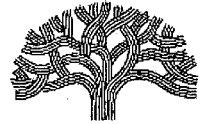


CITY OF OAKLAND



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

THE CITY OF OAKLAND'S HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD WILL HOLD A SPECIAL CLOSED SESSION MEETING ON MARCH 29, 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 Session 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

2018 MAR 21 PM 2:49

FILED
OFFICE OF THE CITY CLERK
OAKLAND

HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD
REGULAR MEETING

March 29, 2018
7:00 P.M.
CITY HALL, HEARING ROOM #1
ONE FRANK H. OGAWA PLAZA
OAKLAND, CA

AGENDA

FILED
OFFICE OF THE CITY CLERK
OAKLAND
2018 MAR 21 PM 2:49

1. CALL TO ORDER
2. ROLL CALL
3. CITY ATTORNEY'S REPORT REGARDING ACTIONS TAKEN IN CLOSED SESSION
4. CONSENT ITEMS
 - i. Approval of Minutes
 - a. February 22, 2018
 - ii. Minutes Available for Review
 - a. February 15, 2018
 - b. March 8, 2018
5. OPEN FORUM
6. OLD BUSINESS
7. NEW BUSINESS
 - A. Appeal Hearings in:
 - 1) T15-0360, Harrison v. Solares
 - 2) L16-0018, CNML Crescent Properties
 - 3) T16-0259, Barghout v. Owens
 - B. Board Training
8. SCHEDULING AND REPORTS
9. ADJOURNMENT

Accessibility. This meeting location is wheelchair accessible. To request disability-related accommodations or to request an ASL, Cantonese, Mandarin or Spanish interpreter, please email sshannon@oaklandnet.com or call (510) 238-3715 or California relay service at 711 at least five working days before the meeting. Please refrain from wearing scented products to this meeting as a courtesy to attendees with chemical sensitivities.

Esta reunión es accesible para sillas de ruedas. Si desea solicitar adaptaciones relacionadas con discapacidades, o para pedir un intérprete de en español, Cantones, Mandarín o de lenguaje de señas (ASL) por favor envíe un correo electrónico a sshannon@oaklandnet.com o llame al (510) 238-3715 o 711 por lo menos cinco días hábiles antes de la reunión. Se le pide de favor que no use perfumes a esta reunión como cortesía para los que tienen sensibilidad a los productos químicos. Gracias.

會場有適合輪椅出入設施。需要殘障輔助設施, 手語, 西班牙語, 粵語或國語翻譯服務, 請在會議前五個工作天電郵 sshannon@oaklandnet.com 或致電 (510) 238-3715 或 711 California relay service。請避免塗搽香氛產品, 參加者可能對化學成分敏感。

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

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

If you will be accompanied by an emotional support animal, then you must provide documentation 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.

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.

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CITY OF OAKLAND
HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD

Meeting

February 22, 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 7:30 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. Friedman	Landlord	X		

Staff Present

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

3. CONSENT ITEMS

a . Approval of Minutes for January 25, 2018

K. Friedman moved to approve the minutes with corrections. J. Warner seconded.
The Board voted as follows:

Aye: U. Fernandez, R. Stone, J. Warner K. Friedman. M. Cook
Nay: 0
Abstain: None

The motion passed by consensus.

4. OPEN FORUM

000004

a. James Vann

5. NEW BUSINESS

i. Hearing in appeal cases:

a. L16-0089, L16-0090, L16-0091 Alexander v. tenants

Appearances: No appearance by landlord

This is a landlord appeal. The landlord did not appear. J. Warner moved to dismiss the appeal pending a showing of good cause. U. Fernandez seconded.

The Board voted as follows;

Aye: U. Fernandez, R. Stone, M. Cook, J. Warner, K. Friedman
Nay: 0
Abstain: None

The motion passed by consensus.

b. T15-0360, Harrison v. Solares

The tenant was granted a postponement.

ii. Election of new Board Officers

The Board nominated Jessie Warner as Board Chair and Robert Stone as Vice Chair.

The Board voted as follows;

Aye: J. Warner, R. Stone, M. Cook, K. Friedman, U. Fernandez
Nay: 0
Abstain: None

The motion passed by consensus

6. Report on Closed Session

7. SCHEDULING & REPORTS

a. Board attendance

b. Update on Substantial Rehabilitation Moratorium

c. Board Training

d. Subcommittee or working group on Board procedure

8. ADJOURNMENT

J. Warner moved to adjourn the meeting. The meeting was adjourned by consensus at 8:45 p.m.

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

**PANEL MEETING
February 15, 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 7:09 p.m. by Panel Chair, Ed Lai.

2. ROLL CALL

MEMBER	STATUS	PRESENT	ABSENT	EXCUSED
Debra Mesaros	Tenant	X		
Ed Lai	Homeowner	X		
Karen Friedman	Owner	X		

Staff Present

Kent Qian	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. T16-0647; Walker v. Ward
 - b. T16-0561; Formby et al. v. Churchill - appeal was withdrawn by appellant

000007

a. T16-0647; Walker v. Ward

No Appearance by any party.

The Board panel waited until 7:15 p.m. for the owner appellant to appear. No one appeared.

E. Lai made a motion to dismiss the appeal subject to finding of good cause for non-appearance. K. Friedman seconded.

The Board panel voted as follows:
Aye: D. Mesaros, E. Lai, K. Friedman
Nay: 0
Abstain: 0

The Motion was approved by consensus.

5. ADJOURNMENT

The meeting was adjourned at 7:17 p.m.

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

**PANEL MEETING
March 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 7:09 p.m. by Panel Chair, Jessica Warner.

2. ROLL CALL

MEMBER	STATUS	PRESENT	ABSENT	EXCUSED
Ubaldo Fernandez	Tenant	X		
Jessica Warner	Homeowner	X		
Benjamin Scott	Owner	X		

Staff Present

Kent Qian	Deputy City Attorney, Office of the City Attorney
Linda M. Moroz	Hearing Officer, Rent Adjustment Program
Maimoona Ahmad	Hearing Officer, Rent Adjustment Program

3. OPEN FORUM

The following speakers spoke at Open Forum:

Leah Simon-Weisberg
Clinton Womack
Grant Rich
Kelly Phillips
Shayna Reese
Lauren Schechter
Ana Fouster
Mary Kallock

000009

Andy Larson
Tom Deckert
Kendra Edwards
Lydia Henkel-Moellmann
James Vann
Jonah Strauss

4. NEW BUSINESS

- i. Appeal Hearing in cases:
 - a. L16-0048; Truckee Zurich Place LLC v. Tenants
 - b. L16-0064; DODG Corp. v. Tenants
 - Appeal was withdrawn by the tenant appellant.
 - c. L16-0093; Masri v. Tenant
 - Appeal was withdrawn by the tenant appellant.

a. L16-0048; Truckee Zurich Place LLC v. Tenants

The Board panel could not hear the appeal in this case because there was no quorum. U. Fernandez recused himself due to a current pending litigation with the owner of the subject property. The case will be rescheduled.

5. ADJOURNMENT

The meeting was adjourned at 7:37 p.m.

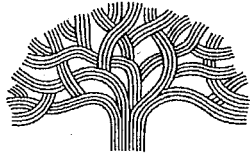
CHRONOLOGICAL CASE REPORT

Case No.: T15-0360
Case Name: Harrison v. Solares Properties, LLC
Property Address: 279 Vernon St., Unit 11, Oakland, CA
Parties: Clifton & Mercedes Harrison (Tenants)
Kathleen Solares (Owner)

TENANT APPEAL OF REMAND DECISION

OWNER APPEAL OF REMAND DECISION

<u>Activity</u>	<u>Date</u>
Hearing Decision issued	March 4, 2016
Appeal Decision issued	March 6, 2017
Hearing Decision On Remand issued	August 23, 2017
Tenant Appeal filed	September 14, 2017
Owner Appeal filed	September 14, 2017



CITY OF OAKLAND

**CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM**

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

2017 SEP 14 11:26
For date stamp.

APPEAL

Appellant's Name Solares Properties, LLC		<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.

2017 SEP 14 PM 1:26

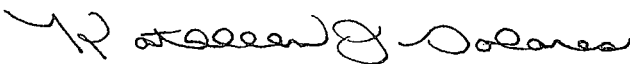
- f) I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. (In your explanation, you must describe how you were denied the chance to defend your claims and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue 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)

2017 SEP 14 PM 1:20

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.

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

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.

RECEIVED
APPEALS BOARD
MAY 14 2017

2017 SEP 16 PM 1:21

Exhibit 1

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.

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 RRP Notice Expense Recog, City Capital Improvement Form, Permit Card report

on the following resident(s) Clifton Harrison

on the 23rd 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 23rd day of May (month), 2015 (year).

In Oakland (City), California (State).

Kathleen Solares
Name of Declarant (Print)

Kathleen Solares
Signature of Declarant

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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 thirteen (13) 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 Recog. City Capital Improvement Form, Permit Card Report

on the following resident(s) Mercedes Harrison

on the 23rd 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 23rd day of May (month), 2015 (year).

Oakland (City), California (State).

Rahneen Solares
Name of Declarant (Print)

Rahneen Solares
Signature of Declarant

2015 MAY 28 11:01

HEARING OFFICER'S MATRIX

HEARING DECISION ON REMAND

DATE OF DECISION: AUGUST 23, 2017

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EVIDENCE

Summary of Capital Improvement Costs In Underlying Hearing Decision¹

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 ²	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
	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.
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¹ Hearing Decision in T15-0360, pp. 6-7

² 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 ³	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 ⁴ \$2,672.46 ⁵ \$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 ⁶		

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 ⁷	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	

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

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

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

⁶ Ex. Nos. 57-58

⁷ This includes a double charge for a disposal of \$179.00

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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

- 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

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Expenses for
275 Vernon Street #11

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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

2017 SEP 21 PM 1:40
 2017 SEP 21 PM 1:40

(c.)

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

<u>CAPITAL IMPROVEMENTS</u>		<u>Effective Date of Increase</u>	
<u>Improvements and repairs benefitting the tenants' unit</u>		August 1, 2015	
<u>IMPROVEMENT OR REPAIR</u>	<u>DATE COMPLETED</u>	<u>COST ALLOWED</u>	<u>MONTHLY COST</u>
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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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:

000030

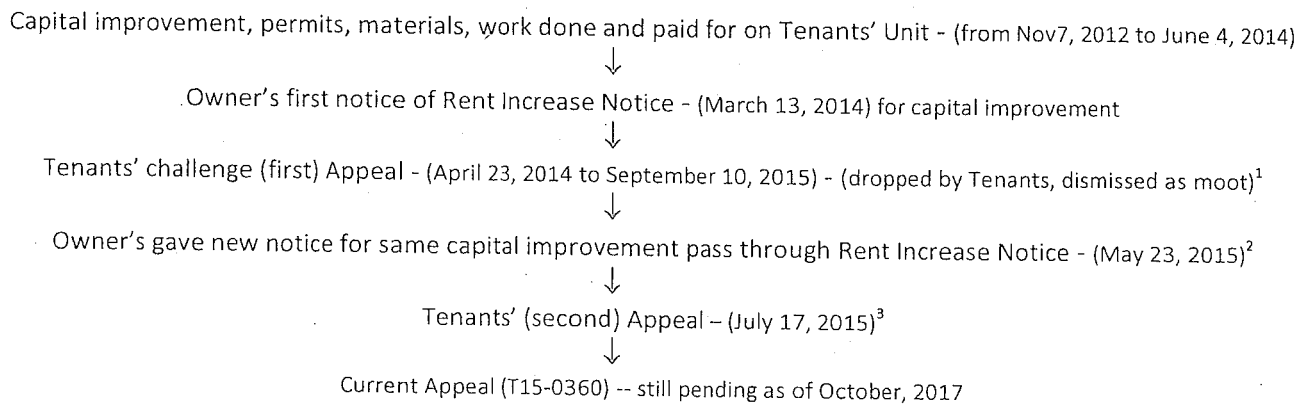
Article I, Section 8.22.010(C), provides in part:

(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 \$36,154.45,⁴
- (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.

