

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

June 21, 2018

7:00 p.m.

**CITY HALL, HEARING ROOM #1
ONE FRANK H. OGAWA PLAZA
OAKLAND, CA**

AGENDA

1. CALL TO ORDER
2. ROLL CALL
3. OPEN FORUM
4. NEW BUSINESS
 - A. Appeal Hearing in cases:
 - a. E17-0002; Husain v. Tenant
E17-0003; Husain v. Tenant
 - b. T17-0082; Holman v. Eastshore Properties
 - c. T17-0221; Kaufman v. Nguyen
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, Cantones, Mandarín o de lenguaje de señas (ASL) por favor envíe un correo electrónico a sshannon@oaklandnet.com o llame al (510) 238-3715 o 711 por lo menos cinco días hábiles antes de la reunión. Se le pide de favor que no use perfumes a esta reunión como cortesía para los que tienen sensibilidad a los productos químicos. Gracias.

會場有適合輪椅出入設施。需要殘障輔助設施, 手語, 西班牙語, 粵語或國語翻譯服務, 請在會議前五個工作天電郵 sshannon@oaklandnet.com 或致電 (510) 238-3715 或

2018 JUN 13 PM 3:51

FILED
OFFICE OF THE CLERK
OAKLAND, CALIF.

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。
谢谢。

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

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

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

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

CHRONOLOGICAL CASE REPORT

Case Nos.: E17-0002/ E17-0003
Case Name: Husain v. Tenant
Property Address: 332 Lenox Avenue, Units 3 & 6, Oakland, CA
Parties: Amelia R. Bunch (Tenant, Unit #6)
John Sargentini (Tenant, Unit #3)
Urfana Husain (Property Owner)

OWNER APPEAL:

| <u>Activity</u> | <u>Date</u> |
|-------------------------|------------------|
| Owner Petitions filed | February 6, 2017 |
| Tenant Response filed | --- |
| Hearing Decision issued | June 20, 2017 |
| Owner Appeal filed | July 12, 2017 |

E17-0002 KM/SK

RECEIVED
CITY OF OAKLAND
RENT ARBITRATION PROGRAM

| | |
|--|---|
| CITY OF OAKLAND RENT ADJUSTMENT PROGRAM 250 Frank H. Ogawa Plaza, Suite 5313 Oakland, CA. 94612 (510) 238-3721 Phone (510) 238-3691 Fax | For date started 2017 FEB -6 PM 3:18 LANDLORD PETITION TO EXTEND TIME FOR TENANT VACANCY TO MAKE REPAIRS |
|--|---|

Please Fill Out This Form Completely. If you need more space, you may attach additional pages. Failure to provide needed information may result in your response being rejected or delayed.

| | | |
|---|---|---|
| Your Name Urfana Husain as attorney in fact for Munawar Husain, General Partner of United Group, a General Partnership | Mailing Address (with zip code) 332 Lenox Avenue, #8 Oakland, California 94610 | Telephone Day: 510- 256-9801 ^{207-8579 44} Evening: 510- 256-9801 ^{SAME 44} |
| Your Representative's Name Alana Grice Conner Fried & Williams LLP | Mailing Address (with zip code) 1901 Harrison Street, 14th Floor Oakland, CA 94612 | Telephone Day: 510-625-0100 Evening: 510-625-0100 |
| Tenant(s) names (s) John Sargentini | Address of unit being repaired (with zip code) 332 Lenox Avenue, #3 Oakland, California 94610 | Telephone Day: Evening: 415-601-6840 |
| Tenant(s) names (s) John Sargentini | <u>Current Address (if known)</u> (with zip code) | Telephone Day: Evening: |

Date of Termination notice to tenant: Tenants displaced due to accidental fire – please see attached explanation

I (We) will need to extend the time to complete repairs to the following date: December 31, 2017

Reason for delay in completing repairs:

Please attach a separate sheet with a full explanation of reason for delay.

Verification

Each petitioner must sign this Section:

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

Urfana Husain
 Landlord's Signature
 By Urfana Husain as attorney in fact for
 Munawar Husain, General Partner of United Group, a General Partnership

February 6, 2017
Date

000004

2017 FEB -6 PM 3:18

Attachment to Landlord Petition to Extend Time for Tenant Vacancy to Make Repairs

An accidental, electrical fire occurred in May 2016. The source of the fire was determined to be in a wall of the basement/storage room by the Oakland Fire Department. The multi-unit building has balloon framing, as a result, during the fire, hot steam and heavy smoke shot up the walls throughout the building. The main electrical meter is located in the basement/storage room. Electricity and gas have been shut off to the entire building until all areas affected by smoke and heat have been checked, and if necessary, repaired for safety. The plumbing system will also be inspected and repaired, if necessary.

The scope of work remains unclear because the landlord and insurance company are engaged in ongoing discussions about coverage. In the testing so far authorized by the insurance company, the back three units (#2, #4 and #6) from the ground to the roof attic spaces show evidence of smoke damage. During the fire, smoke was also billowing out of the roof eaves, so the roof system of the whole house has been affected. Evidence of smoke was found in the front attic space - an area furthest away from the fire. The back three units' walls and floors will be opened to check and correct/repair all affected electric, plumbing, and gas line systems throughout these units and common areas. Depending on what further testing, pending our insurance company's authorization, reveals, this work may need to be done in the walls of the front three units as well.

More testing is pending on the remaining front three units (#1, #3 and #5). Heavy smoke was present throughout the building and hallways and there may be damage in the front three units (#1, #3 and #5) as well.

The central heat system, which is a forced air boiler with ducting and intake/outtake vents throughout the building, was on during the fire and may need to be replaced and repaired throughout the building. Thus, there will be no heat to the building until all other repairs are complete.

In #7 the fire caused extensive structural damage with damage to weight-bearing joists, wall studs, and wall contents. The fire caused damage to the floors in the units above.

In #6 there is an active presence of charred material and evidence of smoke residue in the bedroom closet. The walls and floors in the bedroom of #6 were intensely hot. These areas will have to be demolished to check and repair the heat and smoke damage, as well as ensure the electric, plumbing, and gas systems are repaired and safe.

In #3 there was smoke present, especially the back kitchen area closest to the common hallways there was a heavy presence of smoke. These areas will be tested with further environmental testing to determine if these walls are affected. There will be extensive repairs in this unit to the walls and windows due to cracks in the lath and plaster.

The contractor and city inspectors have said that the gas system will be the last to be turned back in an extensive construction situation like this. Once the repairs to the building are complete all systems including gas will be restored to the building. Without gas, there will be no heating or hot water.

Three of the tenants filed Case Nos. T16-0387, T16-0399 and T16-0424. These matters were consolidated and a hearing decision issued on January 9, 2017. The hearing officer denied the petitions but required the Landlord to file this petition for an extension of time to complete repairs under threat of issuing an administrative citation. This petition is filed to comply with that decision.

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E17-0003 KM/SK

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RENT ARBITRATION PROGRAM

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| | |
|--|--|
| CITY OF OAKLAND RENT ADJUSTMENT PROGRAM 250 Frank H. Ogawa Plaza, Suite 5313 Oakland, CA. 94612 (510) 238-3721 Phone (510) 238-3691 Fax | For date stamp LANDLORD PETITION TO EXTEND TIME FOR TENANT VACANCY TO MAKE REPAIRS |
|--|--|

Please Fill Out This Form Completely. If you need more space, you may attach additional pages. Failure to provide needed information may result in your response being rejected or delayed.

| | | |
|---|---|--|
| Your Name Urfana Husain as attorney in fact for Munawar Husain, General Partner of United Group, a General Partnership | Mailing Address (with zip code) 332 Lenox Avenue, #8 Oakland, California 94610 | Telephone 207-8579 Day: 510-256-9801 Evening: 510-256-9801 SAME MH |
| Your Representative's Name Alana Grice Conner Fried & Williams LLP | Mailing Address (with zip code) 1901 Harrison Street, 14th Floor Oakland, CA 94612 | Telephone Day: 510-625-0100 Evening: 510-625-0100 |
| Tenant(s) names (s) Amelia R. Bunch | Address of unit being repaired (with zip code) 332 Lenox Avenue, #6 Oakland, California 94610 | Telephone Day: Evening: 503-267-8973 |
| Tenant(s) names (s) Amelia R. Bunch | <u>Current Address (if known)</u> (with zip code) 3310 Liberty Avenue Alameda, California 94501 | Telephone Day: Evening: |

Date of Termination notice to tenant: Tenants displaced due to accidental fire – please see attached explanation

I (We) will need to extend the time to complete repairs to the following date: December 31, 2017

Reason for delay in completing repairs:

Please attach a separate sheet with a full explanation of reason for delay.

Verification

Each petitioner must sign this Section:

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

M Husain

Landlord's Signature

By Urfana Husain as attorney in fact for

Munawar Husain, General Partner of United Group, a General Partnership

February 6, 2017

Date

000006

2017 FEB -6 PM 3: 17

Attachment to Landlord Petition to Extend Time for Tenant Vacancy to Make Repairs

An accidental, electrical fire occurred in May 2016. The source of the fire was determined to be in a wall of the basement/storage room by the Oakland Fire Department. The multi-unit building has balloon framing, as a result, during the fire, hot steam and heavy smoke shot up the walls throughout the building. The main electrical meter is located in the basement/storage room. Electricity and gas have been shut off to the entire building until all areas affected by smoke and heat have been checked, and if necessary, repaired for safety. The plumbing system will also be inspected and repaired, if necessary.

The scope of work remains unclear because the landlord and insurance company are engaged in ongoing discussions about coverage. In the testing so far authorized by the insurance company, the back three units (#2, #4 and #6) from the ground to the roof attic spaces show evidence of smoke damage. During the fire, smoke was also billowing out of the roof eaves, so the roof system of the whole house has been affected. Evidence of smoke was found in the front attic space - an area furthest away from the fire. The back three units' walls and floors will be opened to check and correct/repair all affected electric, plumbing, and gas line systems throughout these units and common areas. Depending on what further testing, pending our insurance company's authorization, reveals, this work may need to be done in the walls of the front three units as well.

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In #6 there is an active presence of charred material and evidence of smoke residue in the bedroom closet. The walls and floors in the bedroom of #6 were intensely hot. These areas will have to be demolished to check and repair the heat and smoke damage, as well as ensure the electric, plumbing, and gas systems are repaired and safe.

In #3 there was smoke present, especially the back kitchen area closest to the common hallways there was a heavy presence of smoke. These areas will be tested with further environmental testing to determine if these walls are affected. There will be extensive repairs in this unit to the walls and windows due to cracks in the lath and plaster.

The contractor and city inspectors have said that the gas system will be the last to be turned back in an extensive construction situation like this. Once the repairs to the building are complete all systems including gas will be restored to the building. Without gas, there will be no heating or hot water.

Three of the tenants filed Case Nos. T16-0387, T16-0399 and T16-0424. These matters were consolidated and a hearing decision issued on January 9, 2017. The hearing officer denied the petitions but required the Landlord to file this petition for an extension of time to complete repairs under threat of issuing an administrative citation. This petition is filed to comply with that decision.

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2017 JUL 21 AM 10:35

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

CITY OF OAKLAND

Community and Economic Development Agency
Rent Adjustment Program

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

HEARING DECISION

CASE NUMBERS: E17-0002 & E17-0003, Husain v. Tenant
PROPERTY ADDRESS: 332 Lenox Ave., #3 & #6, Oakland, CA
DATE OF HEARING: May 2, 2017
DATE OF DECISION: June 20, 2017
APPEARANCES: Urfana Husain (Owner)
Sairah Husain (Witness for Owner)
Alana Grice Conner (Attorney for Owner)

SUMMARY OF DECISION

The owner's petition is denied.

CONTENTIONS OF THE PARTIES

On February 6, 2017, the owner filed petitions pursuant to Oakland Municipal Code (O.M.C.) Section 8.22.360(A)(10) which alleges that she will need to extend time to complete repairs to the subject unit until December 31, 2017.

THE ISSUE

Is there a valid reason to allow the owner additional time to complete repairs to the subject units?

EVIDENCE

At the Hearing, the owner and her witness testified that there was a fire in the subject apartment building in May 2016. The owners consulted with a building contractor soon thereafter, and were informed that it would take more than 3 months to repair the building. As a result of the fire, there was no gas or electric service for the building. The owner did not serve any tenants

with a notice to vacate their units. However, all tenants eventually moved out, and the building was vacant as of September or October 2016.

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In August 2016, three tenants filed petitions with the Rent Adjustment Program, claiming decreased housing services. In their petitions, the tenants alleged that they had to leave their rental units; they were not given relocation compensation; they were not given assurance that they could return to their units once necessary work was completed; and they asked that repairs be completed in a timely manner in accordance with the law.

A Hearing Decision in the consolidated cases was issued on January 9, 2017, which Decision has long since been final. The Decision states that temporary displacement of tenants due to a fire is not considered a decreased or loss of housing services under the Rent Adjustment Ordinance, and denied the tenants' petitions. However, the Order states: "A Notice of Intent to Issue Administrative Citation is hereby being issued to the owner for non-compliance with O.M.C. Section 8.22.360A(10)(a) due to failure to apply for extension of time to complete repairs when the repairs exceeded a three-month period."

At the Hearing in the present case, the owner and her witness testified that they filed the subject petitions in response to the prior Hearing Decision quoted above. They further testified that soon after the fire, they were told by both an insurance adjuster and a building contractor that the necessary repairs would take more than 3 months: "3-6 months, roughly." The City of Oakland has never issued a Notice to Vacate or Notice of Violation for the subject building, and tenants in 2 of the units in the building still have possessions in their units.

The owner contends that, since she never issued a Notice to Terminate Tenancy to any tenant, the provisions of the "Just Cause for Eviction" were never triggered. Therefore, the owner has not unreasonably delayed making repairs or filing for an extension of time within which to make repairs.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

O.M.C. Section 8.22.360(A)(10) – a subsection of the "Just Cause for Eviction" Ordinance – states that one ground for evicting a tenant is when:

The Owner of record, after having obtained all necessary permits from the City of Oakland on or before the date upon which notice to vacate is given, seeks in good faith to undertake substantial repairs that cannot be completed while the unit is occupied . . .

The tenant shall not be required to vacate in excess of three months; provided, however, that such time period may be extended by the Rent Board upon application by the landlord. . .

The above-cited Ordinance envisions granting a reasonable extension of time beyond the usual 90 days for cases involving extensive repairs or common delays that are experienced in

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construction projects. Although such a delay may well impose additional hardship and inconvenience for displaced tenants, reasonable discretion is allowed in unusual circumstances.


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Under the circumstance of this case, the owner should have promptly issued notices for tenants to vacate their units in order to make repairs. The tenants had no PG&E service – certainly a necessary element of modern living – and they were therefore constructively evicted. The fact that the tenants moved out voluntarily – rather than in response to notices that the owners were legally required to give – may not be used as a shield by the owner to evade the requirements of the law. The owner’s petitions are therefore denied.

ORDER

1. Petitions E17-0002 & E17-0003 are 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 20, 2017



Stephen Kasdin
Hearing Officer
Rent Adjustment Program

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PROOF OF SERVICE

Case Number E17-0002

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

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

Tenant

John Sargentini
332 Lenox Ave #3
Oakland, CA 94610

Owner

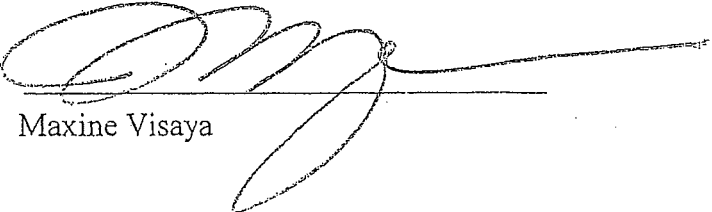
Munawar Husain
332 Lenox Ave #8
Oakland, CA 94610

Owner Representative

Fried & Williams LLP/Alana Grice Conner
1901 Harrison St 14th Flr.
Oakland, CA 94610

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on June 22, 2017 in Oakland, CA.


Maxine Visaya

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PROOF OF SERVICE

Case Number E17-0003

RECEIVED
CITY OF OAKLAND
RENT ARBITRATION PROGRAM
2017 JUL 21 AM 10:35

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

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

Tenants

Amelia R. Bunch
3310 Liberty Ave
Alameda, CA 94501

Amelia R. Bunch
332 Lenox Ave #6
Oakland, CA 94610

Owner

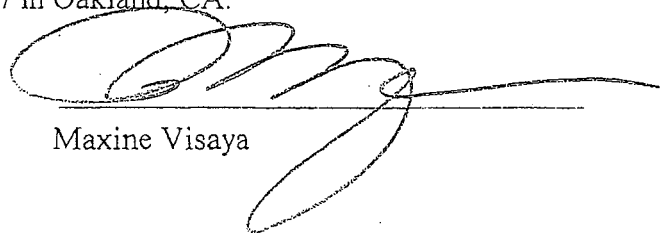
Munawar Husain
332 Lenox Ave #8
Oakland, CA 94610

Owner Representative

Fried & Williams LLP/Alana Grice Conner
1901 Harrison St 14th Flr.
Oakland, CA 94612

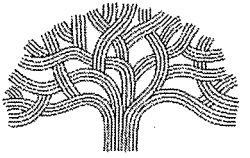
I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on June 22, 2017 in Oakland, CA.



Maxine Visaya

000012

| | | |
|--|--|----------------------|
|  CITY OF OAKLAND | CITY OF OAKLAND RENT ADJUSTMENT PROGRAM P.O. Box 70243 Oakland, CA 94612-0243 (510) 238-3721 | 2017 JUL 12 PM 3:39 |
| | | <u>APPEAL</u> |

| | | | |
|--|--|--|----------------------------------|
| Appellant's Name Urfana Husain | | <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant | |
| Property Address (Include Unit Number) 332 Lenox Avenue #3 & #6 Oakland, CA | | | |
| Appellant's Mailing Address (For receipt of notices) 332 Lenox Avenue Avenue #8 Oakland, CA 94610 | | Case Number E17-0002/E17-0003 | Date of Decision appealed |
| Name of Representative (if any) Alana Grice Conner Fried & Williams LLP | | Representative's Mailing Address (For notices) 1901 Harrison Street, 14th Floor Oakland, CA 94612 | |

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

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

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

2017 JUL 12 PM 3:39


- 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: 4

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 12, 2017, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

| | |
|------------------------|---------------------|
| <u>Name</u> | Amelia Bunch |
| <u>Address</u> | 3310 Liberty Avenue |
| <u>City, State Zip</u> | Alameda, CA 94501 |
| <u>Name</u> | Amelia Bunch |
| <u>Address</u> | 332 Lenox Ave #6 |
| <u>City, State Zip</u> | Oakland, CA 94610 |

| | |
|---|------------|
|  | 12 July 17 |
| SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE | DATE |

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

2017 JUL 12 PM 3: 39


- 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: 0.

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

| | |
|------------------------|---------------------|
| <u>Name</u> | John Sargentini |
| <u>Address</u> | 332 Lenox Avenue #3 |
| <u>City, State Zip</u> | Oakland, CA 94610 |
| <u>Name</u> | |
| <u>Address</u> | |
| <u>City, State Zip</u> | |

| | |
|---|--------------|
|  | 12 July 2017 |
| SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE | DATE |

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

2017 JUL 21 AM 10:34

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

4 Attorneys for Owner
Urfana Husain

6 CITY OF OAKLAND
7 RENT ADJUSTMENT PROGRAM

8 Urfana Husain,

9 Petitioner/Owner

10 v.

