

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

**May 10, 2018
7:00 p.m.
CITY HALL, HEARING ROOM #2
ONE FRANK H. OGAWA PLAZA
OAKLAND, CA**

AGENDA

1. CALL TO ORDER
2. ROLL CALL
3. OPEN FORUM
4. NEW BUSINESS
 - A. Appeal Hearing in cases:
 - a. T16-0683; Prager v. Lagos
 - b. T16-0076; Lee v. Millar
5. ADJOURNMENT

Accessibility & Foreign language interpreters. 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, Cantonese, Mandarin 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 services

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OAKLAND
2018 MAY -2 PM 4:13

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.

CHRONOLOGICAL CASE REPORT

Case Nos.: T16-0683

Case Name: Prager v. Lagos

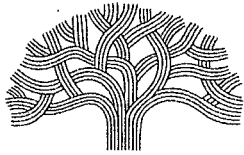
Property Address: 95 41st Street, #202, Oakland, CA

Parties: Marc Prager (Tenant)
Panos Lagos (Property Owner)
James Yamada (Property Owner)

OWNER APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	December 6, 2016
Owner Response filed	December 30, 2016
Hearing Decision issued	June 13, 2017
Landlord Appeal filed	July 3, 2017

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CITY OF OAKLAND

**CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM**

P.O. Box 70243
Oakland, CA 94612-0243
(510) 238-3721

For date stamp
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JUL 03 2017

RENT ADJUSTMENT PROGRAM **APPEAL**
OAKLAND

Appellant's Name Panos Lagos		<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant	
Property Address (Include Unit Number) 95 41st Street, #202 Oakland, CA 94611			
Appellant's Mailing Address (For receipt of notices) 5032 Woodminster Lane Oakland, CA 94602		Case Number T16-0683, Prager v. Lagos	
		Date of Decision appealed June 13, 2017	
Name of Representative (if any)		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.

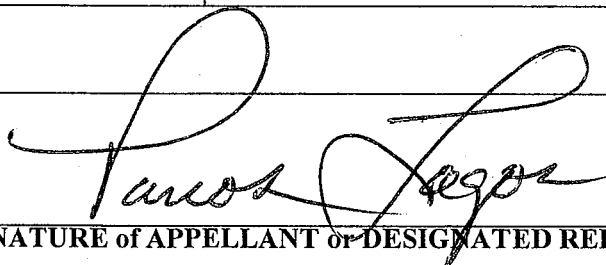
- f) I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. (In your explanation, you must describe how you were denied the chance to defend your claims and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue 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: 11.

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 June 30, 2017, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

Name	Tenant: Marc Prager
Address	95 41st Street, #202
City, State Zip	Oakland, CA 94611
Name	
Address	
City, State Zip	

	June 30, 2017
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

For more information phone (510)-238-3721.

EXPLANATION

2) a) and e):

Issue: Is the 10-unit apartment building at 95 41st Street in Oakland exempt under the provisions of OMC Chapter 8.22.030 A. (5)?

Short Answer: Yes. The undisputed evidence submitted at the Rent Board Hearing established that this apartment building was entirely newly constructed, and that it received a certificate of occupancy after January 1, 1983. Appellant proved each of the elements required for exemption under the Ordinance. The hearing officer's conclusion that this building is not exempt is therefore contrary to the evidence, contrary to the law, and should be reversed.

Applicable Law:

OMC Chapter 8.22.030 A. (5) (hereinafter "Ordinance") addresses the issue of exemptions and reads:

"Types of Dwelling Units Exempt. The following dwelling units are not covered units for purposes of this chapter, ..."

"Dwelling units which were newly constructed and received a certificate of occupancy on or after January 1, 1983. ... To qualify as a newly constructed dwelling unit, the dwelling unit must be entirely newly constructed **or** created from space that was formerly entirely non-residential." (emphasis added)

The Ordinance sets forth that, as long as a dwelling unit was entirely newly constructed **or** created from space that was formerly entirely non-residential, it qualifies as a newly constructed dwelling (and exempt) unit so long as a Certificate of Occupancy is received on or **after** January 1, 1983.

Discussion:

The Hearing Officer acknowledged that the former structure on the property was a single-family residence (*Hearing Decision, Page 3*), that the now-existing 10-unit apartment building replaced it, and that a Certificate of Occupancy for the 10-unit apartment building was issued on June 20, 1986 (*Hearing Decision, Exhibit 3*).

Yet the hearing officer stated, "In order to qualify for a new construction exemption, the new construction must create new units from space not already being used for residential purposes." (*Hearing Decision, Page 4*).^[1] The Hearing Officer appears to have ignored the portion of the

^[1] Even if the Ordinance only contained this language, it's requirement was satisfied with the documents presented at the subject hearing as will be discussed hereafter.

EXPLANATION

Ordinance, quoted above, providing for an exemption for a dwelling unit which is "...entirely newly constructed..." which, as will be discussed hereafter, **was also proven** by appellant.

The evidence before the Hearing Officer included the October 1, 1997 Application for Report of Residential Building Record (3-R Report) (*Hearing Decision, Exhibit 2*) which, on its face, refers to the **new** construction of a four-story, non-owner occupied 10-unit apartment building, and noting it to be **original construction** (1983). This evidence also established that a permit was issued on February 24, 1981 to "Demolish single family dwelling" with an "Original construction permit" issued on July 19, 1983. A Certificate of Occupancy was issued on June 20, 1986 (also in evidence before the Hearing Officer, *Hearing Decision, Exhibit 3*). It is self-evident that if a 10 unit residential apartment building sits where a single family dwelling once sat, entirely new construction took place. Thus, Appellant proved that this apartment building is exempt.

Another one of the errors made by the Hearing Officer, as reflected by her decision, was that she ignored evidence--- namely, the site plan diagram submitted by Appellant.

The "first" hearing of this matter was held on April 28, 2017. Following this hearing and its continuance to May 22, 2017 to give both sides an opportunity to produce additional evidence (see *Hearing Decision, Page 3, Footnote 4*), Appellant, on May 1, 2017 submitted a letter to the Hearing Officer (*Exhibit A hereto*), which **included** the noted (and more legible) Certificate of Occupancy (*Hearing Decision, Exhibit 3*) **as well as** the property's site plan diagram (see, *Exhibit A, Page 5, hereto*). This submission was in response to the Hearing Officer's request for the "footprint" of the previously-existing structure, i.e., a single-family dwelling. This site plan diagram includes the words "**new building proposed**" and confirms the footprint of the previously existing single-family dwelling (outlined in blue) was well within the confines of the larger "footprint" of the then-proposed and presently existing 10-unit building (outlined in pink). Further, the words "2 sty stucco (to be removed)" are written over the footprint of the single-family dwelling, clearly indicating that the old 2-story stucco residence was to be demolished. A true and correct copy of this site plan diagram submitted to the Hearing Officer on May 22, 2017, properly orientated, enlarged, and with its pertinent parts outlined/highlighted as noted above, is attached for the Board's convenience (*Exhibit C hereto*).^[2] This evidence was uncontroverted by the tenant.

The Hearing Officer's statement that "The Owner offered no evidence to establish the size of the prior single family dwelling in order to show that the tenant's unit was outside of that footprint, and therefore new construction" (*Hearing Decision, Page 4*) not only incorrectly reads into the Ordinance language and requirements that are not there, it also indicates the Hearing Officer's

^[2] Page 5 of *Exhibit A hereto* is the same diagram depicted in *Exhibit B hereto* but was "reversed" when copied at the City's Permit Center and initially sent to the Hearing Officer on May 1, 2017. To the extent that it is later found that this particular "legible" diagram (*Exhibit B hereto*) was not made part of the record when it was provided to the Hearing Officer on May 22, 2017, request is herewith made, in the interests of justice, that it be made part of this Appeal process, or, in the alternative, an additional evidentiary hearing be ordered.