¹ T14-0117

² For rent increase to start on August 1, 2015

³ T15-0360 (this current appeal)

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

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PROOF OF SERVICE

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

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

on the following parties:

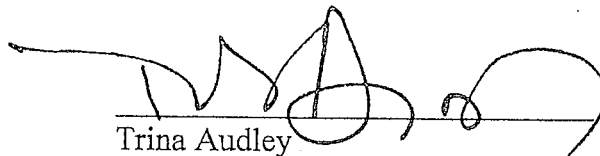
<i>Name of Party</i>	
Clifton Harrison (Tenant) 275 Vernon Street, #11 Oakland, CA 94610	Mercedes Harrison (Tenant) 275 Vernon Street, #11 Oakland, CA 94610

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


(BY REGULAR MAIL) I placed said document(s) along with envelope(s) addressed as indicated above in the location designated by my employer for the collection, processing and mailing of correspondence. I am readily familiar with my employer's ordinary business practice 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.

Executed at Lafayette, California on October 19, 2017.

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


Trina Audley

000032

 <p>CITY OF OAKLAND RENT ADJUSTMENT PROGRAM 250 Frank Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721</p>	For date stamp.
	<p>2017 SEP 14 PM 2:00</p> <p style="text-align: right;"><u>APPEAL</u></p>

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

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.

000033


- 2017 SEP 16 PM 2:07
- 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:

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

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

For more information phone (510) 238-3721.

2017 SEP 16 PM 2:37
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.
- 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.

3
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
<u>+\$15,360.73</u>	additional allowed expenses from check paid to contractor attorney
\$36,054.45	net allowable capital improvement pass-through
<u>-\$ 1,321.52</u>	disallowed American Blinds and Draperies Inc. expense, proof of payment untimely
\$34,732.93	correct net allowable capital improvement pass-through

(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.

(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**.

2/17/2014 10:11:23 AM

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

- 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.

1 Clifton and Mercedes Harrison
2 275 Vernon St. #110
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.

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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, Sol150 (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.

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

FILED
SEP 29 11 41 AM '17
CLERK OF COURT

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>	Lafayette, Ca 94549

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

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.

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

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

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

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

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

The hearing officer's first ruling not to allow this pass through was based on sound reasoning after a very long deliberation and argument from both parties. Solares could not effectively show how the payment of \$27,000.00 to settle a lawsuit could be passed on as a capital improvement since it could not be proven by the evidence submitted that the cost directed to 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 18th 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:

<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

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



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

<u>APPEARANCES</u>	<u>June 26, 2017</u>	<u>July 26, 2017</u>
Tenant		
Clifton Harrison	X	X
Mercedes Harrison	X	X
Leah Simon-Weisberg, Esq.	X	X
Owner		
Kathleen Solares	X	X
Elvera Bordessa	X	X
Stephen Judson, Esq.	X	X
Observer		
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 Decision¹

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 ²	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
	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

¹ Hearing Decision in T15-0360, pp. 6-7

² 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 ³	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 ⁴ \$2,672.46 ⁵ \$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 ⁶		

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 ⁷	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	

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

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

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

⁶ Ex. Nos. 57-58

⁷ This includes a double charge for a disposal of \$179.00

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\$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."⁸ 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.

⁸ 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 \$27,000.00.⁹

The owner also submitted additional invoices totaling \$15,380.11¹⁰ 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 ¹¹ \$1,085.00	7/29/13 8/4/13
Labor	\$6,400 ¹²	8/14, 15, 16, 19, 20, 21, 22, 23/2013
Labor/materials	\$5,641.51 ¹³	9/9, 10, 11, 12, 12, 16, 1, 18, 19, 20, 2013
Materials-Home Depot; Kelly-Moore Paints; Economy Lumber; Truitt & White	\$994.22 ¹⁴	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

⁹ Ex. Nos. 14-19

¹⁰ Ex. No. 35

¹¹ Ex. Nos. 34-35

¹² Ex. Nos. 36-37

¹³ Ex. Nos. 43,48,50

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

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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.¹⁵

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
TOTAL	\$37,259.50	

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, 2013.¹⁶

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

¹⁵ 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

¹⁶ See page 5 of the Hearing Decision on Remand

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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:

CAPITAL IMPROVEMENTS 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 following¹⁷:

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 1/60th 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

¹⁷ Rent Regulations, Revised 11/18/11 Section 10.2.3

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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

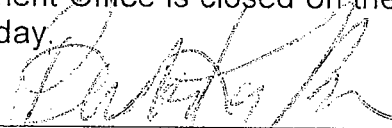
1. The owner is entitled to \$36,154.45, or \$602.57 monthly for a capital improvement pass-through, which is amortized over five years.
2. The rent underpayment shall be amortized over five years, which is \$200.86 monthly. The tenants' monthly rent is stated below as follows:

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

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CITY OF OAKLAND

P.O. BOX 70243, OAKLAND, CA 94612-2043
Department of Housing and Community Development TEL (510) 2383721
Rent Adjustment Program FAX (510) 238-6181
TDD(510)238-3254

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

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.

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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.

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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

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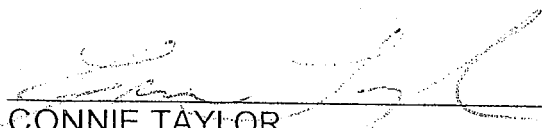
payment to a contractor's attorney did not invalidate a payment from being a capital improvement cost, but that in this case there was not sufficient evidence in the record nor findings in the decision to determine how much of the amount claimed by the owner, if any, of the payment to the contractor's 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.

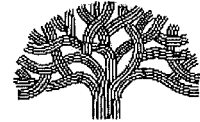


CONNIE TAYLOR
BOARD DESIGNEE
CITY OF OAKLAND
HOUSING, RESIDENTIAL RENT AND
RELOCATION BOARD

DATE 3/6/17

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CITY OF OAKLAND



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

Department of Housing and Community Development
Rent Adjustment Program

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

HEARING DECISION

CASE NUMBER: T15-0360, Harrison v. Solares

PROPERTY ADDRESS: 275 Vernon Street, No. 11
Oakland, CA

DATES OF HEARING: November 17, 2015
November 24, 2015

DATE OF LAST POST-HEARING BRIEF: January 8, 2016

DATE OF DECISION: March 4, 2016

APPEARANCES	November 17	November 24
Tenant		
Clifton Harrison	X	X
Mercedes Harrison	X	X
Laura Shoaps, Esq.	X	X
Derek Schoonmacher, Esq.	X	X
Owner		
Kathleen Solares	X	X
Elvera Bordessa	X	X
Stephen Judson, Esq.	X	X
Observer		
Etha Jones	X	
Rebecca Hom	X	
Alma Blackwell	X	
Charles Brooks III	X	
James Vann	X	X
Court Reporter		
Cathy Meuter	X	
	(a.m. only)	

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SUMMARY OF DECISION

The tenants' petition is granted in part. The rent increase based on capital improvements is granted in the amount of \$33,492.69, or \$ 558.21 monthly.

INTRODUCTION

Tenants Clifton Harrison and Mercedes Harrison filed a petition on July 17, 2015, which alleged the following:

1. The rent increase exceeds the CPI Adjustment and is unjustified or is greater than 10%;
2. The notice of rent increase based upon capital improvement costs does not contain the "enhanced notice" requirements of the Rent Adjustment Ordinance or the notice was not filed with the Rent Adjustment Program (effective August 1, 2014);
3. The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).

The tenant petition also claimed a decreased housing service regarding removal of a door from the hallway into the tenants' living room. They dismissed this claim at the Hearing.

The owner filed a timely response and states the following:

1. The costs exceeded 10% and the owner provided the enhanced notice to the tenants as well as a summary of the vendors, expenses, and payments;
2. The enhanced notice was included with the expense list and 60 day notice of change of monthly rent;
3. The capital improvements were performed on the tenants' unit prior to the August 1, 2014, change in the ordinance regarding capital improvements and the amended ordinance does not apply to this pass-through.

The Hearing adjourned on November 24, 2015. The last post-hearing brief was received on January 8, 2016.

CONTENTIONS

The tenants contend that the rent increase exceeds 100% of their monthly rent , and the owners' motive is to displace them. Even if the capital improvements benefit the tenants the costs are impermissible. The tenants contend that \$33,948.00 of the capital improvement costs are untimely because they were paid outside the 24 month window; there was deferred maintenance regarding the roof leak and mold in the bathroom, and

there were priority 1 and 2 code violations; the costs are not supported; the last \$27,000 payment to the contractor was paid to the contractor's attorney and there is no documentation of how the fees were apportioned; there is no enhanced notice regarding the capital improvements, and the increase exceeds 30% in five years. The tenants also question the \$5,000 credit for the bathroom repair which they contend is not documented.

The tenants also contend that the capital improvement rent increase is invalid because the owner's motive was to displace them.

The owner contends that the tenants' petition does not allege mold as a decreased housing service and any evidence regarding this issue should be disregarded because the owners were not apprised of this issue in the tenants' petition and given an opportunity to respond to this issue.

Additionally, the issue of mold is not relevant to the issues presented in this case and was also decided in a prior hearing decision in T12-0333. The tenants sought to submit a mold test report which was denied by the hearing officer; the bathroom condition has been cleared by the city inspector and the rent reduction for this item was removed and has long since expired.

The owner also contends that it was not her motive to displace the tenants and that her attorney sent a notice advising the tenants' of their right to move back to the unit upon completion of repairs.

ISSUES PRESENTED

1. Is the owner entitled to increase the tenants' rents on the basis of Capital Improvements? If so, in what amount?
2. Is the amendment to the capital Improvement regulations regarding deferred maintenance applicable in this case?

EVIDENCE

Rent History

The tenants moved into the subject unit in 1988 at an initial monthly rent of \$750.00 and are currently paying a monthly rent of \$1,147.00. They received notice of a rent increase on May 23, 2015, increasing their rent from \$1,147.00 to \$2,326.20. They are currently paying \$1,147.00 monthly.

The owner filed a timely response and states that the rent increase is justified on the basis of capital improvements.

Capital Improvement Claim

The owner testified that the subject building was built in 1954 and the kitchen was never remodeled. She removed cabinets, counters, sheetrock, down to the studs. She installed new cabinets, and updated the electrical and plumbing to meet current code requirements, all at the request of the tenants. There was a hairline crack in the ceiling. A prior Rent Board Appeal Decision stated the owner should replace the ceiling sheetrock. There was no leak and no water stain. The tenants claimed there was a leak. There was no leak. The owner obtained a permit for the bathroom, and to open up the rest of the bathroom walls, and she completed a ceiling repair. She removed the sheetrock from the bathroom ceiling. She has credited the tenants with \$5,000 of the capital improvement expenses for the work on the bathroom ceiling. One year later, in September 2012 the tenant suddenly complained of a moldy smell. The owner also did work to comply with new electrical code requirements. She moved the electrical box, added more outlets, and upgraded the electrical wiring in the tenants' unit.

Enhanced Notice to Tenants

There is no issue regarding enhanced notice to the tenants. The owner sent a copy of the enhanced notice to tenants and to the Rent Adjustment Program on May 28, 2015.¹ The owner also provided a declaration of service on the tenants and the tenants agree that the owner provided the enhanced notice to them.

Scope of the Capital Improvements

The owner 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. She further testified that she attempted to remodel the kitchen in 2002 and pulled permits for this work but the tenants said they did not want a remodel and she received a letter from Sentinel Housing opposing the work so she withdrew the permit. The tenants requested that the kitchen be remodeled in August 2012.²

The tenants testified that in 2000 a hinge on a kitchen cabinet fell off and it was repaired.³ They also complained about a kitchen faucet leaking on and off. However, this was not mentioned in the letter from the tenants to the owners in August or September 2012.⁴

The work was performed by First Choice Construction (FCC) and was done between June 23, 2013 and August 21, 2013. The work on the bathroom, which was

¹ L Ex. No. 1

² Ex. No. p. 383

³ T. Ex. p. 20

⁴ T. Ex. p.. 21-22

guttered, was completed and paid for by June 4, 2014. The remodel of the kitchen was completed and paid for by June 4, 2014.

She also remodeled the bathroom. There was a hairline crack in the bathroom ceiling. Over time it worsened and this issue has been litigated in a prior case (T12-233). She testified that suddenly the tenants complained of a moldy, musty smell in the bathroom. The hearing officer found that she needed to replace the sheetrock in the ceiling. The owner further testified that although the tenants claimed there was a leak in the bathroom ceiling there was no leak, and there was no entry from the roof. She arranged to remove the sheetrock in the ceiling and the contractor found no leak, it was dry and there were no water stains. She testified that there are four people using one bathroom and she decided to remodel the entire bathroom. There were radiant pipes above the bathroom ceiling which heated the entire apartment and provided hot water.