11 Tenant,

12 Respondent/Tenant

CASE NO.: E17-0002, E17-0003

**OWNER'S APPEAL FROM HEARING
DECISION**

Decision Date: June 20, 2017
Heading Date: May 2, 2017
Time: 10:00 A.M.
Suite: 5313

14
15 Urfana Husain appeals the decision issued June 20, 2017 in the case E17-0002 & E17-
16 0003, Husain v. Tenant on the following grounds:

17 1) The conclusion that "Under the circumstance of this case, the owner should have
18 promptly issued notices for tenants to vacate their units in order to make repairs" is inconsistent
19 with the Oakland Municipal Code ("O.M.C.") in effect at the time of the fire.

20 2) The owner petitioned for increased time to conduct repairs because the rent board
21 ordered her to do so and threatened to issue an administrative citation if Owner did not.

22 3) The factual finding that tenants were constructively evicted is improper as it was
23 outside the scope of issue of the decision and such language could trigger liability for the Owner.

24 1) In the Findings of Fact and Conclusions of Law section, the decision dated June 20, 2017
25 concluded that "Under the circumstances of this case, the owner should have promptly issued
26 notices for tenants to vacate their units in order to make repairs." (Please see Hearing Decision
27 attached hereto as **Exhibit A**) However, it is not clear that O.M.C. § 8.22.360(A)(10) required
28 the owner to issue a notice to vacate or that the owner met the requirements of that provision. In

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1 particular, O.M.C. § 8.22.360(A)(10) requires that the owner obtains "all necessary permits from
2 the City of Oakland on or before which notice to vacate is given" and completes substantial
3 repairs which "are necessary to bring the property into compliance with applicable codes and
4 laws."

5 As noted by the decision dated June 20, 2017, "The City of Oakland never issued Notice
6 to Vacate or Notice of Violation for the subject building." In light of O.M.C. §
7 8.22.360(A)(10)(c)'s use of the phrase "notice terminating tenancy" rather than "notice to
8 vacate" as used in O.M.C. § 8.22.360(A)(10), the Owner was not clear that the statute was
9 applicable to her situation. To interpret what the statute meant by its "notice to vacate"
10 prerequisite and its requirement that the owner be completing repairs which "are necessary to
11 bring the property into compliance with applicable codes and laws," the Owner turned to the
12 Relocation Ordinance in effect at the time of the fire. This seemed like a logical source of
13 comparison as the relocation provisions reference similar situations where the unit needs to be
14 vacated to conduct substantial repairs and O.M.C. § 8.22.360(A)(10)(c) requires the owner, when
15 issuing a notice terminating tenancy, to provide a "statement informing tenants as to their right to
16 payment under the Oakland Relocation Ordinance."

16 The Relocation Ordinance at the time of the fire has since been amended and thus is not
17 the same version which is applicable today. Under the O.M.C. version in effect at the time, the
18 relocation provision found in § 15.60.040(A) provided that a tenant is eligible for relocation
19 payments from a property owner if the tenant household is displaced from its rental unit due to
20 the city's code enforcement activities. A tenant household is "deemed to be displaced from its
21 rental unit due to code enforcement activities if such household either: (1) Receives a notice from
22 the property owner requiring the household to vacate or quit the rental unit or room at any time
23 after the city or a court has issued a notice to vacate, notice to abate life-threatening condition, or
24 declaration of substandard covering that unit or room; or (2) vacates its unit or room...after (a)
25 the city or court has issued by a notice to vacate, notice to abate life-threatening condition, or
26 declaration of substandard covering that unit or room, and (b) the abatement period has expired
27 without correction of the noncomplying condition."

27 In addition, in Subsection (B) of O.M.C. § 15.60.040 it states that "notwithstanding the
28 above, a tenant household shall not be deemed to be displaced due to code enforcement activities
in any of the following cases...(7) The tenant household is required to vacate the unit or room

1 due solely to damage resulting from an earthquake, fire, flood, natural disaster, civil disturbance,
2 or accident outside the control of the property owner, if (a) the vacation is required within 10-34
3 months of such event, and (b) the property owner can demonstrate that such damage was not
4 caused by the acts or the negligence of the property owner or by a preexisting condition in the
5 building in violation of applicable building, housing, fire, or other health and safety code.”

6 Thus, under the O.M.C. in effect at the time of the fire, a notice to vacate, notice to abate
7 life-threatening condition, or declaration of substandard issued by the City of Oakland was
8 required in order to be eligible for relocation payments. O.M.C. § 15.60.040(B)(7) also explicitly
9 deemed a household to “not be deemed displaced due to code enforcement activities” in
10 circumstances where a fire, outside the control of the property owner, is the main reason the
11 tenant is displaced.

12 In light of O.M.C. § 15.60.040(A)’s undefined requirement of a notice to vacate, O.M.C.
13 § 8.22.360(A)(10)(c)’s use of “notice terminating tenancy” rather than “notice to vacate”, and the
14 relocation ordinance’s requirement of a notice to vacate which is specifically issued by the City
15 of Oakland, to the reasonable observer it would seem most likely that O.M.C. § 15.60.040(A)’s
16 notice to vacate prerequisite is referring to a notice to vacate issued by the City of Oakland.

17 Also, it is not clear that the owner could claim that she was completing repairs which “are
18 necessary to bring the property into compliance with applicable codes and laws.” The City
19 declined to issue a Notice of Violation or any code citations, the Fire Department determined the
20 fire to be accidental, and O.M.C. § 15.60.040(B)(7) explicitly stated that “a tenant household
21 shall not be deemed to be displaced” in the case of an accidental fire.

22 The plain language of the statute, the particular facts of this case, and the comparable
23 protections for similar situations in the relocation ordinance make the conclusion in the decision
24 that the property owner should have issued a notice to vacate inconsistent with the O.M.C. in
25 effect at the time of the fire.

26 2) Three of the displaced tenants filed a petition with the Rent Board claiming a decrease in
27 housing services. The hearing officer, Linda Muroz, issued a decision which stated that the
28 temporary displacement of the tenants due to a fire does not warrant a rent decrease nor is it a
loss of services. (Please see consolidated hearing decision dated January 9, 2017 T-16-0387,
T16-0399 & T16-0424 attached hereto as **Exhibit B**). Ms. Muroz continued in her decision

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1 stating that Oakland's Relocation Ordinance applied to the situation but then ordered a Notice of
2 Intent to Issue Administrative Citation because the Owner failed "to apply for extension of time
3 to complete repairs when the repairs exceeded a three-month period. The Owner felt like she had
4 no other choice but to file a petition for increased time for repairs. It was her belief that O.M.C. §
5 8.22.360(A)(10) was not applicable to her circumstances. As previously discussed, the plain
6 language of O.M.C. § 8.22.360(A)(10) required her to obtain "all necessary permits from the City
7 of Oakland on or before which notice to vacate is given." No notice to terminate was ever served
8 and the City of Oakland never issued a Notice to Vacate.

9 Given the ambiguity of O.M.C. § 8.22.360(A)(10), she compared its prerequisites and
10 requirements with the relocation ordinances referenced by O.M.C. § 8.22.360(A)(10)(c). As
11 previously mentioned, O.M.C. § 15.60.040(B)(7)'s explicit determination that a tenant household
12 is deemed to not have been displaced in the case of an accidental fire and O.M.C. §
13 15.60.040(A)'s requirement of a notice to vacate which is specifically issued by the City of
14 Oakland led her to reasonably conclude that O.M.C. § 8.22.360(A)(10) was indeed inapplicable.
15 When she received notice of the City's intent to issue an Administrative Citation but still needed
16 more time to complete adequate and thorough repairs, she felt like she had no other choice but to
17 file this petition.

18 3) In the Findings of Fact and Conclusions of Law section, the decision concluded that
19 "The tenants had no PG&E service – certainly a necessary element of modern living – and they
20 were therefore constructively evicted." This conclusion is improper given the scope of the issue
21 being decided and the nature of the circumstances. This conclusion by Stephen Kasdin was well
22 beyond the scope of the petition and the Rent Board's jurisdiction. The issue being considered
23 was only whether the landlord should be given additional time to complete repairs to the
24 building. In denying the petition, the answer is clearly no, but a determination of whether the
25 tenants were evicted, constructively or otherwise, is outside the scope of the inquiry presented.
26 The rent board does not have jurisdiction to make this kind of ruling. The purpose of the rent
27 regulation ordinance does not include making determinations regarding evictions. The scope is
28 narrowly defined in O.M.C. 8.22.010C, which is attached hereto as **Exhibit C**.

This petition arises from a good faith attempt to comply with a previous rent board
decision. Neither the Oakland Relocation Ordinance nor the "Just Cause" Ordinance applied to
this specific circumstance. Despite this fact, even if it is determined that O.M.C. §

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8.22.360(A)(10) was triggered somehow, the use of the term “constructively evicted” is improper and should be stricken because it is outside of the rent board’s jurisdiction and, in the interest of due process, the decision should limit its holding to the specific issue as defined by the petition.

Date: July 21, 2017

Fried & Williams LLP



By: Alana Grice Conner
Attorney for Owner
Urfana Husain

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2017 APR 21 PM 4:00

HARBRO Har-Bro of Northern California Inc.

332LENOXAVE

GENERAL ITEMS

| DESCRIPTION | QTY | REMOVE | REPLACE | TAX | O&P | TOTAL |
|-------------------------------------|----------|--------|---------|------|--------|----------|
| 1. Project Management - per hour | 16.00 HR | 0.00 | 71.04 | 0.00 | 227.32 | 1,363.96 |
| 2. Taxes, insurance, permits & fees | 1.00 EA | 0.00 | 757.55 | 0.00 | 151.52 | 909.07 |
| Plumbing and Electrical permits | | | | | | |
| Totals: GENERAL ITEMS | | | | 0.00 | 378.84 | 2,273.03 |

| DESCRIPTION | QTY | REMOVE | REPLACE | TAX | O&P | TOTAL |
|---|----------|--------|---------|------|----------|----------|
| 3. Delivery charge | 2.00 EA | 0.00 | 135.00 | 0.00 | 54.00 | 324.00 |
| 4. Hazardous Waste - Supervisory - per hour | 6.00 HR | 0.00 | 94.48 | 0.00 | 113.38 | 680.26 |
| 5. Hazardous Waste Technician - per hour | 18.00 HR | 0.00 | 82.14 | 0.00 | 295.70 | 1,774.22 |
| 6. Plumber - per hour | 10.00 HR | 0.00 | 150.40 | 0.00 | 300.80 | 1,804.80 |
| 7. Electrician - per hour | 8.00 HR | 0.00 | 113.29 | 0.00 | 181.26 | 1,087.58 |
| 8. Add for HEPA filter (for upright vacuums) | 3.00 EA | 0.00 | 32.53 | 4.70 | 20.46 | 122.75 |
| 9. Negative air fan/Air scrubber (24 hr period) - No monit. | 1.00 DA | 0.00 | 75.50 | 0.00 | 15.10 | 90.60 |
| Totals: Main Level | | | | 4.70 | 980.70 | 5,884.21 |
| Line Item Totals: 332LENOXAVE | | | | 4.70 | 1,359.54 | 8,157.24 |

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HARBRO Har-Bro of Northern California Inc.

Client: Urfana Hussain
Property: 332 Lenox Ave.
Oakland, CA

Operator: MICHAEL.

Estimator: Michael Caiazza
Business: 23067 Bernhardt St
Hayward, CA 94545

Business: (650) 670-2236

Type of Estimate: Fire
Date Entered: 5/9/2016
Date Assigned:

Price List: CAEB8X_APR16
Labor Efficiency: Restoration/Service/Remodel
Estimate: 332LENOXAVE

Thank you for the opportunity to provide you with this estimate to repair your property. Har-Bro has over 50 years experience in the repair and reconstruction of structures damaged by fire, water, earthquake, motor vehicle impact, collapse or other similar disaster related events.

This estimate has been prepared using an Industry Standard Estimating Software product called Xactimate. Xactimate's format is designed by a 3rd party who has embraced the ways Insurance Companies typically wish estimates to be presented, specifically using unit costs and a final 10% overhead and 10% profit (10&10) at the bottom. This 10&10 may not necessarily reflect HAR-BRO's actual Overhead and Profit. Furthermore, unless specifically denoted as an "allowance", unit costs are not to be construed as allowances whatsoever, rather an amount the contractor has chosen to charge for a certain item and/or services. In addition, the software automatically computes sales tax on the material, which may be stated in the summary section of this estimate. This sales tax is only an approximate amount and may or may not be representative of the actual material tax that Har-Bro actually pays when certain materials are purchased. All applicable sales taxes are paid by contractor at the time of material purchase.

Any material *allowances* in this estimate are inclusive of sales tax.

Pricing in this estimate is based solely on Har-Bro completing the entire scope of work as listed. If owner chooses specific trades be accomplished by others, then Har-Bro reserves the right to revise this estimate accordingly.

Exclusions (Unless specifically included in Estimate):

- Building code or Ordinance upgrades
- Content salvage or restoration
- Engineering or Architectural fees
- Testing and/or removal of any type of hazardous waste
- Prevailing wages
- Any related permits and fees
- Temporary weather protection
- Hidden or unforeseen damage
- Landscaping

This estimate is valid for 30 days, after 30 days, HAR-BRO has the right to accept, reject or revise our proposal.

Thank you for this opportunity and I look forward to working together to restore your property.

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HARBRO Har-Bro of Northern California Inc.

Summary

| | |
|------------------------|------------|
| Line Item Total | 6,793.00 |
| Material Sales Tax | 4.70 |
| Subtotal | 6,797.70 |
| Overhead | 679.77 |
| Profit | 679.77 |
| Replacement Cost Value | \$8,157.24 |
| Net Claim | \$8,157.24 |

Michael Caiazza

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SHARBRO Har-Bro of Northern California Inc.

Recap of Taxes, Overhead and Profit

| | Overhead (10%) | Profit (10%) | Material Sales Tax (10%) | Storage Rental Tax (10%) |
|------------|----------------|--------------|--------------------------|--------------------------|
| Line Items | 679.77 | 679.77 | 4.70 | 0.00 |
| Total | 679.77 | 679.77 | 4.70 | 0.00 |

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HARBRO Har-Bro of Northern California Inc.

Recap by Room

| | | |
|-----------------------|----------|---------|
| Estimate: 332LENOXAVE | | |
| GENERAL ITEMS | 1,894.19 | 27.88% |
| Main Level | 4,898.81 | 72.12% |
| <hr/> | | |
| Subtotal of Areas | 6,793.00 | 100.00% |
| <hr/> | | |
| Total | 6,793.00 | 100.00% |

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HARBRO Har-Bro of Northern California Inc.

Recap by Category

| O&P Items | Total | % |
|--------------------------------|----------|---------|
| ELECTRICAL | 906.32 | 11.11% |
| HAZARDOUS MATERIAL REMEDIATION | 1,027.55 | 12.60% |
| LABOR ONLY | 2,218.49 | 27.20% |
| PLUMBING | 1,336.64 | 13.93% |
| O&P Items Subtotal | 1,504.00 | 18.44% |
| Material Sales Tax | 6,793.00 | 83.28% |
| Overhead | 4.70 | 0.06% |
| Profit | 679.77 | 8.33% |
| Total | 8,157.24 | 100.00% |



Har-Bro Northern California, Inc.

23067 Bernl... Street
Hayward, CA 94545
T: (510) 887-8500 F: (510) 887-8530

Invoice Request

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Page 1 of 1

To: **URFANA HUSSAIN**
332 Lenox Ave. #8
Oakland, CA 94610

2017 APR 21 PM 4:00
Invoice: **10289**

Invoice Date: 08/23/16

Payment Due Upon Receipt

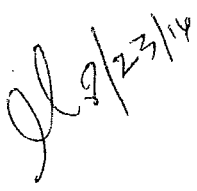
Work Completed by our:
Hayward Regional Office

For Work Completed at:
332 Lenox Ave.
Oakland, CA 94610

by Project Manager: 1373
Michael Caiazza

Contract: **8930-332LENOX**
Stipulated Sum Billing

cc: _____

| Contract Item | Contract Amount | % Complete | Total To Date |
|--|-----------------|------------|--|
| 4 Electrical <i>Per the attached estimate titled "332LENOXAVE-ELE" dated 8/22/2016.</i> T E L E A R  | 4,350.34 | 100.00% | 4,350.34 |
| Please Remit Payment to: Har Bro of Northern California, Inc. 2750 Signal Parkway Signal Hill, CA 90755 Corporate: (562) 528-8000 Fax: (562) 528-8050 | | | Total To Date : 12,507.58 Plus Sales Tax : 0.00 Less Retainage : 0.00 Less Previous Applications : 8,157.24 Total Due This Invoice : \$4,350.34 |

Dear Client,

We appreciate your business and value your opinion. Please visit us at www.harbro.com and click on our survey to let us know how we did.

Thank you for your time and continued trust.

David R. Moll
President
HARBRO, et al.

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August 25, 2016

Kathleen Defever
C/O Greenspan Adjusters
332 Lenox Avenue
Oakland, CA 94610

Re: Poly- Nuclear Aeromatic (PAH) & Fire Char, Soot & Ash
332 Lenox Avenue, Oakland
Benchmark Project #:E16-1028-OPA-FCS
Claim # CHMP 1605002
On Site Technician: Bryan Buller, David Suriaga & Seanae Boyd

**PAH Air Sampling – Favorable
Soot, Char & Ash Surface Residue - Confirmed**

Dear Kathleen Defever,

Thank you for allowing Benchmark to provide professional services for you on the above referenced project. Benchmark Environmental Engineering was retained to conduct a smoke investigation for Fire Char, Soot and Ash and Poly-Nuclear Aromatic (PAH) Hydrocarbons located at 332 Lenox Avenue in Oakland.

Background

The property located at 332 Lenox Avenue in Oakland is a 3 story building, consisting of 6 units that had experienced an electrical fire which originated in the basement. Three units were affected by the fire damage. Benchmark has been requested to conduct soot/smoke testing and PAH sampling and prepare the remediation protocol if needed.

Benchmark Environmental arrived on site to perform air sampling within the affected units for Poly-nuclear Aromatic Hydrocarbons (PAHs) and surface sampling for Combustion By-product (Soot, Char and Ash).

Scope of Services

The following sampling was performed:

- PAH air testing – low volume air vacuum sampling utilizing a MCE pre-filter and glass sorbent tube absorption. The samples were analyzed utilizing a gas chromatograph (GC) Mass Spectrometer in accordance with EPA Method 5506.
- Char, Soot & Ash – Surface samples were collected by utilizing Alcohol saturated wipe media and a 100 cm² target template. The samples are analyzed by Polarized Light Microscopy (PLM), epi-Reflected, Light Microscopy (RLM), Transmission Electron Microscopy (TEM), Energy-dispersive X-

E16-1028-OPA-FCS

Environmental Engineering, Consulting, Testing and Training
Corporate Office: 3732 Charter Park Drive, Ste. A San Jose, CA 95136
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Ray Spectrometry (EDX) and Electron Microscopy - ASTM D3849; ASTM D6602-13 (Mod).
Samples are analyzed to determine the concentration of combustion by-products.

Lab Results

PAH Air Samples:

- The air samples failed to demonstrate any detectable levels of Poly-nuclear Aromatic Hydrocarbons (PAHs) that could be contributed to smoke; this confirms that the building is safe to enter without any special PPE.

