenant's notice of eligibility or the Tenant supplying documentation of the Tenant's eligibility.

E. Failure to make the relocation payments in the manner and within such times as prescribed in this Section is not a defense to an unlawful detainer action. However, if an Owner fails to make the relocation payment as prescribed, the Tenant may file an action against the Owner and, if the Tenant is found eligible for the relocation payments, the Tenant will be entitled to recover the amount of the relocation payments plus an equal amount as damages and the Tenant's attorney's fees. Should the Owner's failure to make the payments as prescribed be found to be in bad faith, the Tenant shall be entitled to the relocation payments plus an additional amount of three times the amount of the relocation payments and the Tenant's attorney's fees.

8.22.860 – Violation – Penalty.

A. Criminal Penalties
1. Infraction. Any property Owner violating any provision or failing to comply with any requirements of this article shall be guilty of an infraction for the first offense.
2. Misdemeanor. Any property Owner violating any provision or failing to comply with any requirements of this article multiple times shall be guilty of a misdemeanor.

B. Administrative Penalties
1. Administrative citation. Any person violating any provision or failing to comply with any requirements of this article may be assessed an administrative citation pursuant to O.M.C. Chapter 1.12 for the first offense.
2. Civil penalties. Any person violating any provision or failing to comply with any requirements of this article multiple times may be assessed a civil penalty for each violation pursuant to O.M.C. Chapter 1.08.

C. Violation includes attempted violation. In addition to failing to comply with this article, it is also violation to attempt to have a Tenant accept terms that fail to comply with this article, including any of the following actions:

1. Asking the Tenant to accept an agreement that pays less than the required relocation payments;
2. Asking the Tenant to accept an agreement that waives the Tenant's rights; or
3. Upon a return to the unit, asking the Tenant to pay a higher rent than is permitted under this article or O.M.C. Chapter 8.22.

8.22.870 – Civil Remedies.

A. Any person or organization who believes that a property Owner or Tenant Household has violated provisions of this article or the program rules and regulations adopted pursuant to this article shall have the right to file an action for injunctive relief and/or actual damages against such party. Whoever is found to have violated this article shall be subject to appropriate injunctive relief and shall be liable for damages, costs and reasonable attorneys' fees. Treble damages shall be awarded for a property Owner's willful failure to comply with the payment obligation established under this article.

B. Nothing herein shall be deemed to interfere with the right of a property Owner to file an action against a Tenant or non-Tenant third party for the damage done to said Owner's property. Nothing herein is intended to limit the damages recoverable by any party through a private action.

C. The city attorney may bring an action against a property Owner that the city attorney believes has violated provisions of this article or any program rules and regulations adopted pursuant to this article. Such an action may include injunctive relief and recovery of damages, penalties-- including any administrative citations or civil penalties-- treble damages, and costs and reasonable attorney's fees. The city attorney has sole discretion to determine whether to bring such an action.

SECTION 3. Modification of Section 8.22.450 of the Oakland Municipal Code. Section 8.22.450 of the Oakland Municipal Code is hereby amended to read as follows (additions are shown as double underline and deletions are shown as ~~strikethrough~~):

8.22.450 - Relocation payments.

A. Tenant Households who are required to move as a result of the Owner's withdrawal of the accommodation from rent or lease shall be entitled to a relocation payment from the Owner equal to Relocation Payment amounts set forth in O.M.C. 8.22.820(A). ~~in the sum of six thousand five hundred dollars ($6,500.00) per unit for studios and one-bedroom apartments; eight thousand dollars ($8,000.00) per unit for two-bedroom apartments; and nine thousand eight hundred seventy five dollars ($9,875.00) per unit for units with three or more bedrooms.~~ The payment shall be divided equally among all Tenants occupying the Rental Unit at the time of service on the Tenants of the notice of intent to withdraw the unit from rent or lease. Once notice of withdrawal of the

accommodation from rent or lease has been given to the Tenant, the Owner is obligated to make the relocation payments.

B. Tenant Households in Rental Units withdrawn from the residential market that include lower income, elderly or disabled Tenants, and/or minor children shall be entitled to a single additional relocation payment equal to the additional Relocation Payment amounts set forth in O.M.C. 8.22.820(B). ~~of two thousand five hundred dollars ($2,500.00) per unit from the owner~~. If a household qualifies for this additional payment, the payment shall be divided equally among eligible (lower-income, elderly, disabled, parents/guardians of minor children) Tenants.

C. A Tenant whose household qualifies for the additional payment may request it from the Owner, provided the Tenant gives written notice of his or her entitlement to such payments to the Owner within sixty (60) days of the date of delivery to the Rent Adjustment Program of the Withdrawal Documents.

D. An Owner who, reasonably and in good faith, believes that a Tenant does not qualify for the additional payment may request documentation from the Tenant demonstrating the Tenant's income qualification. Such documentation may not include any document that is protected as private or confidential under any state, local, or federal law. The Owner's request must be made within fifteen (15) days after receipt of the Tenant's notification of eligibility for the additional payment. The Tenant has thirty (30) days following receipt of the Owner's request for documentation to submit documentation. The Owner must keep the documents submitted by the Tenant confidential unless there is litigation or administrative proceedings regarding the Tenant's eligibility for relocation payments or the documents must be produced in response to a subpoena or court order, in which case the Tenant may seek an order from the court or administrative body to keep the documents confidential. Examples of the types of evidence that may be used to present a claim that a household is entitled to an extra payment based on a Tenant's disability status include evidence that a Tenant has a qualifying disability may be in the form of a statement from a treating physician or other appropriate health care provider authorized to provide treatment, such as a psychologist. A Tenant may also submit evidence of a medical determination from another forum, such as Social Security or worker's compensation, so long as it includes the fact that the Tenant has a disability and its probable duration.

E. Time for payment.

1. The Owner must pay the Tenant half of the relocation payment provided for in Section 8.22.450(A) when the termination notice is given to the household and the remaining half when the Tenant vacates the unit provided that the Tenant agrees, in writing, not to contest an unlawful detainer based on the notice to terminate tenancy for the withdrawal of the Tenant's Rental Unit. If the Tenant does not so agree, then the entirety of the relocation payment is not due unless the Owner prevails in the unlawful detainer. If the Owner prevails in the unlawful detainer, the relocation payment must be paid to the Tenant prior to the Owner seeking a writ of possession for the Tenant to vacate the withdrawn unit.
2. The Owner must pay the Tenant the additional payment provided for in Section 8.22.450(B) within fifteen (15) days of the Tenant's notice of eligibility or the Tenant supplying documentation of the Tenant's eligibility.

F. Failure to make the relocation payments in the manner and within such times as prescribed in this Section 8.22.450 is not a defense to an unlawful detainer action. However, if an Owner fails to make the relocation payment as prescribed, the Tenant may file an action against the Owner and, if the Tenant is found eligible for the relocation payments, the Tenant will be entitled to recover the amount of the relocation payments plus an equal amount as damages and the Tenant's attorney's fees. Should the Owner's failure to make the payments as prescribed be found to be in bad faith, the Tenant shall be entitled to the relocation payments plus an additional amount of three times the amount of the relocation payments and the Tenant's attorney's fees.

G. A Tenant who is eligible for relocation payments under state or federal law, is not also entitled to relocation under this section. A Tenant who is also eligible for relocation under the City of Oakland's code enforcement relocation program (O.M.C. Chapter 15.60), must elect for either relocation payments under this section or O.M.C. Chapter 15.60, and may not collect relocation payments under both.

H. The regulations may provide procedures for escrowing disputed relocation funds.

~~I. The relocation payments specified in subsection 8.22.450(A) shall increase annually on July 1 in accordance with the CPI Adjustment as calculated in OMC subsection 8.22.070(B)(3).~~

SECTION 4. Modification of Section 15.60.110 of the Oakland Municipal Code. Section 15.60.110 of the Oakland Municipal Code are hereby amended to read as follows (additions are shown as double underline and deletions are shown as ~~strikethrough~~):

15.60.110 - Amount of relocation payments.

A. Permanent Displacement. An eligible Tenant Household who will experience permanent displacement as defined above shall receive a monetary relocation payment from the property Owner equal to the Relocation Payment amounts set forth in O.M.C. 8.22.~~450~~820, including the additional payments for Tenant Households that include lower income, elderly or disabled Tenants. and/or minor children as set forth in O.M.C. 8.22.~~450~~820(B).

1. A Tenant whose household qualifies for the additional payment as set forth in O.M.C. 8.22.~~450~~820(B) may request it from the Owner, provided the Tenant gives written notice of his or her entitlement to such payments to the Owner within thirty (30) days following the Tenant Household's actual vacation of the unit or room.
2. An Owner who, reasonably and in good faith, believes that a Tenant does not qualify for the additional payment, may request documentation from the Tenant demonstrating the Tenant's qualification. Such documentation may not include any document that is protected as private or confidential under and state, local or federal law. The Owner's request must be made within fifteen (15) days after receipt of the Tenant's notification of eligibility for the additional payment. The Tenant has thirty (30) days following receipt of the Owner's request for documentation to submit documentation. The Owner must keep the documents submitted by the

Tenant confidential unless there is litigation or administrative proceedings regarding the Tenant's eligibility for relocation payments or the documents must be produced in response to a subpoena or court order, in which case the Tenant may seek an order from the court or administrative body to keep the documents confidential. Examples of the types of evidence that may be used to present a claim that a household is entitled to an extra payment based on a Tenant's disability status may be in the form of a statement from a treating physician or other appropriate health care provided authorized to provide treatment, such as a psychologist. A Tenant may also submit evidence of a medical determination from another forum, such as Social Security or worker's compensation, so long as it includes the fact that the Tenant has a disability and its probable duration.

B. Temporary displacement. An eligible Tenant Household who will experience temporarily displacement as defined above shall receive monetary relocation payment or payments from the property Owner to cover the Tenant Household's actual and reasonable moving expenses and temporary housing accommodations costs directly incurred as a result of the temporary displacement. "Moving expenses" shall include the cost of removing, transporting, and/or storing the Tenant Household's personal property during the displacement period, and "temporary housing accommodations costs" shall include the cost of rental payments and hotel or motel payments during the displacement period. In no event shall the property Owner be liable for making payments in excess of the amount the Tenant Household would receive in the case of permanent displacement as set forth in subsection A of this section.

C. Immediate Vacation. When the condition of a Room or Rental Unit is a danger to the public health and safety such that the city requires immediate vacation, i.e., vacation with less than thirty (30) days advance notice either from the city or from the property Owner to the Tenant Household of the need to vacate, an eligible Tenant Household displaced from such a room or unit shall be entitled to an additional payment from the property Owner in the amount of five hundred dollars ($500.00), in addition to the amounts set forth above. Such additional payment is intended to compensate the Tenant Household for the additional costs associated with short-notice moves and the added inconvenience of such moves.

D. Payments for relocation shall not be considered by the city as income or assets for any government benefits program.

SECTION 5. Modification of Sections 16.36.030 and 16.36.050 of the Oakland Municipal Code. Sections 16.36.030 and 16.36.050 of the Oakland Municipal Code are hereby amended to read as follows (additions are shown as double underline and deletions are shown as ~~strikethrough~~):

16.36.030 - NOTICE TO PROSPECTIVE TENANTS.

Commencing at a date not less than sixty (60) days prior to the filing of a tentative map or tentative parcel map, the subdivider shall give notice of such filing, in the form shown below, to each person applying after such date for rental of a unit in the building to be converted. This notice must be given to the prospective Tenant prior to the acceptance of any rent or deposit from said prospective Tenant.

The notice shall read as follows:

To the prospective occupant(s) of

_____
(Address)

The owner(s) of this building, at (address), has filed or plans to file an application for a (tentative map or tentative parcel map) with the city to convert this building to a (condominium, community apartment, or stock cooperative project). No units may be sold in this building unless the conversion is approved by the City ~~or~~of Oakland and, if five or more units are involved, until after a public report is issued by the ~~Department~~Bureau of Real Estate. If you become a Tenant of this building, you shall be given notice of each hearing for which notice is required pursuant to Government Code Sections 66451.3 and 66452.5 ~~of the Government Code~~, and you have the right to appear and the right to be heard at any such hearing.

_____
(signature of owner or owner's agent)

_____
(date)

I have received this notice on:

_____
(date)

_____
(prospective Tenant's signature)

Prospective Tenants shall also receive all accompanying documents described in Section 16.36.020 and all documents set forth in Sections 16.36.040 and 16.36.050.

If the subdivider fails to give timely notice pursuant to this section, he or she shall pay to each prospective Tenant (1) who becomes a Tenant and who was entitled to such notice~~,~~; and (2) who does not purchase his or her unit pursuant to Section 16.36.040 and vacates, an amount equal to the amounts set forth below:

a. Tenants who vacate for Code Compliance repairs shall be paid relocation payments pursuant to O.M.C. chapter 15.60.

b. Tenants who vacate for any other reason, unless evicted for Tenant fault, shall be paid relocation payments in amounts pursuant to O.M.C. Section 8.22.820. The owner shall make the payment directly to an eligible Tenant

Household no later than ten days before the expected vacation date. If less than ten days' advance notice of vacation is given, then the payment by the owner to the Tenant Household is due no later than the actual time of vacation.

c. A Tenant who is also eligible for relocation under the City of Oakland's code compliance relocation program (O.M.C. Chapter 15.60), must elect for either relocation payments under this section or O.M.C. Chapter 15.60, and may not receive relocation payments under both.

d. A Tenant who is also eligible for relocation assistance under Section 16.36.050 (Preliminary Tenant Assistance Program) must elect for either relocation payments under this section or Section 16.36.050, and may not receive relocation payments under both.

~~sum of the following:~~

~~A. Actual moving expenses incurred when moving from the subject property, but not to exceed a maximum amount, if any, that is specified in the final Tenant assistance program, as set forth in Section 16.36.080, or five hundred dollars ($500.00), whichever is greater; and~~

~~B. The first month's rent on the Tenant's new rental unit, if any, immediately after moving from the subject property, but not to exceed five hundred dollars ($500.00).~~

16.36.050 – Tenant rights and the preliminary Tenant assistance program

A. With regard to any conversion as defined in Section 16.36.010, each Tenant shall have the following minimum rights which shall be set forth in a notice of Tenant rights.

1. After receipt of this notice, each Tenant will be entitled to terminate his or her lease or rental agreement without any penalty upon notifying the subdivider in writing thirty (30) days in advance of such termination; provided, however, that this requirement shall cease upon notice to the Tenant of the abandonment of subdivider's efforts to convert the building.
2. No Tenant's rent will be increased from the date of issuance of this notice until at least twelve (12) months after the date subdivider files the tentative map or tentative parcel map with the city; provided, however, that this requirement shall cease upon abandonment of subdivider's efforts to convert the building.
3. No remodeling of the interior of Tenant-occupied units shall begin until at least thirty (30) days after issuance of the final subdivision public report or, if one is not issued, after the start of subdivider's sales program. (For purposes

of this chapter, the start of subdivider's sales program shall be defined as the start of Tenants' ninety (90) days first-right-of-refusal period set forth below.)

4. Each Tenant shall have an exclusive right to contract for the purchase of his or her unit or, at the Tenant's option, any other available unit in the building upon the same or more favorable terms and conditions that such units will be initially offered to the general public, such right to run for at least ninety (90) days from the issuance of the final subdivision public report or, if one is not issued, from the start of subdivider's sales program.
5. Each Tenant shall have a right of occupancy of at least one hundred eighty (180) days from the issuance of the final subdivision public report or, if one is not issued, from the start of subdivider's sales program, prior to termination of tenancy due to conversion.
6. Tenants in units containing a Tenant sixty-two (62) years or older shall be provided a lifetime lease on their unit or, at Tenant's option, on any other available unit in the building. Such leases, to commence no later than the date of issuance of the final subdivision public report, or, if one is not issued, no later than the start of subdivider's sales program, shall be subject to the following conditions:
    a. Tenants shall have the option of cancelling the lease at any time upon thirty (30) days' written notice to the owner.
    b. Tenants cannot be evicted except for just cause.
    c. Right of occupancy shall be nontransferable.
    d. The first year's base monthly rent for the unit shall be set at no more than the rent existing on the unit one year prior to the filing of the tentative map or tentative parcel map increased by no more than seventy-five (75) percent of the percentage increase in the residential rent component of the Consumer Price Index for All Urban Consumers in the San Francisco-Oakland Metropolitan Area (Bay Area Rental CPI) from the date one year prior to the filing of the tentative map or tentative parcel map to the effective date of the lifetime lease.
    e. Subsequent rent adjustments, if any, may be made no sooner than one year from the effective date of the lifetime lease, shall be limited to no more than one per year, and the percentage increase in the Bay Area Rental CPI for the most recent twelve (12) month period.
    f. Notwithstanding the above, no rent increase shall exceed any rent increase guidelines adopted by the city.
    g. Except as provided hereinabove, terms and conditions of the lifetime lease shall be the same as those contained in Tenant's current lease or rental agreement.

The preliminary Tenant assistance program, as set forth in subsection B of this section, shall make provision for the above minimum rights on the terms set forth above or on terms more favorable to the Tenant.

B. The subdivider's Preliminary Tenant Assistance Program (PTAP) shall consist of at least two parts: efforts to minimize Tenant displacement, and Tenant relocation assistance.

1. In the first part of the PTAP, subdivider shall describe those incentives and inducements that would increase the potential for, and ability of, Tenants to become owners in the conversion. Subdivider shall also include actions and procedures to enable hard-to-relocate Tenants to remain as Tenants.
2. The second part of the PTAP shall include all relocation and moving assistance and information to be provided to each Tenant and all steps the subdivider will take to ensure the successful relocation of each Tenant in the event that conversion takes place and the Tenant chooses not to purchase a unit or remain as a Tenant.
    a. Tenants who resided in the unit prior to the filing of the tentative map or tentative parcel map and who vacate for Code Compliance repairs shall be paid relocation payments at no less than the amounts pursuant to O.M.C. chapter 15.60.
    b. Tenants who resided in the unit prior to the filing of the tentative map or tentative parcel map and vacate for any other reason, unless evicted for Tenant fault, shall be paid relocation payments at not less than the amounts pursuant to O.M.C. Section 8.22.820. The Owner shall make the payment directly to an eligible Tenant Household no later than ten days before the expected vacation date. If less than ten days' advance notice of vacation is given, then the payment by the Owner to the Tenant Household is due no later than the actual time of vacation.
    c. For the purpose of this paragraph, the Tenant is not evicted for Tenant fault if (1) the Tenant vacates within 120 days after the effective date of a rent increase notice of more than 10 percent; and (2) the rent increase notice is issued within one year after the issuance of the final subdivision public report on the conversion of a building with five or more units or the start of the sales program in a building of four units or less.
    d. A Tenant who is also eligible for relocation assistance under Section 16.36.030 must elect for either relocation payments under this section or Section 16.36.030, and may not receive relocation payments under both.

In both parts of the PTAP, subdivider shall give particular attention to specific steps that will be taken to assist the elderly, disabled, and other Tenants who may encounter difficulty in finding new quarters.

SECTION 6. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

SECTION 7. Effective Date and Application. This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption. Section 2 of this Ordinance (Relocation for Owner-Occupancy eviction) shall apply to all notices to terminate tenancy that were served on or after November 28, 2017, Section 5 of this Ordinance (Relocation for Displacement Condominium Conversion) shall apply to any notice to terminate tenancy served by an Owner or Tenant on or after November 28, 2017.

SECTION 8. This action is exempt from the California Environmental Quality Act ("CEQA") pursuant to, but not limited to, the following CEQA Guidelines: § 15378 (regulatory actions), § 15061(b)(3) (no significant environmental impact), and § 15183 (consistent with the general plan and zoning).

SECTION 9. Grandparented relocation payments. The Ordinance amendments provided for in this Ordinance shall not apply to any relocation payments for which a unit was vacated, or for which a notice to vacate was issued to Tenant, prior to adoption of the Ordinance by City Council.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL-WASHINGTON, GALLO, GIBSON MCELHANEY, GUILLÉN, KALB, KAPLAN AND PRESIDENT REID

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

Date of Attestation: _____

000029

NOTICE AND DIGEST

AN ORDINANCE TO ENACT THE UNIFORM RESIDENTIAL TENANT RELOCATION ORDINANCE TO (1) ESTABLISH AN UNIFORM SCHEDULE OF RELOCATION PAYMENTS; (2) TO EXTEND RELOCATION PAYMENTS TO TENANTS DISPLACED BY OWNER MOVE-IN EVICTIONS; (3) TO EXTEND RELOCATION PAYMENTS TO TENANTS DISPLACED BY CONDOMINIUM CONVERSIONS; AND (4) CONFORM EXISTING ELLIS ACT AND CODE COMPLIANCE RELOCATION AMOUNTS TO THOSE IN THE UNIFORM SCHEDULE

The Ordinance enacts the Uniform Residential Tenant Relocation Ordinance to establish an uniform schedule of relocation payments for no-fault evictions; extend relocation payments to tenants displaced by owner or relative move-in evictions; and extend relocation payments to tenants displaced by condominium conversions.

CHRONOLOGICAL CASE REPORT

Case Nos.:	L16-0038	
Case Name:	Ludwig v. Tenants	
Property Address:	6452 "A" Benvenue, Oakland, CA	
Parties:	Barbara Tuse	(Tenant)
	Andrey Vakhovskiy	(Property Owner)
	Dong Han	(Property Owner)

OWNER APPEAL:

Activity	Date
Owner Petition filed	May 31, 2016
Tenant Response filed	June 27, 2016
Hearing Decision issued	November 2, 2016
Tenant Appeal filed	November 23, 2016

MS/BC

RECEIVED
CITY OF OAKLAND
RENT ARBITRATION PROGRAM
2016 NOV 23 AM 9:30

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

APPEAL

Appellant's Name
Barbara Tusé

Landlord ☐ **Tenant** ☑

Property Address (Include Unit Number)
6452 A Benvenue
Oakland CA 94618

Appellant's Mailing Address (For receipt of notices)
Same

Case Number L16-0038

Date of Decision appealed
November 2, 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.*

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* 18 *. 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 November 28, 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	Alison Ludwig
Address	123 Crescent Ave.
City, State Zip	Sausalito CA 94965
Name	Fried & Williams LLP c/o Matthew P. Quiring
Address	1901 Harrison St 14th Floor
City, State Zip	Oakland CA 94612

Barbara Ludwig	November 23, 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.

City of Oakland
Residential Rent
Adjustment Program

Appeal
Barbara Tusé

Item #1: The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board.

I am not able to make this determination. If this condition exists, I ask the Board to consider the facts.

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

I am not able to make this determination. If this condition exists, I ask the Board to consider the facts.

Item #3: The decision raises a new policy issue that has not been decided by the Board.

Please see Item #7. I am not able to determine if any of my concerns are new policy issues.

Item #4: The decision is not supported by substantial evidence.

The decision accepted an invoice submitted by the owner with no professional third party review of the facts of that invoice. There was no third party review of the bid process, or the work.

There was no fact-finding inspection of the apartment. This inspection would have validated my claim that most of the work is properly classified as repair and maintenance, and would also have provided a third-party valuation of the the newly constructed laundry closet.

Information helpful to my case would have been available from the City of Oakland Building Permit that was not available because a Permit was not pulled for this job.

There were no City inspections of the wet wall and electrical work (even though they are required) which would have validated my claim that the work was repair and maintenance.

Attachment BT-1 provides my concerns regarding facts and conclusions of the Decision. A copy of the Decision with corresponding comment numbers is Attachment BT-2.

Item #5; I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim.

I am not an expert on these rules nor the hearing procedures. I was so anxious, that I did not present myself well. I clearly needed help. Documents that might have been helpful, were date stamped several days before the hearing and submitted to the City, but after the submission deadline.

Item #7: Other

1) It is unfair that I am being charged with the full bill for repair and maintenance, and alleged capital improvements, yet I do not benefit from the mitigation of expenses that owners enjoy:

- Income tax deductions for repair and maintenance.
- Income tax deductions for depreciation of property and capital improvements.
- Future rent increases resulting from capital improvements.
- Increased sales price of the property resulting from properly maintained buildings, preventative maintenance, and capital improvements.

2) I should not be forced to pay for illegal work, or work performed without required permits and/or inspections. The repairs, and the construction of the utility closet, electrical work, and plumbing, was performed without permits or inspection as required by the City of Oakland.

3) If I am forced to pay for this work, then I assert that it is my right to be assured by City of Oakland inspectors that this work is all up to code, and that repairs are made properly, so to minimize my future expenses. Further, for repairs that have a safety consequence (such as water damage) there should be

an assurance that the building is structurally sound for the safety of tenants that will rent this apartment after me.

4) Rent should already cover repair and maintenance, as a good business practice. If an owner cannot afford to keep their investment in good shape, and must pass on the cost of repairs via this mechanism, then they do not deserve to be in the rental business. Investment in capital improvement is a business decision, not a passive revenue enhancement tool for owners.

5) The costs of the paint jobs is just excessive. A third party should review the cost and compare it to the estimating guidelines that Licensed Contractors use for legitimacy because I did not get to do the contracting, negotiating or review of the estimate.

6) If I had been informed two years ago that I would be billed for the work, I would have protested the work. If I had at least been informed, then I would have the option to vacate. The owner may make decisions to make capital improvements, but if the tenant is required to pay the bill, this is not fair.