The remodeling of the kitchen and bathroom occurred between June 23, 2013, and August 21, 2013. The final payment to the contractor occurred on June 4, 2014, due to a dispute between him and the owner. Check number 5369 in the amount of \$27,000 was made payable to the contractor's attorney.⁵ The owner testified that of this amount, \$15,380.11 was attributable to the remodeling work on the tenants' unit.

There was extended testimony by both the owner and the tenants as to whether there was mold in the bathroom, whether it was a priority one or two condition, whether the issue had been decided in a prior hearing decision⁶, and whether there was deferred maintenance.

The tenants submitted a Notice of Violation from a city inspector dated October 12, 2012, which stated that "the bathroom ceiling is water damaged. Repair:"⁷ The tenants also submitted a mold inspection report dated November 9, 2012, which concluded that "there was suspect visible mold, and elevated moisture levels within the back right corner of the bathroom ceiling, a 2x2 foot span. The roof over the bathtub as well as adjacent drywall above the shower appeared warped/damaged. The damaged ceiling continues beyond the bathroom front wall and into the living room."⁸ The tenants provided an email transmission from Greg Morris, P.C. Department Director, Environmental Services, the company which conducted the mold inspection, which states that he "confirmed mold growth discovered in the surface sample taken in the bathroom. The air samples taken in the Bathroom and Living Room when compared to the outside (comparison) sample, are showing elevated levels of Cladosporium and Penicillium/Aspergillus."⁹

The tenants also testified that it was unnecessary to replace the dishwasher and disposal because they had been replaced in October 2012.

⁵ Ex. No. 359

⁶ T12-0333, Harrison v. Solares

⁷ T. Ex. No. p. 3233

⁸ T. Ex. No. pp. 36-57

⁹ T. Ex. No. p. 58-59

The owner testified that the total cost of renovations for the capital improvement pass-through was \$75,752.19 and provided a summary of the expenses.¹⁰ \$15,380.11 of the final \$27,000 payment was attributable to the remodeling work on the tenants' unit. The owner testified that \$5,000 of the remodeling costs was deducted as a credit to the tenants for the work on the bathroom ceiling. The owner provided documentation of the following costs in support of the capital improvement pass-through:

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	\$1,382.1 ¹¹	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
	Bath sink	Visa	\$66.00	9/3/13	314
	Home Depot	Door lock/pulls	HD charge	\$32.47	8/19/13
	Door latch set, dead bolt,	HD charge	\$188.32	8/26/13	317
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	\$1,000	8/26/13	323-326
		5214	\$2885		
Martinelli's Cabinet	Kitchen and bath vanity cabinets	Visa	\$4,300	7/3/13	327-330
			\$4,300	8/16/13	
"	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 Inc.	Tub enclosure	5201	\$975.45	9/6/13	338-339

¹⁰ Ex. No. pp. 226-227;359

¹¹ This includes a double charge for a disposal of \$179.00

Vendor	Description	Check No.	Amount	Date	Ex. No.
"	Drapes-bedrooms Blinds-kitchen ¹⁴	4323	\$685.69	1/23/14	341
	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 ¹²	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 ¹³ \$2,672.46 ¹⁴ \$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		

Deferred Maintenance

The tenants allege that the mold issue constituted deferred maintenance. The issue of mold in the bathroom ceiling due to a roof leak was considered by the hearing officer in T12-0233.¹⁵ Based in part on the site inspection by Hearing Officer Cohen who noted "a musty smell" in the bathroom and she could "see some dark spots that might be mold" as well as "bubbling paint and cracked pain in multiple other places on the ceiling" the hearing officer determined that the damage to the bathroom ceiling was a decreased housing service.

The tenants refused to move out of their unit for the repairs because they were concerned that they would not be able to move back in. The owner testified that she had to file a lawsuit to gain possession of the tenant's unit and they did not move out until June 2013, which further delayed the repairs.

The owner testified to the following repairs in the tenants' unit from 1988 to 2014:

- 1988-new fridge

¹² Tenants objected to this exhibit on the grounds that check was made to owner's attorney and amount allocated to contractor was not itemized

¹³ Includes clerical error of \$19.38 in Home Depot Bill L. Ex. 364

¹⁴ The Home Depot amount for 8/16/13 is \$175.84, not \$95.22-difference of \$19.38

¹⁵ T. Ex. No. 113-119

- 1989-new stove
- 1992-kitchen faucet
- 1993-new fridge
- 1997-new dish washer, kitchen faucet, toilet, bathroom fan, vanity
- 1998-replace bathroom vanity after one year due to excessive moisture
- 1998-new bathroom faucet
- 1999-new stove
- 2002-new dishwasher, new blinds
- 2006-new fridge, garbage disposal, dishwasher, bathroom fan
- 2007-new carpet
- 2010-new stove-new kitchen faucet
- 2013-new dishwasher-garbage disposal
- 2013-new garbage disposal, carpet, bath faucet, curtains, fridge, kitchen faucet, blinds, bath fan, toilet, doors, disposal, dishwasher, refurbished stove, electrical upgrade, bath vanity

Retaliation

The tenants testified that the owner was motivated to evict them because they complained about decreased housing services and they did not have to move out for the renovations and repairs to their unit. They testified that there were 3 available units that they could have moved into. The owner testified that there were no units available and her attorney wrote to the tenants on October 15, 2012, which stated that the owner needed to recover possession of the tenants' unit in order to make substantial repairs that could not be completed while the unit was occupied, and were necessary to either bring the property into compliance with applicable code and laws affecting the health and safety of the tenants, or under an outstanding code violation notice.

The letter further stated that when the needed repairs were completed on the unit the owner must offer them the opportunity to return to their unit on the same terms as the original rental agreement subject to rent increases under the Rent Ordinance.¹⁶ The tenants testified that they did not receive this letter.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Deferred Maintenance

The City Council passed Resolution 85306 on December 9, 2014, which amended Rent Adjustment Regulations, Appendix A, Sections 10.1 and 10.2.2 to address excluding the costs of deferred maintenance from Capital Improvement and Housing Service Costs Rent increases.

Regarding deferred maintenance, Section 10.2.2 4 (b) states the following:

¹⁶ T. Ex. p. 173

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.

However, this amendment was not in effect prior to December 9, 2014, and was not in effect at the time the owner performed the capital improvements. Moreover, there was no objective evidence that the work performed constituted deferred maintenance. The only issue cited by the city inspector was the bathroom ceiling. The tenant's mold report was in November 2012. The owner began asking the tenants to move out so she could do the repairs in October 2012 and had to go to court to gain entry into the tenants' unit. Therefore, the capital improvement costs may not be denied on the basis of deferred maintenance.

Capital Improvements: A rent increase in excess of the C.P.I. Rent Adjustment may be justified by capital improvement costs.¹⁷ Capital improvement costs are those improvements which materially add to the value of the property and appreciably prolong its useful life or adapt it to new building codes. Those improvements primarily must benefit the tenant rather than the landlord.

A rent increase based upon capital improvements will only be given for those improvements which have been completed and paid for within 24 months prior to the date of the proposed rent increase.

Limitations on Capital Improvement Increases: The rules governing capital improvement pass-throughs were significantly modified by changes in the Rent Adjustment Ordinance and Regulations, which became effective August 1, 2014.

"Enhanced Notice" Requirements: "For any rent increase based on capital improvements commenced prior to the implementation date, if such rent increase is noticed on or after the implementation date of this Ordinance, the new noticing requirements under this Ordinance are required."¹⁸ A rent increase notice based on capital improvements "must include the following:

- (c) The type of capital improvement(s);
- (d) The total cost of the capital improvement(s);
- (e) The completion date of the capital improvement(s);
- (f) The amount of the rent increase from the capital improvement(s);

ii. Within ten (10) working days of serving a rent increase notice . . . based in whole or in part on capital improvements, an owner must file the notice and all documents accompanying the notice with the Rent Adjustment Program. Failure to file the notice with[in] this period invalidates the rent increase."

¹⁷ O.M.C. Section 8.22.070(C)

¹⁸ Ordinance No. 13226

The owner complied with the enhanced notice requirement and provided a documentation of capital improvement costs for the remodeling of the kitchen and the bathroom.

Additionally, as of August 1, 2014, the Rent Ordinance was amended to limit a capital improvement pass-through to a maximum of 70%.¹⁹ However, the new Ordinance does not apply to capital improvements on which permits have been taken out and substantial monies paid or liabilities incurred (other than permit fees) prior to the implementation date of the Ordinance (August 1, 2014), and the Owner reasonably, diligently pursues completion of the work.” Since the owner’s costs were completed and paid for prior to August 1, 2014, the owner is entitled to a capital improvement pass-through of 100% of the cost of this project.

There is no objective evidence that the condition of the bathroom constituted a priority 1 or 2 condition. The Notice of Violation issued by the city inspector only stated that the bathroom ceiling was water damaged and needed to be repaired. The entire bathroom was gutted and remodeled. However, a portion of the construction costs for repair of the bathroom ceiling and walls as well as the kitchen is disallowed because these costs fall outside the 24 month period prior to the date of the proposed rent increase.

Regarding the kitchen remodel, there is no evidence of a priority 1 or 2 condition. The tenants’ complaint of a hinge falling off a kitchen cabinet and a leak under the kitchen sink in 2002 does not constitute a priority 1 or 2 condition. Although the tenants testified that it was unnecessary to replace the dishwasher and disposal, the owner gutted the entire kitchen so it was necessary to install new appliances.

The costs paid on June 4, 2014, totaling \$15,380.11 are disallowed because the check was made payable to the owner’s attorney and the amount payable to the contractor was not itemized. The owner provided proof of payment of \$33,492.69 after excluding the following costs:

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
TOTAL	\$37,259.50	

CONCLUSION

¹⁹ Resolution 85306 C.M.S.

The owner met the requirements for a capital improvement pass-through totaling \$33,492.69 or \$558.21 monthly amortized over 60 months. The tenants' claim of retaliation falls outside the jurisdiction of the Rent Ordinance and is a matter for the civil court. There was no objective evidence presented that the remodeling was due to deferred maintenance, and there was no ordinance in effect which addressed deferred maintenance at the time of the remodeling work on the tenants' unit. The new kitchen and bathroom add value to the unit and prolongs its useful life, and the tenants are the primary beneficiaries. The allowed capital improvement allocation is itemized in the following table:

CAPITAL IMPROVEMENTS

Effective Date of Increase

<u>Improvements and repairs benefitting the tenants' unit</u>				August 1, 2015
IMPROVEMENT OR REPAIR	OR DATE COMPLETED	COST ALLOWED		MONTHLY COST
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

Date: March 4, 2016



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

PROOF OF SERVICE

Case Number T15-0360

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

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

Kathleen Solares
279 Vernon Street #1
Oakland, CA 94610

Stephen Judson
Ramsey Law Group
3736 Mt. Diablo Blvd., Suite
300
Lafayette, CA 94549

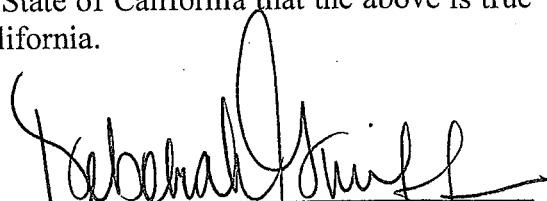
Alan Beale
6114 LaSalle Avenue #354
Oakland, CA 94611

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

Laura Shoaps
Centro Legal de la Raza
3022 International Blvd.,
Suite 410
Oakland, CA 94601

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

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


Deborah Griffin
Oakland Rent Adjustment Program

000078

CHRONOLOGICAL CASE REPORT

Case No.: L16-0018
Case Name: CNML Crescent Properties LLC v. Tenants
Property Address: 480 Crescent Dr., Oakland, CA
Parties: Michael Bykhovsky (Agent for Owner)
Michelle Prouty (Tenant)
Octavio & Elisa Nevarez (Tenants)
Gary Reynolds (Tenant)
Chris Rhem (Tenant)
Angelita Garrison (Tenant)
Owen & Kerry Smithyman (Tenant)
Travis Chrupalo (Tenant)
Edward Camacho (Tenant)
Jun Kim (Tenant)

LANDLORD APPEAL

<u>Activity</u>	<u>Date</u>
Owner's Petition filed	March 3, 2016
Tenant Response filed	March 24, 2016 (Prouty) March 30, 2016 (Chrupalo) March 30, 2016 (Camacho) March 31, 2016 (Smithyman) April 4, 2016 (Rhem) April 5, 2016 (Nevarez) April 7, 2016 (Reynolds) April 8, 2016 (Kim) May 5, 2016 (Garrison)
Hearing Decision issued	November 21, 2016
Landlord Appeal filed	December 12, 2016

2016 DEC 12 PM 2:32

City of Oakland Residential Rent Adjustment Program 250 Frank Ogawa Plaza, Suite 5313 Oakland, California 94612 (510) 238-3721		APPEAL	
Appellant's Name CNML Crescent Properties LLC		Landlord <input checked="" type="checkbox"/> Tenant <input type="checkbox"/>	
Property Address (Include Unit Number) 480 Crescent Drive Oakland, CA 94610			
Appellant's Mailing Address (For receipt of notices) 2350 Broadway Street San Francisco, CA 94115		Case Number L16-0018 Date of Decision appealed 11/21/16	
Name of Representative (if any) Clifford Fried, Esq. Liz Hart		Representative's Mailing Address (For notices) Fried & Williams, LLP 1901 Harrison St. 14th Floor Oakland, CA 94612	

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

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

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

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

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


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

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

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 3. 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 Dec. 12th, 20 16, 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>	See page 5 of the petition for a list of all parties served
<u>Address</u>	
<u>City, State Zip</u>	
<u>Name</u>	
<u>Address</u>	
<u>City, State Zip</u>	

	
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE 12/12/2016

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.