Soot, Char & Ash Samples:

- The bulk of the samples demonstrated some level of char and soot; however, the levels detected at the wall surfaces were typically near the level of detection, while the inner wall cavities results typically demonstrated higher levels that were similar to the exemplar sample (source).

Findings

Unit #7 (origin):

- There was heavy fire and smoke damage in the rear portion of the unit at hallway, bathroom and bedroom wall #3¹.
- There was heavy smoke odor throughout the unit.

Unit #1

- There was no perceivable smoke odor.
- There was no staining or discoloration observed throughout the unit.

Unit #2 (above origin)

- There was intermittent slight smoke odor that was perceivable.
- There was slight discoloration on the bedroom walls.
- In the bedroom closet, wall #3 was partially damaged and removed by fire fighters; discoloration was observed in the cavity.
- In the bathroom, wall #4 of the shower and wall #4 was partially damaged and removed by fire fighters; discoloration was observed in the cavity.

Unit #3:

- There was no perceivable smoke odor.
- There was no staining or discoloration observed throughout the unit.
- There was evidence of candle usage.

Unit #4:

- There was intermittent slight smoke odor that was perceivable.
- There was slight discoloration on the bedroom closet walls.
- In the bathroom, the ceiling was partially damaged fire fighters; discoloration was observed in the cavity
- In the kitchen, the ceiling was partially damaged fire fighters; discoloration was observed in the cavity.

Unit #5:

- There was no perceivable smoke odor.

¹ Wall designations: Wall #1-entry wall, #2- left of entry wall, #3- opposite of entry wall, #4- right of entry wall

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- There was no staining or discoloration observed throughout the unit.
- There was evidence of smoking in the unit.

Unit #6

- There was no perceivable smoke odor.
- There was no staining or discoloration observed throughout the bulk of unit.
- There was what appeared to be slight smoke damage at wall #1 & #4 of the bedroom closet.

Attic Space:

- There is discoloration from smoke on the back side of the sheetrock on the skylight chase.
- There is slight discoloration from smoke on the rafters and framing.
- There is slight discoloration from smoke on the backside of the sheetrock ceiling.

Sampling Hypothesis

PAH Air Sampling:

In an effort to determine presence of remaining smoke constituents within the café, a sampling regime was designed to test for the presence of Polynuclear Aromatic Hydrocarbons. Polynuclear aromatic hydrocarbons (PAHs) are a class of compounds consisting of fused aromatic rings in various structural configurations. The chemical properties of a PAH depend on the size and topology of the molecule. PAHs can be formed as products of the incomplete pyrolysis of organic materials and are present in considerable quantities in fossil fuels from which they are released by a variety of combustion processes. The mechanism(s) of formation of PAHs during incomplete combustion of organic material is far from completely understood. It is believed that two distinct reaction steps are involved, pyrolysis and pyrosynthesis. At high temperatures, organic compounds are partially cracked to smaller, unstable molecules (pyrolysis) and energy is released. These fragments, mostly radicals, recombine to yield larger, relatively stable aromatic hydrocarbons (pyrosynthesis) (Lee et al., 1981). High temperatures and open flames are not required, however, for the aromatization of organic matter. The aromatic hydrocarbons of crude oil for example, were formed over millions of years in sediments that are at temperatures between 100 and 150 degrees Celsius.

Sources of environmental PAHs include power plants, domestic heating systems which burn oil, coal or wood for example, gasoline and diesel engines, waste incineration, various industrial activities, and tobacco smoke (Hall and Grover, 1990).

Sample Collection – PAH:

Samples are collected by utilizing a filter and sorbent tube chain; a 37 mm, 2-µm PTFE filter in front of a Xad-2, 100/50 Sorbent tube; Samples were drawn at 2.0 L/min as required by the method (N5506) for a required volume between 200L – 1000L. An on board and calibrated flow Rotometer confirmed the selected flow rate.

The sample chain is submitted together; the sorbent tubes are wrapped in foil (to protect from UV degradation) and the filters are already opaque. The samples are placed in a temperature controlled carrier; the chain of custody is executed dynamically during the process and accompanies the samples cradle-to-report as required by appropriate IH practices. The samples are submitted to the lab (Torrent Laboratories) located in Milpitas, CA. Torrent Laboratories is certified by the State of California, ELAP #1991 were analyzed by High-performance liquid chromatography (HPLC) methodology or gas chromatograph (GC) Mass Spectrometer.

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Combustion By-Products – Surface Sampling

Soot, Char and Ash sampling is designed to confirm the presence of fire and incomplete residues on surfaces. The analysis is performed by analysts trained in advance techniques of particle identification. Transmission Electron Microscopy (TEM) analysis is used as a confirmation of soot specifically per ASTM D6602 & D3849. Additional confirmation analysis is performed by Polarized Light Microscopy (PCM), epi-Reflected Light Microscopy (RLM), and Energy-dispersive X-Ray Spectrometry (EDX).

Combustion By-Product Sample Collection

Char, Soot & Ash surface samples are collected by prepared Isopropyl Alcohol wipe media and using a 100 cm³ target. An area of known fire/smoke is also collected for comparison (exemplar). The concentration of analytes of interest in bulk samples is derived by Visual Estimation Technique (VAE). The technique estimates the relative projected area of a certain type of particulate in a mixture by comparison with data derived from analysis of calibration materials having similar texture and particulate content. NIOSH 5000 is a gravimetric method. The analysis is performed by analysts trained in advanced techniques of particles identification.

Sampling Results & Discussion

PAH Sampling:

It was alleged that the interior environment is contaminated by the byproducts of combustion (smoke) from a fire in the adjoining unit. Being that smoke is essentially a combination of suspended particles and gasses in the air, some of these particles and gasses will remain in an interior environment. These particles and gasses are also known carcinogens. The following table represents the air sampling results:

Polynuclear Aromatic Hydrocarbons
Method NIOSH 5506

| Sample Number | Location | Results |
|---------------|--------------------------------|---------------|
| 1028-6-16-01P | Unit #1- Living Room | None Detected |
| 1028-6-16-02P | Unit #2- Bedroom | None Detected |
| 1028-6-16-03P | Unit #3- Living Room | None Detected |
| 1028-6-16-04P | Unit #4- Bedroom | None Detected |
| 1028-6-16-05P | Unit #5- Living Room | None Detected |
| 1028-6-16-06P | Unit #6- Bedroom | None Detected |
| 1028-6-16-07P | Unit #7- Bathroom | None Detected |
| 1028-6-16-08P | 1 st Floor- Hallway | None Detected |
| 1028-6-16-09P | 2 nd Floor- Hallway | None Detected |
| 1028-6-16-10P | 3 rd Floor- Hallway | None Detected |

The results of the analysis demonstrate that the analytes are at or below the level of detection of the equipment (<LOD) with all of the samples submitted. This demonstrates that there was no detectable PAH in the samples collected.

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Combustion By-Products (Soot, Char Ash):

In order to confirm or deny the presence of soot damage on surfaces that appear to be discolored from the by-products of combustion, representative samples were collected; a control sample was collected from the actual fire damaged area for comparison. The following table represents the surface sample results:

Combustion By-Products
 Soot, Char, Ash

| Sample Number | Location | Results | Impression |
|---------------|---------------------------------------|---|---------------------------------|
| 1028-6-16-1S | Unit #7- Bathroom | 5% - Black Carbon (Soot) 70% - Carbonized Material (Char) | Combustion By-Product from Fire |
| 1028-6-16-2S | Unit #2- Bedroom Closet Wall Cavity | <1% - Black Carbon (Soot) 2% - Carbonized Material (Char) | Combustion By-Product from fire |
| 1028-6-16-3S | Unit #2- Bedroom, Wall #3 Wall Cavity | <1% - Black Carbon (Soot) 2% - Carbonized Material (Char) | Combustion By-Product from fire |
| 1028-6-16-4S | Unit #1- Living Room, Wall #1 | <1% - Carbonized Material (Char) | Background |
| 1028-6-16-5S | Unit #3- Dining Room, Wall #3 | <1% - Carbonized Material (Char) | Background |
| 1028-6-16-6S | Unit #3- Bedroom, Wall #3 | <1% - Carbonized Material (Char) | Background |
| 1028-6-16-7S | Unit #4- Closet, Wall #3 Cavity | None Detect | n/a |
| 1028-6-16-8S | Unit #4- Closet Wall | None Detect | n/a |
| 1028-6-16-9S | Unit #4- Bathroom Ceiling Cavity | 15% - Black Carbon (Soot) 20% - Carbonized Material (Char) | Combustion By-Product from Fire |
| 1028-6-16-10S | Unit #4- Kitchen Ceiling Cavity | <1% - Black Carbon (Soot) 2% - Carbonized Material (Char) | Combustion By-Product from fire |
| 1028-6-16-11S | Unit #4- Kitchen, Wall #4 | None Detect | n/a |
| 1028-6-16-12S | Unit #5- Living Room, Wall #1 | <1% - Carbonized Material (Char) | Smoking |
| 1028-6-16-13S | Unit #6- Closet, Wall #1 | <1% - Carbonized Material (Char) | Combustion By-Product |
| 1028-6-16-14S | Unit #6- Bedroom, Wall #2 | None Detect | n/a |
| 1028-6-16-15S | Attic Rear of Sky Chase | <1% - Black Carbon (Soot) 3% - Carbonized Material (Char) | Combustion By-Product from fire |
| 1028-6-16-16S | Attic Rafter | <1% - Carbonized Material (Char) | Combustion By-Product from fire |
| 1028-6-16-17S | Attic 3 rd Floor Ceiling | <1% - Carbonized Material (Char) | Combustion By-Product from fire |

The sample results collected from the interior units clearly demonstrate soot and char damage on upper wall and ceiling surface. Although the percent concentration (% Conc.) of soot and char was significantly

E16-1028-OPA-FCS

Environmental Engineering, Consulting, Testing and Training

Corporate Office: 3732 Charter Park Drive, Ste. A San Jose, CA 95136

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higher with the control sample, the morphology was similar to that found in the representative samples from the units.

Recommendations

A contractor familiar with fire damage remediation should only conduct the work. At a minimum, Level C worker PPE shall be required when entering the designated work area.

Engineering controls should be maintained throughout the removal and cleaning process in order to prevent the dispersal of construction debris and contaminants to unaffected areas of the structure. All designated work areas shall be fully contained during all work activities and until favorable post-remediation results are achieved.

All materials to be removed and disposed of from the designated work areas shall be double bagged using no less than 6-mil, clear plastic waste bags. Removal debris shall be handled and cut into reasonably manageable sizes to foster effective handling and prevent damage to their enclosures or create an off-site dispersal. All cuts or removal of finishing materials shall be conducted in such a way as to allow an effective and accurate seaming of replacement materials upon reconstruction. All efforts shall be made to salvage cabinetry, etc.

Air filtration should occur during cleaning process with the use of strategically placed HEPA rated air filtration devices (AFD). The AFD should run continuously during the remediation process.

Due to the age of construction, asbestos containing materials and/or Lead-Paint may be present on the property site. It was reported that materials were already surveyed. The contractor shall request copied of these reports for review prior to starting work.

Soot/Smoke Damage Cleaning (see diagram):

- All hard surfaces should undergo a thorough vacuuming using a HEPA-filter equipped vacuum.
- Following the vacuuming, the areas should be cleaned with a citrus based detergent with sponges and brushes.
- In areas having excessive discoloration, a second round of cleaning will be required.
- Humidity levels of the surfaces should not exceed 15% wwe² after the Specialized Cleaning is performed. Appropriate type dehumidifiers should be utilized to dry down the structure as needed.
- Use charcoal filtration to treat the air to remove odors due to smoke.

Charred Materials Removal (see diagram):

- Building materials that are structurally compromised shall be removed (get Architectural review for load bearing areas)
- Building materials should undergo a thorough vacuuming using a HEPA-filter equipped vacuum.
- All areas shall be HEPA sanded to a reasonably smooth finish.
- Building materials should undergo a thorough vacuuming using a HEPA-filter equipped vacuum following the HEPA sanding.
- All areas shall be coated with an appropriate smoke guard encapsulent sanding.

² wwe = wood water equivalent

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LIMITATIONS

This report is an original work product. This document is confidential and is for the subject client use only. This report is protected by the Copyright Act, Section 17 USC and has been prepared for the sole and exclusive use by the subject client.

This report summarizes the conclusions representing Benchmark's professional judgement based upon information and data available to us during the course of this assignment. Factual information provided by the client, owner or their representatives regarding the operations, conditions, test data, maintenance and repairs, or historical information were presumed to be accurate and complete. Additionally, the conclusions presented are based upon the conditions that existed at the time of the assessment(s).

The inspector(s)/hygienist(s) followed the same degree of care and skill ordinarily exercised, under similar conditions, by reputable inspector(s)/hygienist(s) practicing in this area. Guidance was obtained by the procedural standards of the Institute of Inspection, Cleaning and Restoration, the American Conference of Governmental Industrial Hygienist and the American Industrial Hygiene Association.

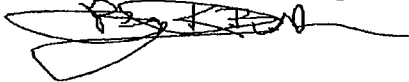
Indoor air quality is the product of multiple influences and attempts to ascertain all the sources of any problem does not always produce expected results. Environmental stresses such as improper lighting, noise, vibration, ergonomic stresses, and job-related psycho social problems can produce symptoms that are similar to those associated with poor air quality.

BENCHMARK has provided a thorough investigation effort to evaluate the conditions of the site targeted using reasonable and prudent investigative techniques. However, we shall not be responsible for claims that may arise out of failure to correct problems or to identify problems that may exist due to the users of the building and poor maintenance.

Benchmark is pleased to provide our services to you for this project. Please contact me at 408-448-7594 if you have any questions.

Sincerely,

Benchmark Environmental Engineering



Bryan K. Buller
Vice President/Engineering

E16-1028-OPA-FCS

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Appendix A – Cleaning & Removal SOW

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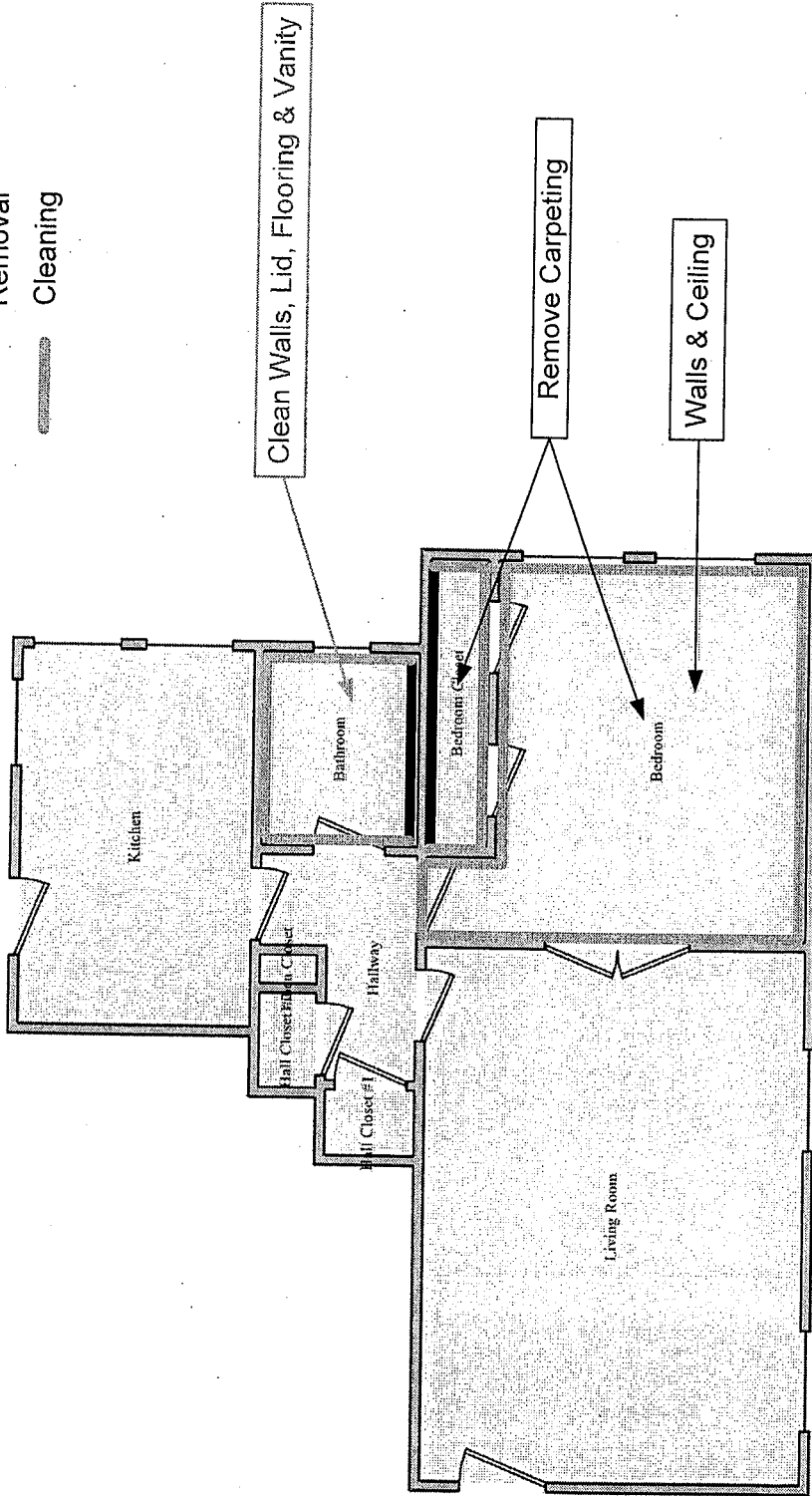
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— Removal
- - - Cleaning



Drawing Not To Scale

| | | | | | |
|--|--|-----------------------------------|---------|-------------|----------|
| Project Name | | Removal & Cleaning Areas, Unit #2 | | Project No. | E16-1028 |
| Environmental Consulting, Testing and Training Corporate Office: 3732 Charter Park Drive, Ste. A, San Jose, CA 95136 408-448-7594 * 408-448-3849 (Fax) | | Drawing No. | 1028-01 | Drawn By | BKB |
| | | | | | |

