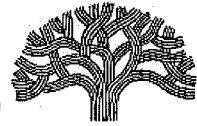


CITY OF OAKLAND



250 FRANK OGAWA PLAZA, SUITE 5313, OAKLAND, CALIFORNIA

Department of Housing and Community Development  
Rent Adjustment Program

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

**THE CITY OF OAKLAND'S HOUSING, RESIDENTIAL RENT AND  
RELOCATION BOARD WILL HOLD A SPECIAL CLOSED SESSION  
MEETING ON FEBRUARY 22, 2018, beginning at 6:30 P.M. IN CITY  
HALL HEARING ROOM 1**

**The Board Will Convene in Open Session Prior to Adjourning to Closed Section and Will  
Report Out Any Final Decisions in Hearing Room 1 During the Board's Open Session  
Meeting Agenda**

**Conference with its City Attorney pursuant to California Government Code Section  
54956.9 (a) (pending litigation) regarding:**

1. *Bader v. City of Oakland*  
Alameda County Superior Court No. RG16809738
2. *Golden State Ventures, LLC v. City of Oakland Rent Board*  
California Court of Appeal Case No. A151421

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND  
2018 FEB 14 PM 3:55

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

**February 22, 2018  
7:00 P.M.  
CITY HALL, HEARING ROOM #1  
ONE FRANK H. OGAWA PLAZA  
OAKLAND, CA**

**AGENDA**

1. CALL TO ORDER
2. ROLL CALL
3. CONSENT ITEMS
  - i. Approval of minutes:
    - a. January 25, 2018
    - b. February 8, 2018
4. OPEN FORUM
5. NEW BUSINESS
  - i. Appeal Hearings in cases:
    - a. L16-0089;  
L16-0090; Alexander v. Tenant(s)  
L16-0091;
    - b. T15-0360; Harrison v. Solares
  - ii. Election of New Board Officers
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**  
**HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD**  
**Meeting**

**January 25, 2018**

**7:00 p.m.**

**City Hall, Hearing Room #1**  
**One Frank H. Ogawa Plaza, Oakland, CA**

**MINUTES**

**1. CALL TO ORDER**

The HRRRB was called to order at 7:08 p.m. by Board Chair Jessie Warner

**2. ROLL CALL**

MEMBER	STATUS	PRESENT	ABSENT	EXCUSED
U. Fernandez	Tenant Alt.	X		
D. Mesaros	Tenant			X
T. Sandoval	Tenant			X
R. Stone	Homeowner			X
M. Cook	Homeowner			X
J. Warner	Homeowner	X		
K. Blackburn	Hosmeowner Alt.		X	
E Lai	Homeowner Alt.	X		
K. Friedman	Landlord	X		
B. Scott	Landlord Alt.			X
T. Mason	Tenant Alt.		X	
D. Madison	Landlord Alt.		X	

Staff Present

Kent Qian                      Deputy City Attorney  
Barbara Kong-Brown      Senior Hearing Officer

**3. CONSENT ITEMS**

a and b. Approval of Minutes for November 9, 2017, and January 11, 2018

J. Warner stated that she was excused from the November 9, 2017, Board meeting and K. Friedman asked that the Board minutes reflect members who are absent or excused. Bate stamp page 4 is corrected to state "rent" instead of "rend" and the word "deceased" is corrected to state "decrease", in the second paragraph under Procedural Background. Under Bate stamp page 5 ii. 5. K. Friedman added

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the phrase "if there are two tenant representatives" after the phrase "to require 2 landlord representatives at each board meeting.

The minutes of January 11, 2018, show the number 6, instead of 7, for adjournment E. Lai moved to approve the minutes with these corrections. K. Friedman seconded. The Board voted as follows:

Aye: U. Fernandez, E.Lai, J. Warner K. Friedman  
Nay: 0  
Abstain: None

The motion passed by consensus.

#### 4. OPEN FORUM

a. James Vann

#### 5. NEW BUSINESS

i. Hearing in appeal cases:

b. T16-0006, Raney v. Tesfa et al.<sup>1</sup>

Appearances: Lamon Raney Tenant Appellant  
No appearance by owner

#### Procedural Background

The tenant filed a petition which claimed various decreased housing services. His monthly rent is \$550.00. The Hearing Decision granted \$264.00 for decreased services in the bathroom and a home in the ceiling.

#### Grounds for Appeal

The tenant appealed the Hearing Decision on the following grounds:

- "My life is in great danger due to severe unhealthy life threatening illegal tobacco (sic) smoking/alcohol/drug activities and usage inside the Silver Dollar Hotel residential location at the address 2329/2327 San Pablo Avenue, Oakland, California 94612."

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<sup>1</sup> Barbara Kong-Brown, Senior Hearing Officer, recused herself from participating in this case as she was the hearing officer who presided over the tenant's hearing

Appeal Hearing and Decision

After questions to the tenant K. Friedman moved to affirm the Hearing Decision based on substantial evidence. E. Lai seconded.

The Board voted as follows;

Aye: U. Fernandez, E.Lai, J. Warner K. Friedman  
Nay: 0  
Abstain: None

The motion passed by consensus.

c. Hearing in appeal cases: T16-0365, Johnson v. Thornton

Appearances: Sharon Johnson Tenant Appellant  
Candi Thornton Owner Appellee

Procedural Background

The tenant filed a petition which contested a rent increase and claimed decreased housing services regarding the heater, a smoke detector, and lack of access to a working toilet for two weeks. The tenant also claimed harassment and breach of the right to covenant of quiet enjoyment. The owner claimed an exemption from the Rent Adjustment Ordinance based on an accommodation in a hospital, convent, monastery, extended care facility, convalescent home, non-profit home for aged, or dormitory owned and operated by an education institution.

The Hearing Decision denied the exemption, and the tenant's decreased housing service claims, and stated that the Rent Adjustment Program does not have jurisdiction over the claims of harassment and covenant of quiet enjoyment.

The tenant vacated the subject unit on July 22, 2016.

Grounds for Appeal

The tenant appealed the Hearing Decision on the following grounds:

- The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board;
- The decision is inconsistent with decisions issued by other hearing officers;
- The decision is not supported by substantial evidence.

The tenant also contends that the owner did not pay her RAP program fees and did not submit proof of payment of her business license fees.

Appeal Hearing and Decision

The tenant contends that she was retaliated against for asserting her rights as a tenant, and a T.R.O. was entered against her, and the owner's brother threw her things out. The police escorted her out of the premises on July 22, 2016. She also stated that there is no heat from the first floor. The owner gave her a portable heater which is illegal.

The owner contends that she operates a facility for clients with mental illness. The tenant did not have a place to live and was living in her car, and she gave her a space in the owner's office. The tenant's behavior was unacceptable. She attacked the owner, yelled and screamed in front of other people so she filed papers to remove the tenant from the facility. She did not remove or touch the tenant's items. The tenant's male friend moved her items with his truck.

Regarding the decreased housing service claims the owner stated that she has a contract with ACME Fire Extinguishers and her bills for theater is \$5000, her staff cleans 24/7 hours and everything was fine.

E. Lai questioned the tenant about photos of the bathroom. The tenant was asked if she felt cold in the month of July. K. Friedman asked the tenant about the thermostat for the heater.

The Board discussed the issue concerning payment of the required business license fees and payment of the RAP fees. E. Lai questioned the statement in the Hearing Decision that "heat is not needed in July" and that the other bathrooms were available to the tenant. He distinguished the bathrooms available to clients versus a renter. K. Friedman stated that lack of heat is a problem.

J. Warner moved to remand the Hearing Decision for a de-novo hearing to re-consider the issues of whether the owner's testimony was properly heard, and if required fees were paid. If the Hearing Officer finds the required fees were not paid, the owner's testimony should not be heard and she may cross-examine the tenant. The hearing should include the issues of whether there was adequate heat at any time and whether loss of access to the toilet constituted decreased housing services. E. Lai seconded.

There was discussion about amending the motion to include payment of the RAP fees but there was no second on the amendment.

The Board voted as follows;

Aye: U. Fernandez, E. Lai, K. Friedman, J. Warner  
Nay: None  
Abstain: None

The motion was approved by consensus.

d. Hearing in appeal cases: T16-9377, Buggs v. Bay Property Group

Appearances: Paul Katz                      Owner Appellant Representative  
                  Michael Buggs                    Tenant Appellee

Procedural Background

The tenant filed a petition which contested a rent increase on the grounds that he did not receive a concurrent notice of the existence of the Rent Adjustment Program with the rent increase notice.

The owner claimed that the subject property is exempt from the Rent Ordinance on the basis of new construction. The Hearing Decision granted the tenant petition.

Grounds for Appeal

The owner appealed the Hearing Decision on the following grounds:

- The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board.

Appeal Hearing and Decision

The owner representative contends that there was a single family residence on the property that was demolished. A totally new building was built which consists of 10 residential units, that it was built after January 1, 1983, and qualifies for exemption under new construction.

The owner representative further contended that Section 8.22.030 (A)(5) states that the exemption applies to property that constitutes new construction or was created from space that was formerly non-residential. The Hearing Officer made an error because she interpreted this section to mean "and"; and that the construction had to be newly constructed and be constructed from space that was formerly non-residential.

After questions to the parties and a discussion of the language and intent of this section of the Ordinance K. Friedman moved to reverse the Hearing Decision and determine that the subject unit is exempt from the Rent Adjustment Ordinance on the basis of new construction. U. Fernandez seconded.

The Board voted as follows;

Aye:            U. Fernandez, E.Lai, J. Warner K. Friedman  
Nay:            0  
Abstain:       None

The motion passed by consensus.



ii. Review of Proposed Regulations

J. Warner moved to accept the Report, Resolution, and Regulation Text for Owner Move-In Notice to include Relocation and a Copy of the Ordinance as passed by the City Council. K. Friedman seconded.

The Board voted as follows;

Aye: J. Warner K. Friedman, U. Fernandez, E. Lai  
Nay: 0  
Abstain: None

The motion passed by consensus

6. SCHEDULING & REPORTS

The Board discussed board attendance and voting for a new Board chair, which will be scheduled for the next full Board meeting.

7. ADJOURNMENT

J. Warner moved to adjourn the meeting. The meeting was adjourned by consensus at 9:15 p.m.

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

**PANEL MEETING  
February 8, 2018  
7:00 p.m.  
City Hall, Hearing Room #1  
One Frank H. Ogawa Plaza, Oakland, CA**

**MINUTES**

**1. CALL TO ORDER**

The HRRRB Panel was called to order at 7:02 p.m. by Panel Chair, Mary Jo Cook.

**2. ROLL CALL**

MEMBER	STATUS	PRESENT	ABSENT	EXCUSED
Ubaldo Fernandez	Tenant	X		
Mary Jo Cook	Homeowner	X		
Benjamin Scott	Owner	X		

Staff Present

Luz Buitrago	Deputy City Attorney, Office of the City Attorney
Linda M. Moroz	Hearing Officer, Rent Adjustment Program

**3. OPEN FORUM**

None.

**4. NEW BUSINESS**

- i. Appeal Hearing in cases:
  - a. T16-0420; Villaluzo v. The Islanders Associates, LLC
  - b. T16-0467; Schacher v. McClain  
T16-0468; McKinzie v. McClain  
T16-0469; Kleinjan v. McClain  
T16-0470; Coleman v. McClain  
T16-0471; Taylor v. McClain

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- c. T16-0197, T16-0263; Ramirez v. Padilla/SPJC, LLC  
T16-0198, T16-0265; Citalli Vargas v. SPJC, LLC  
T16-0199, T16-0264; Gonzalez v. Padilla/SPJC, LLC  
T16-0200, T16-0279; Delia Vargas v. SPJC, LLC

**a. T16-0420; Villaluzo v. The Islanders Associates, LLC**

Appearances:

Cynthia Lam            Owner Appellant  
Jessica Barsotti       Representative for Tenant Appellee

Landlord appealed the Hearing Officer's Corrected Hearing Decision on two issues: (1) the owner was not given the opportunity to cure defects found by the hearing officer as decreased housing services; and (2) the hearing decision is not supported by substantial evidence in granting the decreased housing services.

Board Discussion

After questions to the appellant and Board discussion, U. Fernandez moved to affirm the Hearing Officer's Hearing Decision based on substantial evidence as to the notice and the decreased housing services. B. Scott seconded.

The Board panel voted as follows:

Aye: U. Fernandez, M.J. Cook, B. Scott

Nay: 0

Abstain: 0

The Motion was approved by consensus.

- b. T16-0467, Schacher v. McClain**
- T16-0468, McKinzie v. McClain**
- T16-0469, Kleinjan v. McClain**
- T16-0470, Coleman v. McClain**
- T16-0471, Taylor v. McClain**

Appearances:

James Vann            Representative for Tenant Appellants  
Ann McClain           Owner Appellee

Tenants appealed the Hearing Officer's Hearing Decision on two issues: (1) pigeon control is not a capital improvement but a habitability issue; and (2) whether capital improvement can be approved for hiring of a color consultant.

Board Discussion

After questions to the appellant and Board discussion, M.J. Cook moved to affirm the Hearing Officer's Hearing Decision as to both grounds; pigeon control and color consultation are valid capital improvements. B. Scott seconded.

The Board Appeal Panel voted as follows:

Aye: M.J. Cook, B. Scott  
Nay: U. Fernandez  
Abstain: 0

The Motion carried.

- c. T16-0197, T16-0263; Ramirez v. Padilla/SPJC, LLC
- T16-0198, T16-0265; Citalli Vargas v. SPJC, LLC
- T16-0199, T16-0264; Gonzalez v. Padilla/SPJC, LLC
- T16-0200, T16-0264; Delia Vargas v. SPJC, LLC

Appearances:

Jackie Zaneri, Centro Legal de la Raza      Representative for Tenant Appellants

Alana Grice Conner      Representative for Owner Appellee

Tenants appealed the Hearing Officer's Hearing Decision on two issues: (1) the errors in calculation of rent increases; and (2) the mold issue is not supported by substantial evidence.

Board Discussion

After questions to the parties and Board discussion, U. Fernandez moved to remand the case back to the Hearing Officer to (1) correct the calculation errors in the rent increases, and (2) to weigh evidence that the current Hearing Decision has not acknowledged relating to the mold issue, such as inspector's findings as to water intrusion, wet walls and photos. M.J. Cook seconded.

The Board Appeal Panel voted as follows:

Aye: M.J. Cook, U. Fernandez  
Nay: B. Scott  
Abstain: 0

The Motion carried.

**5. ADJOURNMENT**

The meeting was adjourned by consensus at 8:37 p.m.

2017 APR -5 PM 3:44

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

<b>Appellant's Name</b> RYAN ALEXANDER	<b>Landlord</b> <input checked="" type="checkbox"/> <b>Tenant</b> <input type="checkbox"/>
---	--

<b>Property Address (Include Unit Number)</b> 681/683 32ND ST.
---

<b>Appellant's Mailing Address (For receipt of notices)</b> PO BOX 640872 SAN FRANCISCO, CA 94164	<b>Case Number</b> L16-0089, L16-0090, L16-0091
	<b>Date of Decision appealed</b> 03/21/2017

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

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

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

8. **You must serve a copy of your appeal on the opposing party(ies) or your appeal may be dismissed.** I declare under penalty of perjury under the laws of the State of California that on APRIL 6, 2017, 200   , I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<b><u>Name</u></b>	KATHERINE JUDSON	TONETTE WOODSON	BLAKE HIHARA & JILL TOKUTOMI
<b><u>Address</u></b>	683 32ND ST. UNIT B	683 32ND ST. UNIT D	683 32ND ST. UNIT C
<b><u>City, State Zip</u></b>	OAKLAND, CA 94609	OAKLAND, CA 94609	OAKLAND, CA 94609
<b><u>Name</u></b>			
<b><u>Address</u></b>			
<b><u>City, State Zip</u></b>			

 <b>SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE</b>	04/06/2017 <b>DATE</b>
---	---------------------------

**IMPORTANT INFORMATION:**

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

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

Explanation of Case for Appeal

I am appealing the decision in Cases: L16-0089, L16-0090, L16-0091 based on a denial of sufficient opportunity to present my case and contradictory communications made by a hearing officer in a related case. The timeline of the events are as follows:

**July 20, 2016** - Landlord submits to Tenants and the RAP office the requisite rent increase notice based on capital improvements;

**September 01, 2016** - Tenants contest Landlord rent increase based on capital improvements and file a petition of decreased housing services;

**September 22, 2016** - Rent Adjustment Program ("RAP") notification of September 15, 2017 is received by Landlord regarding Tenants contesting rent increase, decreased housing services, and a setting a December 12, 2016 hearing date (Cases: T16-0490, T16-0491, T160492);

**November 22, 2016** - Landlord is advised to rescind and re-file the petitions for rent increase based on capital improvements by a RAP case manager as a result of having not filed a response within 35 days of September 15th; The RAP case manager said no evidence would be allowed to be presented at the December 12, 2016 hearing and therefore Landlord should rescind the rent increase notices/petitions and re-file them. Landlord is subsequently told by another RAP case manager, Margaret Sullivan, that the case manager should not have communicated this and that rescinding the petition was incorrect. Nonetheless, the petition was rescinded and re-filed;

**November 22, 2016** - Landlord rescinds the rent increase petition and re-files;

**December 5, 2016** - RAP notification of November 28, 2016 is received by Landlord and Tenants regarding the new petition filed for increasing rents and detailing a March 21, 2017 hearing date (Cases: L16-0089, L16-0090, L16-0091);

**December 12, 2016** - Tenants and Landlord hearing occurs for cases T16-0490, T16-0491 and T160492. Hearing Officer ("HO"), Linda Moroz, reviews the rent increase notices, RAP notices, capital improvement expenditures, and asks questions of both Tenants and Landlord accordingly. In addition, the HO reviews the tenants issues with decreased housing services. Both Tenant and Landlord question the HO whether or not we will have to return in March as outlined in the November 28, 2016 notification from the RAP office. **The HO responded that neither of the parties would have to return because the entire case had been presented and heard by her during that hearing; That was understood by myself, Landlord, to mean that I did not have to attend the March 21, 2017 hearing for cases L16-0089, L16-0090, L16-0091.** I presume the Tenants also understood the HO's response to mean this as none of the three Tenants appeared at the March 21, 2017 hearing date and ALL three appeared for the December 12, 2016 date;

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**March 27, 2017** - Hearing Decision for December 12, 2016 is received in the mail for cases T16-0490, T16-0491, T160492. Tenants' petitions are denied, but it keeps in place the previous rents noting that the rent increase petition was rescinded on November 28, 2016. I, Landlord, call the RAP office to inquire why the rent increase issue was not decided. My v-mail message is not returned.

**April 4, 2017** - Hearing Decision for March 21, 2017 is received in the mail for cases L16-0089, L16-0090, L16-0091. Landlord's petitions to increase rents are denied due to the Landlord having failed to appear at the hearing of March 21, 2017. I call RAP office several times and leave more v-mail messages.

I am appealing the decision for cases L16-0089, L16-0090, L16-0091 because it was denied based on my not having appeared for the hearing when I was told by the HO at the December 12, 2016 hearing for cases T16-0490, T16-0491 and T160492 unequivocally that an additional appearance with regard to the rent increase matter was not required. All the relevant information and questions had been dealt with at that December 12, 2016 meeting. In fact, the HO, Tenants and myself (Landlord) spent most of the nearly two hour meeting discussing the construction and improvements that were made and were being sought to be passed through via the petitioned rent increase. In addition, had I received the decision for cases T16-0490, T16-0491 and T160492 prior to March 21, 2017, then it would have afforded me the opportunity to inquire about why the rent increase matter had not been adjudicated and attend the March 21st hearing if required. However, I received the December 12, 2016 hearing decision after the March 21st hearing had already passed. I believe for these compounding reasons, I was denied a sufficient opportunity to present my claim and should be allowed a new hearing date.

Regards,

*RDA*

Ryan Alexander

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

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

**DISMISSAL**

**CASE NUMBER:** L16-0089, Alexander v. Tenant  
L16-0090, Alexander v. Tenant  
L16-0091, Alexander v. Tenant

**PROPERTY ADDRESS:** 681/683 32<sup>nd</sup> St, Oakland, CA

<b>PARTIES:</b>	Katherine Judson	Tenant
	Blake Hihara	Tenant
	Jill Tokutomi	Tenant
	Tonette Woodson	Tenant
	Ryan Alexander	Owner

**DATE OF HEARING:** March 21, 2017

**APPEARANCES:** No Appearance by Tenants or Owner

**SUMMARY OF DECISION**

The owner's petitions are dismissed.

**INTRODUCTION**

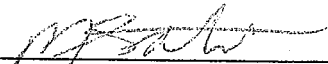
The owner filed the above-referenced petitions on November 22, 2016, requesting approval of rent increases on the grounds that the increases are justified by Capital Improvements. The Notice of Hearing was sent with a proof of service on November 28, 2016, and has not been returned to the Rent Adjustment Program. The owner failed to appear for the hearing. Therefore his petitions are dismissed.

**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: March 21, 2017

---

**MAIMOONA SAHI AHMAD, ESQ.**  
Hearing Officer  
Rent Adjustment Program

MA  
 Ute 0089 RC/BKS

RECEIVED

<b>CITY OF OAKLAND</b> <b>RENT ADJUSTMENT PROGRAM</b> P.O. Box 70243 Oakland, CA 94612-0243 (510) 238-3721	For date stamp. <b>NOV 22 2014</b> RENT ADJUSTMENT PROGRAM OAKLAND <b>OWNER PETITION FOR</b> <b>APPROVAL OF RENT INCREASE</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 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 RYAN ALEXANDER	Complete Address (with zip code) PO BOX 640872 SAN FRANCISCO, CA 94164	Telephone  Day: 415-609-6009
Your Representative's Name NA	Complete Address (with zip code) NA	Telephone  Day: NA
Property Address (If the property has more than one address, list all addresses) 681/683 32ND ST., OAKLAND, CA 94609		Total number of units on property FOUR

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)			APARTMENT
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 (EXHIBIT A)	
Oakland Business License number: (Attach proof of payment of your business tax.)		28011871 (EXHIBIT B - PROOF OF PAYMENT)	
Attach proof of payment of your Rental Property service fee (Account must be current.) (EXHIBIT C)			

**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:**

- |   |   |
|---|---|
| <input type="checkbox"/> Banking (Reg. App. 10.5)                         | <input type="checkbox"/> Increased Housing Service Costs (Reg. App. 10.1) |
| <input checked="" type="checkbox"/> Capital Improvements (Reg. App. 10.2) | <input type="checkbox"/> Uninsured Repair Costs (Reg. App. 10.3)          |
| <input type="checkbox"/> Debt Service Costs (Reg. App. 10.4)              | <input type="checkbox"/> 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.)

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CITY OF OAKLAND  
RENT ARBITRATION PROGRAM

2016 NOV 22 AM 9:55

11/20/2016

Ryan Alexander  
PO BOX 640872  
San Francisco, CA 94164

City of Oakland  
Rent Adjustment Program  
PO BOX 70243  
Oakland, CA 94612-0243  
(510) 238-3721

RE: Owner Petition for Rent Increase

Dear RAP Representative – Please find the following for my submission to increase the rent on my rental unit(s) at 681/683 32nd St., Oakland. Enclosed is the following:

Owner Petition for Approval of Rent Increase

Exhibit A - Notice to tenants of Residential Rent Adjustment Program

Exhibit B - Oakland Business License and Proof of Payment

Exhibit C - Proof of payment of Rental Property Service Fee

Exhibit D - Rental History of Tenant

Exhibit E - Calendar of Payment and Itemization of Capital Improvements

Exhibit F - Proof of Payment for Capital Improvements

Exhibit G - Calculation of Capital Improvement Passthrough on RAP's Worksheet

Exhibit H - Tenant's 30 Day Notice to Increase Rent

Regards,



Ryan Alexander  
415-609-6009  
rra.alexander@gmail.com

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**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.**

*TRDA*

11/20/2016

\_\_\_\_\_  
Owner's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Owner's Signature

\_\_\_\_\_  
Date

**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.

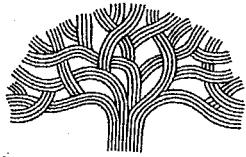
Mediation will be scheduled only if both parties agree (after both your petition and the tenant's response have been filed with the Rent Adjustment Program). **The Rent Adjustment Program will not schedule a mediation session if the tenant does not file a response to the petition.** Rent Board Regulation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

\_\_\_\_\_  
Owner's Signature

\_\_\_\_\_  
Date



CITY OF OAKLAND

**CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM**

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

RENT ADJUSTMENT PROGRAM  
2017 SEP 14 PM 1:26  
For date stamp.

APPEAL

Appellant's Name <b>Solares Properties, LLC</b>		<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant	
Property Address (Include Unit Number) 275 Vernon Street, Unit 11 Oakland, CA 94610			
Appellant's Mailing Address (For receipt of notices) 279 Vernon Street, Unit 1 Oakland, CA 94610		Case Number T15-0360	Date of Decision appealed 8/23/17; proof of service 8/25/17
Name of Representative (if any) Stephen M. Judson, Esq.	Representative's Mailing Address (For notices) Ramsey Law Group, APC 3736 Mt. Diablo Boulevard, Suite 300 Lafayette, CA 94549		

Please select your ground(s) for appeal from the list below. As part of the appeal, an explanation must be provided responding to each ground for which you are appealing. Each ground for appeal listed below includes directions as to what should be included in the explanation.

- 1) There are math/clerical errors that require the Hearing Decision to be updated. *(Please clearly explain the math/clerical errors.)*
- 2) Appealing the decision for one of the grounds below (required):
  - a)  The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board. *(In your explanation, you must identify the Ordinance section, regulation or prior Board decision(s) and describe how the description is inconsistent.)*
  - b)  The decision is inconsistent with decisions issued by other Hearing Officers. *(In your explanation, you must identify the prior inconsistent decision and explain how the decision is inconsistent.)*
  - c)  The decision raises a new policy issue that has not been decided by the Board. *(In your explanation, you must provide a detailed statement of the issue and why the issue should be decided in your favor.)*
  - d)  The decision violates federal, state or local law. *(In your explanation, you must provide a detailed statement as to what law is violated.)*
  - e)  The decision is not supported by substantial evidence. *(In your explanation, you must explain why the decision is not supported by substantial evidence found in the case record.)*

For more information phone (510) 238-3721.



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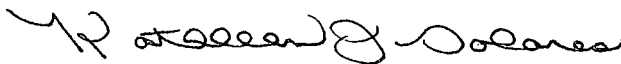
- f)  I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. (In your explanation, you must describe how you were denied the chance to defend your claims and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue a decision without a hearing if sufficient facts to make the decision are not in dispute.)
- g)  The decision denies the Owner a fair return on my investment. (You may appeal on this ground only when your underlying petition was based on a fair return claim. You must specifically state why you have been denied a fair return and attach the calculations supporting your claim.)
- h)  Other. (In your explanation, you must attach a detailed explanation of your grounds for appeal.)

Submissions to the Board are limited to 25 pages from each party. Please number attached pages consecutively. Number of pages attached: \_\_\_\_\_.

**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 September 14, 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:

<u>Name</u>	Clifton Harrison and Mercedes Harrison
<u>Address</u>	275 Vernon Street, Unit 11
<u>City, State Zip</u>	Oakland, CA 94610 (each mailed separately)
<u>Name</u>	Leah Simon-Weisberg, Esq./ Centro Legal de la Raza
<u>Address</u>	3022 International Blvd., #410
<u>City, State Zip</u>	Oakland, CA 94601

	9/14/2017
---	-----------

SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE

DATE

For more information phone (510) 238-3721.

Property Owner Appeal

Case No. T-15-0360 (Harrison v. Solares)

Date of Remand Decision: August 23, 2017 (proof of service dated August 25, 2017, postmark date August 28, 2017)

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**2 (a). The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board**

The application of the provision of the Ordinance (10.2.1, Capital Improvement Costs) is inconsistent in its application to this appealing Owner in that for the capital improvement in this case, the 24-month period for recovery of capital improvement payments ended when the Owner served the Tenants with her notice of proposed rent increase on May 23, 2015. The language of the Ordinance stipulates a 24-month period for recovery of the capital improvement payments. The 24 month window ends May 23, 2015 - the date the proposed notice is given and not the date the rent increase begins on August 1, 2015. The correct 24 month window is **May 23, 2013 to May 23, 2015**. Were it not so, the owner would lose 2 months of the Ordinance's allowable 24-month pass through for capital improvements. The effective date of August 1, 2015 for the rent increase does not apply because the RAP interpretation of the Ordinance is in direct conflict with California State law that requires an Owner to give a 60-day notice of a rent increase greater than 10%.