Appeal Petition for L16-0018
CNML Crescent Properties LLC v Tenants

1. The Decision is inconsistent with Oakland Municipal Code 8.22 and Rent Board Regulations.

O.M.C. 8.22.030 (B) (2) states:

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

Regulations 8.22.030 (B) (3) states:

- a. In order to qualify for the substantial rehabilitation exemption, the rehabilitation work must be completed within a two (2) year period after the issuance of the building permit for the work unless the Owner demonstrates good cause for the work exceeding two (2) years.
- b. For the substantial rehabilitation exemption, the entire building must qualify for the exemption and not just individual units.

There is nothing in O.M.C. 8.22 or the Rent Board Regulations that precludes the expenses from security features, fences, parking areas and driveways from being allowable expenses in the substantial rehabilitation of a property.

2. The Decision is inconsistent with Decisions by other hearing officers.

No prior Decisions for exemption under the substantial rehabilitation grounds have been denied as a consequence of the expenses from security features, fences, parking areas and driveways. Prior Decisions include:

T07-0012	Bell v. Tenants
L08-0004	Bailey v. Tenants
L08-0013	Oakvel Enterprises v. Tenants
L08-0017	Edrington v. Tenants
L09-0001	Mak v. Tenants
L09-0011	Cheney, et al. v. Mikas, et al.
T09-0138	Peterson v. Krausen
L10-0004	MLK Partners v. Tenants
L10-0019	Chen v. Tenants
L10-0021	Sanders v. Tenants
L10-0024	Miller v. Tenants
L10-0025	Miller v. Tenants

Appeal Petition for L16-0018
CNML Crescent Properties LLC v Tenants

L11-0002	Bitzer v. Tenants
L11-0004	Johnson v. Tenants
L11-0005	Johnson v. Tenants
L11-0014	Johnson v. Tenants
L11-0018	Bates v. Tenants
L12-0009	Blair, et al. v. Tenants
L12-0052	Isenberg v. Tenants
L13-0001	REO Homes 2, LLC v. Tenants
L13-0028	Weinberg v. Tenants
L13-0196	Promes v. Fehr
L14-0024	Wong v. Tenant
L14-0025	Monte Vista LLC v. Tenants
L14-0197	Kidder et al. v. McDonald
L15-0034	Carta Holdings LLC v. Tenants
L16-0026	Griffin, et al. v. Tenants

3. The Decision raises a new policy issue that has not been decided by the Board.

The consideration of the expenses from security features, fences, parking areas and driveways has never been raised in any prior Decision therefore it is a new policy issue.

4. The Decision is not supported by substantial evidence.

The Hearing Officer made a number of factual errors when calculating the total amount of allowable expenses. Evidence exhibits that were noticed by the hearing officer and documented over \$177,000.00 in owner expenses were miscalculated or not taken into account in the calculation of allowable expenses in the Decision.

Appeal Petition for L16-0018
CNML Crescent Properties LLC v Tenants

Opposing Parties served with the Appeal Petition

Michelle Prouty, 480 Crescent Street, unit 101, Oakland, CA 94610
Chris Rhem, 480 Crescent Street, unit 104, Oakland, CA 94610
Gary Bill and Marla Bill, 480 Crescent Street, unit 105, Oakland, CA 94610
Owen Smithyman and Kerry Hampton, 480 Crescent Street, unit 107, Oakland, CA 94610
Gary Reynolds, 480 Crescent Street, unit 204, Oakland, CA 94610
Eddie Washington and Doris Washington, 480 Crescent Street, unit 206, Oakland, CA 94610
Elisa Singh and Octavio Nevarez, 480 Crescent Street, unit 207, Oakland, CA 94610
Angelita Garrison, 480 Crescent Street, unit 208, Oakland, CA 94610
Travis Chrupalo and Edward Camacho, 480 Crescent Street, unit 301, Oakland, CA 94610
Elizabeth Derias, 480 Crescent Street, unit 302, Oakland, CA 94610
Cynthia DeCastro, 480 Crescent Street, unit 304, Oakland, CA 94610
Jun Kim, 480 Crescent Street, unit 307, Oakland, CA 94610



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

CITY OF OAKLAND

Department of Housing and Community Development
Rent Adjustment Program

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

HEARING DECISION

CASE NUMBER: L16-0018, CNML Crescent Properties LLC v. Tenants

PROPERTY ADDRESS: 480 Crescent Drive, Oakland, CA

DATE OF HEARING: October 14, 2016

DATE OF DECISION: November 21, 2016

APPEARANCES:

- Michael Bykhovsky (Agent for Owner)
- Elizabeth Hart (Owner Representative)
- Clifford Fried (Attorney for Owner)
- Tsegab Assefa (Witness for Owner)
- Martin Gallagher (Witness for Owner)
- Travis Chrupalo (Tenant, Unit 301)
- Gary Reynolds (Tenant, Unit 204)
- Marla Bill (Tenant, Unit 105)
- Cynthia Decastro (Tenant, Unit 304)
- Angelita Garrison (Tenant, Unit 208)
- Doris Washington (Tenant, Unit 206)
- Eddie Washington (Tenant, Unit 206)
- Michelle Prouty (Tenant, Unit 101)
- Liz Derias (Tenant, Unit 302)
- Octavio Nevarez (Tenant, Unit 207)
- Elisa Nevarez (Tenant, Unit 207)

SUMMARY OF DECISION

The owner's petition is denied. The units on the property are not exempt from the Oakland Rent Ordinance.

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CONTENTIONS OF THE PARTIES

The owner filed a petition for a Certificate of Exemption for a 27-unit residential building on the ground that it is a “substantially rehabilitated” building, pursuant to Oakland Municipal Code (O.M.C.) Section 8.22 and Rent Adjustment Program Regulations (Regulations). The above-named tenants filed responses to the owner’s petition, in which they allege that the owner’s claim that their units are exempt from the Rent Adjustment Ordinance is incorrect.

THE ISSUE

Are the subject rental units exempt from the Rent Adjustment Ordinance on the ground that they have been “substantially rehabilitated?”

EVIDENCE

Square Footage: The owner and his witnesses testified that the subject building is of wood frame construction, and consists of 27 residential units. The owner submitted documents regarding the building that were numbered 162 through 373.¹ Two documents appear to have been prepared by “2013 Colliers International Valuation & Advisory Services” with regard to the subject property.² The owner’s agent testified that these documents are part of an appraisal report that was prepared in connection with the purchase of the subject property, and that the square footage is taken from Alameda County records. These documents state that the gross building area of the is 16,697 square feet, which includes areas described as “laundry facility” and “maint. / storage.”

The owners also submitted a document entitled “Property Detail Report” for the subject property from the website RealQuest.com.³ This document also states that gross area and living area is 16,697 square feet. Mr. Gallagher testified that 9 units in the building have balconies. He testified that balconies on six of the units are approximately 6 by 20 feet, and balconies on three of the units are approximately 4 by 10 feet.

Tenant Chrupalo testified that he has a degree in structural engineering, although his work does not include measuring or determining the square footage of buildings. He testified that he paced the outside of the subject building and further consulted Google Maps to determine the square footage of the subject building. Based upon this information, he concluded that the building contains 24,802 square feet.

Expenses: The owner undertook extensive work in both common areas and individual rental units. The expenses on the attached Table “A” total \$1,081,698. The work was performed in the years 2014 and 2015; the last check to Gallagher Construction, which company performed the bulk of the work, is dated July 28, 2015.⁴ However, some of the exhibits are duplicates (none of

¹ Tenant Reynolds objected to the admission of these documents into evidence on the ground that they contain duplicate charges for windows. The objection was overruled, and all documents other than Exhibit Nos. 361 and 362 were admitted into evidence.

² Exhibit Nos. 359A & 360.

³ Exhibit No. 373.

⁴ Exhibit No. 336.

which are included in the Table). Charges for construction of the fence total \$30,850,⁵ those for the driveway total \$37,000,⁶ and charges for a security gate total \$54,500. The owner testified that one security gate is at the sidewalk with the phone entry system, and the other is at the driveway entrance. Further, there are 3 refund checks from Gallagher Construction to the owner, each in the amount of \$700.⁷

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Substantial Rehabilitation: O.M.C. 8.22.030(A)(6) states that dwelling units located in “substantially rehabilitated buildings” are not “covered units” under the Rent Adjustment Ordinance.⁸

- a. In order to obtain an exemption based on substantial rehabilitation, an owner must have spent a minimum of fifty (50) percent of the average basic cost for new construction for a rehabilitation project.
- b. The average basic cost for new construction shall be determined using tables issued by the chief building inspector applicable for the time period when the substantial rehabilitation was completed.⁹

Square Footage: It is found that the square footage in the Alameda County records, as confirmed by Collier’s International, is more reliable than the pacing and reference to Google Maps undertaken by the tenants. It is found that the square footage – before including the areas of the balconies – is 16,697 square feet. The balcony areas total 840 square feet.

Expenses: The Rent Adjustment Ordinance refers to “substantially rehabilitated **buildings** (emphasis added).” Fences, gates, and driveways are not part of a “building.” Further, if an owner would wish to include the cost of these structures in the calculation, the square footage of these the driveway, fences and gates must also be included. No such evidence was presented. For this reason, the gross expenses of \$1,081,698 must be reduced by the costs of the fence, driveway, and gate, as well as the Gallagher refunds, which total \$124,450. Therefore, the applicable expenses total \$957,248.

The Calculation: Since the construction was completed and paid for on July 28, 2015, it is proper to use the Construction Valuation Table issued by the City Bureau of Building that was effective on May 1, 2015. A copy of this document is attached and marked Table “B.” At the Hearing, the owner contended that, since a majority of the work was done in the year 2014, the prior Table, which was effective on August 1, 2009, should be used. This contention is rejected.

⁵ Exhibit Nos. 164, 166 & 249

⁶ Exhibit Nos. 183, 185, & 260

⁷ Exhibit Nos. 225, 228 & 244.

⁸ O.M.C. 8.22.030(A)(6)

⁹ O.M.C. Section 8.22.030(B)(2)

Table "B" states that the cost of Wood frame construction is \$145.07. This amount multiplied by 16,697 is \$2,422,233.70. The Table lists a separate figure for balconies, being \$44.14 per square foot. This figure multiplied by 840 square feet equals \$37,077.60. The costs therefore total \$2,459,311.30. Fifty percent of \$2,459,311.30 is \$1,229,655.60. If the owner spent at least \$1,229,655.60 on the construction project, the building is exempt from the Rent Adjustment Ordinance.

