HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD
REGULAR MEETING

JULY 12, 2018
7:00 P.M.
CITY HALL, HEARING ROOM #1
ONE FRANK H. OGAWA PLAZA
OAKLAND, CA

AGENDA

1. CALL TO ORDER
2. ROLL CALL
3. CONSENT ITEMS
4. OPEN FORUM
5. NEW BUSINESS
    i. Appeal Hearing in cases:
        a. T16-0496; Samatar v. Anastos
        b. T17-0237; Szymanski v. Madison Park Financial
        c. T16-0495; Arnold v. Farley Levine Properties, LLC
6. SCHEDULING AND REPORTS
7. ADJOURNMENT

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

Esta reunión es accesible para sillas de ruedas. Si desea solicitar adaptaciones relacionadas con discapacidades, o para pedir un intérprete de en español, Cantones, Mandarín o de lenguaje de señas (ASL) por favor envié un correo electrónico a

sshannon@oaklandnet.com o llame al (510) 238-3715 o 711 por lo menos cinco días hábiles antes de la reunión. Se le pide de favor que no use perfumes a esta reunión como cortesía para los que tienen sensibilidad a los productos químicos. Gracias.

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

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

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

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

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

CHRONOLOGICAL CASE REPORT

Case Nos.:	Samatar v. Anastos	
Case Name:	T16-0496	
Property Address:	517B Wesley Avenue, Oakland, CA	
Parties:	Aisha Samatar	(Tenant)
	Jane Anastos	(Property Owner)

OWNER APPEAL:

Activity	Date
Tenant Petition filed	September 2, 2016
Owner Response filed	October 21, 2016
Hearing Decision issued	February 27, 2017
Owner Appeal filed	March 30, 2017
Tenant Response to Owner Appeal	April 28, 2017

T16-0496 KM/LM

CITY OF OAKLAND RENT ADJUSTMENT PROGRAM Mail To: P. O. Box 70243 Oakland, California 94612-0243 (510) 238-3721	For date stamp. RECEIVED CITY OF OAKLAND RENT ARBITRATION PROGRAM 2016 SEP -2 PM 12: 05

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

TENANT PETITION

Please print legibly

Your Name	Rental Address (with zip code)	Telephone
Aisha Samatar	517 B. Wesley Ave	
Your Representative's Name	Mailing Address (with zip code)	Telephone
Property Owner(s) name(s)	Mailing Address (with zip code)	Telephone
Jane Anastos	34 Highland Ave. Piedmont CA 94611	Home 510.~~???-????~~ cell

Number of units on the property: 3.

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

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

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

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

Date you moved into the Unit: 12/1/2002 Initial Rent: $ 535.00 /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: Never. 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. See Attached Documents

Date Notice Served (mo/day/year)	Date Increase Effective (mo/day/year)	Amount Rent Increased From	To	Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		$	$	☐ Yes ☐ No	☐ Yes ☐ No
		$	$	☐ Yes ☐ No	☐ Yes ☐ No
		$	$	☐ Yes ☐ No	☐ Yes ☐ No
		$	$	☐ Yes ☐ No	☐ Yes ☐ No
		$	$	☐ Yes ☐ No	☐ Yes ☐ No
		$	$	☐ Yes ☐ No	☐ Yes ☐ No

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

List case number(s) of all Petition(s) you have ever filed for this rental unit: None

III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:

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

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

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

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

IV. VERIFICATION: The tenant must sign:

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

Tenant's Signature

Sept. 2, 2016
Date

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

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

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

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

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

Tenant's Signature

Sept. 2, 2016
Date

VI. IMPORTANT INFORMATION:

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

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

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

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

CITY OF OAKLAND RENT ADJUSTMENT PROGRAM P.O. Box 70243 250 Frank H. Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721	For filing stamp. RECEIVED CITY OF OAKLAND RENT ARBITRATION PROGRAM 2016 OCT 21 PM 4:03

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

CASE NUMBER T16-0490 **OWNER RESPONSE**

Please print legibly.

Your Name	Complete Address (with zip code)	
Jane Anastos	34 Highland Ave Piedmont CA 94611	Phone: Email: [illegible] .com
Your Representative's Name (if any)	Complete Address (with zip code)	Phone: Fax: Email:
Tenant(s) name(s) Aisha Samatar	Complete Address (with zip code) 517 Wesley Oakland CA 94606	

Have you paid for your Oakland Business License? Yes ☒ No ☐ Number 2678330
(Provide proof of payment.)

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

There are 2 residential units in the subject building. I acquired the building on 1/__/1999

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

I. RENTAL HISTORY

The tenant moved into the rental unit on 12/2002.

The tenant's initial rent ~~including all~~ no services provided was $535 / 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 X I don't know____ If yes, on what date was the Notice first given?_____

Is the tenant current on the rent? Yes ✓ No_____

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

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

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

Date Notice Given (mo/day/year)	Date Increase Effective (mo/day/year)	Amount Rent Increased From	Amount Rent Increased To	Did you provide NOTICE TO TENANTS with the notice of rent increase?
1/6/09	2/1/09	$ 535	$ 565	☐ Yes ☑ No
1/2/10	2/1/10	$ 565	$ 600	☐ Yes ☑ No
8/26/11	10/1/11	$ 600	$ 636	☐ Yes ☑ No
1/28/13	3/1/13	$ 636	$ 655	☐ Yes ☑ No
2/24/14	4/1/14	$ 655	$ 690	☐ Yes ☑ No
5/30/15	7/1/15	$ 690	$ 725	☐ Yes ☑ No
4/11/16	7/1/16	$ 725	760	*NO

II. JUSTIFICATION FOR RENT INCREASE

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

Date of Increase	Banking (deferred annual increases)	Increased Housing Service Costs	Capital Improve-ments	Uninsured Repair Costs	Fair Return	Debt Service (if purchased before 4/1/14)
2/1/09	☑	☐	☐	☐	☐	☐
2/1/10	☑	☐	☐	☐	☐	☐
10/1/11	☑	☐	☐	☐	☐	☐
3/1/13	☑	☐	☐	☐	☐	☐
4/1/14	☑	☐	☐	☐	☐	☐
7/1/15	☑	☐	☐	☐	☐	☐
7/1/16	☑	☐	☐	☐	☐	☐

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

III. DECREASED HOUSING SERVICES

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

IV. EXEMPTION

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

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

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

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

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

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

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

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

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

V. IMPORTANT INFORMATION

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

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

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

VI. VERIFICATION

Owner must sign here:

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

Owner's Signature

10/14/16
Date

VII. MEDIATION AVAILABLE

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

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

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

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

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

Owner's Signature

10/14/16
Date

000010

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

CITY OF OAKLAND

Department of Housing and Community Development
Rent Adjustment Program

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

HEARING DECISION

CASE NUMBER: **T16-0496, Samatar v. Anastos**

PROPERTY ADDRESS: **517 B. Wesley Ave., Oakland, CA**

DATE OF HEARING: **December 13, 2016**

DATE OF DECISION: **February 27, 2017**

APPEARANCES: **Aisha Samatar, Tenant**
Barbara A. Collins, Witness for Tenant
Gillian F. Quandt, Tenant's Attorney
Jane Anastos, Owner

SUMMARY OF DECISION

The tenant petition is granted.

CONTENTIONS OF THE PARTIES

On September 2, 2016, the tenant Aisha Samatar filed a tenant petition contesting several past rent increases, claiming no notice of Rent Adjustment Program was ever provided and decreased housing services due to parking fee and shared utilities.

On October 21, 2016, the owner filed a timely response, alleging that all prior rent increases were justified by banking and also stated that she has not given the notice to tenants of Residential Rent Adjustment Program (RAP Notice) to the tenant.

THE ISSUES

(1) Are the rent increases valid?
(2) Have the tenants' housing services been decreased, and if so, by what amount?

EVIDENCE

Background and Rent Increases

The tenant moved into the subject unit on December 1, 2002, at an initial rent of $535.00. The property consists of two buildings; the main building, consisting of two residential units and the cottage in the back. The subject unit is located on the ground floor in the main building.

The tenant contest the following rent increases:
- From $535.00 to $565.00, effective February 1, 2009;
- from $565.00 to $600.00, effective February 1, 2010;
- from $600.00 to $636.00, effective October 1, 2011;
- from $636.00 to $655.00, effective March 1, 2013;
- from $655.00 to $690.00, effective April 1, 2014;
- from $690.00 to $725.00, effective July 1, 2015; and
- from $725.00 to $760.00, effective July 1, 2016.

Copies of the rent increases were submitted and admitted into evidence.[1] The tenant paid the increases. This evidence was not disputed.

RAP Notices

The tenant testified and stated on her petition that she never received the RAP Notice. She testified that the RAP Notice was not provided when she first moved into the subject unit or with any of the rent increases. The owner response stated that she did not provide the RAP Notice to the tenants. When the owner listed the rent increases on page 2 of the Owner Response, she stated that she did not provide the RAP Notice to the tenants with any of the rent increases.

Decreased Housing Services/Changed Condition

The tenant identified the following as decreased housing services due to changed conditions:

Parking: Since the beginning of her tenancy, the tenant had a designated parking space in the driveway. The parking was free. On July 5, 2016, the owner sent a letter to the tenant, which requested that the parking in the driveway will be $100.00 per month, effective July 15, 2016.[2] The tenant did not pay the parking fee.

Splitting Utilities: There are no separate meters for each unit and the utilities have been shared among the tenants. The PG&E bill has been split between the two units in the main building, and the water and waste bills have been divided among three units. Copies of letters, emails relating to splitting of the utilities payments among the units,

[1] Exhibits A through G
[2] Exhibit H

including copies of utilities bills and worksheets showing the payment amounts were submitted and admitted into evidence.[3] The total amount the tenant paid for utilities from September of 2013 through December 2016 is $3,807.43.[4] This evidence was not disputed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Invalid Rent Increase - No RAP Notice

The Rent Adjustment Ordinance requires an owner to serve notice of the existence and scope of the Rent Adjustment Program (RAP Notice) at the start of a tenancy[5] and together with any notice of rent increase.[6]

Because the owner never provided the RAP notice to any of the tenants, the contested rent increases are not valid and the monthly rent will be rolled back to $535.00, the rent amount prior to the first contested rent increase. The tenant paid all of the rent increases and is entitled to restitution, which is limited to three (3) years prior to the hearing.[7] Therefore, the tenant will receive a credit for rent overpayments for 36 months, from January 1, 2014, through December 31, 2016, as follows:

OVERPAID RENT

From	To	Monthly Rent paid	Max Monthly Rent	Difference per month	No. Months	Sub-total
1-Jan-14	1-Mar-14	$655	$535	$ 120.00	3	$ 360.00
1-Apr-14	1-Jun-15	$690	$535	$ 155.00	15	$ 2,325.00
1-Jul-15	1-Jun-16	$725	$535	$ 190.00	12	$ 2,280.00
1-Jul-16	1-Dec-16	$760	$535	$ 225.00	6	$ 1,350.00
					TOTAL OVERPAID RENT	**$ 6,315.00**

RESTITUTION

		MONTHLY RENT	$535
		TOTAL TO BE REPAID TO TENANT	$ 6,315.00
		TOTAL AS PERCENT OF MONTHLY RENT	1180%
AMORTIZED OVER		MO. BY REG. IS	
OR OVER	60	MONTHS BY HRG. OFFICER IS	**$ 105.25**

[3] Exhibits M through R
[4] Exhibit M
[5] O.M.C. §8.22.060(A)
[6] O.M.C. §8.22.070(H)(1)(A)
[7] HRRAB Appeal Decisions T06-0051 (*Barajas/Avalos v. Chu*) & T08-0139 (Jackson-Redick v. Burks)

Decreased Housing Services

Parking is Part of Housing Services: The Oakland Municipal Code defines "Rent" as the total consideration charged or received by an owner in exchange for the use or occupancy of a covered unit including all housing services provided to the tenant.[8] Housing services include parking.

The Board has also held that an increase in a separate parking fee is an increase in rent.[9] In *Millar v. Black Oak Properties* (2002) T01-0376 (2002), the owner served the tenant with separate rent increases for parking and for the apartment unit. The Board determined that the owner was not entitled to the rent increase because he had previously increased the tenant's rent, and the Rent Ordinance defines a rental unit to include all the housing services provided with the unit. The Board opined: "Where the landlord rents a rental unit and a parking space to the tenant, the parking is part of the housing services, even where the parking is separately charged. Under such circumstances, an increase in the separate parking fee is an increase in rent." (*Pivorak v. Ma*, T08-0294.)

Based on the Board's decisions and the Oakland Municipal Code, the parking spaces rented by the tenants are part of the housing services even though they were acquired subsequent to the execution of the initial lease agreement. The tenant testified that she had the parking in the beginning of her tenancy. Therefore, any rent increases for the parking spaces are subject to the Rent Adjustment Ordinance. Therefore, the additional $100.00 for the parking fee is considered a rent increase and not valid.

Splitting Utilities: Under the Oakland Rent Ordinance, a decrease in housing services is considered to be an increase in rent[10] and may be corrected by a rent adjustment.[11] When more than one rental unit shares any type of utility bill with another rental unit, it is illegal to divide up the bill between units. Splitting the costs of utilities among tenants who live in separate units is prohibited by the public Utilities Commission Code and Rule 18 of PG&E.[12] The best way to remedy this situation is to install individual meters. Alternatively, the owner may choose to pay for the bill or include it into the tenant's rent as part of the rent, but it cannot be separately paid and split by the tenants.

It is undisputed that the tenant was splitting utilities with the other units. Therefore, this claim is granted and the tenant is entitled to a credit in the amount of $3,540.33 ($3,807.43 minus $267.1, the amount paid in 2013), which represents the

[8] O.M.C. §822.020
[9] T01-0376 (Millar v. Black Oak Properties)
[10] O.M.C. Section 8.22.070(F)
[11] O.M.C. Section 8.22.110(E)
[12] RAP Regs 10.1.10

amount she was charged for utilities for 36 months from January 1, 2014, through December of 2016. The tenant will receive a credit as stated in the order below.

ORDER

1. Tenant Petition T16-0496 is granted.

2. The rent increases are not valid. The monthly base rent is $535.00.

3. The monthly base rent of $535 is further decreased to $370.75 for the next sixty (60) months per chart below. The Hearing Officer selected a 60-month amortization period due to the large amount of credit.

4. The total credit is $10,122.43, due to rent overpayments ($6,315.00) and past decreased housing services due to splitting utilities ($3,540.33). This amount may be adjusted by a rent decrease for the next 60 months, beginning April 1, 2017, as follows:

Base Rent	$ 535.00
Rent overpayments amortized over 60 months (6315.00 divided by 60 months)	- 105.25
Tenant rent from April 1, 2017, to March 1, 2022 (60 months)	$429.75
- tenant rent overpayments due to splitting utilities amortized over 60 months ($3,540.33 divided by 60 months)	-59.00
Net current monthly rent	$ 370.75

5. On April 1, 2022, the rent will increase by $164.25 ($105.25 plus $59.00) as the credit for past decreased services expires per chart above. This is not a rent increase.

6. The owner is otherwise entitled to increase the tenants' rent six months after proper service of the Notice of the existence of the Rent Adjustment Program and in accordance with California Civil Code §827.

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

Dated: February 28, 2017

Linda M. Moroz
Hearing Officer, Rent Adjustment Program

PROOF OF SERVICE

Case Number T16-0496

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
Aisha Samatar
517 B. Wesley Ave
Oakland, CA 94606

Owner
Jane Anastos
34 Highland Ave
Piedmont, CA 94611

Tenant Representative
Gillian Quandt/Centro Legal de la Raza
3400 East 12th St
Oakland, CA 94601

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

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

Esther K. Rush

CITY OF OAKLAND

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

For date stamp.
RECEIVED
MAR 30 2017
RENT ADJUSTMENT PROGRAM
OAKLAND

APPEAL

Appellant's Name Jane Anastos	☒ Owner ☐ Tenant
Property Address (Include Unit Number) 517B Wesley Avenue, Oakland, CA 94606	
Appellant's Mailing Address (For receipt of notices) 519 Wesley Avenue, Oakland, CA 94606	**Case Number** T16-0496 **Date of Decision appealed** February 28, 2017
Name of Representative (if any) Monica P. Deka, Esq.	**Representative's Mailing Address (For notices)** M.C. Hall & Associates, P.C. 605 Market Street, 9th Floor San Francisco, CA 94605

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:* 22.

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

Name	Aisha Samatar
Address	517B Wesley Avenue
City, State Zip	Oakland, CA 94606
Name	
Address	
City, State Zip	

	3/30/17
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	**DATE**

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

Michael C. Hall
Francisco A. Gutierrez
Andres M. Sanchez
Monica P. Deka

M. C. HALL & ASSOCIATES, P.C.
Attorneys and Counselors at Law
605 Market Street Suite 900
San Francisco CA 94105
Tel: (415) 512-9865
Fax: (415) 495-7204
mhalllaw.com

March 30, 2017

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

Explanation of Grounds for Landlord's Appeal

RAP Case: T16-0496 (Samatar v. Anastos)
Subject Property: 517B Wesley Avenue, Oakland, CA 94606
Date of Decision: February 28, 2017

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

To the extent that the decision of the Rent Adjustment Program ("RAP") Hearing in the instant case (attached as Exhibit A) granted Tenant a credit for the amount she was charged for water and refuse removal for 36 months from January 1, 2004 through December 2016 (i.e., $2,286.87) due to the fact that the cost for such services were split with the other units on the property, the decision must be reversed. In granting Tenant a credit for such water and refuse removal charges, the hearing officer incorrectly found that water and refuse removal are utilities.