6) My increase is 20%. How would you feel if your mortgage payment went up 20% because someone submitted an invoice to the City? This is a way to support greed.

6) Owners and renters walk down the same street. We are all residents in communities that will be increasingly comprised or renters. I have paid about $190K in rent to Don Ludwig, which covers the $154K assessed value of 6452A,B and 6454 upper and lower. I have persisted in this appeal because it is unfair to me, because it is unfair to my neighbors in Oakland, and because it is unfair to the City of Oakland.

7) By the fact that I am being ordered to pay for a substantial portion of this work, I am no longer the primary beneficiary. The primary beneficiary is the owner who gets a long-term increase in property value for free.

- A 20% increase in my rent is a detriment.
- I don't own the perceived benefits, I only may be able to continue to rent them.

BT Rec'd by mail Saturday 11/5/16

Attachment BT-2

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:	L16-0038, Ludwig v. Tenants
PROPERTY ADDRESS:	6452 "A" Benvenue, Oakland, CA
DATE OF HEARING:	September 29, 2016
DATE OF DECISION:	November 2, 2016
APPEARANCES:	Barbara Tusé, Tenant Alison Ludwig, Owner Representative Darlinda Davolis, Witness for Owner Matthew Quiring, Attorney for Owner

SUMMARY OF DECISION

The owner's petition is granted in part. The allowable rent increase is listed in the Order below.

CONTENTIONS OF THE PARTIES

The owner filed an *Owner Petition for Approval of Rent Increase* seeking a capital improvement rent increase for the tenant's unit.

The tenant filed a timely *Tenant Response Contesting Rent Increase* claiming that the work done on the premises was "repair and maintenance" to fix problems and not capital improvements.

PROCEDURAL HISTORY

On June 1, 2016, a *Notice of Hearing* was sent to all parties setting the Hearing for September 1, 2016, at 10:00 a.m. On September 1, 2016, a Hearing was held. The tenant was not present at the Hearing. The Hearing Officer waited for the tenant to appear and

did not start the Hearing until 10:20 a.m. and she did not appear. The Hearing was completed in approximately one hour.

At approximately 11:30 a.m. on September 1, 2016, the tenant appeared at the offices of the Rent Adjustment Program (RAP) after the Hearing was over. She was informed that the Hearing was finished. She sought to testify at the Hearing. She was told to submit an explanation in writing as to her failure to appear in a timely fashion.

Later in the day on September 1, 2016, the tenant submitted a letter explaining her absence and requesting a chance to be heard. On September 8, 2016 an *Order to Set New Hearing Date* was sent to the parties. The ordered stated in pertinent part:

> "(I)t **is hereby ordered** that a new Hearing is scheduled to determine whether or not there was good cause for the tenant's original failure to appear as scheduled on September 1, 2016. **If good cause is determined, the case shall be immediately re-opened for a hearing on the merits.**
>
> **If the tenant does not appear at this Hearing, no additional opportunities to present testimony will be provided to her absent extraordinary circumstances.**

On September 15, 2016, the RAP received the Owner's *Opposition to Re-Opening Case for Rehearing*.

THE ISSUES

1. Did the RAP have the authority to re-open the Hearing to determine if there was good cause for the tenant's failure to timely appear at the original Hearing?

2. Did the tenant have good cause for failing to appear at the original Hearing?

3. Did the tenant have good cause for failing to timely file the documents she sought to have admitted at the Hearing?

4. Are the capital improvements performed "grandfathered" under the prior Ordinance?

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

EVIDENCE

Good cause for failure to appear: The tenant testified with a quivering voice and on the verge of tears that she was very anxious about the proceedings and had been staying up very late for several nights prior to the Hearing to prepare. She was also having trouble sleeping. Finally, at two a.m. the night before the Hearing she took a ¼ of a sleeping pill, so that she could sleep at all. She set her alarm to get here in a timely fashion but

managed to sleep through the alarm[1]. She did not wake up until 11:00 a.m. She got dressed and came down to the RAP office as soon as she could. When she arrived it was 11:30 a.m.

The owner's attorney contended that there is no procedure in the Rent Adjustment Ordinance or Regulations that allow a Hearing Officer to re-open a Hearing under these circumstances and that even if there was such a procedure that oversleeping does not constitute good cause.

Rental History: The tenant testified that she moved into this rental unit in approximately 2006. The owner testified that she moved into the unit in 2003. Prior to moving into this unit, she lived in the unit next door (6452 "B" Benvenue.)

The tenant further testified that her mother is old family friends with Donald Ludwig, the owner of the property.

Late Documents: The tenant sought to introduce documents into evidence that were filed with the Rent Program on August 30, 2016, two days prior to the first scheduled Hearing. She testified that the reason they were late (not filed at least 7 days prior to the Hearing) is that she "did not pay attention to the dates."[2]

Capital Improvements: 924098 expired

The owner's testimony: Alison Ludwig testified that in July of 2014, she hired Cesar Lopez, a licensed contractor, to do some work on the premises. No permits were taken out for the work that was done. Mr. Lopez removed a plum tree (at the request of the tenant), did substantial work in the upstairs bathroom (new bathtub and tiles, repainting), did electrical work in the back bedroom, replastered the living room walls and repainted the living room, dining room and kitchen. He also installed a washing machine and dryer utility closet outside the kitchen and painted an outside wall. The work was finished and paid for by August 14, 2014.[3] (1) (2) (3)

Ms. Ludwig further testified that the reason that the work was performed in the tenant's bathroom and living room (which is below the bathroom) was in part because there were water leakage issues over the years. Since she recently became involved in helping her father (who is the owner of the property) with this property, she did not know with specificity what the details were regarding the history of the problems with the unit. (4)

Ms. Ludwig further testified that the reason the tub was replaced, is that the prior tub was connected to a built in enclosure. Mr. Lopez informed her that it was more practical to have tiles, rather than a built-in enclosure, so that if there is a problem later, individual tiles can be removed, rather than the entire enclosure. (5)

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[1] In her letter to the Rent Board requesting the tenant stated that she had set two alarms
[2] Recording at 44:50-44:52
[3] Exhibit 4. This exhibit, and all other exhibits referred to in this Hearing Decision, were admitted into evidence without objection.

Mr. Lopez also put a border outside the driveway (for aesthetics and safety)[4]. The driveway area in question is outside the front two units, while Ms. Tusé's unit is in the back.

Ms. Ludwig testified that Mr. Lopez also painted one exterior wall of the unit because there was some rain damage on the wall. However, she stated that she was not seeking a capital improvement pass through for this work.[5]

Ms. Ludwig produced copies of the checks made payable to Mr. Lopez.[6] Mr. Lopez was paid $15,000 for the work that he did on the premises. The first payment was made on July 31, 2014. This included $1,000 for the driveway border, which was a common area improvement, and $14,000 for the unit specific work done.

Ms. Ludwig testified that there were two invoices for the work done by Mr. Lopez. The first invoice had been attached to a rent increase notice given to the tenant in March of 2016, which was later withdrawn[7]. There was a problem with Mr. Lopez' invoice attached to that rent increase notice so the owner asked Mr. Lopez to redo the invoice. That invoice, which correctly stated the work that was done, was admitted into evidence as Exhibit 3. (6)

Mr. Lopez provided a declaration regarding the work that he did and the mistaken invoices[8]. He stated that his initial inspection and estimate occurred from July 28-30, 2014. He also stated that "my crew and I started work at the unit at 8 a.m. on July 31, 2014, and we worked until 5:30 p.m." and that the work was completed on August 13, 2014.

Mr. Lopez' invoice states that the following work was done: (7)

Upstairs bathroom:

"Bathtub replaced with new bathtub and vanity mirror"—Cost: $600.00.
"Damp removed and wood replaced"—Cost $900.00. (8)
"Old plastic walls removed and new tiles installed (shower and floor)"—Cost $1,000.
"Upstairs Bathroom painted"—cost $700
"Labor": $3,000 (9)

Bedroom Two in 6452A:

"Electrical work in back bedroom... new breaker box installed. Updated to code"—Cost: $1,200.

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[4] See Photographs, Exhibit 7, page 11 and 12. This Exhibit, and all exhibits referred to in this Hearing Decision, were admitted into evidence without objection.
[5] However, the *Capital Improvement* spreadsheet produced by the owner and admitted into evidence as Exhibit 5, included the cost of painting the exterior wall.
[6] Exhibit 4, pp 1-8
[7] See Exhibit 2, the first invoice.
[8] Exhibit 6

Living Room 6452A:

"Living room ceiling sealed from damp in bathroom upstairs"—Cost: $900
"New (supporting) wall installed"—Cost $500
"Living room, dining room & kitchen painted (includes moving & covering furniture)"—Cost: $900

(10)

Outside 6452A (in unit garden):

"Construction of new washing machine/dryer utility closet installed outside kitchen. French doors leading to outside stripped and painted."
Cost-building: $1,500
Cost-plumbing: $1,200
Cost-Painting: $400

(11)

Exterior wall of Unit 6452A:

"Elastic paint on right outside wall"—Cost $1,200 ...

Common area of property:

"New wooden border installed around driveway. Cracked step corrected"—Cost $1,000.

The tenant's testimony: Ms. Tusé testified she was objecting to this work as capital improvements because she believes that the work was done to address continued water leaks in her unit and that it is a repair (and not a capital improvement). When she moved into the subject unit, the drywall in the living room was soft from a prior leak in the unit. The unit is two stories, with the living room under the upstairs bathroom. There was mold on the linoleum floor in her bathroom, as well as mold on the bathtub area. She used silicone to try to stop any leak from the bathroom into the living room.

Additionally, the tenant could see water damage in the living room from these leaks in the bathroom. She complained to Donald Ludwig about this condition multiple times in annual inspections in the first years after she moved in.

(12)

In 2012, to correct her concern about the water leakage, a contractor was hired to work in the living room to address the dampness in the wall. In order to investigate the leak, a hole, about 2 feet square, was created in the ceiling. Ms. Tusé does not know what was done in the living room area other than make a hole in the ceiling.

Ms. Tusé further testified that at the same time that the work was being done in the living room, the toilet in the upstairs bathroom was removed for two days and the then manager, Matthew Krohn, removed the linoleum and replaced it with tile. He also repaired the connection from the tub to the overflow drain. Matthew informed her that the tub had been leaking, that the bathtub was not properly plumbed from the overflow drain to the sanitary drain and he used plumber's caulk to stop the leaking. She believes Matthew also replaced a part of the subfloor at the time.

(13)

For some time after this work was done, it appeared to solve the problem. But after about 1½ years, there appeared to be new dampness and softness in the living room

wall, suggesting a continued leak. Ms. Tusé informed the manager about the problem. All through this time, the hole in the ceiling remained.

On cross-examination the tenant testified that she had reported electrical problems and plumbing problems over the years. The electrical problems would require her and her roommate to coordinate the use of appliances so that they both didn't use hair dryers or other appliances at the same time. She also reported that there was a water pressure problem between her unit and the unit next door. Once the work was done in 2014, she no longer has to coordinate with her roommate to use appliances. (14)

The tenant further testified that while the contractor's invoice states that the stripped and painted the French doors leading outside, he did not strip the doors. Instead he sanded the bottom part that was warped and then painted them.

She further testified that while the contractor's invoice states that a new breaker box was installed, he did not replace the breaker box. He did do something to the wiring, because she can now use multiple appliances without fear of tripping the breakers.

The tenant testified that the invoice states "(n)ew (supporting) wall installed" in the living room"; however, no new wall was installed in the living room.

With respect to the bathroom, the tenant testified that the mirror was replaced at the contractor's suggestion because there was some loss of silver in the back of the mirror.

Ms. Tusé further testified that she never uses the part of the driveway where the new wooden border was installed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Did the RAP have the authority to re-open the Hearing to determine if there was good cause for the tenant's failure to timely appear at the original Hearing?

The owner objected to the Hearing Officer's decision to reopen the Hearing to determine if the tenant had "good cause" for her failure to appear at the Hearing scheduled for September 1, 2016. It has long been the law that Hearing Officers in administrative agencies have "wide latitude in fashioning procedures for the pursuit of their inquiries." *California Optometric Association v. Lackner (1976) 600 Cal. App. 3rd 500, 509.* This includes the manner in which the hearing will proceed. *Cella v. United States* (7th Cir.1953) 208 F.2d 783, 789. In fact, administrative agencies are allowed "to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties.' " *Ibid.*, quoting *Federal Communications Comm. v. Pottsville Broadcasting Co.* (1940) 309 U.S. 134, 143, accord, *Fairbank v. Hardin* (9th Cir.1970) 429 F.2d 264, 267. These rules come from the fundamental rule that judges (and Hearing Officers) have "inherent power to control litigation before them." *Rutherford v. Owens–Illinois, Inc.* (1997) 16 Cal.4th 953, 967.

The Rent Adjustment Program (RAP) is an administrative agency that has the power to determine how its hearings will proceed. While this particular procedure is not separately stated in the Ordinance or Regulations, RAP Hearing Officers have re-opened Hearings many times in the past based on a Hearing Officer's discretion. The Hearing Officer had the authority to reopen the Hearing.

Did the tenant have good cause for failing to appear at the original Hearing?

It is the policy of the law that it is preferable to decide a case on the merits rather than by default (or a party's failure to appear). Had the case been decided without the tenant's participation, many of the facts that were later entered into the record at the second Hearing, would not have been before the trier of fact.

The tenant credibly testified that she had been very anxious about the Hearing prior to the Hearing date, that she had been having trouble sleeping for several days, and that the night before the first scheduled Hearing she was up until 2:00 a.m. preparing for the Hearing. While she testified about this her voice was shaking, she was almost crying and her anxiety about the proceedings was obvious (as it was at various times throughout the Hearing). She further testified that at 2:00 a.m. the night before the Hearing she took a portion of a sleeping pill so that she could get some sleep. However, she did not hear her alarm and slept through it, thereby missing the Hearing.

The tenant's testimony was compelling. She had not simply failed to attend the Hearing. She had made reasonable efforts to get here, but because of her failure to sleep well for several nights, and the medication she took, she did not respond to her alarm. Once she woke up, she came to the RAP as fast as she could, but by the time she got here the Hearing had been completed.

The tenant had good cause for her failure to appear and a Hearing on the merits of the Owner's Petition was held.

Did the tenant have good cause for failing to timely file the documents she sought to have admitted at the Hearing?

The tenant sought to admit documents into evidence at the Hearing (photographs and a chart that she had made) that were produced at the RAP on August 30, 2016, two days before the scheduled Hearing on September 1, 2016.

The *Notice of Hearing* sent to the parties specified: "**All proposed tangible evidence, including but not limited to documents and pictures, must be submitted to the Rent Adjustment Program not less than seven (7) days prior to the Hearing.**" (emphasis in the original). This document was sent to all parties on June 1, 2016, three months prior to the Hearing. The tenant testified that her documents were late because she did not pay attention to the dates. (15)

As noted above, an administrative agency has the authority to create its own procedures. This procedure provides all parties with the opportunity to review the documents that

the opposing party will submit into evidence. The tenant was informed of the date that these documents were due, and she failed to pay attention. There is no good cause for the tenant's failure to produce the documents in a timely fashion. These documents were not admitted into evidence.

Are the capital improvements "grandfathered" under the prior Ordinance?

On April 22, 2014, the Oakland City Council passed Ordinance No. 13226. This Ordinance amended the Rent Adjustment Ordinance and limited all rent increases to no more than 10% in any one year or 30% in five years and provided special noticing ("Enhanced Notice") for capital improvement increases. This Ordinance also contained a section entitled "Grandparented Capital Improvement Rent Increases. This section specifically states:

> "This Ordinance shall not apply to capital improvements on which permits have been taken out, unless no permits are required for any of the work, and substantial work is performed and substantial monies paid or liabilities incurred (other than permit fees), before the implementation date of this Ordinance, and the Owner reasonably diligently pursues completion of the work. For any rent increase based on capital improvements commenced prior to the implementation date, if such rent increase is noticed on or after the implementation date of this Ordinance, the new noticing requirements under this Ordinance are required."[9]

This Ordinance provided that the implementation date of the Ordinance was August 1, 2014.[10]

At the same time that this Ordinance was passed, the City Council also passed Resolution No. 84936. That resolution provides that owners may only pass through 70% of allowable capital improvement costs (instead of the prior 100%), and provides for extended amortization periods of rent increases that would otherwise be greater than 10%. Additionally, that Resolution states that:

> "The Regulation amendments provided for in this Resolution shall not apply to capital improvements on which permits have been taken out, unless no permits are required for any of the work, and substantial work is performed and substantial monies paid or liabilities incurred (other than permit fees), before the implementation date of this Resolution, and the Owner reasonably diligently pursues completion of the work."[11]

While the "grandparent" clauses related to Capital Improvements discussed above are not separately laid out in the Rent Adjustment Ordinance, it was clearly intended to be a part of the law by the Oakland City Council. In this case the owner had an estimate done

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[9] Oakland City Council Ordinance No. 13226 C.M.S., Section 4
[10] Id. Section 3
[11] Oakland City Council Resolution No. 84936 C.M.S.

in late July of 2014 and hired a contractor to perform work on the unit. According to the declaration of the contractor, the work was started on July 31, 2014.

Therefore, even though the work was not finished and paid for until mid-August of 2014, the owner incurred this debt once she agreed to have the work done, especially since the work started on July 31, 2014. The owner can pass on 100% of the allowable costs and is not limited to a rent increase that is 10% or less. (See below for discussion of what is allowable.)

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

The Ordinance: A rent increase in excess of the C.P.I. Rent Adjustment may be justified by capital improvement costs.[12] Capital improvement costs are those improvements which materially add to the value of the property and appreciably prolong its useful life.[13] The improvements must primarily benefit the tenants rather than the owner. Normal routine maintenance and repair is not a capital improvement cost, but a housing service cost.[14]

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

An owner has discretion to make such improvements, and does not need the consent or approval of tenants. Therefore, Ms. Tusé's argument that she did not ask for these improvements does not require a different result. Additionally, the improvements must have been completed and paid for within 24 months prior to the date of the proposed rent increase and no more than 12 months of capital improvement costs can be passed on in any single rent increase.[15] An owner has the burden of proving every element of his/her case by a preponderance of the evidence.

Common Area Improvement: The owner sought to pass through work done on the border of the driveway in front of the property. The tenant objected to this cost since she does not use the front of the driveway; it is an area that is used by the tenants in the front building. The tenant's argument was convincing. The testimony of both the owner and the tenant was in agreement that this border is in the front of the property, in the area where the front tenants park their cars.

This work primarily benefits the tenants in the front unit. The owner cannot pass this cost on to tenant Tusé. Therefore, this cost is not included in the allowable pass-through.

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[12] O.M.C. Section 8.22.070(C)
[13] Old Regulations Appendix, §§ 10.2 through 10.2.3
[14] Old Regulations Appendix, §10.2.2(5)
[15] Old Regulations Appendix, § 10.2.1

Unit Specific Costs:

Interior Work: The work done inside the tenant's unit was both to upgrade her bathroom and to fix an outstanding water leakage issue. According to the tenant[16], work had been done in her unit in 2012 (two years prior to the work in question) which had, at least temporarily, solved the water leakage problem. It was 1 ½ years after the 2012 repair that she began to notice that there were new signs of water leakage from that bathroom. (16)

The Rent Adjustment Regulations were revised in January of 2015 to discuss the issue of "unreasonably deferred maintenance." While these regulations were not in existence at the time of the work was done, these regulations codified previously existing decisions from the Rent Board regarding this topic[17]. The Regulations state:

> "b. Costs for work or portion of work that could have been avoided by the landlord's exercise of reasonable diligence in making timely repairs after the landlord knew or should reasonably have known of the problem that caused the damage leading to the repair claimed as a capital improvement.
>
> i. Among the factors that may be considered in determining if the landlord knew or should reasonably have known of the problem that caused the damage:
>
> a. Was the condition leading to the repairs outside the tenant's unit or inside the tenant's unit?
> b. Did the tenant notify the landlord in writing or use the landlords' procedures for notifying the landlord of conditions that might need repairs?
> c. Did the landlord conduct routine inspections of the property?
> d. Did the tenant permit the landlord to inspect the interior of the unit?
>
> ii. Examples:
>
> a. A roof leaks and, after the landlord knew of the leak, did not timely repair the problem and leak causes ceiling or wall damage to units that could have been avoided had the landlord acted timely to make the repair. In this case, replacement of the roof would be a capital improvement, but the repairs to the ceiling or wall would not be.
> b. A problem has existed for an extended period of time visible outside tenants' units and could be seen from a reasonable inspection of the property, but the landlord or landlord's agents either had

[16] The owner's agent, Alison Ludwig, testified that she did not know the history of the tenant's unit, as she had just recently began helping her father, the owner of the property.
[17] See Board Decision in Geren v. Lew T14-0366

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not inspected the property for an unreasonable period of time, or did not exercise due diligence in making such inspections. In such a case, the landlord should have reasonably known of the problem. Annual inspections may be considered a reasonable time period for inspections depending on the facts and circumstances of the property such as age, condition and tenant complaints.

iii. Burden of Proof

a. The tenant has the initial burden to prove that the landlord knew or should have reasonably known of the problem that caused the repair
b. Once a tenant meets the burden to prove the landlord knew or should have reasonably known, the burden shifts to the landlord to prove that the landlord exercised reasonable diligence in making timely repairs after the landlord knew or should have known of the problem."[18]

There is no evidence that any of the work done in the tenant's bathroom was caused by unreasonably deferred maintenance that caused a worsening of the condition. The evidence instead suggests that in 2012 the owner attempted a repair of the water leakage. Substantial work was performed in the unit which, at least for a time, seemed to stop the water leakage. Then in 2014, the tenant saw signs of new water entry and complained again. At that point (with some delay) the owner repaired the water leakage problem and upgraded the bathroom in the process. There was no evidence to suggest that the delay made the condition worse or the repair more expensive. (17) (18)

The owner sought to pass-through unit-specific costs for work done in the upstairs bathroom (at a cost of $6,200). This work included a new bathtub and mirror, the damp wood was removed and replaced, the old bathtub enclosure was removed and the room was painted. These are capital improvements and the costs are allowed. (19) (20) (21) (22)

Additionally, the owner did work on the electrical system in the back bedroom. According to his invoice, this included a "new breaker box." The tenant testified that no new breaker box was installed. However, the tenant testified that there is a substantial change to the quality of the electric supply in her unit since this work was done and that she can now use multiple appliances at the same time without fear of an outage. The electrical work in the unit, which cost the owner $1,200, is an allowable capital improvement cost. (23)

The owner also did work in the living room. This work was, according to the contractor, done to seal the dampness from the bathroom upstairs. While it was unreasonably deferred maintenance to leave a hole in the tenant's living room ceiling for almost two years, there is no evidence that leaving this condition resulted in any additional work (24)

[18] RAP Regulations, Appendix A, 10.2.2, 4b.

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having to be done. Additionally, while it is usually true that a partial paint job is not a capital improvement, in this case the room had to be painted because of the water damage in the unit. And, the tenant testified that the living room, kitchen and dining room are all one room. Therefore, this expense is allowed. The owner is entitled to a $2,300 pass through for the work done in the living room.

Exterior Work: The owner hired the contractor to construct a utility closet outside the tenant's unit for her washer/dryer. This is a capital improvement. While it was done without a permit when a permit should have been acquired, there is no rule that a permit is required for a capital improvement to be passed on to a tenant. The $2,700 cost for the building and plumbing the utility closet is allowed.

However, the owner also sought to pass on the costs to strip and paint the French doors and to put elastic paint on the right outside walls. These jobs are routine repair and maintenance expenses and are not capital improvements.[19] Additionally, it is not clear from the evidence whether the $400 charge for painting (listed in the section regarding the washing machine/dryer utility closet and the French doors) was for painting the new utility closet or for painting the French doors, or both. Since the painting of the French doors is not a capital improvement, and this cost alone cannot be ascertained, no portion of that particular cost can be passed on.

Attached to this Hearing Decision as Exhibit "A" is a capital improvement worksheet with the approved costs. The owner can issue a capital improvement rent increase up to $206.67 for the work performed in August of 2014, providing that the rent increase notice is served pursuant to Civil Code § 827 and the Rent Adjustment Program.[20] The capital improvement pass-through ends 60 months after the rent increase takes effect.

ORDER

1. Petition L16-0038 is granted in part.

2. The owner is entitled to increase the rent to tenant Tusé up to $206.67 a month for these capital improvements.

3. In order to increase the rent, the owner must provide the tenant with a notice of rent increase and the *RAP Notice*, served pursuant to Civil Code § 827.

4. The allowable pass-through granted for the tenant expires after 60 months.

5. The owner can give a smaller rent increase if he wishes to.

[19] In fact, the owner's representative was under the impression that she had not sought to pass-on the costs of the painting of the exterior wall.

[20] No enhanced notice is required as this rent increase is being given after a Hearing Decision.

Attachment BT-1

Appeal
Barbara Tusé

All the facts regarding my apartment, and my knowledge of the work, were stated below were mentioned by me at the hearing and are recorded. Comments regarding the Decision, and some other items, come from the Decision and are now important because of the Decision.