The RAP Board erred in determining that the 24-month recovery period ended on the date the rent increase was *to become effective* (in this case, August 1, 2015).

The Hearing Officer thus erroneously disallowed \$21,150.39 of the capital improvement pass through amount because it allegedly fell outside the allowed 24-month period prior to the date of the proposed rent increase. (This amount of \$21,150.39 was for payments made by the Owner for the capital improvement project during the May 23, 2013 to August 1, 2013 timeframe).

The Rent Adjustment Board Regulations Appendix A in effect at the time this (grandfathered) capital improvement was done, Section 10.2.1, provided in pertinent part as follows:

**10.2.1 Credit for capital improvements will only be given for those improvements which have been completed and paid for within the twenty-four (24) month period prior to the date of the proposed rent increase.**

This project was a capital improvement, costing the Owner a total of \$75,752.19. The Owner gave the Tenants a credit of \$5,000 for material and labor for the bathroom ceiling repair to comply with an earlier decision from case T12-0333 to remove bathroom ceiling and repair. The property owner further decreased the rent to also comply with a decrease in housing service ruling as a result of the bathroom ceiling. The amount of the capital improvement rent pass through in this case was reduced from \$75,752.19 to \$70,752.19 to reflect the credit to the tenants.

The final payment by the Owner to the Contractor was on June 4, 2014, in care of his law firm with the final payment being \$27,000.00 for the settlement of all outstanding invoices. In that final check the invoices/receipts totaling \$15,380.11 were specifically for the Harrison (Tenants') apartment and their capital improvements. The June 4, 2014 check, as well as all of the specific invoices and

supporting documents, were in evidence at the hearing in this case. The Remand Decision correctly awards the \$15,380.11 as part of the allowed capital improvement.

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a. Delay and Abuse of RAP System in Case No. T14-0117

The Owner first served Tenants with a notice of rent increase for this same capital improvement on March 13, 2014, to take effect 60 days later. The Tenants filed a Petition contesting the rent increase.

In this prior RAP proceeding filed April 23, 2014, T14-0117, the Tenants objected to this same capital improvement pass through by the Property Owner, and the Owner rescinded her notice on technical grounds. Tenants then appealed the rescission of the rent increase and, after many continuances granted by the RAP to accommodate these Tenants' stated needs (see, attached Exhibit 1), the Harrison Tenants dropped their appeal and the RAP dismissed the appeal as moot on August 10, 2015. Tenants' actions, and the RAP scheduling shortcomings, caused an additional 16 months of delays. The Property Owner could not have possibly put through another capital improvement pass through while the proceeding in T14-0117 was still pending.

The Owner served a new rent increase notice on May 23, 2015. The Tenants filed a Petition contesting this rent increase. This current proceeding (T15-0360) then followed.

The Owner has been trying to recover this capital improvement since at least March 13, 2014, when she first served notice to the Tenants (see, case T14-0117, Exhibit 1). The Owner has seen no recovery whatsoever since 2014. This is a denial of a fair return to the Owner.

b. Rent Board Regulation 10.2.1 Must be Applied Correctly in this Action (T15-0360) to Allow this Owner Her Full Capital Improvement Pass Through

The Owner is entitled to recover capital improvement payments made during the 24-month period prior to the date the proposed rent increase notice is given to the Tenant. Here, that date is May 23, 2015 (see, Notices of Rent Increase, Ex. 2). To do otherwise would deprive the Owner of the 60-day notice time that she must give under California state law for rent increases exceeding 10%. Thus, the RAP Board cannot interpret the Ordinance to disallow or curtail a full 24-month recovery period allowed by the Ordinance. Otherwise RAP's interpretation reduces the 24 month period to a 22-month recovery period for this Owner. That result violates the time requirements of Civil Code § 827b (60-days) and Regulation 10.2.1 (24-months). That result denies this Owner a fair return.

At the RAP Board hearing in this matter on December 8, 2016, according to the hearing audio recording, the City Attorney Richard Illgen stated this about the 24-month period:

"I believe Ms. Taylor can correct me if I'm wrong. We have always had dates have been interpreted to be the date the rent increase is proposed to be effective, not the date of the notice so ... and the proposed means just simply what happens when a Tenant Petition is, is that... a landlord notices a rent increase and it takes effect in theory 30 to 60 days after that but the tenant files a petition. That date is deferred instead becomes a proposed rent increase because it may or may not be the actual rent increase that is actually given to the tenant when the Board completes or the program completes its' process. So that's why we considered it to be proposed. In that sense and I think because the language doesn't say the

date of the notice of the proposed rent increase we construed that this way, to be the practice to use that date.

Again the tenant doesn't have to pay the rent increase when it takes effect the tenant pays the rent increase later after the decision is made but it dates back to the date the rent increase would have taken effect based on the notice. But we considered proposed because it isn't a final rent increase."

This quotation above misstates the Ordinance. The Ordinance for a capital improvement pass does not say the "effective" date of the proposed rent increase. The Ordinance as it reads is the only guidance that a property owner is allowed to rely on. When the Owner sought information and asked the RAP personnel about the 24-month capital improvement she was directed to the Ordinance instead. Her next step was to go to the dictionary and review the key words as written in the Ordinance. Having done that, the Owner therefore purposely decided to give the Tenants the rent increase notice on May 23, 2015 in order to capture the capital payments made by her during the time period commencing after May 23, 2013. The Ordinance, Regulation 10.2.1 says **Credit for capital improvements will only be given for those improvements which have been completed and paid for within the twenty-four (24) month period prior to the date of the proposed rent increase.**

RAP staff must not re-interpret the language of the Ordinance and say that is our interpretation. RAP's interpretation goes beyond the written words in the actual Ordinance. The practice or the policy of RAP is not a means for it to take on an interpretation that goes beyond what the reader can see from reading the Ordinance.

The Remand Hearing Decision must be modified to allow the sum of \$21,150.39 or another amount TBD as a recoverable capital improvement pass through completed and paid for and proved by this Owner during the 24-month period from the date the rent increase notice was given (ie., when it was proposed - May 23, 2015) back to the date of May 23, 2013.

**2(b). The decision is inconsistent with decisions issued by other Hearing Officers**

The Owner believes that the Remand Hearing Decision conclusion to disallow the sum of \$21,150.39, and the RAP Appeal decision on that point, are inconsistent with the decisions of other Hearing Officers in calculating the 24-month recovery period in years past. The Owner contends that other RAP decisions have calculated the date the proposed rent increase runs from when the owner gives notice to the tenant of a proposed rent increase, not when the rent increase is to later take effect. The ordinance clearly does not say the "effective date" of the rent increase.

**2(c). The decision raises a new policy issue that has not been decided by the Board**

(See, discussion above under **Section 2(a)**)

**2(d). The decision violates federal, state or local law**

The Remand Decision, and the RAP Appeal Decision that directed the Hearing Officer, results in a violation of the interplay between a state law – Civil Code § 827b - and the RAP Regulation 10.2.1. If an owner must give a 60-day notice of a rent increase greater than 10% to comply with state law (Civil

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Code § 827b), then that must be applied consistently with Regulation 10.2.1 to not shorten the owner's 24-month capital improvement recovery period by two months. Here, that inconsistent application results in a loss to this Owner of \$21,150.39. The Owner consciously and knowingly gave her notice of proposed rent increase on May 23, 2015 to capture the \$21,150.39 in capital improvement costs she paid. A decision to deny the Owner this recovery is arbitrary and capricious, and denies this Owner a fair and just constitutional return on her investment.

**2(e). The decision is not supported by substantial evidence**

The Remand Hearing Decision also allows the Tenants to pay to the Owner the underpaid rent (ie., the rent that has accrued unpaid since the Tenants filed their petition on July 17, 2015) over an additional 60-months, concluding in 2022. There is no substantial evidence to support a finding of good cause to extend the repayment of underpaid rent for a period of more than seven years from the date of the rent increase notice (May 23, 2015). The Tenants should have been planning for the underpaid, catch-up rent since receiving the first rent notice on March 13, 2014, and certainly when they received the current rent increase notice on May 23, 2017. Such a long repayment period for underpaid rent denies the Owner a fair return on her investment.

(See further discussion below under **Section 2(g)**).

**2(f). I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim**

The Owner was not allowed the ability to argue the correct 24-month recovery period, due to the RAP Board error in the Appeal Decision (dated March 6, 2017, served on March 7, 2017) specifying that the 24-month period must run from the date the rent increase was to become effective, not the date the rent increase was proposed by notice to the Tenants. The discussion by the RAP Board at the hearing happened only after the comment period from the Tenants and the Owner had been closed. Only then was there a discussion by the Board about the 24-month capital improvement period, ie., when it begins and ends. (See, Section 2(a)b. ; and Attorney Illgen's quote to which the Owner could not respond.)

The Appeals Board's Remand Order unfairly restricted the Hearing Officer from allowing the Owner to testify regarding the timeline and her reasons to challenge the RAP "interpretation" of Regulation 10.2.1's language. Hearing Officer Ms. Kong-Brown was not able to hear testimony on this matter (ie., why the Owner decided to give the notice when she did) because the order from the RAP Board limited the scope of the subjects that could be testified to at the Remand Hearing. Because of that order, the Hearing Officer said she was not allowed to consider any capital improvement expense prior to August 1, 2013.

Additionally, due to the RAP order's restriction, the Owner could not testify that The East Bay Rental Housing Association also recognizes the date the rent increase is noticed as the date the 24-month capital improvement pass through counts back from, and not the effective date of the rent increase. The effective date is not in the Ordinance and other property owners were able to use the date of the notice in their cases.

**2(g). The decision denies the owner a fair return on her investment**

The Remand Decision denies the Owner a fair return when it orders the amount of rent underpaid by the Tenants during their lengthy appeal process (a total of \$12,051.40) to be amortized over an additional 60 months. The action and timing of the Appeals Board can be anticipated by Tenants by knowing the overloaded calendar within the RAP Program. The property owner may still not see any relief for many more months to come.

The Owner has a loan to pay for the capital improvement. The loan is not paid off, and carries an adjustable interest rate. The interest rate on the Owner loan has been adjusted, upward, several times during the extended wait time of these Tenants' petitions. It is fair to assume that the Owner's loan interest rate will be adjusted again, upward, during the years that the Remand Order allows the Tenants to pay their underpaid rent obligation.

Now, the Remand Decision allows that underpaid amount to be repaid, over time with no interest, for an additional 60 months. That means the underpaid rent will not be paid for seven (7) years, or 84 months, from the date the Owner first gave her rent increase notice. This is not fair to the Owner under any circumstances.

There was no evidence introduced at the Remand Hearing upon which to base an order for an amortization, or "repayment plan" as the RAP Board had called it in its Appeal Decision (March 6, 2017). The Tenants attempted to introduce evidence of alleged hardship, but only in private to the Hearing Officer without the Owner or her representative present. This was objected to and correctly not allowed by the Hearing Officer. No evidence in the record supports a 60-month, interest-free payment of the underpaid rent portion. The Tenants have known since the date of the rent increase (May 23, 2015) that some rent increase would be ordered. It was incumbent upon them to save for the ultimate order in this case. It is not fair to shift that burden to the Owner to wait 7 years to receive the underpaid rent. The RAP Program cannot be used to subsidize the Tenants' validly owed rent at the expense of the Owner.

**1) There are math/clerical errors that require the Hearing Decision to be updated**

The Owner will at a later date submit a summary of the math/clerical issues for corrections to the Remand Decision that should be updated.

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# Exhibit 1

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## Exhibit 1 – Timeline for T14-0117

March 13, 2014	60 Day Notice of Rent Increase to tenants.
April 23, 2014	M. Harrison files Tenant Petition.
May 15, 2014	Start of new rent.
May 30, 2014	Landlord response to tenant petition.
July 29, 2014	Hearing date for Harrison vs. Solares scheduled. Harrison's request new hearing date, Solares consented.
August 13, 2014	New Hearing date.
August 27, 2014	Landlord files Post Hearing Brief.
October 1, 2014	Hearing Decision in favor of Solares.
October 22, 2014	Harrison's Appeal.
April 9, 2015	Harrison's Appeal Hearing cancelled (due to time date and place not being posted as required by the Brown Act).
May 14, 2015	Harrison's Appeal Hearing. Tenant Clifton Harrison states there is a new document entered into the file he has never seen or read.
June 11, 2015	Harrison's Appeal Hearing date, Mr. Harrison is not available.
July 9, 2015	Harrison's Appeal Hearing date is cancelled by Mr. Harrison due to an emergency, New Appeal Hearing date set for September 10, 2015.
August 6, 2015	Harrison's drop their Appeal.
August 10, 2015	Rent Adjustment Board sends notice Tenant Petition T14-0117 is being dismissed by the Harrison's.
August 13, 2015	Solares receives letter from the Rent Adjustment Board that the Harrison's have dismissed their petition.
	Hearing Officer Barbara Cohen's decision stands in favor of Solares (LL).
September 10, 2015	Harrison Appeal Hearing is cancelled.

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# Exhibit 2

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# DECLARATION OF SERVICE OF NOTICE TO RESIDENT

I, the undersigned, declare under penalty of perjury that at the time of service of the papers herein referred to, I was at least eighteen (18) years of age and that I served the following checked notices:

- Three-day Notice to Pay Rent or Quit
- Thirty-Day Notice of Termination of Tenancy
- Sixty-Day Notice of Termination of Tenancy
- Other \_\_\_\_\_
- Thirty-Day Notice of Change in Monthly Rent
- Sixty-Day Notice of Change in Monthly Rent
- Thirty-Day Notice of Change in Terms
- Other Enhance Notice, RAP Notice, Expense Recog, City Capital Improvement Form, Permit Card report

on the following resident(s) Clifton Harrison

on the 23<sup>rd</sup> day of May (month), 2015 (year).

BY DELIVERING a copy of the Notice(s) to the following Resident(s) PERSONALLY.

OR

BY LEAVING a copy for each of the above-named Resident(s) with a person of suitable age and discretion at the residence or usual place of business of the resident(s), said resident(s) being absent thereof;

AND MAILING by first class mail on said date a copy to each Resident by depositing said copies in the United States Mail in a sealed envelope, with postage fully prepaid, addressed to the above-named Resident(s) at their place of residence.

OR

BY POSTING a copy for each of the above-named Resident(s) in a conspicuous place on the property therein described, there being no person of suitable age or discretion to be found at any known place of residence or business of said Resident(s);

AND MAILING by first class mail on the same day as posted, a copy to each Resident by depositing said copies in the United States Mail, in a sealed envelope with postage fully prepaid, addressed to the resident(s) at the place where the property is situated.

OR

BY MAILING by first class mail on the said date a copy to each Resident by depositing said copies in the United States Mail, in a sealed envelope, with the postage fully prepaid, addressed to the above-named resident(s) at their place of residence.

(NOTE: This Service by Mail-Only is permitted for Notices of Change in Monthly Rent and Notice to Enter Dwelling Unit only. It is not allowed for Three-Day Notices to Pay Rent or Quit, the Thirty or Sixty Day Notice of Termination of Tenancy, or for the Thirty-Day Notice of Change in Terms of Tenancy (Except Changes in Monthly Rent.)

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct and if called as a witness to testify thereto, I could do so competently.

Executed this 23<sup>rd</sup> day of May (month), 2015 (year).

In Oakland (City), California (State).

Katherine Solares

Name of Declarant (Print)

Katherine Solares

Signature of Declarant

SUPERIOR COURT COUNTY OF ALAMEDA  
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# DECLARATION OF SERVICE OF NOTICE TO RESIDENT

14

I, the undersigned, declare under penalty of perjury that at the time of service of the papers herein referred to, I was at least eighteen (18) years of age and that I served the following checked notices:

- Three-day Notice to Pay Rent or Quit
- Thirty-Day Notice of Termination of Tenancy
- Sixty-Day Notice of Termination of Tenancy
- Other \_\_\_\_\_
- Thirty-Day Notice of Change in Monthly Rent
- Sixty-Day Notice of Change in Monthly Rent
- Thirty-Day Notice of Change in Terms
- Other Enhance Notice RRP Notice Expense Recap, City Capital Improvement Form, Permit Card Report

on the following resident(s) Mercedes Harrison

on the 23<sup>rd</sup> day of May (month), 2015 (year).

BY DELIVERING a copy of the Notice(s) to the following Resident(s) PERSONALLY.

OR

BY LEAVING a copy for each of the above-named Resident(s) with a person of suitable age and discretion at the residence or usual place of business of the resident(s), said resident(s) being absent thereof;

AND MAILING by first class mail on said date a copy to each Resident by depositing said copies in the United States Mail in a sealed envelope, with postage fully prepaid, addressed to the above-named Resident(s) at their place of residence.

OR

BY POSTING a copy for each of the above-named Resident(s) in a conspicuous place on the property therein described, there being no person of suitable age or discretion to be found at any known place of residence or business of said Resident(s);

AND MAILING by first class mail on the same day as posted, a copy to each Resident by depositing said copies in the United States Mail, in a sealed envelope with postage fully prepaid, addressed to the resident(s) at the place where the property is situated.

OR

BY MAILING by first class mail on the said date a copy to each Resident by depositing said copies in the United States Mail, in a sealed envelope, with the postage fully prepaid, addressed to the above-named resident(s) at their place of residence.

(NOTE: This Service by Mail-Only is permitted for Notices of Change in Monthly Rent and Notice to Enter Dwelling Unit only. It is not allowed for Three-Day Notices to Pay Rent or Quit, the Thirty or Sixty Day Notice of Termination of Tenancy, or for the Thirty-Day Notice of Change in Terms of Tenancy (Except Changes in Monthly Rent.)

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct and if called as a witness to testify thereto, I could do so competently.

Executed this 23<sup>rd</sup> day of May (month), 2015 (year).

Oakland (City), California (State).

Kathleen Solares  
Name of Declarant (Print)

Kathleen Solares  
Signature of Declarant

2017 SEP 14 PM 2:37

Mercedes & Clifton Harrison  
275 Vernon, Unit 11  
Oakland, CA 94610

City of Oakland  
Rent Adjustment Program  
250 Frank H. Ogawa Plaza  
Oakland CA, 94612

September 12, 2017

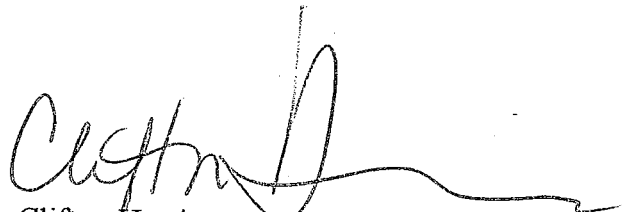
**RE: Appeal of Hearing Decision on Remand - Case No. T15-0360**

To Whom It May Concern:

We have attached our appeal regarding the Decision on Remand in Case No. T15-0360. Please feel free to contact us if you have any questions or concerns about the appeal form. We may be reached at (510) 835-2919.

Sincerely,

  
Mercedes Harrison

  
Clifton Harrison



**CITY OF OAKLAND**  
**RENT ADJUSTMENT PROGRAM**  
250 Frank Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721

For date stamp.

2017 SEP 14 PM 2:03

**APPEAL**

<b>Appellant's Name</b> Mercedes & Clifton Harrison		<input type="checkbox"/> Owner <input checked="" type="checkbox"/> Tenant	
<b>Property Address (Include Unit Number)</b> 275 Vernon St. #11, Oakland, CA 94610			
<b>Appellant's Mailing Address (For receipt of notices)</b> 275 Vernon St. #11, Oakland, CA 94610		<b>Case Number</b> T15-0360	
		<b>Date of Decision appealed</b> August 23, 2017	
<b>Name of Representative (if any)</b> n/a		<b>Representative's Mailing Address (For notices)</b>	

Please select your ground(s) for appeal from the list below. As part of the appeal, an explanation must be provided responding to each ground for which you are appealing. Each ground for appeal listed below includes directions as to what should be included in the explanation.

- 1) There are math/clerical errors that require the Hearing Decision to be updated. *(Please clearly explain the math/clerical errors.)*
- 2) Appealing the decision for one of the grounds below (required):
  - a)  The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board. *(In your explanation, you must identify the Ordinance section, regulation or prior Board decision(s) and describe how the description is inconsistent.)*
  - b)  The decision is inconsistent with decisions issued by other Hearing Officers. *(In your explanation, you must identify the prior inconsistent decision and explain how the decision is inconsistent.)*
  - c)  The decision raises a new policy issue that has not been decided by the Board. *(In your explanation, you must provide a detailed statement of the issue and why the issue should be decided in your favor.)*
  - d)  The decision violates federal, state or local law. *(In your explanation, you must provide a detailed statement as to what law is violated.)*
  - e)  The decision is not supported by substantial evidence. *(In your explanation, you must explain why the decision is not supported by substantial evidence found in the case record.)*

For more information phone (510) 238-3721.

2017 SEP 14 PM 2:00


- f)  I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. (In your explanation, you must describe how you were denied the chance to defend your claims 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.)
- g)  The decision denies the Owner a fair return on my investment. (You may appeal on this ground only when your underlying petition was based on a fair return claim. You must specifically state why you have been denied a fair return and attach the calculations supporting your claim.)
- h)  Other. (In your explanation, you must attach a detailed explanation of your grounds for appeal.)

Submissions to the Board are limited to 25 pages from each party. Please number attached pages consecutively.  
 Number of pages attached: 17

**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 September 14, 2017, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<b>Name</b>	<sup>1</sup> Kathleen Solares, Solares Properties LLC	<sup>3</sup> Alan Beales
<b>Address</b>	279 Vernon St. #1	6114 LaSalle Ave #354
<b>City, State Zip</b>	Oakland, CA 94610	Oakland, Ca 94611
<b>Name</b>	<sup>2</sup> Stephen Judson Ramsey, Law Group	
<b>Address</b>	3736 Mt. Diablo Blvd. Suite 300	
<b>City, State Zip</b>	Lafayette, CA 94549	

	9/12/17
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

For more information phone (510) 238-3721.

RENT ADJUSTMENT PROGRAM

**IMPORTANT INFORMATION:**

2017 SEP 14 PM 2:37

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.
- Any supporting argument or documentation to be considered by the Board must be received by the Rent Adjustment Program with a proof of service on opposing party within 15 days of filing the appeal.
- Any response to the appeal by the other party must be received by the Rent Adjustment Program with a proof of service on opposing party within 35 days of filing the appeal.
- 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.
- The entire case record is available to the Board, but sections of audio recordings must be pre-designated to Rent Adjustment Staff.

For more information phone (510) 238-3721.

# Attachment to Tenant Appeal of Hearing Decision on Remand T15-0360

The tenants are appealing this decision on the grounds that: (1) there are numerous math miscalculations/clerical errors that require the in the Hearing Decision Remand document to be updated (2) specific aspects of the decision are inconsistent with the Oakland Rent Adjustment Ordinance, Rent Board Regulations, and prior decisions of the Board; (3) a section of the decision is inconsistent with decisions issued by other hearing officers; and (4) one element of the decision is not supported by substantial facts because there are factual errors in the opinion.

- There are numerous math miscalculations/clerical errors that are outlined in (a) – (i) below:

(a) On page 1 of the decision the first paragraph last line should read... *grants a capital improvement pass-through of \$34732.93 or \$578.88 monthly.*

(b) The **NET TOTAL** on page 4 of the decision should be **\$70,752.19**

(c) There are two clerical errors on page 7 of the decision, the first error is the additional amount to be deducted from the pass-through should be **\$12,798.97** because these cost were incurred prior to August 1, 2013, (this is the correct number as shown on page 4 of the decision)

(d) The second clerical error in the table on page 7, the original decision was not corrected to reflect a deduction of **\$1,321.52** (check paid to American Blinds and Draperies Inc.) which was objected to and deemed to be inadmissible. The Owner attempted to introduce the check into evidence at the original hearing. The attempt to submit evidence at the hearing was objected to by the Tenants Representative and was to be subtracted from the allowable pass-through, as the proof of payment was untimely.

(e) After incorporating the errors (a) thru (d) listed above, the calculation at the bottom of page 7 of the decision should read as follows with a corrected net allowable capital improvement pass-through of **\$34,732.93**:

\$75,752.19	capital improvement costs
-\$ 5,000.00	credit for deferred maintenance re bathroom
-\$37,259.50	disallowed expenses from first hearing
-\$12,798.97	additional disallowed expenses outside 24 month period
+\$15,360.73	additional allowed expenses from check paid to contractor attorney
<b>\$36,054.45</b>	net allowable capital improvement pass-through
<b>-\$ 1,321.52</b>	disallowed American Blinds and Draperies Inc. expense, proof of payment untimely
<b>\$34,732.93</b>	<b>correct net allowable capital improvement pass-through</b>

(f) At the top of page 8 of the decision the net amount should be **\$34,732.93** or **\$578.88** monthly

(g) The table under the heading CAPITAL IMPROVEMENTS should reflect the corrected net amount of the pass-through as:

COST ALLOWED **\$34,732.93** and MONTHLY COST **\$578.88**. In addition, the paragraph under this section should be deleted because it does not apply.



# Attachment to Tenant Appeal of Hearing Decision on Remand T15-0360

(h) All the paragraphs under the heading Payment Plan on pages 8 and 9 of the decision (except for the last paragraph on page 9 before the section ORDER) should be deleted. The last paragraph on page 9, before the heading ORDER states the reason why. This paragraph states that ... *the capital improvement pass-through shall expire on August 1, 2022.* (This is further explained in the table in the ORDER section).

(i) On page 9 of the decision in the section titled ORDER the following should be changed:

- The sentence labeled 1. should read *The owner is entitled to \$34,732.93 or \$578.88 monthly for a capital improvement pass-through, which is amortized over five years.*
- The sentence labeled 2. should be deleted because there is no underpayment since the 5 year amortization commences September 1, 2017 and ends August 1, 2022. The table should be corrected as follows:

Base rent	\$1,147 .00
+ capital improvement pass-through	+\$ 578.88
Rent payment commencing September 1, 2017 , and ending August 1, 2022	\$1,725.88

Note: If the tenants were to pay the amount listed as under payment (\$200.86 per month) in 5 years they would over pay by \$12,051.40. Again, there is no under payment because the 5 year amortization commences September 1, 2017 and ends August 1, 2022 (5 years or 60 months).

All of these mathematical miscalculations/clerical errors that require the hearing decision be amended are shown in red in the following corrected version of the **Hearing Decision on Remand**, in the **Attachment A** of this document **pages 6 thru 15**.

## Attachment to Tenant Appeal of Hearing Decision on Remand T15-0360

2019 SEP 16 PM 2:30

There is a clerical error in the table on page 7 in the original decision, which was not corrected. When corrected the allowable pass-through should consequently be reduced. Page 7 of the decision should read that "American Blinds and Draperies Inc" is the vendor for the "drapes – living room and dining room" on check # "5323 (other apts included in this check)" for \$635.83, and there should be an additional row which reads "American Blinds and Draperies Inc" as the vendor for "drapes – bedrooms, blinds – kitchen" on check # "5323 (other apts included in this check)" for \$685.69. However, Owner attempted to introduce check # 5323 into evidence at the hearing, which was for \$2,137.09. Of this amount, \$1,321.52 was intended to be passed down to the Tenants. Tenants' representatives objected to the attempt to submit this evidence at the hearing, and this amount should be subtracted from the allowable pass-through as the proof of payment was untimely.

- The hearing officer was directed by the appeals board to determine the appropriate amount to deduct from the total cost of capital improvements based on deferred maintenance. Despite the presence of significant evidence presented by the tenants that by the time the work to repair the bathroom was done it had been over (12/2011) 18 months, thus the effect of the ceiling leak created a mold condition throughout the entire unit (i.e. deferred maintenance is valid). The tenants provided evidence at the original hearing showing how the delay of the repair of the bathroom ceiling caused mold condition in the bathroom as well through out the entire unit. Tenants submitted pictures showing the contamination of the other porous material (wood vanity, carpet, wood doors, removal of the exhaust fan in the bathroom, repainting the unit) in our unit that were replaced as part of the "capital improvement. In addition, the bathroom "repair" was done as a result of the citation from the city of Oakland and the bathroom cost and any other construction required because of the delay in repairing the bathroom ceiling leak should NOT be included in valid capital improvement cost. In spite of the overwhelming evidence presented, including pictures etc., the hearing officer refused to consider the question of deferred maintenance even after being instructed to do so by the appeals board.
- The tenants are challenging factual errors in the original decision that were not corrected related to their deferred maintenance claim. For example, on page 4 the decision states "There was no leak and no water stain. The tenants claimed there was a leak. There was no leak." This is incorrect, as the Owner testified there was a "drip" and the Tenants testified to the leak and submitted evidence regarding the leak. This is most evident when Solares states and the hearing officer quotes her saying "there was no leak and just a hairline crack in the ceiling". That statement contradicts hearing officer Cohen's declaration in case T12-0333 on March 21, 2013 when she inspected the bathroom (see statement on page 17 in Attachment B of this document). The testimony was clear and uncontroverted and proved that the owner Solares made false and incorrect statements.