Section 10.1.10 of Appendix A to the RAP Regulations provides:

> When more than one rental unit shares any type of utility bill with another rental unit, it is illegal to divide up the bill between units. Splitting the costs of utilities among tenants who live in separate units is prohibited by the Public Utilities Commission Code and Rule 18 of PG&E. The best way to remedy the bill is to install individual meters. If this is too expensive, then the property owner should pay the utility bill himself/herself and build the cost into the rent.

The RAP Regulations define "Housing Services" as "all services provided by the Owner related to the use or occupancy of a Covered Unit, including, but not limited to, ... utilities, heat, water, ... [and] refuse removal. *See*, Oakland Municipal Code, § 8.22.020. Further, Appendix A to the RAP Regulations defines "Increased Housing Service Costs" as "services provided by the landlord related to the use or occupancy of a rental unit, including, but not limited to, ... heat,

water, ... [and] refuse removal." *See*, Appendix A, § 10.1 to the Oakland Municipal Code, Chapter 8.22.

The term "utilities" is not specifically defined anywhere in the RAP Regulations or any appendix thereto. However, a critical review of the plain and unambiguous language used in the definitions of "Housing Services" and "Increased Housing Service Costs" as provided in the RAP Regulations, reveals that the general term "utilities" cannot include water and refuse removal services as water and refuse removal are listed as distinct housing services separate and apart from utilities. As such, Section 10.1.10 of Appendix A to the RAP Regulations, which makes it illegal to divide up shared utility bills, has no application to water and refuse removal charges and Landlord properly divided the charges for such services between the units on the property.

Further, the language of Section 10.1.10 of Appendix A to the RAP Regulations itself supports Landlord's argument that water and refuse removal are not utilities which are prohibited from being shared between units. The second sentence of said section explains that the Public Utilities Commission Code and Rule 18 of PG&E prohibit splitting of costs of utilities among tenants who live in separate units. However, the Public Utilities Commission Code and Rule 18 of PG&E only apply to gas and electricity utilities; they have no application to water and refuse removal billing. In fact, water and refuse removal tenant billing is not directly regulated by any California statute. *See*, Moskovitz et al., California Landlord-Tenant Practice, § 4.41A (Cal. Cont. Ed. Bar 2009). Additionally, Section 10.1.10 of Appendix A to the RAP Regulations suggests that "the best way to remedy the [shared] bill is to install individual meters." However, refuse removal charges are impossible to metered.

For all of these reasons, the decision must be reversed to the extent that it granted Tenant a credit for water and refuse removal charges for the period starting January 1, 2014 through December 31, 2016, which total $2,286.87. (Exhibit A, pgs. 4-5).

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

In practical effect, the hearing officer's decision effectively redefines "Housing Service Costs" to include refuse removal costs without exception for any property that has more than one rental unit. Thus, pursuant to the hearing officer's decision, property owners are forced to build refuse removal costs into the rent for any property that has more than one rental unit despite the fact that the current RAP Regulations do not require property owners to do so.

3) The decision is not supported by substantial evidence.

The hearing officer's decision that the initial oral rental agreement between Landlord and Tenant included the rental of a parking space and, therefore, a parking space is part of the "housing services" provided by Landlord, is not supported by substantial evidence. Landlord submitted substantial evidence demonstrating that at no point in time did Landlord rent a parking space to Tenant. Landlord's evidence that establishes that Landlord had never rented Tenant a parking space is as follows:

a. Landlord's response to Tenant's petition, pg. 2 – Establishes that Tenant has never had a car and does not drive. Such facts went undisputed by Tenant.

b. Landlord's response to Tenant's petition, pg. 2 – Establishes that Landlord repeatedly told Tenant that she had never rented a parking space at the property.

c. Landlord's e-mail, sent on April 26, 2010, to all tenants then living at the property (including Tenant), which was attached to Landlord's response to Tenant's petition and is also included as Tenant's Exhibit O, pgs. 3-4 – Establishes that: (i) Steve and Janet Toliver, the then-tenants of the upper unit of the main building on the property who moved to the property after Tenant, had seniority as to their preferred parking spot out of the three spots available at the property; (ii) that the incoming tenant of the cottage on the property would choose which of the two remaining spots available she would use. The fact that Tenant failed to submit any evidence that she objected to any of the statements made in Landlord's April 26, 2010 e-mail regarding seniority of the tenants as to parking spaces or that there were two available parking spots that the incoming tenant could choose to use, is evidence that Tenant never had rented a parking space at the property.

d. Landlord's e-mail, sent on October 1, 2010, to all tenants then living at the property (including Tenant), which was attached to Landlord's response to Tenant's petition and is also included as Tenant's Exhibit O, pg. 6 – Evidence that Tenant did not rent a parking space at the property as Landlord only directed the then-tenant of the cottage on the property to use the parking space on the far right for a few days so as to allow the new incoming tenants of the upper unit of the main building free access to the garage to move their belongings in; no such directive was given to Tenant as she did not rent a parking space at the property.

e. Tenant's e-mail, sent on July 27, 2014, to Landlord, which was attached to Landlord's response to Tenant's petition – Establishes that Landlord informed Tenant's son, Kamil, that Tenant did not rent a parking space after observing Kamil's car parked in the driveway of the subject property during a visit with his Tenant. Additionally, Tenant admits that she does not have a car due to a disability.

f. Tenant's Exhibit H – Landlord's letter to Tenant, dated July 5, 2016, wherein Landlord for the first time offers to rent Tenant one of three parking spots at the subject property (the center parking spot) at the rate of $100/month.

Additionally, Landlord provided testimony at the hearing that at no time did Landlord ever rent a parking space at the property to Tenant. Landlord further testified that although friends and family members of Tenant would infrequently park in the driveway of the property when making brief visits with Tenant at the property, Landlord had repeatedly objected to Tenant's friends and family members' use of a parking space at the property because Tenant was never rented a parking space.

As outlined above, there is substantial evidence in the record that Landlord never provided a parking space to Tenant in connection with Tenant's use and occupancy of the subject premises. The evidence adduced by Tenant in support of her claim of deceased housing services due to an imposition of a monthly fee for use of a parking space at the property was insufficient to meet Tenant's burden to establish that use of a parking space was part of the original oral rental agreement between her and Landlord when she first rented the subject premises.

4) Landlord was denied a sufficient opportunity to present her claim or respond to the tenant's claim.

On December 12, 2016 – just one day before the scheduled mediation and hearing of the Tenant's petition – the hearing officer issued an order denying Landlord's properly submitted request to postpone the hearing to a date just over 3 weeks after the scheduled mediation and hearing. (Exhibit B.) As explained and documented in Landlord's request to postpone the mediation and hearing, which was submitted on December 9, 2016, the health of Landlord's sister, who had been battling a serious illness, had taken a sudden turn for the worse that resulted in her sister being placed in hospice care on December 8, 2016. (Exhibit C.) Landlord provided the hearing officer with proof of her sister's admission into a hospice care center and the contact information for her sister's hospice physician. (Exhibit D.)

The hearing officer rationalized her exercise of discretion in denying Landlord's request for a continuance on the basis that Landlord's reasons for requesting a postponement did not meet her concept of "good cause and in the interest of justice" ostensibly because Landlord failed to submit any documents "indicating any medical emergency" or "a need for ... [Landlord] to travel to visit her sister." (See, Exhibit B.) However, as explained by Landlord in her request to postpone the mediation and hearing, discovering that her sister was close to death caused Landlord to suffer severe emotional and physical distress and there wasn't sufficient time for Landlord to obtain counsel who could appear at the scheduled mediation and hearing on her behalf. (See, Exhibit C.) Surely suddenly learning one's sibling is close to death would cause most people to suffer severe emotional and/or physical distress that would make appearing at and meaningfully participating in a mediation and hearing impractical. Regardless, the hearing officer unfairly ruled that Landlord's proffered reason for requesting a continuance of the mediation and hearing failed to amount to good cause. (See, Exhibit B.) As a result of the denial of Landlord's request for a continuance of the mediation and hearing, Landlord's ability to properly prepare and gather all relevant documentary evidence in support of her opposition to Tenant's petition was detrimentally affected.

Landlord was further denied a sufficient opportunity to respond to Tenant's claim that use of a parking space is part of the housing services provided by Landlord when the hearing officer refused to accept into the hearing record a written rental agreement Landlord entered into with another tenant at the same property that explicitly provides for the payment of a parking fee separate and apart from the tenant's monthly rent. (Exhibit E). The hearing officer's stated reason for refusing to accept the rental agreement into the record was lack of relevancy. However, the rental agreement is relevant to the determination of Tenant's petition as it supports Landlord's claim that she rented parking spaces at the property separately to tenants at the property who desired to use a parking space as it indicates that a separate parking fee was charged to the tenant. Further, the rental agreement rebuts the unsworn statements from prior tenants of the property

produced by Tenant at the hearing regarding the terms of their tenancies at the property, which were accepted into the record by the hearing officer. As a result of the hearing officer's refusal to accept the rental agreement offered by Landlord into the record, Landlord suffered significant prejudice.

For all of the foregoing reasons, Landlord requests that the Board reverse the hearing officer's decision in the instant matter.

Respectfully submitted,

Monica P. Deka

Attorney for Landlord/Appellant Jane Anastos

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

CITY OF OAKLAND

Department of Housing and Community Development
Rent Adjustment Program

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

HEARING DECISION

CASE NUMBER: T16-0496, Samatar v. Anastos

PROPERTY ADDRESS: 517 B. Wesley Ave., Oakland, CA

DATE OF HEARING: December 13, 2016

DATE OF DECISION: February 27, 2017

APPEARANCES: Aisha Samatar, Tenant
Barbara A. Collins, Witness for Tenant
Gillian F. Quandt, Tenant's Attorney
Jane Anastos, Owner

SUMMARY OF DECISION

The tenant petition is granted.

CONTENTIONS OF THE PARTIES

On September 2, 2016, the tenant Aisha Samatar filed a tenant petition contesting several past rent increases, claiming no notice of Rent Adjustment Program was ever provided and decreased housing services due to parking fee and shared utilities.

On October 21, 2016, the owner filed a timely response, alleging that all prior rent increases were justified by banking and also stated that she has not given the notice to tenants of Residential Rent Adjustment Program (RAP Notice) to the tenant.

THE ISSUES

(1) Are the rent increases valid?
(2) Have the tenants' housing services been decreased, and if so, by what amount?

EVIDENCE

Background and Rent Increases

The tenant moved into the subject unit on December 1, 2002, at an initial rent of $535.00. The property consists of two buildings; the main building, consisting of two residential units and the cottage in the back. The subject unit is located on the ground floor in the main building.

The tenant contest the following rent increases:
- From $535.00 to $565.00, effective February 1, 2009;
- from $565.00 to $600.00, effective February 1, 2010;
- from $600.00 to $636.00, effective October 1, 2011;
- from $636.00 to $655.00, effective March 1, 2013;
- from $655.00 to $690.00, effective April 1, 2014;
- from $690.00 to $725.00, effective July 1, 2015; and
- from $725.00 to $760.00, effective July 1, 2016.

Copies of the rent increases were submitted and admitted into evidence.[1] The tenant paid the increases. This evidence was not disputed.

RAP Notices

The tenant testified and stated on her petition that she never received the RAP Notice. She testified that the RAP Notice was not provided when she first moved into the subject unit or with any of the rent increases. The owner response stated that she did not provide the RAP Notice to the tenants. When the owner listed the rent increases on page 2 of the Owner Response, she stated that she did not provide the RAP Notice to the tenants with any of the rent increases.

Decreased Housing Services/Changed Condition

The tenant identified the following as decreased housing services due to changed conditions:

Parking: Since the beginning of her tenancy, the tenant had a designated parking space in the driveway. The parking was free. On July 5, 2016, the owner sent a letter to the tenant, which requested that the parking in the driveway will be $100.00 per month, effective July 15, 2016.[2] The tenant did not pay the parking fee.

Splitting Utilities: There are no separate meters for each unit and the utilities have been shared among the tenants. The PG&E bill has been split between the two units in the main building, and the water and waste bills have been divided among three units. Copies of letters, emails relating to splitting of the utilities payments among the units,

[1] Exhibits A through G
[2] Exhibit H

including copies of utilities bills and worksheets showing the payment amounts were submitted and admitted into evidence.[3] The total amount the tenant paid for utilities from September of 2013 through December 2016 is $3,807.43.[4] This evidence was not disputed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Invalid Rent Increase - No RAP Notice

The Rent Adjustment Ordinance requires an owner to serve notice of the existence and scope of the Rent Adjustment Program (RAP Notice) at the start of a tenancy[5] and together with any notice of rent increase.[6]

Because the owner never provided the RAP notice to any of the tenants, the contested rent increases are not valid and the monthly rent will be rolled back to $535.00, the rent amount prior to the first contested rent increase. The tenant paid all of the rent increases and is entitled to restitution, which is limited to three (3) years prior to the hearing.[7] Therefore, the tenant will receive a credit for rent overpayments for 36 months, from January 1, 2014, through December 31, 2016, as follows:

OVERPAID RENT

From	To	Monthly Rent paid	Max Monthly Rent	Difference per month	No. Months	Sub-total
1-Jan-14	1-Mar-14	$655	$535	$ 120.00	3	$ 360.00
1-Apr-14	1-Jun-15	$690	$535	$ 155.00	15	$ 2,325.00
1-Jul-15	1-Jun-16	$725	$535	$ 190.00	12	$ 2,280.00
1-Jul-16	1-Dec-16	$760	$535	$ 225.00	6	$ 1,350.00
					TOTAL OVERPAID RENT	$ 6,315.00

RESTITUTION

	MONTHLY RENT	$535
	TOTAL TO BE REPAID TO TENANT	$ 6,315.00
	TOTAL AS PERCENT OF MONTHLY RENT	1180%
AMORTIZED OVER	MO. BY REG. IS	
OR OVER 60	MONTHS BY HRG. OFFICER IS	$ 105.25

[3] Exhibits M through R
[4] Exhibit M
[5] O.M.C. §8.22.060(A)
[6] O.M.C. §8.22.070(H)(1)(A)
[7] HRRAB Appeal Decisions T06-0051 (*Barajas/Avalos v. Chu*) & T08-0139 (Jackson-Redick v. Burks)

Decreased Housing Services

Parking is Part of Housing Services: The Oakland Municipal Code defines "Rent" as the total consideration charged or received by an owner in exchange for the use or occupancy of a covered unit including all housing services provided to the tenant.[8] Housing services include parking.

The Board has also held that an increase in a separate parking fee is an increase in rent.[9] In *Millar v. Black Oak Properties* (2002) T01-0376 (2002), the owner served the tenant with separate rent increases for parking and for the apartment unit. The Board determined that the owner was not entitled to the rent increase because he had previously increased the tenant's rent, and the Rent Ordinance defines a rental unit to include all the housing services provided with the unit. The Board opined: "Where the landlord rents a rental unit and a parking space to the tenant, the parking is part of the housing services, even where the parking is separately charged. Under such circumstances, an increase in the separate parking fee is an increase in rent." (*Pivorak v. Ma*, T08-0294.)

Based on the Board's decisions and the Oakland Municipal Code, the parking spaces rented by the tenants are part of the housing services even though they were acquired subsequent to the execution of the initial lease agreement. The tenant testified that she had the parking in the beginning of her tenancy. Therefore, any rent increases for the parking spaces are subject to the Rent Adjustment Ordinance. Therefore, the additional $100.00 for the parking fee is considered a rent increase and not valid.

Splitting Utilities: Under the Oakland Rent Ordinance, a decrease in housing services is considered to be an increase in rent[10] and may be corrected by a rent adjustment.[11] When more than one rental unit shares any type of utility bill with another rental unit, it is illegal to divide up the bill between units. Splitting the costs of utilities among tenants who live in separate units is prohibited by the public Utilities Commission Code and Rule 18 of PG&E.[12] The best way to remedy this situation is to install individual meters. Alternatively, the owner may choose to pay for the bill or include it into the tenant's rent as part of the rent, but it cannot be separately paid and split by the tenants.

It is undisputed that the tenant was splitting utilities with the other units. Therefore, this claim is granted and the tenant is entitled to a credit in the amount of $3,540.33 ($3,807.43 minus $267.1, the amount paid in 2013), which represents the

[8] O.M.C. §822.020
[9] T01-0376 (Millar v. Black Oak Properties)
[10] O.M.C. Section 8.22.070(F)
[11] O.M.C. Section 8.22.110(E)
[12] RAP Regs 10.1.10

amount she was charged for utilities for 36 months from January 1, 2014, through December of 2016. The tenant will receive a credit as stated in the order below.

ORDER

1. Tenant Petition T16-0496 is granted.

2. The rent increases are not valid. The monthly base rent is $535.00.

3. The monthly base rent of $535 is further decreased to $370.75 for the next sixty (60) months per chart below. The Hearing Officer selected a 60-month amortization period due to the large amount of credit.

4. The total credit is $10,122.43, due to rent overpayments ($6,315.00) and past decreased housing services due to splitting utilities ($3,540.33). This amount may be adjusted by a rent decrease for the next 60 months, beginning April 1, 2017, as follows:

Base Rent	$ 535.00
Rent overpayments amortized over 60 months (6315.00 divided by 60 months)	- 105.25
Tenant rent from April 1, 2017, to March 1, 2022 (60 months)	$429.75
- tenant rent overpayments due to splitting utilities amortized over 60 months ($3,540.33 divided by 60 months)	-59.00
Net current monthly rent	$ 370.75

5. On April 1, 2022, the rent will increase by $164.25 ($105.25 plus $59.00) as the credit for past decreased services expires per chart above. This is not a rent increase.

6. The owner is otherwise entitled to increase the tenants' rent six months after proper service of the Notice of the existence of the Rent Adjustment Program and in accordance with California Civil Code §827.