EXPLANATION

conflation of the Ordinance's terms. The Ordinance does not reference, or require proof of, the size of the prior single family dwelling. While the second alternative for exemption applies to dwelling units created from "space" that was formerly entirely non-residential, that provision --- which does not require evidence of the size of the prior single family dwelling (or space) --- most importantly has no bearing on whether the property is exempt under the first alternative. These are two entirely separate, independent grounds for exemption. Appellant was only required to prove, which it did, that these 10 new apartments were all "entirely newly constructed". Clearly, the Hearing Officer was confused regarding the relevant terms of the subject Ordinance.

It is true that no documents were produced by Appellant/owners **prior** to the **first** hearing.^[3] Appellant/owners **did**, however, produce, **at the first hearing**, the October 1, 1997 Application for Report of Residential Building Record (3-R Report) (*Hearing Decision, Exhibit 2*). However, it is not true that Appellant/owners produced **only** the Certificate of Occupancy prior to the second hearing. The documents that were provided **prior** to the second hearing, as set forth in Exhibit A hereto, consisted of, 1) a May 1, 2017 transmittal letter, 2) the June 20, 1986 Certificate of Occupancy, and, 3) the property's (reverse copied) site plan diagram already noted for the Board's present convenience as Exhibit C hereto.

2) d):

Appellant submits that the term(s) "footprint", "created" and/or "from space that was formerly entirely non-residential" used separately and/or together in OMC Chapter 8.22.030 A. (5)---at least insofar as these terms appear to be interpreted and applied by the Hearing Officer--- are vague, uncertain, arbitrary, overly broad, ambiguous and incapable of providing or meeting reasonable due process concerns to which United States citizens and California residents are entitled before their property, real or otherwise, is taken from them. By way of example, suppose the footprint of a previously-existing and later demolished two-story residential dwelling showed a bedroom on the first floor in the northeast corner; is a bedroom in the same northeast corner of the first floor of an entirely newly constructed ten or twenty unit apartment building not exempt because it did not create living space that did not previously exist? Such a result is illogical, absurd, impractical, unworkable, and entirely at odds with the purpose of the Ordinance.

As used in the context of building construction, a "building footprint" refers to the perimeter of the building plan. Parking lots, landscapes, and other non-building facilities are not included in such a "building footprint". A "footprint" alone says nothing about how many bedrooms existed, where they were located, and/or how many stories the structure had.

^[3] It is not true that Appellant/owners were specifically asked to "produce" the October 1, 1997 Application for Report of Residential Building Record (3-R Report) (*Hearing Decision, Exhibit 2*) at the first hearing but chose not to. It was "produced" and shown to everyone. It was the only document Appellant/owners had and they had no reason not to produce it if, as admitted by the Hearing Officer, Appellant/owners relied on the document at the hearing (*Hearing Decision, Page 2, First Paragraph*). It was not marked and placed in the evidentiary record until the May 22, 2017 hearing.

EXPLANATION

Therefore, requiring a footprint of the former structure to prove either alternative basis for exemption under the “newly constructed dwelling unit” section of the Ordinance is neither logical nor practical. New construction can, and often does, follow the same footprint as the former structure, yet it is still creating entirely new dwelling units when the newly constructed apartment building replaces a single family dwelling. Thus, to the extent the Hearing Officer interpreted the Ordinance as requiring proof that Mr. Prager’s unit was “new” in the sense that it is not in the same “space” as what was already being used for residential purposes in the former single-family home, is reading into the Ordinance language that does not exist, is creating a burden of proof that is virtually impossible to meet, and is contrary to the intent of the Ordinance.

One of the stated purposes of the Ordinance is, “... encouraging rehabilitation of rental units, encouraging investment in new residential rental property in the city ... ” (see OMC 8.22.010 A., B., C.). However, the Hearing Officer’s erroneous interpretation and application of the subject Ordinance’s language is inconsistent with the purpose of the Ordinance. There would be **no incentive**, for example, to tear down a single family home and to put up a 10 unit apartment building (and thereby create new residential property that could accommodate 20 or more new renters) if the Hearing Officer’s interpretation and application of the Ordinance was correct.

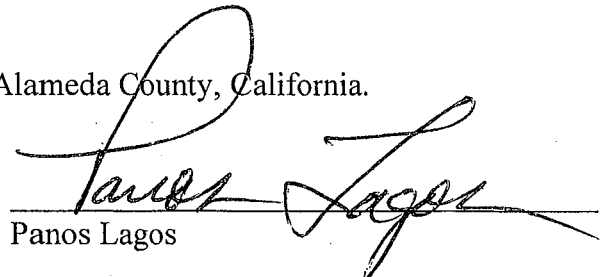
Finally, the Hearing Officer’s Decision is inconsistent with a related provision of the Ordinance which provide for an exemption for “substantially rehabilitated buildings”. If the original owners of this 10-unit apartment had simply “spent a minimum of fifty (50) percent of the average basic cost for new construction for a rehabilitation project” by turning the single family dwelling into ten apartments, the building would be exempt, regardless of whether any of the new units were “outside” of the footprint of the old structure, or whether any of the new units were created “from ‘space’ [] already being used for residential purposes”. (*Hearing Decision, Page 4*).

Hearing Request: To the extent that Board determines that an evidentiary hearing is necessary, Appellant requests such hearing pursuant to OMC Chapter 8.22.120 B. (4).

Attestation:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. If called as a witness, I could and would testify competently to the matters stated herein.

Executed this 30th day of June, 2017, at Oakland, Alameda County, California.


Panos Lagos

The Law Offices of
Panos Lagos

TEL. (510) 530-4078
FAX (510) 530-4725

5032 WOODMINSTER LANE
OAKLAND, CA 94602

E-MAIL ADDRESS:
PANOS@PANOSLAGOSLAW.COM

March 20, 2018

VIA FAX and MAIL

Roberto Costa, Program Analyst
City of Oakland
Department of Housing and Community Development
Rent Adjustment Program
P.O. Box 70243
Oakland, CA 94612-2043

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MAR 20 2018

RENT ADJUSTMENT PROGRAM
OAKLAND

Re: File Name: Prager v. Lagos
Property Address: 95 41st Street, #202, Oakland, CA, 94611
Case Number: T16-0683

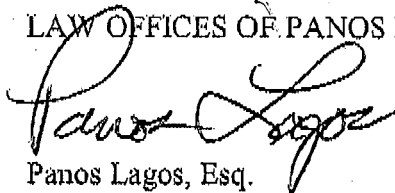
Dear Mr. Costa:

Omitted from the record provided with the Agenda for the March 15, 2018 appeal hearing, which has since been continued to a date not yet provided to the undersigned, is the enclosed Application for Report of Residential Building Record. This Application was referenced in the Hearing Officer's June 13, 2017 Decision and was noted to have been introduced into the evidentiary record. Please provide me with written confirmation that the subject Application is, in fact, part of the evidentiary record.

Your attention and response is appreciated.

Very truly yours,

LAW OFFICES OF PANOS LAGOS



Panos Lagos, Esq.