# Attachment to Tenant Appeal of Hearing Decision on Remand T15-0360

- 2017 SEP 14 PM 2:34
- The hearing officer was asked to determine how much of the \$15,000 paid to the contractor's attorney (out of a total \$27,000) to settle a lawsuit between the contractor and the owner was for work done on the tenants unit. At the remand hearing the owner submitted a copy of the settlement agreement for this lawsuit as new evidence. This should not have been allowed as the settlement agreement was available and should have been submitted as evidence at the original hearing. In addition, the settlement agreement did not provide any additional information regarding the itemized amounts on how much of the settlement was attributed to the tenants unit. Despite these facts the hearing officer reversed her ruling from the original decision that stated "The costs paid on June 4, 2014, totaling \$15,380.11 are disallowed because the check was made payable to the owner's (*corrected to contractor's*) attorney and the amount payable to the contractor was not itemized." The hearing officer's reversal of her original decision not to allow the \$15,000 to allowing the \$15,000 is not supported by the actual facts of the case. Just because the name of who the check was paid to changed, it did not change the actual fact that the amount paid to the contractor was still not itemized to show work related to our unit.

**ATTACHMENT A**



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

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

**HEARING DECISION ON REMAND**

CASE NUMBER: T15-0360, Harrison v. Solares  
 PROPERTY ADDRESS: 275 Vernon Street, No. 11  
 Oakland, CA  
 DATES OF HEARING: June 26, 2017  
 July 26, 2017  
 DATE OF DECISION: August 23, 2017 revised 9/11/2017 Harrison's

APPEARANCES	June 26, 2017	July 26, 2017
<b>Tenant</b>		
Clifton Harrison	X	X
Mercedes Harrison-	X	X
Leah Simon-Weisberg, Esq.	X	X
<b>Owner</b>		
Kathleen Solares	X	X
Elvera Bordessa	X	X
Stephen Judson, Esq.	X	X
<b>Observer</b>		
Etha Jones	X	X
Selena Gonzalez		X
Charles Brooks III	X	

**SUMMARY OF HEARING DECISION ON REMAND**

The Hearing Decision granted a capital improvement pass-through of \$33,492.69, or \$558.21 monthly. Upon Remand, the Hearing Decision grants a capital improvement pass-through of \$34,732.93 or \$578.88 monthly.

**Background**

The Hearing Officer issued a Hearing Decision which granted a rent increase based on capital improvements in the amount of \$33,492.69, or \$558.21 monthly for

Comment [C1]: See math corrections later in document.  
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 Deleted: 602.57

work performed on the subject unit's kitchen and bathroom. \$15,380 of the costs were disallowed on the grounds that the payment was made to the contractor's attorney to settle litigation which the Hearing Officer interpreted as not being a capital improvement cost.

\$37,259.50 of the costs were disallowed on various grounds.

#### Appeal Decision & Scope of Remand Hearing

Both parties appealed. The tenants contended that an additional \$12,797.97 of the costs should have been excluded on the grounds that the payments were made more than 24 months prior to the date of the proposed rent increase, and questioned the \$5,000 credit for deferred maintenance by the owner for work in the bathroom.

The owners contended that \$15,380.11 was improperly excluded because payments made to the contractor's attorney pertained to the capital improvement work and the 24 month period should not apply because the costs outside the 24 month period pertained to this single capital improvement project.

After the parties' presentation and Board discussion, the Board voted to remand the Hearing Decision to the Hearing Officer to do the following:

#### Tenant Appeal

1. Consider if the \$5,000 deducted or some other amount was appropriate to exclude from the rent increase due to costs incurred due to deferred maintenance;
2. Review costs based on existing evidence to exclude all costs prior to August 1, 2013, which is the 24 month period prior to the effective date of the rent increase.

#### Owner Appeal

1. Determine how much of the \$15,000 of the \$27,000 paid to the contractor's attorney was attributed to work done on the subject unit on the basis that the payment to the contractor's attorney did not invalidate a payment from being a capital improvement;
2. Correct a typographical error to indicate that the \$15,000 was paid to the contractor's attorney, not the owner's attorney.

The Board also directed the Hearing Officer to consider a payment plan for the tenants after determining the proper amount of the rent increase.

**EVIDENCE**

Summary of Capital Improvement Costs in Underlying Hearing Decision<sup>1</sup>

Vendor	Description	Check No.	Amount	Date	Ex. No.
City of Oakland	Permits	4946	\$1,123.57	11/7/12	226
		5101	\$162.95	6/21/13	228
First Choice Construction	Contract for remodel kitchen and bathroom	5124	\$1,000.00	7/10/13	232-235
"		5147	\$8,808.36	7/5/13	236-243
"		5137	\$6,689.34	7/17/13	244-258
"		5138	\$4,652.69	7/22/13	261-270
"		5152	\$2,871.17	8/1/13	271-275
"		5153	\$6,658.72	8/1/13	276-281
"		5185	\$1,611.35	8/21/13	282-287
GMS Sales	Green galaxy slabs-bath	Visa	\$437.00	2/23/13	288
Stone Trading	Blue Eyes	Visa	\$1,639.75	6/18/13	290-291
Pacific Sales	Bath items-	Visa	\$1,382.12 <sup>2</sup>	6/25/13	292-295
"	Bath towel bar	Visa	\$119.90	7/23/13	299-301
"	Kitchen items 4	Visa	\$2,366.28	7/23/13	305-307
"	Kitchen sink faucet	Visa	\$134.07	8/28/13	308-309
"	Toilet	Visa	\$218.00	9/3/13	310-312
	Do<2r latch set, dead bolt ,	HD chge	\$188.32	8/26/13	317
	Bathroom sink	Visa	\$66.00	9/3/13	314
Import Tile Co.	Floor tile	Visa	\$774.54	7/30/13	319-320
Walnut Creek Lighting	Dining room light	Visa	\$390.60	7/17/13	321-322
Dick's Carpet	Carpet for 2 bedrooms , hall, living room and dining room	5186 5214	\$1,000 \$2885	8/26/13	323-326
Martinelli's Cabinet	Kitchen and bath vanity cabinets	Visa	\$4,300 \$4,300	7/3/13 8/16/13	327-330
"	Kitchen cabinet pulls	Visa	\$286.06	9/18/13	331
Glenview Key And Lock	Lock change	5123	\$102.26	6/18/12	332
Roma r't's Marble & Granite	Fabricate and install kitchen counter tops, bathroom vanity , and back splashes ; shower walls	5157	\$3,305	9/13/13	335-337
Diablo Glass	Tub enclosure	5201	\$975.45	9/6/13	338-339
"	Drapes-bedrooms Blinds-kitchen	4323	\$685.69	1/23/14	341

<sup>1</sup> Hearing Decision in T I S-0360, pp. 6-7

<sup>2</sup> This includes a double charge for a disposal of \$179.00

Vendor	Description	Check No.	Amount	Date	Ex. No.
	8 Window screens and screen door	5304	\$550	1/7/14	342 - 342a
Bed, Bath & Beyond	Toilet paper stand	Cash	\$19.99	1/20/14	343
<b>SUBTOTAL</b>			\$60,372.08		
First Choice Construction <sup>3</sup>	Contractor for construction Invoice 8/4/13 Invoice 8/27/13 Invoice 9/5/13 Invoice 9/15/13 Combined invoice 9/23/13 for Apt. 2,4 and 11(labor)	5389	\$2,325 \$7,413.60 <sup>4</sup> \$2,672.46 <sup>5</sup> \$1,289.05 \$1,680	6/4/14	159-161-181
<b>SUBTOTAL</b>			\$15,380.11		
			\$75,752.19		
Cred it for bathroom			\$5,000		
<b>NET TOTAL</b>			\$70,752.19 <sup>6</sup>		

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**Additional Costs Expended Prior to August 1, 2013**

Vendor	Description	Check No.	Amount	Date
City of Oakland	Permits	4946	\$1,123.57	11/7/12
		5101	\$162.95	6/21/13
GMS Sales	Green galaxy slabs -bath	Visa	\$437.00	2/23/13
Stone Trading	Blue Eyes	Visa	\$1,639.75	6/18/13
Pacific Sales	Bath items-	Visa	\$1,382.12 <sup>7</sup>	6/25/13
	Bath towel bar	Visa	\$119.90	7/23/13
	Kitchen items		\$2,366.28	7/23/13
Import Tile Co.	Floor tile	Visa	\$774.54	7/30/13
Walnut Creek Lighting	Dining room light	Visa	\$390.60	7/17/13
Martinelli's Cabinet	Kitchen and bath vanity cabinets	Visa	\$4,300	7/3/13
Glenview Key And Lock	Lock change	5123	\$102.26	6/18/12
<b>TOTAL</b>			\$12,798.97	

<sup>3</sup> Tenants objected to this exhibit on the grounds that check was made to owner's attorney and amount allocated to contractor was not itemized

<sup>4</sup> Includes clerical error of \$19.38 in Home Depot Bill, Ex. 364

<sup>5</sup> The Home Depot amount for 8/16/13 is \$175.84, not 195.22-difference of \$19.38

<sup>6</sup> Ex. Nos. 57-58

<sup>7</sup> This includes a double charge for a disposal of \$179.00



\$5,000-Deferred Maintenance

The owner credited the tenants with \$5,000 for work done on the bathroom ceiling based on a prior hearing decision which granted the tenants restitution for decreased housing services.

The tenants contend that the deferred maintenance credit should have been \$7,305, and the following costs should have been excluded based on deferred maintenance:

Vendor	Item	Cost	Paid	Check
Pacific Sales	toilet	\$218.00	9/3/2013	Visa
Pacific Sales	sink	\$66.60	8/19/2013	Charge
Martinelli's Cabinets	vanity cabinet	\$4,300.00	8/16/2013	Visa
Roma rt's Marble & Granite Fabricators	vanity backsplash	\$375.00	9/13/2013	5157
"	shower walls	\$1,350.00	9/6/2013	5157
Diablo Glass, Inc.	tub enclosure & install	\$ 975.40	9/6/2013	5201
Bed, Bath & Beyond	Toilet paper stand	\$19.99	1/20/2014	cash
		\$7,305.00		

The tenants also testified that the remodeling costs in their bathroom far exceeded the quality and costs of other units in the subject building; and that a recent bathroom remodel in 2016 had a plastic enclosure with no glass shower. They also contend that marble does not prolong the useful life of the vanity. They contend that the allowable capital improvements should be \$19,373.20.

The owner testified that she has done many remodels and is very familiar with the costs associated with bathroom remodels. The Notice of Violation issued by the City dated October 12, 2012, only states "The bathroom ceiling is water damaged. Repair." The owner estimated the work to repair the bathroom ceiling was \$3,500 and added a \$1,500 cushion.

The owner further testified that she applied the same standards in remodeling the units in the subject building and all cabinets are custom made due to the original construction of the building by her father. Whether quartz or granite is utilized depends on the condition of the unit. The owner contends that the allowable capital improvements should be \$41,103.83.

\* Ex. Nos. 8-9

Amount of work on the subject unit attributed to the \$15,000 of the \$27,000 paid to the contractor's attorney

The owner submitted a copy of the Settlement Agreement and Mutual Release between Solares Properties and First Choice Construction dated May 28, 2014, in RG 14709656 filed in Alameda County Superior Court, which settled a dispute between the contractor and the owner for construction performed at the subject unit, in which the owner agreed to pay twenty-seven thousand (\$27,000) to settle the dispute. The owner wrote a check to the contractor's attorney, Wood, Smith, Henning & Berman, on June 4, 2014, in the amount of \$27,000.00.<sup>9</sup>

The owner also submitted additional invoices totaling \$15,380.11<sup>10</sup> from First Choice Construction, which allocated costs of material and labor to the work done on the tenants' unit, pursuant to the Settlement Agreement of June 4, 2014, which included the following:

Item	Cost	Date
Labor	\$1,240.00 <sup>11</sup> \$1,085.00	7/29/13 8/4/13
Labor	\$6,400 <sup>12</sup>	8/14, 15, 16, 19, 20, 21, 22, 23/2013
Labor/materials	\$5,641.51 <sup>13</sup>	9/9, 10, 11, 12, 12, 16, 1, 18, 19, 20, 2013
Materials-Home Depot; Kelly-Moore Paints; Economy Lumber; Truitt & White	\$994.22 <sup>14</sup>	8/12, 15, 16, 13, 21, 2013
Total	\$15,360.73	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Credit for Deferred Maintenance

There is a difference of \$2,305.00 in the amounts claimed by the parties for the work in the bathroom based on the Board's direction to consider whether \$5,000 or some other amount should be deducted for deferred maintenance. The cost of the items totaling \$7,305.00 objected to by the tenants have nothing to do with the work to the bathroom ceiling due to deferred maintenance, which was to repair the damage due to

<sup>9</sup> Ex. Nos. 14-19

<sup>10</sup> Ex. No. 35

<sup>11</sup> Ex. Nos. 34-35

<sup>12</sup> Ex. Nos. 36-37

<sup>13</sup> Ex. Nos. 43, 48, 50

<sup>14</sup> Ex. Nos. 36-47- \$1,013.60 includes additional \$ 19.38 for Home Depot charge for 8/16/13-net amount is

the bathroom ceiling. The costs included a new toilet, sink, vanity cabinet and backsplash, shower walls, and tub closure, which prolongs the useful life of the bathroom, adds to the material value of the property and the tenant is the primary beneficiary of the capital improvements. The owner has the right to choose the items for a capital improvement project.<sup>15</sup>

The Hearing Officer finds that the \$5,000 credit for work to the bathroom ceiling was appropriate to exclude from the capital improvement costs.

The owner submitted \$70,752.19 in costs after deducting a \$5,000.00 credit for the work on the bathroom designated as deferred maintenance by the Board. The original Hearing Decision deducted \$37,259.50 for the following charges:

Item	Cost	Reason
Construction First Choice Construction	\$21,150.39 (\$1,000.00, \$8,808.36, \$6,689.34, \$4,652.69).	Falls outside 24 month period
"	\$15,380.11 (minus \$19.38 = \$15,360.73)	Check made to owner's attorney - payment to FCC not itemized
Pacific Sales	\$179.00	This item was charged twice
Screenmobile	\$550	Proof of payment was not submitted 7 days prior to hearing
<b>TOTAL</b>	<b>\$37,259.50</b>	

Additional Exclusion of Costs Expended prior to August 1, 2013

The total amount of the capital improvement pass-through in the underlying Hearing Decision was \$33,492.69, or \$558.21 monthly. An additional \$12,798.97 is deducted from the allowed capital improvement pass-through because these costs were incurred prior to August 1, 2013.<sup>16</sup>

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Comment [C2]: See page 4

Amount of Work Paid to Contractor's Attorney Attributed to Capital Improvements

An additional \$15,360.73 is added to the allowed capital improvement pass-through because the owner has sustained her burden of proof regarding documentation of these costs.

\$75,752.19	capital improvement costs
-\$5,000	credit for deferred maintenance re bathroom
-\$37,259.50	disallowed expenses from first hearing
-\$12,798.97	additional disallowed expenses outside 24 month period
+\$15,360.73	additional allowed expenses from check paid to contractor attorney
<u>\$36,054.45</u>	net allowable capital improvement pass-through

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Deleted: 36,154.45

<sup>15</sup> The Regulations regarding gold plating were not in effect at the time of this tenant petition - effective 9/20/16 - O.M.C. Section 8.22.020

<sup>16</sup> See page 5 of the Hearing Decision on Remand

\$36,054.45 total from above

- \$1,321.52 American Blinds and Drapes (check submitted untimely)

\$34,732.93 Correct net allowable capital improvement pass-through

Based on the testimony and documentary evidence provided by the parties the owner is entitled to 100% of the capital improvement pass-through in the net amount of \$34,732.93, or \$578.88 monthly, effective December 1, 2015.

The allowed capital improvement allocation is itemized in the following table:

**CAPITAL IMPROVEMENTS**

Effective Date of Increase

Improvements and repairs benefitting the tenants' unit

December 1, 2015

IMPROVEMENT OR REPAIR	DATE COMPLETED	COST ALLOWED	MONTHLY COST
Kitchen and bathroom	6/4/14	\$34,732.93	\$578.88

The allowed monthly rent increase based on capital improvements is \$602.57 effective December 1, 2015, and expires on December 1, 2020. The tenants have underpaid rent of \$602.57 from December 1, 2015, through August 2017, totaling \$12,051.40.

<sup>1</sup> Rent Regulations, Revised 11/18/11 Section 10.2.3

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**Comment [C3]:** \$34,732.93/60 months=\$578.88

**Deleted:** 36,154.45

**Deleted:** 602.57

**Deleted:** 36,154.45

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**Comment [C4]:** This entire paragraph and all references to an underpayment should be deleted since the 5 years (60 months) Capital Improvement pass-through begins September 1, 2017 and expires August 1, 2022. See Table under ORDER section.

**Deleted: Payment Plan¶**

¶ The Rent Board directed the Hearing Officer to consider a payment plan for the tenants after determining the proper amount of the increase. The tenants have been paying \$1,147.00 since December 1, 2015. A capital improvement pass-through of \$602.57 is granted. The rent underpayment is \$12,051.40.¶

¶ The Rent Regulations in effect regarding amortization and payment of capital improvements state the following 17.¶

¶ Section 10.2.3(2)-Items defined as capital improvements will be given a useful life of five (5) years or sixty (60) months and shall be amortized over that time period. The dollar amount of the rent increase justified by Capital Improvements shall be reduced from the allowable rent in the sixty-first month.¶

¶ 10.2.3(3)-A monthly increase of 1/60<sup>th</sup> of the average per unit capital improvement cost is allowable; that is, the landlord may divide the total cost of the capital improvement by 60 and divide this monthly increase equally among the units which benefitted from the improvement (i.e. a roof benefits all units).¶

¶ Pursuant to the Regulations in effect at the time of this capital improvement increase the capital improvement pass-through of \$602.57 increases the tenants' rent to¶

¶ \$1,749.57. The rent underpayment of \$12,051.40 would increase the tenants' rent by an¶

The capital improvement pass-through normally would expire on December 1, 2020 as the effective date was December 1, 2015. However, the capital improvement pass-through's expiration date has been extended as a result of the appeals by the parties. Therefore, the capital improvement pass-through shall expire on August 1, 2022.

**ORDER**

1. The owner is entitled to ~~\$34,732.93~~ or ~~\$578.88~~ monthly for a capital improvement pass-through, which is amortized over five years.
2. The rent underpayment shall be amortized over five years, which is \$200.86 monthly. The tenants' monthly rent is stated below as follows:

Base rent	\$1,147.00
+ capital improvement pass-through	+ \$578.88
Rent payment commencing September 1, 2017, and ending August 1, 2022	\$1,725.88

3. The capital improvement pass-through shall expire on August 1, 2022.

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

Dated: August 24, 2017

**BARBARA KING BROWN, ESQ.**  
Senior Hearing Officer  
Rent Adjustment Program

Deleted: additional \$1004.25 based on a twelve month amortization, which would increase the tenants' rent to \$2,753.75.¶  
¶  
Section 8.22.110 F(4) of the Rent Ordinance provides that the Hearing Officer may order Rent Adjustment for overpayments or underpayments over a period of months. However, such adjustments shall not span more than a twelve (12) month period, unless longer period is warranted for extraordinary circumstance. The rent underpayment of \$12,051.40 far exceeds the tenants' new monthly rent and constitutes good cause to grant a payment plan for the rent underpayment. The repayment plan has been extended to five years, and the additional amount of rent increase for the underpayment shall be \$200.86 monthly.¶  
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Comment [C5]: This should be deleted since there is no underpayment because the Capital Improvement pass-through 5 year span commences September 1, 2017 and ends August 1, 2022.  
Deleted: 602.57  
Deleted: + \$ 200.86  
Deleted: Plus rent underpayments totaling¶  
\$12,051.40/60=\$200.86  
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PROOF OF SERVICE

Case Number TIS-0360

RECEIVED  
SEP 14 10 23 AM

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

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

**Tenant**  
Mercedes Harrison  
275 Vernon St #11  
Oakland, CA 94610

**Owner**  
Solares Properties, LLC  
279 Vernon St #1  
Oakland, CA 94610

**Tenant Representative**  
Leah Simon-Weisberg/ Centro Legal de la Raza  
3022 International Blvd. Ste. #410  
Oakland, CA 94601

**Owner Representative**  
Alan Beales  
6114 La Salle Ave. #354  
Oakland, CA 94611  
Stephen Judson/Ramsey Law Group  
3736 Mt. Diablo Blvd. Ste.#300  
Lafayette, CA 94549

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on August 25, 2017 in Oakland, CA.

7.  
[Redacted]  
Maxine Visaya  
[Redacted]

RECEIVED  
ENTRUSTED  
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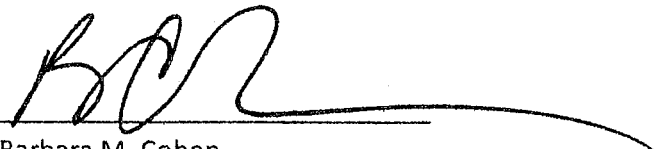
**ATTACHMENT B**

MAR 22 2013

1. I am a Hearing Officer for the City of Oakland's Rent Adjustment Program.
2. On March 21, 2013 I performed an inspection at 275 Vernon Street #11 in the case Harrison v. Solares, T12-0333.
3. I arrived in front of the building at 8:55 a.m. where I met Ms. Solares the owner of the property. Her attorney, Alana Grice Conner showed up a minute or two later and at 9:00 a.m. we were knocking on the tenants' door.
4. In the apartment were the tenants, Clifton and Mercedes Harrison and their attorney Philip Rapier. Also attending was the assistant manager of the building.
5. My inspection was limited to the bathroom. I entered the bathroom door, which was shut before my arrival. The bathroom is small. When I opened the door I immediately noticed a musty smell. I was never in the bathroom with the door closed, as the tenant and at least one other person was in the bathroom with me. I do not remember if the bathroom window was opened or closed.
6. The ceiling directly over the bathtub had a large section of peeling paint. One whole area of paint was completely gone, down to the sheetrock. It appeared that the sheetrock was also peeling. In that area I could see some dark spots that might be mold. Additionally, there was bubbling paint and cracked paint in multiple other places on the ceiling. There was also some cracked paint on several places on the walls.
7. I was in the bathroom for less than 5 minutes.

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

March 22, 2013

  
Barbara M. Cohen



Mercedes & Clifton Harrison  
275 Vernon, Unit 11  
Oakland, CA 94610

City of Oakland  
Rent Adjustment Program  
250 Frank H. Ogawa Plaza  
Oakland CA, 94612

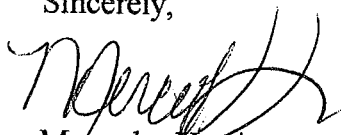
October 18, 2017

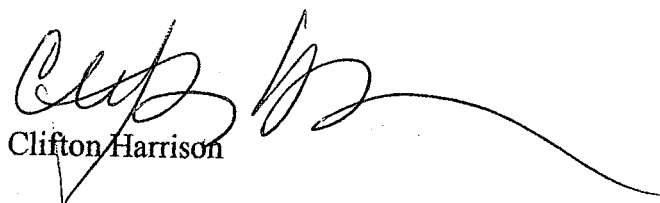
**RE: Harrison's Response to Solares Appeal Document dated 9/14/2017**  
**Case No. T15-0360**

To Whom It May Concern:

We have attached our response to Solares' appeal document regarding the Decision on Remand in Case No. T15-0360. Please feel free to contact us if you have any questions or concerns. We may be reached at (510) 835-2919.

Sincerely,

  
Mercedes Harrison

  
Clifton Harrison

000056

1 Clifton and Mercedes Harrison  
2 275 Vernon St. #11  
3 Oakland, CA 94610

4 Case No: T15-0360  
5 Remand Hearing Date: June 26, 2017 and July 26, 2017  
6 Case Title: Harrison v. Solares Properties LLC  
7 Property Address: 275 Vernon Street, Apt. 11, Oakland, CA 94610

8 **Harrison v. Solares Properties LLC**

9 **Case Number T15-0360**

10 **Remand Decision dated August 23, 2017**

11 **RESPONSE TO SOLARES PROPERTIES APPEAL**

12 This document is submitted as the Harrison's (Tenant's Response) to Solares Properties appeal  
13 submitted by Kathleen Solares, to the City of Oakland Rent Adjustment Program on  
14 September 14, 2017.

15 1. **The Capital Improvement Costs Is Not Inconsistent with OMC Chapter 8.22:**

16 The 24-month period, for recovery used, as stated in the Rent Board Reg. 10.2.1, is  
17 correct. The effective date of August 1, 2015, for the rent increase does apply. The RAP  
18 interpretation of the Ordinance is not in direct conflict with California State law. The  
19 RAP Board is correct in disallowing \$21,150.39. The payments Solares claims she made  
20 for the \$21,150.39, all fall outside of the 24 month window of the date when the rent  
21 increase would have become effective on August 1, 2015. This is a hard and fast rule  
22 with no room for misinterpreting. Solares is incorrect as to her assertions that the Board  
23 in its decision is not correct. This ruling should be substained by the Board.

24 ///

25 ///

///

1           2. Solares credit of \$5,000.00 for the bathroom repair

2           Solares submitted a credit to the Harrison's of \$5,000.00 for repairs made to the  
3 bathroom. Solares was ordered to repair the bathroom for violating the City of Oakland's  
4 Building Code and the cost are not to pass through as a capital improvement.

5           At the remand hearing Solares testified that she added the \$5,000 deduction so there  
6 would be no question that the amount covered the bathroom repair cost, but in Solares appeal  
7 to the remand decision she states that the \$5,000 also included the decrease services cost.  
8 The decreased services cost should not have been included in the cost of the bathroom repair  
9 as the decreased services cost are a penalty imposed by RAP on an owner because a tenant is  
10 unable to use their unit at 100% due to a building code violation that the landlord has not  
11 corrected (i.e. the delay in the bathroom ceiling repair work).

12           It is obvious and apparent based on the invoices submitted by Solares for this work that  
13 the actual deduction should include an additional \$7,305.40, which would bring the total  
14 deducted as a capital improvement to \$12,305.00 (\$5,000 + \$7,305.40). (see Exhibit A) The  
15 invoices Solares submitted is missing the associated cost that should also be included for;  
16 electrical, plumbing, the medicine cabinet, paint, painting cost, labor and building cost (e.g.  
17 demolition, construction, lumber, plaster etc).

18           3. The \$15,380.11 That Was Rejected In The Hearing Officer's First Ruling As a  
19 Capital Improvement Should Not Now Be Allowed As a Capital Improvement Pass-  
20 Through:

21           The hearing officer's first ruling not to allow this pass through was based on sound reasoning  
22 after a very long deliberation and argument from both parties. Solares could not effectively  
23 show how the payment of \$27,000.00 to settle a lawsuit could be passed on as a capital  
24 improvement since it could not be proven by the evidence submitted that the cost directed to  
25 the Harrison's in the amount of \$15,380.11 was for work done solely for the Harrison's  
apartment. The hearing Officers' first ruling was the correct one to make after she stated that

1 she could not determine based on the evidence that the cost claimed was actually for work  
2 completed at the Harrison's apartment. **The hearing Officer's decision not to allow this**  
3 **pass-through was the correct and the only decision she could make based on the**  
4 **evidence.** The fact that the check was paid to the contractor's attorney and not Solares  
5 attorney did not erase the fact that Solares could not prove that the amount paid were for  
6 repairs made to the Harrison's apartment alone since there were charges for other apartments  
7 listed on the invoice. The argument by Solares that the Hearing Officer based her decision  
8 on the fact that the check was made out to her attorney and not to the contractor as written in  
9 the Hearing Officer's statement some how miraculously changes the evidence presented by  
10 Solares. The evidence presented clearly showed that the invoice was for work at three (3)  
11 other apartments. There was no breakdown or itemization of the invoices that showed which  
12 work was done to what apartment. Also the invoice presented appeared to be altered and  
13 were not the original invoices given to her for payment by the contractor. This added to the  
14 question of how accurate the invoice was and the basis for the Hearing Officer's decision  
15 who agreed with the Harrison's. In addition some of the invoices connected to the  
16 \$15,380.11, show other discrepancies listed below.