1. Between the two invoices submitted by Cesar Lopez, there were significant discrepancies, and this was not addressed by the Decision, yet the cost is an important part of the Decision and the owner is required to show by a preponderance of evidence that the costs are real. The CSLB website shows Cesar Lopez of Mill Valley expired as of 8/30/2009. Nowhere is his CSLB license number provided in this Decision document or his invoices.
2. I did not request the removal of the tree.
3. Living room walls were not re-plastered.
4. Water leakage issues over the years was not adequately discussed and evaluated in the Decision. Here is is clear that it is an ongoing, inadequately-addressed maintenance problem.
5. The bathtub did not ever have an enclosure. Apartment B had an enclosure that was removed around the same time. The walls of my bathtub/shower were covered with plastic panels which were removed and replaced with large ceramic tiles.
6. So it is acceptable to the City of Oakland to allow modification of an invoice paid two years ago?
7. Lack of itemization that might help my case about what is repair and maintenance versus capital improvement.
8. The mirror was de-silvered and available at Costco for under $60. See #5 and #14. Damp wood removal is not discussed as to why it is properly classified as a capital improvement.
9. No new tiles were installed on the floor. That work was done in my apartment A, in 2012. There appears to be a mixing of apartment A and B work.
10. Painting was not done for the whole is mostly labor. It is therefore unclear what the costs were for each part of the work. Painting the bathroom exceeds fair and reasonable fees.
11. There is no new wall. The ceiling was repaired with a 2' square piece of drywall and taped. The prices are excessive. Painting the living room is also generally considered customary maintenance and repair, besides, the stairwell that is contiguous with the living room and upstairs bedrooms were not painted, so according to the discussion in the Decision, it was a partial job

and therefore not capital improvement. These costs exceed expected fees for the work and if the owner carries the burden of proof, the evidence provided is lacking.

12. I did not complain. He wanted to know the status of water leaks and I wanted to be a good tenant and let him know about problems early.
13. A patch of caulk is not a repair. As I recall Matthew Krohn did the work, which is why the hole remained for two years, and the bathroom did not get repainted even though bare wall had been exposed.
14. The Decision does not provide any information about what constitutes improvement that reaches the level of capital improvement, when the existing condition was substandard compared to comparable residences.
15. I stated that I missed the deadline was because I was not paying attention to the date, but that was only half the truth, as I was already exhausted and over-whelmed with my anxiety about preparing myself to fight with my landlord about the place where I live. My level of anxiety about missing the deadline seemed to be dwarfed by my fear of submitting documents that were not perfect.
16. There is no evidence of upgrade. The Decision does not address what constituted an upgrade. This job was repair and replace.
17. This work was not repair. The work performed in 2012 was a temporary patch with caulk, which only lasted for a year and a half. The problem was an open gap between the bathtub over-flow and the sanitary drain that needed a permanent connector to close the gap.
18. "Upgraded" is not supported by substantial evidence. The original fixtures were re-installed. The same sink and toilet. There is no increase in functionality. This repair did not primarily benefit the tenant, but the long-term investment of the owner.
19. The existing bathtub was perfectly fine. The bathtub had to be replaced to effect the repair of the leak, therefore it was not an upgrade. In fact, the new bathtub is of a lesser quality.
20. There is inadequate discussion and proof as to why these are not repair and maintenance.
21. There was no bathtub enclosure.
22. There is a complete lack of concern for the price of any of this work. Painting the room cost is excessive, and should have been done in 2012 because it was part of the job in 2012 to remove linoleum that had mold growing up form underneath. I could have done the painting in a day including the trip to the hardware store and the prep.

23. The substantial change was from inadequate to adequate, and as such it seems like more of a repair than a capital improvement. The situation before was frustrating, and maybe a hazard. The repair restored the design to be able to use more than 1 appliance. this is just usual and customary for two bedrooms.
24. The evidence to support this as a capital improvement is inadequate. How is "seal the dampness from the bathroom upstairs" even a repair? It is a patch at best, or a covering up of a problem.
25. The value of any capital improvement depreciates, yet these rules do not give me any credit for the 2 years of depreciation that has already occurred.

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

Department of Housing and Community Development
Rent Adjustment Program

TEL (510) 238-3721
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HEARING DECISION

CASE NUMBER: **L16-0038, Ludwig v. Tenants**

PROPERTY ADDRESS: **6452 "A" Benvenue, Oakland, CA**

DATE OF HEARING: **September 29, 2016**

DATE OF DECISION: **November 2, 2016**

APPEARANCES: **Barbara Tusé, Tenant**
Alison Ludwig, Owner Representative
Darlinda Davolis, Witness for Owner
Matthew Quiring, Attorney for Owner

SUMMARY OF DECISION

The owner's petition is granted in part. The allowable rent increase is listed in the Order below.

CONTENTIONS OF THE PARTIES

The owner filed an *Owner Petition for Approval of Rent Increase* seeking a capital improvement rent increase for the tenant's unit.

The tenant filed a timely *Tenant Response Contesting Rent Increase* claiming that the work done on the premises was "repair and maintenance" to fix problems and not capital improvements.

PROCEDURAL HISTORY

On June 1, 2016, a *Notice of Hearing* was sent to all parties setting the Hearing for September 1, 2016, at 10:00 a.m. On September 1, 2016, a Hearing was held. The tenant was not present at the Hearing. The Hearing Officer waited for the tenant to appear and

did not start the Hearing until 10:20 a.m. and she did not appear. The Hearing was completed in approximately one hour.

At approximately 11:30 a.m. on September 1, 2016, the tenant appeared at the offices of the Rent Adjustment Program (RAP) after the Hearing was over. She was informed that the Hearing was finished. She sought to testify at the Hearing. She was told to submit an explanation in writing as to her failure to appear in a timely fashion.

Later in the day on September 1, 2016, the tenant submitted a letter explaining her absence and requesting a chance to be heard. On September 8, 2016 an *Order to Set New Hearing Date* was sent to the parties. The ordered stated in pertinent part:

> **"(I)t is hereby ordered** that a new Hearing is scheduled to determine whether or not there was good cause for the tenant's original failure to appear as scheduled on September 1, 2016. **If good cause is determined, the case shall be immediately re-opened for a hearing on the merits.**
>
> **If the tenant does not appear at this Hearing, no additional opportunities to present testimony will be provided to her absent extraordinary circumstances.**

On September 15, 2016, the RAP received the Owner's *Opposition to Re-Opening Case for Rehearing.*

THE ISSUES

1. Did the RAP have the authority to re-open the Hearing to determine if there was good cause for the tenant's failure to timely appear at the original Hearing?

2. Did the tenant have good cause for failing to appear at the original Hearing?

3. Did the tenant have good cause for failing to timely file the documents she sought to have admitted at the Hearing?

4. Are the capital improvements performed "grandfathered" under the prior Ordinance?

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

EVIDENCE

Good cause for failure to appear: The tenant testified with a quivering voice and on the verge of tears that she was very anxious about the proceedings and had been staying up very late for several nights prior to the Hearing to prepare. She was also having trouble sleeping. Finally, at two a.m. the night before the Hearing she took a ¼ of a sleeping pill, so that she could sleep at all. She set her alarm to get here in a timely fashion but

managed to sleep through the alarm[1]. She did not wake up until 11:00 a.m. She got dressed and came down to the RAP office as soon as she could. When she arrived it was 11:30 a.m.

The owner's attorney contended that there is no procedure in the Rent Adjustment Ordinance or Regulations that allow a Hearing Officer to re-open a Hearing under these circumstances and that even if there was such a procedure that oversleeping does not constitute good cause.

Rental History: The tenant testified that she moved into this rental unit in approximately 2006. The owner testified that she moved into the unit in 2003. Prior to moving into this unit, she lived in the unit next door (6452 "B" Benvenue.)

The tenant further testified that her mother is old family friends with Donald Ludwig, the owner of the property.

Late Documents: The tenant sought to introduce documents into evidence that were filed with the Rent Program on August 30, 2016, two days prior to the first scheduled Hearing. She testified that the reason they were late (not filed at least 7 days prior to the Hearing) is that she "did not pay attention to the dates."[2]

Capital Improvements:

The owner's testimony: Alison Ludwig testified that in July of 2014, she hired Cesar Lopez, a licensed contractor, to do some work on the premises. No permits were taken out for the work that was done. Mr. Lopez removed a plum tree (at the request of the tenant), did substantial work in the upstairs bathroom (new bathtub and tiles, repainting), did electrical work in the back bedroom, replastered the living room walls and repainted the living room, dining room and kitchen. He also installed a washing machine and dryer utility closet outside the kitchen and painted an outside wall. The work was finished and paid for by August 14, 2014.[3]

Ms. Ludwig further testified that the reason that the work was performed in the tenant's bathroom and living room (which is below the bathroom) was in part because there were water leakage issues over the years. Since she recently became involved in helping her father (who is the owner of the property) with this property, she did not know with specificity what the details were regarding the history of the problems with the unit.

Ms. Ludwig further testified that the reason the tub was replaced, is that the prior tub was connected to a built in enclosure. Mr. Lopez informed her that it was more practical to have tiles, rather than a built-in enclosure, so that if there is a problem later, individual tiles can be removed, rather than the entire enclosure.

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[1] In her letter to the Rent Board requesting the tenant stated that she had set two alarms
[2] Recording at 44:50-44:52
[3] Exhibit 4. This exhibit, and all other exhibits referred to in this Hearing Decision, were admitted into evidence without objection.

Mr. Lopez also put a border outside the driveway (for aesthetics and safety)[4]. The driveway area in question is outside the front two units, while Ms. Tusé's unit is in the back.

Ms. Ludwig testified that Mr. Lopez also painted one exterior wall of the unit because there was some rain damage on the wall. However, she stated that she was not seeking a capital improvement pass through for this work.[5]

Ms. Ludwig produced copies of the checks made payable to Mr. Lopez.[6] Mr. Lopez was paid $15,000 for the work that he did on the premises. The first payment was made on July 31, 2014. This included $1,000 for the driveway border, which was a common area improvement, and $14,000 for the unit specific work done.

Ms. Ludwig testified that there were two invoices for the work done by Mr. Lopez. The first invoice had been attached to a rent increase notice given to the tenant in March of 2016, which was later withdrawn[7]. There was a problem with Mr. Lopez' invoice attached to that rent increase notice so the owner asked Mr. Lopez to redo the invoice. That invoice, which correctly stated the work that was done, was admitted into evidence as Exhibit 3.

Mr. Lopez provided a declaration regarding the work that he did and the mistaken invoices[8]. He stated that his initial inspection and estimate occurred from July 28-30, 2014. He also stated that "my crew and I started work at the unit at 8 a.m. on July 31, 2014, and we worked until 5:30 p.m." and that the work was completed on August 13, 2014.

Mr. Lopez' invoice states that the following work was done:

<u>Upstairs bathroom</u>:

"Bathtub replaced with new bathtub and vanity mirror"—Cost: $600.00.
"Damp removed and wood replaced"—Cost $900.00.
"Old plastic walls removed and new tiles installed (shower and floor)"—Cost $1,000.
"Upstairs Bathroom painted"—cost $700
"Labor": $3,000

<u>Bedroom Two in 6452A:</u>

"Electrical work in back bedroom... new breaker box installed. Updated to code"—Cost: $1,200.

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[4] See Photographs, Exhibit 7, page 11 and 12. This Exhibit, and all exhibits referred to in this Hearing Decision, were admitted into evidence without objection.
[5] However, the *Capital Improvement* spreadsheet produced by the owner and admitted into evidence as Exhibit 5, included the cost of painting the exterior wall.
[6] Exhibit 4, pp 1-8
[7] See Exhibit 2, the first invoice.
[8] Exhibit 6

Living Room 6452A:

"Living room ceiling sealed from damp in bathroom upstairs"—Cost: $900
"New (supporting) wall installed"—Cost $500
"Living room, dining room & kitchen painted (includes moving & covering furniture)"—Cost: $900

Outside 6452A (in unit garden):

"Construction of new washing machine/dryer utility closet installed outside kitchen. French doors leading to outside stripped and painted."
Cost-building: $1,500
Cost-plumbing: $1,200
Cost-Painting: $400

Exterior wall of Unit 6452A:

"Elastic paint on right outside wall"—Cost $1,200 ...

Common area of property:

"New wooden border installed around driveway. Cracked step corrected"—Cost $1,000.

The tenant's testimony: Ms. Tusé testified she was objecting to this work as capital improvements because she believes that the work was done to address continued water leaks in her unit and that it is a repair (and not a capital improvement). When she moved into the subject unit, the drywall in the living room was soft from a prior leak in the unit. The unit is two stories, with the living room under the upstairs bathroom. There was mold on the linoleum floor in her bathroom, as well as mold on the bathtub area. She used silicone to try to stop any leak from the bathroom into the living room.

Additionally, the tenant could see water damage in the living room from these leaks in the bathroom. She complained to Donald Ludwig about this condition multiple times in annual inspections in the first years after she moved in.

In 2012, to correct her concern about the water leakage, a contractor was hired to work in the living room to address the dampness in the wall. In order to investigate the leak, a hole, about 2 feet square, was created in the ceiling. Ms. Tusé does not know what was done in the living room area other than make a hole in the ceiling.

Ms. Tusé further testified that at the same time that the work was being done in the living room, the toilet in the upstairs bathroom was removed for two days and the then manager, Matthew Krohn, removed the linoleum and replaced it with tile. He also repaired the connection from the tub to the overflow drain. Matthew informed her that the tub had been leaking, that the bathtub was not properly plumbed from the overflow drain to the sanitary drain and he used plumber's caulk to stop the leaking. She believes Matthew also replaced a part of the subfloor at the time.

For some time after this work was done, it appeared to solve the problem. But after about 1½ years, there appeared to be new dampness and softness in the living room

wall, suggesting a continued leak. Ms. Tusé informed the manager about the problem. All through this time, the hole in the ceiling remained.

On cross-examination the tenant testified that she had reported electrical problems and plumbing problems over the years. The electrical problems would require her and her roommate to coordinate the use of appliances so that they both didn't use hair dryers or other appliances at the same time. She also reported that there was a water pressure problem between her unit and the unit next door. Once the work was done in 2014, she no longer has to coordinate with her roommate to use appliances.

The tenant further testified that while the contractor's invoice states that the stripped and painted the French doors leading outside, he did not strip the doors. Instead he sanded the bottom part that was warped and then painted them.

She further testified that while the contractor's invoice states that a new breaker box was installed, he did not replace the breaker box. He did do something to the wiring, because she can now use multiple appliances without fear of tripping the breakers.

The tenant testified that the invoice states "(n)ew (supporting) wall installed" in the living room"; however, no new wall was installed in the living room.

With respect to the bathroom, the tenant testified that the mirror was replaced at the contractor's suggestion because there was some loss of silver in the back of the mirror.

Ms. Tusé further testified that she never uses the part of the driveway where the new wooden border was installed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Did the RAP have the authority to re-open the Hearing to determine if there was good cause for the tenant's failure to timely appear at the original Hearing?

The owner objected to the Hearing Officer's decision to reopen the Hearing to determine if the tenant had "good cause" for her failure to appear at the Hearing scheduled for September 1, 2016. It has long been the law that Hearing Officers in administrative agencies have "wide latitude in fashioning procedures for the pursuit of their inquiries." *California Optometric Association v. Lackner (1976) 600 Cal. App. 3rd 500, 509.* This includes the manner in which the hearing will proceed. *Cella v. United States* (7th Cir.1953) 208 F.2d 783, 789. In fact, administrative agencies are allowed "to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties.' " *Ibid.,* quoting *Federal Communications Comm. v. Pottsville Broadcasting Co.* (1940) 309 U.S. 134, 143, accord, *Fairbank v. Hardin* (9th Cir.1970) 429 F.2d 264, 267. These rules come from the fundamental rule that judges (and Hearing Officers) have "inherent power to control litigation before them." *Rutherford v. Owens–Illinois, Inc.* (1997) 16 Cal.4th 953, 967.

The Rent Adjustment Program (RAP) is an administrative agency that has the power to determine how its hearings will proceed. While this particular procedure is not separately stated in the Ordinance or Regulations, RAP Hearing Officers have re-opened Hearings many times in the past based on a Hearing Officer's discretion. The Hearing Officer had the authority to reopen the Hearing.

Did the tenant have good cause for failing to appear at the original Hearing?

It is the policy of the law that it is preferable to decide a case on the merits rather than by default (or a party's failure to appear). Had the case been decided without the tenant's participation, many of the facts that were later entered into the record at the second Hearing, would not have been before the trier of fact.

The tenant credibly testified that she had been very anxious about the Hearing prior to the Hearing date, that she had been having trouble sleeping for several days, and that the night before the first scheduled Hearing she was up until 2:00 a.m. preparing for the Hearing. While she testified about this her voice was shaking, she was almost crying and her anxiety about the proceedings was obvious (as it was at various times throughout the Hearing). She further testified that at 2:00 a.m. the night before the Hearing she took a portion of a sleeping pill so that she could get some sleep. However, she did not hear her alarm and slept through it, thereby missing the Hearing.

The tenant's testimony was compelling. She had not simply failed to attend the Hearing. She had made reasonable efforts to get here, but because of her failure to sleep well for several nights, and the medication she took, she did not respond to her alarm. Once she woke up, she came to the RAP as fast as she could, but by the time she got here the Hearing had been completed.

The tenant had good cause for her failure to appear and a Hearing on the merits of the Owner's Petition was held.

Did the tenant have good cause for failing to timely file the documents she sought to have admitted at the Hearing?

The tenant sought to admit documents into evidence at the Hearing (photographs and a chart that she had made) that were produced at the RAP on August 30, 2016, two days before the scheduled Hearing on September 1, 2016.

The *Notice of Hearing* sent to the parties specified: "**All proposed tangible evidence, including but not limited to documents and pictures, must be submitted to the Rent Adjustment Program not less than seven (7) days prior to the Hearing.**" (emphasis in the original). This document was sent to all parties on June 1, 2016, three months prior to the Hearing. The tenant testified that her documents were late because she did not pay attention to the dates.

As noted above, an administrative agency has the authority to create its own procedures. This procedure provides all parties with the opportunity to review the documents that

the opposing party will submit into evidence. The tenant was informed of the date that these documents were due, and she failed to pay attention. There is no good cause for the tenant's failure to produce the documents in a timely fashion. These documents were not admitted into evidence.

Are the capital improvements "grandfathered" under the prior Ordinance?

On April 22, 2014, the Oakland City Council passed Ordinance No. 13226. This Ordinance amended the Rent Adjustment Ordinance and limited all rent increases to no more than 10% in any one year or 30% in five years and provided special noticing ("Enhanced Notice") for capital improvement increases. This Ordinance also contained a section entitled "Grandparented Capital Improvement Rent Increases. This section specifically states:

> "This Ordinance shall not apply to capital improvements on which permits have been taken out, unless no permits are required for any of the work, and substantial work is performed and substantial monies paid or liabilities incurred (other than permit fees), before the implementation date of this Ordinance, and the Owner reasonably diligently pursues completion of the work. For any rent increase based on capital improvements commenced prior to the implementation date, if such rent increase is noticed on or after the implementation date of this Ordinance, the new noticing requirements under this Ordinance are required."[9]

This Ordinance provided that the implementation date of the Ordinance was August 1, 2014.[10]

At the same time that this Ordinance was passed, the City Council also passed Resolution No. 84936. That resolution provides that owners may only pass through 70% of allowable capital improvement costs (instead of the prior 100%), and provides for extended amortization periods of rent increases that would otherwise be greater than 10%. Additionally, that Resolution states that:

> "The Regulation amendments provided for in this Resolution shall not apply to capital improvements on which permits have been taken out, unless no permits are required for any of the work, and substantial work is performed and substantial monies paid or liabilities incurred (other than permit fees), before the implementation date of this Resolution, and the Owner reasonably diligently pursues completion of the work."[11]

While the "grandparent" clauses related to Capital Improvements discussed above are not separately laid out in the Rent Adjustment Ordinance, it was clearly intended to be a part of the law by the Oakland City Council. In this case the owner had an estimate done

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[9] Oakland City Council Ordinance No. 13226 C.M.S., Section 4
[10] Id. Section 3
[11] Oakland City Council Resolution No. 84936 C.M.S.

in late July of 2014 and hired a contractor to perform work on the unit. According to the declaration of the contractor, the work was started on July 31, 2014.

Therefore, even though the work was not finished and paid for until mid-August of 2014, the owner incurred this debt once she agreed to have the work done, especially since the work started on July 31, 2014. The owner can pass on 100% of the allowable costs and is not limited to a rent increase that is 10% or less. (See below for discussion of what is allowable.)

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

The Ordinance: A rent increase in excess of the C.P.I. Rent Adjustment may be justified by capital improvement costs.[12] Capital improvement costs are those improvements which materially add to the value of the property and appreciably prolong its useful life.[13] The improvements must primarily benefit the tenants rather than the owner. Normal routine maintenance and repair is not a capital improvement cost, but a housing service cost.[14]

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

An owner has discretion to make such improvements, and does not need the consent or approval of tenants. Therefore, Ms. Tusé's argument that she did not ask for these improvements does not require a different result. Additionally, the improvements must have been completed and paid for within 24 months prior to the date of the proposed rent increase and no more than 12 months of capital improvement costs can be passed on in any single rent increase.[15] An owner has the burden of proving every element of his/her case by a preponderance of the evidence.

Common Area Improvement: The owner sought to pass through work done on the border of the driveway in front of the property. The tenant objected to this cost since she does not use the front of the driveway; it is an area that is used by the tenants in the front building. The tenant's argument was convincing. The testimony of both the owner and the tenant was in agreement that this border is in the front of the property, in the area where the front tenants park their cars.

This work primarily benefits the tenants in the front unit. The owner cannot pass this cost on to tenant Tusé. Therefore, this cost is not included in the allowable pass-through.

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[12] O.M.C. Section 8.22.070(C)
[13] Old Regulations Appendix, §§ 10.2 through 10.2.3
[14] Old Regulations Appendix, §10.2.2(5)
[15] Old Regulations Appendix, § 10.2.1

Unit Specific Costs:

Interior Work: The work done inside the tenant's unit was both to upgrade her bathroom and to fix an outstanding water leakage issue. According to the tenant[16], work had been done in her unit in 2012 (two years prior to the work in question) which had, at least temporarily, solved the water leakage problem. It was 1 ½ years after the 2012 repair that she began to notice that there were new signs of water leakage from that bathroom.

The Rent Adjustment Regulations were revised in January of 2015 to discuss the issue of "unreasonably deferred maintenance." While these regulations were not in existence at the time of the work was done, these regulations codified previously existing decisions from the Rent Board regarding this topic[17]. The Regulations state:

> "b. Costs for work or portion of work that could have been avoided by the landlord's exercise of reasonable diligence in making timely repairs after the landlord knew or should reasonably have known of the problem that caused the damage leading to the repair claimed as a capital improvement.
>
> i. Among the factors that may be considered in determining if the landlord knew or should reasonably have known of the problem that caused the damage:
>
> a. Was the condition leading to the repairs outside the tenant's unit or inside the tenant's unit?
> b. Did the tenant notify the landlord in writing or use the landlords' procedures for notifying the landlord of conditions that might need repairs?
> c. Did the landlord conduct routine inspections of the property?
> d. Did the tenant permit the landlord to inspect the interior of the unit?
>
> ii. Examples:
>
> a. A roof leaks and, after the landlord knew of the leak, did not timely repair the problem and leak causes ceiling or wall damage to units that could have been avoided had the landlord acted timely to make the repair. In this case, replacement of the roof would be a capital improvement, but the repairs to the ceiling or wall would not be.
> b. A problem has existed for an extended period of time visible outside tenants' units and could be seen from a reasonable inspection of the property, but the landlord or landlord's agents either had

[16] The owner's agent, Alison Ludwig, testified that she did not know the history of the tenant's unit, as she had just recently began helping her father, the owner of the property.
[17] See Board Decision in Geren v. Lew T14-0366

not inspected the property for an unreasonable period of time, or did not exercise due diligence in making such inspections. In such a case, the landlord should have reasonably known of the problem. Annual inspections may be considered a reasonable time period for inspections depending on the facts and circumstances of the property such as age, condition and tenant complaints.

iii. Burden of Proof

a. The tenant has the initial burden to prove that the landlord knew or should have reasonably known of the problem that caused the repair
b. Once a tenant meets the burden to prove the landlord knew or should have reasonably known, the burden shifts to the landlord to prove that the landlord exercised reasonable diligence in making timely repairs after the landlord knew or should have known of the problem."[18]

There is no evidence that any of the work done in the tenant's bathroom was caused by unreasonably deferred maintenance that caused a worsening of the condition. The evidence instead suggests that in 2012 the owner attempted a repair of the water leakage. Substantial work was performed in the unit which, at least for a time, seemed to stop the water leakage. Then in 2014, the tenant saw signs of new water entry and complained again. At that point (with some delay) the owner repaired the water leakage problem and upgraded the bathroom in the process. There was no evidence to suggest that the delay made the condition worse or the repair more expensive.

The owner sought to pass-through unit-specific costs for work done in the upstairs bathroom (at a cost of $6,200). This work included a new bathtub and mirror, the damp wood was removed and replaced, the old bathtub enclosure was removed and the room was painted. These are capital improvements and the costs are allowed.