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

Dated: February 28, 2017

Linda M. Moroz
Hearing Officer, Rent Adjustment Program

PROOF OF SERVICE

Case Number T16-0496

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
Aisha Samatar
517 B. Wesley Ave
Oakland, CA 94606

Owner
Jane Anastos
34 Highland Ave
Piedmont, CA 94611

Tenant Representative
Gillian Quandt/Centro Legal de la Raza
3400 East 12th St
Oakland, CA 94601

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

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

Esther K. Rush

CITY OF OAKLAND

250 FRANK H. OGAWA PLAZA, SUITE 5313, OAKLAND, CALIFORNIA 94612-2034

Department of Housing and Community Development
Rent Adjustment Program

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

ORDER DENYING REQUEST TO CHANGE DATE OF PROCEEDING

CASE NUMBER: **T16-0496, Samatar v. Anastos**
PROPERTY ADDRESS: **517 B Wesley Ave., Oakland, CA**

On October 27, 2016, a Notice of Mediation and Hearing was mailed to the parties, scheduling the mediation and hearing date for December 13, 2016. On December 9, 2016, the owner submitted the Request to Change Date of Proceeding. The stated reason is that the owner is distressed emotionally because of her sister's medical condition. The owner's sister is currently under a hospice care in Illinois. On December 12, 2016, the owner submitted her sister's hospice care documents. No documents indicating any medical emergency were submitted. No documents indicating a need for the owner to travel to visit her sister was submitted.

Rent Adjustment Ordinance Regulation 8.22.110(A) states that a hearing may only be postponed for "good cause and in the interest of justice," and additionally states that a request for postponement must be made on the earliest possible date, with supporting documentation attached. A Party may be granted only one postponement for good cause, unless the party shows "extraordinary circumstances."

The Regulation states that "good cause" includes, but is not limited to:

- "Verified illness of a party, an attorney, or other authorized representative of a party or material witness of the party;
- Verified travel plan scheduled before the receipt of notice of hearing;
- Any other reason that makes it impractical to appear at the scheduled date due to unforeseen circumstances or verified prearranged plans that cannot be changed. Mere inconvenience or difficulty in appearing shall not constitute 'good cause.'"

Based on the information submitted, the request for continuance is DENIED. The mediation and hearing shall take place as scheduled on December 13, 2016.

Dated: December 12, 2016

Linda M. Moroz
Hearing Officer, Rent Adjustment Program

PROOF OF SERVICE

Case Number T16-0496

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 Order Denying Request to Change Date of Proceeding 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
Aisha Samatar
517 B. Wesley Ave
Oakland, CA 94606

Owner
Jane Anastos
34 Highland Ave
Piedmont, CA 94611

Tenant Representative
Gillian Quandt/Centro Legal de la Raza
3400 East 12th St·
Oakland, CA 94601

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on December 13, 2016 in Oakland, CA.

Esther K. Rush

Mason, Keith

From: Jane Anastos <janastos@yahoo.com>
Sent: Friday, December 09, 2016 12:24 PM
To: Mason, Keith
Subject: Request to postpone hearing
Attachments: Request to postpone.pdf

Hello Mr Mason,

Attached please find the completed request to postpone form. I have requested a note be sent to me from my sister's doctor. I will forward that to you as soon as I receive it.

Thank you for your time and consideration.

Jane Anastos

CITY OF OAKLAND

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

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

REQUEST TO CHANGE DATE OF PROCEEDING

IMPORTANT INFORMATION: A request for a change of the date of hearing or mediation must be submitted on this form as early as possible. You must sign this request. **Documentation verifying the reason for the request must be attached to this form.** A postponement may only be granted for good cause shown and in the interests of justice. The agreement of the parties to a postponement is not good cause, by itself. Only one postponement may be granted to a party unless the party shows extraordinary circumstances. The maximum postponement granted is usually 20 days. **Before submitting this request,** you **must** try to reach an agreement with the other party(ies) for a new date for the proceeding. If you provide two alternate hearing dates, the hearing will be set on one of the agreed dates, if the date is available on the hearing calendar. If it is not available, another date will be chosen.

Case Number(s): T16-0496 **Date of Scheduled Hearing/Mediation:** 12/13/16

Lead Case Title: Samatar v. Anastos

Name of Party Requesting Postponement: J. Anastos

Contact Telephone Number: 510 655 3383 **Fax Number (if any):** email: janastos@yahoo.com

I request postponement of the hearing stated above because:
[If you need more space, attach additional sheets.]

My sister has been very ill and her condition has taken a turn for the worse. She is currently under hospice care. I am very distressed emotionally and physically, and there isn't enough time to properly assign a representative on my behalf. I would like to request a postponement for January 5th or 12th if possible.

I contacted Ms Samatar and she refused to talk to me stating I should contact her attorney. I contacted her attorney and she demanded I provide her with medical records and was not willing to postpone the hearing.

I have requested a note be sent from my sister's doctor and will forward that to you as soon as I receive it.

Thank you in advance for your consideration.

☐ The parties agree that the hearing may be postponed to _____ or _____.
(Agreed dates will be honored by the Rent Adjustment Program if)

OR

☒ I contacted the opposing party(ies) and we were unable to agree on a date for the re-scheduled hearing.

I declare under penalty of perjury pursuant to the laws of the State of California that the information provided in support of this request is true and correct.

Date: 12/9/16 _____
(Signature)

THE HEARING DATE IS NOT CHANGED UNLESS THIS REQUEST IS GRANTED IN WRITING.

Rev. 11/18/08

Mason, Keith

From:	Jane Anastos <janastos@yahoo.com>
Sent:	Monday, December 12, 2016 10:20 AM
To:	Mason, Keith
Subject:	Fw: Hospice docs
Attachments:	Sophia Hospice.pdf

Good morning Mr. Mason,

I have received my sister's hospice documents with the attending physician. Please see attachment.

Today I can be reached at 510-332-5031 or via email.

Thank you again for your assistance!.

Jane Anastos

YOUR HOSPICE TEAM

Primary Nurse: _____

Certified Home Health Aide: _____

Social Worker: _____

Spiritual Coordinator: _____

Music Therapist: _____

Team Director: In Office

Volunteer: _____

Hospice Physician: Dr. Birinder Marwah

Pharmacy: _____

Your Family: _____

_____

_____

_____

1-800-570-8809

Call Hospice Before Calling 911 or Hospital

SEASONS HOSPICE & PALLIATIVE CARE

CONSENT AND ELECTION OF HOSPICE BENEFIT

PATIENT NAME: SOPHIA ANASTOS MR#: _____ DATE: 1/16

I consent and elect to have Seasons Hospice & Palliative Care ("Seasons") provide my hospice care effective as of the date set forth below, if applicable through the Medicare/Medicaid hospice benefit or my commercial insurance benefit. I acknowledge that I have been given a full understanding of the palliative rather than curative nature of hospice care, as it relates to my terminal illness. I understand hospice's goal is not to cure my terminal illness. The goal of hospice is to maintain quality of life through the management of pain and other symptoms when no further curative measures are planned. Seasons staff will also provide emotional and spiritual support (when requested) to me and my family or primary caregiver. Seasons will evaluate me on an ongoing basis for continued eligibility for the Medicare/Medicaid hospice benefit.

Hospice Services. I understand the Medicare/Medicaid hospice benefit covers services that are related to and reasonable and necessary for the palliation and management of my terminal illness and related conditions. I understand the following services may be covered by Seasons under my Medicare/Medicaid hospice benefit, but only to the extent Seasons authorizes and arranges such services.

- Intermittent visits by nurses, social workers, spiritual counselors, hospice aides, homemakers, volunteers, dietary counselors, physical, occupational and speech therapists, and other professionals as set forth in my plan of care;
- Prescription medications, medical supplies and medical equipment as they are identified in my plan of care;
- Short-term inpatient care for pain and symptom management or respite for my primary caregiver at facilities authorized and arranged by Seasons;
- Ambulance transportation as authorized and arranged by Seasons;
- Outpatient medical services at facilities authorized and arranged by Seasons; and
- All other items or services that are related to and reasonable and necessary for the palliation and management of my terminal illness or related conditions when identified in my plan of care.

Non-Hospice Services. I understand the Medicare/Medicaid hospice benefit does not cover services that are not related to or are not reasonable and necessary for the palliation and management of my terminal illness or related conditions. I understand and agree that I personally may be financially liable for any charges if I choose to receive these services without the prior authorization of Seasons. The following services are not routinely covered by Seasons. I understand this list is not exhaustive, and I agree to contact Seasons prior to obtaining any items or services from a provider other than Seasons. To the extent practical, Seasons will inform me of services for which I may be personally liable before I receive such services.

- Medications, medical equipment, and medical supplies that are not related to or are not reasonable and necessary for the palliation and management of my terminal illness and related conditions;
- Inpatient or emergency care that is not authorized or arranged by Seasons or is not related to or reasonable and necessary for the palliation and management of my terminal illness and related conditions;
- Custodial care or 24-hour caregivers, except that Seasons may provide extended hours of care if Seasons determines I am experiencing a period of crisis requiring mostly nursing care;
- Outpatient medical services that are not authorized and arranged by Seasons or are not related to or reasonable and necessary for the palliation and management of my terminal illness and related conditions;
- Ambulance or other specialized transportation that is not authorized and arranged by Seasons; or
- Any other items and services that are not authorized or arranged by Seasons, or are not related to or reasonable and necessary for the palliation and management of my terminal illness and related conditions.

Commercial Insurance. I understand that if my hospice care is covered under a commercial insurance policy, I may be responsible for deductibles and copays. I will contact my insurance company for a list of these costs. I have read and understand the additional information regarding commercial insurance in the Liability for Payment document.

Waiver of Certain Benefits. I understand that while this election is in effect, subject to the exceptions listed below, only Seasons will be able to receive Medicare/Medicaid payment for care or services related to my terminal illness and related conditions. I understand that the Medicare/Medicaid hospice benefit takes the place of my other Medicare/Medicaid benefits for treatment of my terminal illness and related conditions. I acknowledge that by signing this election, I waive my right to all other Medicare/Medicaid benefits related to the treatment of my terminal illness and related conditions, including services provided by a hospice other than Seasons (unless provided under arrangements made by Seasons). Exceptions to services

- Provided by Seasons;
- Provided by another hospice under arrangements made by Seasons; or
- Provided by my chosen attending physician, if that physician is not an employee of Seasons, [illegible] from Seasons for these services.

SEASONS HOSPICE & PALLIATIVE CARE

PATIENT NAME: Sophia Winston MR#: DOB: 12/21/16

Transfer and Revocation. I understand that I may revoke this election at any time by completing a written notice of revocation. I may re-elect my Medicare/Medicaid hospice benefit in the next certification period. I understand I may change my designated hospice once in each certification period by completing a written notice of transfer.

Acknowledgment of Receipt of Documentation. I have received and reviewed the following documents:

- Patient/Family Consent and Education for Hospice Care booklet, including "How to Comment on Your Care"
- Seasons Notice of Privacy Practices
- Seasons Policy on Disposal of Controlled Drugs
- Liability for Payment
- Patient/Family Rights and Responsibilities
- Seasons Advance Directive Policy and State Specific Advance Directive information

By my signature below, I acknowledge that I have had this election and the above documents explained to me. I have been given an opportunity to ask questions about this election and the above documents and had all my questions answered to my satisfaction.

Attending Physician. I understand I may choose my attending physician, who may be a hospice physician or nurse practitioner. The individual I choose to be my attending physician is: [redacted]
First Name Last Name

Effective Date. My election of the Medicare/Medicaid hospice benefit will be effective on the date I sign this form, unless I specify a different effective date below. If I am not yet eligible for the Medicare or Medicaid hospice benefit, I understand that this election, including the waiver of benefits described above, will become effective on the same date as my eligibility for the Medicare or Medicaid hospice benefit. I will notify Seasons when I become eligible for Medicare or Medicaid.

Please check **only if applicable:**

☐ I am currently hospitalized. My election of the Medicare/Medicaid hospice benefit will be effective on the date I am discharged from the hospital.

☐ I want my election of the Medicare/Medicaid hospice benefit to be effective on a future date, as specified here: _____

Signatures

Patient Signature: [signature] **Date:** 12/9/2016

Complete **only if applicable:**

Legal Representative Signature: _____ Print Name: Sophia Winston Date: 12/8/16

Authority of Legal Representative (please provide documentation of authority, where applicable):

- ☐ Activated Health Care Power of Attorney
- ☐ Legally Appointed Guardian
- ☐ Parent of Minor Child

☐ Health Care Proxy/Surrogate (Relationship to Patient: _____)

☐ Other (Specify: _____)

If health care proxy/surrogate or other, reason patient did not sign:

☐ Determined by physician(s) to be non-decisional

☐ Unresponsive (Due to: _____)

☐ Other (Specify: _____)

Seasons Representative Signature: [signature] **Date:** 12/9/16

Print Name: [illegible]

For Office Use Only

Page 2 of 2

EXHIBIT A

Illinois Department of Public Health
UNIFORM DO-NOT-RESUSCITATE (DNR) ORDER FORM

Patient Directive

I, Sophia Anastos, born on 04-08-55, hereby direct the following in the event of:

1. FULL CARDIOPULMONARY ARREST (When both breathing and heartbeat stop):

☒ Do Not Attempt Cardiopulmonary Resuscitation (CPR)

2. PRE-ARREST EMERGENCY (When breathing is labored or stopped, and heart is still beating):

SELECT ONE

☐ Do Attempt Cardiopulmonary Resuscitation (CPR) -OR-

☒ Do Not Attempt Cardiopulmonary Resuscitation (CPR)

Other Instructions ____________________

Patient Directive Authorization and Consent to DNR Order (Required to be a valid DNR Order)

I understand and authorize the above Patient Directive, and consent to a physician DNR Order implementing this Patient Directive

Sophia Anastos — Printed name of individual | [signature] — Signature of individual | 1/7/2013 — Date

-OR-

Printed name of legal representative ___ | Signature of legal representative ___ | Date ___

Witness to Consent (Required to have two witnesses to be a valid DNR Order)

I am 18 years of age or older and I have witnessed the giving of consent by the above person

Susan Young — Printed name of witness | [signature] — Signature of witness | 1/7/2013 — Date

Patricia Moore — Printed name of witness | [signature] — Signature of witness | 1/7/2013 — Date

Physician Signature (Required to be a valid DNR Order)

I hereby execute this DNR Order on 1/14/13

[signature] — Signature of attending physician | Kevin Gulliban MD — Printed name of attending physician | 708-763-1490 — Physician's telephone number

• Send this form or a copy of both sides with the individual upon transfer or discharge •

DNR • DO NOT RESUSCITATE • DNR • DO NOT RESUSCITATE • DNR • DO NOT RESUSCITATE

EXHIBIT A

APARTMENT RENTAL AGREEMENT

THIS AGREEMENT is entered into this 25th day of April, 2010, by and between, Jane Anastos "Owner" (Landlord) and Christine Burger "Resident(s)" (Tenant), hereinafter referred to as "the parties."

IN CONSIDERATION OF THEIR MUTUAL PROMISES THE PARTIES AGREE AS FOLLOWS:

1. Owner rents to Resident(s) and Resident(s) rents from Owner for residential use only, the following "Premises" known as: 517 Wesley - Oakland, CA 94606, California.

2. Rent is due in advance on the 1st day of each and every month, at $ 1260 (1200 + 60 parking) per month, beginning on the 1st day of May, 2010 until April 30, 2011. If any rent shall be due and unpaid five (5) days after the due date, or if default shall be made by Resident(s) in any of the other covenants herein contained, then Owner, at his option, may terminate the tenancy by law. If rent is not received by the 5th of each month, there will be a late charge equivalent to five (5) percent of the monthly rental. There will also be a ~~$~~ $25.00 charge for all bad checks received by Owner.

3. This agreement may be terminated by either party after service upon the other party of a written 60-day notice terminating tenancy, except as provided by law. The parties agree that the sum of $ ..... per day is a fair rental value for the purpose of rental damages in the event Resident(s) holds over after termination of the tenancy.

4. Premises shall be occupied only by the following named persons:
Christine Burger

5. Owner is given the right to enter and/or inspect the apartment for the following purposes:
(a) In case of emergency.
(b) To make necessary or agreed repairs, decorations, alterations or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen or contractors.
(c) When Resident(s) has abandoned or surrendered the premises.
(d) Pursuant to court order.
Except in cases of emergency, when Resident(s) has abandoned or surrendered the premises, or if it is impracticable to do so, Owner shall give Resident(s) reasonable notice of his intent to enter and enter only during normal business hours. Twenty-four (24) hours shall be presumed to be reasonable notice.

6. Resident(s) shall not violate any Governmental law in the use of the premises, commit waste or nuisance, or annoy, molest or interfere with any other Resident or neighbor.

7. ~~No pets,~~ ~~[illegible]~~ No or dangerous items shall be kept or allowed in or about the premises without Owner's written permission, ~~except~~ except 1 cat

8. Resident hereby certifies to Landlord that he does not currently own a waterbed. Prior to placement of a waterbed on the Premises, Resident shall notify Landlord and shall comply with the requirements of California Civil Code Section 1940.5. In addition, Resident shall deposit with Landlord an additional security deposit equal to one-half of one month's rent to cover potential loss or damage due to the waterbed. Resident's failure to comply with this Section shall constitute a default under this agreement.

9. The parties have inspected the premises and furnishings and they are satisfactory: the heating, ~~[illegible]~~, plumbing, electrical and garbage systems are operating satisfactorily, ~~except~~

10. No alterations or decorations shall be done by Resident without Owner's prior written consent. Resident must give written notice to Owner. Resident must give written notice to Owner of any alterations or decorations contemplated, and Owner shall be required to expressly consent thereto in writing before such alterations or decorations shall be undertaken. Resident(s) shall further defend and hold Owner harmless from any claim, action or recording of mechanics lien or supplemental proceedings incurred by Resident(s) for alteration or decoration. Further, any improvements to the premises shall become property of Owner at the end of the tenancy.