- 18 A. Invoice SP27511-6 page Sol035 attributes \$1,240.00 of work for unit 11 done on  
19 7-29-13 (see Exhibit B). This date falls outside the allowable 24 month window  
20 for pass through.
- 21 B. The invoice with multiple units page Sol150 shows \$240 work done 9/16/13 and  
22 \$240 work done 9/19/13 for a total of \$480 (see Exhibit B) of work done after we  
23 moved back into our unit on September 15, 2013. The costs should not be  
24 allowed as they are repairs and are not a part of the capital improvement because  
25 the 90 day city permit had expired.
- C. Also on invoice SP27511-8 page Sol036 the item Painter is listed for \$1000 (50  
hours \*\$20 per hour) is for Jesse Perryman Painting who actually did the work,

1 not Jon Viau the contractor see invoice by Jesse Perryman Painting on 8/13/13  
2 page Sol037. Also attached on page Sol40 are two Kelly Moore receipts for paint  
3 \$153.55 + \$334.33= \$487.88 paid for by Jesse Perryman Painting on 8/13/13  
4 again not Jon Viau the contractor. (See Exhibit B).

5 These additional discrepancies provide additional justification as to why the amount should  
6 not be passed through as a capital improvement. The Hearing Officer correctly prohibited  
7 the amount of \$15,380.11 as a capital improvement pass-through. No evidence Solares has  
8 submitted changes the first decision that was made by the Hearing Officer. The decision to  
9 somehow admit this pass-through without clear and convincing evidence is unwarranted and  
10 cannot be explained based on what has been presented by Solares to disprove this. The  
11 Hearing Officer was correct in her original decision and further she gives no plausible  
12 justification or rationalization nor clarification as to her reversal of her first ruling regarding  
13 this matter. The decision simply makes no sagacity. In addition the total of the five invoices  
14 submitted equals \$21,849.59 not \$27,000.00 (see Exhibit C), and there is no one to one  
15 relationship between each invoice and a subsequent payment as provided with all the other  
16 invoices submitted as evidence (see Exhibit D). Clearly Solares does not meet the burden of  
17 proof required to allow the pass-through of \$15,380.11 based on what has been submitted  
18 and therefore should not be allowed in the interest of fairness and justice to be pass-through  
19 as a capital improvement onto the Harrison's.

20  
21 **4. Delay and Abuse of RAP System in Case No. T14-0117:**

22 Solares comes now claiming that the Harrison's are abusing the system somehow, and that  
23 RAP is colluding with the Harrison's. This claim smacks of desperation and misdirection.  
24 In the very first case of this outrageous capital improvement increase amounting to over  
25 \$70,000.00 dollars for one apartment case no T14-0117, Solares rescinded the rent increase  
at the first hearing because she submitted her evidence late, and therefore could not present

1 any invoices and bills she was claiming to be a capital improvement cost. Faced with a  
2 hearing decision that would have automatically ruled in favor of the Harrison's, Solares  
3 withdrew the \$70,000.00 rent increase at the hearing, and was allowed to over the objections  
4 made by the Harrison's. Although Solares claims "*she could not have possibly put through*  
5 *another capital improvement pass through while the proceeding in T14-0117 was still*  
6 *pending*" (see page 4 of her appeal submission). The truth is that's exactly what Solares did.  
7 Solares' appeal document Exhibit 1 - Time line for T14-0117 (page 9) leaves out a very  
8 important date. That date is **May 23, 2015**, (see Exhibit 2 page 11 of Solares appeal  
9 document) **this date is important as this is when Solares served the Harrison's with**  
10 **another rent increase that was to take effect on August 1, 2015 and is the subject of this**  
11 **current case T15-0360.**

12 This is not the first time Solares has misrepresented the facts in these cases. The Harrison's  
13 did not **drop the appeal on case T14-0117 until August 6, 2015**, which was well after the  
14 rent increase ... "*she (Solares) could not have possibly put through another capital*  
15 *improvement pass through while the proceeding in T14-0117 was still pending*" (see page 4  
16 of her appeal submission). This blatant misrepresentation of the facts should cause the  
17 Hearing Officer as well as the Appeals Board members to question Solares truthfulness  
18 regarding all the facts in this case, as Solares clearly and under penalty of perjury submits  
19 these statements. Solares continues to misrepresent the facts through out what is now a case  
20 that has been going on four (4) years. It should be noted that Solares swore there was no leak  
21 in the bathroom ceiling which is in direct conflict with the report from the City of Oakland  
22 Building Inspector, the Environmental Services Companies report (submitted by the  
23 Harrison's) and the testimony of Hearing Officer Cohen in the decreased services case  
24  
25

1 number T12-0333. It should also be noted that Solares, in the Unlawful Detainer action  
2 brought against the Harrison's in 2013, stated the reason for the just cause (eviction) notice to  
3 vacate *"the owner... seeks in good faith to undertake substantial repairs that cannot be*  
4 *completed while the unit is occupied, and that are necessary to bring the property into*  
5 *compliance with applicable codes and laws affecting the health and safety of the tenants of*  
6 *the building. This is the reason you will need to vacate the premises."* So if Solares was  
7 telling the truth in the Notice to Vacate in the Unlawful Detainer action (again these  
8 documents were submitted to Alameda Superior Court under penalty of perjury) then none of  
9 the "repairs" made to the Harrison's unit should be claimed as capital improvements but  
10 instead repairs to remedy Priority 1 and Priority 2 conditions and deferred maintenance work.

11  
12 **5. RAP Staff is not Re-Interpreting the Language of the Ordinance:**

13 The amount of \$21,150.39 was correctly ruled outside of the 24 month period. If Solares is  
14 claiming the decision to deny the recovery is arbitrary and capricious, and denies her a fair  
15 and just constitutional return on her investment this should have been brought up at the first  
16 hearing. The owner should have been prepared at that time to present evidence that could  
17 prove that she was being denied a fair return on her investment by providing the necessary  
18 financial documents to prove this, as it is instructed in the ordinance for an owner to do so.  
19 This argument has no merit and should not be considered by the hearing officer and the  
20 ruling is final.

21  
22 **6. The Decision Does Not Deny The Owner a Fair Return on Investment:**

23 First there is no real way to determine this based on the evidence presented by Solares. It has  
24 been proven time and time again that Solares has made false statements and presented  
25 invoices and checks that should not have been entered into evidence during the hearing,  
according to the hearing procedure rules. The mystifying argument that the action and

1 timing of the Appeals Board should have been anticipated by the Harrison's is amusing since  
2 the Harrison's don't have a crystal ball in order for them to know how overloaded the  
3 calendar is within the RAP Board Program. It should be noted that Solares is now bringing  
4 up the fact that a loan was taken out to pay for the capital improvements and the loan is not  
5 paid off. If this is indeed the case then the capital improvements have not been officially  
6 paid for as required by the Rent Ordinance and cannot be claimed as a capital improvement  
7 pass-through.

8  
9 **7. Repayment Plan:**

10 There is no evidence requirement for a Hearing Officer to order a payment plan on  
11 overpayments or underpayments over a period of months.(see RAP regulations section  
12 8.22.110 section F4). Solares was afforded the same payment plan rule in the decreased  
13 services hearing (case T12-0333). A payment plan is only considered by a Hearing Officer  
14 for over/under payments in cases as listed in RAP regulation 8.22.110 section F4.

15 **8. Math and clerical errors that should be amended by the Hearing Officer:**

16 As submitted in our appeal document there are errors in Solares attachment to the appeal  
17 document. Some of these errors have been corrected in the additional evidence Solares  
18 submitted to RAP in a document dated 9/27/2017 and copies hand delivered to the Harrison's  
19 on 10/2/2017.

20 End of Response:

21 Dated this 18<sup>th</sup> day of October, 2017

22 Respectfully Submitted,

23   
24 Mercedes Harrison

25   
Clifton Harrison



PROOF OF SERVICE  
Case Number T15-0360

I declare under penalty of perjury under the laws of the State of California that on October 19, 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	Kathleen Solares, Solares Properties LLC
Address	279 Vernon St #1
City, State, Zip	Oakland, Ca 94610
Name	Stephen Gudson, Ramsey Law Group
Address	3736 Mt. Diablo Blvd Suite 300
City, State, Zip	Hayward, Ca 94549

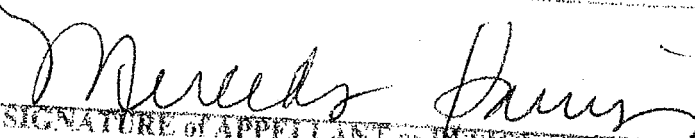
	10/18/2017
SIGNATURE OF APPELLANT or DESIGNATED REPRESENTATIVE	DATE

Exhibit A

1/18/15  
1/18/15  
1/18/15

**Additional Cost that should be deducted for Bathroom Repair created 7-16-2017**

Page #	Description	amount	date paid	check #
49	Pacific Sales - toilet	\$218.00	9/3/2013	visa
52	Pacific Sales - bath sink	\$66.60	8/19/2013*	charge
66	Martinelli's Cabinet's - vanity cabinet	\$4,300.00	8/16/2013	visa
74	Romarts Marble & Granite Fabricators - vanity, back splash, top	\$375.00	9/13/2013	5157
75	Romarts Marble & Granite Fabricators - shower walls	\$1,350.00	9/13/2013	5157
77	Diablo Glass inc - tub enclosure & install	\$975.45	9/6/2013	5201
	Bed Bath Beyond - toilet paper stand (not permanent fixture)	\$19.99	1/20/2014	cash
	<b>TOTAL</b>	<b>\$7,305.04</b>		
	* on expense matrix date paid is 9/3/13 but on invoice #S3524995.002 date paid is 8/19/2013			
	missing cost that should also be included:			
	electrical, plumbing,			
	medicine cabinet, paint cost,			
	and associated labor cost and building cost (lumber plaster etc)			

10/24/2013  
 10/24/2013  
 10/24/2013

Exhibit B

275 Vernon Street #11  
Invoices below paid with Check #5389 for \$27,000.00

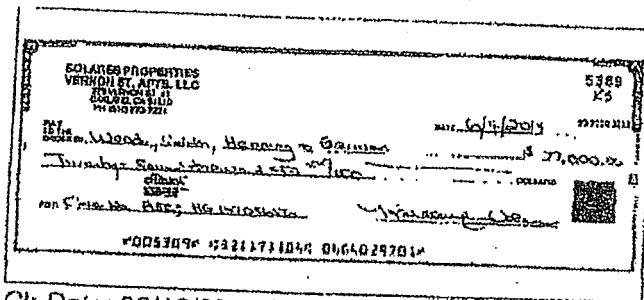
Vendor Name	Purpose	Date Paid	Ck #	Amount
First Choice Construction, Invoice # SP11-6, 08/04/13		06/04/14	5389	\$2,325.00
First Choice Construction, Invoice # SP11-8, 08/27/2013	Pg 360	06/04/14	5389	\$7,413.60
First Choice Construction, Invoice # SP11-9, 09/05/2013	Pg 361 Pg 368	06/04/14	5389	\$2,672.46
First Choice Construction, Invoice # SP11-10, 09/15/2013	Pg 373	06/04/14	5389	\$1,289.05
First Choice Construction, 09/23/2013 (combined invoice for 275 apt. 11, 275 apt. 2, and 279 apt. 4)	Pg 375 First Choice Invoices	06/04/14	5389	\$1,680.00 (labor only)
First Choice Construction, 09/23/2013 (combined invoice for 275 apt. 11, 275 apt. 2, and 279 apt. 4)	KS evidence			Material - No charge
Sub-Total				\$15,380.11
Balance forward from page 2				\$60,372.08
Grand Total				\$75,752.19

000

0.000+

2,325.00 +  
 7,413.60 +  
 2,672.46 +  
 1,289.05 +  
 1,680.00 +

15,380.11G+



Ck Date: 06/12/2014 Ck No: 5389 Amt: \$27000.00

005

360

Jon Vlanu  
ba First Choice Construction  
1630 N. Main St. #137  
Walnut Creek, CA 94596  
(925) 708-0188  
License # 829350

Invoice Solares Properties LLC  
Number: SP27511-6  
Date: 8/4/13

Bill To:

Name: Solares Properties LLC  
Address: 275 Vernon St. Apt. 11  
City: Oakland, CA

Project: Remodel

Date	Description	Hours	Rate	Amount
Mon. 7/29/13	Foreman	8.00	95.00	760.00
	Journeyman	8.00	60.00	480.00
Fri. 8/2/13	Foreman	7.00	95.00	665.00
	Journeyman	7.00	60.00	420.00
				Total
				2,325.00
				Payment
				0.00
				Balance
				2,325.00

Notes:  
Material: 0.00  
Labor: 2,325.00  
General Work Description: plaster

361

**Jon Vianu**  
**dba First Choice Construction**  
 10 N. Main St. #137  
 Walnut Creek, CA 94596  
 (925) 708-0188  
 License # 829350

**Invoice** Solares Properties LLC  
**Number:** SP27511-8  
**Date:** 8/27/13

**Bill To:**

Name: Solares Properties LLC  
 Address: 275 Vernon St. Apt. 11  
 City: Oakland, CA

**Project: Remodel**

Date	Description	Hours	Rate	Amount
Wed. 8/14/13	Journeyman	6.00	60.00	360.00
	Journeyman	8.00	60.00	480.00
	Helper	8.00	30.00	240.00
Thurs. 8/15/13	Journeyman	8.00	60.00	480.00
	Helper	8.00	30.00	240.00
Fri. 8/16/13	Journeyman	8.00	60.00	480.00
	Journeyman	8.00	60.00	480.00
	Helper	8.00	30.00	240.00
Ton. 8/19/13	Journeyman	8.00	60.00	480.00
Tues. 8/20/13	Journeyman	8.00	60.00	480.00
Wed. 8/21/13	Journeyman	8.00	60.00	480.00
Thurs. 8/22/13	Journeyman	8.00	60.00	480.00
Fri. 8/23/13	Journeyman	8.00	60.00	480.00
Painter	Wash walls, prime and paint, walls and ceilings, clearcoat all doors			1,000.00
<b>Materials</b>				
8/12/13	Home Depot			85.11
8/15/13	Home Depot			62.65
8/16/13	Home Depot			195.22
8/12/13	Home Depot			61.48
8/13/13	Kelly-Moore Paints			153.55
	Kelly-Moore Paints			334.33
8/15/13	Economy Lumber			109.43
8/21/13	Truitt and White			11.83
			<b>Total</b>	<b>7,413.60</b>
			<b>Payment</b>	<b>0.00</b>
			<b>Balance</b>	<b>7,413.60</b>

Notes:

362

Jesse Perryman Painting  
3228 Ardeno Dr  
Lafayette, CA 94549

(925)395-8973  
eastbaypainter@hotmail.com

# Invoice

Invoice No: 261  
Date: August 22, 2013  
Terms: NET 30  
Due Date: September 21, 2013

Bill To: First Choice Const.  
82 El Camino Corto

Description	Quantity	Rate	Amount
Labor (hours)	50	\$20.00	\$1,000.00

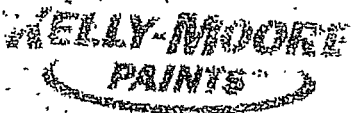
Labor only for unit 11 at 275 Vernon

Total	\$1,000.00
Paid	\$0.00
<b>Balance Due</b>	<b>\$1,000.00</b>

000071



365



Kelly-Moore Paint Company Inc.  
Store 612 Walnut Creek  
700 N. Main St Walnut Creek, Ca  
(925) 939-4100

JOE PERRYMAN  
JE6973

ORDER #612-21054547  
INVOICE #612-0000684771

PAINT CARE KIT  
2 @ \$0.77

PAINT CARE KIT  
ACCOUNT 0.20

PAINT CARE KIT  
ACCOUNT 0.20

PAINT CARE KIT  
ACCOUNT 0.20

PAINT CARE KIT

PAINT CARE KIT  
2 @ 139.95

PAINT CARE KIT  
2 @ 1.59

SUBTOTAL 308.14  
TAX 26.19  
TOTAL 334.33  
CASH (340.00)  
CHANGE 5.67

SALES ASSOCIATE: MARGARITA



Kelly-Moore Paint Company Inc.  
Store 612-Walnut Creek  
700 N. Main St Walnut Creek, Ca 94597  
(925) 939-4100

JOE PERRYMAN PAINTING  
JE6973

ORDER #612-21064623  
INVOICE #612-00006890068

PAINT CARE KIT 139.95

PAINT CARE KIT 1.60

SUBTOTAL 141.55  
TAX 12.03  
TOTAL 153.58  
CASH (200.00)  
CHANGE 46.42

SALES ASSOCIATE: MARGARITA

REG22 Aug 13 2013 12:54 PM

about your experience. Go to  
www.kellymoore.com for shopping at Kelly-Moore

Jon Vianu

First Choice Construction

10 N. Main St. #137  
Walnut Creek, CA 94596  
(925) 708-0188  
License # 829350

Invoice Solares Properties LLC

Number: SP27511-9

Date: 9/5/13

368

Bill To:

Name: Solares Properties LLC  
Address: 275 Vernon St. Apt. 11  
City: Oakland, CA

Project: Remodel

Date	Description	Hours	Rate	Amount
Mon. 8/26/13	Journeyman	5.00	60.00	300.00
	Journeyman	8.00	60.00	480.00
Wed. 8/28/13	Journeyman	2.00	60.00	120.00
Thurs. 8/29/13	Journeyman	5.00	60.00	300.00
	Journeyman	5.00	60.00	300.00
Fri. 8/30/13	Journeyman	6.00	60.00	360.00
	Journeyman	6.00	60.00	360.00
<b>Materials</b>				
28/13	Home Depot			345.79
3/13	Economy Lumber			286.13
1/28/13	Economy Lumber		Credit	-179.46
<b>Total</b>				2,672.46
<b>Payment</b>				0.00
<b>Balance</b>				2,672.46

Notes:

Material: 452.46  
Labor: 2,220.00

General Work Description: Install baseboard, sink, disposer, switches and plugs, ceiling lights  
(chandelier, dishwasher, doorknobs, bathroom sink and faucet, window cranks

Jon Vianu  
 First Choice Construction  
 1630 N. Main St. #137  
 Walnut Creek, CA 94596  
 (925) 708-0188  
 License # 829350

Invoice Solares Properties LLC  
 Number: SP27511-10  
 Date: 9/15/13

Bill To:

Name: Solares Properties LLC  
 Address: 275 Vernon St. Apt. 11  
 City: Oakland, CA

**Project: Remodel**

Date	Description	Hours	Rate	Amount
Tues. 9/3/13	Journeyman	2.00	60.00	120.00
Wed. 9/4/13	Journeyman	4.00	60.00	240.00
	Journeyman	6.00	60.00	360.00
Thurs. 9/5/13	Journeyman	4.00	60.00	240.00
Fri. 9/6/13	Journeyman	2.00	60.00	120.00
	Journeyman	3.00	60.00	180.00
<b>Materials</b>				
9/6/13	Home Depot			29.05
			<b>Total</b>	1,289.05
			<b>Payment</b>	0.00
			<b>Balance</b>	1,289.05

Notes:

Material: 29.05  
 Labor: 1,260.00

General Work Description: Baseboard moldings, finish trimming bathroom, finis electrical

*[Faint circular stamp]*

375

Jon Vianu  
 dba First Choice Construction  
 1630 N. Main St. #137  
 Walnut Creek, CA 94596  
 (925) 708-0188  
 License # 829350

Invoice Solares Properties LLC  
 Number: 275 apt. 11, 275 apt. 2,  
 279 apt. 4  
 Date: 9/23/13

Bill To:

Name: Solares Properties LLC  
 Address: 275 apt. 11, 275 apt. 2, 279 apt. 4  
 City: Oakland, CA

Project: Remodel

Date	Description	Hours	Rate	Amount
Mon. 9/9/13	Journeyman 4hrs apt. 2 and 4hrs apt. 11	240/240	8.00	60.00
Tues. 9/10/13	Journeyman 6 hrs apt. 4 and 2 hrs apt. 11	360/120	8.00	60.00
	Journeyman 6 hrs apt. 4 and 2 hrs apt. 11	" "	8.00	60.00
Wed. 9/11/13	Journeyman 6hrs apt. 4 and 2 hrs. apt 2	" "	8.00	60.00
	Journeyman 6 hrs apt. 4 and 2 hrs. apt. 2	" "	8.00	60.00
Thurs. 9/12/13	Journeyman 6hrs apt. 4 and 2 hrs. apt 11	" "	8.00	60.00
	Journeyman 6 hrs apt. 4 and 2 hrs. apt. 11	" "	8.00	60.00
Fri. 9/13/13	Journeyman 4 hrs. apt. 11 and 4 hrs. apt. 2	240/240	8.00	60.00
	Journeyman 4 hrs. apt. 11 and 4 hrs. apt. 2	" "	8.00	60.00
Mon 9/16/13	Journeyman 2 hrs. apt. 11 and 6 hrs. apt. 4	120/240	8.00	60.00
	Journeyman 2 hrs. apt. 11 and 6 hrs. apt. 4	" "	8.00	60.00
Tues. 9/17/13	Journeyman	7	8.00	60.00
Wed 9/18/13	Journeyman		8.00	60.00
Thurs. 9/19/13	Journeyman 4 hrs. apt 11	240	8.00	60.00
Fri. 9/20/13	Journeyman 4 hrs. apt. 2 and 4 hrs. apt. 4	240/240	8.00	60.00

Materials	Amount
9/20/13 Home Depot	154.76
09/12/13 Home Depot	194.22
09/11/13 Home Depot	226.17
09/19/13 Home Depot	85.97
09/16/13 Home Depot	265.63
09/18/13 Bayshore Supply	22.73

Total	8,149.48
Payment	0.00
Balance	8,149.48

Notes:  
 Material: 949.48  
 Labor: 7,200.00  
 General Work Description: Installing exterior ground and housings from Apt. 11, Apt. 2, and Apt. 4 to main panel. Ground all outlets in Apt. 4. Finish cabinetry Apt. 4. Install finish plumbing and electrical Apt. 4.

275V11 = 240. 240      275V2 = 240      279V4 = 360. 120.  
 120. 240      120      360. 120.  
 120. 120.      120.      360. 240.  
 120. 120.      240      360.  
 120. 240      340.      360.  
 1680.      240.      360.  
 Sol 050      19      360.  
 1200.

260000075

Exhibit C

2010-10-10  
10:00 AM  
10:00 AM

Invoice Number	Date	Invoice Total
SP27511-6	8/4/2013	\$2,325.00
SP27511-8	8/27/2013	\$7,413.60
SP27511-9	9/5/2013	\$2,672.46
SP27511-10	9/15/2013	\$1,289.05
Combined invoices for 275 apt. 11, 275 apt. 2, 279 apt. 4	9/23/2013	\$8,149.48
<b>TOTAL OF INVOICES</b>		<b>\$21,849.59</b>

CHECK NO 5389 PAYABLE TO contractors attorneys \$27,000.00  
TOTAL OF INVOICES \$21,849.59  
**Shortage (CHECK TOTAL - TOTAL OF INVOICES) \$5,150.41**

PHOTO COPY  
of original invoice  
numbered

Exhibit D

FORWARDED  
BY  
2009 11 24  
10:00 AM

Ion Vianu  
**Iba First Choice Construction**  
 1630 N. Main St. #137  
 Walnut Creek, CA 94596  
 (925) 708-0188  
 License # 829350

Invoice Solares Properties LLC  
 Number: SP27511-7  
 Date: 8/11/13

20130811 01:00:13  
 20130811 01:00:13  
 20130811 01:00:13

**Bill To:**

Name: Solares Properties LLC  
 Address: 275 Vernon St. Apt. 11  
 City: Oakland, CA

**Project: Remodel**

Date	Description	Hours	Rate	Amount
Mon. 8/5/13	Foreman	2.00	95.00	190.00
	Journeyman	2.00	60.00	120.00
Tues. 8/6/13	Foreman	1.00	95.00	95.00
	Journeyman	1.00	60.00	60.00
Thurs. 8/8/13	Journeyman	8.00	60.00	480.00
Fri. 8/9/13	Journeyman	8.00	60.00	480.00

Materials	Description	Amount
8/7/13	Home Depot	99.98
08/05/13	SG Industries	28.34
08/09/13	Economy Lumber	58.03

8/2/13  
 V LLC  
 # 5185


<b>Total</b>	1,611.35
<b>Payment</b>	0.00
<b>Balance</b>	1,611.35

**Notes:**

Material: 186.35  
 Labor: 1,425.00

General Work Description: Tile, electrical



SOLARIS PROPERTIES VERNON ST. APTS. LLC <small>3740 W. 127th ST. #100          CHICAGO, IL 60642-2224</small>		5185
PAY TO THE ORDER OF <u>First Choice Construction</u>		DATE <u>8/26/13</u> 007710 3211
<u>One thousand six hundred eleven and 35/100</u> DOLLARS		\$ <u>1,611.35</u>
<small>FOR DEPOSIT ONLY</small> <small>NO OTHER ENDORSEMENTS</small>		
#005185# 4321171184# 0464029704#		

Ck Date: 08/26/2013 Ck No: 5185 Amt: \$1611.35

FIRST BANK NATIONAL ASSOCIATION  
 CHICAGO, IL 60601  
 08/26/2013 11:24 AM

Tenant and Property Owner Appeal      FINAL REPLY BY OWNER  
DUE OCTOBER 19, 2017

Case No. T-15-0360 (Harrison v. Solares)  
Date of Remand Decision: August 23, 2017 (proof of service dated August 25, 2017, postmark date August 28, 2017)

In addition to the grounds for the Property Owner's appeal, as set forth in the RAP submissions by Owner on September 14, 2017, and September 27, 2017, there are serious systemic errors in the Hearing Decision on Remand dated August 23, 2017 ("Remand Decision"), which compel further remand to the Hearing Officer.

In the Remand Decision, the Hearing Officer inexplicably lists the commencement of the capital improvement pass through as September 1, 2017. This makes no sense and must be corrected. On page 9 of the Remand Decision, the Hearing Officer states:

**Remand Decision (August 23, 2017)**

The capital improvement pass-through normally would expire on December 1, 2020 as the effective date was December 1, 2015. However, the capital improvement pass-through's expiration date has been extended as a result of the appeals by the parties. Therefore, the capital improvement pass-through shall expire on August 1, 2022.

**ORDER**

1. The owner is entitled to \$36,154.45, or \$602.57 monthly for a capital improvement pass-through, which is amortized over five years.
2. The rent underpayment shall be amortized over five years, which is \$200.86 monthly. The tenants' monthly rent is stated below as follows:

Base rent	\$1,147.00
+ capital improvement pass-through	+ \$602.57
	+ \$ 200.86
Plus rent underpayments totaling \$12,051.40/60=\$200.86	
Rent payment commencing September 1, 2017, and ending August 1, 2022	\$1,950.43

3. The capital improvement pass-through shall expire on August 1, 2022.

Here, the Owner gave the Tenants the rent increase notice on May 23, 2015, for a rent increase due to start on August 1, 2015. The Owner for argument maintains her position (see, Owner Appeal filed September 14, 2017) that the notice of the proposed rent pass through is May 23, 2015 when the Tenants were served with the Notice. The use and consideration of the effective date never appears in the old Ordinance (10.2.1). At that time it stated, "credit for capital improvements will only be given for those improvements which have been completed and paid for within the 24 month period prior to the date of the proposed rent increase". The key word is "proposed" otherwise the Ordinance would have said within 24 months prior to the rent increase - a totally different meaning. An owner must be able to capture a full 24 months outside of the 30 or 60 day notice to a tenant; otherwise, there is a loss for materials and labor that occurred prior to the required notification. The Tenants then filed this current appeal, and it has remained pending ever since. **Therefore, the correct start date for the capital improvement pass through must be (May 23, 2015) not August 1, 2015.**

The Remand Decision ordered an allowed capital improvement pass through of \$36,154.45. That amount must be amortized over the 60-months as the Ordinance allowed at the time. The capital improvement pass through therefore must be ordered as of August 1, 2015, when the Owner's rent increase notice was to begin, and must continue for 60-months from then until August 1, 2020.