Additionally, the owner did work on the electrical system in the back bedroom. According to his invoice, this included a "new breaker box." The tenant testified that no new breaker box was installed. However, the tenant testified that there is a substantial change to the quality of the electric supply in her unit since this work was done and that she can now use multiple appliances at the same time without fear of an outage. The electrical work in the unit, which cost the owner $1,200, is an allowable capital improvement cost.

The owner also did work in the living room. This work was, according to the contractor, done to seal the dampness from the bathroom upstairs. While it was unreasonably deferred maintenance to leave a hole in the tenant's living room ceiling for almost two years, there is no evidence that leaving this condition resulted in any additional work

[18] RAP Regulations, Appendix A, 10.2.2, 4b.

having to be done. Additionally, while it is usually true that a partial paint job is not a capital improvement, in this case the room had to be painted because of the water damage in the unit. And, the tenant testified that the living room, kitchen and dining room are all one room. Therefore, this expense is allowed. The owner is entitled to a $2,300 pass through for the work done in the living room.

Exterior Work: The owner hired the contractor to construct a utility closet outside the tenant's unit for her washer/dryer. This is a capital improvement. While it was done without a permit when a permit should have been acquired, there is no rule that a permit is required for a capital improvement to be passed on to a tenant. The $2,700 cost for the building and plumbing the utility closet is allowed.

However, the owner also sought to pass on the costs to strip and paint the French doors and to put elastic paint on the right outside walls. These jobs are routine repair and maintenance expenses and are not capital improvements.[19] Additionally, it is not clear from the evidence whether the $400 charge for painting (listed in the section regarding the washing machine/dryer utility closet and the French doors) was for painting the new utility closet or for painting the French doors, or both. Since the painting of the French doors is not a capital improvement, and this cost alone cannot be ascertained, no portion of that particular cost can be passed on.

Attached to this Hearing Decision as Exhibit "A" is a capital improvement worksheet with the approved costs. The owner can issue a capital improvement rent increase up to $206.67 for the work performed in August of 2014, providing that the rent increase notice is served pursuant to Civil Code § 827 and the Rent Adjustment Program.[20] The capital improvement pass-through ends 60 months after the rent increase takes effect.

ORDER

1. Petition L16-0038 is granted in part.

2. The owner is entitled to increase the rent to tenant Tusé up to $206.67 a month for these capital improvements.

3. In order to increase the rent, the owner must provide the tenant with a notice of rent increase and the *RAP Notice*, served pursuant to Civil Code § 827.

4. The allowable pass-through granted for the tenant expires after 60 months.

5. The owner can give a smaller rent increase if he wishes to.

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[19] In fact, the owner's representative was under the impression that she had not sought to pass-on the costs of the painting of the exterior wall.

[20] No enhanced notice is required as this rent increase is being given after a Hearing Decision.

6. 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: November 2, 2016

Barbara M. Cohen
Hearing Officer
Rent Adjustment Program

Unit Specific Capital Improvement Worksheet

Improvements and repairs benefitting particular units

IMPROVEMENT OR REPAIR	DATE COMPLETED	COST ALLOWED	NUMBER OF UNITS BENEFITTED	MONTHLY COST PER UNIT
Bathroom Repairs	14-Aug-14	$6,200.00	1	$103.33
Electrical Work	14-Aug-14	$1,200.00	1	$20.00
Living Room	14-Aug-14	$2,300.00	1	$38.33
Utility Closet	14-Aug-14	$2,700.00	1	$45.00
Total Allowable Increase				$206.67

CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM

for Date Stamp Only

2016 JUL 27 AM 10:43

250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612
(510) 238-3721

CASE NUMBER L16-0038

Tenant Response Contesting Rent Increase

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

Your Name	Complete Address (with Zip Code)	Telephone
Barbara Tusé	6452 A Benvenue Oakland CA 94618	Day (510) 594-8960 Evening "
Your Representative's Name	Complete Address (with Zip Code)	Telephone Day Evening

Are you current on your rent? Yes ☒ No ☐

Number of Units in this Building: 4

Rental History

Date you entered into the Rental Agreement for this unit: March 18, 2003

Date you moved into this unit: A few days after March 18, 2003

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

Initial Rent: $1,000.00 /mo. Initial rent included (please check all that apply) ( ) Gas ( ) Electricity (X) Water ( ) Garbage (X) Parking ( ) Storage ( ) Cable TV ( ) Other (please specify) Additional charge for garbage, monthly check for $1020.-

Did you receive the City of Oakland's NOTICE TO TENANTS OF RESIDENTIAL ADJUSTMENT PROGRAM at any time during your tenancy in this unit? Yes ☒ No ☐

Please list the date you first received the Notice to Tenants March 2013

000066

List all increases your received. Begin with the most recent and work backwards. Attach most recent rent increase notice. If you need additional space please attach another sheet.

Date Notice Given (Mo/Day/Yr)	Date Increase Effective	Rent Increased From	To	Did you receive a NOTICE TO TENANTS with the notice of rent increase?
4/2/16		$ 1,063.-	$ 1,300.[1]	☒ Yes ☐ No
3/1/14		$ 1,000.-	$ 1,063.-	☒ Yes ☐ No
		$	$	☐ Yes ☐ No
		$	$	☐ Yes ☐ No
		$	$	☐ Yes ☐ No
		$	$	☐ Yes ☐ No
		$	$	☐ Yes ☐ No

Contested Justification(s) for Rent Increase

Please attach a brief statement explaining why the owner is not entitled to the proposed increase. The legal justifications are Banking, Capital Improvements, Increased Housing Service Costs, Debt Service, Uninsured Repair Costs, and Necessary to Meet Constitutional Fair Return requirements.

Banking		**Debt Service**	
Capital Improvement	☒	**Uninsured Repair Costs**	
Increased Housing Service Costs		**Constitutional Fair Return**	

For the detailed text of these justifications, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site.

The property owner has the burden of proving the contested rent increase is justified.

[1] **http://www.oaklandnet.com/government/hcd/rentboard/ordinance.html**
[1] **http://www.oaklandnet.com/government/hcd/rentboard/rules.html**

Verification

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

Barbara Jones — 6/27/16

Tenant's Signature **Date**

Tenant's Signature **Date**

000067

Important Information

This form must be received at the following address within the time limits prescribed by Oakland Municipal Code, Chapter 8.22. City of Oakland, Housing Residential Rent Relocation Board, Dalziel Building, 250 Frank H. Ogawa Plaza Suite 5313, Oakland, CA 94612. For more information, please call: 510-238-3721.

You cannot get an extension of time to file your Response by telephone.

File Review

You should have received with this letter a copy of the landlord petition.
Copies of attachments to the petition will not be sent to you. However, you may review these in the Rent Program office. Files are available for review by appointment.
For an appointment to review a file call (510) 238-3721.

MEDIATION PROGRAM

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 Hearing Officer the same day.

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).

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 (for Mediation Request **Date**

_____ _____

Tenant's Signature (for Mediation Request **Date**

000068

L16-0038

June 27, 2016

Tenant Response Contesting Rent Increase

Thank you for your review of my concerns about the capital improvements for work performed at 6452A Benvenue.

The majority of the work performed appears to be repair and maintenance to fix problems, restore the property to its previous condition, and protect the property. It appears that there may be errors concerning the scope and the valuation of the work. The cost of work, and scope, is reported inconsistently on the documents filed with the City on March 31st and May 31st.

000069

LL-0038 MS/BC

CITY OF OAKLAND RENT ADJUSTMENT PROGRAM P.O. Box 70243 Oakland, CA 94612-0243 (510) 238-3721	For date stamp. **OWNER PETITION FOR APPROVAL OF RENT INCREASE**

Please Fill Out This Form Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed. Attach to this petition copies of the documents that prove your case. Before completing this petition, please read the Rent Adjustment Ordinance, sections 8.22.050 through 8.22.140 and Rent Adjustment Regulations, Appendix A.

Your Name	Complete Address (with zip code)	Telephone
Alison Ludwig Agent & Property Manager for Owner, Donald Ludwig	123 Crescent Avenue Sausilito, CA 94965	415-755-3629 Day: 415-755-3629 Aludle@hotmail.com
Your Representative's Name	Complete Address (with zip code)	Telephone
Matthew P. Quiring	Fried & Williams LLP 1901 Harrison Street, 14th Floor Oakland, CA 94612	510-625-0100 Day: 510-625-0100 mquiring@friedwilliams.com
Property Address (If the property has more than one address, list all addresses)		Total number of units on property
6452 "A" Bevenue Avenue, Oakland, CA 94618		4

For each unit affected by this petition, you must attach a list of the mailing addresses of all of the units on the property showing the tenants in each unit on this property. Increases based on debt service, increased housing service costs and constitutional fair return affect all of the units on the property.

Type of units (circle one)	House	Condominium	Apartment or Room
I have given a copy of the NOTICE TO TENANTS OF RESIDENTIAL RENT ADJUSTMENT PROGRAM to the tenants in each unit effected by this petition:		YES	NO
Oakland Business License number: (Attach proof of payment of your business tax.)		282302	
Attach proof of payment of your Rental Property service fee (Account must be current.)			

REASON(S) FOR PETITION: Check all that apply. **I (We) petition for approval of one or more rent increases on the grounds that the increase(es) is/are justified by:**

- [ ] Banking (Reg. App. 10.5)
- [X] Capital Improvements (Reg. App. 10.2)
- [ ] Debt Service Costs (Reg. App. 10.4)
- [ ] Increased Housing Service Costs (Reg. App. 10.1)
- [ ] Uninsured Repair Costs (Reg. App. 10.3)
- [ ] Constitutionally required fair return

(Note that Debt Service has been eliminated as a reason for a rent increase for property purchased after April 1, 2014.)

000070

History: Attach a rent history for the current tenant(s) in each affected unit.

Banking: You must complete this section if you are claiming banking as a justification.
Have you given prior increases to any affected tenant justified by increased housing service costs, debt service or constitutional fair return? Yes ☐ No ☐ If yes, attach a list noting the affected unit, the effective date of each such increase and the amount.
An Excel spreadsheet for calculating available banking increases is available online at http://www2.oaklandnet.com/Government/o/hcd/s/LandlordResources/index.htm For each unit you may either complete and attach the spreadsheet or attach a separate page the date the current tenant moved into the unit, the initial rent, and if the tenant has lived in the unit for more than 10 years, the rent in effect 10 years ago.

Capital Improvements and Uninsured Repairs: You must attach an itemized schedule of claimed capital improvements, showing the affected units, the cost and completion date for each item. You can only pass-through 70% of the capital improvement costs you have incurred. **You must submit organized documentation supporting your claims, including proof of expenditures and proof of payment.** An Excel spreadsheet for calculating entitlement to a capital improvement pass-through is available online at http://www2.oaklandnet.com/Government/o/hcd/s/LandlordResources/index.htm. You may print out and attach a copy of the spreadsheet, or complete a capital improvements schedule manually. Uninsured repair costs use the same calculations as capital improvements but are not limited to 70%.

Debt Service: Debt service has been eliminated as a justification for a rent increase for all property purchased after April 1, 2014, unless a bona fide offer to purchase the property was made before April 1, 2014. To claim debt service you must submit organized documentation proving your commercially reasonable financing costs. This documentation must include at a minimum, a copy of the promissory note, a copy of the deed of trust, proof of the monthly mortgage payment and proof of your operating expenses. You may print out and attach a copy of the spreadsheet for calculation debt service costs found at:
http://www2.oaklandnet.com/Government/o/hcd/s/LandlordResources/DOWD008774

Increased Housing Service Costs: You must present organized documentation of your housing service costs for two successive year periods. They may be calendar or fiscal years. You may print out and attach a copy of the spreadsheet for calculating increased housing service costs found at:http://www2.oaklandnet.com/Government/o/hcd/s/LandlordResources/DOWD008774

Verification (Each petitioner must sign this section):
I declare under penalty of perjury pursuant to the laws of the State of California that everything I said in this petition and attaches pages is true and that all of the documents attached to the petition are originals or are true and correct copies of the originals.

Owner's Signature — May 27, 2016 — Date

Agent for Donald F. Linden

Owner's Signature — Date

000071

File Review:

Your renter(s) will be required to file a response to this petition within 35 days of notification by the Rent Adjustment Program. You will be sent a copy of the Tenant's Response. **Copies of attachments to the response form will not be sent to you. However, you may review any attachments in the Rent Program Office. Files are available for review by appointment only.** For an appointment to review a file, call (510) 238-3721. Please allow six weeks from the date of filing for notification processing and expiration of the landlord's response time before scheduling a file review.

MEDIATION AVAILABLE: Mediation is an entirely voluntary process to assist you in reaching an agreement with the tenant. 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 tenant 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 tenant's response have been filed with the Rent Adjustment Program). **The Rent Adjustment Program will not schedule a mediation session if the tenant 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).

Alvin J Ludy — May 27, 2016

Owner's Signature — Date

Agent for Donald J. Ludwig

CHRONOLOGICAL CASE REPORT

Case Nos.:	L16-0056
Case Name:	Khanna v. Tenants
Property Address:	2800 Madera, Oakland, CA
Parties:	Darci & Darline Burrell (Tenant) Josephine Alioto (Tenant) Marco & Michelle Rodriguez (Tenant) Raedonda Conner (Tenant) Kasturi & Alok Khanna (Property Owner)

OWNER APPEAL:

Activity	Date
Owner Petition filed	September 14, 2016
Tenant Response filed	October 27, 2016
Hearing Decision issued	December 29, 2016
Owner Appeal filed	January 14, 2017

RECEIVED

JAN 14 2017

OAKLAND RENT ADJUSTMENT

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

Appellant's Name	**Landlord** ☑ **Tenant** ☐
KASTURI KHANNA, ALOK KHANNA	

Property Address (Include Unit Number)

2800 MADERA AVE
OAKLAND CA 94619

Appellant's Mailing Address (For receipt of notices)	**Case Number** L16-0056
3406 STACEY CT MOUNTAIN VIEW CA 94040	**Date of Decision appealed** 12/29/2016

Name of Representative (if any)	**Representative's Mailing Address (For notices)**

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

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

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

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

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

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

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

7. ☑ Other. *You must attach a detailed explanation of your grounds for appeal. Submissions to the Board are limited to 25 pages from each party. Number of pages attached* 4 *. Please number attached pages consecutively.*

8. You must serve a copy of your appeal on the opposing party(ies) or your appeal may be dismissed. I declare under penalty of perjury under the laws of the State of California that on 14th January, 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:

Name	DARCI & DARLINE BURRELL	RAEDONDA CONNER
Address	5208 FLEMING AVE	5210 FLEMING AVE
City, State Zip	OAKLAND CA 94619	OAKLAND CA 94619
Name	MARCOS & MICHELLE RODRIGUEZ	JOSEPHINE ALIOTO
Address	2800 MADERA AVE	2804 MADERA AVE
City, State Zip	OAKLAND CA 94619	OAKLAND CA 94619

SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	**DATE** 01/14/2017

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.

000075

Case L16-0056: Appeal Statement - 1/14/2017

By: Kasturi Khanna & Alok Khanna
For: 2800 Madera Ave, Oakland, CA 94619

Hearing Decision:

> *"It is clear from the blue prints, building records and permits, construction loan and certificate of occupancy, that the prior owner performed construction work on the building. But it has been the Rent Board policy to require invoices, agreements, and proof of payment to substantiate costs. The owner was unable to provide any invoices, agreements, or proof of payment for specific work done on the subject building and is not entitled to the exemption in the absence of proof of specific costs of construction."*

We hereby appeal the above hearing decision issued in case L16-0056 on 29-Dec-2016 on the following grounds:

1. The decision is inconsistent with OMC Chapter 8.22

The Hearing Officer states: "*Certainly, construction work was done as evidenced by the City Building Permit Records...*", and then argues, "*... but without proof of payment and invoices, it is difficult to ascertain what work was done by which vendor.*"

This is inconsistent with Section 8.22.030.B.2.a.

> *In order to obtain an exemption based on substantial rehabilitation, an owner must have spent a minimum of fifty (50) percent of the average basic cost for new construction for a rehabilitation project.*

The ordinance requires that the owner must have spent for '**a rehabilitation project**'. **There is absolutely no requirement in the ordinance to ascertain what work was done by which vendor in order to qualify for exemption.** The plain language of the ordinance does not require proof of ***specific costs of construction*** or ***specific work done***.

When there is indisputable evidence in Building records of compliant and timely completion of an overall rehabilitation project, it is a moot point to require specifics.

In our case, the rehabilitation project is unambiguously described in the finaled Building Permits as '**Renovate upstairs existing, create two joint living & work quarters on ground floor. 2nd Floor R-1 to R-3', including soft story seismic retrofit.** A Certificate of Occupancy was issued by the City Building department upon completion of the project.

The overall rehabilitation project was funded with a Construction Loan taken by the prior owner. The construction loan was reconveyed on time upon completion of project. This is the definitive **proof that the rehabilitation project <u>as a whole</u> was paid for.**

2. The decision is inconsistent with prior decisions of the Board

The Hearing Officer's verdict is *"The owner was unable to provide any invoices, agreements, or proof of payment for specific work done on the subject building and is not entitled to the exemption in the absence of proof of specific costs of construction."*

This is inconsistent with prior Board decisions. In the following appeal cases, the Board held that where a landlord is ***unable to obtain detailed evidence of construction costs*** due to passage of time, the circumstance should be considered in determining sufficiency of the evidence presented:

a. Case number: L07-0012 Bell v. Tenants
b. Case number: L09-0138 Petersen v. Krausen

We have a similar predicament where we are unable to obtain detailed evidence of construction costs. We are not the owners who actually initiated and completed the rehabilitation project. It is both **unfair and unreasonable to require us to produce detailed itemized construction costs, invoices, agreements and cancelled checks for work done several years ago by a prior owner**. In insisting that we do so, our circumstance was not given due consideration in the Hearing decision.

3. The decision is inconsistent with decisions issued by other (or same) hearing officers.

The Hearing Officer argues *"But it has been the Rent Board policy to require invoices, agreements, and proof of payment to substantiate costs."*

This is completely inconsistent with and in direct contradiction to the position taken by the same Hearing Officer in case number **L12—0062 Fung v. Tenants.**

Mr. Fung, the owner petitioned for exemption from rent control based on substantial rehabilitation work done several years ago by prior owner. **There were no invoices, agreements or proof of payments for specific work done or for specific costs of construction.** However, Mr. Fung was successful in getting a letter of "opinion" of substantial rehabilitation from Chief Building Inspector Calvin Wong.

The Chief Building Inspector used the job value declared in the building permit application to *opine* that the 50% test for substantial rehabilitation was met.

The Hearing Officer ruled favorably that this written "opinion" of the Chief Building Inspector is *"credible evidence of expenses"* and *"persuasive evidence of substantial rehabilitation"*, **without requiring any specific proof of payments.** The Hearing Officer also used the **job value on the permit application as a proxy for construction expenses** to determine whether the owner met the 50% test.

From this, it is evident beyond reasonable doubt that it is ***not always*** the Rent Board policy to require invoices, agreements and proof of payment to substantiate costs.

4. The decision is not supported by substantial evidence.

The Hearing Officer has disregarded the **job value of $501,000 declared on the finaled Building Permit B0703379,** while considering it favorably as a proxy for construction costs in L12-0062 Fung v tenants.

The job value declared on a permit application is usually a conservative proxy for the actual value of the job, for the simple reason that a lower job value means lower permit fees. On the other hand, the motive to declare a value higher than actuals is not very plausible, and therefore, the job value declared on our Building permit should be admitted as credible and conservative proxy for actual construction costs.

The Hearing Officer ruled "*The construction loan indicates that the prior owner took out a $1,000,000 loan with a drawdown of over $966,000 but there is no specificity indicated that the loan proceeds were used to pay the vendors or contractors for work done on the subject building.*"

In other words, the argument seems to imply that even though the loan was secured by the subject property with a promissory Note for $1,000,000, there is no proof that the loan proceeds were actually used for the rehabilitation work on the same subject property.

This is an untenable argument.

The Hearing Officer has inexplicably disregarded the fact that a Construction Loan is de facto governed by an underlying "Construction Loan Agreement" and **by definition, a construction loan agreement inherently guarantees that the proceeds are used to pay the vendors or contractors, only for work completed for the approved construction project.**

The construction lender collects, validates and approves the invoices and costs of construction from the borrower/contractor as a pre-requisite for disbursing payments to contractors and vendors. The built-in due diligence in construction loan administration guarantees that draws or loan proceeds from being paid out only after inspection of completed work – both by the lender's inspectors and by the city building inspectors.

This is a Construction lending industry standard practice, and there is no reason to believe that the underwriters at Far East National Bank would be any less rigorous in this case.

Besides, it is very obvious that the lending bank approved the construction loan for work on the subject property because:

a. In 2007, the subject property had been determined non-habitable by the Report of Building record issued 4/2/2007 vide code enforcement #0668210 for blight and work without permits – which establishes justification for a rehabilitation project.
b. The rehabilitation project on the subject property overlapped the same 2-year time period when the construction loan was issued and reconveyed.

5. Other grounds for appeal – Rules of Evidence [Govt. Code Section 11513(c)]

The Hearing Officer acknowledges: *"The owner made a good faith attempt to obtain the cost information from the Bank and the prior owners, but was unsuccessful."*

And yet, the Hearing Offer also argues: *"However, the owner has not provided any invoices for the work done or proof of payment to the vendors who did the construction."*

In doing so, the Hearing Officer has failed to apply in our case the Rules of Evidence under the California Administrative Procedures Act (Government Code, Section 11513(c):

> **"Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs"**

We have presented credible, persuasive evidence from building records and proof of construction loan and reconveyance, which **collectively corroborate** the substantial rehabilitation done at the subject property. Under the provisions of Rules of Evidence, it is the sort of evidence on which responsible persons or parties (such as lenders, government, investors) are accustomed to rely in the conduct of business.

We are appealing to the Board to pay attention to the ultimate evidence and end product of the rehabilitation project – the physical building itself. It could not exist without incurring a substantial amount in construction costs.

The Hearing Officer determined the threshold for meeting the 50% test at $330,785.72, but in reality, it has cost the owners much more than that to rehabilitate the building to its current form and condition.

To deny this petition on grounds of needing specifics of construction costs seems arbitrary and superfluous when the end result of the rehabilitation project has been inspected and certified by the Building authorities.

In conclusion, we request the Board to re-examine in detail our original petition with all the supporting documents and grant our petition for exemption based on substantial rehabilitation.

Thank you.

Sincerely,

Kasturi Khanna

Alok Khanna

Kasturi & Alok Khanna
3406 Stacey Ct
Mountain View CA 94040

To:
City of Oakland
Rent Adjustment Program
250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612

Subject: **Petition for exemption from rent control on the basis on substantial rehabilitation**
Property: **2800 Madera Ave, Oakland CA 94619 (APN: 36-2487-22)**

We are hereby submitting our petition for exemption from rent control on the basis of substantial rehabilitation for the 4-plex apartment building located at 2800 Madera Ave, Oakland CA 94619. We have recently purchased the subject property for $1,250,000, in consideration of the relatively new condition of the building exterior and interior. Our lender, Wells Fargo Bank has independently appraised the property and approved the purchase price. The purchase date is 07/20/2016.

The building was substantially altered and renovated to the "equivalent of new" during 2007 - 2009 by prior owners. It used to be a commercial/mixed use property as per the City building records. The 5 commercial storefronts on the ground floor were converted into 2 live/work units, while retaining the historical design with new transom windows and tile bulkheads. The 3 apartments on the first floor were converted into 2 residential units. *No additional square footage was added.* Upon completion of work and final inspections, the City issued the property's first ever Certificate of Occupancy for residential use in 2009.

Per City and County records, the Building permit by itself had the job value at $501,000. The total project cost was declared at $1 million by the prior owners. Unfortunately, the real estate markets took a nosedive in 2009, driving many an investor into bankruptcy. These prior owners defaulted on their rehab loans and were forced to foreclose with their lending bank. Eventually, the bank sold the property as REO in 2012 to the previous owner for only $450,000 amidst a heavily depressed real estate market in Oakland. The previous owner did further upgrades to finish up the interior of the property and eventually rented the 4 units starting June 2013 and after. The Move-In Statement signed by two of the existing tenants in June 2013 and July 2013 testifies to the fact that the unit was in "New" condition at lease signing. *Please note that the previous owner never increased rent for any of the existing tenants.*

We believe that the subject property qualifies for exemption from Rent Adjustment Ordinance on the grounds of substantial rehabilitation and have gathered documentary evidence from City and County records to support this petition. *Yellow post-it notes with numbers are affixed to each document to help correlate with the below numbering order.*

Attached please find:

1. **Landlord Petition for Certificate of Exemption**
2. **List of all Tenant Names & Addresses**

Kasturi & Alok Khanna
3406 Stacey Ct
Mountain View CA 94040

Supporting documentation to prove substantial rehabilitation:

3. **Evidence of purchase/ownership**
   - Copy of executed Grant Deed recorded with the County on 7/20/2016

4. **Evidence of square footage**
   a. Certified copy of 'Property Characteristics' provided by the County of Alameda:
      This shows the square footage at 5,429 sf. *Please note that the County has not yet updated the property ownership data in their system as it is a very recent sale.*
   b. Certified copy of 'Commercial Building Record' provided by the Alameda County Assessor:
      Page 2 shows the detailed computation of square footage. Total = 2,838+2,591 = 5,429 sf

   Please note that the previous owners and their listing agents had listed the square footage at 5,461 sf. For Loan Appraisal, our lender's third-party appraiser independently calculated the square footage at 5,458 sf. As new owners, we choose to go by the County records at 5,429 sf for the purposes of this petition. The variance at 29-32 sf (about half a percentage) is not statistically significant to make a difference to the merits of this case.