PL/ah
Enclosure

cc: Marc Prager (via email and regular mail)
Barbara M. Cohen, Hearing Officer

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8/26/97 H 50.00



Office of Planning and Building
Alameda Housing Code, Sec. H-206

APPLICATION FOR REPORT OF RESIDENTIAL BUILDING RECORD (3-R Report)

FOR CITY USE ONLY
Date Completed 10/1/97
Expiration Date 1/2/98
Completed by S. M. Buegg

Address of Subject Property: 95 41st Street Drive Alley (OAKLAND)

Name of Applicant: Ron Dunn

Mailing Address of Applicant: 145 Sea Bridge Ct.

Alameda, Ca. 94502

Name and address of Owner (if different from above): 408 8th St. #103
Hong Lu and Lucy Lu OAKLAND, Ca. 94607

Total number of HABITABLE buildings on premises: 1 Total number of ACCESSORY buildings on premises: 0
Existing BASEMENT or CELLAR? yes no
Habitable ATTIC? yes no
Habitable ATTIC? yes no
Construction Material: Wood frame Brick Steel Other

Number of STORIES: 4
Owner occupied? yes no

Number of dwelling UNITS or APARTMENTS: 10 Number of HOUSEKEEPING units: _____ Number of HOTEL/Guest rooms: _____

Number of KITCHENS: 10 Total number of HABITABLE ROOMS (including bath, toilet, laundry, utility rooms and closets): _____

I certify that I am the APPLICANT named herein, that I have familiarized myself with the residential building with respect to compliance and filing this application, that the reports herein contained are in all respects true and accurate to the best of my knowledge and belief, and that they may not correlate with the City's official records as recorded below.

Ron Dunn Date: 10/1/97 Telephone: (510) 521-9721

REPORT OF RESIDENTIAL BUILDING RECORD

This is NOT to be construed that said residential building complies with all applicable laws of the City and only sets forth the report as of the date completed shown above.

Zone District: R-70 Date of original building construction: 1983 Building type: VIEN

Original OCCUPANCY or USE: 4 story + basement garage 10 unit apartment building

Placed on file? yes no SFD? no yes Cert. of Occupancy issued? no yes Date: 6/20/86 Number: 39128 HV

Total number of HABITABLE BUILDINGS: 1 Total number of ACCESSORY BUILDINGS: 0 Total number of HABITABLE ROOMS: 37 Total number of UNITS or APARTMENTS: 10

Building related PERMITS ISSUED:	Permit #	Date	DWR
Demolish single family dwelling	D21324	2/24/81	
Original construction permit	D21662	7/19/83	
Install solar panels	D29114	6/20/83	
	Permit #	Date	Date
	Permit #	Date	Date
	Permit #	Date	Date

Current AUTHORIZED OCCUPANCY or USE (to be ascertainable from existing City records): 4 story + basement garage, 10 unit apartment building, 37 rooms

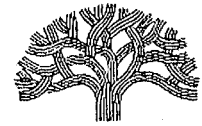
This Report of Residential Building Record shall not be construed as warranty or release, stated, clear, or not, in any way of the provisions or requirements of any laws or ordinances of the City of Oakland, nor shall such issuance of the report prevent compliance of errors, violations, or any applicable law or ordinance of the City of Oakland. This report contains information transferable to other City records. It shall be unlawful for the owner or authorized agent of the owner, to sell this residential building without first delivering to the buyer this Report of Residential Building Record prior to the consummation of sale.

October 1, 1997
Date: 10/01/97 Amt Paid: \$50.00
By: JT Register REC. BOOK # 101 01605

1001

FROM PACIFIC COAST R. R.

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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: T16-0683, Prager v. Lagos
PROPERTY ADDRESS: 95 41st Street, # 202, Oakland, CA
DATE OF HEARING: April 28, 2017; May 22, 2017
DATE OF DECISION: June 13, 2017
APPEARANCES: Marc Prager, Tenant (both dates)
Panos Lagos, Owner (both dates)
James Yamada, Owner (April 28, 2017)
Craig Riesterer, Witness (April 28, 2017)

SUMMARY OF DECISION

The tenant's petition is granted in part. The legal rent for the unit is set forth in the Order below.

CONTENTIONS OF THE PARTIES

The tenant filed a petition on December 2, 2016, contesting a rent increase from \$1,825 to \$2,200 a month, on the following grounds:

- The increase exceed the Consumer Price Index (CPI) Adjustment, is unjustified or is greater than 10%; and,
- No written notice of the Rent Program (*RAP Notice*) was given to him at least six months prior to the effective date of the rent increase.

Additionally, the tenant claimed that his housing services had decreased. The claims of decreased services involve the carpet is his unit being past its useful life.

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The owner filed a timely response to the tenant petition on December 30, 2016 claiming that the unit is exempt from the RAP as new construction.

THE ISSUES

1. Is the unit exempt from the RAP as new construction?
2. When, if ever, was the *RAP Notice* first served on the tenant?
3. Can the tenant raise claims related to decreased services that were not raised in the tenant's initial filing?
4. Have the tenant's housing services decreased?
5. What is the rent and what, if any, restitution is owed between the parties?

EVIDENCE

Building History: The owners testified that they purchased the subject property in 1997.

The owners had not produced any documents to the RAP prior to the Hearing about the subject property. At the Hearing they referred to a document entitled *Application for Report of Residential Building Record*. They testified that they did not think they had a *Certificate of Occupancy*. They testified that based on the documentary record (the *Application for Report of Residential Building Record*), they believed that a single family dwelling was demolished before the current building was built. They did not own the property at the time.

The Hearing was set for a second day. The owners were asked to produce a *Certificate of Occupancy* and the *Application for Report of Residential Building Record* prior to the Hearing. They were also asked to produce any plans that might show the footprint of the prior residential unit and the footprint of the current 10 unit building. Prior to the Hearing, the owners produced only the *Certificate of Occupancy*. This document states that the building completion date was June 20, 1986, and that the building is a ten unit apartment house.¹

At the Hearing held on May 22, 2017, the owner was asked about the *Application for Report of Residential Building Record*, which was provided to the Hearing Officer at the Hearing. This document, dated October 1, 1997, shows that a permit was received in February of 1981 to "demolish (a) single family dwelling."² Then in July of 1983 a permit was issued to construct a 10-unit apartment building.

The owner was also asked about whether he was able to find any plans for the previous building or the current building. He testified that he did not find any records.

¹ Exhibit 3. This document, and all other documents referred to in this Hearing Decision, was admitted into evidence without objection.

² Exhibit 2. The owners were specifically asked at the first Hearing to produce this document but chose not to. This document was admitted into evidence without objection, even though it was not produced 7 days in advance, as it had crucial information about the prior history of this property that was not available on any other document produced by the owners.

Rental History: The tenant testified that he moved into the rental unit in March of 2014, at an initial rent of \$1,825 a month. He received a rent increase notice on about November 22, 2016, purporting to increase his rent to \$2,200 (from \$1,825) a month. He has paid the old rent of \$1,825 and will continue to do so until he receives a Hearing Decision in this matter. He received the *RAP Notice* with this rent increase notice. He also received the *RAP Notice* when he moved into the building.³

The owners did not dispute the tenant's testimony about these issues.

Decreased Housing Services: The tenant testified that the carpet is old, worn and smells. It is not a tripping hazard. The carpet was in the same condition when he moved in. The tenant produced photographs of the carpet, which show minor staining.⁴

The owner Panos Lagos testified that at the time that he rented the unit to the tenant it was in fine shape. The carpet was not worn and it did not smell. When he got notice of the tenant's complaint, he returned to the unit to see the carpet in February of 2017. The carpet was in fine shape, there is no tripping hazard, it is not worn and does not smell.