11. Resident(s) shall keep the premises, furnishings, appliances and fixtures in good order and condition at Resident's(s') expense, normal wear and tear excepted, and ~~except as provided by law, Resident(s) shall not injure or damage any of the common~~ areas. Resident(s) shall report to Owner immediately any damage to the premises or common areas, any furnishings, fixtures or appliances or personal injury on the premises. Resident(s) shall pay for any damage or injury to any portion of the premises, common areas, furnishings, fixtures or appliances or personal injury to individuals caused to Resident(s), his (their) guests or invitees, and shall defend and hold Owner harmless from any claim of damages or injury caused by Resident(s), his (their) guests or invitees. This does not waive Owner's duty to use due care to prevent personal injury or damage where that duty is imposed by law.

12. Resident(s) shall pay for all ~~utilities~~ TGE, services and charges, if any, made payable by or predicated upon occupancy of Resident(s) ~~except~~: plus 1/3 garbage bill & 1/5 water bill (will vary with number of tenants)

13. The undersigned Resident(s), whether or not in actual possession of the premises, are jointly and severally liable for all obligations under this rental agreement.

14. Resident(s) shall deposit with Owner, as a security deposit, the sum of $ 1000 payable concurrently with the execution of this agreement. Owner may claim and withhold of the security deposit only such amounts as are reasonably necessary to remedy Resident(s) defaults as follows:
(a) in the payment of rent, or
(b) to repair damages to the premises caused by Resident(s), exclusive of ordinary wear and tear,
(c) to clean such premises, if necessary, upon termination of the tenancy, or
(d) to remedy future defaults by Tenant to restore personal property on the Premises, if required hereby.
No later than two weeks after Resident(s) has vacated the premises, Owner shall furnish Resident(s) with an itemized written statement of the basis for, and the amount of, any security received and the disposition of such security and shall return any remaining portion of such security to Resident(s).

15. Owner shall have an Apartment Keeper's lien on baggage and other property of value of Resident's(s') which can be enforced only after final judgment. (Section 1861A Civil Code, of State of California.)

16. If any legal action or proceeding is brought by either party to enforce any part of this Agreement, the prevailing party shall recover, in addition to all other relief, reasonable attorney's fees and costs.

17. Notices required under this Agreement may be served by Owner by service upon:.....

at: 34 Highland Piedmont, California. Said person is authorized to accept legal service on behalf of Owner. Notice may be served on Resident(s) at the address set forth in Paragraph 1.

18. Resident(s) shall not transfer his (their) interest in and to this lease contract or any part thereof, nor shall Resident(s) assign or sublet these premises or any part thereof, or in his (their) absence or otherwise permit others to occupy the apartment without written consent of Owner. This clause is a special consideration for this contract and its violation shall be an irremedial breach of this contract.

19. Resident(s) shall do the following:
(a) Keep that part of the premises which he (they) occupies and uses clean and sanitary as the condition of the premises permits.
(b) Dispose from the dwelling unit all rubbish, garbage and other waste, in a clean and sanitary manner.
(c) Properly use and operate all electrical, gas and plumbing fixtures and keep them as clean and sanitary as their condition permits.
(d) Not permit any person on the premises, with his (their) permission, to willfully or wantonly destroy, deface, damage, impair or remove any part of the structure or dwelling unit or the facilities, equipment or appurtenances thereto, nor himself (themselves) do any such thing.
(e) Occupy the premises as Resident's(s') abode, utilizing portions thereof for living, sleeping, cooking or dining purposes only which were respectively designed or intended to be used for such purposes.
(f) Be held responsible for the expense of replacing electric lamps broken by Resident(s), his (their) guests, or invitees.

20. Owner or management will not be responsible for money, jewelry or any article missing from Resident's(s') apartment except by fault of Owner as imposed by law. Doors must be locked by Resident(s) on leaving apartment.

21. No loud or unusual noises or boisterous conduct are permitted, and are hereby prohibited. Intoxication is prohibited on premises. Piano or any unusual instruments shall not be played in such manner as to annoy other occupants at any time, and, in no event whatever, after eight o'clock P.M., or before ten o'clock A.M., on any day. Resident(s) agrees that in the use of the radio or T.V., it will be so controlled at all hours as not to disturb other tenants.

22. No radio aerial or television aerial or other installation shall be made in the roof or any other part of the premises without the express written consent of Owner.

23. [redacted] Resolution of Disputes. Resident(s) and Owner agree to resolve all claims exclusively through binding arbitration to be held in Alameda County, California and waive any right to have any dispute between them resolved in a court of law by a judge or jury.

The undersigned Resident(s) acknowledges having read and understood the foregoing and receipt of a duplicate original and attachments thereto.

Jane Anastos — Owner

Christa Borja — Resident

janastos@yahoo.com — Authorized Agent:

Christine Burger — Resident

911

:ON:

Name:	Date of Birth:	Social Security #:
Present Employer:	Address:	
How long Employed:	Salary:	Occupation:
Name of Supervisor:		Phone:
Current Address:	Name of Landlord:	Phone:
Previous Address if less than 2yrs:	Name of Landlord:	Phone:
The undersigned Resident(s) acknowledges the foregoing, and accepts to be true, and also authorize the obtaining of a credit report. Signature:		Date:
Signature:		Date:

DEPOSIT - $2260 = last $1760 plus security $1000 — May 1st $1760 - due

PROOF OF SERVICE - CIVIL

I declare that I am a citizen of the United States, over the age of eighteen years and not a party to the within cause; my business address is 605 Market Street, Suite 900, San Francisco, California 94105. On the date last listed below I served a true copy of the foregoing: **LANDLORD'S APPEAL – OAKLAND RESIDENTIAL RENT ADJUSTEMENT PROGRAM** on the interested parties in said action:

Aisha Samatar
517B Wesley Avenue
Oakland, CA 94606

as marked below:

[XX] **BY UNITED STATES MAIL**: I caused a true and correct copy of the above document, by following ordinary business practices, to be placed and sealed in an envelope addressed to the addressee with United States First Class Mail postage fully prepaid thereon and for collection and mailing with the United States Postal Service in the ordinary course of business, correspondence placed for collection on a particular day, which is deposited with the United States Postal Service that same day.

[] **BY OVERNIGHT MAIL**: I caused a true and correct copy of the above document, by following ordinary business practices, to be placed and sealed in an envelope addressed to the addressee and for collection and mailing with the United States Postal Service's Express Mail service in the ordinary course of business, correspondence placed for collection on a particular day, which is deposited with the United States Postal Service that same day.

[ ] **BY MESSENGER SERVICE**: I caused a true and correct copy of the above document to be delivered to the parties in such cause by hand delivery by placing same in a sealed envelope addressed to the above addressee and providing it to a professional messenger service for service.

[ ] **BY FACSIMILE TRANSMISSION**: I caused a copy of such document to be transmitted via facsimile machine. The fax number of the machine to which the document was transmitted is listed above. The facsimile transmission was reported as complete and without error.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed at San Francisco, California on March 30, 2017.

Fabienne Lopez

TENANT AISHA SAMATAR'S
RESPONSE TO LANDLORD APPEAL

To: Rent Adjustment Program
Fr: Aisha Samatar

Case No: T16-0496
Case Title: Samatar v. Anastos
Property Address: 517 B Wesley Avenue, Oakland, CA 94606

FACTS AND PROCEDURAL HISTORY

Tenant Aisha Samatar ("Tenant") filed a petition with the Oakland Rent Adjustment Program ("RAP") against her landlord, Jane Anastos ("Landlord") contesting multiple rent increases, including a new fee for parking, and claiming decreased housing services due to shared utilities. The RAP Hearing ("Hearing") was held on December 13, 2016, and, on February 27, 2017, the Hearing Officer issued a Hearing Decision ("Decision") granting the Tenant's petition in full. The Decision stated that all of Landlord's rent increases, including the new fee for parking, were invalid, Landlord's utilities splitting was unlawful, Tenant's housing services had decreased, and ordered restitution to Tenant for rent overpayments and utilities overpayments.

Landlord has filed an appeal based on four grounds: the Decision is inconsistent with O.M.C. Chapter 8.22, Rent Board Regulations, or prior decisions of the Board; the Decision raises a new policy issue that has not been decided by the Board; the Decision is not supported by substantial evidence; and that Landlord was denied sufficient opportunity to present her claim

or respond to petitioner's claim. Because these claims have no support in the record, Tenant requests that Landlord's appeal be denied.

ARGUMENTS

1. The Decision Is Consistent with O.M.C. Chapter 8.22, Rent Board Regulations, and Prior Decisions of the Board

a. Water and Refuse Removal Are Utilities Within the Definition of OMC Chapter 8.22 and RAP Regulations and Within Common Usage

Water and refuse removal are specifically defined as utilities throughout sections of the Oakland Municipal Code, which includes the RAP Ordinance. For example, O.M.C. Section 5.04.460, entitled "[p]ublic utility," provides that this section "includes, but is not limited to, establishments providing to the general public or to private business sectors the following services: gas, sanitary and **garbage**, cable television, and P.U.C.-related telephone services." (emphasis added). Other sections, e.g. O.M.C. 12.12.003, define water as a public utility: "'Utility company' shall mean any public utility company or entity authorized to work in the public right of way providing public utility services such as **water**, electricity, natural gas, telephone, and communication." (emphasis added). The RAP Ordinance is Chapter 22 of the Oakland Municipal Code. The RAP Ordinance and its regulations do not specifically define the word "utility" because "utility" is defined in numerous other sections of the Oakland Municipal Code, and, additionally, the term "utility" is employed in its common usage within the Code.

Water and refuse removal are called "utilities" within the common usage in the English language. The Merriam Webster Dictionary defines public utilities as "a business organization

(as an electric company) performing a public service and subject to special governmental regulation."[1] The provision of water and removal of refuse are public services and both water and refuse removal are subject to regulation under the Oakland Municipal Code. Collin's dictionary defines public utility as "an enterprise concerned with the provision to the public of essentials, such as electricity or water."[2] The companies which provide water and refuse removal in Oakland, East Bay Municipal Utility District (EBMUD) and Waste Management, respectively, are enterprises concerned with the provision of public essentials. Indeed, the word "utility" even forms part of the name of Oakland's water provider, the East Bay Municipal Utility District (EBMUD.) Under common usage, the provision of water and refuse removal are public utilities.

b. Prior Decisions of the Board Have Demonstrated that Water and other Utilities Cannot be Split without Separate Meters

Past Board decisions affirm that water and refuse removals are utilities. The Board has repeatedly cited RAP Regulations Section 10.1.10 to hold that utility bills cannot be split between tenants unless there are separate meters: "[w]hen more than one rental unit shares any type of utility bill with another rental unit, it is illegal to divide up the bill between units."

In Degaud v. Bomberger (T08-0281) the Board found that splitting a water bill was in violation of RAP Regulations Section 10.1.10 and prohibited a landlord from dividing water bills

[1] Merriam Webster Dictionary, Online Edition, accessible at https://www.merriam-webster.com/dictionary/public%20utility.

[2] Collins English Dictionary, Online Edition, Accessible at https://www.collinsdictionary.com/us/dictionary/english/public-utility

between tenants. Another case, Bealle v. Bannon (T11-0040), clarified upon remand that splitting any type of utility bill was illegal: "[w]hen more than one rental unit shares any type of utility bill with another rental unit, it is illegal to divide up the bill between units." (emphasis added). Dividing the cost of any utility bill, including refuse removal, in the absence of individual meters for each residential unit is in violation of RAP Regulations Section 10.1.10.

2. The Hearing Decision Does Not Raise Any New Policy Issues

The Decision applies the law to the facts in the case and does not raise any new policy issues. After both Tenant and Landlord testified that there were no separate meters for any utility, including refuse removal, the Hearing Officer found that "it is illegal to divide up the bill between units" in the absence of separate meters. The Decision applied RAP Regulations Section 10.1.10 to the facts of the case to reach a decision. As described above, the decision is consistent with the law and with past RAP Appeal Decisions. There are no new policy issues raised.

3. The Hearing Decision Was Based on Substantial Evidence, including Documentary Evidence, Testimony by Both Parties, and Testimony by Two Witnesses

The Decision was based on substantial evidence, including documentary evidence submitted by Tenant and Landlord, oral testimony by Tenant and Landlord, and testimony from witnesses. The Hearing Officer made a determination based on the substantial evidence presented. The Board will not overturn decisions based on credible witnesses and supported by

substantial evidence. See Diamond v. Rose Ventures (T03-0198); see also Knox v. Progeny Properties (T00-0340, T00-0367, T00-0368).

In the case at hand, Tenant credibly testified that Tenant always had a parking spot included in the terms of her tenancy.[3] Two witnesses provided credible testimony to the same fact. Tenant provided documentary evidence showing that she had a parking space included in her tenancy. Landlord testified that Tenant did not have a parking space and, in her Landlord Response, included a few emails she sent to Tenant regarding parking without including Tenant's emailed responses. Based on the documentary evidence and oral testimony, the Hearing Officer made a determination of fact and ruled that Tenant had a parking space included in the terms of her lease.

Landlord focused much of her testimony and the present Appeal on the fact that Tenant is disabled and does not drive herself. Tenant is disabled, and she uses the parking space to allow family, friends, or In-Home Supportive Services to park while they are visiting her, picking her up, or dropping her off. Whether Tenant drives or not has no bearing on her right to the parking space included in the terms of her lease.

4. Landlord Was Not Denied a Sufficient Opportunity to Present Her Claim or Respond to Tenant's Claim

a. The Outcome of the Hearing Would Remain the Same Had the Case Been Continued or If the Case Is Remanded

The Landlord was not denied a sufficient opportunity to present her claim because the

[3] Tenant and Landlord entered into an oral lease agreement made when Tenant moved into the unit in December 2002, which including the provision of a parking space at no additional cost.

outcome of the case would have remained the same even if a continuance were granted or if the case is remanded. Tenant brought her petition on two grounds: unlawful rent increases and decreased housing services, including splitting of shared utilities and charging a fee for Tenant's parking spot. Landlord has not claimed any new facts that would change the outcome of the Decision.

Landlord admitted in her Landlord Response and in her testimony at the Hearing that she never provided Tenant with RAP Notice at any point of the tenancy. Landlord has not claimed in her Appeal to have ever provided RAP Notice. Without RAP Notice, any rent increase is invalid. See O.M.C. 8.22.060 (A) and 8.22.070 (H)(1)(A). If the case were continued or remanded, all of the rent increases would still be invalid, and Tenant would be owed restitution for her overpayments.

Landlord admitted in Landlord Response and her testimony at Hearing that all utilities were shared between Tenant and other units[4], and there were no separate meters for electricity and gas (PG&E), water (EBMUD), or refuse removal (Waste Management.) Landlord has not claimed in her appeal that any of the utilities had separate meters. In the absence of separate meters, RAP Regulations and past Board decisions make clear that utilities cannot be divided between tenants. If the case were continued or remanded, Landlord's charging Tenant for shared utilities would still be illegal, and Tenant would still be owed restitution for her utilities payments.

Landlord claimed in her Landlord response and in her testimony at Hearing that Tenant did not have a parking space and that it was impossible for Tenant to have a parking space because Tenant did not drive. As outlined in Section 3 above, the Hearing Officer made a

[4] Electricity and gas (PG&E) is divided between Tenant and one other unit, water (EBMUD) is divided between Tenant and two other units, and refuse removal (Waste Management) is divided between Tenant and two other units.

factual determination based on substantial evidence, including witness testimony and documentary evidence, that Tenant had a parking space included in her lease terms. If the case were continued or remanded, a Hearing Officer would make the same determination that a parking space was included in Tenant's lease terms and that Landlord's fee for the parking space was invalid.

If Landlord had received a continuance, it would not have affected the outcome of the case. If the case is remanded, the outcome of the case will remain the same. Remanding the case is a waste of scarce judicial resources and the parties' time because the facts of the case only allow for one outcome, the outcome of the Decision.

b. **Moreover, Landlord had Sufficient Opportunity to Present Her Case and Respond to Tenant's Claim and Has Not Submitted Any New Evidence Which Could Affect the Case**

Landlord appeared at the Hearing to testify and present her case, and previously had submitted documentary evidence along with her Landlord Appeal. Landlord had approximately three months between receiving notice of Tenant's petition and the Hearing to prepare.[5] In the months before the Hearing, Landlord submitted her Landlord Response and attached documents to the Response, and completed a file review and made copies of the Tenant's petition and supporting documentation. The Hearing Officer took Landlord's testimony and documentary evidence into consideration when making her decision.

Additionally, in her Appeal, Landlord has not submitted any new evidence which would

[5] The Rent Adjustment mailed Landlord notice of Tenant's petition on September 16, 2016, and the Hearing was conducted on December 13, 2016.

affect the outcome of the Decision. On appeal, Landlord focuses on the Hearing Officer's refusal to accept a lease agreement from an unrelated tenant in a different unit, a document which was not submitted within the proper timeframe to be considered into evidence and, additionally, was not relevant as it was not Tenant's lease agreement.[6] The unrelated tenant's lease agreement, even if considered in evidence, would not affect the case. Landlord has not submitted any other evidence or arguments which could affect the outcome of the Decision.

c. In the Alternative, the Hearing Officer did Not Abuse Her Discretion in Denying Landlord's Continuance

The Hearing Officer did not abuse her discretion in denying Landlord's continuance. The RAP Regulations outline that a postponement of a hearing may be granted "for good cause shown and in the interests of justice." Landlord requested a postponement with no supporting documentation on December 9, 2016 before the December 13, 2016 Hearing. One day before the Hearing, on December 12, 2016, Landlord submitted a document showing her sister's entry into hospice care with a 1-800 number for the hospice facility written on it. Landlord did not submit any documentation as to the nature of her sister's condition, any letter or information from her sister's doctor or other medical staff, or any documentation of Landlord's travel plans to visit her sister.