5. **Evidence of major alteration/renovation**
   a. Copy of Certificate of Occupancy Issued 9/14/2009 by City of Oakland:
      This was issued pursuant to major alteration and complete renovation of the subject property during 2007 - 2009. This is the first and only Certificate of Occupancy issued to the property for residential use. It shows the number of units at 4. It also references the Permits issued and finaled by the City of Oakland for this alteration/renovation: B0703379, E0800253, P0800212, and M0800190

   b. Page 1 of Lender Appraisal Report by independent third-party appraiser
      The appraiser's comments about the condition of the property are highlighted.

6. **Evidence of cost incurred in alteration/renovation**
   a. Certified copy of Building Permit # B0703379 provided by City of Oakland:
      This Building Permit was issued and finaled for doing a complete alteration and renovation of the subject property. The Description on the Permit states: *"Renovate upstairs existing, create two joint living & work quarters on ground floor..."* It has a job value of **$501,000** as recorded with the City of Oakland. The work done was practically ground-up, including new foundation, frame, ceiling, roof, walls, plumbing, electrical, mechanical. Final Inspection was approved on 7/13/2009, within 2 years of Building Permit issue date (7/23/2007).
   b. Certified copy of 'Commercial Building Record' provided by the Alameda County Assessor:
      This document also shows the job value of the Building Permit # B0703379 at **$500,000**

Kasturi & Alok Khanna
3406 Stacey Ct
Mountain View CA 94040

Please note that this document is the same as referenced in 4.b. above. A copy is provided again to avoid confusion.

7. **Construction Valuation Table effective 1 Aug 2009 issued by the Building Services, City of Oakland**
   - As per the Certificate of Occupancy issued in 2009, the subject building is of "Type VN" construction. The cost per square foot for Apartment New Construction – Type V would be $127.00 as per the table of 2009. This amount multiplied by 5,429 sf (per public records) equals $689,483 as the average basic cost of new construction in 2009.
     From the Job Value recorded in Building Permit **B0703379,** it is evident that the prior owner has expended *at least* $500,000 which is more than 50% of the average basic cost of new construction in 2009 for the subject property ($689,483 * 0.5 = $344741.5)

8. **Move-In Statement signed by tenant**
   - This is provided to prove that the units were in new condition at move-in in June 2013 and in July 2013. Previous owner has originals of Move-In Statements signed by all the existing tenants. The attached documents signed by two of the tenants in June/July 2013 were shared with us as part of the disclosures during sale of property.

9. **Pics of interior**
   - As part of the disclosures during sale of property, the previous owner and their listing agents had provided these pics of the building and interiors of 3 of the 4 units. We have also physically visited all 4 units and testify that these pics are of the subject property.

10. **Copy of Hearing Decision by CEDA Rent Adjustment Program on Case # L12-0062**
    - We are providing this case as a precedent for reference purposes. This case is identical to our petition, where the current owner had petitioned in 2012 for exemption from rent control on the basis on substantial rehabilitation done by a prior owner in 1986. Evidence comprises of Job value stated on Building Permit application that was inspected and finaled by the City prior to issue of Certificate of Occupancy. *Please note that only the first 3 pages of the Hearing Decision document were available on Recordtrac query results.*

Kindly review this petition and all the supporting documents, and notify of next steps.

If you have any questions or need further information, please contact me at 650 450 6640 or email kasturi.khanna@gmail.com

Thanking you,

Sincerely,

Kasturi Khanna
9/10/2016

Alok Khanna
9/10/2016

List of Tenants

For

2800 Madera Ave, Oakland CA 94619

Please note that each of the 4 units has its own street address as provided below:

Unit	Name(s) of Tenant(s)	Street Address of unit	Tenant since	Rent Increased on
1	Marcos Felipe Rodriguez Michelle Zhuting Rodriguez	2800 Madera Ave, Oakland CA 94619	26-DEC-2014	Never*
2	Josephine Alioto	2804 Madera Ave, Oakland CA 94619	01-DEC-2013	Never*
3	Darci Burrell Darline Burrell	5208 Fleming Ave, Oakland CA 94619	01-JUL-2013	Never*
4	Raedonda Conner	5210 Fleming Ave, Oakland CA 94619	01-JUN-2013	Never*

- The above information is as provided in the Renter Estoppels signed by all tenants in May 2016, as part of the disclosures required for sale of property

CITY OF OAKLAND

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

Housing and Community Development Department
Rent Adjustment Program

TEL (510) 238-3721
FAX (510 238-6181
TDD (510)238-7629

HEARING DECISION

CASE NUMBER: **L16-0056, Khanna v. Tenants**

PROPERTY ADDRESS: **2800 Madera Avenue**
Oakland, CA

APPEARANCES:

Kasturi Khanna	**Owner**
Alok Khanna	**Owner**
Walt Tayara	**Owner Agent**
Josephine Alioto	**Tenant**
Michelle Rodriguiz	**Tenant**

DATE OF HEARING: **December 22, 2016**

DATE OF DECISION: **December 29, 2016**

SUMMARY OF DECISION: The owner's petition is DENIED. The subject building is not exempt from the Rent Ordinance on the basis of substantial rehabilitation.

INTRODUCTION

Kasturi Khanna filed a petition requesting an exemption from the Rent Adjustment Ordinance on the basis of substantial rehabilitation. Notice of the petition was sent to all tenants at the subject building. Josephine Alioto filed a timely tenant response which contests the exemption.

ISSUE

1. Is the subject building exempt from the Rent Adjustment Ordinance on the basis of "substantial rehabilitation"?

EVIDENCE

The owner testified that the subject building consists of four units with a square footage ranging from 5,429 square feet (City Commercial Building

Record) to 5,458 (Alameda County Assessor) to 5,461 square feet (Pacific Blue appraisal) and provided supporting documentation of this square footage. The parties stipulated that 5,429 square feet was appropriate for this case.

The owner provided a document signed by Timothy Low, Chief Building Inspector of the City of Oakland, dated September 27, 2016, which stated that in order to obtain an exemption based on substantial rehabilitation:

"For a 5,429 square foot building at 2800 Madera Avenue:

Average basic cost in 2007=$502,001/5429=$92.28 >50%
Present cost=$92.28 present index/former index = $127.28."[1]

Thomas Dolan and Mary Ann Harrel, Trustee of the Harrel Family Trust, the prior owners, obtained a construction loan from Far East National Bank(Bank) on September 24, 2007,in the amount of $1,000,000[2].The Construction Deed of Trust was signed by Thomas Dolan and Mary Ann Harrel, Trustee of the Harrel Family Trust.[3]The Bank sold the loan to Orton Development/Realta Capital Partners LLC on April 13, 2012.[4] A deed in lieu of foreclosure was executed by the trustors Harrel and Dolan to Realta(Orton Development) on April 13, 2012.[5]

The owner testified that the construction work was done by the prior owner, and consisted of renovation of the two existing upstairs units, and creation of two new joint work-live units on the ground floor, as well as work to abate a prior complaint. She provided a copy of the blueprints for the project.[6]

Building Permit Number B0703379 was issued to renovate the two existing upstairs units, and to create two joint work-live units on the ground floor; also to abate complaint # 0608210 and complete work under permit B0701162.[7] The job value stated by the requestor, Thomas Dannenberg, was $501,000.[8]

Building Permit Number TPM09703 was issued on January 9, 2008, for creation of 4 new condo units (2 residential and 2 live-work).[9] The owner further testified that there was also substantial seismic retrofit work done on the subject building, and was signed off by a Special Inspector for the City of Oakland.[10]

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[1] Ex. no. 39
[2] Ex. No. 18
[3] Ex. No. 16
[4] Ex. No. 37
[5] Ex. No. 38
[6] Ex. No. 22
[7] Ex. No. 6
[8] Ex. No. 26
[9] Ex. No.
[10] Ex. No. 25

The work was "finaled" on July 13, 2009, and a Certificate of Occupancy dated September 14, 2009, was issued by the City Inspections Manager.[11]

The owner provided documentation that the subject building is Type V, wood frame construction on level ground, and claims expenses totaling $966,562.3 based on a drawdown from the construction loan.[12] She did not provide any documentary evidence of invoices and/or expenses paid in support of the owner's claim of exemption. She testified that she attempted to ascertain the construction expenses from the prior owners and wrote them a letter requesting a copy of the expenses but the prior owners refused to cooperate because they had defaulted on the loan and lost the building.[13] The owner further testified that she attempted to elicit this information from Far East National Bank but the Bank declined to provide the cost information on the grounds of privacy.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Applicable Law: O.M.C. 8.22.030(A) (6) states that dwelling units located in "substantially rehabilitated buildings" are not "covered units" under the Rent Ordinance.

> a. In order to obtain an exemption based on substantial rehabilitation, an owner must have spent a minimum of fifty (50) percent of the average basic cost for new construction for a rehabilitation project.
>
> b. The average basic cost for new construction shall be determined using tables issued by the chief building inspector applicable for the time period when the substantial rehabilitation was completed.[14]

The tables issued by the Building Services agency refer to a dollar amount per square foot. Therefore, in order to make the necessary mathematical computation, an owner must present sufficient evidence of the square footage of the building, as well as the cost of the rehabilitation project.

The Calculation: Table "A" lists square foot construction costs, effective May 1, 2015. However, since the construction in this case occurred in 2007 and costs have risen, it would be unfair to an owner if current costs were used. For this reason, the Building Services agency has also issued a document entitled "Cost Indexes (1926 = 100)" (Table B).

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[11] Ex. No. 4, 14, 26
[12] Ex. No. 5, 20
[13] Ex. No. 27 & 28
[14] O.M.C. Section 8.22.030(B)(2)

These tables are used as follows: (1) On Table "B," determine the number for the year of construction, geographical district, and type of construction; (2) Divide this number by the number in the same category for the year 2007. The resulting percentage is then multiplied by the number derived when the square foot cost shown on Table "A" is multiplied by the number of square feet in the building.

The square footage of the subject building is 5,429 square feet. The appropriate cost table is for level ground renovation construction costs. Construction costs in 2007 are stated below as follows:

The owner testified that the subject building is of wood frame construction. The table issued by the City of Oakland entitled "City of Oakland Building Services Construction Valuation for Building Permits", May 1, 2015, states if the renovation work were done in 2015 the square foot cost would be $145.07. (Apartment R2; Category V–wood frame). This amount multiplied by 5,429 square feet equals $787,585.03. This figure is then reduced, using the Cost Index Table as follows:

$$\frac{\text{Year 2007} = 2507.5}{\text{Year 2015} = 3010.4} = 84\%$$

84% is $661,571.43. 50% of that amount is $330,785.72. Therefore, if the owner expended $330,785.72 on the construction project, the building is exempt from the Rent Ordinance.

Construction work was completed within a two year period. However, the owner has not provided any invoices for the work done or proof of payment to the vendors who did the construction. The construction loan indicates that the prior owner took out a $1,000,000 loan with a drawdown of over $966,000 but there is no specificity indicated that the loan proceeds were used to pay the vendors or contractor for work done on the subject building. Certainly, construction work was done as evidenced by the City Building Permit Records but without proof of payment and invoices it is difficult to ascertain what work was done by which vendor. The owner made a good faith attempt to obtain the cost information from the Bank and the prior owners but was unsuccessful.

The case cited by the owner in support of her claim is not dispositive. In Fung v.Tenants,L12-0062, the undersigned Hearing Officer granted an exemption on the property on the basis of substantial rehabilitation because the chief building inspector opined in a letter that the subject building was substantially rehabilitated and based on building records, an excess of 50% of the average basic cost for new construction was completed during the time frame.

In this case, the letter signed by the chief building inspector, Timothy Low, did not state that that the subject building is exempt on the basis of substantial rehabilitation. The letter merely provided a sample calculation of how one would calculate the required costs to obtain an exemption based on substantial rehabilitation.

It is clear from the blue prints, building records and permits, construction loan, and certificate of occupancy, that the prior owner performed construction work on the subject building. But It has been the Rent Board policy to require invoices, agreements, and proof of payment to substantiate costs. The owner was unable to provide any invoices, agreements, or proof of payment for specific work that was done on the subject building and is not entitled to the exemption in the absence of proof of the specific costs of construction.

The rental units in the building are not exempt from the Rent Ordinance.

ORDER

1. The owner's petition is denied.

2. The subject building is not a "substantially rehabilitated" building exempt from the Rent Adjustment Ordinance.

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

Dated: December 29, 2016

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

City of Oakland
Bureau of Building
Construction Valuation[1]
For Building Permits[4]
Effective May 1, 2015

Planning and Building Department
Dalziel Administration Building
250 Frank Ogawa Plaza - 2nd Floor
Oakland, CA 94612
510-238-3891

		Construction	Level Ground		Hillside Construction[2]		Marshall & Swift April 2015
Occ.	Description[3]	Type	New	Remodel	New	Remodel	Section pg (Class/type)
R3	Single Family Residence	V	$234.17	$121.77	$304.42	$158.30	Section 12 pg 25 (C/e)
	Duplex/Townhouse	V	$193.69	$100.72	$251.79	$130.93	Section 12 pg 25 (C/vg)
	Factory/Manufactured home	V	$73.06	$37.99	$94.98	$49.39	Section 63 pg 9 (Exc)
	Finished Habitable Basement Conversion	V	$124.09	$64.52	$161.31	$83.88	Section 12 pg 26 (CDS/g)
	Convert non-habitable to habitable	V	N/A	$48.57	N/A	$63.14	Section 12 pg 26 (CDS/g)
	Partition Walls	V	N/A	$17.23	N/A	$22.39	Section 52 pg 2 (6"wall)
	Foundation Upgrade (l.f.)	V	$107.90	NA	$140.27	NA	Section 51 pg 2 (R/24x72.)
	Patio/Porch Roof	V	$27.76	$14.43	$36.08	$18.76	Section 66 pg 2 (Wood)
	Ground Level Decks	V	$33.80	$17.58	$43.94	$22.85	Section 66 pg 2 (100sf/avg)
	Elevated Decks & Balconies	V	$44.14	$22.95	$57.38	$29.84	Section 66 pg 2 (100sf/+1 story)
U1	Garage	V	$43.30	$22.52	$56.29	$29.27	Section 12 pg 35 (C/a600)
	Carport	V	$28.74	$14.95	$37.37	$19.43	Section 12 pg 35 (D/a4car)
	Retaining wall (s.f.)	III	$35.75	NA	$46.48	NA	Section 55 pg 3 (12"reinf./h)
R2	Apartment (>2 units)	I & II	$191.10	$99.37	$248.43	$129.18	Section 11 pg 18 (B/g)
		III	$149.01	$77.48	$193.71	$100.73	Section 11 pg 18 (Dmill/g)
		V	$145.07	$75.43	$188.59	$98.07	Section 11 pg 18 (D/g)
	Non-Residential Occupancy						
A	Church/Auditorium	I & II	$301.54	$156.80	$392.00	$203.84	Section 16 pg 9 (B/g)
		III	$220.22	$114.51	$286.29	$148.87	Section 16 pg 9 (B/a)
		V	$203.15	$105.64	$264.10	$137.33	Section 16 pg 9 (S/g)
A	Restaurant	I & II	$260.56	$135.49	$338.73	$176.14	Section 13 pg 14 (A-B/g)
		III	$200.51	$104.27	$260.67	$135.55	Section 13 pg 14 (C/g)
		V	$188.49	$98.01	$245.03	$127.42	Section 13 pg 14 (D/g)
B	Restaurant <50 occupancy	V	$144.99	$75.39	$188.49	$98.01	Section 13 pg 17 (C/a)
B	Bank	I & II	$258.31	$134.32	$335.80	$174.62	Section 15 pg 21 (B/a)
		III	$206.61	$107.44	$268.59	$139.67	Section 15 pg 21 (C/a)
		V	$194.87	$101.33	$253.33	$131.73	Section 15 pg 21 (D/a)
B	Medical Office	I & II	$289.61	$150.60	$376.50	$195.78	Section 15 pg 22 (A/g)
		III	$281.19	$146.22	$365.55	$190.08	Section 15 pg 22 (B/g)
		V	$227.88	$118.50	$296.24	$154.04	Section 15 pg 22 (C/g)
B	Office	I & II	$191.17	$99.41	$248.51	$129.23	Section 15 pg 17 (B/a)
		III	$137.10	$71.29	$178.23	$92.68	Section 15 pg 17 (C/a)
		V	$130.01	$67.61	$169.02	$87.89	Section 15 pg 17 (D/a)
E	School	I & II	$244.37	$127.07	$317.69	$165.20	Section 18 pg 14 (A-B/g)
		III	$188.85	$98.20	$245.51	$127.66	Section 18 pg 14 (C/g)
		V	$181.97	$94.63	$236.57	$123.01	Section 18 pg 14 (D/g)
H	Repair Garage	I & II	$212.03	$110.26	$275.64	$143.33	Section 14 pg 33 (MSG 527C/e)
		III	$205.70	$106.96	$267.41	$139.05	Section 14 pg 33 (MLG 423C/e)
		V	$197.94	$102.93	$257.32	$133.81	Section 14 pg 33 (MLG 423D/e)
I	Care Facilities / Institutional	I & II	$215.02	$111.81	$279.53	$145.35	Section 15 pg 22 (B/a)
		III	$172.71	$89.81	$224.52	$116.75	Section 15 pg 22 (C/a)
		V	$165.20	$85.91	$214.77	$111.68	Section 15 pg 22 (D/a)
M	Market (Retail sales)	I & II	$168.68	$87.71	$219.28	$114.02	Section 13 pg 26 (A/g)
		III	$134.90	$70.15	$175.37	$91.19	Section 13 pg 26 (C/g)
		V	$127.88	$66.50	$166.25	$86.45	Section 13 pg 26 (D/g)
S	Industrial plant	I & II	$180.88	$94.06	$235.15	$122.28	Section 14 pg 15 (B/a)
		III	$141.69	$73.68	$184.19	$95.78	Section 14 pg 15 (C/a)
		V	$126.46	$65.76	$164.40	$85.49	Section 14 pg 15 (D/a)
S	Warehouse	I & II	$112.65	$58.58	$146.44	$76.15	Section 14 pg 26 (A/g)
		III	$105.50	$54.86	$137.14	$71.31	Section 14 pg 26 (B/g)
		V	$103.45	$53.80	$134.49	$69.93	Section 14 pg 26 (Cmill/g)
S	Parking Garage	I & II	$89.44	$46.51	$116.27	$60.46	Section 14 pg 34 (A/g)

[1] Cost per square foot, unless noted otherwise, (l.f. = linear foot; s.f. = square foot); includes 1.3 regional multiplier (see Sec. 99 pg 6 April 2015 Marshall & Swift)

[2] Hillside construction = slope >20%; multiply by additional 1.3 multiplier

[3] Remodel Function of New Construction is a 0.52 multiplier.

[4] Separate structures or occupancies valued separately.

[5] Separate fees assessed for E/P/M permits, R.O.W. improvements, Fire Prevention Bureau, Grading Permits, technology enhancement, records management, Excav. & Shoring.

000089

COST INDEXES (1926 = 100)

BUILDINGS – EASTERN DISTRICT

	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002	2001	2000	1999	1998	1997	1996	1995	1994	1993
A : Fireproofed steel frame	3096.3	3051.7	2979.2	2911.2	2820.7	2722.4	2806.1	2708.8	2600.6	2450.6	2307.2	2118.6	1964.2	1909.4	1879.8	1858.6	1780.1	1736.6	1695.7	1656.5	1626.1	1572.3	1526.2
B : Reinforced concrete frame	3089.0	3035.5	2963.4	2886.1	2787.7	2702.2	2775.5	2693.3	2597.5	2454.7	2309.1	2123.2	1964.1	1909.5	1875.3	1853.0	1775.5	1728.2	1686.7	1646.7	1623.3	1566.3	1521.8
C : Masonry bearing walls	3072.6	3020.0	2933.5	2841.2	2758.4	2670.7	2700.3	2650.9	2593.9	2457.6	2299.4	2134.1	1982.0	1923.2	1886.4	1863.9	1773.5	1729.5	1695.7	1653.8	1633.6	1578.7	1540.7
D : Wood frame	3036.1	2980.9	2889.4	2777.4	2693.8	2605.2	2616.5	2609.5	2585.1	2470.0	2314.3	2154.0	1994.3	1930.2	1888.5	1872.5	1773.8	1724.3	1697.5	1640.6	1630.1	1574.5	1526.0
S : Metal frame and walls	2815.3	2774.9	2725.5	2674.2	2594.7	2523.7	2635.4	2550.7	2441.4	2306.8	2170.2	1999.4	1844.9	1793.5	1769.4	1752.4	1679.2	1648.1	1612.7	1580.3	1546.0	1491.9	1453.9

BUILDINGS – CENTRAL DISTRICT

A : Fireproofed steel frame	2771.7	2749.6	2704.1	2640.5	2567.6	2483.6	2550.7	2468.6	2355.2	2234.9	2117.3	1959.6	1832.7	1799.6	1762.4	1749.7	1676.9	1630.4	1579.2	1531.2	1501.5	1453.9	1403.3
B : Reinforced concrete frame	2781.3	2745.8	2695.5	2617.7	2545.8	2468.2	2516.7	2447.9	2346.5	2236.6	2123.0	1975.8	1845.1	1809.3	1770.0	1756.5	1683.4	1634.0	1577.6	1528.8	1506.8	1455.6	1406.8
C : Masonry bearing walls	2778.2	2745.1	2687.4	2591.5	2526.0	2456.0	2477.2	2424.3	2353.2	2252.6	2124.3	1992.3	1864.1	1825.5	1784.8	1773.6	1686.5	1638.1	1587.3	1536.0	1519.0	1469.9	1420.7
D : Wood frame	2774.5	2738.7	2668.8	2543.9	2477.9	2408.5	2414.3	2397.1	2354.0	2274.1	2145.9	2014.6	1875.4	1835.9	1790.3	1779.2	1679.6	1627.5	1579.9	1518.2	1512.2	1465.7	1404.0
S : Metal frame and walls	2489.9	2466.6	2443.6	2404.5	2340.8	2285.9	2379.8	2315.1	2208.8	2101.9	1988.8	1844.5	1712.9	1682.5	1651.9	1643.5	1579.5	1541.9	1500.7	1468.5	1434.6	1385.8	1342.1

BUILDINGS – WESTERN DISTRICT

A : Fireproofed steel frame	3043.5	3007.5	2941.3	2868.8	2784.6	2689.4	2779.5	2678.8	2559.6	2410.0	2279.7	2091.5	1965.4	1926.2	1892.1	1863.0	1782.7	1740.1	1699.9	1656.2	1629.4	1578.9	1525.8
B : Reinforced concrete frame	3030.2	2984.0	2914.7	2830.2	2750.4	2662.2	2737.4	2661.4	2553.3	2407.9	2281.4	2104.3	1971.3	1932.8	1894.5	1866.6	1786.7	1742.1	1697.6	1653.1	1633.8	1579.4	1527.6
C : Masonry bearing walls	3048.1	3000.6	2925.0	2822.1	2748.5	2661.3	2680.1	2623.7	2543.0	2400.9	2265.9	2124.4	1992.6	1951.5	1911.5	1886.5	1796.1	1753.0	1717.0	1671.8	1657.4	1603.7	1553.1
D : Wood frame	3010.4	2958.3	2872.3	2742.1	2668.7	2577.5	2572.3	2555.5	2507.5	2388.1	2257.1	2126.8	1978.1	1934.3	1892.1	1874.5	1775.9	1730.8	1702.9	1644.1	1636.2	1593.1	1530.4
S : Metal frame and walls	2720.0	2689.3	2645.8	2594.4	2519.6	2456.1	2555.5	2461.8	2358.3	2230.0	2104.2	1934.4	1809.2	1775.9	1749.0	1726.8	1658.3	1622.5	1598.7	1569.1	1540.1	1489.6	1443.8