Official Notice is taken that on April 20, 2017, (prior to the first Hearing in this case) the tenant produced a letter to the RAP seeking to add additional claims regarding decreased services in this case. The tenant was not permitted to testify about these matters (See below.)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Is the unit exempt from the RAP as new construction?

The Oakland Rent Adjustment Ordinance states that dwelling units are not "covered units" under the Ordinance if such units "were newly constructed and received a certificate of occupancy on or after January 1, 1983."⁵ The Ordinance states:

"To qualify as a newly constructed dwelling unit, the dwelling unit must be entirely newly constructed or created from space that was formerly entirely non-residential."⁶

An owner has the burden of proof on all elements of a claim for exemption.

In this case, the owner purchased a 10 unit residential building in 1997. The evidence documents that prior to the 10 unit residential building being built, which was in 1986, a prior residential single family dwelling existed on the property.

³ Exhibit 1.

⁴ Exhibit 4. These documents were produced by the tenant prior to the second Hearing. The tenant was given an opportunity to produce additional evidence, since the owner was being given the opportunity to produce additional evidence.

⁵ O.M.C. § 8.22.030(A)(5)

⁶ O.M.C. § 8.22.030(A)(5)

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The owner offered no evidence to establish the size of the prior single family dwelling in order to show that the tenant's unit was outside of that footprint, and therefore new construction.

Furthermore, this building was built before *Costa Hawkins*, California Civil Code § 1954.50 et seq. was enacted. While *Costa Hawkins* does state that newly constructed units are exempt if they have a *Certificate of Occupancy* issued after February 1, 1995, or were already exempt from rent control pursuant to a local exemption for newly constructed units, *Costa Hawkins* is not controlling here since the *Certificate of Occupancy* was issued before February 1, 1995.

In order to qualify for a new construction exemption, the new construction must create new units from space not already being used for residential purposes. Since the owners did not provide any evidence as to the footprint of the prior residential building, there is no way to establish that the tenant's unit is new construction.

Therefore, the owners have not met their burden of proof to establish that the subject building is exempt from the Rent Adjustment Ordinance as new construction.

When, if ever, was the *RAP Notice* first served on the tenant?

The Rent Adjustment Ordinance (Ordinance) requires an owner to serve the *RAP Notice* at the start of a tenancy⁷ and together with any notice of rent increase or change in the terms of a tenancy.⁸ An owner can cure the failure to give notice at the start of the tenancy, but may not raise the rent until 6 months after the first *RAP Notice* is given.⁹

The tenant was served with the *RAP Notice* when he moved into the unit.

Can the tenant raise claims related to decreased services that were not raised in the tenant's initial filing?

In order to bring a claim of decreased housing services, the tenant is required to provide a list or a description of his claims when he files his petition. O.M.C. § 8.22.070 (F). Here the tenant filed a list of decreased housing services with his petition, which raised only an issue related to the carpet.

Approximately a week prior to the initial Hearing, the tenant sent a letter to the RAP office seeking to add additional claims of decreased services to his petition. This document was filed on April 20, 2017. Since this list was not provided with the tenant's initial petition, these issues were not considered at the Hearing. Only those issues that were on the documents the tenant initially filed were considered at the Hearing.

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⁷ O.M.C. § 8.22.060(A)

⁸ O.M.C. § 8.22.070(H)(1)(A)

⁹ O.M.C. § 8.22.060 (C)

000015

Have the tenant's housing services decreased?

Under the Oakland Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent¹⁰ and may be corrected by a rent adjustment.¹¹ However, in order to justify a decrease in rent, a decrease in housing services must be the loss of a service that seriously affects the habitability of a unit or one that was provided at the beginning of the tenancy that is no longer being provided.

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

In this case the tenant complained of the condition of the carpet. Both the owner and the tenant testified that the carpet is in essentially the same condition as it was when the tenant moved into the unit; therefore, there is not a changed condition. Furthermore, there is no proof that there is any habitability violation with respect to the carpet—there are no holes, no mold and no tripping hazards.

The tenant has established only that there are some stains on the carpet. Stains are not a habitability problem. This claim is denied.

What is the rent and what, if any, restitution is owed between the parties?

The owners did not seek to justify the rent increase other than claiming new construction. Since the owners have not prevailed in their claim of new construction, the rent remains \$1,825 a month. The tenant has not paid the rent increase. Therefore, there are no underpayments or overpayments.

ORDER

1. Petition T16-0683 is granted in part. The rent remains \$1,825.
2. The tenant's claims of decreased services are denied.
3. The unit is not exempt from the RAP as new construction.
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

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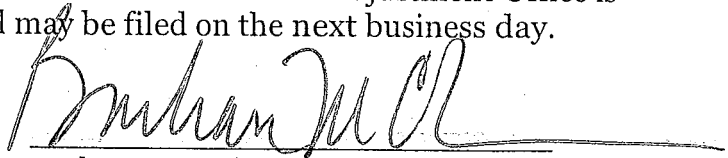
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¹⁰ O.M.C. § 8.22.070(F)

¹¹ O.M.C. § 8.22.110(E)

service is shown on the attached Proof of Service. If the Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.

Dated: June 13, 2017

A handwritten signature in cursive script, appearing to read "Barbara M. Cohen", is written over a horizontal line.

Barbara M. Cohen
Hearing Officer
Rent Adjustment Program

000017

Ttl. 0683 KC/BC

CITY OF OAKLAND RENT ADJUSTMENT PROGRAM Mail To: P. O. Box 70243 Oakland, California 94612-0243 (510) 238-3721	For date stamp. <p style="text-align: center;">RECEIVED</p> <p style="text-align: center;">DEC - 2 2016</p> <p style="text-align: center;">OAKLAND RENT ADJUSTMENT</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 Marc PRAGER	Rental Address (with zip code) 94611 95 41st St. Oakland Apt. 202	Telephone 510 913 3080
Your Representative's Name	Mailing Address (with zip code)	Telephone
Property Owner(s) name(s) Panos Lagos	Mailing Address (with zip code) 5032 Woodminster Ln. Oakland 94602	Telephone 510 530 4078

Number of units on the property: 11

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

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

<input 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 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 type="checkbox"/>	(f2) At present, there exists a health, safety, fire, or building code violation in the unit. <u>If the owner has been cited in an inspection report, please attach a copy of the citation or report.</u>
<input type="checkbox"/>	(g) The contested increase is the second rent increase in a 12-month period.
<input type="checkbox"/>	(h) The notice of rent increase based upon capital improvement costs does not contain the "enhanced notice" requirements of the Rent Adjustment Ordinance or the enhanced notice was not filed with the RAP.
<input type="checkbox"/>	(i) My rent was not reduced after the expiration period of the rent increase based on capital improvements.
<input type="checkbox"/>	(j) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).
<input type="checkbox"/>	(k) I wish to contest an exemption from the Rent Adjustment Ordinance (OMC 8.22, Article I)

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

Date you moved into the Unit: 3/3/2014 Initial Rent: \$ 1825.00 /month

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

possibly 11/26/16

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.

he: tie ows 22/ 2017 s ate

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		
11/22/16	2/1/17	\$ 1825	\$ 2200	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

* 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.