Similarly, the effective date of December 1, 2015, as the start of the pass through (noted above) is in error. The Hearing Officer was correct in her first Decision dated March 4, 2016. In that Decision, the HO stated correctly that the "Effective Date of Increase" was August 1, 2015. That Decision on page 11 stated the following:

**March 4, 2016 Decision**

<b>CAPITAL IMPROVEMENTS</b>			<b>Effective Date of Increase</b>
<u>Improvements and repairs benefitting the tenants' unit</u>			August 1, 2015
<b>IMPROVEMENT OR REPAIR</b>	<b>DATE COMPLETED</b>	<b>COST ALLOWED</b>	<b>MONTHLY COST</b>
Kitchen and bathroom	6/4/14	\$33,492.69	1 \$558.21

**ORDER**

Wherefore, all the evidence having been reviewed and considered, it is the order of this Hearing Officer that:

1. The tenants' petition is granted in part.
2. The tenants' claim of decreased housing services was dismissed by the tenants at the Hearing.
3. The owner is granted a monthly capital improvement pass-through of \$558.21. The capital improvements pass-through is effective August 1, 2015, and expires July 31, 2020.
4. The tenants have underpaid rent in the amount of \$4,465.70. Their rent is stated below as follows:

Base Rent	\$1,147.00
Plus capital improvement costs	\$ 558.21
Plus rent underpayment of \$4,465.68 (8/1/15-3/1/16/24) (a 24 month amortization period is warranted due to large underpayment)	186.07
Current rent payment commencing April 1, 2016, and ending March 1, 2018	\$1,891.28

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 OCT 19 PM 2:25

It is unclear why the HO later in the Remand Decision (August 23, 2017) instead chose an effective date of September 1, 2017. There is no explanation. Clearly, there is no basis to start the capital improvement pass through almost two years later, on September 1, 2017. This must be corrected by the Hearing Officer on remand.

Any references in the Remand Decision or in the Appeal Hearing regarding a capital improvement pass through starting anytime *other than* (May 23, 2015) August 1, 2015, is error and must be corrected by the Hearing Officer.

The Hearing Officer on remand should issue a new order, which will allow the capital improvement pass through starting August 1, 2015, and continuing for the allowed 60-months amortization period to August 1, 2020.

The Hearing Officer should correct her dateline and also re-calculate the amount of the rent underpayment of the Tenants from August 1, 2015 (based on the allowed capital improvement amount of \$36,154.45), and order that amount to be paid to Owner in full in a lump sum. That amount will be all underpaid rent from the date of August 1, 2015, to the present time. Then, the remaining amount of the approved capital improvement (\$36,154.45 less the underpaid rent portion) is to be amortized in equal months through 60-months ending on August 1, 2020. This correction will address the Tenants' concern regarding a duplicative payment.

It must be noted that the Tenants have made no increased payments since receiving the rent increase Notice set to start on August 1, 2015. The Tenants have made no good faith increased payments at all for over two years despite knowing that they will ultimately be ordered by the RAP to pay some increase for the significant improvements to their Unit. Therefore, amortizing the underpaid rent portion should not occur and is prejudicial. As City Attorney Richard Illgen counseled the Board members at the December 8, 2016 RAP Board Hearing (at Tape 02:35:35) when a repayment plan was raised for the first time at the appeal Board level:

**"Because the time period [the appeal of the capital improvement] has gone on a long ways, it creates a burden, I would hope the parties could reach an accommodation on this, ... we also typically advise people when they are going through this process to put the money aside, because when we have an outcome here [of the appeal] you may have to pay all or a portion of this money to the landlord, and we hope that people would have at least made some effort to do that during the course of this [the appeal]...we know that it is an extreme burden on both sides of this issue too...because the landlord has been paying for the improvements all this time and not had the rent increase, and the tenant who has received some of the benefits of the improvements but also has not had to pay the rent [increase] over this period of time ..."**

Board member Ms. Karen Friedman correctly stated that the matter of a payment plan was not presented in the tenant's Brief nor in their Appeal. This was the first time anyone was hearing about a payment plan. This poses a problem: is this something the Board can consider? We, too, object and believe this to be out of order and something the Board should never have been allowed to consider.

The Tenants cannot use the delayed appeal process to avoid paying any increased rent for years. Further, there clearly is no precedent whatsoever to allow the Tenants to pay no increased rent for over two years, and then for the Hearing Officer to allow the unpaid rent to be amortized over five additional years! That would result in the Tenants not fully paying for the improvements to their Unit for seven years, with no interest! That is manifestly unfair to the Owner and denies her a just and fair constitutional return. The Findings and Purpose of the Residential Rent Adjustment Program ("RAP") are clearly spelled out in the Ordinance:

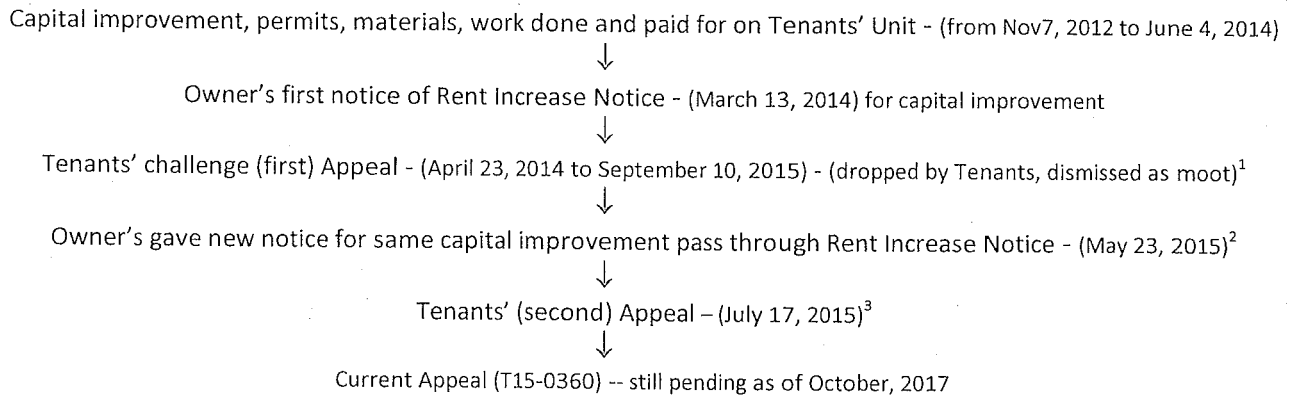
Article I, Section 8.22.010(C), provides in part:

(C) Among the purposes of this chapter are ... encouraging rehabilitation of rental units, ... and allowing efficient rental property owners the opportunity for both a fair return on their property and rental income sufficient to cover the increasing cost of repairs on their property and rental income sufficient to cover the increasing cost of repairs, maintenance, insurance, employee services, additional amenities, and other costs of operation.

The Owner here is entitled to have her capital improvement pass through allowed and paid through August 1, 2020, and the underpaid rent portion paid immediately.

### Conclusion

The highlights of the history of this capital improvement, and attempted pass through, can be summarized in this chronological chart:



It is thus time for the RAP Board to remand this matter to the Hearing Officer with specific instructions to:

- (1) approve the capital improvement pass through amount of \$36,154.45,<sup>4</sup>
- (2) order the underpaid rent portion from August 1, 2015, to present to be paid to Owner in a lump sum; and
- (3) order the remaining balance (\$36,154.45 less underpaid rent portion) to be amortized over the remainder of the 60-month period ending on August 1, 2020.

Thank you for your continuing consideration.

---

<sup>1</sup> T14-0117

<sup>2</sup> For rent increase to start on August 1, 2015

<sup>3</sup> T15-0360 (this current appeal)

<sup>4</sup> Or, the higher amount if the 24-month recovery period is May 23, 2013 – May 23, 2015

1 **PROOF OF SERVICE**

2 I, the undersigned, am employed in the County of Contra Costa, State of California. I  
3 am over the age of eighteen and not a party to the within action. My business address is Ramsey  
4 Law Group, 3736 Mount Diablo Blvd. Suite 300, Lafayette, California, 94549. On October 19,  
2017, I caused to be served the

5 **FINAL REPLY OF OWNER (T15-0360) (HARRISON V. SOLARES)**

6 on the following parties:

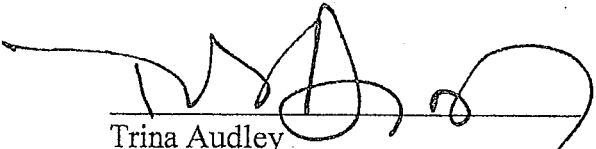
<b>Name of Party</b>	
Clifton Harrison (Tenant) 275 Vernon Street, #11 Oakland, CA 94610	Mercedes Harrison (Tenant) 275 Vernon Street, #11 Oakland, CA 94610

7  
8  
9  
10  
11  
12  **(BY FACSIMILE)** I served said document on the parties in this action by transmitting a  
13 true copy thereof by facsimile machine to their respective fax numbers shown above. I complied  
14 with California Rules of Court, Rule 2008, and the machine reported No error. The machine  
printed a record(s) of successful transmission(s).

15  **(BY REGULAR MAIL)** I placed said document(s) along with envelope(s) addressed as  
16 indicated above in the location designated by my employer for the collection, processing and  
17 mailing of correspondence. I am readily familiar with my employer's ordinary business practice  
18 for processing such correspondence for mailing which includes sealing said document(s) inside  
said envelope(s) and mailing them with postage fully prepaid the same day via the United States  
Postal Service.

19 Executed at Lafayette, California on October 19, 2017.

20  
21 I declare under penalty of perjury under the laws of the State of California that the above is  
22 true and correct.

23  
24   
Trina Audley

25  
26  
27  
28  
OCT 19 2017  
LAFAYETTE, CA

Stephen M. Judson  
Attorney

3736 Mt. Diablo Boulevard, Suite 300  
Lafayette CA, 94549

www.ramseylawgroup.com  
sjudson@ramseylawgroup.com  
925-284-2811 Direct  
925-409-7773 Facsimile

RENT ADJUSTMENT PROGRAM

2017 OCT -2 PM 1:39

**RAMSEY LAW GROUP**  
a professional corporation



September 27, 2017

VIA HAND DELIVERY

Rent Board  
City of Oakland  
Residential Rent Adjustment Program  
250 Frank Ogawa Plaza, Suite 5313  
Oakland, CA 94612

Re: Harrison v. Solares Properties, LLC  
Case No.: T15-0360  
Remand Hearing: June 26, 2017 and July 26, 2017

To whom it may concern:

Enclosed please find corrections to the Summary of Capital Improvement Costs which was evidenced within the Hearing Decision on Remand. Each item for correction is noted by letter (a-h) and is followed by a Comments page which defines the reason requiring each correction.

In addition, the original list of Expenses for 275 Vernon Street #11, which was presented and reviewed at the initial Hearing regarding this case on November 17, 2015, is included.

This submission totals seven pages. Should you have questions about the corrections enclosed, please feel free to contact me.

Sincerely,

Stephen M. Judson  
RAMSEY LAW GROUP

Encl.

SEP 27 2017

RENT ADJUSTMENT PROGRAM

000086

HEARING OFFICER'S MATRIX

HEARING DECISION ON REMAND

DATE OF DECISION: AUGUST 23, 2017

RECEIVED  
CITY OF OAKLAND  
ARBITRATION PROGRAM

2017 OCT -2 PM 1:40

**EVIDENCE**

Summary of Capital Improvement Costs In Underlying Hearing Decision<sup>1</sup>

Vendor	Description	Check No.	Amount	Date	Ex. No.
City of Oakland	Permits	4946	\$1,123.57	11/7/12	226
		5101	\$162.95	6/21/13	228
First Choice Construction	Contract for remodel kitchen and bathroom	5124	\$1,000.00	7/10/13	232-235
"		5147	\$8,808.36	7/5/13	236-243
"		5137	\$6,689.34	7/17/13	244-258
"		5138	\$4,652.69	7/22/13	261-270
"		5152	\$2,871.17	8/1/13	271-275
"		5153	\$6,658.72	8/1/13	276-281
"		5185	\$1,611.35	8/21/13	282-287
GMS Sales	Green galaxy slabs-bath	Visa	\$437.00	2/23/13	288
Stone Trading	Blue Eyes	Visa	\$1,639.75	6/18/13	290-291
Pacific Sales	Bath Items-	Visa	\$1,382.12 <sup>2</sup>	6/25/13	292-295
"	Bath towel bar	Visa	\$119.90	7/23/13	299-301
"	Kitchen Items <sup>4</sup>	Visa	\$2,366.28	7/23/13	305-307
"	Kitchen sink faucet	Visa	\$134.07	8/28/13	308-309
"	Toilet	Visa	\$218.00	9/3/13	310-312
	Door latch set, dead bolt,	HD chge	\$188.32	8/26/13	317
	Bathroom sink	Visa	\$66.00	9/3/13	314
Import Tile Co.	Floor tile	Visa	\$774.54	7/30/13	319-320
Walnut Creek Lighting	Dining room light	Visa	\$390.60	7/17/13	321-322
Dick's Carpet	Carpet for 2 bedrooms, hall, living room and dining room	5186 5214	\$1,000 \$2885	8/26/13	323-326
Martinelli's Cabinet	Kitchen and bath vanity cabinets	Visa	\$4,300 \$4,300	7/3/13 8/16/13	327-330
"	Kitchen cabinet pulls	Visa	\$286.06	9/18/13	331
Glenview Key And Lock	Lock change	5123	\$102.26	6/18/12	332
Romart's Marble & Granite	Fabricate and install kitchen counter tops, bathroom vanity, and back splashes; shower walls	5157	\$3,305	9/13/13	335-337
Diablo Glass	Tub enclosure	5201	\$975.45	9/6/13	338-339
"	Drapes-bedrooms Blinds-kitchen	4323	\$685.69	1/23/14	341

a.  
b.  
c.  
d.  
e.  
f.

<sup>1</sup> Hearing Decision in T15-0360, pp. 6-7

<sup>2</sup> This includes a double charge for a disposal of \$179.00

2017 SEP 27 PM 3:33



Vendor	Description	Check No.	Amount	Date	Ex. No.
	8 Window screens and screen door	5304	\$550	1/7/14	342-342a
Bed, Bath & Beyond	Toilet paper stand	Cash	\$19.99	1/20/14	343
SUBTOTAL			\$60,372.08		
First Choice Construction <sup>3</sup>	Contractor for construction Invoice 8/4/13 Invoice 8/27/13 Invoice 9/5/13 Invoice 9/15/13 Combined invoice 9/23/13 for Apt. 2,4 and 11(labor)	5389	\$2,325 \$7,413.60 <sup>4</sup> \$2,672.46 <sup>5</sup> \$1,289.05 \$1,680	6/4/14	159-161-181
SUBTOTAL			\$15,380.11		
			\$75,752.19		
Credit for bathroom			-\$5,000		
NET TOTAL			\$70,752.10 <sup>6</sup>		

Additional Costs Expended Prior to August 1, 2013

Vendor	Description	Check No.	Amount	Date
City of Oakland	Permits	4946	\$1,123.57	11/7/12
		5101	\$162.95	6/21/13
GMS Sales	Green galaxy slabs-bath	Visa	\$437.00	2/23/13
Stone Trading	Blue Eyes	Visa	\$1,639.75	6/18/13
Pacific Sales	Bath items-	Visa	\$1,382.12 <sup>7</sup>	6/25/13
	Bath towel bar	Visa	\$119.90	7/23/13
	Kitchen items		\$2,366.28	7/23/13
Import Tile Co.	Floor tile	Visa	\$774.54	7/30/13
Walnut Creek Lighting	Dining room light	Visa	\$390.60	7/17/13
Martinelli's Cabinet	Kitchen and bath vanity cabinets	Visa	\$4,300	7/3/13
Glenview Key And Lock	Lock change	5123	\$102.26	6/18/12
TOTAL			\$12,798.97	

g.

h.

<sup>3</sup> Tenants objected to this exhibit on the grounds that check was made to owner's attorney and amount allocated to contractor was not itemized

<sup>4</sup> Includes clerical error of \$19.38 in Home Depot Bill, Ex. 364

<sup>5</sup> The Home Depot amount for 8/16/13 is \$175.84, not 195.22-difference of \$19.38

<sup>6</sup> Ex. Nos. 57-58

<sup>7</sup> This includes a double charge for a disposal of \$179.00

2013 SEP 27 PM 1:03

RENT ARBITRATION PROGRAM

# Comments RE: Summary of Capital Improvement Costs

Case No. T15-0360, Harrison v. Solares  
275 Vernon Street, No. 11  
Oakland, CA

Page: 1

---

- a. \$179.00 garbage disposal included in Visa payment dated 6/25/13
- b. 66.00 should be \$66.60
- c. Add line item for \$32.47 - Home Depot (for door locks/pulls)  
This cost is reflected on list of Expenses for 275 Vernon Street #11 which was reviewed by the Rent Board at the initial 11/17/15 Hearing. The cost was paid 8/19/13.
- d. Date should be 6/18/13
- e. Check # should be 5323
- f. Add line item: \$635.83 for living room and dining room drapes from American Blinds  
This cost is reflected on list of Expenses for 275 Vernon Street #11 which was reviewed by the Rent Board at the initial 11/17/15 Hearing. The cost was paid 1/23/14.

Page: 2

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- g. This amount should be \$1,638.75 This amount is also referenced on Page 1 - Stone Trading, Blue Eyes.
- h. This date should be 6/18/13

2017 SEP 27 PM 1:33  
RENT ARBITRATION PROGRAM

000089

Expenses for  
275 Vernon Street #11

2017 OCT -2 PM 1:40

Vendor Name	Purpose	Date Paid	Ck #/Credit Card	Amount
City of Oakland	Permit	11/07/12	4946	\$1,123.57
City of Oakland	Permit extension	06/21/13	5101	\$162.95
First Choice Construction	Deposit	07/10/13	5124	\$1,000.00
First Choice Construction, Invoice # SP11-1, 06/30/13		07/05/13	5147	\$8,808.36
First Choice Construction, Invoice # SP11-2, 07/09/13		07/17/13	5137	\$6,689.34
First Choice Construction, Invoice # SP11-3, 07/16/13		07/22/13	5138	\$4,652.69
First Choice Construction, Invoice # SP11-4, 07/25/13		08/01/13	5152	\$2,871.17
First Choice Construction, Invoice # SP11-5, 08/01/13		08/01/13	5153	\$6,658.72
First Choice Construction, Invoice # SP11-7, 08/11/13		08/21/13	5185	\$1,611.35
GMS Sales	Green galaxy slabs – Bath	02/23/13	Visa	\$437.00
Stone Trading #13753	Blue Eyes	06/18/13	Visa	\$1,638.75
Pacific Sales #4801063	Bath items such as faucet, tub spout, grab bar, etc, and garbage disposal	06/25/13	Visa	\$1,382.12 (\$1,608.74 (less \$165.68 for returned grab bar, \$42.22 & \$18.72 for 2 returned toilet paper holders)
Pacific Sales #4801063	Bath towel bar	07/23/13	Visa	\$119.90
Pacific Sales #4826313	Kitchen items such as hood, dishwasher, etc	07/23/13	Visa	\$2,366.28
Pacific Sales #4895099	Kitchen sink faucet	08/28/13	Visa	\$134.07
Pacific Sales #4909249	Toilet	09/03/13	Visa	\$218.00
General Plumbing #S3524995.002	Bath sink	08/19/13		\$66.60
The Home Depot	Door lock/pulls	08/19/13	HD charge	\$32.47 (c.)
The Home Depot	Door lock set, dead bold, door latch	08/26/13	HD charge	\$188.32

Vendor Name	Purpose	Date Paid	Chk#/Credit Card	Amount
Import Tile Co.#11652031	Floor tile	07/30/13	Visa	\$774.54
Walnut Creek Lighting Co.	Dining room light	07/17/13	Visa	\$390.60
Dick's Carpet One #55054	Carpet, 2 bedrooms, hall, living room and dining room	08/26/13	Check #5186 1,000, Check #5214 \$2,885.00	\$3,885.00
Martinelli's Cabinet's Etc. #C36144	Kitchen and bath vanity cabinets	07/03/13 & 08/16/13	Visa (\$4300.00 & \$4,300.00)	\$8,600.00
Martinelli's Cabinet's Etc. #C36205	Kitchen cabinet pulls	09/18/13	Visa	\$286.06
Glenview Key & Lock #49794	Lock change	06/18/13	5123	\$102.26
Romart's Marble & Granite Fabricators	Fabricate and install kitchen countertops/backsplash (\$1,580.00) Fabricate and install bathroom vanity, backsplash, top (\$375.00) Fabricate and install shower walls (\$1,350.00)	09/13/13	5157	\$3,305.00
Diablo Glass Inc. #W0012028	Tub enclosure and installation	09/06/13	5201	\$975.45
American Blinds and Draperies, Inc	Drapes -living room and dining room	01/23/14	5323 (other apts included in this check)	\$635.83
American Blinds and Draperies, Inc	Drapes – bedrooms Blinds – kitchen	01/23/14	5323 (other apts included in this check)	\$685.69
Screenmobile	8 Window screens and screen door	01/07/14	5304	\$550.00
Bed, Bath & Beyond, #261	Toilet paper stand	01/20/14	Cash	19.99
Total				\$60,372.08

(4)

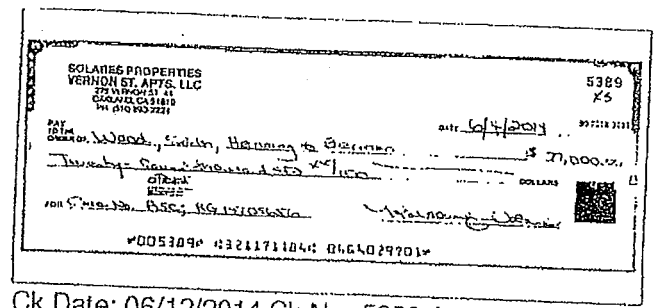
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RENT ARBITRATION PROGRAM

275 Vernon Street #11  
Invoices below paid with Check #5389 for \$27,000.00

2017 OCT -2 PM 1:40

Vendor Name	Purpose	Date Paid	Ck #	Amount
First Choice Construction, Invoice # SP11-6, 08/04/13		06/04/14	5389	\$2,325.00
First Choice Construction, Invoice # SP11-8, 08/27/2013		06/04/14	5389	\$7,413.60
First Choice Construction, Invoice # SP11-9, 09/05/2013		06/04/14	5389	\$2,672.46
First Choice Construction, Invoice # SP11-10, 09/15/2013		06/04/14	5389	\$1,289.05
First Choice Construction, 09/23/2013 (combined invoice for 275 apt. 11, 275 apt. 2, and 279 apt. 4)		06/04/14	5389	\$1,680.00 (labor only)
First Choice Construction, 09/23/2013 (combined invoice for 275 apt. 11, 275 apt. 2, and 279 apt. 4)				Material - No charge
Sub-Total				\$15,380.11
Balance forward from page 2				\$60,372.08
Grand Total				\$75,752.19



Ck Date: 06/12/2014 Ck No: 5389 Amt: \$27000.00

2017 SEP 27 PM 1:39

000092

2017 OCT -2 PM 1:41

Hearing Decision on Remand

Date: June 26, 2017 to July 26, 2017

Date of Decision: August 23, 2017

Corrections should be made as follows:

Page 2 – Subject unit's kitchen and bathroom is \$15,380.011 not \$15,380.00

Owner Appeal

Page 2

1. Much of \$15,000 should be \$15,380.11
2. Typographical error to indicate \$15,000 should be \$15,380.11

Corrections for Total \$37,259.50

Page 7 – Box Item, Cost, Reason is partly correct and requires a new total amount.

\$21,150.39 is correct and \$179.00 is incorrect.

The \$179.00 charge for the garbage disposal falls outside of the allowed 24 month pass through. See page 2(a).

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2017 SEP 27 PM 1:39

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1 Clifton and Mercedes Harrison  
2 275 Vernon St. #110 PH #3  
3 Oakland, CA 94610

4 Case No: T15-0360  
5 Remand Hearing Date: June 26, 2017 and July 26, 2017  
6 Case Title: Harrison v. Solares Properties LLC  
7 Property Address: 275 Vernon Street, Apt. 11, Oakland, CA 94610

8 **Harrison v. Solares Properties LLC**

9 **Case Number T15-0360**

10 **Appeal Summary - Remand Decision dated August 23, 2017**

11 **Additional Information for Appeals Board 9/29/17**

12 Tenants Clifton and Mercedes Harrison respectfully request that the Appeals Board have  
13 the Remand decision corrected to reflect the following:

14 1. The pass-through amount totaling \$15,380.11 be stricken as a capital  
15 improvement in that the owner has not sustained her burden of proof regarding documentation of  
16 these cost.

17 2. Remove the pass through amount of \$1,321.52 for cost paid to American Blinds  
18 and Draperies Inc. Proof of payment was not submitted 7 days prior to the original hearing, and  
19 the hearing officer ruled that it should be disallowed but was **inadvertently** included in the  
20 permissible pass-through.

21 3. Correct the numerous math miscalculations and clerical errors that are outlined in  
22 the document *ATTACHMENT to TENANT APPEAL OF HEARING DECISION on REMAND -*  
23 *Case T15-0360* submitted to RAP on September 14, 2017.

24 4. Create a new payment plan based on the new pass-through amount which should  
25 be recalculated based of the factual evidence stated above.

ARGUMENTS

1. Hearing Officer Kong-Brown was asked to determine how much of the \$15,000 paid as a part of a lawsuit settlement agreement that totaled \$27,000 to settle a lawsuit between the contractor and the owner was for work done on the tenants unit. At the remand hearing the owner submitted a copy of the settlement agreement for this lawsuit as new evidence. This is new evidence and is untimely as it was available at the time of the original hearing. It is unnecessary because it does not provide any additional evidence as to how this litigation settlement check was truly allocated to the tenants unit. The invoices submitted by Solares as evidence at the remand hearing and labeled page Sol060, Sol035, Sol036, Sol043, Sol48, Sol50 (See Exhibit A attached to this document) do not add up to \$27,000, and thus Solares does not meet the burden of proof regarding these cost. This fact is relevant because in all other invoices there is a one to one relationship between the payment by Solares and the actual amount of the invoice, (See example of attached Invoice SP27511-7 and copy of check #5185 attached to this document as Exhibit B). Based on these facts the \$15,380.11 should be disallowed because the hearing officer's decision in the original hearing was based of the factual evidence presented at that hearing and no evidence by Solares has been submitted to deny this fact. In addition the invoices submitted herein is clear evidence and proof of the Harrison's position that Solares could not show or prove how the amount of \$15,380.11 of the \$27,000.00 settlement check was for work done at the Harrison's apartment alone since the invoices shows that the payment was for other apartments listed on the invoices. In addition some of the invoices connected to the \$15,380.11, show other discrepancies listed below.



- 1 A. Invoice SP27511-6 page Sol035 attributes \$1,240.00 of work for unit 11 done on  
2 7-29-13 (see Exhibit A). This date falls outside the allowable 24 month window  
3 for pass through.
- 4 B. The invoice with multiple units page Sol50 shows \$240 work done 9/16/13 and  
5 \$240 work done 9/19/13 for a total of \$480 (see Exhibit A) of work done after we  
6 moved back into our unit on September 15, 2013. The costs should not be  
7 allowed as they are repairs and are not a part of the capital improvement because  
8 the 90 day city permit had expired.
- 9 C. Also on invoice SP27511-8 page Sol036 the item Painter is listed for \$1000 (50  
10 hours \*\$20 per hour) is for Jesse Perryman Painting who actually did the work,  
11 not Jon Viau the contractor see invoice by Jesse Perryman Painting on 8/13/13  
12 page Sol037. Also attached on page Sol40 are two Kelly Moore receipts for paint  
13 \$153.55 + \$334.33= \$487.88 paid for by Jesse Perryman Painting on 8/13/13  
14 again not Jon Viau the contractor. (See Exhibit A).  
15

16 **HEARING OFFICER INADVERTENTLY ALLOWED A CHARGES**

17 The hearing officer inadvertently allowed a charge of \$1,321.52 payment to American  
18 Blinds and Drapes to be passed through to the tenants. This is inconsistent with her decision in  
19 the original hearing where she disallowed the submission of this check at the hearing because it  
20 was not submitted 7 days prior to hearing. This decision by the hearing officer was also  
21 addressed in a memo to Connie Taylor dated December 15, 2016. (See Exhibit C).  
22  
23  
24  
25

CREATE A NEW PAYMENT PLAN

09/29/17 2:23 PM

The Hearing Office should be instructed by the Appeals Board to create a new payment plan that reflects the corrections of all mathematical, clerical errors and the subtractions based on the removal of the \$15,380.11 and \$1,321.52 for the corrected pass-through amount.