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— Removal
- - - Cleaning

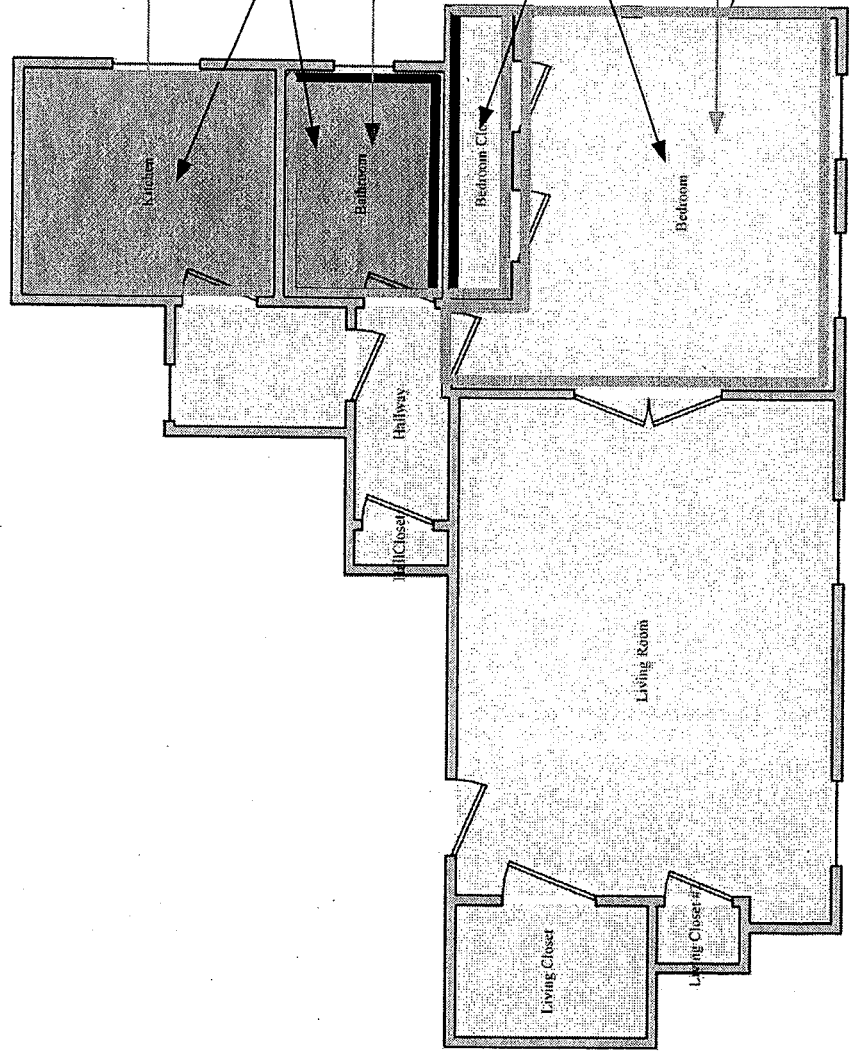
Clean All Horizontal and Vertical Surfaces

Remove Ceiling Lid

Clean Flooring & Vanity

Remove Carpeting

Walls & Ceiling



Drawing Not To Scale

| | | |
|-------------------------|-----------------------------------|---|
| Project No. E16-1028 | Removal & Cleaning Areas, Unit #4 | Project Name Environmental Consulting, Testing and Training Corporate Office: 3732 Charter Park Drive, Ste. A San Jose, CA 95136 408-448-7594 * 408-448-3849 (Fax) |
| BENCHMARK | Drawing No. 1028-02 | Drawn By BKB |

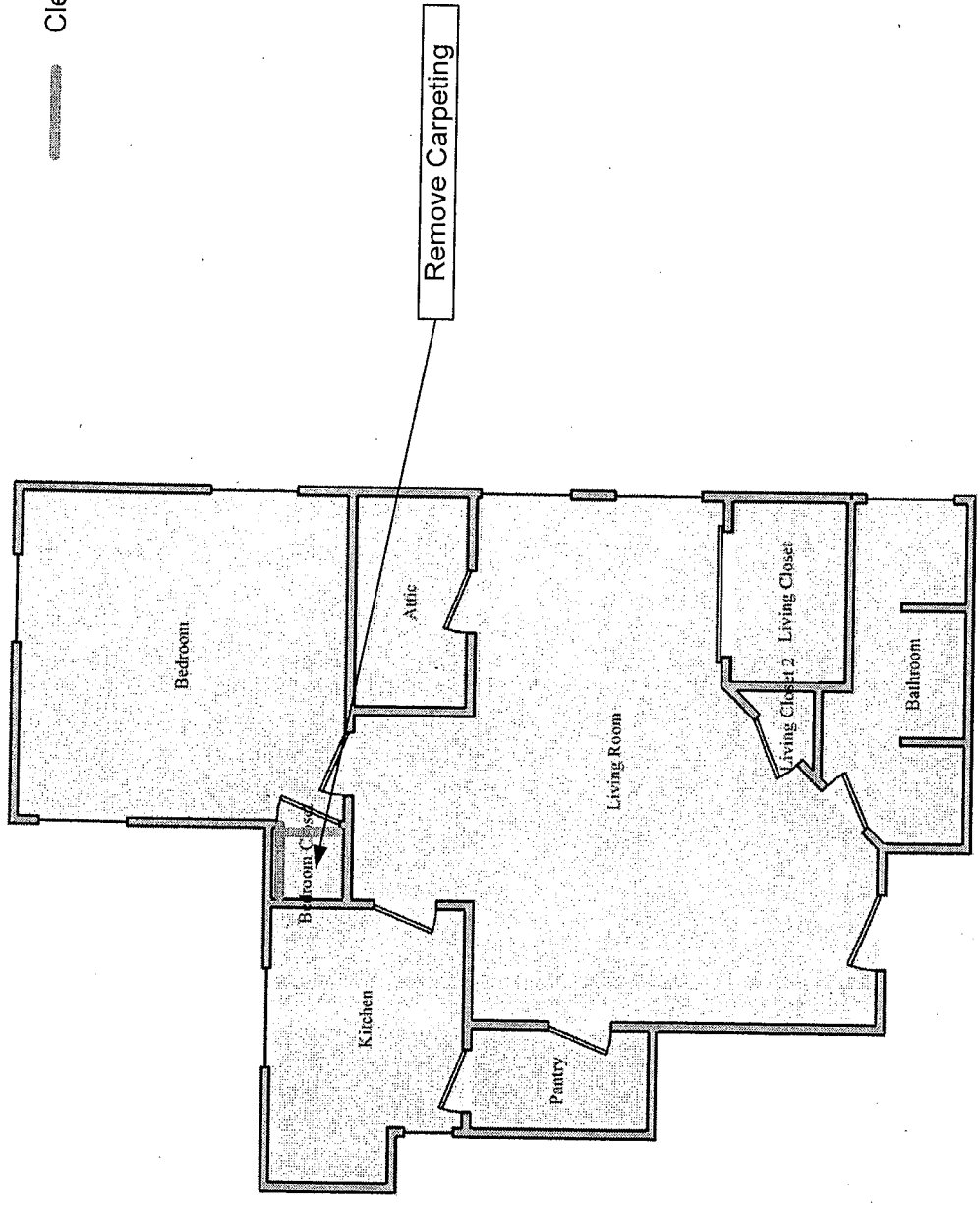
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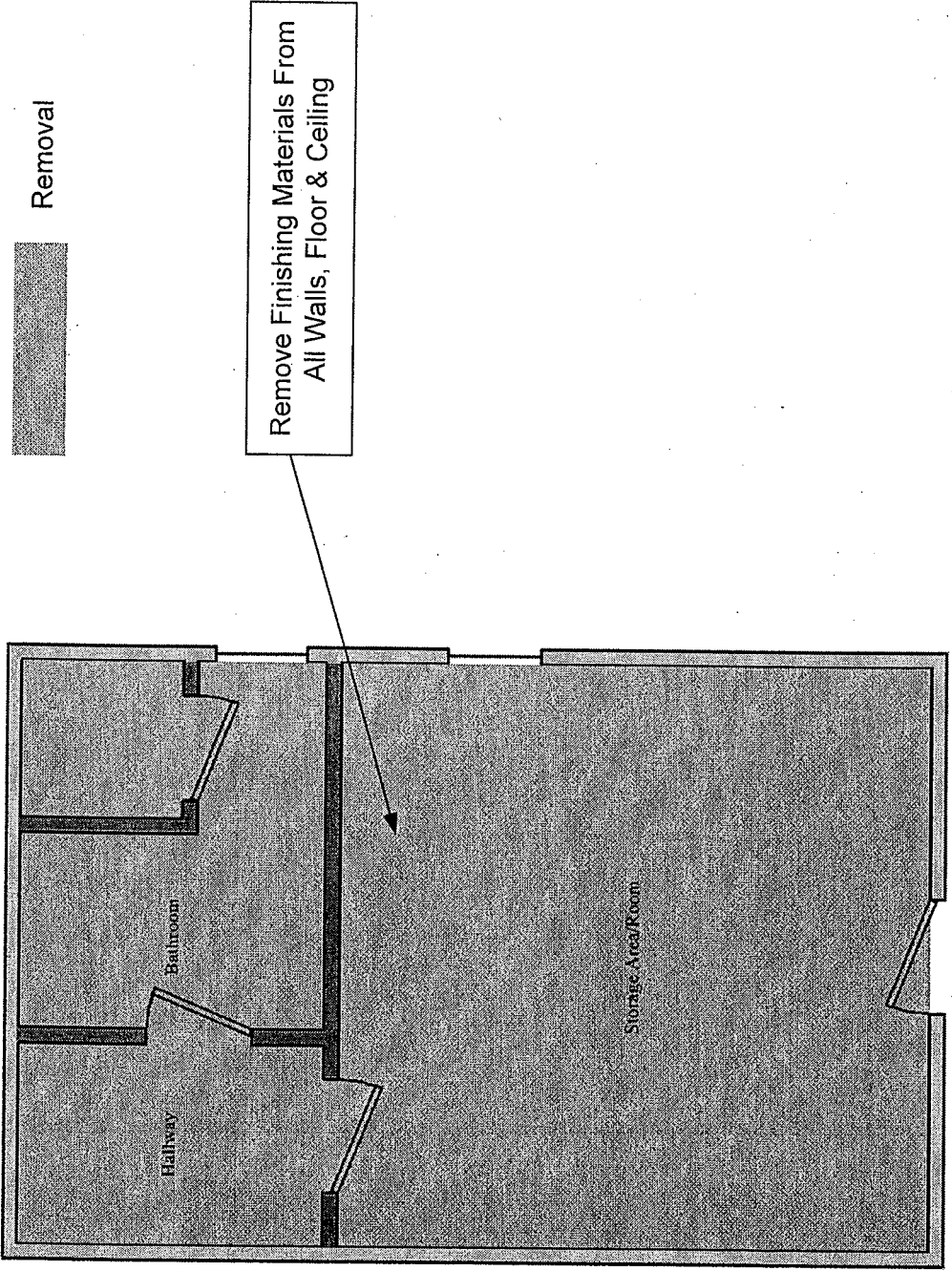
Cleaning



| | |
|---|--------------------------------|
| Project Name Removal & Cleaning Areas, Unit #6 Environmental Consulting, Testing and Training Corporate Office: 3732 Charter Park Drive, Ste. A San Jose, CA 95136 408-448-7594 * 408-448-3849 (Fax) | Project No. E16-1028 |
| Drawing No. 1028-03 | Drawn By BKB |
| BENCHMARK | |

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Drawing Not To Scale

| | | |
|--|--|--------------------------------|
| Project Name Removal & Cleaning Areas, Basement | | Project No. E16-1028 |
| Environmental Consulting, Testing and Training Corporate Office: 3732 Charter Park Drive, Ste. A San Jose, CA 95136 408-448-7594 * 408-448-3849 (Fax) | | Drawn By BKB |
| Drawing No. 1028-04 | | BENCHMARK |

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Appendix B – Laboratory Results

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Benchmark
3732 Charter Park Dr, Suite A
San Jose, California 95136
Tel: 408-448-7594
Fax: 408-448-3849
Email: labreports@benchmarkenvironment
RE: Greenspan Adjusters

Work Order No.: 1606053

Dear Bryan Buller:

Torrent Laboratory, Inc. received 10 sample(s) on June 22, 2016 for the analyses presented in the following Report.

All data for associated QC met EPA or laboratory specification(s) except where noted in the case narrative.

Torrent Laboratory, Inc. is certified by the State of California, ELAP #1991. If you have any questions regarding these test results, please feel free to contact the Project Management Team at (408)263-5258; ext 204.

A handwritten signature in black ink, appearing to read "Patti L. Sandrock", is written over a horizontal line.

Patti L Sandrock
QA Officer

June 27, 2016

Date

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Date: 6/27/2016

Client: Benchmark
Project: Greenspan Adjusters
Work Order: 1606053

CASE NARRATIVE

No issues encountered with the receiving, preparation, analysis or reporting of the results associated with this work order.

Unless otherwise indicated in the following narrative, no results have been method and/or field blank corrected.

Reported results relate only to the items/samples tested by the laboratory.

This report shall not be reproduced, except in full, without the written approval of Torrent Analytical, Inc.

CHRONOLOGICAL CASE REPORT

Case Nos.: T17-0082
Case Name: Holman v. Eastshore Properties
Property Address: 3711 Fruitvale Avenue, #12, Oakland, CA
Parties: Tasha Holman (Tenant)
Eastshore Properties (Property Owner)

OWNER APPEAL:

| <u>Activity</u> | <u>Date</u> |
|--|--------------------|
| Tenant Petition filed | February 10, 2017 |
| Owner Response filed | --- |
| Hearing Decision issued | August 8, 2017 |
| Owner Appeal filed | August 28, 2017 |
| Tenant Response to Owner Appeal filed | September 14, 2017 |

T17-0082 KM/SK

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RENT ADJUSTMENT PROGRAM

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RENT ADJUSTMENT PROGRAM

| | | |
|--|----------------|---------------------|
| CITY OF OAKLAND RENT ADJUSTMENT PROGRAM Mail To: P. O. Box 70243 Oakland, California 94612-0243 (510) 238-3721 | FEB 10 PM 3:34 | 2017 FEB 10 PM 3:34 |
|--|----------------|---------------------|

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

TENANT PETITION

Please print legibly

| | | |
|--|--|--|
| Your Name <i>Tasha Holman</i> | Rental Address (with zip code) <i>3711 Fruitvale Ave. #12 Oakland, CA 94602</i> | Telephone <i>(510) 205-2049</i> |
| Your Representative's Name | Mailing Address (with zip code) | Telephone |
| Property Owner(s) name(s) <i>Eastshore Properties</i> | Mailing Address (with zip code) <i>P.O. Box 70512 Richmond, CA 94807</i> | Telephone <i>(510) 965-4664</i> |

Number of units on the property: 12

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

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

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

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

Date you moved into the Unit: July 1st 2005 Initial Rent: \$ 700.00 /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: 1/30/2017. 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.

[Signature]
Tenant's Signature

2/10/2017
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): Years ago word of mouth

Tenant: Tasha Holman

Location: 3711 Fruitvale Avenue, Oakland, CA 94602, Unit: 12

Date: February 10, 2017

Tenants Petition Details

Specific Problem: I want to file a petition against the new owners of my building, Eastshore Properties for the following notices: (1) Sixty-Day Notice of Termination of Tenancy; (2) Notice of Resident Option to Request Initial Inspection of the Rental Unit and (3) Notice to Vacate Premises Due to Need for Substantial Repair, 3711 Fruitvale, Oakland.

Current unit and build conditions:

- 1) Paint: Apartment was NOT painted before I moved in, possible over 9 years ago (The previous tenants were heavy smokers.)
- 2) Carpet: Same carpet from previous tenants before I moved in, possible over 9 years ago.
- 3) Windows: Don't completely close; Screens don't fit the frames; Two out of the five windows don't have proper locks; natural deterioration of frames outside doesn't keep the wind outside, (have photo proof).
- 4) Toilet doesn't completely flush all the way.
- 5) Heater doesn't stay on. (Have video proof)
- 6) Front screen door doesn't fit frame.
- 7) Decline in services: No major unit maintenance has been done expect what was needed to be (i.e) the tub fossett; rust water; garbage disposal; refrigerator replacement. (Can provide detail breakdown for each room in unit.)
- 8) Decline in services: Stopped sprayed unit for bugs for over 11 years.
- 9) Stairs in front of building are not secure/ very loose. (Have pictures)
- 10) Hole in the Ceiling/floor of Apartment 11 over the cars (Since 2012)
- 11) Decline in services: Cleaning/ sweeping of the parking stalls.

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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: T17-0082, Holman v. Eastshore Properties
PROPERTY ADDRESS: 3711 Fruitvale Ave., #12, Oakland, CA
DATE OF HEARING: June 7, 2017
DATE OF INSPECTION: July 12, 2017
DATE OF DECISION: August 8, 2017
APPEARANCES: Tasha Holman (Tenant)
Amin Hassan (Witness for Tenant)
(No Appearance by Owner)

SUMMARY OF DECISION

The tenant's petition is partly granted.

CONTENTIONS OF THE PARTIES

The tenant filed a petition on February 10, 2017, which alleges that that she first received the form Notice to Tenants (RAP Notice) on January 30, 2017; 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:

- Apartment was not painted before she moved in
- Carpet was not changed before she moved in
- Windows are defective
- Toilet does not flush completely
- Heater does not stay on
- Front door screen does not fit the frame

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- Decline in repair services
- Decline in pest control
- Front stairs are not secure
- Hole in garage ceiling
- Decline in cleaning parking stalls

The owner did not file a response to the tenant's petition, nor did any owner representative appear at the Hearing.

THE ISSUE

Have the tenant's housing services been decreased and, if so, by what percentage of the total housing services that are provided by the owner?

EVIDENCE

RAP Notice: At the Hearing, the tenant testified that she first received the RAP Notice on January 20, 2017.

Rent History: The tenant testified that she has paid rent of \$821.82 per month since the year 2014.

Decreased Housing Services:

Painting: The tenant testified that she moved into her unit on July 1, 2015, and that her unit has never been painted. However, the paint is not chipping or peeling. The unit was inspected on July 12, 2017, by Barbara Cohen, a Hearing Officer with the Rent Adjustment Program. Following her inspection, Ms. Cohen prepared a Declaration, a copy of which is attached as Attachment "A." Ms. Cohen wrote: "There are stains on the paint on the ceiling in the bedroom and the hallway."

Carpet: The tenant testified that the carpet is worn and torn, which catches on the wheels of the walker that she uses for mobility. This condition has existed for a number of years. The tenant testified that she has notified the building management about this and other problems listed in the attachment to her petition for several years, but there has been no improvement. Further, this condition would be noticed during a regular inspection.

Ms. Cohen wrote: "There are several areas where the carpet seams are beginning to separate. On one of these seams, at the threshold of the bedroom, there is slight ripping of the carpet. Because the tenant walks with a walker, it is possible that these tears can cause a tripping hazard. . . . At the threshold to the bedroom, where the carpet seams are ripping, there is a carpet tack that is protruding out. This tack is sharp . . . and could cause injury."

Windows: The tenant testified that there are gaps between the window and the window frames and screens. This condition has existed since she moved into the unit. Ms. Cohen wrote:

“There were obvious gaps in the screens in the bedroom and bathroom. Because of the presence of the screens I could not see if there were gaps in the windows.”

Toilet: The tenant testified that, since she moved in, she has needed to flush the toilet twice after using it.

Heater: The tenant testified that there is one gas heater in her unit. However, in order for it to light, she needs to continue to hold the switch, which does not stay on. Ms. Cohen wrote: “It was a warm day when I arrived. I turned the heater to 83 degrees and it turned on within seconds.”

Front Screen Door: The tenant testified that there is a gap of 2 to 3 inches under the door. It was in the same condition when she moved in.

Repair services: The tenant testified that the owner took a long time to make various repairs in her unit. She further testified that the repairs to which she referred were performed in the years 2010 and 2013.

Pest Control: The tenant testified that, when she moved in, a maintenance person sprayed for insects every 3 months. This practice stopped in 2007. Since that time, her father has sprayed the unit and put up no-pest strips. This practice has been as effective as the spraying that had been done by the owner.

Front Stairs: The tenant testified that her unit is on the second floor of the subject building. The stairs going to the second floor are made of concrete treads with metal supports. The railings have been loose since 2010, and she has informed the owner’s employee, but nothing has been done. Ms. Cohen wrote: “When I asked the tenant about inspecting the stairway and carport she informed me that these matters had been repaired.”

Garage Ceiling: The tenant testified that there is a hole in the ceiling of the parking garage under her building, which was made for plumbing repairs. She believes that this hole allows insects to enter the building. Ms. Cohen states in her Declaration that this condition was repaired by the time of her inspection.