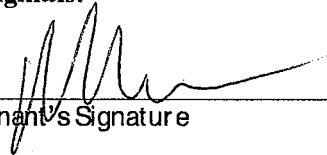
- Are you being charged for services originally paid by the owner? Yes No
- Have you lost services originally provided by the owner or have the conditions changed? Yes No
- Are you claiming any serious problem(s) with the condition of your rental unit? Yes No

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

11/28/16

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

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): Internet

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. <div style="text-align: center;"> RECEIVED DEC 8 0 2016 <small>OAKLAND RENT ADJUSTMENT</small> </div>
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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 -0683 / Prager v. Lagos

OWNER RESPONSE

Please print legibly.

Your Name PANOS LAGOS	Complete Address (with zip code) LAW OFFICES OF PANOS LAGOS 5032 Woodminster Lane Oakland, CA 94602	Phone: <u>510 530 4078</u> Email: <u>panos@panoslagoslaw.com</u>
Your Representative's Name (if any)	Complete Address (with zip code)	Phone: _____ Fax: _____ Email: _____
Tenant(s) name(s) MARC PRAGER	Complete Address (with zip code) 95 41st Street, Apt. 202 Oakland, CA 94611	

Have you paid for your Oakland Business License? Yes No Number 2766302
 (Provide proof of payment.) SEE EXHIBIT A

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

There are 10 residential units in the subject building. I acquired the building on 10/27 /1997

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

(10 parcel numbers with Unit #101 being parcel #12-992-22 through Unit #402, parcel #12-992-31)

I. RENTAL HISTORY

The tenant moved into the rental unit on or about 3/1/2014

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? 02/28/2014 SEE EXHIBIT B

Is the tenant current on the rent? Yes No

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

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

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

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

II. JUSTIFICATION FOR RENT INCREASE

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

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

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

III. DECREASED HOUSING SERVICES

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

IV. EXEMPTION

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

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

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

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

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

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

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

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

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

V. IMPORTANT INFORMATION

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

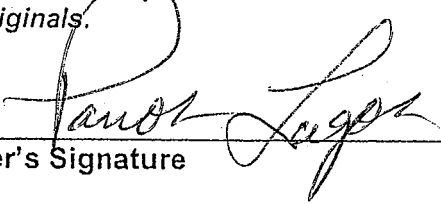
NOTE: If you do not file a timely Response, you will not be able to produce evidence at the Hearing, unless you can show good cause for the late filing.

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

VI. VERIFICATION

Owner must sign here:

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



Owner's Signature

12/22/16

Date

VII. MEDIATION AVAILABLE

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

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

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

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

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

Owner's Signature

Date

CHRONOLOGICAL CASE REPORT

Case No.: T16-0076
Case Name: Lee v. Millar
Property Address: 848 Erie St., Unit #2, Oakland, CA
Parties: Mary E. Lee (Tenant)
Bruce G. Millar (Owner)

TENANT APPEAL

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

2016 JUL -6 PM 11:35

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

APPEAL

Appellant's Name
MARY E. LEE

Landlord Tenant

Property Address (Include Unit Number)
**848 ERIE ST., #2
OAKLAND, CA 94610-2205**

Appellant's Mailing Address (For receipt of notices)
SAME AS ABOVE

Case Number
716-0076

Date of Decision appealed
6/17/16

Name of Representative (if any)

Representative's Mailing Address (For notices)

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 7. Please number attached pages consecutively.

8. **You must serve a copy of your appeal on the opposing party(ies) or your appeal may be dismissed.** I declare under penalty of perjury under the laws of the State of California that on July 6, 2006, 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>	<i>Bruce G. Miller</i>
<u>Address</u>	<i>P.O. Box 11165</i>
<u>City, State Zip</u>	<i>Oakland, Ca. 94611</i>
<u>Name</u>	
<u>Address</u>	
<u>City, State Zip</u>	

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

IMPORTANT INFORMATION:

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

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

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

I am appealing the decision based on many reasons;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

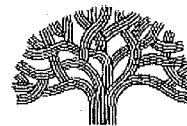
- n) I was able to clear the living room in a timely way for the workers to come through. However, then out of the clear blue, a letter from Mr. Millar in September was out of place and served no purpose, except as a found less written documentation to serve provide written documentation to appear contrary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

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

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

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

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



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

CITY OF OAKLAND

Department of Housing and Community Development
Rent Adjustment Program

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

HEARING DECISION

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

SUMMARY OF DECISION

The tenant's petition is denied.

CONTENTIONS OF THE PARTIES

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

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

000035

- Bathroom vanity
- Inadequate hot water

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

THE ISSUES

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

EVIDENCE

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

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

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

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

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

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

² Exhibit No. 1B.

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

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

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

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

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

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

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

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

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

⁴ Exhibit No. 13C.

⁵ Exhibit Nos. 10A & 10B.

⁶ Exhibit Nos. 2A & 2B.

⁷ Exhibit Nos. 10D and 12B.

⁸ Exhibit No. 3.

⁹ Exhibit No. 10E.

¹⁰ Exhibit Nos. 11A & 11B.

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

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

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

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

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

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

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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

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¹¹ Exhibit Nos. 11A & 11B.

¹² Exhibit Nos. 8A through 8E.

¹³ Exhibit Nos. 9A through 9F

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

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

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

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

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

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

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

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

¹⁴ O.M.C. Section 8.22.070(F)

¹⁵ O.M.C. Section 8.22.110(E)

¹⁶ O.M.C. Section 8.22.090(A)(2)

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

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

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


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

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

ORDER

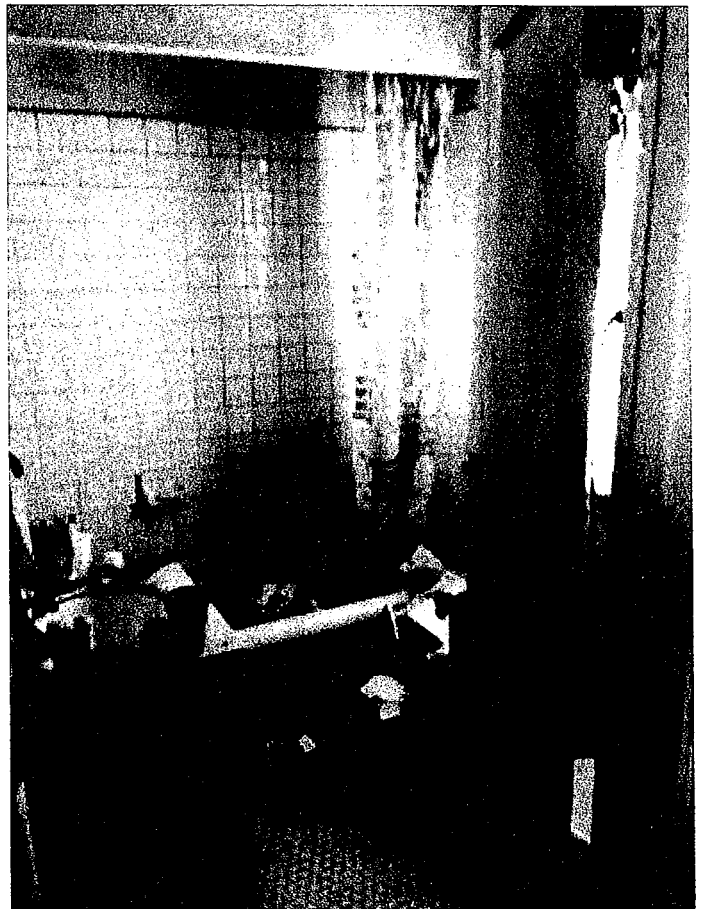
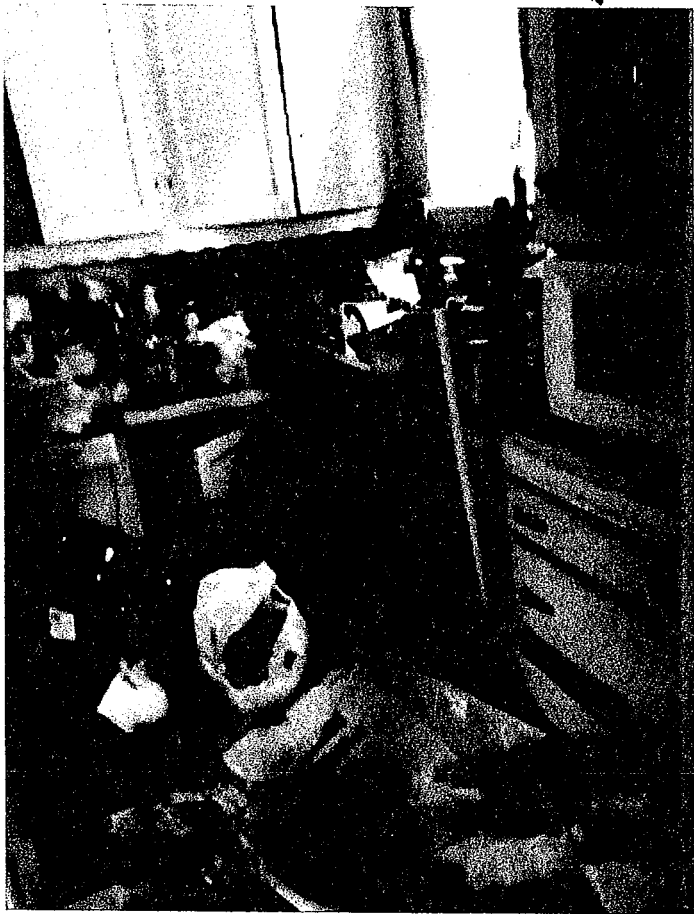
1. Petition T16-0076 is denied.
2. Right to Appeal: **This decision is the final decision of the Rent Adjustment Program Staff.** Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within twenty (20) calendar days after service of the decision. The date of service is shown on the attached Proof of Service. If the Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.