The hearing officer denied the continuance, stating that "[n]o documents indicating any medical emergency were submitted" and "[n]o documents indicating a need for the owner to

[6] Parties have until seven days prior to the hearing to submit all tangible evidence. This information is written in bold text on the Notice of the Hearing mailed to all parties: "All proposed tangible evidence, including but not limited to documents and pictures, must be submitted to the Rent Adjustment Program not less than seven (7) days prior to the Hearing."

travel to visit her sister was submitted." Past Board decisions have upheld the denial of continuances when proper documentation has not been submitted. For example, in Belu v. Beck (T07-0255) and del Mazo v. Beck (T07-0256), Board found that the hearing officer did not abuse her discretion when she denied a continuance when the landlord did not submit evidence of travel plans. Even in cases where a party has not attended a hearing after requesting a continuance and was prejudiced by not attending, the Board has still upheld the denial of the continuance if there was not proper supporting documentation submitted. See *Id.* In the present case, Landlord requested a continuance without proper documentation and then attended the hearing when the continuance was denied.

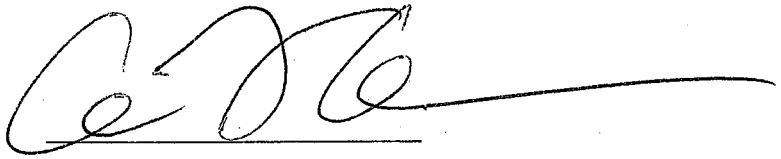
The Hearing Officer gave a well-reasoned explanation for the denial of the continuance in this case. The Hearing Officer's denial of the continuance is supported by prior Board decisions upholding continuance denials where supporting documentation was not provided. Landlord has not met her burden to show that the Hearing Officer abused her discretion in denying the continuance.

CONCLUSION

Tenant respectfully requests that the Board uphold the February 27, 2017 Decision because the Decision is consistent with O.M.C. Chapter 22, Rent Board Regulations, and prior Board decisions, does not raise any new policy issues, and is supported by substantial evidence, and the Landlord had a sufficient opportunity to present her claim and respond to Tenant's claims. Landlord has not submitted any new facts or arguments in her appeal that could change the Decision issued on February 27, 2017. For these reasons, Tenant respectfully requests that the Decision be upheld and the Appeal dismissed in full.

Date: April 28, 2017

Respectfully submitted,



Gillian F. Quandt

Attorney for Aisha Samatar

PROOF OF SERVICE FOR CASE NUMBER T16-0496

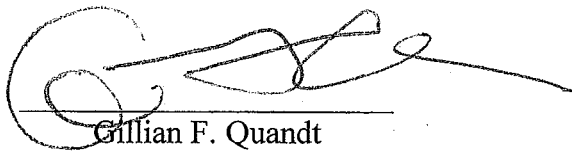
I am a resident of the State of California at least eighteen years of age. I am not a party to the Residential Rent Adjustment Program case listed above. I am employed in Alameda County, California. My business address is 3022 International Blvd, Suite 410, Oakland, CA, 94601.

Today, I served the attached Appeal Brief by placing a true copy of it in a sealed envelope for collection with the United States Postal Service with the postage fully prepaid.

The envelope was addressed and mailed as follows to the Landlord's representative:

M.C. Hall & Associates, P.C.
Attn: Monica P. Deka
605 Market Street, 9th Floor
San Francisco, CA 94605

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on April 28, 2017 in Oakland, CA.



Gillian F. Quandt

CHRONOLOGICAL CASE REPORT

Case Nos.: T17-0237

Case Name: Szymanski v. Madison Park Financial

Property Address: 4401 San Leandro St., Unit 21, Oakland, CA

Parties: Ziaa Szymanski (Tenant)
Madison Park Finanacial (Property Owner)

TENANT APPEAL:

Activity	Date
Tenant Petition filed	April 3, 2017
Owner Response filed	June 1, 2017
Administrative Decision issued	July 19, 2017
Tenant Appeal filed	August 14, 2017
Owner Response to Appeal	August 28, 2017

CITY OF OAKLAND

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

For date stamp.

RECEIVED
APR 03 2017
RENT ADJUSTMENT PROGRAM
OAKLAND

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 T17-0237 KM/SK

Your Name	Rental Address (with zip code)	Telephone:
ZIAA SZYMANSKI	4401 SAN LEANDRO ST. OAKLAND CA 94601 'VULCAN LOFTS' LLC	E-mail:
Your Representative's Name	Mailing Address (with zip code)	Telephone:
		Email:
Property Owner(s) name(s) MADISON PARK FINANCIAL OWNS VULCAN LOFTS LLC OWNER OF MPF JOHN PROTOPASSAS	Mailing Address (with zip code) LAKE MERRITT TOWER 155 GRAND AVE ste 950 OAKLAND CA. 94612	Telephone: Email: ?
Property Manager or Management Co. (if applicable) PROF Mgmt ASSO A HQ BARBARA TURNER ADDRESS ABOVE ON SITE MANAGER: ELECIA HOLLAND	Mailing Address (with zip code) TURNER - ADDRESS ABOVE FOR MPF. VULCAN LOFTS #460 4401 SAN LEANDRO ST. OAK 94601	Telephone: BARB: ELECI. Email:

Number of units on the property: 59 UNITS 1 SHOP & 1 CAFE.

* NOTE: CITY RECORDS SHOW FILED AS CONDOMINIUMS

Type of unit you rent (check one)	☐ House	☐ Condominium	☑ Apartment, Room, or Live-Work
Are you current on your rent? (check one)	☑ Yes	☐ 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:**

✓	(a) The CPI and/or banked rent incr[illegible]e notice I was given was calculated incc[illegible]tly.
✓	(b) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
	(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 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 illegally after the unit was vacated as set forth under OMC 8.22.080.

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

TOOK OVER LEASE APRIL 18 2016

2011 $1782.00 RENT
3/1 2016 $1960.00 RENT

Date you moved into the Unit: FIRST AS SUB TENANT IN JAN 2011 Initial Rent: $2500-00 /month ON MY TAKE OVER OF LEASE 4/18/2016.

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: NEVER. If never provided, enter "Never." THEY CLAIM VULCAN LOFT STUDIOS IS A CONDOMINIUM — IT IS "LIVE-WORK" 2011 C of A.

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)	Mon rent increase From	To	Are you Contesting th Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
3/25/17	5/1/17	$2500-	$2575-	☑ Yes ☐ No	☐ Yes ☑ No
3/21/16	4/18/16	$1960-	$2500-	☑ Yes ☐ No	☐ Yes ☑ No
		$	$	☐ Yes ☐ No	☐ Yes ☐ No
		$	$	☐ Yes ☐ No	☐ Yes ☐ No
		$	$	☐ Yes ☐ No	☐ Yes ☐ No
		$	$	☐ Yes ☐ No	☐ Yes ☐ 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:

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

4

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.

Jin Hyo Munsli
Tenant's Signature

3/27/2017
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 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).

[signature] MARCH 27, 2017

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.

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IE DOCUMENTARY EVIDENCE WILL BE SENT AFTER THE MANAGEMENT HAS HAD ANOTHER WEEK TO COMPLETE THE EMAIL LIST SENT TO THEM BELOW MARCH 22 2017 WITH WALKED THROUGHT UNIT FRI 24 MARCH AFTER NO SERIOUS REPAIRS DONE SINCE TAKING OVER LEASE.

SEE 3 PAGES OF EMAIL TO TWU MANAGERS &

CITY OF OAKLAND

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

For date stamp.
CITY OF OAKLAND
RENT ARBITRATION PROGRAM
2017 JUN -1 PM 3:05

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 -

Your Name	Complete Address (with zip code)	Telephone:
Vulcan Lofts, LLC	155 Grand Ave. Ste. 950 Oakland, CA 94612	Email:
Your Representative's Name (if any)	**Complete Address (with zip code)**	**Telephone:**
Barbara Turner	same as above	Email: com
Tenant(s) Name(s)	**Complete Address (with zip code)**	
Ziaa Szymanski	4401 San Leandro St. Oakland, CA 94601	
Property Address (If the property has more than one address, list all addresses)		**Total number of units on property**
N/A		57

Have you paid for your Oakland Business License? Yes ☒ No ☐ Lic. Number: 3556417
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: 34-2265-44
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: 9/15/06

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**

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

Rev. 3/28/17

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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.

Date of Contested Increase	Banking (deferred annual increases)	Increased Housing Service Costs	Capital Improvements	Uninsured Repair Costs	Debt Service	Fair Return
N/A	☐	☐	☐	☐	☐	☐
	☐	☐	☐	☐	☐	☐
	☐	☐	☐	☐	☐	☐

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 4/18/16.

The tenant's initial rent including all services provided was: $ 2,500 / 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 X No ____ I don't know ____

If yes, on what date was the Notice first given? 4/15/16

Is the tenant current on the rent? Yes X No ____

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

Date Notice Given (mo./day/year)	Date Increase Effective	Rent Increased From	Rent Increased To	Did you provide the "RAP NOTICE" with the notice of rent increase?
5/23/2017	5/1/2017	$ 2500	$ 2,575	☐ Yes ☒ No
		$	$	☐ Yes ☐ No
		$	$	☐ Yes ☐ No
		$	$	☐ Yes ☐ No
		$	$	☐ Yes ☐ 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 — **Date** 5/20/17

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

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

MADISON PARK

May 31, 2017

City of Oakland
Department of Housing and Community Development - Rent Adjustment Program
250 Frank H Ogawa Plaza, Suite 5313
Oakland, CA 94612

Re: Case #T17-0237
Szymanski v. Madison Park Financial

To Whom It May Concern:

I am in receipt of your Notice of Hearing dated April 28, 2017 with the petition filed by Ziaa Szymanski. Please note that this property is exempt from Oakland's Residential Rent Adjustment Program. In addition, the applicant is a new tenant and the petition is unfounded.

On September 29, 2005, in a previous petition involving this property, the City of Oakland's rent board hearing officer determined that this unit was exempt from rent controls. This was further upheld by the Court of Appeal, First District, Division 5 on October 6, 2009 after the tenants appealed the rent board officer's decision. A copy of this decision, *Vidor v. City of Oakland Community and Economic Development Agency*, is attached for your review.

In addition to the building being exempt from rent control, this is Ms. Szymanski's first lease with Vulcan Lofts, LLC. The previous tenant, Elizabeth Drake, signed a lease on June 5, 2008. Sometime during the course of Ms. Drake's tenancy, she took in roommates which included Ms. Szymanski. Vulcan Lofts, LLC discovered that there were unauthorized subletters in Ms. Drake's unit and Vulcan Lofts, LLC sent a letter on March 9, 2016 that she needed to have all occupants over 18 years of age to apply and be added to the lease if their application qualified. Rather than comply, Ms. Drake gave notice to terminate her lease (she has since vacated the subject unit). Ms. Szymanski and two other individuals applied during the period after Ms. Drake gave notice and became tenants with Vulcan Lofts, LLC for the first time when they signed a lease with others on April 15, 2016. As this was a new lease, Vulcan Lofts, LLC was permitted to raise the rent to market.

If you have any questions, please contact me at (510) 452-2944.

Sincerely,

Barbara Turner
Property Management Associate
For Vulcan Lofts, LLC

Enclosures: Tenant lease, Vidor v. City of Oakland Community and Economic Development Agency

CITY OF OAKLAND

250 FRANK H. OGAWA PLAZA, SUITE 5313, OAKLAND, CALIFORNIA 94612

Department of Housing and Community Development
Rent Adjustment Program

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

ADMINISTRATIVE DECISION

CASE NUMBER: **T17-0237, Szymanski v. Madison Park Financial**

PROPERTY ADDRESS: **4401 San Leandro St., Oakland, CA**

PARTIES: **Ziaa Szymanski (Tenant)**
Madison Park Financial (Owner)

INTRODUCTION

On April 3, 2017, the tenant filed a petition that contests a rent increase which the tenant claims exceeds the CPI Adjustment and is unjustified, and additionally alleges decreased housing services.

Administrative Notice is taken of the Hearing Decision in Case No. T05-0119, Vidor v. Orton, which concerns the subject building. The Order in that case states that the building is exempt from the Rent Adjustment Ordinance because it has been "newly constructed."

The tenants in Case No. T05-0119 appealed that Decision, and the Hearing Decision was affirmed by the Appeals Board. The tenants then filed a petition for a writ of administrative mandamus in the Alameda County Superior Court, in which they sought to overturn the Hearing Decision. The Alameda County Superior Court denied the tenants' petition, and affirmed the Hearing Decision.

The tenants then filed an appeal with the District Court of Appeals. On October 6, 2009, the District Court affirmed the Superior Court's denial of the tenants' writ. A copy of the District Court's Decision is attached as Attachment "A".

Reason for Administrative Decision: An administrative decision is a decision issued without a Hearing. The purpose of a Hearing is to allow the parties to present testimony and other evidence beyond the information contained in the petition and/or response. However, in this case, sufficient uncontested facts have been presented to issue a decision

without a Hearing and there are no material facts in dispute. Therefore, an administrative decision is being issued.

Since the subject building is exempt from the Rent Adjustment Ordinance, this agency has no jurisdiction to consider the tenant's petition, which must be dismissed.

ORDER

1. Petition T17-0237 is dismissed.

2. The Hearing set for August 14, 2017 is cancelled.

3. Right to Appeal: **This decision is the final decision of the Rent Adjustment Program Staff.** Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within twenty (20) days after service of 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: July 19, 2017

Stephen Kasdin
Hearing Officer
Rent Adjustment Program

VIDOR v. CITY OF OAKLAND COMMUNITY AND ECONOMIC DEVELOPMENT AGENCY

A120973

RICHARD VIDOR, Plaintiff and Appellant, v. CITY OF OAKLAND COMMUNITY AND ECONOMIC DEVELOPMENT AGENCY, Defendant and Respondent; VULCAN PROPERTIES, LLP, et al., Real Parties in Interest and Respondents.

Court of Appeals of California, First Appellate District Division Five

October 6, 2009.

Not to be Published in Official Reports

JONES, P.J.

Appellant Richard Vidor filed a petition for writ of administrative mandamus challenging a decision by the City of Oakland's rent board to deny his request for a decrease in rent. The trial court denied the petition ruling the rent board had not prejudicially abused its discretion and Vidor had not been denied a fair hearing. Vidor now appeals contending (1) certain aspects of the rent board's decision are not supported by substantial evidence, and (2) he was not given a fair hearing. We reject these arguments and affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

In December 1985, J.R. Orton and James Alexander purchased what formerly was the Vulcan Foundry located on San Leandro Street in Oakland. Operating through a partnership known as Vulcan Properties, L.P., Orton and Alexander then converted the foundry into 59 residential artist live/work units in three different buildings.

In March 1998, appellant Richard Vidor rented a unit in Building C of the property. In the years that followed, Vulcan Properties increased Vidor's rent from $900 per month in 1998 to $1,266 per month in 2005.

In May 2005, Vidor filed a petition with the City of Oakland's rent board alleging his rent had been increased illegally. The petition was consolidated with similar petitions that had been filed by three other tenants who lived in units at the Vulcan property.

A hearing on the petitions was conducted on June 22, 2005. The primary issue was whether the units at the Vulcan property were exempt from Oakland's rent control ordinance. Section 8.22.030(A)(5) of the ordinance states that the rent restrictions set forth therein do not apply to "Dwelling units which were newly constructed and received a certificate of occupancy on or after January 1, 1983. . . . To qualify as a newly constructed dwelling unit, the dwelling unit must be entirely newly constructed or created from space that was formerly entirely non-residential." The parties disagreed whether the Vulcan property ever received a "certificate of occupancy" and whether the property was "formerly entirely non-residential."

The officer conducting the hearing received documentary evidence and heard testimony from witnesses. There was considerable dispute about the authenticity of some of the documents and whether Oakland's building department had provided the parties with full and accurate records. At the conclusion of the hearing, the parties agreed the hearing officer could go to the building department and independently review the documents located there.

On August 11, 2005, the hearing officer served notice that a second hearing was needed. The notice stated as follows: "Following a review of the testimony and documentary evidence presented at the hearing, it has become apparent that, in order to render a proper Decision, further evidence must be developed in two respects: [¶] (1) Pertinent history of the subject property, including use and construction projects undertaken, from 1985 to date; and [¶] (2) The authenticity and significance, or lack of authenticity and significance, of certain Exhibits introduced by the parties at the June [22] hearing, as follows: Building Permit Applications; Certificates of Occupancy; Temporary Certificates of Occupancy; letters and other

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ATTACHMENT "A" p.1

documents contained in the files of the Oakland Building Services Department."

Then on August 22, 2005, the hearing officer sent a letter to the director of the Community and Economic Development Agency asking that she "arrange to have the person most knowledgeable concerning the practices of the Building Services Department in the mid-and late-1980's" appear to testify at the second hearing.

A second day of hearings was conducted on September 29, 2005. Ray Derania, the interim building official for the City of Oakland, appeared as the person most knowledgeable about practices of the building department. After hearing the additional evidence presented, the hearing officer rendered a lengthy written decision. As is relevant here, he rejected the rent petitions, ruling Vulcan had "proven by a preponderance of the evidence that the tenants' units were created from space that was formerly entirely non-residential, and that the units either did or should have received Certificates of Occupancy after January 1, 1983."

Vidor and the other tenants filed an appeal to Oakland's rent board. The rent board conducted a public hearing and denied the appeal unanimously.