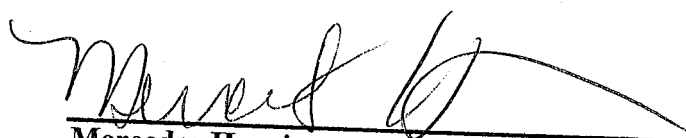
CONCLUSION

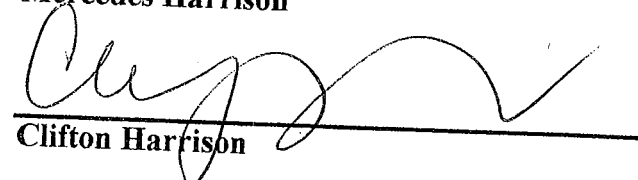
In light of the aforementioned, Tenants respectfully request that the Board make the following changes to the total pass-through amount in the hearing decision on remand:

1. Exclude the pass-through of \$15,380.11 because the owner has not sustained her burden of proof regarding documentation of these cost.
2. Exclude the \$1,321.52 charge for American Blinds and Draperies Inc from the pass-through.
3. Correct the numerous math miscalculation/clerical errors outlined in the document *ATTACHMENT to TENANT APPEAL OF HEARING DECISION on REMAND – Case T15-0360* that was submitted to RAP on September 14, 2017.
4. Create a new payment plan based on the new pass-through amount which will be calculated based on actions stated above

Dated this 29<sup>th</sup> day of September, 2017

Respectfully Submitted,

  
Mercedes Harrison

  
Clifton Harrison

**PROOF OF SERVICE**  
**Case Number T15-0360**

SEP 29 PM 4:5

I declare under penalty of perjury under the laws of the State of California that on Sept 29, 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:

<u>Name</u>	Kathleen Solares, Solares Properties LLC
<u>Address</u>	279 Derron St #1
<u>City, State Zip</u>	Oakland, Ca 94610
<u>Name</u>	Stephen Judson, Ramsey Law Group
<u>Address</u>	3736 Mt. Diablo Blvd Suite 300
<u>City, State Zip</u>	Rafayette, Ca 94549

<u>Mercedes Harris</u>	9/29/17
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

Exhibit A

447 0723 41 000

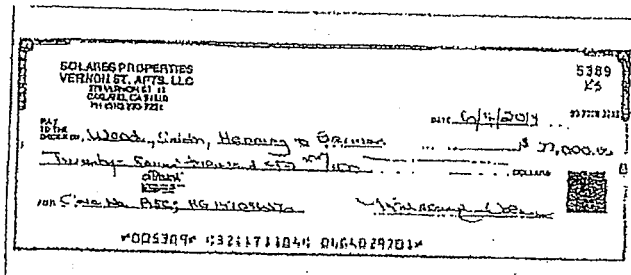
275 Vernon Street #11  
 Invoices below paid with Check #5389 for \$27,000.00

Vendor Name	Purpose	Date Paid	Ck #	Amount
First Choice Construction, Invoice # SP11-6, 08/04/13		06/04/14	5389	\$2,325.00
First Choice Construction, Invoice # SP11-8, 08/27/2013	pg 360	06/04/14	5389	\$7,413.60
First Choice Construction, Invoice # SP11-9, 09/05/2013	pg 361	06/04/14	5389	\$2,672.46
First Choice Construction, Invoice # SP11-10, 09/15/2013	pg 368	06/04/14	5389	\$1,289.05
First Choice Construction, 09/23/2013 (combined invoice for 275 apt. 11, 275 apt. 2, and 279 apt. 4)	pg 373	06/04/14	5389	\$1,680.00 (labor only)
First Choice Construction, 09/23/2013 (combined invoice for 275 apt. 11, 275 apt. 2, and 279 apt. 4)	pg 375 First Choice Invoices KS evidence			Material - No charge
Sub-Total				\$15,380.11
Balance forward from page 2				\$60,372.08
Grand Total				\$75,752.19

000

0.00G+

2,325.00 +  
 7,413.60 +  
 2,672.46 +  
 1,289.05 +  
 1,680.00 +



Ck Date: 06/12/2014 Ck No: 5389 Amt: \$27000.00

15,380.11G+

005

360.

Jon Vianu

ba First Choice Construction

1630 N. Main St. #137

Walnut Creek, CA 94596

(925) 708-0188

License # 829350

Invoice Solares Properties LLC

Number: SP27511-6

Date: 8/4/13

Bill To:

Name: Solares Properties LLC

Address: 275 Vernon St. Apt. 11

City: Oakland, CA

Project: Remodel

Date	Description	Hours	Rate	Amount
Mon. 7/29/13	Foreman	8.00	95.00	760.00
	Journeyman	8.00	60.00	480.00
Fri. 8/2/13	Foreman	7.00	95.00	665.00
	Journeyman	7.00	60.00	420.00
Materials				
			Total	2,325.00
			Payment	0.00
			Balance	2,325.00

Notes:

Material: 0.00

Labor: 2,325.00

General Work Description: plaster

361

on Vianu  
 ba First Choice Construction  
 0 N. Main St. #137  
 Walnut Creek, CA 94596  
 (925) 708-0188  
 License # 829350

Invoice Solares Properties LLC  
 Number: SP27511-8  
 Date: 8/27/13

20130829 10:15:55

Bill To:  
 Name: Solares Properties LLC  
 Address: 275 Vernon St. Apt. 11  
 City: Oakland, CA

Project: Remodel

Date	Description	Hours	Rate	Amount
Wed. 8/14/13	Journeyman	6.00	60.00	360.00
	Journeyman	8.00	60.00	480.00
	Helper	8.00	30.00	240.00
Thurs. 8/15/13	Journeyman	8.00	60.00	480.00
	Helper	8.00	30.00	240.00
Fri. 8/16/13	Journeyman	8.00	60.00	480.00
	Journeyman	8.00	60.00	480.00
	Helper	8.00	30.00	240.00
Mon. 8/19/13	Journeyman	8.00	60.00	480.00
Tues. 8/20/13	Journeyman	8.00	60.00	480.00
Wed. 8/21/13	Journeyman	8.00	60.00	480.00
Thurs. 8/22/13	Journeyman	8.00	60.00	480.00
Fri. 8/23/13	Journeyman	8.00	60.00	480.00
Painter	Wash walls, prime and paint, walls and ceilings, clearcoat all doors			1,000.00
<b>Materials</b>				
8/12/13	Home Depot			85.11
8/15/13	Home Depot			62.65
8/16/13	Home Depot			195.22
8/12/13	Home Depot			61.48
8/13/13	Kelly-Moore Paints			153.55
	Kelly-Moore Paints			334.33
8/15/13	Economy Lumber			109.43
8/21/13	Truitt and White			11.83
			<b>Total</b>	<b>7,413.60</b>
			<b>Payment</b>	<b>0.00</b>
			<b>Balance</b>	<b>7,413.60</b>

Notes:

362

# Invoice

Jesse Ferryman Painting  
3228 Ameno Dr  
Lafayette, CA 94549

(925)395-6973  
eastbaypainter@hotmail.com

Invoice No: 261  
Date: August 22, 2013  
Terms: NET 30  
Due Date: September 21, 2013

PAID  
SEP 21 2013

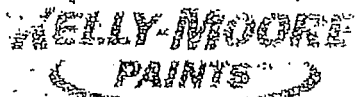
Bill To: First Choice Const.  
82 El Camino Corto

Description	Quantity	Rate	Amount
Labor (hours)	50	\$20.00	\$1,000.00

Labor only for unit 11 at 275 Vernon

Total	\$1,000.00
Paid	\$0.00
<b>Balance Due</b>	<b>\$1,000.00</b>





Kelly-Moore Paint Company Inc.  
Store 612 Walnut Creek  
2700 N. Main St Walnut Creek, Ca  
(925) 939-4100

SALES ASSOCIATE: MARCO RIVERA  
ID: JE6973

ORDER #612 2105454  
INVOICE #612-0000584771

1994-08-18 139.95  
2 @ \$0.77

PAINT CARE RFD 3.20

PAINT CARE RFD 3.20

PAINT CARE RFD 3.20

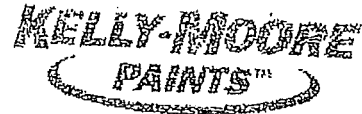
PAINT CARE RFD 3.20

PAINT CARE RFD 3.20

PAINT CARE RFD 3.20

SUBTOTAL 308.14  
TAX 26.19  
TOTAL 334.33  
CASH (340.00)  
CHANGE 5.67

SALES ASSOCIATE: MARCO RIVERA



Kelly-Moore Paint Company Inc.  
Store 612-Walnut Creek  
2700 N. Main St Walnut Creek, Ca 94597  
(925) 939-4100

SALES ASSOCIATE: MARCO RIVERA  
ID: JE6973

ORDER #612-21064623  
INVOICE #612-0000590068

1610-049-56 ACR 139.95 T

PAINT CARE RFD 1.60 J

SUBTOTAL 141.55  
TAX 12.03  
TOTAL 153.58  
CASH (200.00)  
CHANGE 46.42

SALES ASSOCIATE: MARCO RIVERA

536 #

AUG 17 2013 12:54 PM

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368

Jon Vianu  
First Choice Construction  
10 N. Main St. #137  
Walnut Creek, CA 94596  
(925) 708-0188  
License # 829350

Invoice Solares Properties LLC  
Number: SP27511-9  
Date: 9/5/13

Bill To:

Name: Solares Properties LLC  
Address: 275 Vernon St. Apt. 11  
City: Oakland, CA

Project: Remodel

Date	Description	Hours	Rate	Amount
Mon. 8/26/13	Journeyman	5.00	60.00	300.00
	Journeyman	8.00	60.00	480.00
Wed. 8/28/13	Journeyman	2.00	60.00	120.00
Thurs. 8/29/13	Journeyman	5.00	60.00	300.00
	Journeyman	5.00	60.00	300.00
Fri. 8/30/13	Journeyman	6.00	60.00	360.00
	Journeyman	6.00	60.00	360.00
<b>Materials</b>				
8/28/13	Home Depot			345.79
9/3/13	Economy Lumber			286.13
08/28/13	Economy Lumber		Credit	-179.46
			<b>Total</b>	<b>2,672.46</b>
			<b>Payment</b>	<b>0.00</b>
			<b>Balance</b>	<b>2,672.46</b>

Notes:

Material: 452.46  
Labor: 2,220.00

General Work Description: Install baseboard, sink, disposer, switches and plugs, ceiling lights, install chandelier, dishwasher, doorknobs, bathroom sink and faucet, window cranks

Jon Vianu  
 First Choice Construction  
 1630 N. Main St. #137  
 Walnut Creek, CA 94596  
 (925) 708-0188  
 License # 829350

Invoice Solares Properties LLC  
 Number: SP27511-10  
 Date: 9/15/13

**Bill To:**

Name: Solares Properties LLC  
 Address: 275 Vernon St. Apt. 11  
 City: Oakland, CA

**Project: Remodel**

Date	Description	Hours	Rate	Amount
Tues. 9/3/13	Journeyman	2.00	60.00	120.00
Wed. 9/4/13	Journeyman	4.00	60.00	240.00
	Journeyman	6.00	60.00	360.00
Thurs. 9/5/13	Journeyman	4.00	60.00	240.00
Fri. 9/6/13	Journeyman	2.00	60.00	120.00
	Journeyman	3.00	60.00	180.00
<b>Materials</b>				
9/6/13	Home Depot			29.05
			<b>Total</b>	1,289.05
			<b>Payment</b>	0.00
			<b>Balance</b>	1,289.05

**Notes:**

Material: 29.05  
 Labor: 1,260.00

General Work Description: Baseboard moldings, finish trimming bathroom, finis electrical

Jon Vianu  
 dba First Choice Construction  
 1630 N. Main St. #137  
 Walnut Creek, CA 94596  
 (925) 708-0188  
 License # 829350

Invoice Solares Properties LLC  
 Number: 275 apt. 11, 275 apt. 2,  
 279 apt. 4  
 Date: 9/23/13

Bill To:

Name: Solares Properties LLC  
 Address: 275 apt. 11, 275 apt. 2, 279 apt. 4  
 City: Oakland, CA

Project: Remodel

Date	Description	Hours	Rate	Amount	
Mon. 9/9/13	Journeyman 4hrs apt. 2 and 4hrs apt. 11	240 / 240	8.00	60.00	480.00
Tues. 9/10/13	Journeyman 6 hrs apt. 4 and 2 hrs apt. 11	360 / 120	8.00	60.00	480.00
	Journeyman 6 hrs apt. 4 and 2 hrs apt. 11	" "	8.00	60.00	480.00
Wed. 9/11/13	Journeyman 6hrs apt. 4 and 2 hrs. apt 2	" "	8.00	60.00	480.00
	Journeyman 6 hrs apt. 4 and 2 hrs. apt 2	" "	8.00	60.00	480.00
Thurs. 9/12/13	Journeyman 6hrs apt. 4 and 2 hrs. apt 11	" "	8.00	60.00	480.00
	Journeyman 6 hrs apt. 4 and 2 hrs. apt. 11	" "	8.00	60.00	480.00
Fri. 9/13/13	Journeyman 4 hrs. apt. 11 and 4 hrs. apt. 2	240 / 240	8.00	60.00	480.00
	Journeyman 4 hrs. apt. 11 and 4 hrs. apt. 2	" "	8.00	60.00	480.00
Mon 9/16/13	Journeyman 2 hrs. apt. 11 and 6 hrs. apt. 4	120 / 240	8.00	60.00	480.00
	Journeyman 2 hrs. apt. 11 and 6 hrs. apt. 4	" "	8.00	60.00	480.00
Tues. 9/17/13	Journeyman	7	8.00	60.00	480.00
Wed 9/18/13	Journeyman	7	8.00	60.00	480.00
Thurs. 9/19/13	Journeyman 4 hrs. apt 11	240	8.00	60.00	480.00
Fri. 9/20/13	Journeyman 4 hrs. apt. 2 and 4 hrs. apt. 4	240 / 240	8.00	60.00	480.00

Materials				
9/20/13	Home Depot			154.76
09/12/13	Home Depot			194.22
09/11/13	Home Depot			226.17
09/19/13	Home Depot			85.97
09/16/13	Home Depot			265.63
09/18/13	Bayshore Supply			22.73

Total	8,149.48
Payment	0.00
Balance	8,149.48

Notes:

Material: 949.48  
 Labor: 7,200.00

General Work Description: Installing exterior ground and housings from Apt. 11, Apt. 2, and Apt. 4 to main panel. Ground all outlets in Apt. 4. Finish cabinetry Apt. 4. Install finish plumbing and electrical Apt. 4.

275V11 = 240. 240  
 120. 240  
 120. 120.  
 120. 120.  
 120. 240

275V2 = 240  
 120  
 120.  
 240  
 240.  
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279V4 = 360. 120.  
 360. 120.  
 360. 240.  
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 360. 2600.

1680.  
 Sol 050  
 1200.

- 14 - 360.

Exhibit B

100-400000-1000  
100-400000-1000

on Vianu  
**Iba First Choice Construction**  
 630 N. Main St. #137  
 Walnut Creek, CA 94596  
 925) 708-0188  
 License # 829350

Invoice Solares Properties LLC  
 Number: SP27511-7  
 Date: 8/11/13

**Bill To:**  
 Name: Solares Properties LLC  
 Address: 275 Vernon St. Apt. 11  
 City: Oakland, CA

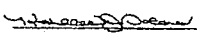

**Project: Remodel**

Date	Description	Hours	Rate	Amount
Mon. 8/5/13	Foreman	2.00	95.00	190.00
	Journeyman	2.00	60.00	120.00
Tues. 8/6/13	Foreman	1.00	95.00	95.00
	Journeyman	1.00	60.00	60.00
Thurs. 8/8/13	Journeyman	8.00	60.00	480.00
Fri. 8/9/13	Journeyman	8.00	60.00	480.00
<b>Materials</b>				
8/7/13	Home Depot			99.98
08/05/13	SG Industries			28.34
08/09/13	Economy Lumber			58.03
	8/24/13 V LLC # 5185			
			<b>Total</b>	1,611.35
			<b>Payment</b>	0.00
			<b>Balance</b>	1,611.35

**Notes:**

Material: 186.35  
 Labor: 1,425.00

General Work Description: Tile, electrical

SOLARES PROPERTIES VERNON ST. APTS. LLC 375 VERNON ST. #1 CHICAGO, IL 60610 PH: 312.963.2224		5185 08-26-13
PAY TO THE ORDER OF First Choice Construction	DATE 8/26/13	08-26-13
One thousand six hundred eleven and 35/100	\$ 1,611.35	DOLLARS
FOR SP 205 11-7		
*005185* 4321171484 0464029701*		

Ck Date: 08/26/2013 Ck No: 5185 Amt: \$1611.35

Exhibit C

2025-01-15  
10:00 AM





# Centro Legal de la Raza

*Working for Justice  
Strengthening Community  
Since 1969*

Connie Taylor  
Oakland Rent Adjustment Program  
250 Frank H. Ogawa Plaza, Fifth Floor  
Oakland, CA 94612

December 15, 2016

**RE: Harrison v. Solares, Case No. T15-0360**

Dear Connie,

As you know, the appeal hearing for Harrison v. Solares (T15-0360) was held on December 8, 2016. At the hearing, the tenants requested that the decision be remanded to the hearing officer on the grounds of:

- (1) Excluding \$12,797.79 from the pass-through due to untimeliness;
- (2) Excluding the \$1,321.52 charge for American Blinds and Draperies Inc. from the pass-through due to untimely evidence submission; and
- (3) Reconsidering Tenants' claims of deferred maintenance.

At the appeal hearing, the Board discussed the first and third issue, however the second issue was not discussed. The tenants respectfully request that the Board address this second issue in their final decision.

Please feel free to contact me at (510) 827-1170 or [lshoaps@centrolegal.org](mailto:lshoaps@centrolegal.org) if you have any questions or concerns.

Sincerely,

Laura Shoaps  
Housing Staff Attorney

CC: Steven Judson  
Ramsey Law Group  
3736 Mount Diablo Blvd, Suite 300  
Lafayette, CA 94549

Stephen M. Judson  
Attorney

3736 Mt. Diablo Boulevard, Suite 300  
Lafayette CA, 94549

[www.ramseylawgroup.com](http://www.ramseylawgroup.com)  
[sjudson@ramseylawgroup.com](mailto:sjudson@ramseylawgroup.com)  
925-284-2811 Direct  
925-403-7773 Facsimile

**RAMSEY LAW GROUP**  
a professional corporation



September 27, 2017

**VIA HAND DELIVERY**

Rent Board  
City of Oakland  
Residential Rent Adjustment Program  
250 Frank Ogawa Plaza, Suite 5313  
Oakland, CA 94612

Re: Harrison v. Solares Properties, LLC  
Case No.: T15-0360  
Remand Hearing: June 26, 2017 and July 26, 2017

To whom it may concern:

Enclosed please find corrections to the Summary of Capital Improvement Costs which was evidenced within the Hearing Decision on Remand. Each item for correction is noted by letter (a-h) and is followed by a Comments page which defines the reason requiring each correction.

In addition, the original list of Expenses for 275 Vernon Street #11, which was presented and reviewed at the initial Hearing regarding this case on November 17, 2015, is included.

This submission totals seven pages. Should you have questions about the corrections enclosed, please feel free to contact me.

Sincerely,

Stephen M. Judson  
RAMSEY LAW GROUP

Encl.

SEP 27 2017 11:00 AM  
RECEIVED

000113

HEARING OFFICER'S MATRIX  
 HEARING DECISION ON REMAND  
 DATE OF DECISION: AUGUST 23, 2017

**EVIDENCE**

Summary of Capital Improvement Costs in Underlying Hearing Decision<sup>1</sup>

Vendor	Description	Check No.	Amount	Date	Ex. No.	
City of Oakland	Permits	4946	\$1,123.57	11/7/12	226	
		5101	\$162.95	6/21/13	228	
First Choice Construction	Contract for remodel kitchen and bathroom	5124	\$1,000.00	7/10/13	232-235	
"		5147	\$8,808.36	7/5/13	236-243	
"		5137	\$6,689.34	7/17/13	244-258	
"		5138	\$4,652.69	7/22/13	261-270	
"		5152	\$2,871.17	8/1/13	271-275	
"		5153	\$6,658.72	8/1/13	276-281	
"		5185	\$1,611.35	8/21/13	282-287	
GMS Sales	Green galaxy slabs-bath	Visa	\$437.00	2/23/13	288	
Stone Trading	Blue Eyes	Visa	\$1,639.75	6/18/13	290-291	
Pacific Sales	Bath items-	Visa	\$1,382.12 <sup>2</sup>	6/25/13	292-295	a.
"	Bath towel bar	Visa	\$119.90	7/23/13	299-301	
"	Kitchen items	Visa	\$2,366.28	7/23/13	305-307	
"	Kitchen sink faucet	Visa	\$134.07	8/28/13	308-309	
"	Tollet	Visa	\$218.00	9/3/13	310-312	
	Door latch set, dead bolt,	HD chge	\$188.32	8/26/13	317	
	Bathroom sink	Visa	\$66.00	9/3/13	314	b. c.
Import Tile Co.	Floor tile	Visa	\$774.54	7/30/13	319-320	
Walnut Creek Lighting	Dining room light	Visa	\$390.60	7/17/13	321-322	
Dick's Carpet	Carpet for 2 bedrooms, hall, living room and dining room	5186 5214	\$1,000 \$2885	8/26/13	323-326	
Martinelli's Cabinet	Kitchen and bath vanity cabinets	Visa	\$4,300 \$4,300	7/3/13 8/16/13	327-330	
"	Kitchen cabinet pulls	Visa	\$286.06	9/18/13	331	
Glenview Key And Lock	Lock change	5123	\$102.26	6/18/12	332	d.
Romart's Marble & Granite	Fabricate and install kitchen counter tops, bathroom vanity, and back splashes; shower walls	5157	\$3,305	9/13/13	335-337	
Diablo Glass	Tub enclosure	5201	\$975.45	9/6/13	338-339	
"	Drapes-bedrooms Blinds-kitchen	4323	\$685.69	1/23/14	341	e. f.

<sup>1</sup> Hearing Decision in T15-0360, pp. 6-7

<sup>2</sup> This includes a double charge for a disposal of \$179.00

SEP 27 PM 4:35

Vendor	Description	Check No.	Amount	Date	Ex. No.
	8 Window screens and screen door	5304	\$550	1/7/14	342-342a
Bed, Bath & Beyond	Toilet paper stand	Cash	\$19.99	1/20/14	343
SUBTOTAL			\$60,372.08		
First Choice Construction <sup>3</sup>	Contractor for construction Invoice 8/4/13 Invoice 8/27/13 Invoice 9/5/13 Invoice 9/15/13 Combined invoice 9/23/13 for Apt. 2,4 and 11(labor)	5389	\$2,325 \$7,413.60 <sup>4</sup> \$2,672.46 <sup>5</sup> \$1,289.05 \$1,680	6/4/14	159-161-181
SUBTOTAL			\$15,380.11		
			\$75,752.19		
Credit for bathroom			-\$5,000		
NET TOTAL			\$70,752.10 <sup>6</sup>		

Additional Costs Expended Prior to August 1, 2013

Vendor	Description	Check No.	Amount	Date
City of Oakland	Permits	4946	\$1,123.57	11/7/12
		5101	\$162.95	6/21/13
GMS Sales	Green galaxy slabs-bath	Visa	\$437.00	2/23/13
Stone Trading	Blue Eyes	Visa	\$1,639.75	6/18/13
Pacific Sales	Bath Items-	Visa	\$1,382.12 <sup>7</sup>	6/25/13
	Bath towel bar	Visa	\$119.90	7/23/13
	Kitchen items		\$2,366.28	7/23/13
Import Tile Co.	Floor tile	Visa	\$774.54	7/30/13
Walnut Creek Lighting	Dining room light	Visa	\$390.60	7/17/13
Martinelli's Cabinet	Kitchen and bath vanity cabinets	Visa	\$4,300	7/3/13
Glenview Key And Lock	Lock change	5123	\$102.26	6/18/12
TOTAL			\$12,798.97	

g.

h.

<sup>3</sup> Tenants objected to this exhibit on the grounds that check was made to owner's attorney and amount allocated to contractor was not itemized

<sup>4</sup> Includes clerical error of \$19.38 in Home Depot Bill, Ex. 364

<sup>5</sup> The Home Depot amount for 8/16/13 is \$175.84, not 195.22-difference of \$19.38

<sup>6</sup> Ex. Nos. 57-58

<sup>7</sup> This includes a double charge for a disposal of \$179.00

SEP 27 PM 1:00

## Comments RE: Summary of Capital Improvement Costs

Case No. T15-0360, Harrison v. Solares  
275 Vernon Street, No. 11  
Oakland, CA

Page: 1

---

- a. \$179.00 garbage disposal included in Visa payment dated 6/25/13
- b. 66.00 should be \$66.60
- c. Add line item for \$32.47 - Home Depot (for door locks/pulls)  
This cost is reflected on list of Expenses for 275 Vernon Street #11 which was reviewed by the Rent Board at the initial 11/17/15 Hearing. The cost was paid 8/19/13.
- d. Date should be 6/18/13
- e. Check # should be 5323
- f. Add line item: \$635.83 for living room and dining room drapes from American Blinds  
This cost is reflected on list of Expenses for 275 Vernon Street #11 which was reviewed by the Rent Board at the initial 11/17/15 Hearing. The cost was paid 1/23/14.

Page: 2

---

- g. This amount should be \$1,638.75 This amount is also referenced on Page 1 - Stone Trading, Blue Eyes.
- h. This date should be 6/18/13

2017 SEP 27 PM 1:05  
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000116

**Expenses for  
275 Vernon Street #11**

Vendor Name	Purpose	Date Paid	Ck #/Credit Card	Amount
City of Oakland	Permit	11/07/12	4946	\$1,123.57
City of Oakland	Permit extension	06/21/13	5101	\$162.95
First Choice Construction	Deposit	07/10/13	5124	\$1,000.00
First Choice Construction, Invoice # SP11-1, 06/30/13		07/05/13	5147	\$8,808.36
First Choice Construction, Invoice # SP11-2, 07/09/13		07/17/13	5137	\$6,689.34
First Choice Construction, Invoice # SP11-3, 07/16/13		07/22/13	5138	\$4,652.69
First Choice Construction, Invoice # SP11-4, 07/25/13		08/01/13	5152	\$2,871.17
First Choice Construction, Invoice # SP11-5, 08/01/13		08/01/13	5153	\$6,658.72
First Choice Construction, Invoice # SP11-7, 08/11/13		08/21/13	5185	\$1,611.35
GMS Sales	Green galaxy slabs -- Bath	02/23/13	Visa	\$437.00
Stone Trading #13753	Blue Eyes	06/18/13	Visa	\$1,638.75
Pacific Sales #4801063	Bath items such as faucet, tub spout, grab bar, etc, and garbage disposal	06/25/13	Visa	\$1,382.12 (\$1,608.74 less \$165.68 for returned grab bar, \$42.22 & \$18.72 for 2 returned toilet paper holders)
Pacific Sales #4801063	Bath towel bar	07/23/13	Visa	\$119.90
Pacific Sales #4826313	Kitchen items such as hood, dishwasher, etc	07/23/13	Visa	\$2,366.28
Pacific Sales #4895099	Kitchen sink faucet	08/28/13	Visa	\$134.07
Pacific Sales #4909249	Toilet	09/03/13	Visa	\$218.00
General Plumbing #S3524995.002	Bath sink	08/19/13		\$66.60
The Home Depot	Door lock/pulls	08/19/13	HD charge	\$32.47
The Home Depot	Door lock set, dead bold, door latch	08/26/13	HD charge	\$188.32

000117

Vendor Name	Purpose	Date Paid	Ck #/Credit Card	Amount
Import Tile Co.#11652031	Floor tile	07/30/13	Visa	\$774.54
Walnut Creek Lighting Co.	Dining room light	07/17/13	Visa	\$390.60
Dick's Carpet One #55054	Carpet, 2 bedrooms, hall, living room and dining room	08/26/13	Check #5186 1,000, Check #5214 \$2,885.00	\$3,885.00
Martinelli's Cabinet's Etc. #C36144	Kitchen and bath vanity cabinets	07/03/13 & 08/16/13	Visa (\$4300.00 & \$4,300.00)	\$8,600.00
Martinelli's Cabinet's Etc. #C36205	Kitchen cabinet pulls	09/18/13	Visa	\$286.06
Glenview Key & Lock #49794	Lock change	06/18/13	5123	\$102.26
Romart's Marble & Granite Fabricators	Fabricate and install kitchen countertops/backsplash (\$1,580.00) Fabricate and install bathroom vanity, backsplash, top (\$375.00) Fabricate and install shower walls (\$1,350.00)	09/13/13	5157	\$3,305.00
Diablo Glass Inc. #W0012028	Tub enclosure and installation	09/06/13	5201	\$975.45
American Blinds and Draperies, Inc	Drapes -living room and dining room	01/23/14	5323 (other apts included in this check)	\$635.83
American Blinds and Draperies, Inc	Drapes -- bedrooms Blinds -- kitchen	01/23/14	5323 (other apts included in this check)	\$685.69
Screenmobile	8 Window screens and screen door	01/07/14	5304	\$550.00
Bed, Bath & Beyond, #261	Toilet paper stand	01/20/14	Cash	19.99
Total				\$60,372.08

(4)

2013 SEP 27 PM 4:00

000118

**275 Vernon Street #11**  
**Invoices below paid with Check #5389 for \$27,000.00**

Vendor Name	Purpose	Date Paid	Ck #	Amount
First Choice Construction, Invoice # SP11-6, 08/04/13		06/04/14	5389	\$2,325.00
First Choice Construction, Invoice # SP11-8, 08/27/2013		06/04/14	5389	\$7,413.60
First Choice Construction, Invoice # SP11-9, 09/05/2013		06/04/14	5389	\$2,672.46
First Choice Construction, Invoice # SP11-10, 09/15/2013		06/04/14	5389	\$1,289.05
First Choice Construction, 09/23/2013 (combined invoice for 275 apt. 11, 275 apt. 2, and 279 apt. 4)		06/04/14	5389	\$1,680.00 (labor only)
First Choice Construction, 09/23/2013 (combined invoice for 275 apt. 11, 275 apt. 2, and 279 apt. 4)				Material – No charge
Sub-Total				\$15,380.11
Balance forward from page 2				\$60,372.08
Grand Total				\$75,752.19

SOLARIS PROPERTIES  
 VERNON ST. APTS. LLC  
 275 VERNON ST #11  
 CHARLOTTE, NC 28204  
 PH 704.383.2221

PAY TO THE ORDER OF: Wood, Sinden, Henning & Garner \$ 27,000.00  
Twenty Seven Thousand and 00/100

DATE: 06/12/2014

5389  
 X5

1078204990 4321171044 0166029701

Ck Date: 06/12/2014 Ck No: 5389 Amt: \$27000.00

2017 SEP 27 PM 1:01

000119



Hearing Decision on Remand

Date: June 26, 2017 to July 26, 2017

Date of Decision: August 23, 2017

Corrections should be made as follows:

Page 2 – Subject unit's kitchen and bathroom is \$15,380.011 not \$15,380.00

Owner Appeal

Page 2

1. Much of \$15,000 should be \$15,380.11
2. Typographical error to indicate \$15,000 should be \$15,380.11

Corrections for Total \$37,259.50

Page 7 – Box Item, Cost, Reason is partly correct and requires a new total amount.