Dated: June 17, 2016



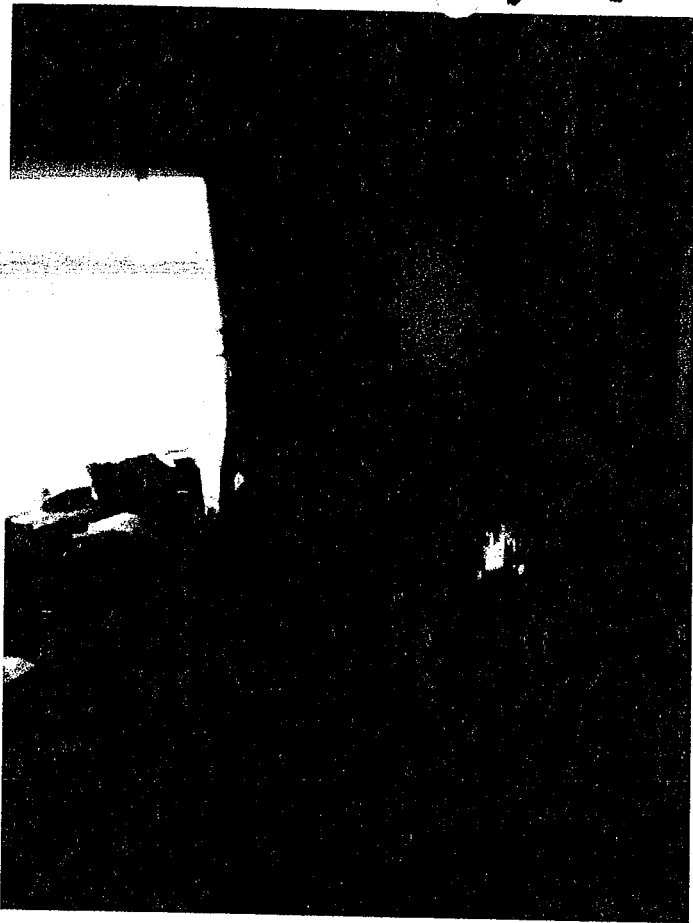
Stephen Kasdin
Hearing Officer
Rent Adjustment Program

21 20114



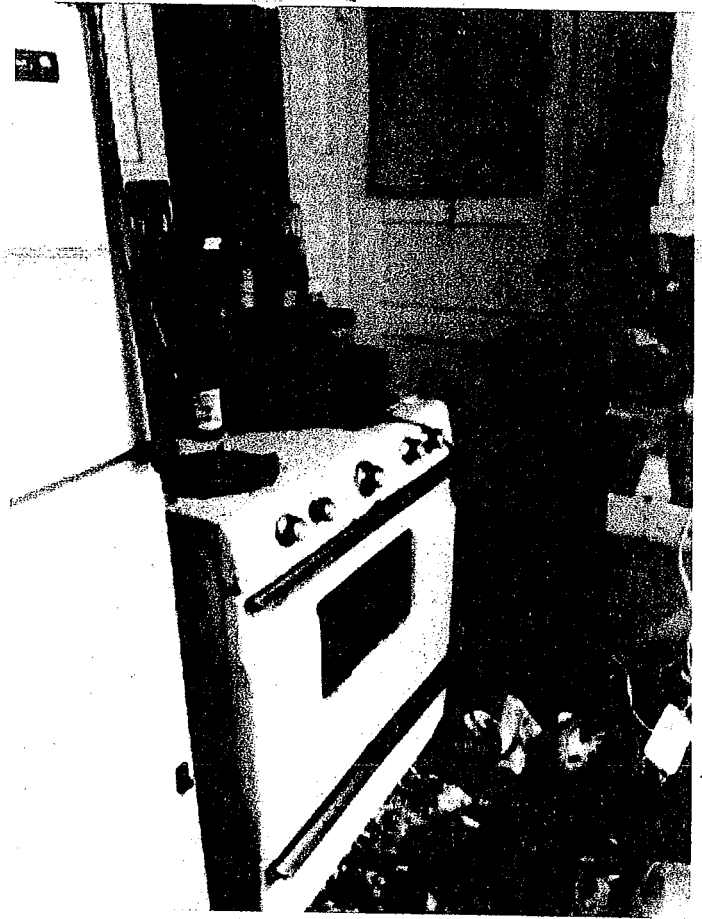
000041 ATTACHMENT "A"