Parking Stalls: The tenant testified that, when she moved in, the parking stalls were cleaned on a regular basis. This practice ended and, as a result, there is often garbage such as food wrappers in the stalls. The tenant further testified that the stalls were cleaned on the day before the Hearing; this was the first time they were cleaned since November 2016.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

RAP Notice: It is found that the tenant first received the RAP Notice on January 20, 2017.

Decreased Housing Services: Under the Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent¹ and may be corrected by a rent adjustment.²

¹ O.M.C. Section 8.22.070(F)

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.

There is also a time limit for claiming decreased housing services. A tenant petition must be filed within 90 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.³ In this case, the tenant received the RAP Notice less than 90 days before filing her petition. Therefore, the tenant may be granted restitution for decreased housing services for a maximum of 3 years.⁴

Painting: Since the unit had not been recently painted when the tenant moved in, her housing services have not decreased. Further, this is a cosmetic defect which does not affect health or safety. Therefore, the claim is denied.

Carpet: This condition affects the safety of the tenant, who uses a walker, and has reduced the package of housing services by 3% for the past 3 years. Because of the current decrease in housing services, the rent is reduced by 3%, being \$24.65 per month, to \$797.17 per month. This rent decrease will remain in effect until the carpet is repaired, as specified in the Order below.

Further, the tenant has overpaid rent since August, 2014. As set forth on the Table below, the tenant overpaid rent during that time in the amount of \$887.57. The overpayment is ordered repaid over a period of 12 months.⁵ The rent is temporarily reduced by \$73.96 per month, to \$723.21 per month, beginning with the rent payment in September 2017 and ending with the rent payment in August 2018.

Windows: Ms. Cohen could not confirm that there are gaps in the windows, and there is no evidence that the unit was inspected by a City Inspector. Further, the condition existed at the start of the tenancy, and gaps in the screens or windows do not significantly affect health or safety. The claim is denied.

Toilet: This condition is also unchanged since the start of the tenancy and, in any case, is a slight inconvenience, not a health or safety issue. The claim is denied.

Heater: The heater worked properly when tested by Ms. Cohen, and the claim is denied.

Front Screen Door: Again, this condition has not changed since the tenancy began, and does not significantly affect health or safety. The claim is denied.

Repair services: The tenant last experienced delay in making repairs in the year 2013. This was more than 3 years ago, and the claim is denied.

² O.M.C. Section 8.22.110(E)

³ O.M.C. Section 8.22.090(A)(2)

⁴ Appeal Decision in Case No. T06-0051, Barajas/Avalos v. Chu

⁵ Regulations, Section 8.22.110(F)

Pest Control: Although the owner no longer does regular pest control, because of the assistance of her father, the tenant's living condition has not changed. For this reason, the claim is denied.

Front Stairs: There is no reason to disbelieve the tenant's testimony. However, since the stairs were repaired before Ms. Cohen's inspection, it is impossible to objectively determine the extent of the previous condition, and whether it affected the tenant's safety. Therefore, the claim is denied.

Garage Ceiling: A hole in the ceiling of the parking garage had minimal impact upon the tenant's living situation and, in any case, it has been repaired. The claim is denied.

Parking Stalls: There is no objective standard of cleanliness, and the stalls were cleaned soon before Ms. Cohen's inspection. Therefore, it is impossible to determine what the condition had been, much less the effect, if any, upon the tenant's tenancy. For this reason, the claim is denied.

VALUE OF LOST SERVICES

| Service Lost | From | To | Rent | % Rent Decrease | Decrease /month | No. Months | Overpaid |
|----------------------------|----------|-----------|-------|-----------------|-----------------|------------|-----------------|
| Carpet | 1-Aug-14 | 31-Jul-17 | \$822 | 3% | \$ 24.65 | 36 | \$887.57 |
| TOTAL LOST SERVICES | | | | | | | \$887.57 |

RESTITUTION

| | |
|--------------------------------------|-----------------|
| MONTHLY RENT | \$822 |
| TOTAL TO BE REPAYED TO TENANT | \$887.57 |
| TOTAL AS PERCENT OF MONTHLY RENT | 108% |
| AMORTIZED OVER 12 MO. BY REG. IS | \$73.96 |

ORDER

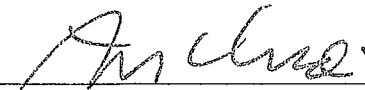
1. Petition T17-0082 is partly granted.
2. The Base Rent is \$821.82 per month.
3. Because of an ongoing decrease in housing services, the current rent, before reduction due to rent overpayments, is \$797.17 per month.
4. Because of past decreased housing services, the tenant has overpaid rent in the amount of \$887.57. This overpayment is adjusted by a rent reduction for 12 months.
5. The rent is temporarily reduced by \$73.96 per month. The current rent is \$723.21 per month, beginning with the rent payment in September 2017 and ending with the rent payment in August 2018.

7. When the carpet in the tenant's unit is repaired, the owner may increase the rent by \$24.65 per month, after giving proper notice in accordance with Civil Code Section 827.

8. The owner may otherwise be eligible for a rent increase.

9. 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: August 8, 2017



Stephen Kasdin
Hearing Officer
Rent Adjustment Program

CITY OF OAKLAND



250 FRANK OGAWA PLAZA, SUITE 5313, OAKLAND, CA 94612

Department of Housing and Community Development
Rent Adjustment Program

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

DECLARATION RE: SITE INSPECTION

CASE NUMBER: T17-0082, Holman v. Eastshore Properties
PROPERTY ADDRESS: 3711 Fruitvale Ave, #12, Oakland, CA
DATE OF INSPECTION: July 12, 2017

I, Barbara M. Cohen, declare as follows:

1. I am a Hearing Officer with the City of Oakland's Rent Adjustment Program.
2. On July 12, 2017, I performed an inspection at 3711 Fruitvale Ave, #12, Oakland, CA, in the unit.
3. I was asked to inspect the building regarding the tenant's claims of decreased housing services.
4. Present at the inspection were tenant Tasha Holman, owner representative Brando, and the tenant's father (name unknown.)
5. In this case I was asked to inspect the carpet in the tenant's unit; the heater, the stairway and common area cleanliness.
6. The photographs attached to this Declaration are true and correct copies of the photographs I took at the inspection.
7. The tenant's carpet has several burn marks in the shape of an iron in the living room and bedroom. There are also several areas where the carpet seams are beginning to separate. On one of these seams, at the threshold of the bedroom, there is slight ripping of the carpet. Because the tenant walks with a walker, it is possible that these tears can cause a tripping hazard.
8. At the threshold to the bedroom, where the carpet seams are ripping, there is a carpet tack that is protruding out. This tack is sharp and painful and could cause injury.
9. There are stains on the paint on the ceiling in the bedroom and the hallway.

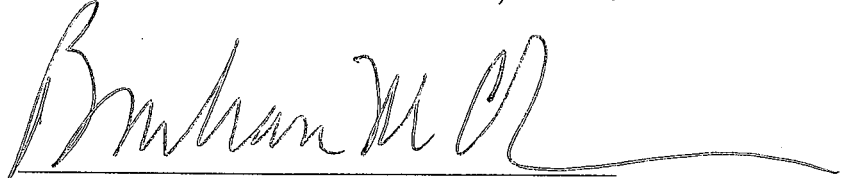
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ATTACHMENT "A", P. 1

10. It was a warm day when I arrived. I turned the heater to 83° and it turned on within seconds. I could not tell if there was anything wrong with the heater because it was already 80° in the room at the time.
11. When I asked the tenant about inspecting the stairway and the carport she informed me that these matters had been repaired.
12. The tenant asked me to inspect the windows and window screens for gaps. There were obvious gaps in the screens in the bedroom and bathroom. Because of the presence of the screens I could not see if there were gaps in the windows.