EQUIPMENT – NATIONAL AVERAGE

INDUSTRY																							
Average of all	1593.7	1578.8	1558.7	1545.9	1503.2	1457.4	1468.6	1427.3	1373.3	1302.3	1244.5	1157.3	1118.6	1100.0	1093.4	1084.3	1065.0	1061.8	1052.7	1036.0	1020.4	985.0	958.0
Airplane mfg.	1885.9	1878.5	1860.6	1859.2	1806.1	1741.6	1770.4	1721.2	1653.7	1566.6	1489.2	1375.5	1325.1	1301.4	1296.7	1287.8	1264.7	1263.2	1253.4	1238.5	1221.8	1174.9	1145.3
Apartment	1139.4	1123.8	1109.7	1088.5	1060.4	1032.9	1027.0	1005.1	976.8	942.4	903.7	856.7	836.1	826.3	818.3	812.4	797.8	793.1	787.1	774.1	763.5	739.5	714.2
Bakery	1553.5	1537.3	1516.0	1502.5	1461.6	1415.5	1426.6	1392.1	1338.3	1249.7	1194.7	1110.9	1070.6	1052.6	1045.7	1034.3	1014.0	1010.5	1000.3	983.4	969.1	930.9	903.0
Bank	1167.7	1152.5	1136.5	1128.5	1102.0	1073.2	1078.7	1050.7	1019.3	979.4	943.7	887.3	859.8	847.6	842.1	837.0	822.9	821.3	816.3	803.6	794.9	773.4	749.3
Bottling	1636.0	1622.5	1602.8	1595.4	1552.8	1503.6	1517.9	1479.8	1417.4	1336.9	1271.6	1172.9	1131.2	1111.3	1105.9	1096.3	1075.6	1073.5	1065.4	1049.4	1033.6	994.3	968.5
Brewery & distillery	2014.9	1993.5	1966.8	1950.4	1900.0	1848.8	1860.0	1808.7	1731.7	1634.2	1554.6	1438.6	1390.9	1366.5	1357.7	1343.2	1318.6	1311.5	1298.7	1278.1	1254.3	1208.9	1181.0
Candy	2005.2	1982.6	1953.9	1935.6	1882.7	1823.7	1834.9	1792.2	1722.1	1604.0	1534.0	1427.3	1377.5	1354.6	1346.2	1330.6	1304.8	1300.4	1286.5	1263.5	1244.2	1194.7	1159.1
Cannery (fish)	1963.2	1942.2	1913.8	1897.6	1844.6	1786.0	1802.1	1755.8	1687.7	1575.7	1507.3	1398.4	1347.0	1323.3	1314.5	1300.6	1275.2	1271.4	1258.5	1235.8	1217.8	1169.9	1133.3
Cannery (fruit)	1946.1	1922.5	1893.0	1869.9	1819.6	1762.6	1769.9	1735.6	1672.4	1570.3	1504.6	1403.1	1353.0	1331.7	1322.2	1308.8	1282.1	1277.8	1266.2	1240.9	1225.1	1180.1	1140.3
Cement mfg.	1661.5	1649.1	1628.6	1612.5	1559.1	1516.4	1536.7	1469.8	1407.4	1337.2	1274.5	1172.4	1127.6	1104.9	1098.1	1087.6	1069.6	1065.1	1054.1	1041.2	1022.3	987.5	965.9
Chemical	1607.0	1594.1	1575.3	1572.5	1531.1	1490.9	1512.0	1460.7	1397.2	1319.5	1256.1	1157.7	1118.7	1096.6	1090.6	1080.3	1063.0	1057.8	1047.0	1033.9	1014.0	977.9	958.3
Church	1313.6	1292.2	1269.3	1245.8	1215.4	1186.6	1185.6	1157.6	1127.6	1092.5	1053.8	993.4	962.1	949.4	939.3	933.2	914.7	909.6	901.6	881.5	870.9	847.9	813.4
Clay products	1654.3	1639.4	1617.3	1598.6	1548.3	1503.6	1514.9	1448.3	1388.7	1317.9	1258.0	1165.3	1125.0	1103.5	1095.5	1083.8	1066.1	1062.2	1051.2	1035.1	1015.8	981.8	959.3
Contractor's. equip.	1834.1	1812.5	1788.0	1754.3	1698.1	1650.9	1657.3	1609.6	1560.1	1506.6	1441.9	1349.7	1311.7	1291.6	1281.5	1274.0	1252.1	1242.2	1228.3	1204.6	1185.1	1153.4	1125.2
Creamery & dairy	1723.2	1702.5	1679.1	1663.4	1618.7	1568.4	1575.0	1540.6	1478.0	1380.9	1315.7	1222.8	1181.5	1162.3	1154.6	1142.1	1119.1	1114.6	1103.5	1084.9	1066.4	1023.6	996.5
Dwelling	1097.5	1083.0	1070.2	1051.1	1024.8	999.1	993.4	973.8	946.2	913.0	874.5	831.8	813.5	804.2	796.9	790.2	776.2	770.9	764.4	753.0	741.6	717.5	694.2
Elec. equip. mfg.	1573.2	1574.4	1566.0	1577.2	1537.3	1465.9	1486.0	1462.1	1394.4	1302.8	1227.2	1126.3	1080.4	1062.3	1063.4	1055.9	1036.9	1040.7	1036.0	1026.5	1015.1	968.7	945.8
Elec. power equip.	1488.8	1494.8	1492.8	1510.2	1477.2	1400.0	1411.2	1405.6	1332.3	1230.8	1147.3	1048.5	1002.6	986.3	990.0	983.0	963.9	968.4	966.7	961.5	953.6	905.8	887.4
Flour, cereal & feed	1611.8	1596.2	1575.6	1562.8	1519.1	1471.0	1483.2	1445.0	1385.8	1300.7	1238.0	1147.0	1106.3	1087.9	1081.9	1070.3	1049.4	1045.0	1034.9	1019.4	1003.6	964.9	939.4
Garage	1720.3	1710.3	1691.4	1679.6	1636.2	1587.7	1600.1	1558.4	1501.0	1434.1	1370.3	1280.9	1241.2	1223.6	1215.1	1205.0	1184.3	1180.8	1172.9	1157.5	1140.5	1102.0	1073.9
Glass mfg.	1539.1	1529.1	1512.4	1503.8	1460.1	1412.0	1427.1	1381.5	1320.5	1246.4	1182.3	1086.8	1045.3	1025.2	1020.0	1010.1	991.4	989.1	981.1	968.3	952.2	914.9	894.6
Hospital	1473.0	1456.8	1438.3	1426.7	1388.7	1344.9	1346.4	1312.2	1264.5	1195.8	1142.3	1070.8	1038.4	1022.3	1015.2	1005.2	986.4	983.2	974.4	960.2	944.0	908.8	883.1
Hotel	1384.4	1364.1	1343.4	1323.5	1290.0	1257.2	1254.2	1224.4	1185.9	1129.6	1084.9	1025.6	997.7	984.0	975.9	965.7	947.6	941.7	931.5	915.1	899.4	869.8	842.0
Laundry & cleaning	1374.7	1363.5	1345.7	1336.7	1298.1	1257.4	1268.9	1227.6	1178.7	1118.0	1070.0	991.8	957.3	940.0	934.9	927.1	909.9	908.4	901.3	887.1	873.5	843.0	820.9
Library	1491.8	1479.1	1458.2	1449.1	1410.3	1366.8	1379.2	1338.9	1291.3	1231.7	1181.3	1096.7	1058.3	1039.4	1033.7	1026.4	1007.1	1007.0	999.4	982.5	969.6	937.2	906.6
Logging equip.	1623.8	1612.5	1593.2	1577.1	1531.2	1488.5	1509.2	1460.7	1411.1	1354.1	1296.8	1206.3	1165.0	1147.0	1139.9	1133.4	1113.3	1109.0	1099.9	1082.9	1067.9	1034.9	1006.4
Metalworking	1754.9	1746.7	1727.3	1727.7	1676.9	1621.4	1653.2	1593.2	1534.0	1453.4	1392.3	1289.9	1250.3	1230.0	1227.7	1219.5	1202.9	1203.1	1191.7	1176.6	1156.4	1113.4	1085.9
Mining & milling	1761.2	1741.6	1716.3	1683.9	1612.8	1561.5	1562.8	1494.8	1434.3	1373.8	1309.8	1208.0	1164.2	1142.1	1128.7	1120.7	1102.2	1097.2	1085.4	1068.2	1051.3	1019.8	992.7
Motion picture	1731.7	1718.2	1698.8	1682.3	1639.7	1580.1	1583.4	1559.2	1501.9	1430.6	1363.5	1268.8	1225.3	1207.4	1201.6	1195.5	1173.2	1172.7	1167.1	1145.9	1135.1	1097.9	1065.0
Office equip.	1252.4	1236.5	1221.8	1218.7	1190.9	1161.3	1164.3	1132.4	1096.7	1053.1	1012.4	957.7	933.6	922.0	918.5	910.7	896.1	894.2	887.1	876.8	863.1	838.6	818.1
Packing (fruit)	1802.7	1778.0	1747.7	1715.0	1668.6	1620.1	1621.2	1589.9	1536.7	1467.7	1409.3	1320.2	1276.1	1257.4	1246.1	1236.2	1210.4	1204.9	1195.3	1167.7	1153.5	1118.6	1079.2
Packing (meat)	1713.3	1691.0	1665.1	1646.2	1599.4	1553.3	1561.0	1512.5	1455.3	1366.1	1309.5	1222.1	1182.1	1162.3	1153.5	1141.3	1120.1	1114.6	1102.3	1082.9	1064.3	1025.8	996.3
Paint mfg.	1664.7	1651.3	1630.7	1622.4	1574.8	1524.7	1542.3	1490.9	1427.6	1349.2	1285.3	1184.8	1141.7	1118.6	1112.2	1102.2	1081.7	1078.6	1068.4	1052.7	1034.3	995.7	971.8
Paper mfg.	1567.1	1552.5	1531.0	1516.8	1472.5	1426.7	1442.0	1397.5	1343.5	1278.6	1223.3	1128.6	1086.5	1066.2	1057.3	1050.8	1030.2	1027.5	1018.8	998.8	985.5	953.2	925.2
Petroleum	1759.2	1745.6	1725.8	1714.6	1665.9	1624.0	1650.3	1584.6	1510.4	1419.8	1340.9	1234.2	1192.0	1169.0	1157.2	1142.9	1126.8	1121.2	1106.2	1088.4	1066.5	1028.9	1008.3
Printing	1363.6	1358.7	1347.8	1342.6	1308.0	1269.1	1281.5	1253.9	1211.5	1148.0	1104.0	1035.3	1006.1	990.0	989.0	980.6	967.1	966.2	961.0	945.7	931.9	898.6	877.0
Refrigeration	1957.0	1938.6	1912.9	1900.2	1844.5	1783.4	1795.4	1736.3	1664.4	1572.7	1500.2	1391.2	1343.0	1316.4	1305.6	1293.5	1268.6	1263.6	1251.1	1231.2	1209.6	1165.9	1135.6
Restaurant	1314.3	1295.5	1274.4	1256.8	1224.2	1192.1	1192.5	1162.8	1124.4	1065.1	1023.4	963.4	934.7	920.7	913.1	903.7	886.4	881.5	871.8	855.5	840.8	812.8	786.7
Rubber	1684.5	1672.0	1653.6	1652.5	1609.1	1563.8	1586.7	1531.4	1473.5	1398.3	1342.8	1252.0	1209.4	1185.2	1181.8	1171.9	1154.6	1150.0	1137.6	1121.9	1101.2	1063.7	1039.1
School	1479.5	1460.4	1438.8	1422.8	1384.7	1346.8	1349.6	1311.3	1268.9	1207.4	1159.7	1088.9	1056.9	1041.1	1033.5	1024.4	1005.7	1002.3	992.6	975.6	959.8	927.9	899.0
Shipbuilding	1848.2	1833.9	1811.5	1801.0	1743.9	1692.5	1726.4	1659.5	1594.5	1515.4	1444.8	1322.7	1275.4	1250.3	1244.3	1236.8	1216.9	1212.5	1199.4	1180.7	1162.4	1122.8	1097.2
Steam power	1604.7	1597.0	1580.5	1580.6	1537.0	1484.0	1498.4	1448.9	1382.6	1295.4	1229.9	1128.4	1088.3	1066.7	1063.1	1054.5	1038.4	1037.3	1029.9	1019.3	1002.9	964.5	944.5
Store	1511.0	1492.5	1469.7	1454.7	1417.2	1377.5	1383.5	1346.7	1305.1	1252.1	1204.5	1126.7	1090.3	1073.9	1066.5	1060.2	1040.2	1039.0	1031.8	1012.7	1000.6	970.9	937.5
Textile	1583.6	1573.8	1554.5	1546.1	1507.8	1471.1	1491.4	1447.0	1398.7	1341.0	1292.5	1207.2	1173.0	1156.2	1151.1	1142.2	1125.3	1123.6	1114.6	1095.7	1081.1	1049.2	1022.7
Theater	1286.4	1273.9	1256.6	1249.7	1218.1	1181.8	1186.1	1153.6	1114.0	1062.7	1019.0	952.3	922.6	907.8	903.3	896.6	880.6	879.7	872.9	860.0	847.7	820.3	795.1
Warehousing	1267.0	1252.6	1235.2	1216.6	1182.2	1148.7	1155.8	1120.6	1082.6	1044.1	1009.0	942.8	910.9	900.4	897.1	892.0	875.8	874.8	871.7	857.7	850.1	826.7	800.2
Woodworking	1512.3	1485.4	1459.8	1435.0	1397.6	1356.3	1367.1	1335.8	1293.6	1243.4	1198.5	1122.1	1088.7	1072.7	1063.0	1052.1	1044.4	1042.9	1038.3	1013.3	1002.9	975.0	942.9

The data included on this page becomes obsolete after update delivery, scheduled for October 2016.

LLC-0056 M15 BKD

CITY OF OAKLAND RENT ADJUSTMENT PROGRAM 250 Frank H. Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721	For date stamp. RECEIVED SEP 14 2016 OAKLAND RENT ADJUSTMENT **LANDLORD PETITION FOR CERTIFICATE OF EXEMPTION (OMC §8.22.030.B)**

Please Fill Out This Form Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed. Attach to this petition copies of the documents that prove your claim. Before completing this petition, please read the Rent Adjustment Ordinance, section 8.22.030. A hearing is required in all cases even if uncontested or irrefutable.

Section 1. Basic Information

Your Name	Complete Address (with zip code)	Telephone
KASTURI KHANNA ALOK KHANNA	3406 STACEY CT MOUNTAIN VIEW CA 94040	Day: 650 450 6640
Your Representative's Name	Complete Address (with zip code)	Telephone Day:
Property Address 2800 MADERA AVE, OAKLAND CA 94619		Total number of units in bldg or parcel. 4

Type of units (circle one)	Single Family Residence (SFR)	Condominium	~~Apartment~~ or ~~Room~~
If an SFR or condominium, can the unit be sold and deeded separately from all other units on the property?		Yes	No

Section 2. Tenants. You must attach a list of the names and addresses, with unit numbers, of all tenants residing in the unit/building you are claiming is exempt.

Section 3. Claim(s) of Exemption: A Certificate of Exemption may be granted **only** for dwelling units that are **permanently** exempt from the Rent Adjustment Ordinance.

New Construction: This may apply to individual units. The unit was newly constructed and a certification of occupancy was issued for it on or after January 1, 1983.

Substantial Rehabilitation: This applies only to entire buildings. An owner must have spent a minimum of fifty (50) percent of the average basic cost for new construction for a rehabilitation project. The average basic cost for new construction is determined using tables issued by the Chief Building Inspector applicable for the time period when the Substantial Rehabilitation was completed.

Single-Family or Condominium (Costa-Hawkins): Applies to Single Family Residences and condominiums only. If claiming exemption under the Costa-Hawkins Rental Housing Act (Civ. C. §1954.50, et seq.), 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 a notice of rent increase under 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?
8. When did the tenant move into the unit?

I (We) petition for exemption on the following grounds (Check all that apply):

- [ ] New Construction
- [x] Substantial Rehabilitation
- [ ] Single Family Residence or Condominium (Costa-Hawkins)

Section 4. Verification Each petitioner must sign this section.

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

Kashi Khanna — **Owner's Signature**

9/8/2016 — **Date**

Ashi Khanna — **Owner's Signature**

9/8/2016 — **Date**

Important Information

Burden of Proof The burden of proving and producing evidence for the exemption is on the Owner. A Certificate of Exemption is a final determination of exemption absent fraud or mistake.

File Review Your tenant(s) will be given the opportunity to file a response to this petition within 35 days of notification by the Rent Adjustment Program. You will be sent a copy of the tenant's Response. Copies of attachments to the Response form will not be sent to you. However, you may review any attachments in the Rent Program Office. Files are available for review by appointment only. For an appointment to review a file, call (510) 238-3721. Please allow six weeks from the date of filing for notification processing and expiration of the tenant's response time before scheduling a file review.

CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM

250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612
(510) 238-3721

for Date Stamp Only
RECEIVED
CITY OF OAKLAND
RENT ARBITRATION PROGRAM
2016 OCT 27 AM 9:38

CASE NUMBER L16-0056

TENANT RESPONSE TO CLAIM OF PERMANENT EXEMPTION

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

Your Name	Complete Address (with Zip Code)	Telephone
Josephine L. Alioto	2804 Madera Ave. Oakland, CA 94619	(415) 385-0076
Your Representative's Name	**Complete Address (with Zip Code)**	**Telephone**

Number of Units on the parcel: 4

The unit I rent is: a house ☐ an apartment ☒ a condo ☐

Rental History:

Date you entered into the Rental Agreement for this unit: Nov 2013

Date you moved into this unit: 12/1/13

Are you current on your rent? Yes ☒ No ☐ Lawfully Withholding Rent ☐

If you are lawfully withholding rent, attach a written explanation of the circumstances.

Exemption Contested

For the detailed text of the exemptions, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. You can get additional information and copies of the Ordinance and Regulations from the Rent Program office in person or by phoning (510) 238-3721.

[1] **http://www.oaklandnet.com/government/hcd/rentboard/ordinance.html**
[1] **http://www.oaklandnet.com/government/hcd/rentboard/rules.html**

The property owner has the burden of proving the right to exemption for the unit. Explain below why you believe your landlord's claim that your unit is exempt is incorrect.

Please see attached explanation. (7 pages total attached)

Please list the date you first received the Notice to Tenants of the Residential Rent Adjustment Program (RAP Notice): On or around - June 30, 2016.

List all increases your received. Begin with the most recent and work backwards. Attach most recent rent increase notice. If you need additional space please attach another sheet.

Date Notice Given (Mo/Day/Yr)	Date Increase Effective	Rent Increased From	Rent Increased To	Did you receive a NOTICE TO TENANTS with the notice of rent increase?
10/24/16	1/1/17	$ 2000	$ 2114.10	☒ Yes ☐ No
		$	$	☐ Yes ☐ No
		$	$	☐ Yes ☐ No
		$	$	☐ Yes ☐ No
		$	$	☐ Yes ☐ No
		$	$	☐ Yes ☐ No
		$	$	☐ Yes ☐ No

Verification

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

_____ 10/24/16

Tenant's Signature **Date**

_____ _____

Tenant's Signature **Date**

Important Information

This form must be received at the Rent Adjustment Offices by the date and time limits prescribed by Oakland Municipal Code, Chapter 8.22. The offices are located at City of Oakland, Rent Adjustment Program, Dalziel Building, 250 Frank H. Ogawa Plaza Suite 5313, Oakland, CA 94612. The mailing address is PO Box 70243, Oakland, CA 94612-0243. For more information, please call: 510-238-

You cannot get an extension of time to file your Response by telephone.

File Review

You should have received with this letter a copy of the landlord petition.

For an appointment to review a file call (510) 238-3721.

Copies of attachments to the petition will not be sent to you. However, you may review these in the Rent Program office. Files are available for review by appointment.

Josephine L. Alioto
2804 Madera Avenue
Oakland, CA 94619

October 26, 2016

Re: Case No. L16-0056
Tenant Josephine Alioto's Response to Landlord's Petition for Certificate of Exemption

RESPONSE TO PETITION FOR CERTIFICATE OF EXEMPTION

I, Josephine L. Alioto, hereby submit the following response to Landlord's Petition for Certificate of Exemption.

I. INTRODUCTION/STATEMENT OF FACTS

Oakland's Rent Adjustment Program ("RAP") was enacted based on findings that the City of Oakland continues to suffer a "shortage of decent, safe, affordable and sanitary residential rental housing" (§ 8.22.010, subd. A) for the purpose of limiting rent increases and evictions. It was enacted with the intent that tenants could be free from the fear of eviction motivated by a rental property owner's desire to increase rents. (*Id.*) The housing shortage has only worsened since Oakland adopted RAP, in part because of the issuance of Certificates of Exemption.

The Subject Property at issue in this Petition was built in 1907 and is subject to RAP. It is both rent and eviction controlled. There are presently four units total after a previous owner of the property decided to **convert** two commercial properties located on the first floor of the Subject Property into live/work units.

I reside at 2804 Madera Avenue (hereinafter "Premises"). It is a three bedroom, one bathroom unit on the upper floor of the building. My unit, as well as the other upstairs unit, has housed residential tenants since prior to 2009. My tenancy began on December 1, 2013 pursuant to a residential rental agreement. It is undisputed that the Premises is subject to RAP's protections.

Petitioners, who did not effect the renovations, now seek a Certificate of Exemption. They allege the following: The "building was substantially altered and renovated" during 2007-

2009 by *prior* owners, who eventually defaulted on the loans acquired to finance this supposed renovations (Petition, p. 1.); The building was foreclosed on and the previous owner performed "further upgrades" on interiors and rented out all four units, two of which were newly created; The alterations qualify the Subject Property for a substantial rehabilitation exemption because the cost of the 2007-2009 work totaled $500,000.

However, Petitioners have failed to demonstrate exactly *what* construction was completed from 2007-2009 or what "further upgrades" were completed after 2009. Petitioners alleged that work was completed from the "ground up," without actually providing any proof of any work completed and what was actually paid for each item of work completed. The only evidence produced by petitioners regarding the value of alleged work performed is a building permit in which former owners estimated the value of the work and did not specify what exactly the costs were for. There are no invoices or receipts.

It is clear that Petitioners, who just purchased the Subject Property a mere three months ago, intended to file this petition prior to purchase. Petitioners did not expend the costs for the alleged substantial rehabilitation and neither did the prior owner. However, Petitioners benefit from the rehabilitation by collecting rent every month on four units, two of which did not exist prior. Further, the presence of rent-controlled tenants resulted in the Subject Property being sold for a bargain. Petitioners are seeking to better their very good bargain by having the freedom to increase rents to whatever rate they choose and to continue doing so every year.

II. ARGUMENT

The burden of proving and producing evidence for the substantial rehabilitation exemption rests on the shoulders of Petitioners. (Oakland Municipal Code, Chapter 8.22.030 subd. B.1.b.) As discussed in more detail below, Petitioners have woefully failed to meet their burden.

a. No Evidence Produced That Costs Exceeded $344,741.50.

In order to obtain an exemption based on substantial rehabilitation, an owner must

have spent a minimum of fifty (50) percent of the average basic cost for new construction for a rehabilitation project. (Oakland Municipal Code, Chapter 8.22.030 subd. B.2.a.) As discussed above, Petitioner did not offer any evidence that the previous owner *spent* anything at all on the renovations that allegedly took place from 2007-2009. The only evidence presented is the building permit application with an estimate of how much all renovations would allegedly cost. There are no actual estimates by a contractor, an invoice for work completed, or receipts for costs actually paid. Further, there the permit does not specify what exact work was performed on which unit and what the estimate for that specific work was. Consequently, no credible evidence of expenses were provided and Petitioners have not met their burden.

The San Francisco Rent Board ("SFRB") provides guidance to the rent board, hearing officers, and potential Petitioners in determining whether a building qualifies for a certificate of exemption. The print out, entitled "Topic No. 326: Substantial Rehabilitation Petitions" from the SFRB's website is attached herein. Although not controlling, the SFRB's guidance can aid the trier of fact in the instant case with his/her determination, which are reasonable and practical. The SFRB mandates that landlords provide *specific evidence* with the Petition, including: A detailed description of the work performed and itemization of costs; Evidence that the building was essentially uninhabitable; Copies of invoices, bids, and cancelled checks substantiating the costs for which the landlord has not been compensated by insurance proceeds. Absolutely none of the above was presented. Instead, Petitioners rely on a vague estimation on a building permit application. They have simply not met this strict burden.

b. Renovations Do Not Constitute "Substantial Rehabilitation."

Unfortunately, Oakland RAP does not define "Substantial Rehabilitation." However, the San Francisco Rent Stabilization and Arbitration Ordinance ("SFRO") similarly provides for an exemption to rent control based on substantial rehabilitation and defines "Substantial Rehabilitation" as:

> The renovation, alteration or remodeling of residential units of 50 or more years of age which have been condemned or which do not qualify for certificates of occupancy or which require substantial renovation in order to conform the building to contemporary

> standards for decent, safe and sanitary housing. Substantial rehabilitation may vary in degree from gutting and extensive reconstruction to extensive improvements that cure substantial deferred maintenance. Cosmetic improvements alone such as painting, decorating and minor repairs, or other work which can be performed safely without having the unit vacated do not qualify as substantial rehabilitation.

(San Francisco Rent Ordinance, Section 37.2(r)(6).) Here, the building permit was allegedly obtained to "Renovate upstairs existing, create two joining living & work quarters on ground floor. . ." (Petition, p. 2.) It is indisputable that the Petition must be denied under this definition. There is no evidence that the building was condemned, that there were allegations that the building did not conform to contemporary standards for decent housing prior to 2007, or that there was substantial deferred maintenance. The evidence solely illustrates that the prior owner intended to convert two units and "renovate" the upstairs existing *cosmetically*. The cosmetic improvements included painting, decorating, and minor repairs.