Conclusion: The applicable expenses total \$957,248, which is considerably less than the required amount on the construction project. Therefore, the rental units in the subject building are "covered units," and the owner's petition is denied.¹⁰

ORDER

1. Petition L16-0018 is denied.
2. Right to Appeal: **This decision is the final decision of the Rent Adjustment Program Staff.** Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within twenty (20) calendar days after service of the decision. The date of service is shown on the attached Proof of Service. If the Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.

Dated: November 21, 2016



Stephen Kasdin
Hearing Officer
Rent Adjustment Program

¹⁰ Even if the cost of the driveway, fences and gates were included in the calculation, the costs would not be sufficient for an exemption based upon substantial rehabilitation.

Item	Exhibit No.	Cost
Building Permit		162 153
Building Permit		163 37
Roof		164 33,000
Fence		164 24,250
Roof		166 33,000
Fence		166 4,400
Stairs		168 10,875
Beam & Posts		168 23,706
Stairs		170 3,625
Security Gate		172 27,500
Exterior Painting		174 48,500
Siding & Stucco		176 60,000
Water Heater		178 8,300
Laundry Room		179 7,000
Security Gate		181 27,000
Storage Rooms		182 5,200
Driveway Concrete		183 4,625
Pipe Repair		185 450
Dry Rot Repair		185 15,000
GFCI Outlets		185 1,500
Driveway Concrete		185 18,500
Windows #101	188 & 217	1,800
Windows #102	189 & 218	1,800
Windows #103	190 & 219	3,600
Windows #104	191 & 220	3,600
Windows & Door #105	191 & 221	4,300
Window & Door #106	193 & 222	2,500
Window & Door #107	194 & 223	3,400
Windows #108	195 & 227	4,300
Windows #109	197 & 224	3,400
Windows #201	199 & 229	1,800
Windows #202	200 & 230	1,800
Windows #203	201 & 231	3,600
Windows #204	202 & 232	3,600
Windows #205	203 & 233	2,700
Door #204	203 & 233	1,600
Window & Door #206	204 & 234	2,500
Windows & Door #207		205 3,400
Windows #208		206 3,600
Windows #209		207 2,700
Windows #302		208 2,700
Windows #303		209 3,600
Windows #404		210 3,600
Windows & Door #305		211 4,300
Windows #306		212 2,500
Windows & Door #307		213 2,200

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TABLE "A", p.1

Windows #308	214	3,600
Windows & Door #401	215	6,300
Windows #101 - Partial	217	1,800
Windows #304	240	3,600
Windows & Door #307 - Supplemental	243	3,400
Windows #308 - Supplemental	245	3,600
Windows & Door #401	246	7,900
Dry Rot Repair	248	13,541
Fence	249	2,200
Roof & Step	250	1,100
Kitchens	252	31,800
Stove #204	253	950
Additional Windows	255	14,400
Bathrooms #105 & #103	256	18,400
Remodel #301	258	44,000
Dry Rot Repair	260	16,950
Driveway Concrete	260	13,875
Painting	262	755
Painting	263	1,161
Heater	265	1,583
Heater	267	1,269
Heater	269	633
Wall Patching	271	247
Wall Patching	272	247
Wall Patching	273	247
Debris Removal	275	4,359
Debris Removal	277	1,281
Windows #101 - Supplemental	281	800
Windows #101 & # 102 - Supplemental	282	800
Windows # 103 - Supplemental	283	1,600
Windows #104 - Supplemental	284	1,600
Windows #105 - Supplemental	285	1,400
Window & Door #105	286	600
Windows & Door #107	287	1,000
Windows #108 - Supplemental	288	1,600
Windows #109 - Supplemental	289	1,200
Windows #201 - Supplemental	290	800
Windows #202 - Supplemental	291	800
Windows #203 - Supplemental	292	1,600
Windows #204 - Supplemental	293	1,600
Windows & Door #205	294	1,400
Windows & Door #206	295	600
Bathroom #206	296	11,250
Windows & Door #207	297	1,000
Windows #208 - Supplemental	298	1,600
Windows #209 - Supplemental	299	1,200
Windows #302 - Supplemental	300	1,200

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TABLE "A", p. 2

Windows #303 & #304 - Supplemental	301	1,600
Windows # 304 - Supplemental	302	1,200
Windows & Door #305	303	1,400
Windows & Door #306	304	600
Windows #307 - Supplemental	305	1,200
Windows & Door #401	306	3,000
Kitchen & Bath #106	308	38,050
Kitchen & Bath #109	309	39,000
Kitchen & Bath #201	310	31,000
Kitchen & Bath #203	311	31,000
Kitchen & Bath #204	312	30,050
Kitchen & Bath #207	313	31,000
Kitchen & Bath #304	314	31,000
Kitchen & Bath #305	315	31,000
Kitchen & Bath #306	316	31,000
Kitchen & Bath #308	317	31,000
Bath - Supplemental	319	2,727
Bath - Supplemental	320	2,727
Bath - Supplemental	321	2,727
Bath - Supplemental	322	2,727
Bath - Supplemental	323	2,727
Faucet #204	325	1,208
Misc. work #208	326	658
Misc. work #301	328	3,726
Doors #305	329	1,943
Ceiling #305	330	5,762
Flooring #102	332	3,173
Inspection #305	333	57
Ceiling #308	334	7,385
Flooring #308	335	3,173
Range #307	337	446
Refrigerator Service #101	339	296
Kitchen & Bath #107	341 & 342	15,564
Refrigerator	344	567
Range & Dishwasher #107	345	904
Appliance Repair & Installation #107	347	404
Electrical upgrade	349	215
Kitchen & Bath #209	350 - 352	22,000
Upgrade #308	354	1,621
Range & Dishwasher #209	356	1,239
Heater Maintenance #209	357	253
		1081698

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TABLE "A", p.3

City of Oakland
Bureau of Building
Construction Valuation¹
For Building Permits⁴
Effective May 1, 2015

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

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

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

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

³ Remodel Function of New Construction is a 0.52 multiplier.

⁴ Separate structures or occupancies valued separately.

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

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TABLE "B"

PROOF OF SERVICE

Case Number L16-0018

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

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

Tenants

Angelita Garrison
480 Crescent St #208
Oakland, CA 94610

Brian Capehart
480 Crescent St #109
Oakland, CA 94610

Cara Cuison and Marlon Barns
480 Crescent St #308
Oakland, CA 94610

Chris Rhem
480 Crescent St #104
Oakland, CA 94610

Cynthia DeCastro
480 Crescent St #304
Oakland, CA 94610

Cynthia Yeung
480 Crescent St #209
Oakland, CA 94610

Darren Elston and Lisa Skinner
480 Crescent St #106
Oakland, CA 94610

Eddie & Doris Washington
480 Crescent St #206
Oakland, CA 94610

Owner

CNML Crescent Properties LLC c/o Micha
2350 Broadway St
San Francisco, CA 94115

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Edward Ayala
480 Crescent St #205
Oakland, CA 94610

Elisa Singh and Octavio Nevarez
480 Crescent St #207
Oakland, CA 94610

Elizabeth Derias
480 Crescent St #302
Oakland, CA 94610

Gary & Marla Bill
480 Crescent St #105
Oakland, CA 94610

Gary Reynolds
480 Crescent St #204
Oakland, CA 94610

Georgina Mountain
480 Crescent St #306
Oakland, CA 94610

Jenevieve Francisco & Avetis Chalaganyan
480 Crescent St #201
Oakland, CA 94610

Jun Kim
480 Crescent St #307
Oakland, CA 94610

Kevin Seid
480 Crescent St #202
Oakland, CA 94610

Matthew Winger
480 Crescent St #303
Oakland, CA 94610

Michael Hon
480 Crescent St #108
Oakland, CA 94610

Michelle Prouty
480 Crescent St #101
Oakland, CA 94610

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Owen Smithyman and Kerry Hampton
480 Crescent St #107
Oakland, CA 94610

Patrick & Francis Mitchell
480 Crescent St #401
Oakland, CA 94610

Peter Cannady and Natalie Burke
480 Crescent St #305
Oakland, CA 94610

Resident
480 Crescent St #102
Oakland, CA 94610

Samantha Forster & Enrique Cordero
480 Crescent St #203
Oakland, CA 94610

Terrence Pack
480 Crescent St #103
Oakland, CA 94610

Travis Chrupalo and Edward Camacho
480 Crrescent St #301
Oakland, CA 94610

Owner Representative

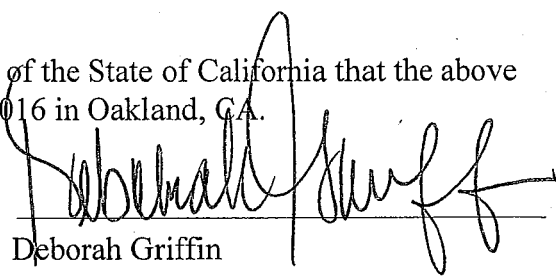
Clifford Fried c/o Fried & Williams LLP
1901 Harrison St 14th Flr.
Oakland, CA 94612

Liz Hart
1801 University Ave 308
Berkeley, CA 94703

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.

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on November 22, 2016 in Oakland, CA.



Deborah Griffin

File 0018 RC/SK

<p>CITY OF OAKLAND RENT ADJUSTMENT PROGRAM 250 Frank H. Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721</p>	<p>For date stamp.</p> <p style="text-align: right;">2016 MAR -3 PM 1:42</p> <p style="text-align: center;"><u>LANDLORD PETITION</u> <u>FOR CERTIFICATE OF EXEMPTION</u> (OMC §8.22.030.B)</p>
--	---

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

Section 1. Basic Information

Your Name CNML Crescent Properties LLC c/o Michael Bykhovsky, manager		Complete Address (with zip code) 2350 Broadway Street San Francisco, CA 94115	Telephone Day: 510-625-0100
Your Representative's Name Clifford Fried Liz Hart		Complete Address (with zip code) c/o Fried & Williams LLP 1901 Harrison Street, 14th Floor Oakland, CA 94612	Telephone Day: 510-625-0100
Property Address 480 Crescent Drive, Oakland, CA 94610			Total number of units in bldg or parcel. 27
Type of units (circle one)	Single Family Residence (SFR)	Condominium	<u>Apartment</u> or Room
If an SFR or condominium, can the unit be sold and deeded separately from all other units on the property?		Yes	<u>No</u>

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

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

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

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

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Single-Family or Condominium (Costa-Hawkins): Applies to Single Family Residences and condominiums only. If claiming exemption under the Costa-Hawkins Rental Housing Act (Civ. C. §1954.50, et seq.), please answer the following questions on a separate sheet:

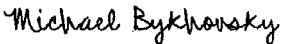
1. Did the prior tenant leave after being given a notice to quit (Civil Code Section 1946)?
2. Did the prior tenant leave after being a notice of rent increase under Civil Code Section 827?
3. Was the prior tenant evicted for cause?
4. Are there any outstanding violations of building, housing, fire,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

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

	New Construction
✓	Substantial Rehabilitation
	Single Family Residence or Condominium (Costa-Hawkins)

Section 4. Verification Each petitioner must sign this section.

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

DocuSigned by:

 Owner's Signature FD102AE704EE409...