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

July 13, 2017



Barbara M. Cohen
Hearing Officer
Rent Adjustment Program

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ATTACHMENT "A", p. 2

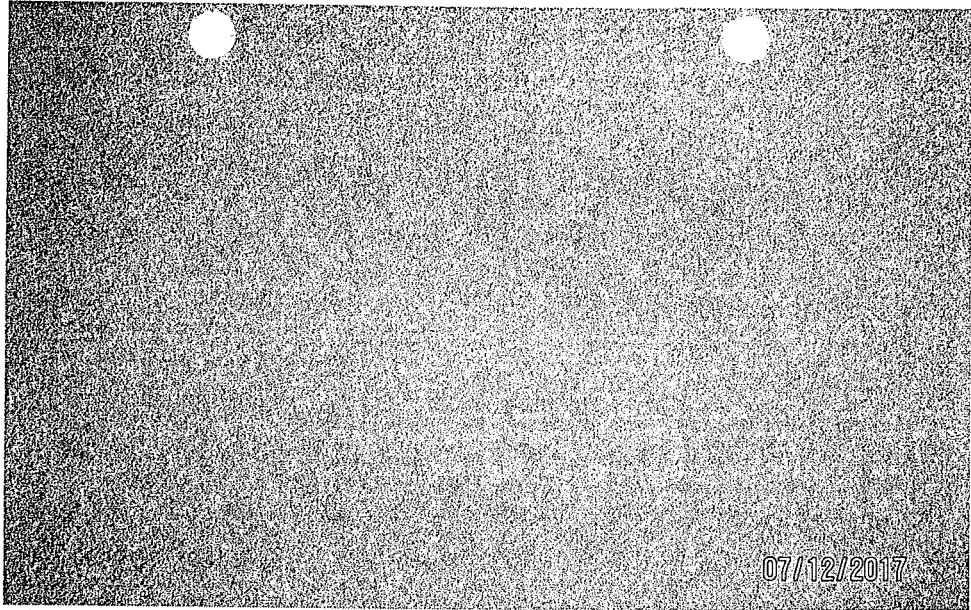


Photo 1-Carpet Living Room

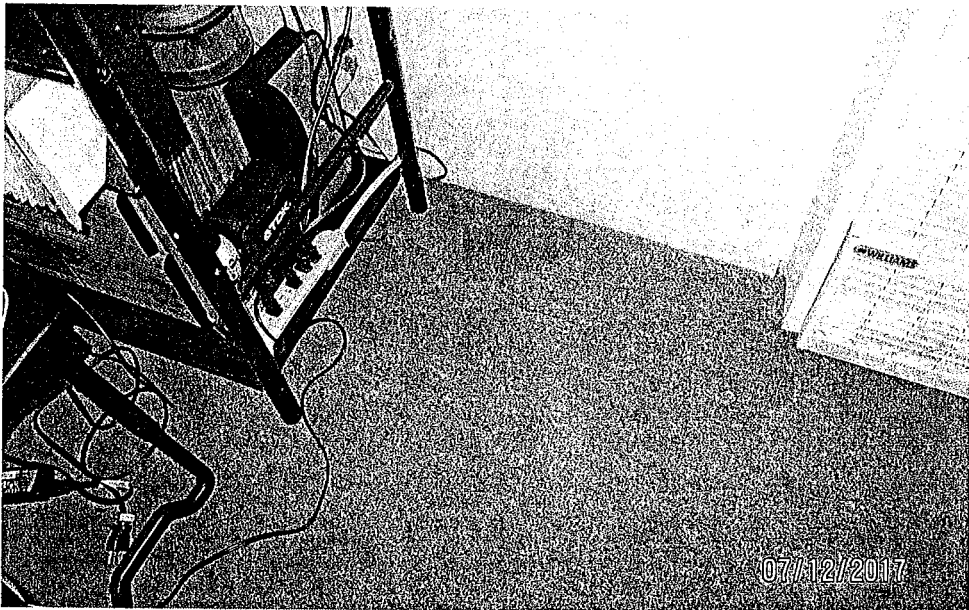


Photo 2-Carpet Living Room

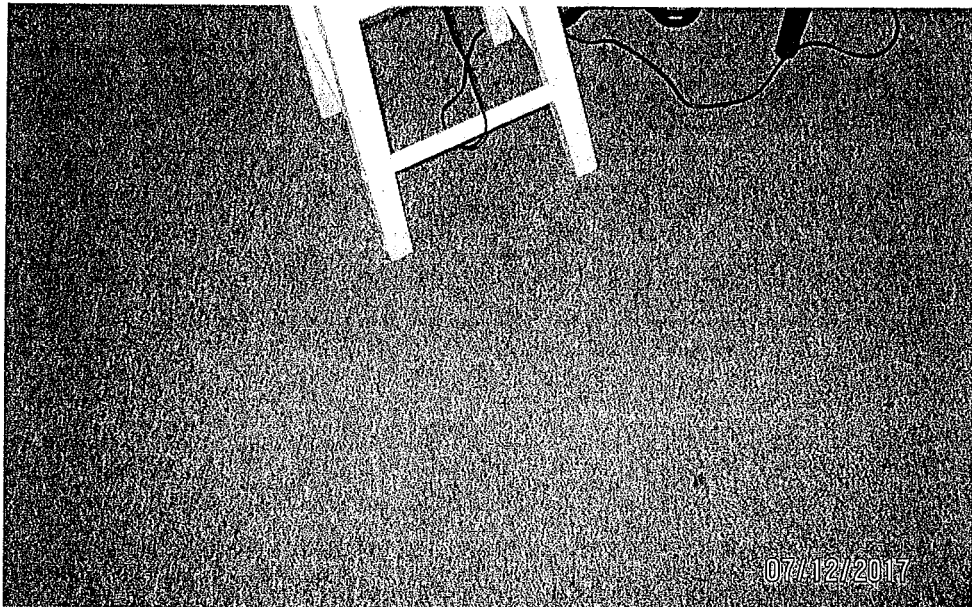


Photo 3-Carpet Living Room

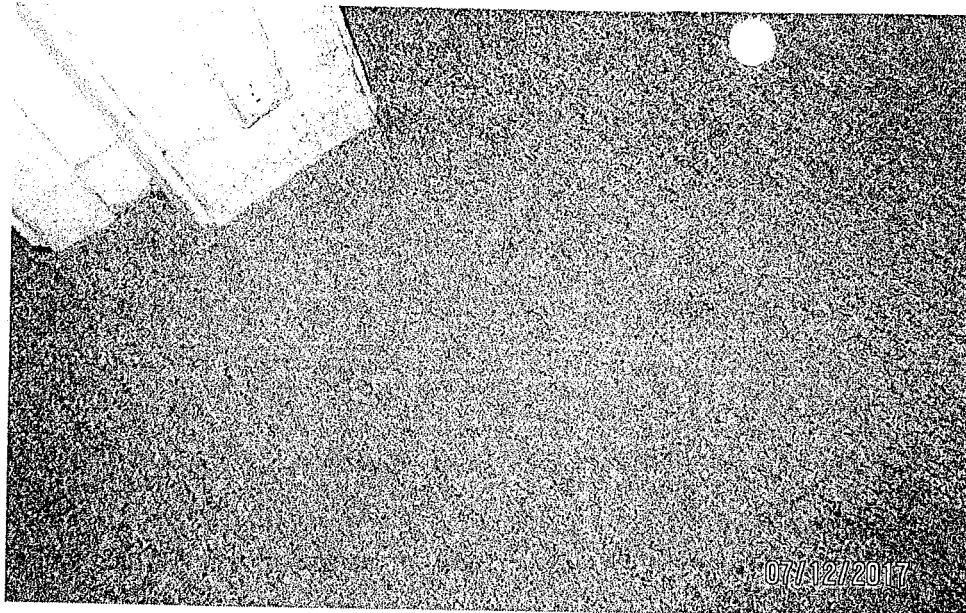


Photo 4-Threshold to Bedroom

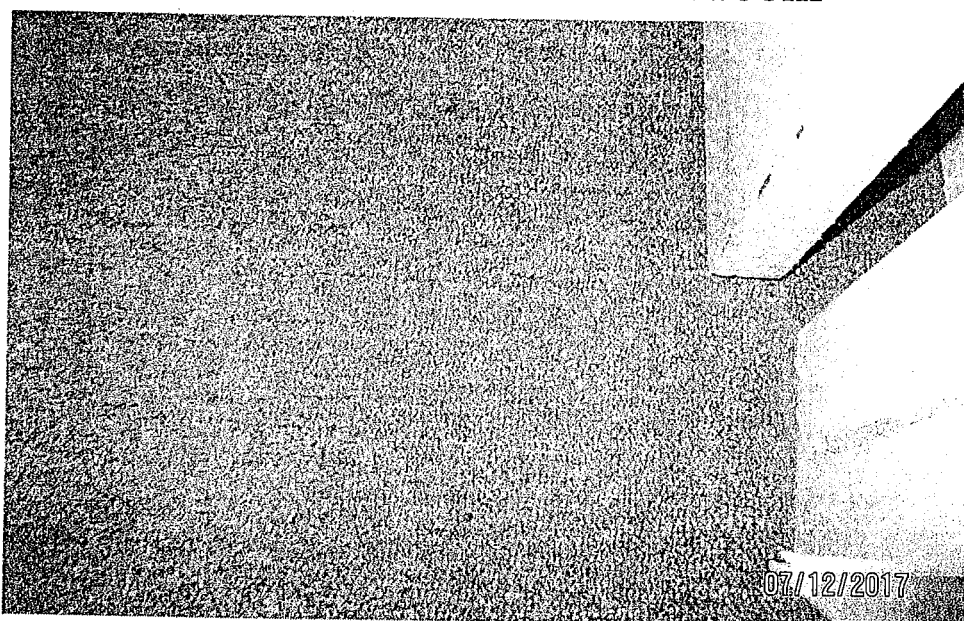


Photo 5-Bedroom Carpet

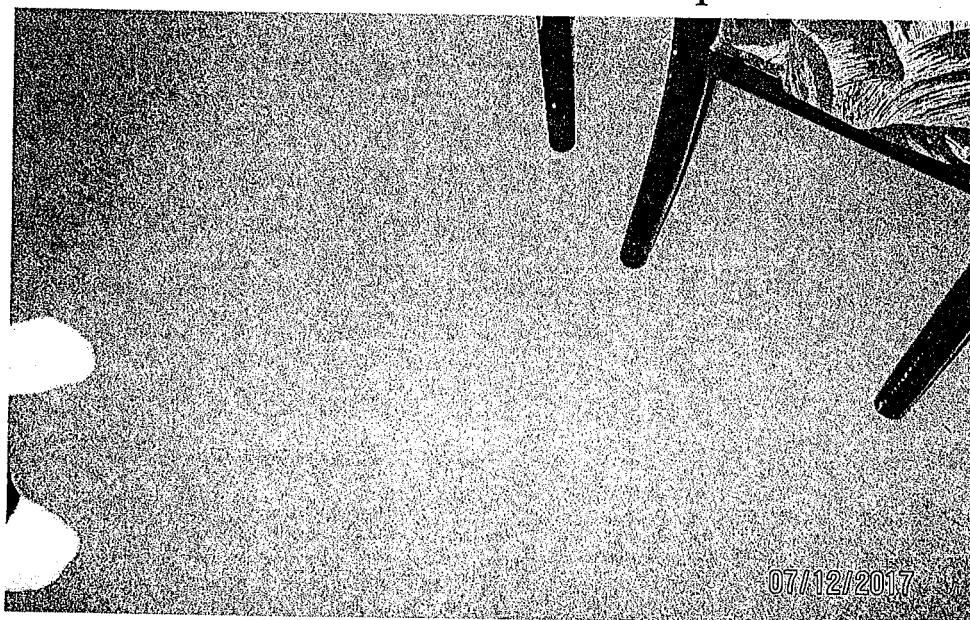


Photo 6-Carpet Bedroom

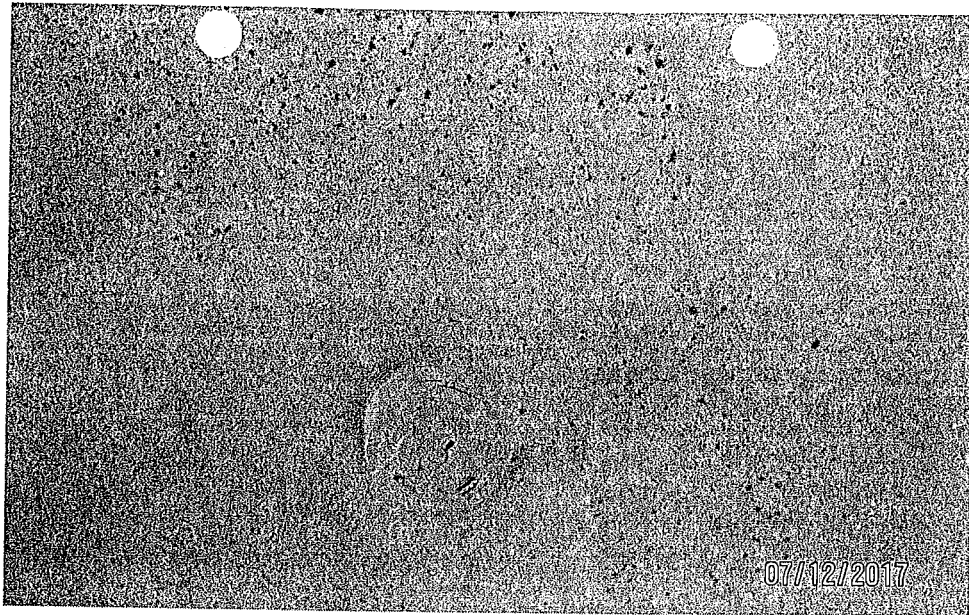


Photo 7-Ceiling Bedroom

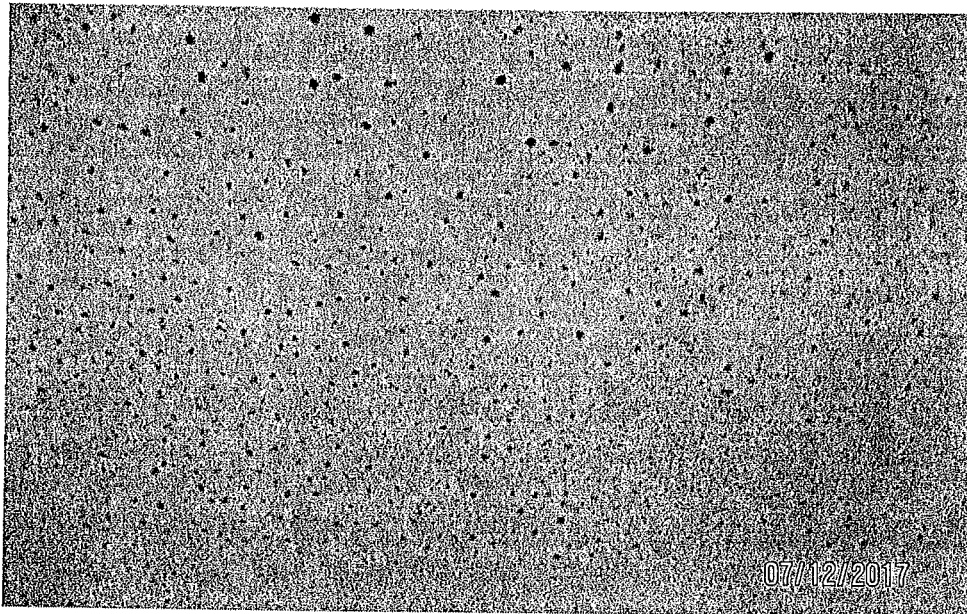


Photo 8-Ceiling



Photo 9-Ceiling Stains

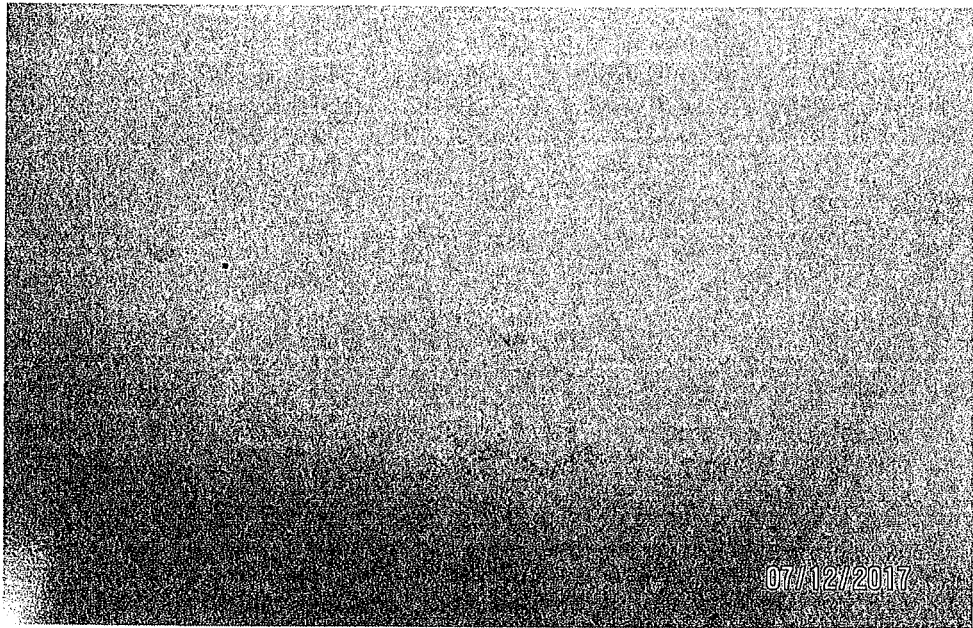


Photo 10-Ceiling stains



Photo 11-Bedroom screen gap

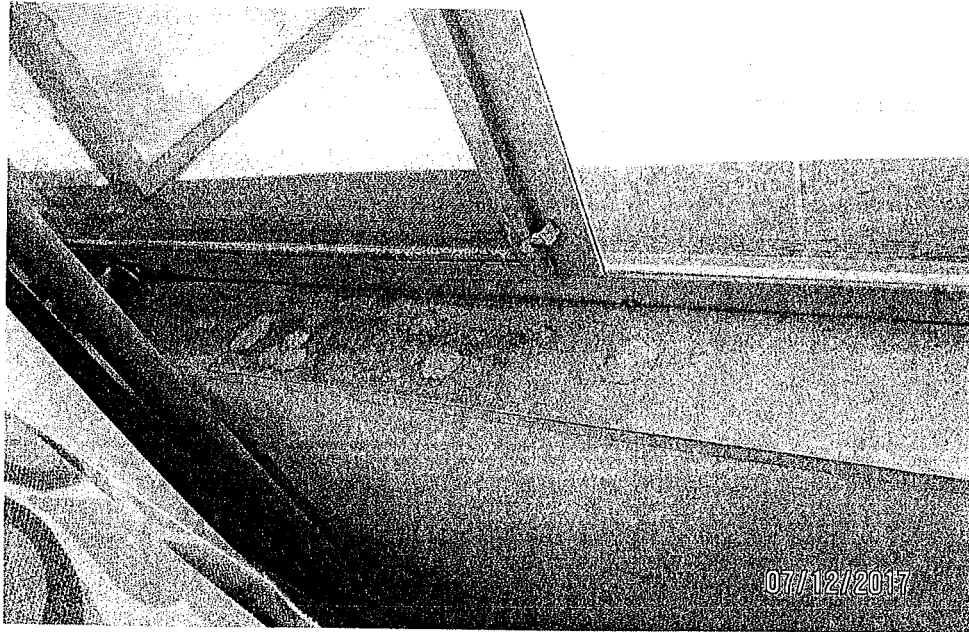


Photo 12-Bedroom window stains

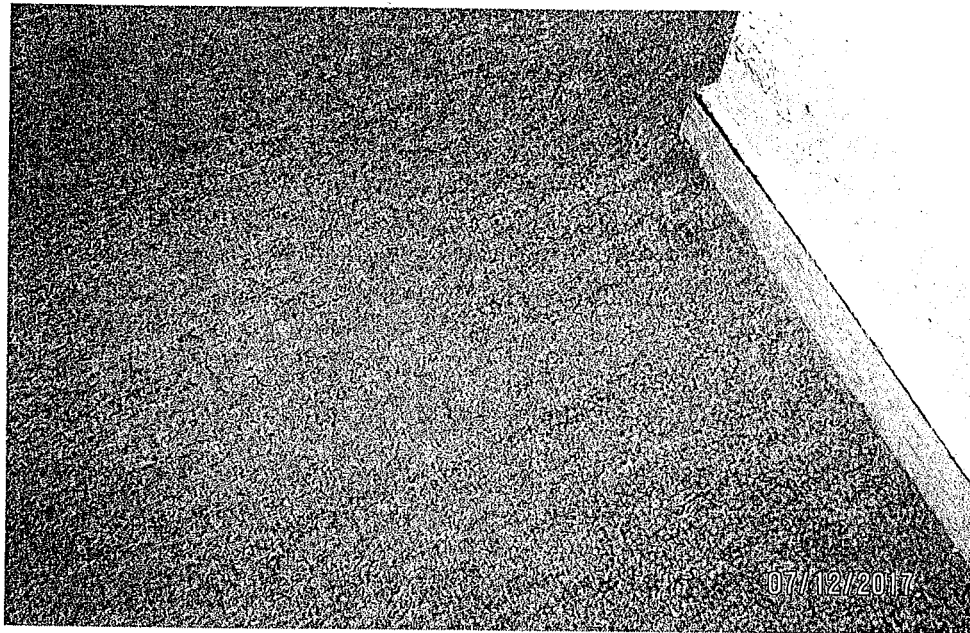


Photo 13-Carpet

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PROOF OF SERVICE

Case Number T17-0082

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

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

Tenant

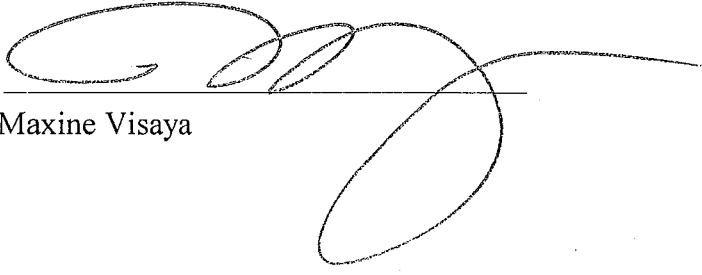
Tasha Holman
3711 Fruitvale Ave #12
Oakland, CA 94602

Owner

Eastshore Properties
P.O. Box 70512
Richmond, CA 94807

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

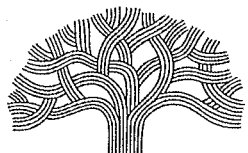
I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on August 10, 2017 in Oakland, CA.



Maxine Visaya

000062

RECEIVED
RENT ADJUSTMENT PROGRAM



CITY OF OAKLAND

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

For date stamp
AUG 28 PM 12:41

APPEAL

| | | | |
|---|--|---|--|
| Appellant's Name Eastshore Properties | | <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant | |
| Property Address (Include Unit Number) 3711 Fruitvale Ave., #12 Oakland, CA 94602 | | | |
| Appellant's Mailing Address (For receipt of notices) P.O. Box 70512 Richmond, CA 94807 | | Case Number T17-0082 | |
| | | Date of Decision appealed August 8, 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.

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EASTSHORE 13

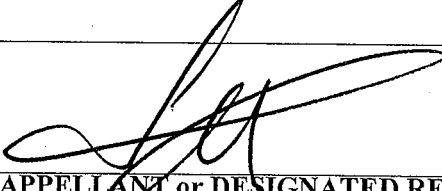
- f) I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. (In your explanation, you must describe how you were denied the chance to defend your claims and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue 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: 1.

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 August 28, 2017, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

| | |
|------------------------|--------------------------|
| <u>Name</u> | Tasha Holman |
| <u>Address</u> | 3711 Fruitvale Ave., #12 |
| <u>City, State Zip</u> | Oakland, CA 94602 |
| <u>Name</u> | |
| <u>Address</u> | |
| <u>City, State Zip</u> | |

| | |
|---|-----------|
|  | 8/28/2017 |
| SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE | DATE |

For more information phone (510) 238-3721.

City of Oakland Residential Rent Adjustment Program
250 Frank H Ogawa Plaza #5313
Oakland, CA 94612

Re: Case Number T17-0082, Holman v. Eastshore Properties

On January 27, 2017, Eastshore Properties (we) purchased the property located at 3711 Fruitvale Ave. in Oakland.

On January 30, 2017, we served the 11 residents "Notice to Vacate Premises Due to Need for Substantial Repair" to allow us to retrofit the "soft story" and bring it into compliance with all laws.

On February 10, 2017, the resident in unit #12 (Ms. Holman) filed a petition contesting a rent increase (we didn't issue a rent increase) with the RAP.

On March 8, 2017, we received notices of hearings scheduled for June 7, 2017 for each of the 11 60 Day Notices we served.

On April 10, 2017, we received an administrative decision from the RAP stating that the cases had been dismissed, or so we thought. The RAP notice dismissed 10 of the 11 cases (T17-0105, T17-0106, T17-0107, T17-0108, T17-0111, T17-0112, T17-0113, T17-0114, T17-0115, T17-161), but not Case T17-0082. The RAP dismissed the other 10 cases because, "the Rent Adjustment Program does not have jurisdiction over the tenants' claims."

Regarding case T17-0082 – we were never notified by the tenant of any maintenance concerns, therefore never given the opportunity to access and possibly fix.

Further, this claim does not rise to the standard of "loss of service", as outlined in the RAP ordinance. As Ms. Holman stated in her petition, the carpet is the, "Same carpet from previous tenants before I moved in, possible (sic) over 9 years ago." Ms. Holman states in her petition that she moved in 12 years ago, on July 1, 2005. If the carpet was 9 years old when she moved in, and the accepted average lifespan of a carpet in a residential rental unit is between 8 and 10 years¹, the carpet had reached the end of its life when Ms. Holman moved in.

As her previous testimony reads, the tenant uses a walker and this repeated motion, over time, has actually caused the tear in the carpet, not owner neglect. We ask that the determination of loss of service resulting in a credit back be overturned and removed. Should the tenant seek a solution for the carpet tear and curling iron burns caused through her actions, management will discuss with her.

¹ National Association of Home Builders/Bank of America Home Equity Study of Life Expectancy of Home Components

<https://www.interstatebrick.com/sites/default/files/library/nahb20study20of20life20expectancy20of20home20components.pdf>

000065

EASTSHORE 3/3

RENT ARBITRATION PROGRAM
City Of Oakland Rent Adjustment Program

Att: Keith Mason
250 Frank H Ogawa Plaza, Suite 5313
Oakland, California 94612

RENT ARBITRATION PROGRAM

2017 SEP 14 AM 8:32

Date: September 5th, 2017

Tasha Holman
3711 Fruitvale Avenue, Apt. 12
Oakland, California 94602

Re: Case number T17-0082; Appeal Rebuttal

Dear Mr. Mason,

My name is Tasha Holman and I am writing to you in regards to the appeal that Eastshore Properties filed on August 28th, 2017. The specific allegations pertaining to myself and unit #12 which I occupy are incorrect, which I will prove in their false nature. First, I have been a tenant of 3711 Fruitvale Avenue for over 12 years, however, I have attached proof that I lived in unit 4 for 2-3 years before moving upstairs to unit 12. I have attached a copy of my (1) Original Residential Lease for unit 4 from 2005 and (2) a Remainder of Rent Increases for unit 12 from 2008. Upon my moving into unit 12, there was verbal acknowledge between myself and the previous landlord, of the need for the carpet to be changed, however the previous landlord never yielded the physical time for action, but always welcome the discussion, while implying he would eventually take care of the issue.

On December 19th, 2016 and January 13th, 2017, I received two "Notice of Entry" from Zack Ward, the Vice President, of The Ben Weil Team of the Paragon Commercial Brokerage on behalf of Eastshore Properties. Upon each date of entry I present a list of maintenance concerns that I had. All of which I have attached

000066

copies of along with this letter, both are labeled as "Notice of Entry" with my list of maintenance concerns (3) and (4) .

In fact, when Eastshore Properties enter the unit both times, my father and I were present. I even asked one of Eastshore Properties employees, Brando Velazquez, "who should I give this list of items that need to be fixed in the apartment?" And he said "the man in the red jacket." The man in said jacket was Zack Ward. I also attached a copy of his business card just in case. Then I stated loudly for everyone in my apartment to hear me, "I just want to make it clear, this was the condition of the unit before I moved in and the previous owner, Mr. Chew was well aware of this. And the iron burns, nail and other tears/damages where already present in the carpet!" So not only did I provide paper documentation of the maintenance concerns, I also verbalize them to the entire team from Eastshore properties that was present and inspecting my unit. Thirdly, there is clear photo proof of the type of iron burns that was put in the carpet by the previous tenants that was taken by Ms. Barbara M. Cohen during her inspection. Therefore the accusations that are being made in Eastshore Properties appeal are FASLE.

In consultation, I believe the hearing decision is still in valid because Eastshore Properties has not completely followed the orders that are outlined on pages 5 and 6 of the Hearing Decision. Nor has the owner acknowledged the findings for the RAP Notice on page 2. This property manager is only taking action for their own personal gain. I say this because Eastshore Properties has hired a construction company that started demolition work on all the other empty units and outside the building that started on September 5th, 2017. Eastshore Properties has other goals in mind and the maintenance or safety in my unit is not one of them.

Respectfully,

Ms. Holman

Ms. Holman

000067



RESIDENTIAL LEASE OR MONTH-TO-MONTH RENTAL AGREEMENT

(C.A.R. Form LR, Revised 10/01)

TASHA HOLMAN
PRUDENTIAL LANDMARK R.E.

(TENANT) and (LANDLORD) agree as follows:

1. PROPERTY:

A. Landlord rents to Tenant and Tenant rents from Landlord, the real property and improvements described as: 3711 FRUITVALE AVE ("Premises").

B. The following personal property is included: 1 STOVE - 1 REFRIGERATOR

2. TERM: The term begins on (date) 7/1/05 ("Commencement Date"), (Check A or B):

A. Month-to-month: and continues as a month-to-month tenancy. Either party may terminate the tenancy by giving written notice to the other at least 30 days prior to the intended termination date, subject to any applicable local laws. Such notice may be given on any date.

B. Lease: and shall terminate on (date) 6/30/06 at AM/PM.

Any holding over after the term of this Agreement expires, with Landlord's consent, shall create a month-to-month tenancy which either party may terminate as specified in paragraph 2A. Rent shall be at a rate equal to the rent for the immediately preceding month, unless otherwise notified by Landlord, payable in advance. All other terms and conditions of this Agreement shall remain in full force and effect.

3. RENT:

A. Tenant agrees to pay rent at the rate of 700 per month for the term of the Agreement.

B. Rent is payable in advance on the 1st (or) day of each calendar month, and is delinquent on the next day.

C. If Commencement Date falls on any day other than the first day of the month, rent shall be prorated based on a 30-day period. If Tenant has paid one full month's rent in advance of Commencement Date, rent for the second calendar month shall be prorated based on a 30-day period.