\$21,150.39 is correct and \$179.00 is incorrect.

The \$179.00 charge for the garbage disposal falls outside of the allowed 24 month pass through. See page 2(a).

2017 SEP 27 PM 4:37

000120

Clifton and Mercedes Harrison.  
275 Vernon St. #11  
Oakland, CA 94610

NEW YORK COUNTY CLERK

2018 JAN 15 PM 2:10

Case No: T15-0360  
Remand Hearing Dates: June 26, 2017 and July 26, 2017  
Case Title: Harrison v. Solares Properties LLC  
Property Address: 275 Vernon Street, Apt. 11, Oakland, CA 94610

**Harrison v. Solares Properties LLC**

**Case Number T15-0360**

**Appeal Summary - Remand Decision dated August 23, 2017**

**Additional Information for Appeals Board hearing 1/25/2018**

Tenants Clifton and Mercedes Harrison respectfully request that the Appeals Board have the Remand decision corrected to reflect the following:

1. The pass-through amount totaling \$15,380.11 be stricken as a capital improvement in that the owner has not sustained her burden of proof regarding documentation of these cost therefore the Appeals Board should remand this back to the hearing officer and reverse her decision to include this unproven amount as a capital improvement pass through.
2. Remove the pass through amount of \$1,321.52 for cost paid to American Blinds and Draperies Inc. Proof of payment was not submitted 7 days prior to the original hearing, and the hearing officer ruled that it should be disallowed but was **inadvertently** included in the permissible pass-through.
3. Correct the numerous math miscalculations and clerical errors that are outlined in the document *ATTACHMENT to TENANT APPEAL OF HEARING DECISION on REMAND – Case T15-0360* submitted to RAP on September 14, 2017.
4. The exclusion of all cost submitted by Solares that are purported to be capital improvements based on evidence presented by the Harrison's that clearly show were nothing more than much needed repair work due to **deferred maintenance**.
5. Create a new payment plan based on the new pass-through amount which should be recalculated based of the factual evidence stated above.

# Additional Arguments for Hearing on January 25, 2018

NEW JERSEY APPEALS BOARD

## Appeal Decision & Scope of Remand Hearing

2018 JAN 16 PM 2:10

### **Deferred maintenance:**

After going over this in the hearing it should have been crystal clear that none of the cost due to the repairs in the bathroom should have been admitted because of the total damage caused by Solares failure and neglect to make needed repairs for over several years. All of the repairs in the bathroom were made because of priority building code violations and as such none of the cost attributed to the bathroom should be allowed.

The Appeals Board Remand Hearing instructed the hearing officer to determine if \$5000 deducted or some other amount was appropriate to exclude from the rent increase due to costs incurred based on **deferred maintenance**. Again the hearing officer refused to determine if any of the work completed other than the bathroom was only much needed repair work due to the owner's lack of maintenance as the tenants argued in their case. The hearing officer completely ignores the Harrison's argument and evidence of **deferred maintenance** which should and would drastically reduce the capital improvement pass through.

Attached along with the narrative below is additional information that proves that Solares was well aware of the repairs needed in the Harrison's apartment dating back to 2002, but are now being falsely claimed as a capital improvements in 2015.

### **Hearing Officers Kong's Statement in her Decision of March 4, 2016**

#### Scope of the Capital Improvements

The hearing officer wrote in her decision dated March 4, 2016, that Solares testified that the scope of the renovations included remodeling of the kitchen at the tenants' request, which consisted of removing the sheetrock down to the studs; replacing the kitchen cabinets, upgrading plumbing, lighting and electrical to comply with changes in codes. Solares further testified that **she attempted to remodel the kitchen in 2002. Solares and pulled permits for this work because as she claimed the Harrison's did not want a remodel. Solares received a letter from Sentinel Housing opposing the work which she was claiming required the Harrison's to move out. Sentinel housing determined that that it was not necessary for the Harrison's to move out during the repair work and upon hearing this Solares withdrew the permits.** The claim by Solares that the tenants requested that the kitchen be remodeled in August 2012 is false. The above statement written in the hearing officer's report is factually incorrect. The following clarifies and provides the correct summary of what actually occurred in 2002.

Attached are copies of the letter from Sentinel Fair Housing dated July 25, 2002, and the Building Permits obtained by Solares to make kitchen repairs which were pulled, and the eviction notice from 2002, in another Solares attempt to evict the Harrison's and force them to move out. In the letter from Sentinel Fair Housing dated July 25, 2002, paragraph 3 reads **"After examination of the building permits it is clear that the repairs being made are not anything other than normal maintenance and do not require the**

tenants to vacate the unit. At that time the Harrison's had been in the unit for over ten years, requesting that repairs be made."

**In the last paragraph of the same letter it reads ... "It is requested that you complete the repairs that you have obtained building permits for, and allow the family to continue to pay rent and live in the unit free of any acts of harassment or retaliation."**

Solares response (dated July 25, 2002) to the letter from Sentinel Fair Housing is also attached and simply reads ... "This letter will rescind the Thirty Day Notice of Termination of Tenancy dated June 27, 2002."

After the delivery of this letter to the tenants Solares made none of the normal maintenance repairs that she had taken out Building Permits to do, proving that her true motive was to force the Harrison's to move out. In 2011 when the Harrison's reported water damage from a leak in their bathroom ceiling, and it was not until 2013 that the leak repair was made. The Harrison's filed a Decreased in Services Petition and reported the delay in the repair to the Oakland Building Department in September 2012. Solares was cited by the Building Department and instructed to repair the rain damaged bathroom ceiling. Solares again pulled building permits and issued another eviction notice to the Harrison's to make the normal maintenance repairs that had been outstanding since 2002.

**It should be noted that in the letter from Sentinel Fair Housing dated July 25, 2002 (paragraph 4) Solares was advised that "...under California Statute tenants are provided protections from retaliation from harassment when they have requested repairs or because they have contacted city or public agencies for assistance in resolving landlord-tenant problems."**

The letter from Sentinel Fair Housing to Solares in 2002 is additional proof of the Harrison's claim of **deferred maintenance as well as retaliation**. Solares knew in 2002 that the repairs she is now claiming are "capital improvements" were needed and was advised to complete them at that time, but did not. Instead Solares waited **another eleven (11) years** to make the repairs that she was fully aware of and were needed in 2002, as evidenced by the building permits. Solares made these deferred maintenance repairs (in 2013) under the guise of what she now is claiming to be capital improvements.

The hearing officer for some unexplained reason refuses to use the rent board ordinance as a guideline in determining what work should have been excluded based on clear and convincing evidence that the repairs that are being presented as capital improvements were nothing more than much needed repair work in which Solares was clearly aware of and should have made 11 years before this capital improvement pass through that is now before the board was made.

In the City Oakland RAP ordinances, Deferred Maintenance is defined as follows:

**Regarding deferred maintenance, Section 10.2.2 4 (b) states the following:  
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. The evidence presented clearly shows Solares knew of the repairs needed.**

In the original hearing of Case T15-0360 the Harrison's argued and submitted evidence that the \$70,752.19 capital improvement pass-through was and is intended to displace the tenants from their home and would have that effect if permitted. After several attempts starting in 2002 the Owner is now seeking to circumvent Oakland's Just Cause protections by passing through over \$70,000 of expenses as purported capital improvement with the sole purpose of displacing the Harrison's from their home.

All of these arguments as well as others substantiating that this purported capital improvement pass through is **deferred maintenance** and a retaliatory act against the Harrison's, because they reported the owner to the city of Oakland as well as the fact that the Harrison's are long term tenants whose rent is currently below the market rate that the landlord seeks to obtain. The capital improvement arguments and the proof thereof of deferred maintenance showing they were not capital improvements were completely ignored and disregarded by the hearing officer without a true explanation by her as to why she continues after writing two decisions to reject the Harrison's claim of deferred maintenance.

The hearing officer stated that the City does not address retaliatory rent increases and does not recognize deferred maintenance, both statements are not factually correct and are not supported by other RAP decisions made in other cases where evidence was presented that the capital improvement pass through was no more than neglected repairs over years. The Appeals Board instructed the hearing officer in its remand that deferred maintenance should be considered. In the hearing officer's determination as to what is or is not a capital improvement failed to follow those given instructions to her by the Appeals Board.

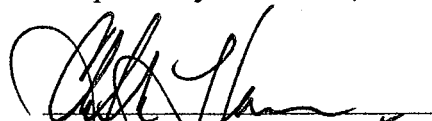
### CONCLUSION


As stated in the very first hearing regarding this case it was clearly shown that the repair work Solares is claiming as a capital improvement was undertaken with the intent of displacing the Harrison's which it did. What Solares did not count on was that the Harrison's would move back and when they did Solares would pass on the outrageous increase in rent amounting to a capital improvement amounting to over \$70,000.00 for one apartment. For this reason alone the remaining amounts still at issue should not be allowed to be passed on to the Harrison's to pay as a capital improvement. None of the work primarily benefited the Harrison's and even if the work performed by the landlord were construed to primarily benefit the Harrison's most if not all of the cost should not be allowed to be passed through to the Harrison's because it resulted from **deferred maintenance** and to address Priority 1 and Priority 2 conditions.

The \$15,000.00 that was excluded in the hearing officer's first decision, because there was no documentation of how the fees were apportioned were reinstated in the latest decision and should not be allowed and be reversed by the Appeals Board because it was not sufficiently submitted by Solares evidence. Solares did not prove that anything other than the name on a check was changed as to who it was paid to. Who the check was written to does not however disprove the reason the \$15,000.00, was not allowed in the first place. Solares could not prove by indexing what the \$27,000.00 check actually paid for and in the hearing officer's own language she states "there is no documentation of how the fees were apportioned" hence it was not allowed. Just because the name changed on the check the hearing officer reverse her earlier decision. Even at the Remand hearing the owner did not submit additional invoices totaling \$27,000 which is the amount of the check that was paid to the contractors attorney and thus failed in her required burden of proof of how this payment was allocated.

Date: January 15, 2018

Respectfully Submitted,

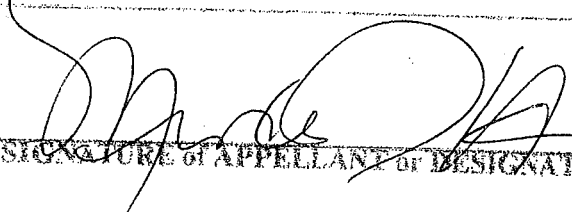
  
Clifton Harrison, Tenant

  
Mercedes Harrison, Tenant

PROOF OF SERVICE  
Case Number T15-0360

I declare under penalty of perjury under the laws of the State of California that on January 16, 2018, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<u>Name</u>	Kathleen Solares, Solares Properties LLC
<u>Address</u>	279 Yerman St #1
<u>City, State, Zip</u>	Oakland, Ca 94610
<u>Name</u>	Stephen Judson, Ramey Law Group
<u>Address</u>	3736 Mt. Diablo Blvd Suite 300
<u>City, State, Zip</u>	Lafayette, CA 94549

 1/16/18  
SIGNATURE OF APPELLANT OR DESIGNATED REPRESENTATIVE DATE

## Attachment A

- Letter from Sentinel Fair Housing to Kathleen Solares dated July 25, 2002 regarding Clifton Harrison, 275 Vernon St. #11, and the examination of the building permits stating that the work is repairs related to normal maintenance.
- Thirty Day Notice of Termination of Tenancy to Clifton Harrison, Mercedes Harrison et al from Kathleen Solares dated June 27, 2002
- Letter to Clifton and Mercedes Harrison from Kathleen Solares dated July 25, 2002 rescinding Thirty Day Notice of Termination of Tenancy dated June 27, 2002.
- City of Oakland Building Permits (with an estimated cost of \$15,000) for kitchen remodel in units 275 Vernon St. #10 and #11 and bath remodel in #10 dated June 27, 2002 printed date of July, 2002.

000126

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## **SENTINEL FAIR HOUSING**

**INVESTIGATION • EDUCATION**

**Tel: (510) 836-2687 ♦ (510) 645-1305**

**Fax: (510) 836-0461**

July 25, 2002

Kathleen Solares  
279 Vernon ST  
Oakland Ca, 94610

RE: Clifton Harrison  
275 Vernon St #11  
Oakland Ca, 94610

Dear Ms.Solares:

Sentinel Fair Housing is a private non-profit agency that provides unbiased counseling services to both tenants and landlords on their rights and responsibilities in residential rentals in Oakland and Alameda. We also investigate complaints of illegal discrimination under a grant from the U.S. Department of Housing and Urban Development (HUD).

Our office has been contacted regarding a 30-Day Notice to Terminate Tenancy. After carefully reviewing the notice, it has been deemed defective in accordance to City of Oakland Ordinance No. 12273. Please contact the Rent Board at (510) 238-3721 for a copy of the Oakland Rental Ordinance. After a termination notice is filed it would be illegal to increase the rent on the rental unit for 24 months, unless the landlord first obtained approval for increased rent from the Rent Board.

After examining the building permits it is clear that the repairs being made are not anything other than normal maintenance, and do not require the tenants to vacate the unit. The tenants have been in the unit for over ten years, requesting that repairs be made to their unit. A final letter was sent from the tenants on June 12, 2002, followed by a 30-day Notice to Terminate Tenancy.

Finally, under California Statute, tenants are provided protections from retaliation from harassment when they have requested repairs or because they have contacted city or public agencies for assistance in resolving landlord-tenant problems. Illegal retaliation through eviction, rent increases, reduced services; etc. is presumed for a six-month period. We are willing to assist the the tenants in preparing a complaint and identifying an attorney who is willing to file a separate civil action, if any further retaliatory actions take place.





**SENTINEL FAIR HOUSING**  
**INVESTIGATION • EDUCATION**

Tel: (510) 836-2687 ♦ (510) 645-1305

Fax: (510) 836-0461

It is requested that you complete the repairs that you have obtained building permits for, and allow the family to continue to pay rent and live in the unit free of any acts of harassment or retaliation. Please do not hesitate to contact our office if you have any questions. My telephone number is (510) 836-2687 extension 304.

Sincerely,

Denielle Hopkins  
Oakland Housing Counselor

# THIRTY DAY NOTICE OF TERMINATION OF TENANCY

2002-06-27

TO: Clifton Harrison Mercedes Harrison, Virginia Harrison Clifton Harrison, Jr.  
*All residents (tenants and subtenants) in possession (full name) and all others in possession*

of the premises designated by the number and street as 275 Vernon St # 11,  
unit number 11 (if applicable), in the city of Oakland, State of California.

PLEASE TAKE NOTICE that your tenancy of the premises is terminated effective at the end of a thirty (30) day  
period after service on you of this notice, or June 27, 2002 whichever is later.  
(Date)

You must peaceably vacate the premises and remove all of your personal property on or before the date indicated above. If you fail to quit and deliver possession, legal proceedings will be instituted against you to obtain possession and such proceedings could result in a judgment against you which may include attorneys' fees and court costs as allowed by law, plus Owner/Agent may recover an additional punitive award of six hundred dollars (\$600) in accordance with California law for such unlawful detention. This legal action will also result in forfeiture of the rental agreement.

This Notice of termination of tenancy does not relieve you of payment of any financial obligation for rent owed until the actual date of termination of tenancy.

As required by law, you are hereby notified that a negative credit report reflecting on your credit history may be submitted to a credit reporting agency if you fail to fulfill the terms of your credit obligations.

6/27/02 Date Kathleen J. Dolara Owner/Agent

## Proof of Service To be filled out by Server

I, the undersigned, being at least 18 years of age, declare under penalty of perjury that I served this notice, of which this is a true copy, on the \_\_\_\_\_ day of \_\_\_\_\_ (month), \_\_\_\_\_ (year), on the above mentioned Resident in possession in the manner indicated below.

- BY DELIVERING** a copy of the Notice to the following resident(s) PERSONALLY:
- BY MAILING** a copy of the Notice to each of the above-named resident(s) via U.S. Postal Service CERTIFIED MAIL
- BY LEAVING** a copy for each of the above-named resident(s) with a person of suitable age and discretion at the residence or usual place of business of the resident(s), said resident(s) being absent thereof;  
**AND MAILING** by first class mail on said date a copy to each resident by depositing said copies in the United States Mail, in a sealed envelope, with postage fully prepaid, addressed to the above-named resident(s) at their place of residence.
- BY POSTING** a copy for each of the above-named resident(s) in a conspicuous place on the property therein described, there being no person of suitable age or discretion to be found at any known place of residence or business of said resident(s);  
**AND MAILING** by first class mail on the same day as posted, a copy to each resident by depositing said copies in the United States Mail, in a sealed envelope with postage fully prepaid, addressed to the resident(s) at the place where the property is situated.

Kathleen J. Dolara  
(Signature of Declarant)



California Apartment Association Approved Form  
To order, call your local CAA Chapter or (800) 967-4CAA  
Form 7.0-SV — Revised 2/99 — © 1999 — All Rights Reserved  
Page 1 of 1

REPRODUCTION OF BLANK  
FORMS IS ILLEGAL



000129

Solares Properties  
Vernon Street Apts LLC  
279 Vernon Street #1  
Oakland, CA 94610

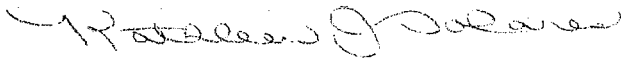
July 25, 2002

Clifton and Mercedes Harrison  
275 Vernon Street #11  
Oakland, CA 94610

Dear Clifton and Mercedes:

This letter will rescind the Thirty Day Notice of Termination of Tenancy dated June 27, 2002.

Sincerely,



Kathleen J. Solares

CC: Rent Arbitration Board  
Sentinel Fair Housing

000130

...ing plan check only.  
 Electrical, plumbing & mechanical plan  
 check are optional at additional fee(s).

mechanical   
 Plumbing

Decline Optional Plan Chk



CEDA - Building Services  
 250 Frank H. Ogawa Plaza, Suite 2114  
 Oakland, Calif. 94612  
 (510) 238-3444 Inspections & (510) 238-2263 fax

Initials: \_\_\_\_\_ Date \_\_\_\_\_

JOB ADDRESS: 275 Vernon St # 11 <sup>#10</sup>  
Oakland <sup>#11</sup>

CONTR. LIC. NO.: \_\_\_\_\_

BUILDING PERMIT: \_\_\_\_\_

USE OF BUILDING \_\_\_\_\_

apartment house

DESCRIPTION OF PROPOSED WORK:

ELECTRICAL	NO.	Cst/U	TOTAL	PLUMBING	NO.	Cst/U	TOTAL	MECHANICAL	NO.	Cst/U	TOTAL
SERVICE( )AMPS		44.00		TOILETS	1	11.00	11	F.A.U.(forced air unit)		28.00	
>100 AMP/100 INCR		33.00		URINALS		11.00		WALL FURNACE		28.00	
METER (EXTRA)		6.60		LAVATORY/ BASIN	1	11.00	11	FLOOR FURNACE		28.00	
CIRCUITS		3.30		SHOWERS		11.00		DUAL UNIT Heat/Cool		50.00	
APART. (> 4NEW) Elec		83.00		TUBS	1	11.00	11				
FIXT. RES. (Incandes.)		1.10		SINKS	2	11.00	22	A/C UNITS (<100 btu's)		28.00	
FIXTURES(Fluor.balast)	2	2.20		DISHWASHER Resid	2	11.00	22	A/C UNITS (>100 btu's)		44.00	
FIXT.(HPS.HID)		3.30		DISHWASHER Comm		17.00		EVAP COOLER		28.00	
SWITCHES	10	1.10		GARBAGE DISP Resid	2	11.00	22	COIL /RADIANT		17.00	
RECEPTACLES	10	1.10		GARBAGE DISP Comm		17.00		COND/COMPRESS		17.00	
RANGE		11.00		LAUNDRY TRAY		11.00					
DRYER		11.00		CLOTHES WASHER		11.00		ENVIR AIR DUCT Res		11.00	
RANGE TOP OVEN		11.00		DRINKING FOUNTAIN		11.00		ENVIR AIR DUCT Com		17.00	
FAN(Exhaust; Kitch./Bth)		1.10		FLOOR SINKS		11.00		FAN BLWER >10,000		22.00	
DISPOSAL		4.40		FLOOR DRAIN		11.00		FAN BLWER <10,000		44.00	
DISHWASHER		4.40		INDIR WASTE/COND		11.00		V.A.V. DAMP		11.00	
AIR COND.(1st 5 hp)		22.00		BACKWATER VALVE		17.00		LOW PRESS DUCT		22.00	
AIR COND(ea. add'l hp)		2.20		RAIN WATER LEADER		17.00		FIRE/SMOKE DAMP		11.00	
HEATERS(AIR)KW		2.20		AREA DRAIN		17.00		SUB DUCT		11.00	
WATER (165 max)		2.20									
FURNACE		11.00		GREASE TRAPS		55.00		GAS TEST/PIPE LOW		33.00	
SWIMMING POOL		88.00		INTERCEPTOR		55.00		GAS TEST/PIPE MED		55.00	
OUTDOOR SPA.H.T.		55.00		WASTE/VENT ALT Res		11.00		GAS DRYERS Resid		11.00	
INDOOR SPA HIDR.		39.00		WASTE/VENT ALT Com		17.00		GAS DRYERS Comm		17.00	
FOUNTAIN		33.00		EJECTOR/SUMP		55.00		GAS RANGES Resid		11.00	
CASE BEV/FR/VEG		11.00		WATER ALTERATION		17.00		GAS RANGES Comm		17.00	
GASOLINE DISP.		11.00		WATER SERVICE		17.00		GAS APPLIACE Misc		17.00	
SIGN (NEW)		28.00		BACK FLOW DEVICE		17.00					
SIGN (EXISTING)		22.00		WATER HEATERS		17.00		LOG LIGHTER		11.00	
OUTLINE LGT. KVA		7.70		GAS TEST/PIPE LOW		33.00		FIREPLACES		55.00	
MOVED BLDG.		39.00		GAS TEST/PIPE MED		55.00					
SERVICE(TEMP.)		50.00		GAS DRYERS Resid		11.00		COMMERCIAL HOOD		110.00	
MISC. APPARATUS		2.20		GAS DRYERS Comm		17.00					
MOTORS HP (165 max)		2.20		GAS RANGES Resid		11.00		FLUES		11.00	
MFG.BLDG 1ST SECT.		83.00		GAS RANGES Comm		17.00		BOILERS (TO 30 HP)		55.00	
MFG.BLDG. +SECT.		28.00		GAS APPLIACE Misc		17.00		(> 30 HP)		88.00	
RESET METER: SFD		22.00						INDIR WASTE/COND		11.00	
APT.		17.00		SWIM. POOL/SPA		110.00					
COMM		44.00		ROMAN TUBS & BAPT		55.00		MISC. INDUS. EQP.		88.00	
SURVEY 1HR+(83/83)		83.00		APART.(> 4NEW) Plmb.		83.00					
DENTAL UNIT/STERILIZ		11.00		MFG.BLDG 1ST SECT.		83.00		MFG.BLDG 1ST SECT.		83.00	
X-RAY MACHINE		11.00		MFG.BLDG. ADD SECT		28.00		MFG.BLDG. +SECT.		28.00	
PERMIT FEE (\$45 min)			45	PERMIT FEE (\$45 min)			45	PERMIT FEE (\$45 min)			
PLAN CHK (17%res/55%com)				PLAN CHK (17%res/55%com)				PLAN CHK (17%res/55%com)			
SURCHARGE 8.0%	0.080			SURCHARGE 8.0%	0.080			SURCHARGE 8.0%	0.080		
SUBTOTAL				SUBTOTAL				SUBTOTAL			
APPLICATION FEE		45.00		APPLICATION FEE		45.00		APPLICATION FEE		45.00	
GRAND TOTAL				GRAND TOTAL				GRAND TOTAL			

CERTIFY THAT THIS DOCUMENT IS  
A FULL, TRUE & CORRECT COPY

*James O'Neil*

SIGNED OFFICE OF PLANNING  
& BUILDING  
CITY OF OAKLAND

*Plum Elec Permits*

DATED *7/15/02*

000132

000132

Applic#\* B0202957 Type: 5  
 Date Filed: 06/27/02 Disposition: I ISSUED 06/27/02 ✓  
 NUMBER STREET NAME SUFFIX\* SUITE ASSESSOR PARCEL#  
 Site addr: 1) 275 VERNON ST 10,11 010 -0795-009-08  
 2)  
 3)  
 Bldg: Floor: Prcl Cond: Cond Aprvl: Viol:  
 Proj Descr: Kitchen remodel in units 10 & 11 and bath remodel in #10 PC:  
 Insp Div: BD-INSP Dist: 02A Scope Includes: BLDG ELEC MECH PLMB  
 Track: Lic# Phone# Applicant  
 Owner: VERNON STREET APARTMENTS LLC (510)893-2224 X  
 Contractor:  
 Arch/Engr:  
 Agent: KATHLEEN SOLARES  
 Applicant Addr: 279 VERNON ST No Fee:  
 City/State: OAKLAND CA Zip: 94610 Wrkrs Comp\* NO  
 Other Related Applic#s: E0202394 P0201894  
 F3=Ext F23=Dsc F24=Com

Applic#\* B0202957  
 Type: 5 Filed: 06/27/02 Disposition: I ISSUED 06/27/02 No Exp:  
 Plans: 0 Survey: Soil Rpt: Calcs E: S: Priority:  
 Est Cost: 15,000 Rev Cost: 0 New Cost: 0

-----EXISTING----- PROPOSED-----

Nbr of Bldgs on Lot:	00	02
Nbr of Dwelling Units:	0000	0011
Nbr of Stories:	000	003
Construction Type*		5N
Occupancy Codes*		R-1
Building Use*		52 APARTMENT > 5 UNITS
Zoning*		

Term Plan: Sign Type: Bldg Sq Ft: Posting Date:  
 Q Repair: Bdrm Count: Address Fee: URM: Sprnk\*  
 Outsd-PC: Tenant Impr: Pest Control: Fire Damg: Invstg: No Fee:  
 OTC: X Outsd-EC: No Fld-Chk: Cnt-Revw: MFG: Parallel:

3=Ext F12=Page 1 F24=Com ENTER=Next Selection

Nbr: 275 Street: VERNON Sfx\* ST  
or Parcel#: \_\_\_\_\_ Active Only? Y/N Y Appl Type\* \_\_\_\_\_

-----ADDRESS-----

* Nbr	Street Name	Sfx	Parcel Nbr	Applic#	P	Disposition	Pln
275	VERNON	ST	010 -0795-009-08	B0202957	5 I	06/27/02	0
Desc: Kitchen remodel in units 10 & 11 and bath remodel in #10							
275	VERNON	ST	010 -0795-009-08	E0202394	5 I	06/27/02	0
Desc: Electrical for kitchen, bath remodels. Units 10 & 11.							
275	VERNON	ST	010 -0795-009-08	P0201894	5 I	06/27/02	0
Desc: Plumbing for kitchen, bath remodels. Units 10 & 11.							
278	VERNON	ST	010 -0796-024-00	SL000107	2 I	02/07/00	0
Desc: sewer lateral repair							
278	VERNON	ST	010 -0796-024-00	X0000106	1 I	02/07/00	0
Desc: sewer lateral repair							
325	VERNON	ST	010 -0795-056-00	B0202216	5 I	05/14/02	0
Desc: REMOVE/REPLACE WOOD SIDING WITH SAME MATERIAL							
325	VERNON	ST	010 -0795-056-00	OB020306	4 I	05/14/02	0
Desc: REMOVE/REPLACE WOOD SIDING WITH SAME MATERIAL							
330	VERNON	ST	010 -0796-074-00	P0102830	5 I	10/04/01	0
Desc: Plumbing for a Solar Panel Hot Water System.							