3/2/16
 Date

Owner's Signature

Date

Important Information

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

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

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2016 Tenant Roster
480 Crescent Street Oakland, CA 94610

UNIT #	TENANT NAME
101	Michelle Prouty
102	Vacant
103	Terrence Pack
104	Chris Rhem
105	Gary Bill and Marla Bill
106	Darren Elston and Lisa Skinner
107	Owen Smithyman and Kerry Hampton
108	Michael Hong
109	Brian Capehart
201	Jenevieve Francisco and Avetis Chalaganyan
202	Kevin Seid
203	Samantha Forster and Enrique Cordero
204	Gary Reynolds
205	Edward Ayala
206	Eddie Washington and Doris Washington
207	Elisa Singh and Octavio Nevarez
208	Angelita Garrison
209	Cynthia Yeung
301	Travis Chrupalo and Edward Camacho
302	Elizabeth Derias
303	Matthew Winger
304	Cynthia DeCastro
305	Peter Cannady and Natalie Burke
306	Georgina Mountain
307	Jun Kim
308	Cara Cuison and Marlon Barns
401	Patrick Mitchell & Francis K. Mitchell

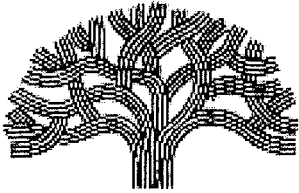
000099

ACTIVITY LOG

HCD - Rent Adjustment Program

DATE	ACTIVITY	INITIAL
3.7.16	opened case.	TP
3-29-16	Per T request, emailed sample H.D. & construction val. tables to T. Chrupalo	ms
3/30/16	File review w/ Travis Chrupalo	KR
6/13/16	File review w/ Gary Reynolds	KR
6/17/16	File review w/ Chris Rhem	KR
6/20/16	File review w/ Travis Chrupalo	KR
6-23	HEARING	SK
7-11	POSTPONEMENT OF HEARING	SK
7-21	"	SK
8.4.16	mailed order w/POS.	TP
10-14	HEARING	SK
11.22.16	mailed hearing decision w/POS.	TP
12.9.16	file review by Liz Hart w/copies req	MMW
12/12/16	Received L.R. appeal; review of Hearing offered.	S.J.
1.12.17	COPIES REQUESTED - LIZ HART	(MMW)
10/16/17	Mailed copies of Appeal notice of Hearing to all parties.	S.J.
11/1/17	mailed copy of order to all parties w/POS	KR
3/5/18	mailed notice of appeal hearing to all parties w/POS	KR

CaseNum	FileName	PropertyAddress	PetitionReAndHof
L15-0065	CNML Crescent Properties, LL	480 Crescent Drive Oakland, CA 94610	9-Oct-15 5RC SK
L16-0018	CNML Crescent Properties LLC	480 Crescent Drive Oakland, CA 94610	MS



**CITY OF OAKLAND
RENT ADJUSTMENT
PROGRAM**

P.O. Box 70243
250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612
(510) 238-3721ti

for Date Stamp Only
RECEIVED
MAR 24 2016
OAKLAND RENT ADJUSTMENT

CASE NUMBER L16-0018

TENANT RESPONSE TO
CLAIM OF PERMANENT EXEMPTION

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

Your Name <i>Michelle Prouty</i>	Complete Address (with Zip Code) <i>480 Crescent St #101 Oakland, CA 94610</i>	Telephone <i>707-319-3708</i>
Your Representative's Name <i>—</i>	Complete Address (with Zip Code) <i>—</i>	Telephone <i>—</i>

Number of Units on the parcel:

27

The unit I rent is:

a house

an apartment

a condo

Rental History:

Date you entered into the Rental Agreement for this unit:

4/13/13

Date you moved into this unit:

5/1/13

Are you current on your rent?

Yes

No

Lawfully Withholding Rent

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

Exemption Contested

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

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

Please list the date you first received the Notice to Tenants *3/7/10*

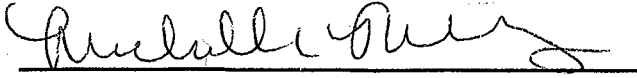
List all increases your received. Begin with the most recent and work backwards. Attach most recent rent increase notice. If you need additional space please attach another sheet.

¹ <http://www.oaklandnet.com/government/hcd/rentboard/ordinance.html>

¹ <http://www.oaklandnet.com/government/hcd/rentboard/rules.html>

Verification

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



Tenant's Signature

3/21/15

Date

Tenant's Signature

Date

Important Information

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

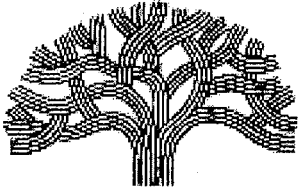
You cannot get an extension of time to file your Response by telephone.

File Review

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

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

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



**CITY OF OAKLAND
RENT ADJUSTMENT
PROGRAM**

for Date Stamp Only
2015 MAR 30 PM 2:49

P.O. Box 70243
250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612
(510) 238-3721ti

CASE NUMBER L16-0018

TENANT RESPONSE TO
CLAIM OF PERMANENT EXEMPTION

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

Your Name TRAVIS CHRUPALO EDWARD CAMACHO	Complete Address (with Zip Code) 480 CRESCENT ST. Apt 301 OAKLAND, CA, 94610	Telephone 530-591-9603
Your Representative's Name	Complete Address (with Zip Code)	Telephone

Number of Units on the parcel:

The unit I rent is:

a house

an apartment

a condo

Rental History:

Date you entered into the Rental Agreement for this unit:

Date you moved into this unit:

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

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

Exemption Contested

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

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

Please list the date you first received the Notice to Tenants 1/17/15

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

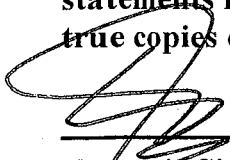
2/1/2015 - CURRENT RENT = 921.95

¹ <http://www.oaklandnet.com/government/hcd/rentboard/ordinance.html>

¹ <http://www.oaklandnet.com/government/hcd/rentboard/rules.html>

Verification


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



Tenant's Signature

3/24/2016

Date



Tenant's Signature

3/24/2016

Date

Important Information

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

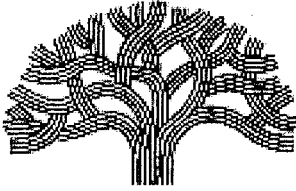
You cannot get an extension of time to file your Response by telephone.

File Review

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

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

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



**CITY OF OAKLAND
RENT ADJUSTMENT
PROGRAM**

P.O. Box 70243
250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612
(510) 238-3721ti

for Date Stamp Only
RECEIVED
MAR 31 2016
OAKLAND RENT ADJUSTMENT

CASE NUMBER L16-0018

TENANT RESPONSE TO
CLAIM OF PERMANENT EXEMPTION

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

Your Name <i>Owen Smithyman Kerry Smithyman</i>	Complete Address (with Zip Code) <i>480 Crescent St #107 Oakland, CA 94610</i>	Telephone <i>415-250-9509</i>
Your Representative's Name <i>None?</i>	Complete Address (with Zip Code)	Telephone

Number of Units on the parcel:

27

The unit I rent is:

a house

an apartment

a condo

Rental History:

Date you entered into the Rental Agreement for this unit:

April 1, 2015

Date you moved into this unit:

April 1, 2015

Are you current on your rent?

Yes

No

Lawfully Withholding Rent

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

Exemption Contested

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

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

Please list the date you first received the Notice to Tenants *Never*


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

¹ <http://www.oaklandnet.com/government/hcd/rentboard/ordinance.html>

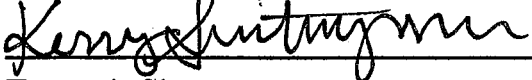
¹ <http://www.oaklandnet.com/government/hcd/rentboard/rules.html>

Verification

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



Tenant's Signature



Tenant's Signature

3/27/2016

Date

3/27/16

Date

Important Information

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

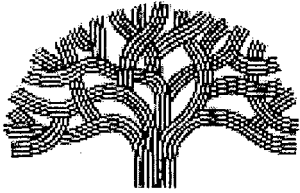
You cannot get an extension of time to file your Response by telephone.

File Review

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

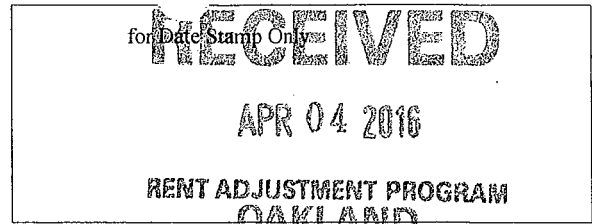
Copies of attachments to the petition will not be sent to you. However, you may review these in the Rent Program office. Files are available for review by appointment.

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



**CITY OF OAKLAND
RENT ADJUSTMENT
PROGRAM**

P.O. Box 70243
250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612
(510) 238-3721ti



CASE NUMBER L16-0018

TENANT RESPONSE TO
CLAIM OF PERMANENT EXEMPTION

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

Your Name CHRIS RHEM	Complete Address (with Zip Code) 480 CRESCENT ST #104 OAKLAND, CA 94610	Telephone (408) 921-6230
Your Representative's Name CHRIS RHEM	Complete Address (with Zip Code) 480 CRESCENT ST #104 OAKLAND, CA 94610	Telephone (408) 921-6230

Number of Units on the parcel:

27

The unit I rent is:

a house an apartment a condo

Rental History:

Date you entered into the Rental Agreement for this unit:

APRIL 12, 2011

Date you moved into this unit:

APRIL 12, 2011

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

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

Exemption Contested

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

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

Please list the date you first received the Notice to Tenants **MARCH 7, 2016**

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

NOV 12, 2015

¹ <http://www.oaklandnet.com/government/hcd/rentboard/ordinance.html>

¹ <http://www.oaklandnet.com/government/hcd/rentboard/rules.html>

Verification

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

Chris Elan
Tenant's Signature

3/18/2016
Date

Tenant's Signature

Date

Important Information

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

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

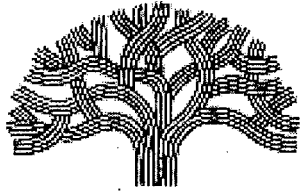
File Review

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

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

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

113



**CITY OF OAKLAND
RENT ADJUSTMENT
PROGRAM**

for Date Stamp Only
ARBITRATION FILE #
2016 APR -5 PM 2:08

P.O. Box 70243
250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612
(510) 238-3721ti

CASE NUMBER L16-0018

TENANT RESPONSE TO
CLAIM OF PERMANENT EXEMPTION

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

Your Name Octavio Nevarez Elisa Nevarez	Complete Address (with Zip Code) 480 Crescent St. #207 Oakland, CA 94610	Telephone (510) 219-7176 (925) 595-6205
Your Representative's Name —	Complete Address (with Zip Code) —	Telephone —

Number of Units on the parcel:

27

The unit I rent is:

a house

an apartment

a condo

Rental History:

Date you entered into the Rental Agreement for this unit:

12/1/12

Date you moved into this unit:

12/1/12

Are you current on your rent?

Yes

No

Lawfully Withholding Rent

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

Exemption Contested

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

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

Please list the date you first received the Notice to Tenants _____

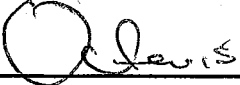
List all increases your received. Begin with the most recent and work backwards. Attach most recent rent increase notice. If you need additional space please attach another sheet.

¹ <http://www.oaklandnet.com/government/hcd/rentboard/ordinance.html>

¹ <http://www.oaklandnet.com/government/hcd/rentboard/rules.html>

Verification


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



Tenant's Signature

4/4/16

Date



Tenant's Signature

4/4/16

Date

Important Information

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

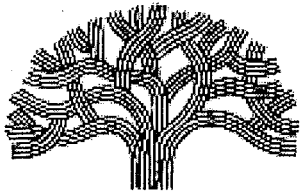
You cannot get an extension of time to file your Response by telephone.

File Review

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

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

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



**CITY OF OAKLAND
RENT ADJUSTMENT
PROGRAM**

P.O. Box 70243
250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612
(510) 238-3721ti

for Date Stamp Only
2016 APR -7 AM 10:15

CASE NUMBER L16-0018

TENANT RESPONSE TO
CLAIM OF PERMANENT EXEMPTION

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

Your Name GARY REYNOLDS	Complete Address (with Zip Code) 400 Crescent St #204 OAKLAND, CA 94610	Telephone 415-305-9277
Your Representative's Name	Complete Address (with Zip Code)	Telephone

Number of Units on the parcel:

The unit I rent is:

a house an apartment a condo

Rental History:

Date you entered into the Rental Agreement for this unit:

NO

Date you moved into this unit:

11-01-2002

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

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

Exemption Contested

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

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

Please list the date you first received the Notice to Tenants 3-7-16

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

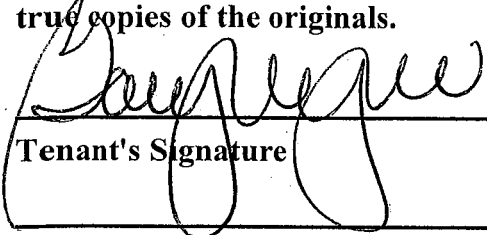
¹ <http://www.oaklandnet.com/government/hcd/rentboard/ordinance.html>

¹ <http://www.oaklandnet.com/government/hcd/rentboard/rules.html>

* See letter attached

Verification

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



Tenant's Signature

3-26-16

Date

Tenant's Signature

Date

Important Information

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

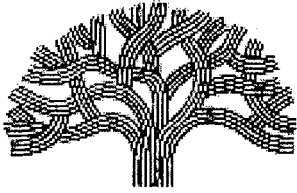
You cannot get an extension of time to file your Response by telephone.