5/20/14

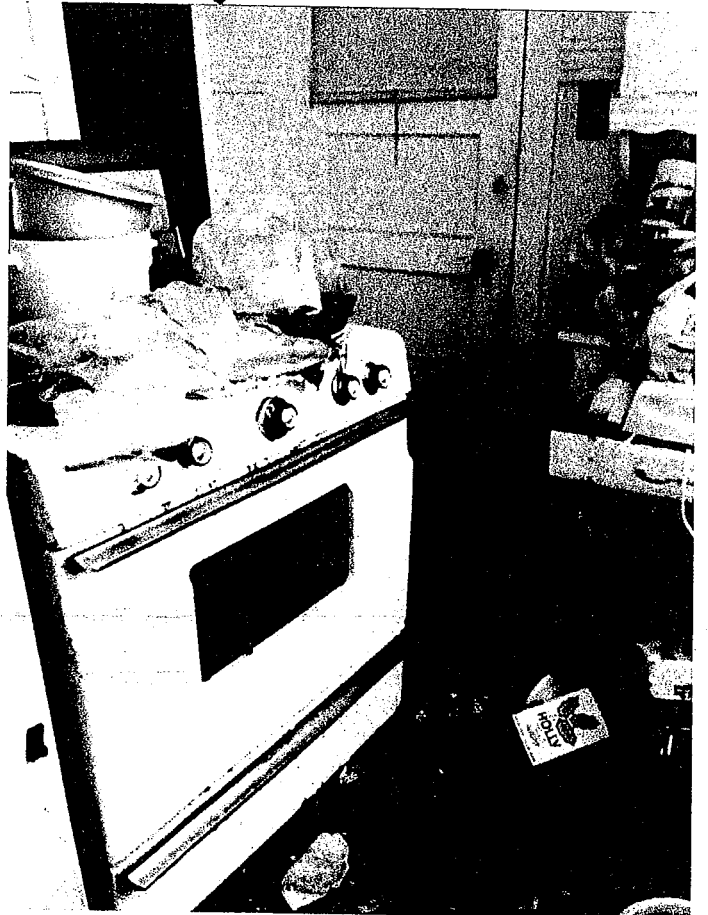
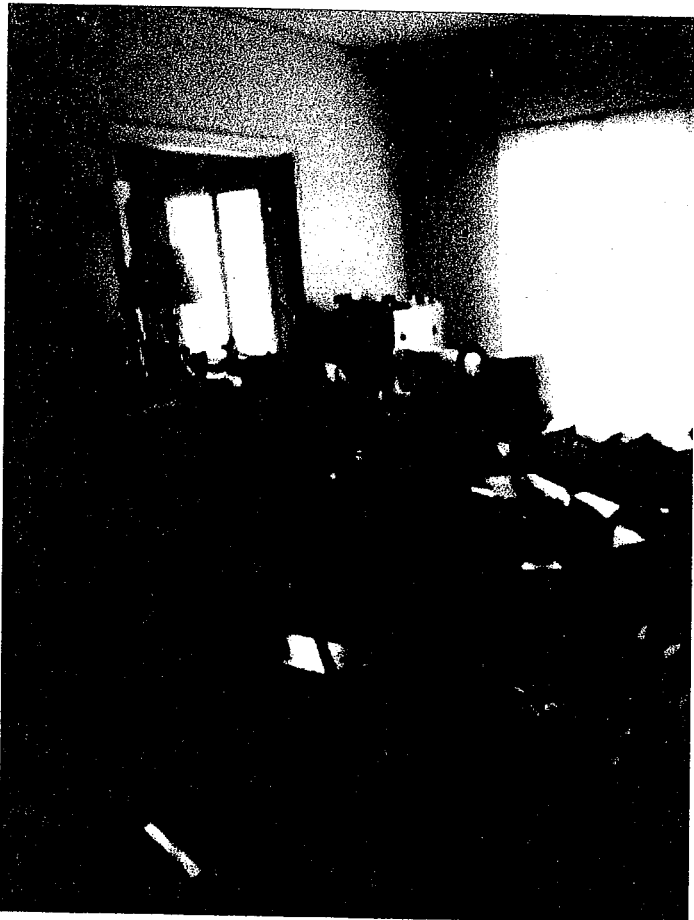


5/20/14

7/15/15



7/15/15



000042 ATTACHMENT "B"

11/25/10



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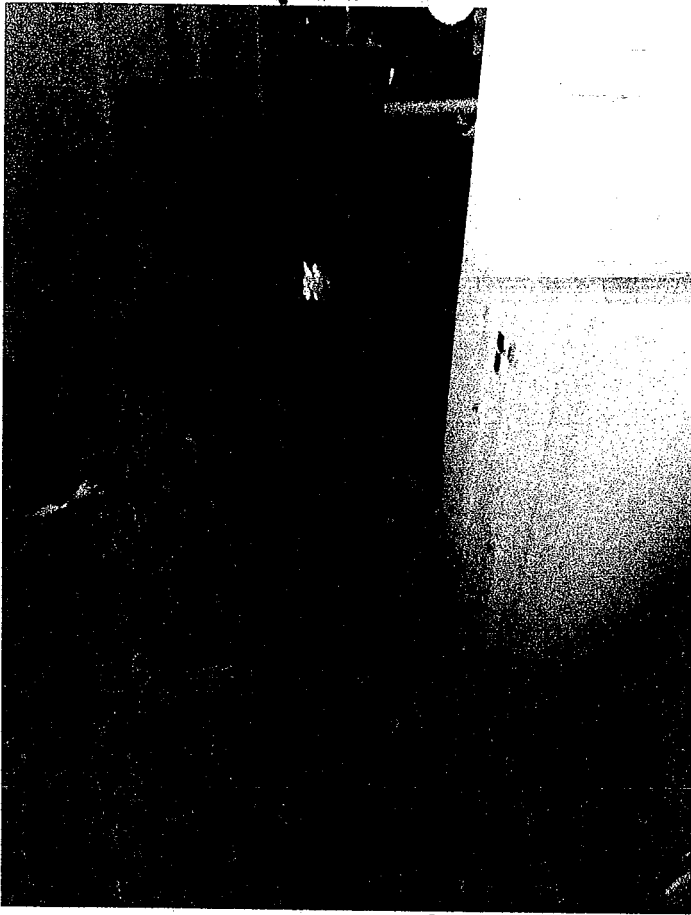
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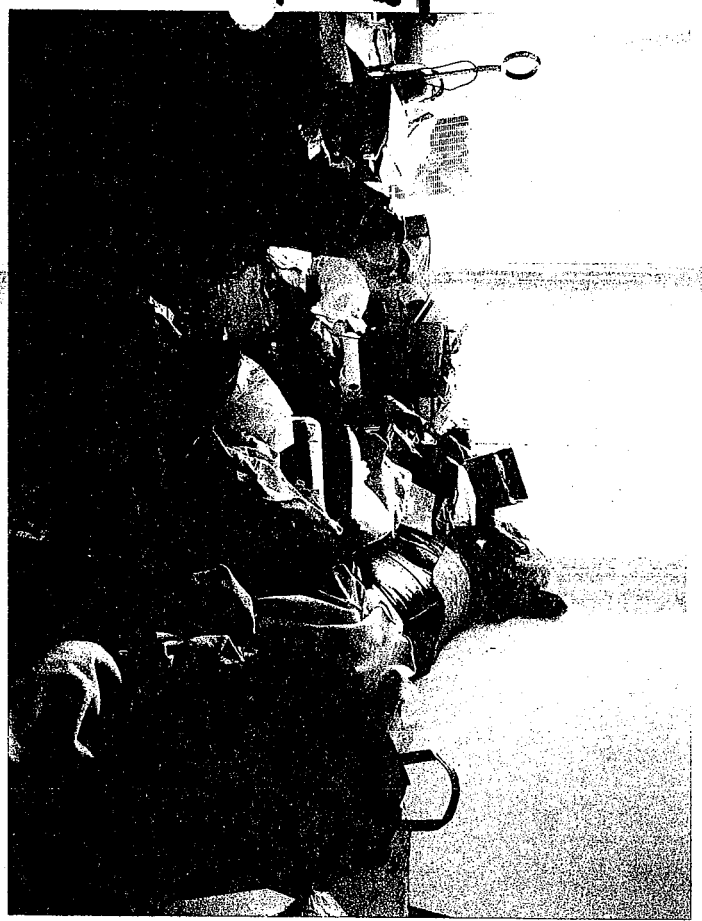