D. PAYMENT: The rent shall be paid by cash, personal check, money order, cashier check, other to

(name) PRUDENTIAL LANDMARK R.E. (address) 4379 PIEDMONT AVE OAKLAND, CA 94611 (phone) 510-450-7584 at

(or at any other location specified by Landlord in writing to Tenant) between the hours of 9AM and 5PM on the following days Mon - Fri

4. SECURITY DEPOSIT:

A. Tenant agrees to pay \$ 700 as a security deposit. Security deposit will be transferred to and held by the Owner of the Premises; or held in Owner's Broker's trust account.

B. All or any portion of the security deposit may be used, as reasonably necessary, to: (1) cure Tenant's default in payment of rent, Late Charges, non-sufficient funds ("NSF") fees, or other sums due; (2) repair damage, excluding ordinary wear and tear, caused by Tenant or by a guest or licensee of Tenant; (3) clean Premises, if necessary, upon termination of tenancy; and (4) replace or return personal property or appurtenances. SECURITY DEPOSIT SHALL NOT BE USED BY TENANT IN LIEU OF PAYMENT OF LAST MONTH'S RENT. If all or any portion of the security deposit is used during tenancy, Tenant agrees to reinstate the total security deposit within five days after written notice is delivered to Tenant. Within three weeks after Tenant vacates the Premises, Landlord shall: (1) furnish Tenant an itemized statement indicating the amount of any security deposit received and the basis for its disposition; and (2) return any remaining portion of security deposit to Tenant.

C. No interest will be paid on security deposit unless required by local ordinance.

D. If security deposit is held by Owner, Tenant agrees not to hold Broker responsible for its return. If security deposit is held in Owner's Broker's trust account, and Broker's authority is terminated before expiration of this Agreement, and security deposits are released to someone other than Tenant, then Broker shall notify Tenant, in writing, where and to whom security deposit has been released. Once Tenant has been provided such notice, Tenant agrees not to hold Broker responsible for security deposit.

5. MOVE-IN COSTS RECEIVED/DUE:

| Category | Total Due | Payment Received | Balance Due | Date Due |
|--|------------|------------------|-------------|----------|
| Rent from <u>7/1/05</u> to <u>7/31/05</u> (date) | <u>700</u> | | | |
| *Security Deposit | <u>700</u> | | | |
| Other <u> </u> | | | | |
| Other <u> </u> | | | | |
| Total <u>1400</u> | | | | |

*The maximum amount that Landlord may receive as security deposit, however designated, cannot exceed two month's rent for an unfurnished Premises, or three month's rent for a furnished premises.

6. PARKING: (Check A or B)

A. Parking is permitted as follows:

The right to parking is, is not, included in the rent charged pursuant to paragraph 3. If not included in the rent, the parking rental fee shall be an additional \$ per month. Parking space(s) are to be used for parking operable motor vehicles, except for trailers, boats, campers, buses or trucks (other than pick-up trucks). Tenant shall park in assigned space(s) only. Parking space(s) are to be kept clean. Vehicles leaking oil, gas or other motor vehicle fluids shall not be parked on the Premises. Mechanical work or storage of inoperable vehicles is not allowed in parking space(s) or elsewhere on the Premises.

OR B. Parking is not permitted on the Premises.

Landlord and Tenant acknowledge receipt of copy of this page.

Landlord's Initials TH ()

Tenant's Initials TH ()



Reviewed by
Broker or Designee

Date

000068

April 1, 2008

Tasha Holman
3711 Fruitvale Ave. #12
Oakland, CA 94602

Re: Reminder of Rent Increase

Dear Tasha Holman:

This is just a reminder that your rent of \$723 has been increased to \$746.00 effective May 1, 2008 per the notice sent to you on April 1, 2008. Please make sure to include the increase in your rental payment for ~~May~~
June

If you have any questions please call me at 510-759-9988. Thank you for your cooperation in this matter.

Sincerely,

Sherwin Chew

000069

Notice of Entry

1/13/2017

Re: Tenants of 3711 Fruitvale Ave, Oakland CA 94602

Please be advised that we will be doing a walk through and inspection with a potential buyer at the following time:

Thursday January 19th from 10:30am – 12:30pm

During this inspection we will be entering your apartment. You are more than welcome to be home during the inspection however your presences is not required.

If you have any questions or concerns please feel free to contact me.

Sincerely,

Zack Ward

Vice President

The Ben Weil Team

Paragon Commercial Brokerage

1700 California Str #310

San Francisco, CA 94109

415-874-5018

BRE #01907645

zward@paragon-re.com

000070

Tenant: Tasha Holman

Location: 3711 Fruitvale Avenue, Oakland, CA 94602

Unit: 12

Apartment Report 2017

- 1) Paint on the walls: Apartment hasn't been before I moved in 8 years ago and there was a family here that smoked before me. And the heater was changed out in 2012
- 2) Carpet wasn't changed when I moved in for over 8 years: Same carpet since previous tenants lived here in 2007/2006
- 3) Windows: photo proof
- 4) No major maintain has been done expect what was needed to be (i.e) the tub, rust water, garbage disposal, refrigerator replacement
- 5) Previous owners used to sprayer for bugs once a month, Sherwin doesn't
- 6) Previous owner used one maintenance person, however Sherwin does all the maintenance now
- 7) Parking slot used to be cleaned on regular bases; Now Sherwin cleans when he has time

000071

Notice of Entry

12/19/2016

To: Tenants of 3711 Fruitvale Ave, Oakland 94602

This is a letter to introduce myself as the listing agent of the property you live in. The owner, Sherwin H Chew, has accepted an offer to sell the building. In order to help facilitate the transaction the buyer will be conducting a formal inspection of the building and will need access to your unit on the following date.

Wednesday the 21st of December 2016

From 10AM to 12PM

During this inspection we will be entering your units; you are welcome to be home however your presence is not required.

Also, attached to this letter is an estoppels certificate, please take a minute to fill out the questions and confirm the terms of your lease. This is for your own protection to ensure the new owner keeps the same arrangements that you currently have.

If you have any questions or concerns please feel free to contact me.

Sincerely,

Zack Ward

Vice President

The Ben Weil Team

Paragon Commercial Brokerage

1700 California Str #310

San Francisco, CA 94109

415-874-5018 Office

415-940-3918 Cell

BRE #01907645

zward@paragon-re.com

000072

THE BEN WEIL TEAM

April 29th, 2015

Full List of Things to be fixed in Apartment/ Building- Grand Total 18 complaints

Building Over All

- 1) Stairs in front of building are not secure; Have pictures (Complained to Landlord in June of 2011)
- 2) Hole in the Ceiling/floor of Apartment 11 over the cars (Since 2012)
- 3) Decline in services: Cleaning/ sweeping of the parking stalls
- 4) Spraying for insects and bugs (Since 2006)
- 5) Parking Problem; had me look into a towing company in summer of 2014 and didn't post formal signs until first week of Feb of 2015; cause of complaint about mo-ped parked in Apt. 1 stall; photos as proof; Reported harassment on 10/1/2010 from man parked in my stall and all Landlord did was write a letter;

Living Room Total 7

- 1) Screens in Window doesn't fit Window Frame and has wholes in them; UNFIXED
- 2) Front door doesn't fix frame (2007); Top lock doesn't lock when it's raining or when the apartment is over 75 degrees; (2007); Fixed by SPECTRA HEAP PROGRAM in (2011)
- 3) Gate doesn't fit into door frame. When closed the upper left corner sticks out of frame (2007)
- 4) Old electrical sockets need to be changed to the current 3 whole electrical sockets (2007)
- 5) Heater was labeled with Hazard Notice by PG&E on May 2nd, 2011- found leak at control valve gasket disconnected appliance advise to replace value; Have tape of landlord telling PG&E that he would fix heater, and never did(2011); Fixed by SPECTRA HEAP PROGRAM in (2011)
- 6) Heater doesn't stay on, video as proof (2015)
- 7) 2 number on front door (2007); Fixed by on my own

Kitchen Total 4

- 1) Till in the Kitchen under cabinets coming undone (2008); Sherwin Fixed?
- 2) Screens in Window doesn't fit Window Frame
- 3) Wooden Sticks for locks in windows (2007); Landlord said that this works better than replacing locks or new windows cause the build is over 50 years old;
- 4) OLD Refrigerator dripped water on the inside since (2007) and Landlord would not fix/replace until it complete cut off in 7/9/2011 with over \$25 worth of groceries inside; Sherwin Fixed

000073

Bathroom Total 6

- 1) Screens in Window doesn't fit Window Frame
- 2) Missing hot and cold labels knobs; Sherwin Fixed and broke follow year
- 3) Rust water problem October 2013; Complained about in 2012
- 4) Bath Tub- needs to be painted (2007), gradually gotten worse
- 5) Toilet doesn't complete flush, always requires second flush (2007) Landlord doesn't acknowledge anymore
- 6) Black till in bathroom on side wall in front on toilet is loosed (2015)

Bedroom Total 3

- 1) Window blinds need to fixed (2007)
 - 2) Screens in Window doesn't fit Window Frame
 - 3) One of blinds still haven't been replaced from initial viewing of the apartment (may 2007)
- ** Also informed me that he is not making any more from my rent checks

List 2016 :

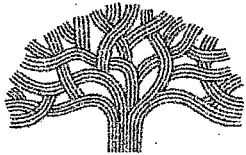
- 1) Paint on the walls: Apartment hasn't been before I moved in 8 years ago and there was a family here that smoked before me. And the heater was changed out in 2012
- 2) Carpet wasn't changed when I moved in for over 8 years: Same carpet since previous tenants lived here in 2007/2006
- 3) Windows: photo proof
- 4) No major maintain has been done expect what was needed to be (i.e) the tub, rust water, garbage disposal, refrigerator
- 5) Previous owners used to sprayer for bugs once a month, Sherwin doesn't
- 6) Previous owner used one maintenance person, however Sherwin does all the maintenance now
- 7) Parking slot used to be cleaned on regular bases; Now Sherwin cleans when he has time
- 8) Always wonder why some tenants have dish washers and I don't?

CHRONOLOGICAL CASE REPORT

Case Nos.: T17-0221
Case Name: Kaufman v. Nguyen
Property Address: 4016 Kansas Street, #D, Oakland, CA
Parties: Michael Kaufman (Tenant)
Jennifer Nguyen (Property Owner)

TENANT APPEAL:

| <u>Activity</u> | <u>Date</u> |
|-------------------------|--------------------|
| Tenant Petition filed | March 30, 2017 |
| Owner Response filed | May 25, 2017 |
| Hearing Decision issued | September 8, 2017 |
| Tenant Appeal filed | September 29, 2017 |



CITY OF OAKLAND

**CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM**

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

RECEIVED
CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM

2017 MAR 30 PM 4:40

TENANT PETITION

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

Please print legibly

T17-0221 RC/SK

| | | |
|---|---|---|
| Your Name Michael Kaufman | Rental Address (with zip code) 4016 Kansas St Apt D Oakland, CA 94619 | Telephone: 323-632-2980 E-mail: mvkaufman@gmail.com |
| Your Representative's Name James Vann | Mailing Address (with zip code) 251 Wayne Ave Oakland, CA 94606 | Telephone: 510-763-0142 Email: jamesevann@aol.com |
| Property Owner(s) name(s) Jennifer Nguyen | Mailing Address (with zip code) 88 Eureka Sq Pacifica, CA 94044 | Telephone: 510-213-9275 Email: jennifer611mailee@yahoo.com |
| Property Manager or Management Co. (if applicable) | Mailing Address (with zip code) | Telephone: Email: |

Number of units on the property: 4

| | | | |
|--|---|--------------------------------------|--|
| Type of unit you rent (check one) | <input type="checkbox"/> House | <input type="checkbox"/> Condominium | <input checked="" type="checkbox"/> Apartment, Room, or Live-Work |
| Are you current on your rent? (check one) | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No | |

If you are not current on your rent, please explain. (If you are legally withholding rent state what, if any, habitability violations exist in your unit.)

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 CPI and/or banked rent increase notice I was given was calculated incorrectly. |
| <input checked="" type="checkbox"/> (b) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%. |
| <input checked="" type="checkbox"/> (c) I received a rent increase notice before the property owner received approval from the Rent Adjustment Program for such an increase and the rent increase exceeds the CPI Adjustment and the available banked |

Rev. 2/10/17

For more information phone (510) 238-3721.

000076

| |
|--|
| rent increase. |
| (d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.) |
| (e) The property owner did not give me the required form "Notice of the Rent Adjustment Program" at least 6 months before the effective date of the rent increase(s). |
| (f) The rent increase notice(s) was (were) not given to me in compliance with State law. |
| (g) The increase I am contesting is the second increase in my rent in a 12-month period. |
| (h) There is a current health, safety, fire, or building code violation in my unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance. (Complete Section III on following page) |
| (i) The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner. (OMC 8.22.070(F): A decrease in housing services is considered an increase in rent. A tenant may petition for a rent adjustment based on a decrease in housing services.) (Complete Section III on following page) |
| (j) My rent was not reduced after a prior rent increase period for a Capital Improvement had expired. |
| (k) 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). |
| (l) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake (OMC 8.22, Article I) |
| (m) The owner did not give me a summary of the justification(s) for the increase despite my written request. |
| (n) The rent was raised <u>illegally</u> after the unit was vacated as set forth under OMC 8.22.080. |

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

Date you moved into the Unit: 7-23-2013 Initial Rent: \$ 1,250.00 /month

When did the owner first provide you with the RAP NOTICE, a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program? Date: 7-24-16. 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. If you never received the RAP Notice you can contest all past increases. You must check "Yes" next to each increase that you are challenging.

| Date you received the notice (mo/day/year) | Date increase goes into effect (mo/day/year) | Monthly rent increase | | Are you Contesting this Increase in this Petition?* | Did You Receive a Rent Program Notice With the Notice Of Increase? |
|--|--|-----------------------|------------------|---|---|
| | | From | To | | |
| <u>2-9-17</u> | <u>4-1-17</u> | <u>\$1250.00</u> | <u>\$1273.75</u> | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| <u>2-9-17</u> | <u>4-1-17</u> | <u>\$1273.75</u> | <u>\$1295.00</u> | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| <u>2-9-17</u> | <u>4-1-17</u> | <u>\$1250.00</u> | <u>\$1275.00</u> | <input type="checkbox"/> Yes <input checked="" 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 |

* You have 90 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 did not receive a RAP Notice with the rent increase you are contesting but have received it in the past, you have 120 days to file a petition. (O.M.C. 8.22.090 A 3)

Have you ever filed a petition for this rental unit?

- Yes
- No

List case number(s) of all Petition(s) you have ever filed for this rental unit and all other relevant Petitions:

T16-0482

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 problems in your unit, or because the owner has taken away a housing service, 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, or if you checked box (h) or (i) on page 2, please attach a separate sheet listing a description of the reduced service(s) and problem(s). Be sure to include the following:

- 1) a list of the lost housing service(s) or problem(s);
- 2) the date the loss(es) or problem(s) began or the date you began paying for the service(s)
- 3) when you notified the owner of the problem(s); and
- 4) how you calculate the dollar value of lost service(s) or problem(s).

Please attach documentary evidence if available.

You have the option to have a City inspector come to your unit and inspect for any code violation. To make an appointment, call the City of Oakland, Code of Compliance Unit at (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.

Michael Kaufman
Tenant's Signature

3-30-17
Date

Rent increase notice of 2-9-17 attached.

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 different Rent Adjustment Program Hearing Officer.

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:

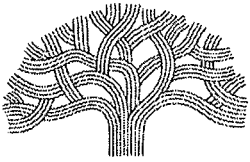
Time to File This form must be **received** at the offices of the City of Oakland, Rent Adjustment Program, Dalziel Building, 250 Frank H. Ogawa Plaza Suite 5313, Oakland, CA 94612 within the time limit for filing a petition set out in the Rent Adjustment Ordinance, Oakland Municipal Code, Chapter 8.22.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

File Review

Your property owner(s) will be required to file a response to this petition within 35 days of notification by the Rent Adjustment Program. You will be sent a copy of the Property Owner's Response. The petition and attachments to the petition can be found by logging into the RAP Online Petitioning System and accessing your case once this system is available. If you would like to review the attachments in person, please call the Rent Adjustment Program office at (510) 238-3721 to make an appointment.

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
- Rent Adjustment Program web site
- Other (describe): _____



CITY OF OAKLAND

**CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM**
P.O. Box 70243
Oakland, CA 94612-0243
(510) 238-3721

For date stamp.
RESERVED
CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM
2017 MAY 25 PM 2:25
PROPERTY OWNER
RESPONSE

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 - 717 - 0221

| | | |
|--|---|---|
| Your Name <i>Jennifer Nguyen</i> | Complete Address (with zip code) <i>3718 Green Acre Rd Oakland CA 94619</i> | Telephone: <i>510-213-9275</i> Email: <i>Jennifer @ll New Lee Yahoo.com</i> |
| Your Representative's Name (if any) <i>Michach Kaufman</i> | Complete Address (with zip code) <i>4016 Kansas St APT. D Oakland CA 94619</i> | Telephone: <i>323-632-2981</i> Email: |
| Tenant(s) Name(s) | Complete Address (with zip code) | |
| Property Address (If the property has more than one address, list all addresses) | | Total number of units on property |

Have you paid for your Oakland Business License? Yes No Lic. Number: _____
The property owner must have a current Oakland Business License. If it is not current, an Owner Petition or Response may not be considered in a Rent Adjustment proceeding. **Please provide proof of payment.**

Have you paid the current year's Rent Program Service Fee (\$68 per unit)? Yes No APN: _____
The property owner must be current on payment of the RAP Service Fee. If the fee is not current, an Owner Petition or Response may not be considered in a Rent Adjustment proceeding. **Please provide proof of payment.**

Date on which you acquired the building: 1/19/16

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

Type of unit (Circle One): House / Condominium/ Apartment, room, or live-work

I. JUSTIFICATION FOR RENT INCREASE You must check the appropriate justification(s) box for each increase greater than the Annual CPI adjustment contested in the tenant(s) petition. For the detailed text of these justifications, see Oakland Municipal Code Chapter 8.22 and the Rent

Board Regulations. You can get additional information and copies of the Ordinance and Regulations from the Rent Program office in person or by phoning (510) 238-3721.

You must prove the contested rent increase is justified. For each justification checked on the following table, you must attach organized documentary evidence demonstrating your entitlement to the increase. This documentation may include cancelled checks, receipts, and invoices. Undocumented expenses, except certain maintenance, repair, legal, accounting and management expenses, will not usually be allowed.

| <u>Date of Contested Increase</u> | <u>Banking (deferred annual increases)</u> | <u>Increased Housing Service Costs</u> | <u>Capital Improvements</u> | <u>Uninsured Repair Costs</u> | <u>Debt Service</u> | <u>Fair Return</u> |
|-----------------------------------|--|--|-----------------------------|-------------------------------|--------------------------|--------------------------|
| | <input checked="" 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"/> |

If you are justifying additional contested increases, please attach a separate sheet.

II. RENT HISTORY If you contest the Rent History stated on the Tenant Petition, state the correct information in this section. If you leave this section blank, the rent history on the tenant's petition will be considered correct

The tenant moved into the rental unit on 7/23/2013.