File Review

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

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

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



**CITY OF OAKLAND
RENT ADJUSTMENT
PROGRAM**

for Date Stamp Only
RECEIVED
APR 08 2016
OAKLAND RENT ADJUSTMENT

P.O. Box 70243
250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612
(510) 238-3721ti

CASE NUMBER L16-0018

TENANT RESPONSE TO
CLAIM OF PERMANENT EXEMPTION

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

Your Name <i>Jun Kim</i>	Complete Address (with Zip Code) <i>480 Crescent St #307 Oakland CA 94612</i>	Telephone <i>(510) 301-5549</i>
Your Representative's Name	Complete Address (with Zip Code)	Telephone

Number of Units on the parcel: The unit I rent is:
 a house an apartment a condo

Rental History:

Date you entered into the Rental Agreement for this unit: Date you moved into this unit:

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

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

Exemption Contested

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

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

Please list the date you first received the Notice to Tenants 3/3/16

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

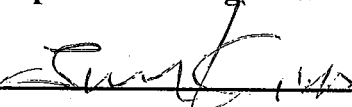
\$850 to \$867 on 5/1/08

¹ <http://www.oaklandnet.com/government/hcd/rentboard/ordinance.html>

¹ <http://www.oaklandnet.com/government/hcd/rentboard/rules.html>

Verification

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



Tenant's Signature

3/28/16

Date

Tenant's Signature

Date

Important Information

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

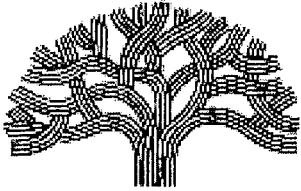
You cannot get an extension of time to file your Response by telephone.

File Review

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

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



**CITY OF OAKLAND
RENT ADJUSTMENT
PROGRAM**

P.O. Box 70243
250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612
(510) 238-3721

for Date Stamp
RECEIVED
MAY 5 2016
OAKLAND RENT ADJUSTMENT

CASE NUMBER L16-0018

*I contest
Case L16-0018*

TENANT RESPONSE TO
CLAIM OF PERMANENT EXEMPTION

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

Your Name <i>Angelita Garrison</i>	Complete Address (with Zip Code) <i>480 Crescent St # A208</i>	Telephone <i>(510) 738-4557</i>
Your Representative's Name	Complete Address (with Zip Code)	Telephone

Number of Units on the parcel: The unit I rent is:
 a house an apartment a condo

Rental History:

Date you entered into the Rental Agreement for this unit: Date you moved into this unit:

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

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

Exemption Contested

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

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

Please list the date you first received the Notice to Tenants *don't remember*

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

695.00 to present 709.00

¹ <http://www.oaklandnet.com/government/hcd/rentboard/ordinance.html>
¹ <http://www.oaklandnet.com/government/hcd/rentboard/rules.html>

Verification

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

Angelete M. Jarvis

Tenant's Signature

3/30/16

Date

Tenant's Signature

Date

Important Information

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

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

File Review

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

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

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

CHRONOLOGICAL CASE REPORT

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

TENANT APPEAL

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	May 23, 2016
Owner Response filed	June 22, 2016
Hearing Decision issued	September 19, 2016
Tenant Appeal filed	October 10, 2016
Landlord Appeal filed	October 24, 2016

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

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

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


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7. Other. You must attach a detailed explanation of your grounds for appeal. Submissions to the Board are limited to 25 pages from each party. Number of pages attached 2016 OCT 24 PM 2:34 Please number attached pages consecutively.

8. **You must serve a copy of your appeal on the opposing party(ies) or your appeal may be dismissed.** I declare under penalty of perjury under the laws of the State of California that on October 24, 2016, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

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

<u>Name</u>	
<u>Address</u>	
<u>City, State Zip</u>	

	October 24, 2016
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

IMPORTANT INFORMATION:

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

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

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

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8 Attorneys for Landlord/Appellant
9 Jonathan Owens

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COMMUNITY AND HOUSING DEVELOPMENT AGENCY
RENT ADJUSTMENT PROGRAM

Lauren Barghout;

Petitioner/Tenant,

v.

Jonathan Owens,

Appellant/Landlord

CASE NO: T16-0259

LANDLORD'S APPEAL

Decision Date: September 19, 2016

Hearing Date: August 25, 2016

Time: 10:00 a.m.

Suite: 5313

Hearing Officer: Steven Kasdin

Factual Summary

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

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

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

9 Argument

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

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

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

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

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

Conclusion

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

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Dear RAP,

I notice when I got home last night a few pages from the attached I submitted yesterday were jammed in my printer. Please review all of attach 4 of this was there.

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

CITY OF OAKLAND

Department of Housing and Community Development
Rent Adjustment Program

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

HEARING DECISION

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

SUMMARY OF DECISION

The tenant's petition is denied.

CONTENTIONS OF THE PARTIES

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

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

THE ISSUES

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

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

EVIDENCE

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

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

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

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

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

Decreased Housing Services:

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

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

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

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

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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

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

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

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

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

¹ O.M.C., § 22:090, A.3.B.

² See Green v. Superior Court, (1974) 10 Cal.3d 676, 635; Code of Civil Procedure, § 1174.2.

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

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

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

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

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

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

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

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

³ O.M.C. Section 8.22.070(F)

⁴ O.M.C. Section 8.22.110(E)

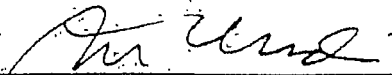
⁵ Golden Gateway Center v. San Francisco Residential Rent Stabilization and Arbitration Board, 73 Cal.App. 4th, 1204, 1206 (1999).

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ORDER

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

Dated: September 19, 2016



Stephen Kasdin,
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE

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Case Number T16-0259

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

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

Owner Representative

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

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

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



Esther K. Rush
Oakland Rent Adjustment Program

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EXHIBIT B /

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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RENT ARBITRATION PROGRAM[ONLINE SERVICES](#)[Assessor's Office](#) | [Treasurer-Tax Collector](#) | [New Query](#)**PROPERTY ASSESSMENT INFORMATION** ASSESSOR'S OFFICE

2016 - 2017 Assessment Information

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

[Additional Assessment Information](#) | [Property Tax Information](#)Adobe Acrobat Reader is required to view the maps. Click [here](#) to download. Alameda County © 2016 • All Rights Reserved • [Legal / Disclaimers](#) • [Accessibility](#)

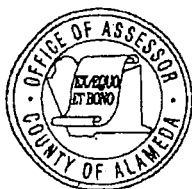
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EXHIBIT D

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OFFICE OF ASSESSOR
 COUNTY OF ALAMEDA
 1221 Oak St., County Administration Building
 Oakland, California 94612-4288
 (510) 272-3787 / FAX (510) 272-3803
 RON THOMSEN
 ASSESSOR

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OWENS JONATHAN A
 3420 RUBIN DR
 OAKLAND CA 94602-4144

JULY 15, 2016

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OWNER ON JAN. 1, 2016:
 OWENS JONATHAN A

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

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

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

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

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

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

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

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

000137

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

306.251

Attachment 4:

PH 4: 05

2016 OCT 11 PH 4: 05

Tenant was current on rent when she filed the petition

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

Furthermore, though informed of the termination of tenancy² and unlawful detainer action, the hearing officer erred by asking about and including dates post termination notice. As explained by *Hinson v. Delis*³ a tenant must first notify Landlord of safety and habitability problems, allow a reasonable time for repair and only *AFTER* the Landlord fails to remedy the problem may the tenant lawfully withhold rents and notify proper agencies. If rents due after a Landlord terminates tenancy (and therefore does not accepts rents) is included in the calculation of tenant rents, Landlords would be incentivized to terminate a tenancy as soon as tenant informs Landlord of needed repairs - thereby creating a mechanism for refusing rent - and preventing a tenant from properly exercising her rights to petition.

Finally hearing officer erred by allowing Landlord to read into evidence documents that were not submitted prior to hearing as per the rules. Since the Landlord benefited from advice of a lawyer and tenant was pro per, strict adherence to RAP written instructions is the only way to insure a pro per tenant can properly prepare for a hearing. The Landlord did not enter into the file the basis by which he claimed tenant was behind on rent. It turned out that the Landlord claim of rents due was for previous year and included a recession of his contribution to the fundraising campaign of tenant daughter to cover tuition and expenses for a Full

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

² The Landlord failed to file the termination of tenancy into evidence prior to the Rent Adjustment Office hearing, but instead filed it on August 26th the day after the hearing. This shows a bad faith attempt to deprive the tenant of proper notice of evidence.

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

Stack Web Development Program (see Exhibit B). Had Landlord followed instructions in the petition form and submitted evidence of his claim prior to the hearing, the tenant would have had the opportunity to bring evidence to dispute his claims (see Exhibit A and B).

Because the \$18,110.50 paid by tenant exceeded the rents owed of \$18,110.50 calculated by the hearing officer, it's unequivocal that tenant was current on rent when she followed petition. The prohibition of accepting rents post termination of tenancy and failure of Landlord to follow RAP instructions by providing documents prior to hearing should require a new hearing if Landlord disputes this appeal and/or the documents included.

Statement of Undisputed Fact

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

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

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

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

The undisputed facts show that (a) tenant knew of (and had sufficient evidence) potential electrical hazards, lead and asbestos hazards as the prior owner and (b) knowing of these hazards she followed the procedure as outlined by Hinson

v. Delis⁴ by asking Landlord to explain safeguard in use to protect tenants from hazards (airborne lead & asbestos) during remodeling and from electrical hazards prior to turning on swimming pool. As per Knight v. Hallsthammer, a tenants prior knowledge of Habitability defects does not waive Landlords require to remedy defects nor does it preclude tenant from the remedy of lawfully withholding rent until repairs are completed. Furthermore, the mere threat of personal injury from facilities - which if found to be defective⁵ (in this case air borne asbestos and lead during the remodeling) breaches the warrant of Habitability. "Subjecting a tenant to the fear that he may suffer injury or deterioration in health due to an unrepaired defect is best viewed as an independent basis for breach of the warranty"⁶ Once informed of potential hazards, the burden of proof falls on the Landlord not the tenant to show Habitability. Finally, the tenant has suffered health effects due to the 8 month ongoing remodeling as shown in Exhibit C.

The undisputed facts in the documents and testimony show decreased housing services

It is an undisputed fact, as testified by both tenant and landlord that under and wall adjacent to her working desk in her office were out of her use from 4/11/16 until 7/30/27. The testimony of both tenant and landlord confirm the noise and chemical prevent her from using her office for all but storage during these same dates - an unequivocal decreased house service (loss of her rented office). The testimony and documents filed in this petition show the other decreased housing services.

⁴ Hinson v. Delis, 26 Cal. App. 3d 62 - Cal: Court of Appeal, 1st Appellate Dist., 3rd Div. 1972

⁵ Todd v. May, (1972-74 Transfer Binder) CCH Pov. L. REP., 1 17,949 (Conn. Cir. Ct. 1973) (failure to remove paint containing high degree of lead after having been duly warned);

⁶ Javins v. First Nat'l Realty Corp., 428 F.2d 1071, 1082-83 (D.C. Cir.), cert. denied, 400 U.S. 925 (1970); Green v. Superior Court, 10 Cal. 3d 616, 629, 517 P.2d 1168, 1177, 111 Cal. Rptr. 704, 712 (1974); Hinson v. Dells, 26 Cal. App. 3d 62, 70, 102 Cal. Rptr. 661, 666 (1st Dist. 1972); Pines v. Perssion, 14 Wis. 2d 590, 597, 111 N.W.2d 409, 413 (1961); cf. Seely v. White Motor Co., 63 Cal. 2d 9, 14-15, 403 P.2d 145, 149, 45 Cal. Rptr. 17, 21 (1965). See also Reste Realty Corp. v. Cooper, 53 N.J. 444, 462 n.1, 251 A.2d 268, 277 n.1 (1969).