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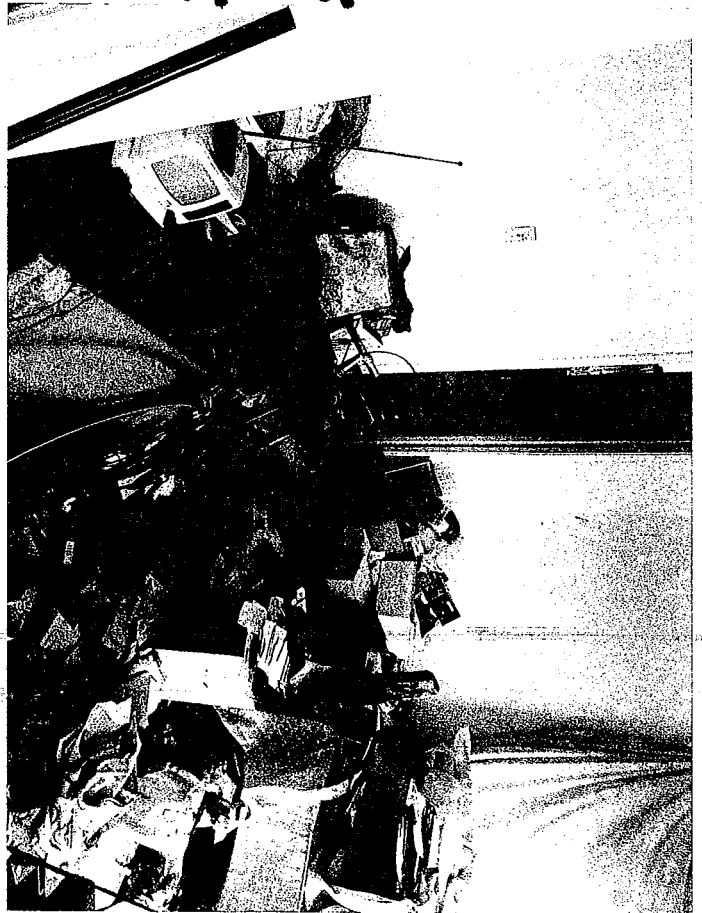
ATTACHMENT "A"



8/26/15



8/26/15



000045

ATTACHMENT "E"

T16-0076 RC/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 FEB -5 PM 4:41</p>
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Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed.

TENANT PETITION

Please print legibly

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

Number of units on the property: 4

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

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

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

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

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

When did the owner first provide you with a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program (RAP NOTICE)? Date: 7/29/14. If never provided, enter "Never."

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

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

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

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

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

III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:

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

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

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

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

IV. VERIFICATION: The tenant must sign:

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

Mary E. Lee
Tenant's Signature

Feb. 5, 2016
Date

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

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

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

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

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

Tenant's Signature

Date

VI. IMPORTANT INFORMATION:

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

File Review

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

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

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

2016 FEB 5 PM 1:41

- 1) **No working oven** since June 25th, 2014.
PG&E – 2 workers working on smart meter turned off my gas to oven. Came into re-light and could not re-light, as a result gave hazard notice. When Bruce G. Millar (in upstairs apartment overheard this and misunderstanding believed that I had called PG&E, he told me to move or we will fight this out in court.) When I filed claim form with PG&E to have my oven re-light, they learned I was not owner and told me to turn over to owner with hazard notice. I was not aware that I needed to make a copy, since, owner never re-light, but continue to make nuisance complaints of not having an immaculate apartment for re-lighting the oven.
 - a) September 28, 2014- Bruce G. Millar came in apartment, while I was not home, and turned off pilot light to top burners. I did not know until I was ready to steam marinated salmon for cooking. I, then called Bruce G. Millar 3 times, without success of a return phone call. I then called PG&E, whom came out and took off the nut to the gas line and wrote hazard notice for owner to replace with a new stove. To date, I do not have use of a stove.
 - b) January 19th, 2016 – Adult Protective Services came and inspected my apartment and says it is uninhabitable.
- 2) There's **black grease leaking out** of silver metal pipe leading from the stove to the outside.
- 3) There's grease on walls in the kitchen over the stove-never a paint job since 1974.
- 4) The kitchen floor is not cleanable; it has become paste upon mopping.
 - a) There was a leak in the kitchen sink pipe that Bruce G. Millar refused to fix until I called City of Oakland's Code & Compliance. January 6, 2016.
- 5) There are Black Widow spiders, spiders and a huge ant infestation, all in the kitchen, bathroom, and living room.
- 6) There's missing knobs on cabinet doors, the wood on cabinet drawers are chipping saw dust, rotten away and spitted up and cracked. There's grout that has chipped away on the kitchen since having me worried the sink may drop.
- 7) There's rotten wood windows that won't close well in the dining room and bedroom that he has know of before he bought this building.
- 8) There is chipping and peeling paint in the living room, occupying a fourth of the living room and also in the opposite side of the room. The owner had come in while he suing me for eviction and had someone scrapped the paint onto my clothing on my couch and on the floors without clean up.
- 9) The hall wall has brown walls from steam and dust.
- 10) The bathroom has a rotten vanity and it is unlevelled, consequently I have had to keep 2 sponges on the edge continuously in order for water not to drain onto my neighbor's garage. Bruce G. Millar was going to cite me for these sponges as a clause in his eviction points, until he realized why they were there.
- 11) There is chipped paint and walls are brown from steam and dust in the bathroom.
- 12) The hot water heater does not give enough hot water to complete a short shower.
- 13) These are among some of the items of concern and not just limited to these.

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

For filing stamp.

RECEIVED

MAR 17 2016

**RENT ADJUSTMENT PROGRAM
OAKLAND**

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

CASE NUMBER T 16-0096

OWNER RESPONSE

Please print legibly.

Your Name <u>Bruce G. Millar</u>	Complete Address (with zip code) <u>P.O. BOX 11165 Oakland, CA 94611</u>	Phone: <u>425-855-0419</u> Email: _____
Your Representative's Name (if any) <u>self</u>	Complete Address (with zip code)	Phone: _____ Fax: _____ Email: _____
Tenant(s) name(s) <u>Mary Lee</u>	Complete Address (with zip code) <u>848 Erie St. #2 Oakland, CA 94611</u>	

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

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

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

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

I. RENTAL HISTORY

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

The tenant's initial rent including all services provided was \$ 215 / month.

Have you (or a previous Owner) given the City of Oakland's form entitled **NOTICE TO TENANTS OF RESIDENTIAL RENT ADJUSTMENT PROGRAM ("RAP Notice")** to all of the petitioning tenants?
Yes No I don't know If yes, on what date was the Notice first given? 4/02/14

Is the tenant current on the rent? Yes No

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

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

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

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

II. JUSTIFICATION FOR RENT INCREASE

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

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

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

III. DECREASED HOUSING SERVICES

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

IV. EXEMPTION

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

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

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

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

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

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

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

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

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

V. IMPORTANT INFORMATION

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

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

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

VI. VERIFICATION

Owner must sign here:

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

Bruce G. Mellor
Owner's Signature

3/24/10
Date

VII. MEDIATION AVAILABLE

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

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

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

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

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

Owner's Signature

Date

March 9, 2016

RECEIVED

MAR 17 2016

OAKLAND RENT ADJUSTMENT

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

To Whom It May Concern,

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

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

000054

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

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

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

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

Sincerely,



Bruce G. Millar

Enclosure: Letters
Legal documents
Photos