Of course, the SFRO is not controlling, but it does provide much needed direction. Even if that definition was not used, the majority of construction that occurred from 2007-2009 was a *conversion* of the bottom two units from commercial property to work/live units "from the ground up," not "substantial rehabilitation". Although no evidence was provided regarding what was actually spent or what it was spent on, it is highly likely that a significant portion was spent on the creation of the bottom two units.

c. Entire Building Does Not Qualify For Exemption.

For the substantial rehabilitation exemption, the entire building must qualify for the exemption and not just individual units. (Oakland Municipal Code, Chapter 8.22.030 subd. B.3.b.) It is clearly demonstrated by the evidence presented by Petitioners, including the petition, that the *bottom two units* is where an overwhelming majority of costs were incurred (if incurred at all). As substantial rehabilitation on individual units cannot qualify the entire building for a substantial rehabilitation exemption, this petition must be denied.

d. Petitioners Did Not Actually Incur Any Costs.

The substantial rehabilitation exemption seeks to provide owners who have

performed substantial rehabilitation with a means to recover money they were forced to expend to rehabilitate an entire property. It provides an incentive to owners who expend significant money and resources to restore their buildings to a habitable condition. Here, Petitioners did not contribute any money to the alleged renovations that occurred in 2007-2009. In fact, the prior owner did not actually spend the money either; the bank spent it and was forced to foreclose on the property. The owner who purchased the Subject Property in foreclosure in 2012 also did not expend any money for the 2007-2009 renovations. In fact, he paid less for the entire building than what was allegedly spent on the renovations only. (Petition, p.1.) Petitioners received the benefit of the renovations and the subsequent foreclosure by purchasing this four-unit property with model tenants at a bargain.

Petitioners base their claim that they are entitled to the exemption, despite not having incurred costs of alleged remediation on a hearing decision (Case #L12-0062), arguing that the case is "identical" to their petition, despite only have access to the first three pages. (Petition, p. 2.) A Certificate of Exemption was granted despite evidence that the new owner did not expend the funds to complete the alleged rehabilitation. First, the hearing decision has no precedence, as it is not a decision rendered in an appeal. Second, there are likely several decisions to the contrary. However, it is nearly impossible to find decisions – whether rendered by a hearing officer or appeals heard by the rent board. The decision should be completely ignored based on its lack of precedence/authority combined with its incomplete state.

III. CONCLUSION

For the foregoing reasons, I, on behalf of myself and the other tenants at the Subject Property respectfully request that this Petition for Certificate of Exemption be denied in its entirety as Petitioners have failed to meet their burden.

Dated: October 26, 2016

By: _____
Josephine L. Alioto
Tenant at 2804 Madera Ave.

Rent Board

Topic No. 326: Substantial Rehabilitation Petitions

Landlords may petition for exemption from the Rent Ordinance because of substantial rehabilitation of a building. "Substantial rehabilitation" means the renovation, alteration or remodeling of a building containing essentially uninhabitable residential rental units of 50 or more years of age that require substantial renovation in order to conform to contemporary standards for decent, safe and sanitary housing. Substantial rehabilitation may vary in degree from gutting and extensive reconstruction to extensive improvements that cure substantial deferred maintenance. Cosmetic improvements alone such as painting, decorating and minor repairs, or other work which can be performed safely without having the units vacated, do not qualify as substantial rehabilitation.

Improvements will not be deemed substantial unless the cost of the work for which the landlord has not been compensated by insurance proceeds equals or exceeds 75% of the cost of newly constructed residential buildings of the same number of units and type of construction, excluding land costs and architectural/engineering fees. The determination of the cost of newly constructed residential buildings shall be based upon construction cost data reported by Marshall and Swift, Valuation Engineers, as adapted for San Francisco and posted by the Department of Building Inspection for purposes of determining permit fees. The schedule in effect on the date the Building Inspector gives final approval of the completed improvements shall apply.

The landlord must provide specific evidence with the Substantial Rehabilitation Petition, including: tenant histories and copies of eviction notices to prior tenants; a detailed description of the work performed and itemization of costs; proof that the building is over 50 years old; a determination of condemnation and/or a determination by the Department of Building Inspection that the building was ineligible for a permit of occupancy and/or other evidence that the building was essentially uninhabitable; an abstract of title; a complete inspection report issued by the Department of Building Inspection prior to the commencement of the rehabilitation work; proof of purchase price; a final notice of completion from the Department of Building Inspection or other evidence of the date the Building Inspector gave final approval of the completed improvements; copies of invoices, bids and cancelled checks substantiating the costs for which the landlord has not been compensated by insurance proceeds; a copy of the current assessment; and a work log for any claims for uncompensated labor.

In general, a petition for exemption based on substantial rehabilitation can be filed at any time after the work has been completed. However, a landlord who recovers possession of a rental unit under Ordinance Section 37.9(a)(12) in order to carry out substantial rehabilitation must file the petition within the earlier of two years following recovery of possession of the rental unit or one year following completion of the work. A landlord who fails to file a petition within such time and thereafter obtain a determination of exempt status from the Rent Board shall be rebuttably presumed to have wrongfully recovered possession of the tenant's rental unit in violation of the Ordinance.

000100

Attachment 1 of 1

Tenants may raise objections to the Substantial Rehabilitation Petition based upon any of the following: that the work was not done; that the work was necessitated by the current landlord's deferred maintenance resulting in a code violation; that the costs are unreasonable; and/or that the work was not principally directed to code compliance.

June 2006

Español 中文

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CHRONOLOGICAL CASE REPORT

Case Nos.:	T16-0423
Case Name:	Habarek v. Vaughn
Property Address:	550 Fairmount Ave., #D, Oakland, CA
Parties:	Mourad Habarek (Tenant) Brad Vaughn (Property Owner)

TENANT APPEAL:

OWNER APPEAL:

Activity	Date
Tenant Petition filed	August 11, 2016
Owner Response filed	August 31, 2016
Hearing Decision issued	December 6, 2016
Tenant Appeal filed	December 20, 2016
Owner Appeal filed	January 23, 2017

RECEIVED
CITY OF OAKLAND
RENT ARBITRATION PROGRAM
2016 DEC 20 PM 12:0?

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

Appellant's Name MOURAD HABAREK

Landlord ☐ **Tenant** ☑

Property Address (Include Unit Number)
550 Fairmount Ave Apt D
Oakland, CA 94611

Appellant's Mailing Address (For receipt of notices)
550 Fairmount Ave Apt D
Oakland, CA 94611

Case Number T16-0423

Date of Decision appealed 12-06-2016

Name of Representative (if any)

Representative's Mailing Address (For notices)

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

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

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

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

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

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

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

7. ☐ Other. *You must attach a detailed explanation of your grounds for appeal. Submissions to the Board are limited to 25 pages from each party. Number of pages attached* 1 *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 December 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	Mourad Habarek
Address	550 Fairmount Ave Apt D
City, State Zip	Oakland, CA 94611
Name	Brad Vaughn
Address	1290 Howard Ave
City, State Zip	Burlingame, CA 94010

SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	**DATE** 12/20/16

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.

December 20,2016

Mourad Habarek
550 Fairmount Ave Apt D
Oakland,CA 94611.

To Whom it May concern,

In the light of last ruling from The City of Oakland housing authority , I would like to express my total disapproval and concern regarding the decision to increase my rent based on capital improvements basis. I feel like the total process is biased and the outcome is very discriminatory as I ended up the sole tenant to take on the burden of capital improvement, as I have more seniority than some tenant , I'm the only tenant included in this unfair rent adjustment . Through this appeal I would like city of Oakland to review this injustice and to treat its residences in equal and fair way . My rent increase is a long process of pressure from landlord , started with offering compensation multiple times to vacate the property, then escalated by trying to change my lease terms , then increasing my rent, even though nothing is done to improve my unit conditions , like carpet replacement I requested before . I invite city of Oakland to repair this injustice by treating everyone equally .

Sincerely,

Mourad Habarek.

RECEIVED

T16-0423

JAN 23 2017

RENT ADJUSTMENT PROGRAM
OAKLAND

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

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 T16-0423

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.

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.*

000106 0000

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:

Name	MOURAD HABAREK
Address	550 FAIRMOUNT AVENUE #D
City, State Zip	OAKLAND, CA 94611
Name	
Address	
City, State Zip	

Melissa A. Bas	
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	**DATE 1-20-2017**

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

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.

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 pride 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 A. Bais

Melissa Bais

510-206-2474

Property Manager

Agent for Owner

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 NUMBERS: T16-0358, Kaci v. Vaughn Management
T16-0360, Habarek v. Vaughn Management
T16-0391, Khalfouni v. Bais
T16-0423, Habarek v. Vaughn
T16-0429, Khalfouni v. Bais
T16-0455, Kaci v. Vaughn Management

PROPERTY ADDRESS: 550 Fairmount Ave, Apts. A, D and F, Oakland, CA

DATES OF HEARING: October 19, 2016, November 10, 2016

DATE OF DECISION: December 6, 2016

APPEARANCES: Melissa Bais, Owner Representative (10/19 only)
Brad Vaughn, Owner
Sophiane Khalfouni, Tenant Apartment A
Mourad Habarek, Tenant Apartment D (10/19 only)
Ali Kaci, Tenant Apartment F

SUMMARY OF DECISION

The tenants' petitions T16-0358, T16-0360 and T16-0391 are granted. The tenants' petitions T16-0429 and T16-0455 are granted. The tenant's petition T16-0423 is partly granted. The tenants' legal rents are set forth in the Order below.

CONTENTIONS OF THE PARTIES

Tenant Kaci filed two petitions. The first, T16-0358, alleges that his housing services have increased based on a $100 charge for parking, when in the past he had not paid for parking. The second, T16-0455, alleges that a rent increase he received purporting to

increase his rent from $917 to $998.88, exceeds the CPI Adjustment and is unjustified or is greater than 10%.

The owner filed a late response to both of tenant Kaci's petitions, in which he alleged that the rent increases were justified by capital improvements and denied that his housing services had decreased.

Tenant Habarek filed two petitions. The first, T16-0360, alleges that his housing services have increased based on a $100 charge for parking, when in the past he had not paid for parking. The second, T16-0423, alleges that he was contesting a rent increase he received purporting to increase his rent from $830 to $911.88. He also claimed that the notice of rent increase did not contain the enhanced notice requirements of the Rent Adjustment Ordinance. He also alleged that he had lost services originally provided by the owner or the conditions have changed.

Habarek did not include a list of decreased services with his petition in case T16-0423 (as directed on the Petition form.) He was sent a deficiency letter on August 31, 2016, instructing him to provide a list of any alleged problems in writing. Habarek responded to the deficiency letter by sending three photographs, one of his patio door, one of a slightly torn screen and one of the lock on his screen door.[1] These documents were sent to the owner.

The owner filed timely responses to Tenant Habarek's petitions, in which he alleged that the parking charge was not a rent increase, that there were no decreased housing services and that the rent increase for the unit was justified by capital improvements.

Tenant Khalfouni filed two petitions. The first, T16-0391, alleges that his housing services have increased based on a $100 charge for parking, when in the past he had not paid for parking. The second, T16-0429, alleges that he was contesting a rent increase he received purporting to increase his rent from $962 to $1,043.88.

The owner filed a timely response to Tenant Khalfouni's petition in case T16-0391, in which he alleged that the parking charge was not a rent increase and that there were no decreased housing services . The owner did not file a response to Tenant Khalfouni's petition in case T16-0429.

THE ISSUES

1. Did the Owner have good cause for failing to file a response in T16-0429, Khalfouni v. Bais?
2. Did the Owner have good cause for filing late responses in both T16-0358 and T16-0455 (Kaci v Vaughn)?
3. What is the impact of failing to file timely responses?
4. When, if ever, was the form Notice to Tenants (*RAP Notice*) first served on the tenants?

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[1] See Exhibit 9.

5. Did Tenant Habarek's petition (T16-0423) and Tenant Khalfouni's petition, (T16-0429), adequately allege that the rent increase was invalid?
6. Can the owner validly charge these tenants for parking?
7. Were the rent increase notices served according to the law?
8. Did Mr. Habarek adequately allege a decrease in housing services?
9. Did the owner properly serve and file the *Enhanced Notice to Tenants for Capital Improvements?*
10. Did the owner properly serve the rent increase notices?
11. Is the owner entitled to a rent increase based on capital improvements?
12. How much, if any, restitution is owed between the parties and how does it affect the rent?

EVIDENCE

Rental History, the *RAP Notice* and Parking:

Tenant Kaci: Tenant Kaci testified that he moved into apartment "F" in the subject building in August of 2006 at an initial rent of $850 a month. A *Rental Agreement* between *JW Silveira Company* was produced by the parties.[2] The only references to parking or the parking lot in the rental agreement is in paragraph 6, which states "No mechanical or auto work to be done in parking or garage area" and paragraph 20 (b) which states "Parking in garage areas by tenants renting spaces only." Kaci testified that he was served with the *RAP Notice* when he moved into the unit.

Kaci further testified that when he moved in he was allowed to park in the underground parking area. While there are 10 apartments and only 9 parking spaces, when he moved in there was an open space, so he was given permission to park there. He was never charged for parking nor was he ever given a document to sign regarding parking in the lot. After he had been living on the premises for a while, there was a dispute between the tenants about access to the parking lot. At that time, *JW Silveira* clarified to all the tenants that parking was first come, first served based on tenancy. At that time, Kaci had been parking in the lot and continued to do so.

Kaci further testified that on July 1, 2016, he received an email from Melissa Bais, the property manager, saying that going forward there would be a $100 charge a month for parking in the lot.[3] This email not sent with a *RAP Notice*. Kaci informed Ms. Bais that this was a new charge that had never before been imposed by the prior owner (the building had been purchased by Mr. Vaughn in March of 2016.) Kaci has not paid for his parking space and is still parking in the lot.

On August 1, 2016, Kaci received a rent increase notice from Ms. Bais in the mail, purporting to increase his rent to $998.88 a month, effective September 1, 2016. The rent increase notice was served with an *Enhanced Notice to Tenants for Capital*

[2] Exhibit 1. This Exhibit and all other Exhibits referred to in this Hearing Decision were admitted into evidence without objection.
[3] Exhibit 2

Improvements and a *RAP Notice.*[4] Prior to this rent increase, Kaci was paying rent of $917 a month. Kaci has paid the rent increase since September 1, 2016.

Mr. Vaughn testified that the rent increase notices were served on July 29, 2016, by USPS 1-Day Mail.[5] He also confirmed that Mr. Kaci has been paying the rent increase on his unit, but has not been paying for parking.

Tenant Habarek: Tenant Habarek testified that he has been living in apartment D in the subject building since August of 2006 at an initial rent of $830 a month. A *Rental Agreement* between *JW Silveira Company* was entered into evidence.[6] The *Rental Agreement* is the same form as Mr. Kaci, and has the same language about parking. Habarek testified that he was served with the *RAP Notice* when he moved into the unit.

Habarek further testified that when he moved in he was told by the manager that parking was "first come first serve" and since there was an open spot when he moved in, he was allowed to park in the underground parking area. He was never charged for parking nor was he ever given a document to sign regarding parking in the lot. In September of 2013, there was a dispute between the tenants because someone had more than one car. At that time *Silveria* clarified to all the tenants that parking was first come, first served based on tenancy and assigned particular spaces to particular people. He was given a spot that was assigned to him. At that time Habarek filled out a form for *Silveria* entitled *Tenant Vehicle Form* which listed the make and model of his car. This form was emailed to the then owner in September of 2013.[7]

Habarek further testified that when the new owner was purchasing the property, he filled out an *Estoppel Certification.*[8] He understood that the purpose of the *Estoppel* was to inform the new owner what was included in his lease. This document states that included in the rent is a parking space, garage and storage space. He never got a response from the old owner disagreeing with the *Estoppel Certification.*

Habarek received the same email notification from Ms. Bais on July 1, 2016, saying that going forward there would be a $100 charge a month for parking in the lot.[9] This was not sent with a *RAP Notice.*

On approximately July 31, 2016, Habarek received a rent increase notice from Ms. Bais in the mail, purporting to increase his rent to $911.88 a month, effective September 1, 2016. The rent increase notice was served with an *Enhanced Notice to Tenants for Capital Improvements* and a *RAP Notice.*[10] Prior to this rent increase, Habarek was paying rent of $830 a month. Habarek has not paid the rent increase.

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[4] Exhibit 3
[5] Exhibit 4 is the tracking receipt from USPS.
[6] Exhibit 5
[7] Exhibit 6, page 3
[8] Exhibit 6, page 1
[9] Exhibit 6, page 2
[10] Exhibit 7

Mr. Vaughn testified that the rent increase notices were served on July 29, 2016, by USPS 1-Day Mail.[11] He also confirmed that Mr. Habarek has not been paying the rent increase on his unit, and has not been paying for parking.

Tenant Khalfouni: Tenant Khalfouni testified that he has been living in apartment "A" in the subject building since November of 2012 at an initial rent of $925 a month. A *Rental Agreement* between *JW Silveira Company* was entered into evidence.[12] The tenant was given a *RAP Notice* when he moved into the unit.

The *Rental Agreement* states in paragraph 6 that "Tenant shall use the Premises exclusively as a residence and for no other purpose. No business shall be conducted from the Premises and no mechanical or garage work shall be performed in the parking or garage areas and such parking and garage areas are for Tenant's use only." Paragraph 20 states in part that "Any garage and storage areas and covered patio areas which may be a part of the Premises are not represented to be watertight and are to be used primarily for parking of cars and/or normal patio uses, with only incidental storage use, all at Tenants risk."

Vaughn testified that there was an additional document that was part of Khalfouni's lease entitled *Resident Policies and Rules*. This document was not produced by the owner prior to the Hearing. This document has the same language regarding the parking area that was in the Habarek and Kaci leases and was signed by the tenant. The language specified: "Parking in garage areas by tenants renting spaces only."

Khalfouni further testified that when he moved in there was a free spot for him in the parking lot, and he was assigned a spot to use. He never had to pay for parking.

Khalfouni received the same email notification from Ms. Bais on July 1, 2016, saying that going forward there would be a $100 charge a month for parking in the lot.[13]

On approximately July 31, 2016, Khalfouni received a rent increase notice from Ms. Bais in the mail, purporting to increase his rent to $1,043.88 a month, effective September 1, 2016. The rent increase notice was served with an *Enhanced Notice to Tenants for Capital Improvements* and a *RAP Notice*.[14] Prior to this rent increase, Khalfouni was paying rent of $962 a month. Khalfouni has been paying the rent increase.

Mr. Vaughn testified that the rent increase notices were served on July 29, 2016, by USPS 1-Day Mail.[15] He also confirmed that Mr. Khalfouni has been paying the rent increase on his unit, and has not been paying for parking.

///

[11] Exhibit 4 is the tracking receipt from USPS.
[12] Exhibit 10
[13] Exhibit 6, page 2
[14] Exhibit 11
[15] Exhibit 4 is the tracking receipt from USPS.

Decreased Housing Services:

On Tenant Habarek's petition in case T16-0423, he checked "yes" on the box "Have you lost services originally provided by the owner or have the conditions changed?" He did not provide an accompanying list of reduced services, as directed by the form. On September 1, 2016, Mr. Habarek was sent a deficiency letter, asking him to provide a list of decreased services in writing. Mr. Habarek responded by sending back photographs of three conditions in his unit.[16] These photographs were sent to the owner.

Non locking screen door: Mr. Habarek testified that there is a patio door in his unit that leads to a small patio. When he moved in, there was a screen door. That screen door was replaced about three months prior to the Hearing. The new screen door does not lock properly, and he has to push very hard to get it to lock. He complained to the person who installed it, but did not complain to either Ms. Bias or Mr. Vaughn.

Hole in screen: Mr. Habarek testified that there is a small hole in the new screen door. He complained to the contractor, not to Bias or Vaughn.

Mr. Vaughn and Ms. Bais testified that they had not heard any complaints about these problems.

Parking: With respect to all the complaints about the loss of parking, Vaughn testified that the new tenants pay for parking; and that after he purchased the building he numbered and striped the lot, which had not been done in the past. Each of the tenants continue to park in the lot, and none of them are paying for parking. Vaughn further testified that it was not his intent that the email sent to the tenants about parking was to be considered a rent increase.

Enhanced Notice to Tenants for Capital Improvements:

Official Notice is taken that on August 5, 2016, the RAP received copies of the *Enhanced Notice to Tenants of Capital Improvements,* along with the rent increase notices and *RAP Notices,* for each of these tenants.

Owner Responses:

Official Notice is taken of the case file in T16-0358. In that case, the *Tenant Petition* was mailed to the owner on July 11, 2016, along with a letter that states:

> **YOU MUST FILE A WRITTEN RESPONSE TO THE ATTACHED TENANT PETITIONS WITHIN THIRTY-FIVE (35) DAYS FROM THE DATE OF MAILING OF THIS NOTICE OR A DECSIION MAY BE MADE AGAINST YOU. THE RESPONSE MUST BE FILED ON THE PROPER FORM AND MUST BE RECEIVED AT THE CITY OF OAKLAND'S RENT ADJUSTMENT PROGRAM OFFICE ON OR BEFORE THE DUE DATE.**

[16] Exhibit 9, pp 1-3

Official Notice is also taken of the case files in cases T16-0429 and T16-0455. These cases have the same letter in the file. The date of mailing of the letter in T16-0429 is August 24, 2016. The date of mailing of the letter in T16-0455 is August 25, 2016.

T16-0429:

Brad Vaughn testified that he filled out an owner response form in T16-0429. He mailed it to the Rent Adjustment Program (RAP), but he doesn't know when. He did not keep a copy of the response he sent to the RAP. On September 30, 2016, he tried to reach Robert Costa (the analyst with RAP assigned to the case) to find out if all the paperwork had been received. On that day he was informed that Mr. Costa was out of town. He called again on October 4, 2016, at which point Mr. Costa told him that "everything was fine." On October 6, 2016, Roberto Costa, called him to inform him that the case file in T16-0455, was missing an *Owner Response*. He filed an *Owner Response* in that case on that day. Mr. Costa did not tell him he was missing anything in case T16-0429.

The case file in T16-0429, does not have an *Owner Response*.

T16-0358:

Vaughn testified that he believes he mailed in the *Owner Response* in T16-0358 "long before" the due date. He did not keep copies of any of the *Owner Responses* he mailed in. He further testified that he wrote a letter that he mailed along with the *Owner Response* form. That letter, which was in the case file, was dated September 13, 2016. Additionally, the *Owner Response* form was signed on September 15, 2016.

T16-0455:

Vaughn testified that this was the case that Robert Costa informed him that an *Owner Response* had not been received. He believed that he mailed the response originally before it was due. This case also had a copy of a letter written by Vaughn on September 13, 2016, in which he references the *Owner Response* form. This letter was received by the RAP on October 6, 2016, with the *Owner Response* form.

Capital Improvements: Mr. Vaughn testified that he hired *T4 Company* to "install retro-fit windows, replace balcony 4' privacy wall, install 60 AMP subpanel at each unit, paint exterior."[17] According to the *Enhanced Notice to Tenants of Capital Improvements* the owner sought to pass-through just the cost of replacing the electrical panels and the exterior building paint.[18]

The invoice sets forth the cost of replacing the 60 AMP sub-panels as $42,350. The invoice sets forth the cost for the paint job as $19,200 plus $4,200 for materials, for a

[17] See Exhibit 12, page 2, the Invoice from *T4 Company*
[18] Exhibit 11, page 2

total of $23,400. The costs for the other work (windows, sliders, privacy screen, dry rot repair and supervision/project management) is also listed separately on the invoice.

Mr. Vaughn testified that there was additional costs associated with the sub-panel installation and paint job that are listed on the invoice under "permits", "disposables", "GL insurance" and "fee". These are part of the overhead costs for all the work that was done. These costs apply to all the costs listed on the invoice. Vaughn decided how much to list on the *Enhanced Notice* by asking the contractor (Mr. Bahm) how much of each of those additional costs applied to the sub-panels and the exterior paint.[19] Vaughn did not know whether permit fees were required for the exterior paint, but there were permit fees for the electrical work. No permit documentation was provided.

Kaci (and the other tenants) testified that the electrical work was not completed in their units prior to the time that the rent increase notice was given. The electrical panel was replaced in May of 2016, but the walls in the units were not repainted until August of 2016. Kaci further testified that while the exterior was painted, the contractor has not returned to install the unit numbers on the doors.[20] Additionally, the exterior painting was not finished before the rent increase was to take effect; about two to three weeks before the Hearing the painters were on the premises doing some additional exterior paint that required plastic to be placed across his door.

Vaughn testified that the contractor had to leave the interior walls unfinished in the units until the *City of Oakland* came to confirm that the wiring had been done correctly. The work to patch the interior walls and repaint was done by his in-house crew, and was not part of the charges for the capital improvement pass-through. Additionally, Vaughn testified that with respect to the exterior painting, the contractor had to come back to install a downspout (which was done prior to the rent increase effective date) but that the contractor used the wrong paint. So approximately three weeks prior to the Hearing the contractor returned to do some touch up on this small area where the wrong paint had been used.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Was there good cause for the failure of the owner to file a response to the tenant petition in case T16-0429, Khalfouni v. Bais?

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. [21] "If a tenant files a petition and if the owner wishes to contest the petition, the owner must respond . . ."[22] This information is clearly laid out, all caps and in bold, in the letter the owner is sent along with the tenant petition.