Vidor alone then filed a petition for a writ of administrative mandamus. He argued the decisions issued by the rent board and the hearing officer were not supported by substantial evidence and that he had not received a fair hearing. The trial court conducted a hearing on Vidor's petition and denied it.

Vidor then filed the present appeal. [1]

II. DISCUSSION [2]

A. Sufficiency of the Evidence

Vidor contends certain aspects of the ruling issued by the hearing officer are not supported by substantial evidence.

When a party files a petition for writ of administrative mandamus contending the administrative record does not support the findings, the superior court reviews the record using either an independent judgment standard or a substantial evidence standard. (Code Civ. Proc., § 1094.5, subd. (c); *Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 811.) Where the administrative decision substantially affects a vested fundamental right, the trial court must apply the independent judgment test. (*Goat Hill Tavern v. City of Costa Mesa* (1992) 6 Cal.App.4th 1519, 1525-1526.) When the administrative decision involves primarily economic interests, the trial court must determine if the findings of the administrative board are supported by substantial evidence. (*Concord Communities v. City of Concord* (2001) 91 Cal.App.4th 1407, 1414; *Carson Harbor Village, Ltd. v. City of Carson Mobilehome Park Rental Review Bd.* (1999) 70 Cal.App.4th 281, 287.)

The petition here involves Vidor's request for a decrease in rent, an economic interest that does not involve a fundamental vested right. (Cf. *San Marcos Mobilehome Park Owners' Assn. v. City of San Marcos* (1987) 192 Cal.App.3d 1492, 1500, holding the decision of a rent board must be reviewed under the substantial evidence standard.) Accordingly, the trial court's review of the administrative proceedings below was governed by the substantial evidence standard.

When a decision of the trial court applying the substantial evidence standard is challenged on appeal, the same substantial evidence standard applies. (*Desmond v. County of Contra Costa* (1993) 21 Cal.App.4th 330, 334-335.) The issue is whether the administrative decision is based on substantial evidence in light of the entire administrative record. (*Ibid.*) When making that determination, the reviewing court must review the administrative record, apply the substantial evidence test, and "begin with the presumption that the record contains evidence to sustain the [administrative] board's findings of fact." (*Carson Harbor Village, Ltd. v. City of Carson Mobilehome Park Rental Review Bd., supra,* 70 Cal.App.4th at p. 287.)

Here, Vidor challenges the sufficiency of the evidence in two primary respects. First, he argues the evidence was insufficient to support the hearing officer's conclusion that the building in which he lived, (Building C) received a certificate of occupancy after January 1, 1983.

At the hearing, Vulcan presented a building permit that indicated a final inspection had been completed for Building C in 1987. The hearing officer also heard testimony from Ray Derania, Oakland's interim building official, who stated that a final inspection, once completed, is "authorization to occupy the building. And, for this particular building, a change in use, a certificate of occupancy would be following from that." Derania explained further, "In Oakland and many jurisdictions . . . the building permit is the last document to be final. So you're supposed to assure that the electrical permit had been final beforehand, the plumbing permit, the mechanical permit. If you have a Health Department approvals, that's been done. If you had Public Works approvals. At the conclusion of that, then, all right, and the building is okay, you final the building permit. That triggers the preparation issuance of the certificate of occupancy for new buildings and buildings of change of uses." Given the presumption that official duty has been regularly performed, (Evid. Code, § 664) the hearing officer evaluating this evidence reasonably could conclude that Vulcan had *in fact* obtained a certificate of occupancy for Building C after January 1, 1983. [3]

Vidor also challenges the hearing officer's conclusion that Building C was formerly entirely nonresidential.

Vulcan presented testimony that indicated that the property at issue formerly had been a steel foundry. Vulcan also presented documentary evidence that prior to its purchase, the buildings on the property "had been in use in their entirety as a foundry and were converted in their entirety to artist loft and live/work." In addition, Vulcan presented building permits that described the proposed construction at the property as a "change to R." Derania, the building official, testified that designation meant the project was adding residences to "an existing non-residential use." Again, the officer evaluating this evidence reasonably could conclude that prior to Vulcan's work, the property at issue was "entirely non-residential."

None of the arguments Vidor makes convince us the trial court erred. [4] As to the former issue, Vidor contends the evidence was insufficient because Vulcan never produced a final certificate of occupancy for any of the buildings on the property. Vidor argues that the documents Vulcan

ATTACHMENT "A" 1.2

did produce, certificates of occupancy that did not have an official stamp, and temporary certificates of occupancy that had expired, were inadequate as a matter of law. Vidor is correct that the documents he cites do not appear to be final certificates of occupancy. However, this point is not dispositive. As we have explained, the record contains substantial evidence that Vulcan in fact obtained a certificate of occupancy for Building C. "If such substantial evidence be found, it is of no consequence that the [hearing officer] believing other evidence, or drawing other reasonable inferences, might have reached a contrary conclusion. [Citations.]" (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 874, italics omitted.)

As to prior nonresidential use, Vidor argues the hearing officer's conclusion was flawed because it was inconsistent with a document he submitted that showed on April 13, 1987, a tenant at the property named Peter Smith filed an application for a building permit to perform work on an "'existing live-work studio.'" The evidence Vidor cites does support an inference that on some date prior to April 1987 the property may have been used for residential purposes. But that is of no consequence. Evidence of residential use prior to April 1987 does not defeat the trial court's conclusion that the property was entirely nonresidential before it was purchased and renovated by Vulcan in December 1985. Again, the hearing officer's conclusion is supported by substantial evidence even though there is other evidence in the record that might have supported a different result. (*Bowers v. Bernards, supra,* 150 Cal.App.3d at p. 874.)

B. Whether Vidor Received a Fair Hearing

Vidor contends the trial court should have granted his petition for a writ because he did not receive a fair hearing from the rent board.

A petition for writ of administrative mandamus may be granted if a party has not received a fair trial before an administrative body. (Code Civ. Proc., § 1094.5, subd. (b).) On appeal, the trial court's factual findings with respect to whether a party received a fair hearing will be upheld if supported by substantial evidence. However, the trial court's ultimate determination as to whether the administrative proceedings were fundamentally fair is a question of law that this court reviews de novo on appeal. (*Nightlife Partners, Ltd. v. City of Beverly Hills* (2003) 108 Cal.App.4th 81, 87; *Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, 1169; *Rosenblit v. Superior Court* (1991) 231 Cal.App.3d 1434, 1443.)

Here, Vidor presents four arguments when arguing the underlying hearing before the rent board was unfair. First, he contends the decision issued by the hearing officer was unfair because it was inconsistent with the decision issued in a prior case: *Garsson v. Collins*—T04-1063. We reject this argument because Vidor has not cited any authority to support his position. The issue is forfeited. (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852.) It is also unpersuasive. In the prior case, the same hearing officer who presided over this case initially ruled that a tenant was not entitled to a decrease in rent even though the landlord had never obtained a certificate of occupancy. The decision issued by the hearing officer states the "landlord credibly testified that he did not apply for a Certificate because he was informed by City representatives that the City grants such certificates only for buildings that are entirely newly constructed, and not those in which the exterior structure remains essentially intact. The tenant did not dispute this testimony." The record in this case strongly suggests that Oakland city officials misinformed the landlord in the prior case. The testimony of Derania and the documentary evidence presented indicates a certificate of occupancy can be issued for buildings where the exterior structure remains essentially intact. In any event, the mere fact that the hearing officer in the prior case rendered a different decision in a different dispute between different parties and based on different evidence does not demonstrate unfairness.

Next, Vidor contends he did not receive a fair hearing because the hearing officer sought and allowed the introduction of additional evidence after the conclusion of the first day of testimony. Vidor contends that act was inconsistent with the court's statement at the end of the first day that "the record is now closed." While the hearing officer did state the record was "closed," all parties knew the hearing officer would in fact receive additional evidence because they had agreed he could go to the building department and review the records there. It is apparent that after that review, the hearing officer believed additional evidence was needed. On August 11, 2005, he sent the parties notice stating, "Following a review of the testimony and documentary evidence presented at the hearing, it has become apparent that, in order to render a proper Decision, further evidence must be developed . . . ." Then on August 22, 2005, the hearing officer asked that the person most knowledgeable with Oakland's building department appear to present testimony. Ray Derania, Oakland's interim building official, appeared in response to that request and he testified at the second hearing. We see no unfairness in these actions. It is well settled that a trial court is granted broad discretion to determine whether it is appropriate to reopen a case and receive additional evidence. (*Rosenfeld, Meyer & Susman v. Cohen* (1987) 191 Cal.App.3d 1035, 1052.) It is also settled that a trial court has the discretion to call and examine a witness in furtherance of justice. (*Travis v. Southern Pacific Co.* (1962) 210 Cal.App.2d 410, 424-425.) An officer conducting an administrative hearing, a much less formal proceeding, (*Blinder, Robinson & Co. v. Tom* (1986) 181 Cal.App.3d 283, 289) would at a minimum possess similar powers. We conclude the hearing officer here did not abuse his discretion or provide an unfair hearing simply because he sought and allowed the introduction of additional evidence that he believed was necessary in order to render a fair decision.

Next, Vidor contends he "should have been allowed to submit additional evidence which was not readily available to [him] at the time of the second hearing . . . ." Vidor's argument on this point is unclear. He tried to present additional evidence to the rent board and to the trial court and he was rebuffed on both occasions. We cannot determine whether Vidor is arguing the rent board erred, the trial court erred, or both. However, we need not try to sort the issue out because we reject Vidor's argument on procedural grounds. Vidor has not cited any authority to support his argument. He has forfeited the issue. (*Benach v. County of Los Angeles, supra,* 149 Cal.App.4th at p. 852.)

Finally, Vidor contends the rent board hearing officer should have concluded the evidence presented by Vulcan was unreliable because it was not the best evidence that Vulcan could have been presented to show it had obtained certificates of compliance or that the property formerly had been entirely nonresidential. Vidor bases this argument on Evidence Code sections 412 and 413.[5] However, the technical rules of evidence do not apply in administrative hearings. (*Big Boy Liquors, Ltd. v. Alcoholic Bev. Etc. Appeals Bd.* (1969) 71 Cal.2d 1226, 1230.) "[N]either the trier of fact nor the board was required to weigh the evidence in accordance with the provisions of sections 412 and 413 of the Evidence Code." (*Ibid.*)[6]

III. DISPOSITION

The judgment denying the petition for writ of administrative mandate is affirmed.

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We concur:

ATTACHMENT "A" 13

PROOF OF SERVICE

Case Number T17-0237

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 Administrative 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
Ziaa Szymanski
4401 San Leandro St #21
Oakland, CA 94601

Owner
Madison Park Financial/John Protopassas
155 Grand Ave Ste #950
Oakland, CA 94612

Vulcan Lofts, LLC
155 Grand Ave. Ste. #950
Oakland, CA 94612

Owner Representative
Elicia Holland
4401 San Leandro St
Oakland, CA 94601

Madison Park Financial/Barbara Turner
155 Grand Ave Ste #950
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 July 26, 2017 in Oakland, CA.

Maxine Visaya

RECEIVED
CITY OF OAKLAND
RENT ARBITRATION 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.
2017 AUG 14 AM 11:28

APPEAL

Appellant's Name Ziaa Szymanski	☐ **Owner** ■ **Tenant**
Property Address (Include Unit Number) 4401 San Leandro St., Unit 21 Oakland, CA 94602	
Appellant's Mailing Address (For receipt of notices) 4401 San Leandro St., Unit 21	**Case Number** T17-0237
	Date of Decision appealed July 19, 2017
Name of Representative (if any)	**Representative's Mailing Address (For notices)**

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

1) There are math/clerical errors that require the Hearing Decision to be updated. *(Please clearly explain the math/clerical errors.)*

2) Appealing the decision for one of the grounds below (required):

a) ■ **The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board.** *(In your explanation, you must identify the Ordinance section, regulation or prior Board decision(s) and describe how the description is inconsistent.).*

b) ■ **The decision is inconsistent with decisions issued by other Hearing Officers.** *(In your explanation, you must identify the prior inconsistent decision and explain how the decision is inconsistent.)*

c) ☐ **The decision raises a new policy issue that has not been decided by the Board.** *(In your explanation, you must provide a detailed statement of the issue and why the issue should be decided in your favor.).*

d) ☐ **The decision violates federal, state or local law.** *(In your explanation, you must provide a detailed statement as to what law is violated.)*

e) ■ **The decision is not supported by substantial evidence.** *(In your explanation, you must explain why the decision is not supported by substantial evidence found in the case record.)*

For more information phone (510) 238-3721.

f) ☒ **I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim.** (*In your explanation, you must describe how you were denied the chance to defend your claims and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue a decision without a hearing if sufficient facts to make the decision are not in dispute.*)

g) ☐ **The decision denies the Owner a fair return on my investment.** (*You may appeal on this ground only when your underlying petition was based on a fair return claim. You must specifically state why you have been denied a fair return and attach the calculations supporting your claim.*)

h) ☒ **Other.** *(In your explanation, you must attach a detailed explanation of your grounds for appeal.)*

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

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

Name	(See attached proof of service on all persons/entities served)
Address	
City, State Zip	
Name	
Address	
City, State Zip	

X [signature]	X AUGUST 14 2017
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.

Szymanski v. Madison Park Financial, Case No. T17-0237
Attachment to Appeal

THE ADMINISTRATIVE DECISION IS INCONSISTENT WITH OMC CHAPTER 8.22 AND THE REGULATIONS, IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE, AND DENIED APPELLANT THE OPPORTUNITY TO PRESENT HER CLAIM

I. The Administrative Decision Was the Result of Mistake Or Fraud

A. The Administrative Decision Was Based Upon Fraud Or Mistake: The Claimed Exemption Does Not Apply to the Tenant's Rental Unit; The Administrative Decision Cites No Evidence Supporting Exemption for Unit 21

Appellant Ziaaa Szymanski appeals from the July 19, 2017 Administrative Decision of the Hearing Officer.

Appellant filed Tenant Petition T17-0237 asserting that a rent increase was incorrectly calculated, exceeded the allowable CPI Adjustment, and was unjustified. She also asserted that there were current code violations and serious property conditions, and that the owner decreased services.

In response to the instant Petition, the Owner wrote a letter to the Rent Program, citing three prior tenant cases concerning the same 59-unit property in which it was determined that certain units at the property were exempt. One of those tenants, Mr. Vidor, appealed to the Board and lost. Thereafter he filed a petition for writ of mandamus in the Superior Court, which was denied. When he appealed to the District Court of Appeal, the Hearing Decision was also affirmed. (Vidor v. Orton T05-0119; *Vidor v. City of Oakland Community and Economic Development Agency*; Alameda County Superior Court RG06-2877844; *Vidor v. City of Oakland Community and Economic Development Agency* 2009 Cal.App. Unpub. Lexis 8016.[1]

In its letter to the Rent Program in this case, the Owner wrote:

> On September 29, 2005, in a previous petition involving this property, the City of Oakland's rent board hearing officer determined that this unit was exempt from rent controls. This was further upheld by the Court of Appeal, First District, Division 4 on October 6, 2009 after the tenants appeals the rent board officer's decision. A copy of this decision, *Vidor v. City of Oakland Community and*

[1]It should be noted that the appellate *Vidor* case was unpublished. Per California Rules of Court, Rule 8.115(b) it cannot be used except where relevant as law of the case, *res judicata* or collateral estoppel. None of these doctrines apply here, as the parties are different than in the *Vidor* case. Therefore, it should not have been employed in the instant case.

Economic Development Agency, is attached for your review. (See Owner's letter, attached hereto).

The Owner's statement in this letter that Appellant's rental unit was found exempt in *Vidor* is SIMPLY false. The rental unit in which Appellant resides was not a subject of the prior tenants' petition. No determination had been made concerning Unit 21 in that case.[2] See, for example, Rent Board Appeal Case L13-0054, in which only one of the four units in the case was found to be exempt. (L13-0054, Appeal Decision, p. 3.

Appellant is informed that no certificate of exemption has been issued with regard to any part of the property. Had the Owner requested one after prevailing in *Vidor* case, it would no doubt clarify exactly which units were determined to be exempt. But such a request might have provoked City scrutiny or additional petitions from other tenants. Doubtless, the Owner wished to avoid such scrutiny.

The Hearing Officer's Administrative Decision in this case was issued by mistake and by due to the Owner's false representation that Appellant's unit had been declared exempt. At any rate, the Hearing Officer jumped to the incorrect conclusions that there were no material facts in dispute and that an Administrative Decision was appropriate. There are material facts in dispute concerning the prior residential history of the Appellant's rental unit. The Administrative Decision deprived her of her opportunity to present the true facts.

Even if the *Vidor* case had found the entire property exempt, its holding was the result of fraud or mistake. In the short time since she received the Administrative Decision, Appellant has uncovered significant evidence that residential tenants resided at the subject property prior to the time the owner purchased and renovated it. She has uncovered some evidence that her rental unit was, more likely than not, previously occupied by residential tenants. She seeks remand in order to demonstrate prior residential occupancy of her rental unit.[3]

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[2]Appellant is considerably hindered in this appeal by the fact that she has been unable to procure a copy of the Hearing Decision and the Board's Appeal Decision in the *Vidor* case as yet. However, the District Court of Appeal's Decision mentions nothing about Unit 21 or the building in which it is located. The appellate court referred only to Building C. Unit 21 is located in Building C.