Exhibit A

You sent a payment

Transaction ID: 84F34856595485141

Dear Lauren Barghout,

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

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

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

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

Amount you have sent: \$2,615.00 USD

Your total charge: \$2,615.00 USD

Jonathan Owens will receive: \$2,615.00 USD

Sent on: April 20, 2016

Message in your payment
email:

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

Sincerely,
PayPal

000141

RECEIVED
CITY OF OAKLAND
RENT ARBITRATION PROGRAM

2016 OCT 10 PM 4:48

APPEAL

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

Appellant's Name
Lauren Barghart

Landlord Tenant

Property Address (Include Unit Number)
3420 Rubin Drive
Oakland, CA 94602

Appellant's Mailing Address (For receipt of notices)
3420 Rubin Drive
Oakland CA 94602

Case Number
T16-0259
Date of Decision appealed
9/19/2016

Name of Representative (if any)

Representative's Mailing Address (For notices)

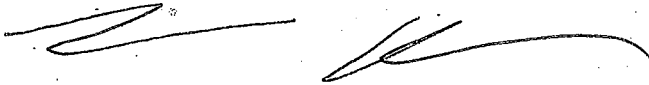
appeal the decision issued in the case and on the date written above on the following grounds:
(Check the applicable ground(s). Additional explanation is required (see below). Please attach additional pages to this form.)

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

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

8. **You must serve a copy of your appeal on the opposing party(ies) or your appeal may be dismissed.** I declare under penalty of perjury under the laws of the State of California that on 10/20, 2016, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<u>Name</u>	Alana Conner Esq. Williams C. Lyon
<u>Address</u>	2420 Rubin Drive Oakland CA
<u>City, State Zip</u>	Oakland CA 94602
<u>Name</u>	
<u>Address</u>	
<u>City, State Zip</u>	

	10/20/16
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

IMPORTANT INFORMATION:

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

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

Attachment 4:

Tenant was current on rent when she filed the petition

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

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

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

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

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

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

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

Statement of Undisputed Fact

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

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

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

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

The undisputed facts show that (a) tenant knew of (and had sufficient evidence) potential electrical hazards, lead and asbestos hazards as the prior owner and (b) knowing of these hazards she followed the procedure as outlined by Hinson v. Delis³ by asking Landlord to explain safeguard in use to protect tenants from

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

hazards (airborne lead & asbestos) during remodeling and from electrical hazards prior to turning on swimming pool. As per Knight v. Hallsthammer, a tenants prior knowledge of Habitability defects does not waive Landlords require to remedy defects nor does it preclude tenant from the remedy of lawfully withholding rent until repairs are completed. Furthermore, the mere threat of personal injury from facilities - which if found to be defective⁴ (in this case air borne asbestos and lead during the remodeling) breaches the warrant of Habitability. "Subjecting a tenant to the fear that he may suffer injury or deterioration in health due to an unrepaired defect is best viewed as an independent basis for breach of the habitability warranty "⁵ As per Knight v Hallshamer ⁶, the burden of proof falls on the Landlord once tenant has accurately specified the safety issues. Finally, the tenant has suffered health effects due to the 8 month ongoing remodeling as shown in Exhibit C - the proving that the Landlord breach Habitability and tenant has suffered medical issues as a result.

The undisputed facts show decreased housing services.

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

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

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

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

Exhibit A

You sent a payment

Transaction ID: 84F34856S95485141

Dear Lauren Barghout,

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

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

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

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

Amount you have sent: \$2,615.00 USD
Your total charge: \$2,615.00 USD
Jonathan Owens will receive: \$2,615.00 USD
Sent on: April 20, 2016

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

Sincerely,
PayPal

000147

You sent a payment

Transaction ID: 92K69S72FP915711T

Dear Lauren Barghout,

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

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

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

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

Amount you have sent: \$1,775.00 USD

Your total charge: \$1,775.00 USD

Jonathan Owens will receive: \$1,775.00 USD

Sent on: March 17, 2016

Sincerely,
PayPal

000148

PayPal

You sent a payment

Transaction ID: 5LU38113JJ316324X

Dear Lauren Barghout,

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

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

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

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

Amount you have sent: \$1,875.00 USD

Your total charge: \$1,875.00 USD

Jonathan Owens will receive: \$1,875.00 USD

Sent on: February 19, 2016

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

Sincerely,
PayPal

000149

PayPal

You sent a payment

Transaction ID: 6JC39431CG7229021

Dear Lauren Barghout,

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

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

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

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

Amount you have sent: \$1,875.00 USD

Your total charge: \$1,875.00 USD

Jonathan Owens will receive: \$1,875.00 USD

Sent on: January 16, 2016

Sincerely,
PayPal

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

000150

PayPal

You sent a payment

Transaction ID: 6EL936838U913910C

Dear Lauren Barghout,

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

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

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

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

Amount you have sent: \$875.00 USD

Your total charge: \$875.00 USD

Jonathan Owens will receive: \$875.00 USD

Sent on: December 17, 2015

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

Sincerely,
PayPal

000151

PayPal

You sent a payment

Transaction ID: 30E7062373070702Y

Dear Lauren Barghout,

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

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

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

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

Amount you have sent: \$1,100.00 USD

Your total charge: \$1,100.00 USD

Jonathan Owens will receive: \$1,100.00 USD

Sent on: November 16, 2015

Message in your payment
email: rest in cash

Sincerely,
PayPal

000152

PayPal

You sent a payment

Transaction ID: 4D347998C2536870R

Dear Lauren Barghout,

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

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

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

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

Amount you have sent: \$135.00 USD

Your total charge: \$135.00 USD

Jonathan Owens will receive: \$135.00 USD

Sent on: October 20, 2015

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

Sincerely,
PayPal

000153

PayPal

You sent a payment

Transaction ID: 0CR08819J9588712A

Dear Lauren Barghout,

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

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

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

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

Amount you have sent: \$1,570.66 USD

Your total charge: \$1,570.66 USD

Jonathan Owens will receive: \$1,570.66 USD

Sent on: October 15, 2015

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

Sincerely,
PayPal

000154

11/20/2015

RECEIPT of \$200.00 in cash
From Lauren to Jonathan
for partial payment installment
of October rent.

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

Jonathan

000155

PayPal

You sent a payment

Transaction ID: 0SX793003X324070V

Dear Lauren Barghout,

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

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

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

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

Amount you have sent: \$141.83 USD

Your total charge: \$141.83 USD

Jonathan Owens will receive: \$141.83 USD

Sent on: October 5, 2015

Message in your payment
email: utilities

000156

PayPal

You sent a payment

Transaction ID: 4WU37895YV385271P

Dear Lauren Barghout,

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

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

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

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

Amount you have sent: \$1,835.00 USD

Your total charge: \$1,835.00 USD

Jonathan Owens will receive: \$1,835.00 USD

Sent on: September 14, 2015

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

Sincerely,
PayPal

000157

PayPal

You sent a payment

Transaction ID: 9U4043445F729340F

Dear Lauren Barghout,

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

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

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

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

Amount you have sent: \$1,835.00 USD

Your total charge: \$1,835.00 USD

Jonathan Owens will receive: \$1,835.00 USD

Sent on: August 24, 2015

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

Sincerely,
PayPal

000158

View Check Copy

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

[Adjust Image](#)

LAUREN BARGHOUT
3420 RUBEN DR
OAKLAND, CA 94612-4144

101
11-22847110 626
34028743

7/20/15 Date

Pay to the Order of Jon Owen \$ 1835.00

One thousand eight hundred thirty five and 00/100 Dollars

For cat exp 6/15/15

10100 00101 865E0E9740 20 28820

[Adjust Image](#)

[Faint signature and illegible text]

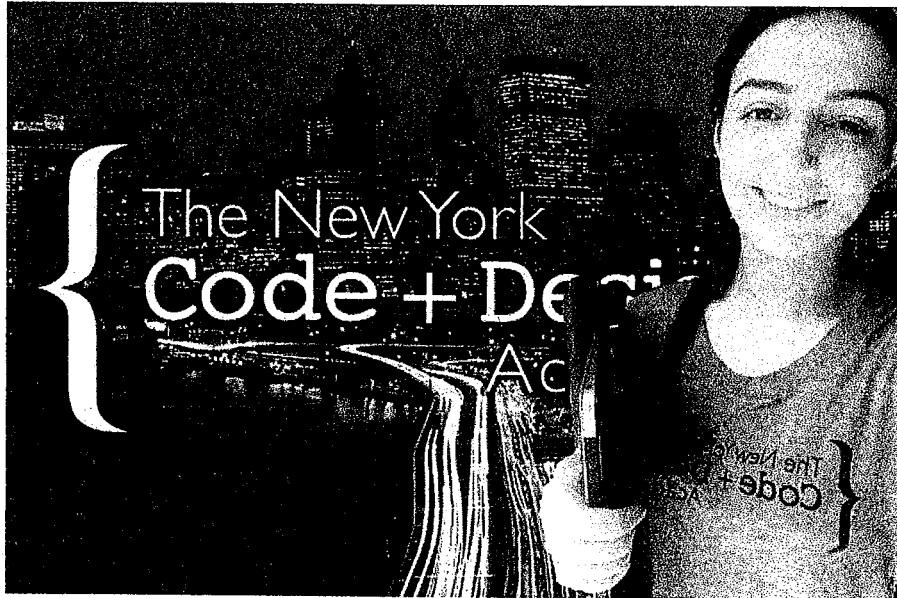
Exhibit B

Inbox !!

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

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

-SamGoFundMug4.jpg



1 attachment | [save](#)

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Exhibit C
{Put redacted Stanford Medicine Note here}

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

CITY OF OAKLAND

Department of Housing and Community Development
Rent Adjustment Program

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

HEARING DECISION

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

SUMMARY OF DECISION

The tenant's petition is denied.

CONTENTIONS OF THE PARTIES

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

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

THE ISSUES

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

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

EVIDENCE

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

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

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

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

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

Decreased Housing Services:

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

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

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

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

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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

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

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

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

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

¹ O.M.C. 8,22.090.A.3.B

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

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

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

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

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

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

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

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

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

³ O.M.C. Section 8.22.070(F)

⁴ O.M.C. Section 8.22.110(E)

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

ORDER

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

Dated: September 19, 2016



Stephen Kasdin
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE

Case Number T16-0259

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

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

Tenant

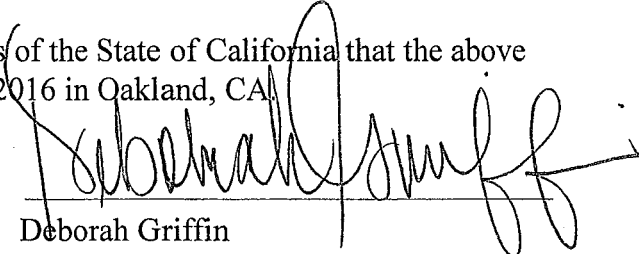
Laurin Barghout
3420 Rubin Dr.
Oakland, CA 94602

Owner

Jon Owens
3420 Rubin Dr.
Oakland, CA 94602

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on September 19, 2016 in Oakland, CA.


Deborah Griffin

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T16-0259 KM/SK

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

TENANT PETITION

Please print legibly

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

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

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

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

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

Retaliation not 60 day notice

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

Date you moved into the Unit: _____ Initial Rent: \$ 1875 /month

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

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

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

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

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

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

III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:

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


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

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

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

IV. VERIFICATION: The tenant must sign:

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



Tenant's Signature

5/22/16

Date

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

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

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

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

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



Tenant's Signature

5/22/16

Date

VI. IMPORTANT INFORMATION:

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

File Review

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

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

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

CITY OF OAKLAND RENT ADJUSTMENT PROGRAM P.O. Box 70243 250 Frank H. Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721	For filing stamp. 2015 JUN 22 AM 11:34
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Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your response being rejected or delayed.

CASE NUMBER T 16 - 0259

OWNER RESPONSE

Please print legibly.

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

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

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

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

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

I. RENTAL HISTORY

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

The tenant's initial rent including all services provided was \$ 1,825.00 / month.

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

Is the tenant current on the rent? Yes No

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

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

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

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

II. JUSTIFICATION FOR RENT INCREASE

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

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

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

III. DECREASED HOUSING SERVICES

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

2016 JUN 22 AM 11:34

IV. EXEMPTION

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

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

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

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

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

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

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

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

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

V. IMPORTANT INFORMATION

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

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

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

VI. VERIFICATION

Owner must sign here:

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


Owner's Signature

6/21/2016
Date

VII. MEDIATION AVAILABLE

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

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

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

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

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


Owner's Signature

6/21/2016
Date

Attachment IV. Exemption

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

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