F1=Hlp F3=Ext F4=More/Less F5=Chg F12=Prv Page: 1

Applic#\* E0202394 Type: 5  
Date Filed: 06/27/02 Disposition: I ISSUED 06/27/02

NUMBER	STREET NAME	SUFFIX*	SUITE	ASSESSOR	PARCEL#
1) 275	VERNON	ST	10,11	010	-0795-009-08
2)					
3)					

Bldg: \_\_\_\_\_ Floor: \_\_\_\_\_ Prcl Cond: \_\_\_\_\_ Cond Aprvl: \_\_\_\_\_ Viol: \_\_\_\_\_  
Proj Descr: Electrical for kitchen, bath remodels. Units 10 & 11. PC: \_\_\_\_\_

Insp Div: ED-INSP Dist: 02A Scope Includes: BLDG ELEC X MECH PLMB  
Track: \_\_\_\_\_ Lic# \_\_\_\_\_ Phone# \_\_\_\_\_ Applicant \_\_\_\_\_  
Owner: VERNON STREET APARTMENTS LLC (510)893-2224 X

Contractor: \_\_\_\_\_  
Arch/Engr: \_\_\_\_\_  
Agent: KATHLEEN SOLARES  
Applicant Addr: 279 VERNON ST No Fee: \_\_\_\_\_  
City/State: OAKLAND CA Zip: 94610 Wrkrs Comp\* NO  
Other Related Applic#s: B0202957 P0201894

F3=Ext F23=Dsc F24=Com

Applic#\* P0201894 Type: 5

Date Filed: 06/27/02 Disposition: I ISSUED 06/27/02

NUMBER STREET NAME SUFFIX\* SUITE ASSESSOR PARCEL#

Site addr: 1) 275 VERNON ST 10,11 010 -0795-009-08
2)
3)

Bldg: Floor: Prcl Cond: Cond Aprvl: Viol:
Proj Descr: Plumbing for kitchen, bath remodels. Units 10 & 11. PC:

Insp Div: PMD-INSP Dist: 02A Scope Includes: BLDG ELEC MECH PLMB X

Track: Lic# Phone# Applicant

Owner: VERNON STREET APARTMENTS LLC (510)893-2224 X

Contractor:

Arch/Engr:

Agent: KATHLEEN SOLARES

Applicant Addr: 279 VERNON ST

No Fee:

City/State: OAKLAND CA

Zip: 94610

Wrkrs Comp\* NO

Other Related Applic#s: B0202957 E0202394

F3=Ext F23=Dsc F24=Com

Nbr: 275 Street: VERNON Sfx\* ST

or Parcel#: Active Only? Y/N Y Appl Type\* T

-----ADDRESS-----

Table with columns: \* Nbr, Street Name, Sfx, Parcel Nbr, Applic#, P, Disposition, Pln. Rows include details for units 10 & 11 and bath remodels, kitchen remodels, and sewer lateral repairs.

F1=Hlp F3=Ext F4=More/Less F5=Chg F12=Prv



PROOF OF SERVICE  
Case Number T15-0360

I declare under penalty of perjury under the laws of the State of California that on January 16, 2018, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<u>Name</u>	Kathleen Solares, Solares Properties LLC
<u>Address</u>	279 Vernon St #1
<u>City, State Zip</u>	Oakland, Ca 94610
<u>Name</u>	Stephen Judson, Ramsey Law Group
<u>Address</u>	3736 Mt. Diablo Blvd Suite 300
<u>City, State Zip</u>	Lafayette, CA 94549

Murcells Harrison 1/16/18  
SIGNATURE OF APPELLANT or DESIGNATED REPRESENTATIVE DATE



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

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**HEARING DECISION ON REMAND**

**CASE NUMBER:** T15-0360, Harrison v. Solares  
**PROPERTY ADDRESS:** 275 Vernon Street, No. 11  
 Oakland, CA  
**DATES OF HEARING:** June 26, 2017  
 July 26, 2017  
**DATE OF DECISION:** August 23, 2017

<b>APPEARANCES</b>	<b>June 26, 2017</b>	<b>July 26, 2017</b>
<b>Tenant</b>		
Clifton Harrison	X	X
Mercedes Harrison	X	X
Leah Simon-Weisberg, Esq.	X	X
<b>Owner</b>		
Kathleen Solares	X	X
Elvera Bordessa	X	X
Stephen Judson, Esq.	X	X
<b>Observer</b>		
Etha Jones	X	X
Selena Gonzalez		X
Charles Brooks III	X	

**SUMMARY OF HEARING DECISION ON REMAND**

The Hearing Decision granted a capital improvement pass-through of \$33,492.69, or \$558.21 monthly. Upon Remand, the Hearing Decision grants a capital improvement pass-through of \$36,154.45 or \$602.57 monthly.

Background

The Hearing Officer issued a Hearing Decision which granted a rent increase based on capital improvements in the amount of \$33,492.69, or \$558.21 monthly for

work performed on the subject unit's kitchen and bathroom. \$15,380 of the costs were disallowed on the grounds that the payment was made to the contractor's attorney to settle litigation which the Hearing Officer interpreted as not being a capital improvement cost.

\$37,259.50 of the costs were disallowed on various grounds.

### Appeal Decision & Scope of Remand Hearing

Both parties appealed. The tenants contended that an additional \$12,797.97 of the costs should have been excluded on the grounds that the payments were made more than 24 months prior to the date of the proposed rent increase, and questioned the \$5,000 credit for deferred maintenance by the owner for work in the bathroom.

The owners contended that \$15,380.11 was improperly excluded because payments made to the contractor's attorney pertained to the capital improvement work and the 24 month period should not apply because the costs outside the 24 month period pertained to this single capital improvement project.

After the parties' presentation and Board discussion, the Board voted to remand the Hearing Decision to the Hearing Officer to do the following:

#### Tenant Appeal

1. Consider if the \$5,000 deducted or some other amount was appropriate to exclude from the rent increase due to costs incurred due to deferred maintenance;
2. Review costs based on existing evidence to exclude all costs prior to August 1, 2013, which is the 24 month period prior to the effective date of the rent increase.

#### Owner Appeal

1. Determine how much of the \$15,000 of the \$27,000 paid to the contractor's attorney was attributed to work done on the subject unit on the basis that the payment to the contractor's attorney did not invalidate a payment from being a capital improvement;
2. Correct a typographical error to indicate that the \$15,000 was paid to the contractor's attorney, not the owner's attorney.

The Board also directed the Hearing Officer to consider a payment plan for the tenants after determining the proper amount of the rent increase.

## EVIDENCE

### Summary of Capital Improvement Costs in Underlying Hearing Decision<sup>1</sup>

Vendor	Description	Check No.	Amount	Date	Ex. No.
City of Oakland	Permits	4946	\$1,123.57	11/7/12	226
		5101	\$162.95	6/21/13	228
First Choice Construction	Contract for remodel kitchen and bathroom	5124	\$1,000.00	7/10/13	232-235
"		5147	\$8,808.36	7/5/13	236-243
"		5137	\$6,689.34	7/17/13	244-258
"		5138	\$4,652.69	7/22/13	261-270
"		5152	\$2,871.17	8/1/13	271-275
"		5153	\$6,658.72	8/1/13	276-281
"		5185	\$1,611.35	8/21/13	282-287
GMS Sales	Green galaxy slabs-bath	Visa	\$437.00	2/23/13	288
Stone Trading	Blue Eyes	Visa	\$1,639.75	6/18/13	290-291
Pacific Sales	Bath items-	Visa	\$1,382.12 <sup>2</sup>	6/25/13	292-295
"	Bath towel bar	Visa	\$119.90	7/23/13	299-301
"	Kitchen items <sup>4</sup>	Visa	\$2,366.28	7/23/13	305-307
"	Kitchen sink faucet	Visa	\$134.07	8/28/13	308-309
"	Toilet	Visa	\$218.00	9/3/13	310-312
	Door latch set, dead bolt,	HD chge	\$188.32	8/26/13	317
	Bathroom sink	Visa	\$66.00	9/3/13	314
Import Tile Co.	Floor tile	Visa	\$774.54	7/30/13	319-320
Walnut Creek Lighting	Dining room light	Visa	\$390.60	7/17/13	321-322
Dick's Carpet	Carpet for 2 bedrooms, hall, living room and dining room	5186 5214	\$1,000 \$2885	8/26/13	323-326
Martinelli's Cabinet	Kitchen and bath vanity cabinets	Visa	\$4,300 \$4,300	7/3/13 8/16/13	327-330
"	Kitchen cabinet pulls	Visa	\$286.06	9/18/13	331
Glenview Key And Lock	Lock change	5123	\$102.26	6/18/12	332
Romart's Marble & Granite	Fabricate and install kitchen counter tops, bathroom vanity, and back splashes; shower walls	5157	\$3,305	9/13/13	335-337
Diablo Glass	Tub enclosure	5201	\$975.45	9/6/13	338-339
"	Drapes-bedrooms Blinds-kitchen	4323	\$685.69	1/23/14	341

<sup>1</sup> Hearing Decision in T15-0360, pp. 6-7

<sup>2</sup> This includes a double charge for a disposal of \$179.00

Vendor	Description	Check No.	Amount	Date	Ex. No.
	8 Window screens and screen door	5304	\$550	1/7/14	342-342a
Bed, Bath & Beyond	Toilet paper stand	Cash	\$19.99	1/20/14	343
SUBTOTAL			\$60,372.08		
First Choice Construction <sup>3</sup>	Contractor for construction Invoice 8/4/13 Invoice 8/27/13 Invoice 9/5/13 Invoice 9/15/13 Combined invoice 9/23/13 for Apt. 2, 4 and 11(labor)	5389	\$2,325 \$7,413.60 <sup>4</sup> \$2,672.46 <sup>5</sup> \$1,289.05 \$1,680	6/4/14	159-161-181
SUBTOTAL			\$15,380.11		
			\$75,752.19		
Credit for bathroom			-\$5,000		
NET TOTAL			\$70,752.10 <sup>6</sup>		

Additional Costs Expended Prior to August 1, 2013

Vendor	Description	Check No.	Amount	Date
City of Oakland	Permits	4946	\$1,123.57	11/7/12
		5101	\$162.95	6/21/13
GMS Sales	Green galaxy slabs-bath	Visa	\$437.00	2/23/13
Stone Trading	Blue Eyes	Visa	\$1,639.75	6/18/13
Pacific Sales	Bath items-	Visa	\$1,382.12 <sup>7</sup>	6/25/13
	Bath towel bar	Visa	\$119.90	7/23/13
	Kitchen items		\$2,366.28	7/23/13
Import Tile Co.	Floor tile	Visa	\$774.54	7/30/13
Walnut Creek Lighting	Dining room light	Visa	\$390.60	7/17/13
Martinelli's Cabinet	Kitchen and bath vanity cabinets	Visa	\$4,300	7/3/13
Glenview Key And Lock	Lock change	5123	\$102.26	6/18/12
TOTAL			\$12,798.97	

<sup>3</sup> Tenants objected to this exhibit on the grounds that check was made to owner's attorney and amount allocated to contractor was not itemized

<sup>4</sup> Includes clerical error of \$19.38 in Home Depot Bill, Ex. 364

<sup>5</sup> The Home Depot amount for 8/16/13 is \$175.84, not 195.22-difference of \$19.38

<sup>6</sup> Ex. Nos. 57-58

<sup>7</sup> This includes a double charge for a disposal of \$179.00

\$5,000-Deferred Maintenance

The owner credited the tenants with \$5,000 for work done on the bathroom ceiling based on a prior hearing decision which granted the tenants restitution for decreased housing services.

The tenants contend that the deferred maintenance credit should have been \$7,305, and the following costs should have been excluded based on deferred maintenance:

Vendor	Item	Cost	Paid	Check
Pacific Sales	toilet	\$218.00	9/3/2013	Visa
Pacific Sales	sink	\$66.60	8/19/2013	Charge
Martinelli's Cabinets	vanity cabinet	\$4,300.00	8/16/2013	Visa
Romart's Marble & Granite Fabricators	vanity backsplash	\$375.00	9/13/2013	5157
"	shower walls	\$1,350.00	9/6/2013	5157
Diablo Glass, Inc.	tub enclosure & install	\$ 975.40	9/6/2013	5201
Bed, Bath & Beyond	Toilet paper stand	\$19.99	1/20/2014	cash
		\$7,305.00		

The tenants also testified that the remodeling costs in their bathroom far exceeded the quality and costs of other units in the subject building; and that a recent bathroom remodel in 2016 had a plastic enclosure with no glass shower. They also contend that marble does not prolong the useful life of the vanity. They contend that the allowable capital improvements should be \$19,373.20.

The owner testified that she has done many remodels and is very familiar with the costs associated with bathroom remodels. The Notice of Violation issued by the City dated October 12, 2012, only states "The bathroom ceiling is water damaged. Repair."<sup>8</sup> The owner estimated the work to repair the bathroom ceiling was \$3,500 and added a \$1,500 cushion.

The owner further testified that she applied the same standards in remodeling the units in the subject building and all cabinets are custom made due to the original construction of the building by her father. Whether quartz or granite is utilized depends on the condition of the unit. The owner contends that the allowable capital improvements should be \$41,103.83.

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<sup>8</sup> Ex. Nos. 8-9

Amount of work on the subject unit attributed to the \$15,000 of the \$27,000 paid to the contractor's attorney

The owner submitted a copy of the Settlement Agreement and Mutual Release between Solares Properties and First Choice Construction dated May 28, 2014, in RG14709656 filed in Alameda County Superior Court, which settled a dispute between the contractor and the owner for construction performed at the subject unit, in which the owner agreed to pay twenty-seven thousand (\$27,000) to settle the dispute. The owner wrote a check to the contractor's attorney, Wood, Smith, Henning & Berman, on June 4, 2014, in the amount of \$27,000.00.<sup>9</sup>

The owner also submitted additional invoices totaling \$15,380.11<sup>10</sup> from First Choice Construction, which allocated costs of material and labor to the work done on the tenants' unit, pursuant to the Settlement Agreement of June 4, 2014, which included the following:

Item	Cost	Date
Labor	\$1,240.00 <sup>11</sup> \$1,085.00	7/29/13 8/4/13
Labor	\$6,400 <sup>12</sup>	8/14, 15, 16, 19, 20, 21, 22, 23/2013
Labor/materials	\$5,641.51 <sup>13</sup>	9/9, 10, 11, 12, 12, 16, 1, 18, 19, 20, 2013
Materials-Home Depot; Kelly-Moore Paints; Economy Lumber; Truitt & White	\$994.22 <sup>14</sup>	8/12,15,16,13,21, 2013
Total	\$15,360.73	

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Credit for Deferred Maintenance

There is a difference of \$2,305.00 in the amounts claimed by the parties for the work in the bathroom based on the Board's direction to consider whether \$5,000 or some other amount should be deducted for deferred maintenance. The cost of the items totaling \$7,305.00 objected to by the tenants have nothing to do with the work to the bathroom ceiling due to deferred maintenance, which was to repair the damage due to

<sup>9</sup> Ex. Nos. 14-19

<sup>10</sup> Ex. No. 35

<sup>11</sup> Ex. Nos. 34-35

<sup>12</sup> Ex. Nos. 36-37

<sup>13</sup> Ex. Nos. 43,48,50

<sup>14</sup> Ex. Nos. 36-47- \$1,013.60 includes additional \$19.38 for Home Depot charge for 8/16/13-net amount is

the bathroom ceiling. The costs included a new toilet, sink, vanity cabinet and backsplash, shower walls, and tub closure, which prolongs the useful life of the bathroom, adds to the material value of the property and the tenant is the primary beneficiary of the capital improvements. The owner has the right to choose the items for a capital improvement project.<sup>15</sup>

The Hearing Officer finds that the \$5,000 credit for work to the bathroom ceiling was appropriate to exclude from the capital improvement costs.

The owner submitted \$70,752.19 in costs after deducting a \$5,000.00 credit for the work on the bathroom designated as deferred maintenance by the Board. The original Hearing Decision deducted \$37,259.50 for the following charges:

Item	Cost	Reason
Construction First Choice Construction	\$21,150.39 (\$1,000.00, \$8,808.36,\$6,689.34, \$4,652.69).	Falls outside 24 month period
"	\$15,380.11	Check made to owner's attorney- payment to FCC not itemized
Pacific Sales	\$179.00	This item was charged twice
Screenmobile	\$550	Proof of payment was not submitted 7 days prior to hearing
<b>TOTAL</b>	<b>\$37,259.50</b>	

Additional Exclusion of Costs Expended prior to August 1, 2013

The total amount of the capital improvement pass-through in the underlying Hearing Decision was \$33,492.69, or \$558.21 monthly. An additional \$12,698.97 is deducted from the allowed capital improvement pass-through because these costs were incurred prior to August 1, 2013.<sup>16</sup>

Amount of Work Paid to Contractor's Attorney Attributed to Capital Improvements

An additional \$15,360.73 is added to the allowed capital improvement pass-through because the owner has sustained her burden of proof regarding documentation of these costs.

\$75,752.19	capital improvement costs
-\$5,000	credit for deferred maintenance re bathroom
-\$37,259.50	disallowed expenses from first hearing
-\$12,698.97	additional disallowed expenses outside 24 month period
<u>+\$15,360.73</u>	additional allowed expenses from check paid to contractor attorney
\$36,154.45	net allowable capital improvement pass-through

<sup>15</sup> The Regulations regarding gold plating were not in effect at the time of this tenant petition-effective 9/20/16-O.M.C. Section 8.22.020

<sup>16</sup> See page 5 of the Hearing Decision on Remand



Based on the testimony and documentary evidence provided by the parties the owner is entitled to 100% of the capital improvement pass-through in the net amount of \$36,154.45, or \$602.57 monthly, effective December 1, 2015.

The allowed capital improvement allocation is itemized in the following table:

<u>CAPITAL IMPROVEMENTS</u>			Effective Date of Increase
<u>Improvements and repairs benefitting the tenants' unit</u>			December 1, 2015
IMPROVEMENT OR REPAIR	DATE COMPLETED	COST ALLOWED	MONTHLY COST
Kitchen and bathroom	6/4/14	\$36,154.45	\$602.57

The allowed monthly rent increase based on capital improvements is \$602.57 effective December 1, 2015, and expires on December 1, 2020. The tenants have underpaid rent of \$602.57 from December 1, 2015, through August 2017, totaling \$12,051.40.

Payment Plan

The Rent Board directed the Hearing Officer to consider a payment plan for the tenants after determining the proper amount of the increase. The tenants have been paying \$1,147.00 since December 1, 2015. A capital improvement pass-through of \$602.57 is granted. The rent underpayment is \$12,051.40.

The Rent Regulations in effect regarding amortization and payment of capital improvements state the following<sup>17</sup>:

Section 10.2.3(2)-Items defined as capital improvements will be given a useful life of five (5) years or sixty (60) months and shall be amortized over that time period. The dollar amount of the rent increase justified by Capital Improvements shall be reduced from the allowable rent in the sixty-first month.

10.2.3(3)-A monthly increase of 1/60<sup>th</sup> of the average per unit capital improvement cost is allowable; that is, the landlord may divide the total cost of the capital improvement by 60 and divide this monthly increase equally among the units which benefitted from the improvement (i.e. a roof benefits all units).

Pursuant to the Regulations in effect at the time of this capital improvement increase the capital improvement pass-through of \$602.57 increases the tenants' rent to \$1,749.57. The rent underpayment of \$12,051.40 would increase the tenants' rent by an

<sup>17</sup> Rent Regulations, Revised 11/18/11 Section 10.2.3

additional \$1004.25 based on a twelve month amortization, which would increase the tenants' rent to \$2,753.75.

Section 8.22.110 F(4) of the Rent Ordinance provides that the Hearing Officer may order Rent Adjustment for overpayments or underpayments over a period of months. However, such adjustments shall not span more than a twelve (12) month period, unless longer period is warranted for extraordinary circumstance. The rent underpayment of \$12,051.40 far exceeds the tenants' new monthly rent and constitutes good cause to grant a payment plan for the rent underpayment. The repayment plan has been extended to five years, and the additional amount of rent increase for the underpayment shall be \$200.86 monthly.

The capital improvement pass-through normally would expire on December 1, 2020 as the effective date was December 1, 2015. However, the capital improvement pass-through's expiration date has been extended as a result of the appeals by the parties. Therefore, the capital improvement pass-through shall expire on August 1, 2022.

**ORDER**

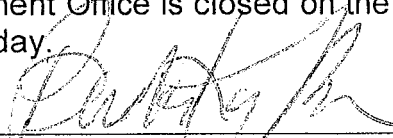
1. The owner is entitled to \$36,154.45, or \$602.57 monthly for a capital improvement pass-through, which is amortized over five years.
2. The rent underpayment shall be amortized over five years, which is \$200.86 monthly. The tenants' monthly rent is stated below as follows:

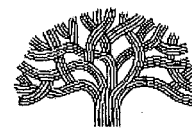
Base rent	\$1,147.00
+ capital improvement pass-through	+ \$602.57
	+ \$200.86
Plus rent underpayments totaling \$12,051.40/60=\$200.86	
Rent payment commencing September 1, 2017, and ending August 1, 2022	\$1,950.43

3. The capital improvement pass-through shall expire on August 1, 2022.

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

Dated: August 24, 2017

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



CITY OF OAKLAND

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

Department of Housing and Community Development  
Rent Adjustment Program

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HOUSING, RESIDENTIAL, RENT AND RELOCATION BOARD

APPEAL DECISION

**CASE NUMBER:** T15-0360, Harrison v. Solares

**APPEAL HEARING:** December 8, 2016

**PROPERTY ADDRESS:** 279 Vernon Street, No. 1  
Oakland, CA

<b>APPEARANCES:</b>	<b>Stephen Judson</b>	<b>Owner Appellant /Cross Appellee Representative</b>
	<b>Laura Shoaps</b>	<b>Tenant Appellee /Cross-Appellant Representative</b>

Procedural Background

The Hearing Officer issued a Hearing Decision which granted a rent increase based on capital improvements in the amount of \$33,492.69, which equals a \$558.21 monthly pass through, for work performed on the unit's kitchen and bathroom. The Hearing Decision disallowed \$15,380.11 in costs claimed by the Owner on the grounds that the payment was made directly to the contractor's attorney to settle litigation, which the Hearing Officer interpreted as not a capital improvement cost. The Hearing Decision also excluded \$21,150.39 in payments to the Owner's contractor, because such payments were made more than 24-months prior to the date of the proposed rent increase. The Hearing Decision took notice of the fact that the Owner deducted \$5,000 from the capital improvement costs to account for deferred maintenance, but it did not independently exclude any amount of the capital improvement cost on the basis of being deferred maintenance.

### Grounds for Appeal-Owner

The owner appealed the Hearing Decision on the following grounds:

- The decision raises a new policy issue that has not been decided by the Board;
- The decision is not supported by substantial evidence;

The Owner claimed that the \$15,380 was improperly excluded from the capital improvement cost because substantial evidence in the record demonstrated that the payment to the contractor's attorney was related to the capital improvement work. The Owner further claimed that the 24-month limitation on recovery of capital improvement costs should not apply in this case, because the costs older than 24 months were incurred in connection with a single capital improvement project for which rent was adjusted within 24 months of completion. Owner alleged that this interpretation of the 24-month limitation was a new policy issue requiring a decision by the Board and that the Board should overturn the Hearing Decision disallowing \$21,150.39 of capital improvement costs that were incurred outside the 24 month period prior to the date of the proposed rent increase.

### Grounds for Appeal-Tenant

The tenant appealed the Hearing Decision on the following grounds:

- Specific aspects of the Hearing Decision are inconsistent with the Oakland Rent Adjustment Ordinance, Rent Board Regulations and prior Board decisions;
- A section of the Hearing Decision is inconsistent with decisions issued by other hearing officers; and
- One element of the Hearing Decision is not supported by substantial evidence.

The Tenant claimed that \$12,797.97 of costs should have been excluded for falling outside the 24-month period prior to the rent increase as required by the Oakland Rent Adjustment Ordinance, Rent Board Regulations and prior Board decisions. The Tenant also claimed that the Hearing Decision should have considered the cost of repairing deferred maintenance and reduced the capital improvement pass-through accordingly, consistent with decisions issued by other hearing officers. Finally, the Tenant claimed that the Hearing Decision's conclusion that capital improvement costs could not be denied as deferred maintenance was not supported by substantial evidence in the record.

### Appeal Decision

After Board discussion and questions to both parties, J. Warner moved to remand the case to the Hearing Officer to review the required 24 month time period and exclude any payment made prior to August 1, 2013, 24 months before the proposed rent increase; to consider deferred maintenance as proper grounds for any additional exclusions in the calculation; and to confirm that the payments in question are attributed to unit 11.

T. Singleton requested that the issues in the tenant and owner appeals be considered separately.

### Tenant Appeal

J. Warner restated the motion before the Board to remand the case to a Hearing Officer to consider if the \$5,000 deducted from the allowable capital improvement costs or some other amount was appropriate to exclude from the rent increase, on the basis that if costs were incurred as a result of deferred maintenance, such costs should be excluded from an allowed capital improvement pass through; however, there was insufficient evidence in the record nor findings in the decision regarding the cost attributable to deferred maintenance here to conclude whether \$5,000 was the correct deduction. The motion also directs the Hearing Officer to review costs based on existing evidence in order to exclude all costs incurred prior to August 1, 2013, which is the date the Board determined to be 24 months before the noticed rent increase., the noticed rent increase being a proposed rent increase until the Rent Program decision is final. Finally, the motion directed the Hearing Officer to consider including a payment plan for the Tenant after determining the proper amount of the rent increase. K. Friedman seconded the motion. The Board voted as follows:

Aye: N. Frigault, T. Singleton, K. Friedman, J. Warner, J. Karchmer, J. Warner

Nay: 0

Abstain: 0

Absent: B. Williams

The motion was approved by consensus.

### Owner Appeal

T. Singleton moved to affirm the Hearing Officer's decision based on substantial evidence. The motion was withdrawn.

J. Karchmer moved to remand the case to the Hearing Officer to determine how much of the approximately \$15,000 of the \$27,000 total paid to the contractor's attorney was attributed to work done on the subject unit, on the basis that

payment to a contractor's attorney did not invalidate a payment from being a capital improvement cost, but that in this case there was not sufficient evidence in the record nor findings in the decision to determine how much of the amount claimed by the owner, if any, of the payment to the contractor's attorney was attributable to the actual work performed on the Tenant's unit. The motion also directed the Hearing Officer to correct a typographical error in the Hearing Decision to indicate that the \$15,000 was paid to the contractor's attorney and not the owner's attorney. J. Warner seconded. The Board voted as follows:

Aye: K. Friedman, J. Warner, J. Karchmer  
Nay: N. Frigault, T. Singleton  
Abstain: 0

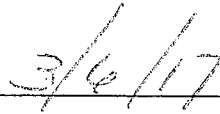
The motion carried.

**NOTICE TO PARTIES**

Pursuant to Ordinance No (s). 9510 C.M.S. of 1977 and 10449 C.M.S. of 1984, modified in Article 5 of Chapter 1 of the Municipal Code, the City of Oakland has adopted the ninety (90) day statute of limitations period of Code of Civil Procedure, Section 1094.6.

  
\_\_\_\_\_  
CONNIE TAYLOR  
BOARD DESIGNEE  
CITY OF OAKLAND  
HOUSING, RESIDENTIAL RENT AND  
RELOCATION BOARD

DATE

  
\_\_\_\_\_  
3/6/17