[3]To the extent that *Vidor* may have found the entire property or even all of Building C exempt, without notice to the then-current tenants and an opportunity for them to participate and, apparently, without any presentation of any evidence regarding the occupancy history of the individual units, the *Vidor* decision would be in error. For purposes of this appeal, Appellant relies upon the lack of any evidence submitted with regard to Unit 21. [Regulations, 8.22.030.C.1.(b) (Owner's exemption certificate petition cannot be decided on a summary basis, may only be decided by a hearing on the merits]

C. The Ordinance and Regulations Provide for Continuing Rent Board Jurisdiction Over Challenges to Certificates of Occupancy Which Are Based on Allegations of Fraud or Mistake

The Administrative Decision in this case rests upon a fundamental misunderstanding of the Ordinance and Regulations. The Hearing Officer's Decision relies upon the Court of Appeals determination in *Vidor* "which concerns the subject building" and, apparently, upon the Owner's agent's statement that Appellant's unit had been found to be exempt. The Summary Hearing Decision concludes that, since a certificate of exemption had previously been issued (it had not), the Rent Program lacked jurisdiction to hear a petition concerning the property, *even one seeking to rescind the exemption.*

However, even if the District Court had found the rental unit to be exempt, the exemption could still be challenged. The circular reasoning inherent in the Hearing Officer's Decision is apparent: It categorically declares that, once a Certificate of Occupancy is issued, the Rent Adjustment Program lost jurisdiction and had no power to rescind it. However, both the Ordinance and the Regulations explicitly provide for rescission of a previously-issued certificate of exemption when it is challenged as fraudulent or mistakenly issued:

> For purposes of obtaining a certificate of exemption or responding to a tenant petition by claiming an exemption from Chapter 8.22, Article I, the burden of proving and producing evidence for the exemption is on the owner. A certificate of exemption is a final determination of exemption *absent fraud or mistake.* (Emphasis added) (OMC 8.22.030.B.1.b)
>
> Timely submission of a certificate of exemption *previously granted* in response to a petition shall result in dismissal of the petition *absent proof of fraud or mistake regarding the granting of the certificate.* The burden of proving such fraud or mistake is on the tenant. (Emphasis added) (OMC 8.22.030.B.1.c)
>
> In the event that a *previously issued* certificate of exemption is found to have been issued based on fraud or mistake and thereby rescinded, the Staff shall record a recision of the certificate of exemption against the affected real property with the County Recorder. (Emphasis added) (Regulation No. 8.22.030C.2)

A previously issued certificate could hardly be found to have been based upon fraud or mistake if the matter cannot be heard. The Rent Adjustment Program tenant petition form itself provides a procedure for contesting an exemption based upon fraud or mistake. See, Tenant Petition, I.(l)

Plainly the Ordinance, Regulations, and Petition Procedures provide for continued Rent Program jurisdiction when a tenant charges that a *previously issued certificate* of exemption was based upon fraud or mistake.

D. The Hearing Officer Improperly Applied the Ordinance Provisions Respecting Administrative Decisions

The Administrative Decision states that it was issued pursuant to Section 8.22.110. Section 8.22.110 states that a petition may be dismissed by way of an Administrative Decision "Conclusive proof of exemption has been provided *and is not challenged by the tenant*". (Emphasis added) (OMC 8.22.110.F.1.d)

This is exactly the situation here. In *Vidal*, the Owners obtained a court declaration that they had a certificate of exemption (or its equivalent). The Owners then presented the exemption as a defense to this case. In response, the Hearing Officer declared that no further jurisdiction existed. By dismissing the case, Appellant was denied any opportunity to raise her challenge.

In this case, Appellant intends to present testimonial and documentary evidence of prior residential use of the rental unit, which is entirely inconsistent with the grant of a certificate of exemption based upon new construction.

F. Appellant Was Deprived of Her Right to Present Her Case

Regulation 8.22.110E.3 provides for basic due process rights, including the right to call witnesses, introduce exhibits, cross-examine opposing withnesses, impeach witnesses, and rebut evidence against her. The Administrative Decision deprived her of all these rights and prevented her from presenting her case. This is contrary to both the intent and the letter of the Ordinance.

> When ever an owner seeks a certificate of exemption, the following procedures apply:
>
> The petition cannot be decided on a summary basis and may only be decided after a hearing on the merits. Regulations, 8.22.030.C.1(a)

G. The Hearing Examiner Failed to Enforce Ordinance Requirements for Owner's Responses

The Ordinance provides that a landlord "must" respond to a tenant petition "on a form proscribed by the Rent Adjustment Program." 8.22.090.B.1(d). Here, the landlord submitted a letter erroneously declaring that Appellant's rental unit was exempt, along with a copy of the *Vidor* Court of Appeal decision. The Owner did not use a Rent Program form.

There are reasons for strictly enforcing the provisions of the Ordinance requiring RAP forms. The proscribed Owner Response form requires, for example, that other units at the property be described by address, asks whether Rent Adjustment Program notices were served on the tenant and seeks other such information. Very importantly, the form must be verified under

penalty of perjury.

The owner did not provide this form and, therefore, the Response should have been rejected. Allowing the Owner to substitute its own statement and attach the Court of Appeal decision, provided a means of directing attention away from the actual issue in *this* case.

CONCLUSION

For the reasons stated above, Appellant requests that this matter be remanded for a full evidentiary hearing regarding the exemption status of her rental unit.

Dated: August 11, 2017

Respectfully Submitted,

ZIAA SZYMANSKI, Appellant

PROOF OF SERVICE BY MAIL

Re: *Szymanski v. Madison Park Financial* T17-0237

I am a citizen of the United States of America and a resident of Alameda County. I am over the age of eighteen years and not a party to the within action. My business address is 1814 Franklin Street, Suite 506, Oakland, CA 94612.

On August 14, 2017 I served a copy of the following documents by overnight mail:

TENANT'S APPEAL TO RENT BOARD

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in a United States Post Office, in Oakland, California, addressed as follows:

Madison Park Financial/John Protopappas
155 Grand Avenue, # 950
Oakland, CA 94612

Madison Park Financial/John Protopappas
155 Grand Avenue, # 950
Oakland, CA 94612

Elicia Hoiland
4401 San Leandro St.
Oakland, CA 94601

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

Dated: August 14, 2017

Leah Hess, Declarant

Vidor v. City of Oakland Cmty. & Econ. Dev. Agency, 2009 Cal. App. Unpub. LEXIS 8016

Copy Citation

Court of Appeal of California, First Appellate District, Division Five

October 6, 2009, Filed

A120973

Reporter
2009 Cal. App. Unpub. LEXIS 8016 * | 2009 WL 3182549

RICHARD VIDOR, Plaintiff and Appellant, v. CITY OF OAKLAND COMMUNITY AND ECONOMIC DEVELOPMENT AGENCY, Defendant and Respondent; VULCAN PROPERTIES, LLP, et al., Real Parties in Interest and Respondents.

Notice: NOT TO BE PUBLISHED IN OFFICIAL REPORTS. CALIFORNIA RULES OF COURT, RULE 8.1115(a), PROHIBITS COURTS AND PARTIES FROM CITING OR RELYING ON OPINIONS NOT CERTIFIED FOR PUBLICATION OR ORDERED PUBLISHED, EXCEPT AS SPECIFIED BY RULE 8.1115(b). THIS OPINION HAS NOT BEEN CERTIFIED FOR PUBLICATION OR ORDERED PUBLISHED FOR THE PURPOSES OF RULE 8.1115.

Prior History: **[*1]** Alameda County Super. Ct. No. RG06287844.

Core Terms

hearing officer, certificate of occupancy, trial court, rent board, rent, parties, contends, substantial evidence, non-residential, additional evidence, judicial notice, fair hearing, buildings, formerly, writ petition, certificates, substantial

evidence standard, rent control ordinance, documentary evidence, building department, building permit, documents, foundry, unfair

Judges: Jones, P.J. We concur: Simons, J., Bruiniers, J.

Opinion by: Jones

Opinion

Appellant Richard Vidor filed a petition for writ of administrative mandamus challenging a decision by the City of Oakland's rent board to deny his request for a decrease in rent. The trial court denied the petition ruling the rent board had not prejudicially abused its discretion and Vidor had not been denied a fair hearing. Vidor now appeals contending (1) certain aspects of the rent board's decision are not supported by substantial evidence, and (2) he was not given a fair hearing. We reject these arguments and affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

In December 1985, J.R. Orton and James Alexander purchased what formerly was the Vulcan Foundry located on San Leandro Street in Oakland. Operating through a partnership known as Vulcan Properties, L.P., Orton and Alexander then converted the foundry into 59 residential artist live/work units in three different buildings.

In March 1998, appellant Richard Vidor rented a unit in Building C of the property. In the years that followed, Vulcan Properties increased Vidor's rent from $ 900 per month in 1998 to $ 1,266 per month in 2005.

In May 2005, **[*2]** Vidor filed a petition with the City of Oakland's rent board alleging his rent had been increased illegally. The petition was consolidated with similar petitions that had been filed by three other tenants who lived in units at the Vulcan property.

A hearing on the petitions was conducted on June 22, 2005. The primary issue was whether the units at the Vulcan property were exempt from Oakland's rent control ordinance. Section 8.22.030(A)(5) of the ordinance states that the rent restrictions set forth therein do not apply to "Dwelling units which were newly constructed and received a certificate of occupancy on or after January 1, 1983. . . . To qualify as a newly constructed dwelling unit, the dwelling unit must be entirely newly constructed or created from space that was formerly entirely non-residential." The parties disagreed whether the Vulcan property ever received a "certificate of occupancy" and whether the property was "formerly entirely non-residential."

The officer conducting the hearing received documentary evidence and heard testimony from witnesses. There was considerable dispute about the

authenticity of some of the documents and whether Oakland's building department had **[*3]** provided the parties with full and accurate records. At the conclusion of the hearing, the parties agreed the hearing officer could go to the building department and independently review the documents located there.

On August 11, 2005, the hearing officer served notice that a second hearing was needed. The notice stated as follows: "Following a review of the testimony and documentary evidence presented at the hearing, it has become apparent that, in order to render a proper Decision, further evidence must be developed in two respects: [P] (1) Pertinent history of the subject property, including use and construction projects undertaken, from 1985 to date; and [P] (2) The authenticity and significance, or lack of authenticity and significance, of certain Exhibits introduced by the parties at the June [22] hearing, as follows: Building Permit Applications; Certificates of Occupancy; Temporary Certificates of Occupancy; letters and other documents contained in the files of the Oakland Building Services Department."

Then on August 22, 2005, the hearing officer sent a letter to the director of the Community and Economic Development Agency asking that she "arrange to have the person most knowledgeable **[*4]** concerning the practices of the Building Services Department in the mid-and late-1980's" appear to testify at the second hearing.

A second day of hearings was conducted on September 29, 2005. Ray Derania, the interim building official for the City of Oakland, appeared as the person most knowledgeable about practices of the building department. After hearing the additional evidence presented, the hearing officer rendered a lengthy written decision. As is relevant here, he rejected the rent petitions, ruling Vulcan had "proven by a preponderance of the evidence that the tenants' units were created from space that was formerly entirely non-residential, and that the units either did or should have received Certificates of Occupancy after January 1, 1983."

Vidor and the other tenants filed an appeal to Oakland's rent board. The rent board conducted a public hearing and denied the appeal unanimously.

Vidor alone then filed a petition for a writ of administrative mandamus. He argued the decisions issued by the rent board and the hearing officer were not supported by substantial evidence and that he had not received a fair hearing. The trial court conducted a hearing on Vidor's petition and denied **[*5]** it.

Vidor then filed the present appeal. [1]

II. DISCUSSION [2]

A. Sufficiency of the Evidence

Vidor contends certain aspects of the ruling issued by the hearing officer are not supported by substantial evidence.

When a party files a petition for writ of administrative mandamus **[*7]** contending the administrative record does not support the findings, the superior court reviews the record using either an independent judgment standard or a substantial evidence standard. (Code Civ. Proc., § 1094.5, subd. (c); *Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 811.) Where the administrative decision substantially affects a vested fundamental right, the trial court must apply the independent judgment test. (*Goat Hill Tavern v. City of Costa Mesa* (1992) 6 Cal.App.4th 1519, 1525-1526.) When the administrative decision involves primarily economic interests, the trial court must determine if the findings of the administrative board are supported by substantial evidence. (*Concord Communities v. City of Concord* (2001) 91 Cal.App.4th 1407, 1414; *Carson Harbor Village, Ltd. v. City of Carson Mobilehome Park Rental Review Bd.* (1999) 70 Cal.App.4th 281, 287.)

The petition here involves Vidor's request for a decrease in rent, an economic interest that does not involve a fundamental vested right. (Cf. *San Marcos Mobilehome Park Owners' Assn. v. City of San Marcos* (1987) 192 Cal.App.3d 1492, 1500, holding the decision of a rent board must be reviewed under the substantial evidence standard.) **[*8]** Accordingly, the trial court's review of the administrative proceedings below was governed by the substantial evidence standard.

When a decision of the trial court applying the substantial evidence standard is challenged on appeal, the same substantial evidence standard applies. (*Desmond v. County of Contra Costa* (1993) 21 Cal.App.4th 330, 334-335.) The issue is whether the administrative decision is based on substantial evidence in light of the entire administrative record. (*Ibid.*) When making that determination, the reviewing court must review the administrative record, apply the substantial evidence test, and "begin with the presumption that the record contains evidence to sustain the [administrative] board's findings of fact." (*Carson Harbor Village, Ltd. v. City of Carson Mobilehome Park Rental Review Bd., supra,* 70 Cal.App.4th at p. 287.)

Here, Vidor challenges the sufficiency of the evidence in two primary respects. First, he argues the evidence was insufficient to support the hearing officer's conclusion that the building in which he lived, (Building C) received a certificate of occupancy after January 1, 1983.

At the hearing, Vulcan presented a building permit that indicated **[*9]** a final inspection had been completed for Building C in 1987. The hearing officer also heard testimony from Ray Derania, Oakland's interim building official, who stated that a final inspection, once completed, is "authorization to occupy the building. And, for this particular building, a change in use, a certificate of occupancy would be following from that." Derania explained further, "in Oakland and many jurisdictions . . . the building permit is the last document to be final. So you're supposed to assure that the electrical permit had been final beforehand, the plumbing permit, the mechanical permit. If you have a Health Department approvals, that's been done. If you had Public Works approvals. At the conclusion of that, then, all right, and the building is okay, you final the building permit. That triggers the preparation issuance of the certificate of occupancy for new buildings and buildings of change of uses." Given the presumption that official duty has been regularly performed, (Evid. Code, §

664) the hearing officer evaluating this evidence reasonably could conclude that Vulcan had *in fact* obtained a certificate of occupancy for Building C after January 1, 1983. [3]

Vidor also challenges the hearing officer's conclusion that Building C was formerly entirely nonresidential.

Vulcan presented testimony that indicated that the property at issue formerly had been a steel foundry. Vulcan also presented documentary evidence that prior to its purchase, the buildings on the property "had been in use in their entirety as a foundry and were converted in their entirety to artist loft and live/work." In addition, Vulcan presented building permits that described the proposed construction at the property as a "change to R." Derania, the building official, testified that designation meant the project was adding residences to "an existing non-residential use." Again, the officer evaluating this evidence reasonably could conclude that prior to Vulcan's work, the property at issue was "entirely non-residential."

None of the arguments Vidor makes convince us the trial court erred. [4] As to the former issue, Vidor contends the evidence was insufficient **[*11]** because Vulcan never produced a final certificate of occupancy for any of the buildings on the property. Vidor argues that the documents Vulcan did produce, certificates of occupancy that did not have an official stamp, and temporary certificates of occupancy that had expired, were inadequate as a matter of law. Vidor is correct that the documents he cites do not appear to be final certificates of occupancy. However, this point is not dispositive. As we have explained, the record contains substantial evidence that Vulcan in fact obtained a certificate of occupancy for Building C. "If such substantial evidence be found, it is of no consequence that the [hearing officer] believing other evidence, or drawing other reasonable inferences, might have reached a contrary conclusion. [Citations.]" (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 874, italics omitted.)

As to prior nonresidential use, **[*12]** Vidor argues the hearing officer's conclusion was flawed because it was inconsistent with a document he submitted that showed on April 13, 1987, a tenant at the property named Peter Smith filed an application for a building permit to perform work on an "'existing live-work studio.'" The evidence Vidor cites does support an inference that on some date prior to April 1987 the property may have been used for residential purposes. But that is of no consequence. Evidence of residential use prior to April 1987 does not defeat the trial court's conclusion that the property was entirely nonresidential before it was purchased and renovated by Vulcan in December 1985. Again, the hearing officer's conclusion is supported by substantial evidence even though there is other evidence in the record that might have supported a different result. (*Bowers v. Bernards, supra,* 150 Cal.App.3d at p. 874.)

B. Whether Vidor Received a Fair Hearing

Vidor contends the trial court should have granted his petition for a writ because he did not receive a fair hearing from the rent board.

A petition for writ of administrative mandamus may be granted if a party has not received a fair trial before an administrative body. **[*13]** (Code Civ. Proc., § 1094.5, subd. (b).) On appeal, the trial court's factual findings with respect to whether a party received a fair hearing will be upheld if supported by substantial evidence. However, the trial court's ultimate determination as to whether the administrative proceedings were fundamentally fair is a question of law that this court reviews de novo on appeal. (*Nightlife Partners, Ltd. v. City of Beverly Hills* (2003) 108 Cal.App.4th 81, 87; *Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, 1169; *Rosenblit v. Superior Court* (1991) 231 Cal.App.3d 1434, 1443.)

Here, Vidor presents four arguments when arguing the underlying hearing before the rent board was unfair. First, he contends the decision issued by the hearing officer was unfair because it was inconsistent with the decision issued in a prior case: *Garsson v. Collins*--T04-1063. We reject this argument because Vidor has not cited any authority to support his position. The issue is forfeited. (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852.) It is also unpersuasive. In the prior case, the same hearing officer who presided over this case initially ruled that a tenant was not entitled to a decrease **[*14]** in rent even though the landlord had never obtained a certificate of occupancy. The decision issued by the hearing officer states the "landlord credibly testified that he did not apply for a Certificate because he was informed by City representatives that the City grants such certificates only for buildings that are entirely newly constructed, and not those in which the exterior structure remains essentially intact. The tenant did not dispute this testimony." The record in this case strongly suggests that Oakland city officials misinformed the landlord in the prior case. The testimony of Derania and the documentary evidence presented indicates a certificate of occupancy can be issued for buildings where the exterior structure remains essentially intact. In any event, the mere fact that the hearing officer in the prior case rendered a different decision in a different dispute between different parties and based on different evidence does not demonstrate unfairness.