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[19] Vaughn did not have any document from the contractor that specifies how much of these costs apply to the electrical work or the exterior paint.
[20] See Kaci photos, Exhibit 13.
[21] O.M.C. § 8.22.090(B)
[22] O.M.C. § 8.22.070(C)(2)

No *Owner Response* was filed in case T16-0429, *Khalfouni v. Bais*. Mr. Vaughn stated that he mailed an owner response, but no evidence other than Vaughn's testimony was presented that such a response was ever actually mailed. Mr. Vaughn did not keep a copy of this document. No additional letter (like those filed in the other cases along with the *Owner Response)* was provided. Vaughn attempted to blame the RAP Program for giving him faulty information after he called an analyst and was told that the file was complete. However, it is not the responsibility of the RAP Program to keep track of Mr. Vaughn's responses. It is his responsibility to make sure that his responses have been received in a timely fashion.

The tenant petition in this case was served on Mr. Vaughn on August 24, 2016. His response was therefore due in the office on September 29, 2016. There is no good cause for the owner's failure to file a response to the petition.

Did the Owner have good cause for filing late responses in both T16-0358 and T16-0455 (Kaci v Vaughn)?

In case T16-0358, the owner was informed of the tenant petition in a letter mailed on July 11, 2016. The owner response was due on August 16, 2016. The owner response in that case was filed on September 19, 2016.

While Mr. Vaughn tried to argue that he mailed the owner response long before it was due, Mr. Vaughn appears to not have a clear memory about this issue. The *Owner Response* that was filed in this case was signed on September 15, 2016. It is highly unlikely that Mr. Vaughn would have postdated his *Owner Response* form and list a date one month after he mailed the form to the RAP Office. Additionally, the letter that he testified was sent to the RAP Program with the *Owner Response* is dated September 13, 2016.

It is obvious from the record that Mr. Vaughn did not mail the response to the RAP Office before it was due. There was no good cause for the failure to timely file a response to the petition in case T16-0358.

The same is true with case T16-0455. In this case, the owner was mailed the notification letter on August 25, 2016. The owner response was due on September 29, 2016. The response was filed on October 6, 2016. While the owner may have mailed it to the RAP office earlier in September 2016, the owner did not provide any proof as to the day it was mailed to the RAP program. The *Owner Response* that was filed was signed on October 6, 2016. There was no good case for the failure to timely file a response to the petition in case T16-0455.

What is the impact on failing to file timely responses?

Generally speaking, when an *Owner Response* is not timely filed, the owner cannot provide direct testimony and is limited to cross-examination and argument. However, in this case, the testimony regarding the owner responses being late (or absent) was not on the record until after the owner had testified about the capital improvements and

parking issues raised by the petitions. Furthermore, since these were combined cases in which the *Owner Responses* were timely in some cases and untimely in others, the owner would have been given a chance to testify in those cases in which he filed timely responses.

Nonetheless, when an *Owner Response* is not timely filed, and there is no good cause for the late filing, there is no legal justification for the rent increase. In the case of *Kaci v. Vaughn*, T16-0358, the rent increase for parking is invalid. In the case of *Kaci v. Vaughn*, T16-0455, the rent increase for capital improvements is invalid. In the case of *Khalfouni v. Bais*, T16-0429 the rent increase for capital improvements is invalid. (See below for the allowable rent.)

Did Tenant Habarek's petition (T16-0423) adequately allege that the rent increase was invalid?

In case T16-0423, the tenant did not check the box on the first page of the petition which states "the increase exceeds the CPI Adjustment and is unjustified or is greater than 10%." However, on page 2 of the petition, under the words "list all rent increases that you want to challenge...." the tenant did list the rent increase he received in August of 2016, increasing his rent from $830 to $911.88. Additionally, he checked the box "are you contesting this Increase in this Petition" next to that rent increase.

All *Tenant Petitions* and *Owner Response* forms are reviewed in their entirety. It is clear from the *Tenant Petition* that tenant Habarek intended to contest the rent increase he received increasing his rent from $830 to $911.88. The tenant's petition gave the requisite notice to the owner of what rent increase he was contesting. Tenant Habarek's petition contesting the rent increase can be heard by the RAP.

Was the RAP Notice served on the tenants as required?

The Rent Adjustment Ordinance requires an owner to serve the *RAP Notice* at the start of a tenancy[23] and together with any notice of rent increase.[24] All tenants acknowledged that they received the RAP Notice when they moved in, and together with the capital improvement rent increases served in July of 2016.

However, as to the owner's email informing the tenants that they were required to pay for parking, this document was not served with a *RAP Notice*. (Nor was it served legally, as email notice is not permitted.) The Ordinance specifies "As part of any notice to increase rent *or change any terms of tenancy*, an owner must include: (a) Notice of the existence of this chapter."[25] Any change in terms of tenancy, including a change to a long standing practice of parking on the premises, must be served with a *RAP Notice*.

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[23] O.M.C. § 8.22.060(A)
[24] O.M.C. § 8.22.070(H)(1)(A)
[25] O.M.C. § 8.22.070(H)(1)(A)

The owner's belief that the emailed notice was not a rent increase, is not controlling. As to the case *Kaci v. Vaughn*, T16-0358, this is a second reason why the rent increase for parking is invalid. As to *Habarek v. Vaughn*, T16-0360 and *Khalfouni v. Bais*, T16-0391, the rent increases as to parking are invalid as they were not properly served.

Can the owner validly charge these tenants for parking?

Even had the owner properly served the rent increases for parking, the evidence in this case was overwhelming that each of the tenants was permitted to rent a parking space in the building, included in the rent they were paying, beginning when they moved into the building.

While each of their leases had language which stated that "Parking in garage areas by tenants renting spaces only" this language does not specify that there is any charge for parking. Mr. Vaughn provided no evidence to suggest that these tenants were parking without permission. In fact, the evidence was to the contrary. Mr. Habarek presented evidence of *Tenant Vehicle* form that he filled out for the prior owner, listing the make and model of his car.[26] Additionally, his *Tenant Estoppel Certificate* stated that the parking space was included in the rent.[27] While the *Estoppel Certificate* is not binding, it is uncontroverted evidence that the tenant had been parking his car in the lot, without charge, for a long time. All three tenants provided testimony that they had been parking in the lot, with permission, since they moved into their units.

The Rent Adjustment Ordinance provides that parking is "housing service." O.M.C. § 8.22.020. The owner cannot charge for a housing service that previously had been provided free of charge. The owner cannot charge any of these tenants for their right to park in the parking lot.

Did Mr. Habarek adequately allege a decrease in housing services?

In Mr. Habarek's petition in case T16-0423, he had checked the "yes" box to the question, "Have you lost services originally provided by the owner or have the conditions changed." However, he had not followed the directions on the petition in which he was asked to attach a separate sheet of paper listing his reduced services and problems.

On August 31, 2016, Mr. Habarek was sent a deficiency notice regarding his failure to fill out the petition correctly. The letter stated: "**you must provide a list of the alleged problems in writing.**" (Emphasis in the original.) In response, Mr. Habarek sent the RAP three photographs of potential problems in his unit. This is insufficient.

Photographs do not amount to a list. In order to make a valid claim for decreased services, a tenant must provide a list of the problems claimed. Photographs are

[26] Exhibit 6, page 3
[27] Exhibit 6, page 1

ambiguous and do not give adequate notice of the claimed problems. Mr. Habarek's claims of decreased services are therefore denied.

Did the owner properly serve and file the *Enhanced Notice to Tenants* and accompanying documents?

The Rent Adjustment Ordinance requires that an owner who gives a rent increase on the basis of capital improvements must provide an "*Enhanced Notice*" with the rent increase and then file a copy of the *Enhanced Notice* with the Rent Adjustment Program within 10 days of the date the rent increase notice is served. O.M.C. § 8.22.070 (H)(1)(d)(ii). Official Notice is taken that an *Enhanced Notice* for the tenants involved in this case was filed with the RAP office on August 5, 2016 along with the accompanying rent increase documents.

The *Enhanced Notices* were timely filed.

Did the owner properly serve the rent increase notices?

Civil Code § 827 requires an owner to provide at least 30 days' written notice of a rent increase of less than ten per cent. The notices are required to be hand delivered or served by mail. However, when a rent increase notice is served by regular mail, an extra 5 calendar days is added to the notice period; therefore, the rent increase cannot go into effect until 35 days after the notice is mailed. Code of Civil Procedure § 1013. But when a rent increase notice is served by express mail, the time period is extended by two court days. Code of Civil Procedure § 1013(c).

In this case the owner served the rent increase documents by express mail on July 29, 2016. Thirty days after July 29, 2016 was August 28, 2016, a Monday. Two court days following August 28, 2016, was August 30, 2016. Since the rent increase notices were not set to go into effect until September 1, 2016, the tenants were given adequate notice of the rent increase.

As to tenant Habarek, is the owner entitled to a rent increase based on capital improvements?

The Ordinance: A rent increase in excess of the C.P.I. Rent Adjustment may be justified by capital improvement costs.[28] Capital improvement costs are those improvements which materially add to the value of the property and appreciably prolong its useful life.[29] The improvements must primarily benefit the tenants rather than the owner. Normal routine maintenance and repair is not a capital improvement cost, but a housing service cost.[30]

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[28] O.M.C. Section 8.22.070(C)
[29] Regulations Appendix, §§ 10.2 through 10.2.3
[30] Regulations Appendix, §10.2.2(4)(d)

An owner has discretion to make such improvements, and does not need the consent or approval of tenants. Additionally, the improvements must have been completed and paid for within 24 months prior to the date of the proposed rent increase.[31] An owner has the burden of proving every element of his/her case by a preponderance of the evidence.

Here, the owner sought to pass through costs associated with replacing the electrical panels and the exterior building paint. The evidence established that the owner upgraded the electrical system in each unit, installing a 60 AMP subpanel in each unit.

The tenants' contention that this work was not finished prior to the date they received the notice for the rent increase does not require a different result. First, the requirement is that the work must be finished prior to the effective date of the rent increase, not the date the notice was received. As to the subpanels, the evidence established that the work was completed by August of 2016. The rent increase was effective September 1, 2016.

Additionally, the owner established that most of the work on the subpanels was completed in May of 2016, before the rent increase notices were sent. The only work done in August of 2016, after the notices were sent, was the painting done in each unit to "finish" the walls that were disturbed by the upgrade. This work was done by Vaughn's in-house work crew, and was not charged as part of the electrical improvement. Therefore, the tenants' objections regarding the timing of the electrical work are not valid.

However, the invoice produced by the owner does not support the amount of the requested pass-through as to the electrical work. The invoice specifies that the electrical work cost for replacing the 60 AMP sub-panels was $42,350. The additional costs listed for "permits, disposables, GL insurance and fee" are not separately stated and cannot be estimated by the contractor, without evidence. The owner is entitled to a capital improvement pass-through of $42,350 for the electrical work.

The same is true for the exterior painting. The invoice provided shows costs associated with the painting as $23,600 ($19,200 for exterior paint and $4,200 for materials.) No additional costs are allowed, as it is impossible to tell from the documents provided what additional costs are associated with the paint job.

The tenants' concerns about the timing of the completion of the paint job does not alter this result. The work was finished prior to September 1, 2016, the date that the rent increase went into effect. The owner was convincing that in October of 2016, the contractor returned to paint over a minor mistake that had been made earlier in the job. The paint job was completed and paid for prior to September 1, 2016.

The attached *Capital Improvement Worksheet* attached to the Hearing Decision as Exhibit "A" specifies that as to Mr. Habarek, the owner is entitled to a rent increase for capital improvements of $76.71, effective September 1, 2016.

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[31] Regulations Appendix, § 10.2.1

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

Tenant Kaci: Tenant Kaci's rent remains $917.00 a month. Neither the rent increase for parking nor the rent increase for capital improvements is valid. The tenant has been paying rent of $998.88 a month since September 1, 2016, an overpayment of $81.88 a month. Through the end of December of 2016, the tenant has overpaid $327.52.

Restitution of this amount is paid over a 6 month period. Therefore, the tenant's rent is reduced by $54.59 a month beginning in January of 2017. From January 2017 through June of 2017, the tenant's rent is $862.41 a month. His rent reverts to $917 in July of 2017.

Nothing in this Hearing Decision prevents the owner from increasing the rent according to the laws of the State of California and the Rent Adjustment Program. If the owner increases the rent before the restitution is repaid, the monthly restitution amount should be decreased from the new rent.

Tenant Khalfouni: Tenant Khalfouni's rent remains $962 a month. Neither the rent increase for parking nor the rent increase for capital improvements is valid. The tenant has been paying rent of $1,043.88 a month since September 1, 2016, an overpayment of $81.88 a month. Through the end of December of 2016, the tenant has overpaid $327.52.

Restitution of this amount is paid over a 6 month period. Therefore, the tenant's rent is reduced by $54.59 a month beginning in January of 2017. From January 2017 through June of 2017, the tenant's rent is $907.41 a month. His rent reverts to $962 in July of 2017.

Nothing in this Hearing Decision prevents the owner from increasing the rent according to the laws of the State of California and the Rent Adjustment Program. If the owner increases the rent before the restitution is repaid, the monthly restitution amount should be decreased from the new rent.

Tenant Habarek: Tenant Habarek's rent increase for parking is invalid. The owner is entitled to a rent increase for capital improvements in the amount of $76.71. The tenant's rent, effective September 1, 2016, is $906.71. The tenant has been paying rent of $830 a month, an underpayment of $76.71 a month. Through the end of December of 2016, the tenant has underpaid $306.84.

Restitution of this amount is paid over a 6 month period. Therefore, the tenant's rent is increased $51.14 a month, beginning in January of 2017. From January of 2017 through June of 2017, the tenant's rent is $957.85. His rent reverts to $906.71 in July of 2017.

On September 1, 2021, the tenant's rent will be reduced by the capital improvement pass-through of $76.71.

ORDER

1. Petitions T16-0358 (Kaci v. Vaughn Management), T16-0360 (Habarek v. Vaughn) and T16-0391 (Khalfouni v. Bais) are granted. The owner cannot charge these tenants for parking.

2. Petitions T16-0429 (Khalfouni v. Bais) and T16-0455 (Kaci v. Vaughn Management) are granted. The owner did not timely file a response to the tenant petitions.

3. Petition T16-0423 is partly granted. The owner is entitled to a capital improvement rent increase as to tenant Habarek in the amount of $76.71 a month, effective September 1, 2016.

4. Tenant Kaci: Tenant Kaci's base rent is $917.00 a month. The tenant has overpaid rent in the amount of $327.52.

5. From January 2017 through June of 2017, tenant Kaci's rent is $862.41 a month. His rent reverts to $917 in July of 2017.

6. Nothing in this Hearing Decision prevents the owner from increasing tenant Kaci's rent according to the laws of the State of California and the Rent Adjustment Program. If the owner increases the rent before the restitution is repaid, the monthly restitution amount should be decreased from the new rent.

7. Tenant Khalfouni: Tenant Khalfouni's base rent is $962 a month. The tenant has overpaid rent in the amount of $327.52.

8. From January 2017 through June of 2017, tenant Khalfouni's rent is $907.41 a month. His rent reverts to $962 in July of 2017.

9. Nothing in this Hearing Decision prevents the owner from increasing tenant Khalfouni's rent according to the laws of the State of California and the Rent Adjustment Program. If the owner increases the rent before the restitution is repaid, the monthly restitution amount should be decreased from the new rent.

10. Tenant Habarek: The tenant's rent, effective September 1, 2016, is $906.71. The tenant has underpaid $306.84.

11. From January of 2017 through June of 2017, tenant Habarek's rent is $957.85. His rent reverts to $906.71 in July of 2017.

12. On September 1, 2021, tenant Habarek's rent will be reduced by the capital improvement pass-through of $76.71.

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

Dated: December 6, 2016

Barbara M. Cohen
Hearing Officer
Rent Adjustment Program

000125

T16-0423 RC | BC

CITY OF OAKLAND RENT ADJUSTMENT PROGRAM Mail To: P. O. Box 70243 Oakland, California 94612-0243 (510) 238-3721	For date stamp. RECEIVED CITY OF OAKLAND RENT ARBITRATION PROGRAM 2016 AUG 19 PM 2:38

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	Rental Address (with zip code)	Telephone
MOURAD HABAREK	550 Fairmount Ave Apt D Oakland, CA 94611	(510) 456-6476
Your Representative's Name	Mailing Address (with zip code)	Telephone
Property Owner(s) name(s)	Mailing Address (with zip code)	Telephone
BRAD VAUGHN	1290 Howard Ave. Suite 309 Burlingame, CA 94010	(650) 347-3552

Number of units on the property: 10.

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:**

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

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

Date you moved into the Unit: 08/01/2006 Initial Rent: $ 830.00 /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: 08-01-2016. If never provided, enter "Never."

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

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

Date Notice Served (mo/day/year)	Date Increase Effective (mo/day/year)	Amount Rent Increased From	To	Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
08-01-2016	09-01-2016	$ 830.00	$ 911.88	☑ Yes ☐ No	☑ Yes ☐ No
		$	$	☐ Yes ☐ No	☐ Yes ☐ No
		$	$	☐ Yes ☐ No	☐ Yes ☐ No
		$	$	☐ Yes ☐ No	☐ Yes ☐ No
		$	$	☐ Yes ☐ No	☐ Yes ☐ No
		$	$	☐ Yes ☐ No	☐ Yes ☐ 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: T16-0360

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 08/07/2016 **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 08/07/2016 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): _____

550 Fairmount Apts.; Agent for Owner, Melissa Bais, Property Manager

377 Santa Clara Ave. Oakland, CA 94610 | 510-206-2474 | 550Fairmount@gmail.com

July 25, 2016

Mourad Habarek
Mohard Ferhati
550 Fairmount Avenue #D
Oakland, CA 94611

Dear Mourad and Mohard:

This letter is to inform you of a rental increase. We have made capital improvements which I hope you are enjoying. In the last few months we have replaced electrical panels ($54,245.45), painted the exterior of the building ($29,972.69) and more. The capital improvements will be spread amongst tenants over 72 months. That increase is $81.88 per unit.

Your new rental rate effective September 1st, 2016 will be $911.88 per month.

Please keep the attached copy of a Notice to Tenants of the Residential Rent Adjustment Program from the City of Oakland for your records.

Sincerely,

Melissa Bais

550 Fairmount Apts.; Agent for Owner, Melissa Bais, Property Manager

NOTICE TO TENANTS FOR CAPITAL IMPROVEMENTS*

This enhanced notice must be served with a notice of rent increase and RAP Notice and filed with the Rent Adjustment Program within 10 days of service of these notices on the tenant.

Date: 7/25/2016

To Tenant(s): Mourad Habarek, Mohard Ferhati

Property Address: 550Fairmount Avenue Unit Number D

Current Rent: $ $830.00 # of Units 10

Date of Rent Increase: 9/1/2016

Step 1: Enter the building-wide capital improvements (See instructions for examples)

Building-wide Capital Improvements CATEGORY (Attach separate sheet if needed)	TOTAL COSTS	DATE COMPLETED	DATE PAID FOR
Replace Electrical Panels	$54,245.45	07/12/16	07/15/16
Exterior Building Paint	$29,972.69	07/12/16	07/15/16
SUBTOTAL:	$84,218.14		

Step 2: Multiply Subtotal in Step 1 by 70% (Increase Limited to 70%)

$ 84,218.14 (Subtotal) x 70% = $58,952.70 (Step 2)

Step 3: Divide results of Step 2 by the number of units affected

$ 58,952.70 (Step 2) ÷ 10 (# of units) = $ $5,895.27 (Step 3)

Step 4: Enter capital improvements for specific unit

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Unit-Specific Capital Improvement CATEGORY (Attach separate sheet if needed)	TOTAL COSTS	DATE COMPLETED	DATE PAID FOR
SUBTOTAL:			

Step 5: Multiply Subtotal in Step 4 by 70% (Increase Limited to 70%)

$_____ x 70% = _____
Subtotal Step 5

Step 6: Add:

6a: TOTAL for building wide capital improvement for this unit (Step 3) $ 5,895.27

6b: TOTAL for unit specific capital improvement (Step 5) $ 0.00

6c: Total allowable cost for unit (pre-amortization) $ 5,895.27 (6c)

Step 7: INSTRUCTIONS TO CALCULATE THE AMORTIZATION PERIOD

To calculate the amortization period (length of time for the pass-through), first calculate 10% of the current monthly rent

Step 7a: (10% limit) Current Rent $830.00 x 10% = $ 83.00 (7a)
Step 7b: (# of months)

Divide the total allowable pass-through (6c) by 7a $ 5,895.27 (6c)÷ $ 83.00 (7a)=

71.03 (7b)

Step 7c: (60 months?) If the number determined in 7b is less than or equal to 60, the amortization period is 60 months or 5 years.

Step 7d: (Length of time?) If the number determined in 7b is greater than 60, divide 7b by 12.

71.03 (7b) ÷ 12= 5.92 (7d)

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Step 7e:(# of years) If 7d is not a whole number, round up to the next highest number. 6(7e)

7e= the # of years you are allowed to pass through the rent increase.

Step 7f: (Allowable # of months) The allowable # of months is 7e x 12 72. The rent increase ends on the last month.

Step 8: INSTRUCTIONS TO CALCULATE THE RENT INCREASE

Step 8a: If the number determined in 7b is less than or equal to 60, divide the total pass-through per unit (6c) by 60.

$ _____ ÷ _____ = $_____.
(6c) ALLOWABLE RENT INCREASE

Step 8b: If the number determined in 7b is greater than 60, divide the total pass-through per unit (6c) by the number of allowable months (7f)

$ 5,895.27 ÷ 72 = $ 81.88
6c 7f ALLOWABLE RENT INCREASE

Step 9: PROVIDE NOTICE OF THE NEW RENT AND AMORTIZATION PERIOD

Rent Increase Amount: $ 81.88

Rent Increase% 9.86 (cannot exceed 10%) (To determine the % divide the rent increase amount by the current rent, then multiply the remaining number by 100)

$ 81.88 ÷ **$ 830.00** x 100 = 9.86
Rent increase Current Rent % increase

New Rent: $ 911.88 (old rent plus rent increase)

Amortization Period 6 (In years, minimum of 5)

Date Rent Increase Begins: 9/1/16 Date Rent Increase Ends: 8/31/2022

*An Owner may still file an *Owner Petition* for capital improvement increase instead of the enhanced notice requirements.

Use of this form is optional; an owner may provide his or her own form that meets the requirements of the RAP Ordinance and Regulations.

There is an excel spreadsheet available on the RAP website which will calculate the amortization period for you.

http://www2.oaklandnet.com/Government/o/hcd/s/LandlordResources/index.htm)

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CITY OF OAKLAND RENT ADJUSTMENT PROGRAM P.O. Box 70243 250 Frank H. Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721	For filing stamp. RECEIVED AUG 31 2016 OAKLAND RENT ADJUSTMENT

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 T16-0423

OWNER RESPONSE

Please print legibly.

Your Name	Complete Address (with zip code)	Phone: 650 347-3552 Email: BVaughn@gmail.com
Brad Vaughn	1200 Howard Ave. Suite 209	
Your Representative's Name (if any)	Complete Address (with zip code)	Phone: _____ Fax: _____ Email: _____
	Burlingame CA 94010	
Tenant(s) name(s)	Complete Address (with zip code)	

Have you paid for your Oakland Business License? Yes ☑ No ☐ Number_____
(Provide proof of payment.)

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

There are 16 residential units in the subject building. I acquired the building on 3/24/2016

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

I. RENTAL HISTORY

The tenant moved into the rental unit on _____ See Response

The tenant's initial rent including all services provided was $ See Response / 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_____

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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? 7/30/2016 . 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 From	To	Did you provide NOTICE TO TENANTS with the notice of rent increase?
		$	$	☐ Yes ☐ No
		$	$	☐ Yes ☐ No
		$	$	☐ Yes ☐ No
See Notice		$	$	☐ Yes ☐ No
		$	$	☐ Yes ☐ No
		$	$	☐ Yes ☐ 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.

Date of Increase	Banking (deferred annual increases_)	Increased Housing Service Costs	Capital Improve-ments	Uninsured Repair Costs	Fair Return	Debt Service (if purchased before 4/1/14)
_____	☐	☐	☐	☐	☐	☐
_____	☐	☐	☐	☐	☐	☐
_____	☐	☐	☐	☐	☐	☐
_____	☐	☐	☐	☐	☐	☐
_____	☐	☐	☐	☐	☐	☐
_____	☐	☐	☐	☐	☐	☐
_____	☐	☐	☐	☐	☐	☐

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.

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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.

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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

8/26/2016
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

8/26/2016
Date

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Vaughn Management LLC • 1290 Howard Ave. • Suite 309 • Burlingame, CA 94010 T: 650-347-3552 www.vaughnmanagement.com

8/26/2016

Case T16-0423

To whom it May Concern:

Attached is the proper documentation that the tenant believes wasn't filed including a copy of the certified receipt from July 29th. This petition should be dismissed immediately as the tenant has no claim that the enhanced notice was not sent and the petition was not filed with RAP.

Regards,

Brad Vaughn
Managing Member 550 Fairmount LLC