The tenant's initial rent including all services provided was: \$ 4,250 / 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? 7/24/2016

Is the tenant current on the rent? Yes No

Begin with the most recent rent and work backwards. If you need more space please attach another sheet.

| <u>Date Notice Given (mo./day/year)</u> | <u>Date Increase Effective</u> | <u>Rent Increased</u> | | <u>Did you provide the "RAP NOTICE" with the notice of rent increase?</u> |
|---|--------------------------------|-----------------------|-------------------|---|
| | | <u>From</u> | <u>To</u> | |
| <u>2.9.17</u> | <u>4.4.17</u> | \$ <u>1250</u> | \$ <u>1320.82</u> | <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 |

III. 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** 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.

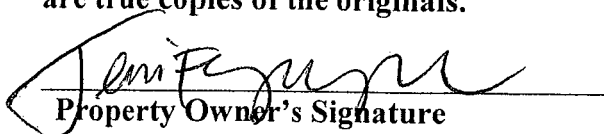
The unit is located in a building with three or fewer units. The owner occupies one of the units continuously as his or her principal residence and has done so for at least one year.

IV. 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. If you need more space attach a separate sheet. Submit any documents, photographs or other tangible evidence that supports your position.

V. VERIFICATION

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


Property Owner's Signature

5.9.17
Date

IMPORTANT INFORMATION:

Time to File

This form **must be received** by the Rent Adjustment Program (RAP), P.O. Box 70243, Oakland, CA 94612-0243, within 35 days after a copy of the tenant petition was mailed to you. Timely mailing as shown by a postmark does not suffice. The date of mailing is shown on the Proof of Service attached to the response documents mailed to you. 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.

You can date-stamp and drop your Response in the Rent Adjustment drop box at the Housing Assistance Center.. The Housing Assistance Center is open Monday through Friday, except holidays, from 9:00 a.m. to 5:00 p.m.

File Review

You should have received a copy of the petition (and claim of decreased housing services) filed by your tenant. When the RAP Online Petitioning System is available, you will be able to view the response and attachments by logging in and accessing your case files. If you would like to review the attachments in person, please call the Rent Adjustment Program office at (510) 238-3721 to make an appointment.

Mediation Program

Mediation is an entirely voluntary process to assist you in reaching an agreement with your tenant. In mediation, the parties discuss the situation with someone not involved in the dispute, discuss the relative strengths and weaknesses of the parties' case, and consider their needs in the situation. Your tenant may have agreed to mediate his/her complaints by signing the mediation section in the copy of the petition mailed to you. If the tenant signed for mediation and if you also agree to mediation, a mediation session will be scheduled before the hearing with a RAP staff member trained in mediation.

If the tenant did not sign for mediation, you may want to discuss that option with them. You and your tenant may agree to have your case mediated at any time before the hearing by submitted a written request signed by both of you. If you and the tenant agree to a non-staff mediator, please call (510) 238-3721 to make arrangements. Any fees charged by a non-staff mediator are the responsibility of the parties that participate. You may bring a friend, representative or attorney to the mediation session. Mediation will be scheduled only if both parties agree and after your response has been filed with the RAP.

If you want to schedule your case for mediation and the tenant has already agreed to mediation on their petition, sign below.

I agree to have my case mediated by a Rent Adjustment Program Staff member at no charge.

Property Owner's Signature

Date

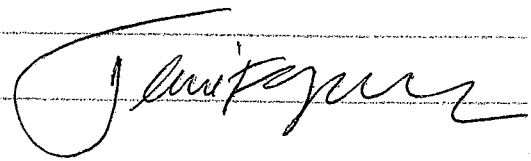
Dear Hearing Officer:

My Tenant Michel Kaufman
has been paying \$1,273.75 since
April 1, 2017.

Please adjust my increase
accordingly through your
decision. I am due \$1,320
through banking justification

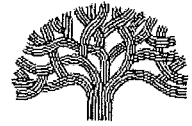
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CITY OF OAKLAND

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: T17-0221, Kaufman v. Nguyen
PROPERTY ADDRESS: 4016 Kansas St., #D, Oakland, CA
DATE OF HEARING: August 18, 2017
DATE OF DECISION: September 8, 2017
APPEARANCES: Michael Kaufman (Tenant)
Jennifer Nguyen (Owner)
James E. Vann (Tenant Representative)

SUMMARY OF DECISION

The tenant's petition is denied.

CONTENTIONS OF THE PARTIES

The tenant filed a petition on March 30, 2017, which alleges that proposed rent increases from \$1,250 to \$1,273.75 and from \$1,273.75 to \$1,295 per month, effective April 1, 2017, exceed the CPI Adjustment and are unjustified or are greater than 10%; that the CPI or banked rent increase was calculated incorrectly; and that he did not receive the form Notice to Tenants (RAP Notice) together with either contested rent increase.

The owner filed a response to the petition, which alleges that the tenant was given a rent increase notice from \$1,250 to \$1,320.82, effective April 1, 2017; that the tenant was given a RAP Notice together with this rent increase notice; and that the proposed rent increase is justified by Banking.

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THE ISSUES

- (1) What is the amount of the proposed rent increase?
- (2) Did the tenant receive the RAP Notice together with the subject rent increase notice?
- (3) Is a rent increase based upon Banking justified and, if so in what amount?

EVIDENCE

The Proposed Rent Increase: At the Hearing, the parties agreed that the tenant was given a rent increase notice which states that the rent would be increased from \$1,250 to \$1,320 per month, effective April 1, 2017.¹

RAP Notice: The tenant testified that he received the RAP Notice in July 2016 and together with the rent increase notice described in the prior paragraph.

Rent History: Both the petition and response state that the tenant moved into the subject rental unit on July 23, 2013, at a rent of \$1,250 per month. The tenant testified that he paid rent of \$1,275 per month since April 2017, and that he would continue to pay this amount until he receives a Hearing Decision in this case.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Proposed Rent Increase: It is found that the rent increase at issue in this case is from \$1,250 to \$1,320 per month, effective April 1, 2017.

RAP Notice: It is found that the tenant received the RAP Notice in the year 2016 and also together with the contested rent increase notice.

Banking: An owner is allowed to bank rent increases and use them in subsequent years, subject to certain limitations.² The parties agree on the dates and rent amounts entered into the Banking calculations shown on the attached Table. The method of calculation on this Table has been approved by the Rent Board.³ Therefore, as set forth in this Table, the maximum rent for the tenant's unit is \$1,321.31 per month, effective April 1, 2017. This is slightly more than the amount stated in the rent increase notice. Since a rent increase cannot be more than what is stated in a notice of rent increase, the rent is \$1,320 per month, effective April 1, 2017.

Rent Underpayments: The tenant paid rent of \$1,275 per month for the 6 months from April through September 2017. This is an underpayment of \$45 per month, a total of \$270. The underpayment is ordered repaid over a period of 3 months.⁴ The rent is temporarily increased by \$90 per month, to \$1,410 per month, beginning with the rent payment in October 2017 and ending with the rent payment in December 2017.

¹ Exhibit No. 1, which was admitted into evidence without objection.

² O.M.C. Section 8.22.070(C); Regulations Appendix, Section 10.5.1

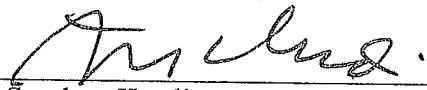
³ Appeal Decision, Case No. 98-02, et al. Merlo v. Rose Ventures III et al. The Board has designated this decision to be a Precedent Decision.

⁴ Regulations, Section 8.22.110(F)

ORDER

1. Petition T17-0221 is denied.
2. The rent, before a temporary increase due to underpaid rent, is \$1,320 per month, effective April 1, 2017. However, the tenant has underpaid rent in the total amount of \$270. This underpayment is adjusted over a period of 3 months.
3. The rent is temporarily increased by \$90 per month, to \$1,410 per month, beginning with the rent payment in October 2017 and ending with the rent payment in December 2017.
4. In January 2018, the rent will return to \$1,320 per month.
5. The Anniversary Date for future rent increases is April 1.
6. **Right to Appeal: This decision is the final decision of the Rent Adjustment Program Staff.** Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within twenty (20) calendar days after service of the decision. The date of service is shown on the attached Proof of Service. If the Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.

Dated: September 8, 2017



Stephen Kasdin
Hearing Officer
Rent Adjustment Program

CITY OF OAKLAND

Department of Housing and Community Development
 Rent Adjustment Program
<http://www2.oaklandnet.com/Government/o/hcd/o/RentAdjustment/>

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

CALCULATION OF DEFERRED CPI INCREASES (BANKING)

| | | | | | |
|--|-------------|--|-----------|----------|---------------------------------|
| Initial move-in date | 23-Jul-2013 | MUST FILL IN D9, D10, D11 and D14 | Case No.: | T17-0221 | CHANGE YELLOW CELLS ONLY |
| Effective date of increase | 1-Apr-2017 | | Unit: | | |
| Current rent (before increase and without prior cap. improve pass-through) | \$1,250 | | | | |
| Prior cap. imp. pass-through | | | | | |
| Date calculation begins | 23-Jul-2013 | If the planned increase includes other than banking put an X in the box→ | | | |
| Base rent when calc. begins | \$1,250 | | | | |

ANNUAL INCREASES TABLE

| Year Ending | Debt Serv. or Fair Return increase | Housing Serv. Costs increase | Base Rent Reduction | Annual % | CPI Increase | Rent Ceiling |
|-------------|------------------------------------|------------------------------|---------------------|----------|--------------|--------------|
| 7/23/2016 | | | | 2.0% | \$ 25.91 | \$ 1,321.31 |
| 7/23/2015 | | | | 1.7% | \$ 21.65 | \$ 1,295.40 |
| 7/23/2014 | | | | 1.9% | \$ 23.75 | \$ 1,273.75 |
| 7/23/2013 | | | | - | - | \$1,250 |

Calculation of Limit on Increase

| | |
|---|-------------|
| Prior base rent | \$1,250.00 |
| Banking limit this year (3 x current CPI and not more than 10%) | 6.0% |
| Banking available this year | \$ 71.31 |
| Banking this year + base rent | \$ 1,321.31 |
| Prior capital improvements recovery | \$ - |
| Rent ceiling w/o other new increases | \$ 1,321.31 |

PROOF OF SERVICE

Case Number T17-0221

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

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

Tenant

Michael Kaufman
4016 Kansas St #D
Oakland, CA 94619

Owner

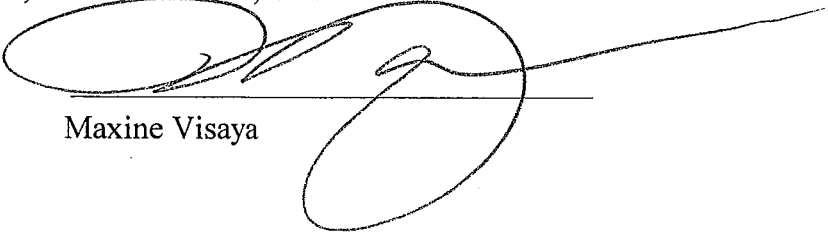
Jennifer Nguyen
88 Eureka Sq
Pacifica, CA 94044

Tenant Representative

James Vann
251 Wayne Ave
Oakland, CA 94606

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on September 12, 2017 in Oakland, CA.


Maxine Visaya

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

For date stamp
 2017 SEP 29 PM 2:45

APPEAL

| | | | |
|--|--|---|--|
| Appellant's Name Michael Kaufman | | <input type="checkbox"/> Owner <input checked="" type="checkbox"/> Tenant | |
| Property Address (Include Unit Number) 4016 Kansas St Apt D, Oakland, CA 94619 | | | |
| Appellant's Mailing Address (For receipt of notices) 4016 Kansas St Apt D, Oakland, CA 94619 | | Case Number T17-0221 | |
| | | Date of Decision appealed September 8, 2017 | |
| Name of Representative (if any) James Vann | | Representative's Mailing Address (For notices) 251 Wayne Ave, Oakland, CA 94606 | |

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: _____

You must serve a copy of your appeal on the opposing party(ies) or your appeal may be dismissed.

I declare under penalty of perjury under the laws of the State of California that on September 29, 2017, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

| | |
|------------------------|--------------------|
| Name | Jennifer Nguyen |
| Address | 88 Eureka Sq |
| City, State Zip | Pacifica, CA 94044 |
| Name | |
| Address | |
| City, State Zip | |

| | |
|------------------------|----------------|
| <i>Michael Kaufman</i> | <i>9-29-17</i> |
|------------------------|----------------|

SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE

DATE

For more information phone (510) 238-3721.

IMPORTANT INFORMATION:

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

- Appeals filed late without good cause will be dismissed.
- You must provide all of the information required or your appeal cannot be processed and may be dismissed.
- Any supporting argument or documentation to be considered by the Board must be received by the Rent Adjustment Program with a proof of service on opposing party within 15 days of filing the appeal.
- Any response to the appeal by the other party must be received by the Rent Adjustment Program with a proof of service on opposing party within 35 days of filing the appeal.
- The Board will not consider new claims. All claims, except as to jurisdiction, must have been made in the petition, response, or at the hearing.
- The Board will not consider new evidence at the appeal hearing without specific approval.
- You must sign and date this form or your appeal will not be processed.
- The entire case record is available to the Board, but sections of audio recordings must be pre-designated to Rent Adjustment Staff.

For more information phone (510) 238-3721.

Appeal of Decision of RAP Case T17-0221 heard on 8/18/17 by Hearing Officer Stephen Kasdin and decided on 9/8/17 with date of service of 9/12/17. This Appeal is filed on 9/29/17

Background for this Appeal

This case is a re-litigation of RAP Case No. T16-0482, heard on 12/8/16 by Hearing Officer Barbara Kong Brown, Esq., and decided in favor of the Tenant, Michael Kaufman, on 12/28/16.

That older case involved the Property Owner demanding banking to increase the rent from a previously signed 2014 lease, and also demanding continuing rent increases for 2015 and a new increase in 2016.

The result of that case was that, since I, the Tenant, had not been given a timely "Notice to Tenants of the RAP", the rent increase demands going back to 2014 were not proper and the Tenant's rent, my rent, should revert to the amount, \$1,250.00, listed in the signed lease.

Now, for this case, T17-0221, the Property Owner is again demanding an increase based on the same banking rejected in case T16-0482, this time for years, 2014 and 2015. The rent increase demanded is \$70 dollars or a 5.6% increase.

I have already, in April 2017, voluntarily increased my rent by the then allowed CPI of 2%. I am now paying \$1,275 per month. I do not want to pay the unfair and previously litigated and rejected rent increase to \$1,320.

Reasons for Appeal

A. Section "Contentions of the Parties" is wrongly stated.

A.1. I did not contend that "Tenant did not receive RAP Notice together with either contest rent increase."

A.2. I did contend (see attached note delivered to Hearing Officers and parties dated 8/18/17) that the Rap Notice, only first received in July 2016, did not and could not cover the years 2014-2015 and 2015-2016. These are the years that are now being referenced for banking.

A.3. I did contend that I did not dispute the 2017 2% rent increase and was paying that increase, but this contention was not listed in the "Contentions of the Parties."

A.4. I did contend that the decision of Case T16-0482, heard on 12/8/16 by hearing officer Barbara Kong Brown, Esq. determined that the RAP Notice's date of July 2016, did not allow increases of rent based on banking 2014 or 2015, but this contention was not listed in the "Contentions of the Parties."

This last contention, and any reference to prior Case T16-0482 is completely absent from the "Contentions of the Parties" section of the current Case T17-0221 being appealed. That prior case's decision was specifically referenced in both my 8/18/17 note delivered at the hearing and in my original petition, filed 3/30/17.

B. Section "The Issues" is partly stated wrongly.

B.1. The issue is not "What is the amount of the proposed rent increase?" This issue should be which of the three proposed rent increases are valid:

- (1) the one labeled in the rent increase notice as 7/23/14 for 1.9%,
- (2) the one labeled in the rent increase notice as 7/23/15 for 1.7%,
- (3) the one labeled in the rent increase notice as 7/23/16 for 2.0%,

B.2. The issue is not "Did the tenant receive the RAP Notice together with the subject rent increase notice?" The issue is whether the RAP notice was delivered in a timely manner with respect to years 2014 & 2015. The last issue, "Is a rent increase based upon Banking justified and, if so in what amount?", is the correct issue.

C. Section "Evidence" is wrongly stated.

"The Proposed Rent Increase" only states the sum of three rent increases. The hearing dealt extensively with the three rent increases, not just the sum. The tenant emphasized that the sum must be broken down into the three separate rent increases, all demanded at the same time. This is left out of this "Evidence" section.

D. Section "Findings of Fact and Conclusions of Law" is wrongly stated.

D.1. "The Proposed Rent Increase" should not be found as one sum, but based on evidence from

- (1) the Owner's Rent Increase Notices, and
- (2) the tenant's filed petition, and
- (3) the tenant's argument at the hearing (see 8/18/17 note)

it should be found that there are three rent increases in one, and that two of them are being protested and appealed.

D.2. The "Banking" finding in this decision references O.M.C Section 8.22.070(C). But this finding does not take into account O.M.C. Section 8.22.070 (H.3) or the finding of the prior Case T16-0482.

D.3. Prior Case T16-0482 found that banked rent increases for 7/23/14 and 7/23/15 were invalid due to violation of O.M.C. 8.22.060 (A), 8.22.070(H.1) and 8.22.060(C).

D.4. Current Case T17-0221 should also find that banking is invalid for those prior years based on O.M.C. 8.22.070(H.3) since no RAP Notice was delivered in those years. This O.M.C section states:

O.M.C. 8.22.070 Rent adjustments for occupied covered units

...
H. Notice Required to Increase Rent or Change Other Terms of Tenancy.

...
3. A rent increase is not permitted unless the notice required by this section is provided to the tenant. An owner's failure to provide the notice required by this section invalidates the rent increase or change of terms of tenancy. This remedy is not the exclusive remedy for a violation of this provision. If the owner fails to timely give the tenant a written summary of the basis for a rent increase in excess of the CPI Rent Adjustment, as required by Subsection 8.22.070H.1.c., the amount of the rent increase in excess of the CPI Rent Adjustment is invalid.

For these reasons I appeal this case. Michael Kaufman *M Kaufman* Date: 9-29-17

Remarks of Michael Kaufman to be given at a hearing on 8/18/17 of RAP Case No. T17-0221 filed on 5/25/17.

This case is a re-litigation of RAP Case No. T16-0482, heard on 12/8/16 by hearing officer Barbara Kong Brown, Esq., and decided in favor of the Tenant, Michael Kaufman, on 12/28/16.

That older case involved the Property Owner demanding banking to increase the rent from a previously signed 2014 lease, and also demanding continuing rent increases for 2015 and a new increase in 2016.

The Property Owner provided a "Notice to Tenants of the RAP" for the first time only on July 24th, 2016, the same day the Property Owner demanded the increase in rent from prior years, thus prompting the Tenant's petition which resulted in RAP Case T16-0482

The result of that case was that, since I, the Tenant, had not been given a timely "Notice to Tenants of the RAP", the rent increase demands going back to 2014 were not proper and the Tenant's rent, my rent, should revert to the amount, \$1,250.00, listed in the signed lease.

Now, for this case, T17-0221, the Property Owner is again demanding an increase based on the same banking rejected in case T16-0482, this time for years, 2014, 2015 and 2016. The rent increase demanded is \$70 dollars or a 5.6% increase.

I have already, in April 2017, voluntarily increased my 2017 rent by the allowed CPI of 2%. I am now paying \$1,275 per month. I do not want to pay the unfair and previously litigated and rejected rent increase to \$1,320.

Sincerely,
Michael Kaufman
323-632-2980

Michael Kaufman