Next, Vidor contends he did not receive a fair hearing because the hearing officer sought and allowed the introduction of additional evidence after the conclusion of the first day of testimony. Vidor contends that act was **[*15]** inconsistent with the court's statement at the end of the first day that "the record is now closed." While the hearing officer did state the record was "closed," all parties knew the hearing officer would in fact receive additional evidence because they had agreed he could go to the building department and review the records there. It is apparent that after that review, the hearing officer believed additional evidence was needed. On August 11, 2005, he sent the parties notice stating, "Following a review of the testimony and documentary evidence presented at the hearing, it has become apparent that, in order to render a proper Decision, further evidence must be developed . . . ." Then on August 22, 2005, the hearing officer asked that the person most knowledgeable with Oakland's building department appear to present testimony. Ray Derania, Oakland's interim building official, appeared in response to that request and he testified at the second hearing. We see no

unfairness in these actions. It is well settled that a trial court is granted broad discretion to determine whether it is appropriate to reopen a case and receive additional evidence. (*Rosenfeld, Meyer & Susman v. Cohen* (1987) 191 Cal.App.3d 1035, 1052.) **[*16]** It is also settled that a trial court has the discretion to call and examine a witness in furtherance of justice. (*Travis v. Southern Pacific Co.* (1962) 210 Cal.App.2d 410, 424-425.) An officer conducting an administrative hearing, a much less formal proceeding, (*Blinder, Robinson & Co. v. Tom* (1986) 181 Cal.App.3d 283, 289) would at a minimum possess similar powers. We conclude the hearing officer here did not abuse his discretion or provide an unfair hearing simply because he sought and allowed the introduction of additional evidence that he believed was necessary in order to render a fair decision.

Next, Vidor contends he "should have been allowed to submit additional evidence which was not readily available to [him] at the time of the second hearing . . . ." Vidor's argument on this point is unclear. He tried to present additional evidence to the rent board and to the trial court and he was rebuffed on both occasions. We cannot determine whether Vidor is arguing the rent board erred, the trial court erred, or both. However, we need not try to sort the issue out because we reject Vidor's argument on procedural grounds. Vidor has not cited any authority to support his argument. He **[*17]** has forfeited the issue. (*Benach v. County of Los Angeles, supra,* 149 Cal.App.4th at p. 852.)

Finally, Vidor contends the rent board hearing officer should have concluded the evidence presented by Vulcan was unreliable because it was not the best evidence that Vulcan could have been presented to show it had obtained certificates of compliance or that the property formerly had been entirely nonresidential. Vidor bases this argument on Evidence Code sections 412 and 413. [5] However, the technical rules of evidence do not apply in administrative hearings. (*Big Boy Liquors, Ltd. v. Alcoholic Bev. Etc. Appeals Bd.* (1969) 71 Cal.2d 1226, 1230.) "[N]either the trier of fact nor the board was required to weigh the evidence in accordance with the provisions of sections 412 and 413 of the Evidence Code." (*Ibid.*) [6]

III. DISPOSITION

The judgment denying the petition for writ of administrative mandate is affirmed.

Jones, P.J.

We concur:

Simons, J.

Bruiniers, J.

Footnotes

1 The briefs Vidor has filed describe the other tenants who filed rent petitions as "real parties in interest." In fact, none of the other tenants filed an appeal, and none has made an appearance in this action. The legal rights of the other tenants are not at issue in this appeal.

2 While this appeal was being briefed, the parties each filed a request for judicial notice. We deferred ruling on the requests until the merits of the appeal. Having now considered the requests, we rule as follows:

On December 12, 2008, Vidor filed a request asking this court to take judicial notice of (1) the administrative decisions issued in *Garsson v. Collins*--T04-0163, a case involving different parties that also arose under Oakland's rent control ordinance, (2) a printout from a website that allegedly is operated by Orton Development, (3) this court's unpublished opinion in *Old Mother's Cookies, LLC v. City of Oakland* (Nov. 10, 2008, A117899) and (4) Oakland's ordinance No. 7248. We decline to take judicial notice of the first items because many of them are already part of the record on appeal. We decline to take judicial notice of the second and **[*6]** third items because they were never presented to the trial court below. (See *Brosterhous v. State Bar* (1995) 12 Cal.4th 315, 325.) We decline to take judicial notice of the fourth item because it is not relevant to any issue that has been properly presented to this court. (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1089 fn. 4.)

On March 18, 2009, the City of Oakland filed a motion asking this court to take judicial notice of (1) its rent control ordinance, and (2) the related regulations. The unopposed request is granted. (See Cal. Rules of Court, rule 8.54(c).)

On March 18, 2009, Vulcan Properties et al. filed a motion asking this court to take judicial notice of (1) Oakland's rent control ordinance, (2) the regulations that implement Oakland's rent control ordinance, and (3) a grant deed for the subject property that was recorded on December 31, 1985. Requests one and two are granted. Request three is denied. (*Brosterhous v. State Bar, supra,* 12 Cal.4th at p. 325.)

3 Having **[*10]** reached this conclusion, we need not decide whether the hearing officer was also correct when he ruled that Vidor was not entitled to a decrease in rent because Building C "should have received" a certificate of occupancy.

4 Vidor scatters what could be interpreted as challenges to the sufficiency of the evidence throughout his briefs. As required by the California Rules of Court, we will only address those arguments that are presented correctly through appropriate headings. (See Cal. Rules of Court, rule 8.204(a)(1)(B).)

5 Evidence Code section 412 states: "If weaker and less satisfactory evidence is offered when it was within the power of the party to produce stronger and more satisfactory evidence, the evidence offered should be viewed with distrust."

Evidence Code section 413 states: "In determining what inferences to draw from the evidence or facts in the case against a party, the trier of fact may **[*18]** consider, among other things, the party's failure to explain or to deny by his testimony such evidence or facts in the case against him, or his willful suppression of evidence relating thereto, if such be the case."

6 In his opening brief, and again in his reply brief, Vidor makes statements that seem to argue Vulcan was not entitled to any rent increases because its conversion of the Vulcan Foundry into residential units violated Oakland's municipal ordinances. We declined to address this issue because it is not presented properly through appropriate headings. (See Cal. Rules of Court, rule 8.204(a)(1)(B).)

LEAH HESS
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August 15, 2017

Oakland Rent Adjustment Program
P.O. Box 70243
Oakland, CA 94612

RE: Szymanski v. Madison Park Financial, et al.

Dear Rent Adjustment Program;

Please file the enclosed Errata Re: Tenant's Appeal and send a stamped copy back to me in the enclosed self addressed envelope.

Very truly yours,

Leah Hess

ZIAS SZYMANSKI
4401 San Leandro Street, Unit 21
Oakland, CA 94602

CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM

TENANT APPEAL

Zia Szymanski, **Tenant,**	**T17-0237**
Madison Park Financial, et al. **Owner**	**ERRATA TO ATTACHMENT TO APPEAL**

Certain typographical errors appeared in the Attachment to the Appeal. Appellant submits the following corrections to the Appeal Attachemnt filed on August 14, 2017.

PAGE 2

Footnote 2, last line:

Omit "Unit 21 is located in Building C."

Replace with: "Unit 21 is located in Building B."

PAGE 3

Paragraph 2, line 3-4:

Omit: "It categorically declares that, once a Certificate of Occupancy is issued, the Rent Adjustment Program lost jurisdiction...."

Replace with: "It categorically declares that, once a Certificate of Exemption is issued, the Rent Adjustment Program lost jurisdiction...."

PROOF OF SERVICE BY MAIL

Re: *Szymanski v. Madison Park Financial* T17-0237

I am a citizen of the United States of America and a resident of Alameda County. I am over the age of eighteen years and not a party to the within action. My business address is 1814 Franklin Street, Suite 506, Oakland, CA 94612.

On August 15, 2017 I served a copy of the following documents by regular mail:

TENANT'S APPEAL TO RENT BOARD
ERRATA, TENANT'S APPEAL TO RENT BOARD

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in a United States Post Office, in Oakland, California, addressed as follows:

Madison Park Financial/John Protopapas
155 Grand Avenue, # 950
Oakland, CA 94612

Madison Park Financial/Barbara Turner
155 Grand Avenue, # 950
Oakland, CA 94612

Vulcan Lofts, LLC
155 Grand Ave, # 950
Oakland, CA 94612.

Elicia Holland
4401 San Leandro St.
Oakland, CA 94601

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

Dated: August 15, 2017

Leah Hess, Declarant

ERICKSEN
ARBUTHNOT
Attorneys at Law

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Los Angeles

San Jose

Corporate Administration:

Walnut Creek

Via US Mail

August 25, 2017

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

RE: Ziaa Szymanski – 4401 San Leandro Street, Unit 21, Oakland, CA 94612; Response to Appeal - Case Number: T17-0237

To Whom It May Concern,

Please consider this a response to the appeal filed in case number T17-0237, entitled *Szymanski v. Madison Park Financial Corporation.* As indicated below, there is no basis for the Housing, Residential Rent and Relocation Board, ("the Board"), to maintain jurisdiction over this matter, and, if there is, the concepts of res judicata and collateral estoppel mandate that the administrative decision of the hearing officer be upheld.

I. The Rent Arbitration Program Lacks Jurisdiction To Hear This Dispute as the Issue of The Rent Control Exemption Has Already Been Decided

The fundamental flaw in the plaintiff's appeal is that it assumes that the denial of a hearing was based on a summary review of the facts—that is not the case. The administrative hearing denial was based on the simple fact that the building has already been deemed exempt from rent control. Per the Oakland Municipal Code:

8.22.030 – Exemptions.

A. Types of Dwelling Units Exempt. The following dwelling units are not covered units for purposes of this chapter, Article I only…

5. Dwelling units which were newly constructed and received a certificate of occupancy on or after January 1, 1983.

Where Article I concerns the Residential Rent Adjustment Program.

The tenant's original petition claimed that the owners of the Vulcan Lofts, were wrongfully attempting to raise the rent on her unit due to various allegedviolations of the Oakland Rent Control Ordinance. However, the entirety of the Vulcan Lofts has already been adjudicated by this rent board to be exempt from rent control.

In the case of *Vidor v. City of Oakland Community and Economic Development Agency* (Cal. Ct. App., Oct. 6, 2009, No. A120973) 2009 WL 3182549, ("*Vidor*" and attached here for reference), this rent board ruled "Vulcan had 'proven by a preponderance of the evidence that the tenants' units were created from space that was formerly entirely non-residential, and that the units either did or should have received Certificates of Occupancy after January 1, 1983.'" (*Vidor* at 2.) Throughout the *Vidor* decision the appellate court relied on these findings and determined that the ruling was correct and the tenants at the time were provided a fair hearing and sufficient evidence was put forth in support of the decision.

Per the California Rules of Court, "An unpublished opinion may be cited or relied on…When the opinion is relevant under the doctrines of law of the case, res judicata, or collateral estoppel." (Cal. Rules of Court, 8.1115, emphasis added.) The issues of res judicata and collateral estoppel are exactly at issue in this matter and preclude any petition by the tenant.

"Collateral estoppel precludes relitigation of issues argued and decided in prior proceedings." (*Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341.) There is a four part test to determine if collateral estoppel is applicable. "First, the issue sought to be precluded from relitigation must be identical to that decided in a former proceeding. Second, this issue must have been actually litigated in the former proceeding. Third, it must have been necessarily decided in the former proceeding. Fourth, the decision in the former proceeding must be final and on the merits. Finally, the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding." (*Id.*)

In this instance the *Vidor* court easily passes the Supreme Court's test to apply collateral estoppel. A review of the *Vidor* decision (and rent board files) shows that 1) the certificate of exemption was litigated in the underlying action; 2) the decision was actually litigated by the parties in front of the rent board, the appeals board, the district court, and the appellate court; 3) the decision was made and in favor of the landlord; 4) and the decision was final on its merits, even after a considerable challenge by the tenants.

This rent board and the trial court found that the tenants in *Vidor* were given a fair hearing and they affirmed the hearing officer's decision that there was sufficient evidence to confirm that the Vulcan Lofts were exempt from rent control. The fact is that the Board had already determined that this building is exempt and the current action is incapable of rebutting that determination. This building is outside of the rent board's jurisdiction—as stated in the administrative decision of Stephen Kasdin in the underlying matter—and that determination must be upheld.

II. The Tenant's Cited Ordinances Do Not Confer A Right To A Hearing On This Matter

In support of her appeal, the tenant states that the prior rent board determination can categorically be appealed due to "fraud or mistake." That is incorrect. In reliance on OMC 8.22.030, the tenant claims that a certificate of exemption can be challenged if issued based on "mistake or fraud." The cited code sections state in their entirety:

> 8.22.30 – Exemptions
>
> B. Exemption Procedures.
>
> 1. Certificate of Exemption:
>
> c. Timely submission of a certificate of exemption previously granted in response to a petition shall result in dismissal of the petition absent proof of fraud or mistake regarding the granting of the certificate. The burden of proving such fraud or mistake is on the tenant.

And the cited regulation states:

> 8.22.30 – Exemptions
>
> C. Certificates of Exemption
>
> 2. In the event that a previously issued Certificate of Exemption is found to have been issued based on fraud or mistake and thereby rescinded, the Staff shall record a rescission of the Certificate of Exemption against the affected real property with the County Recorder.

On their face, the code section and regulation cited by the tenant do not confer an independent right to seek revocation of a lawfully granted exemption from rent control. They only establish a standard of proof necessary to revoke the determination[1]. There is nothing in the code which grants an affirmative right to second guess the determination of this board, its hearing officers or the court, after a determination of exemption has been made. As stated above and in the decision of the hearing officer in the instant action, this building is exempt from the entirety of Article 1 of OMC, 8.22, et seq., which would include the section of the article potentially granting the right to challenge the issuance of a certificate of exemption.

If there is an ambiguity of the terms of an ordinance between the exemption from Article 1 and the ability to challenge an exemption due to "fraud or mistake," a court must determine the legislative intent of the ordinance. (*Freedom Newspapers, Inc. v. Orange County Employees Retirement System* (1993) 6 Cal.4th 821, 826.) In this matter, there was and is a clear intent by

[1] This should also be subject to the below sections regarding timing of any challenges to the determination of a rental exemption.

city council and drafters of the ordinance to exclude sections of the rental market from rent control. This is evidenced by the sheer number of exemptions and the specific date chosen under 8.22.030.A.5 of the Code. There are a number of dates within the ordinance and it was within the power of the city council to choose any other date to determine when a newly constructed building could be exempt, but the council deliberately chose to exclude residence which received a certificate of occupancy after 1983 from rent control—a date that has been in place since the earliest version of the rent control ordinance.

Additionally, it cannot be the legislative intent of the City of Oakland to create a rent board that has the authority to grant certificates of exemption, and provide that board with the police power over tenants and landlords, and then undermine the ability of the board by allowing their decisions to be second guessed and challenged by any tenant irrespective of the board's findings.

The more likely interpretation of Article 1, and the potential power to challenge the issuance of a certificate of exemption, is that the rent board can hear challenges to certificates of occupancy that were granted through a ministerial or summary proceeding. It would make little sense and frustrate landlords and tenants if, after an evidentiary hearing, the tenant or landlord could simply challenge the rent board's determination over and over again with alleged new facts. This potential unending litigation would be the end result of Ms. Szymanski's interpretation of the ordinance, and it would mean an increase in work for the rent adjustment program, uncertainty for the landlords, and would frustrate the purpose of the Board.

The plain intent of the ordinance is to provide the Board with the power to grant exceptions to rent control, and to exclude properties granted certificates of occupancy after January 1, 1983, from rent control. Therefore, the ordinance excluding Vulcan Lofts from the entire rent control scheme is unambiguous and must be enforced here, thereby precluding the tenant from arguing a right to challenge a hearing officer's decision made 12 years ago.

III. Fraud or Mistake Is Insufficient To Reexamine Vulcan Loft's Certificate Of Exemption

Even if there is "fraud or mistake" as alleged by the tenant's counsel, that is not sufficient to set aside the determination of the rent board.

> A direct attack on an otherwise final, valid judgment by way of an independent action to set it aside…is permitted where it appears that the complaining party was fraudulently prevented from presenting his claim or defense in the prior action….This rule is based upon the important public policy that litigants be afforded a fair adversary proceeding in which fully to present their case. Such relief will be denied, however, where it appears that the complaining party . . . has had an opportunity to present his case to the court and to protect himself from…any fraud attempted by his adversary. This rule is based upon the equally important public policy that there must be an end to litigation which underlies the doctrine of finality of judgments.

Kachig v. Boothe (1971) 22 Cal.App.3d 626, 632, citations omitted.

Even in extreme situations California Courts have declined to re-litigate cases. "California cases uniformly hold that the introduction of perjured testimony or false documents in a fully litigated case constitutes intrinsic rather than extrinsic fraud. [citations]. Likewise, in a litigated case the concealment or suppression of material evidence is held to constitute intrinsic fraud. *Kachig, Supra* 22 Cal.App.3d at 634. "[W]hen parties have once submitted a matter, or have had the opportunity of submitting it, for investigation and determination, and when they have exhausted every means for reviewing such determination in the same proceeding, it must be regarded as final and conclusive, unless it can be shown that the jurisdiction of the court has been imposed upon, or that the prevailing party, by some extrinsic or collateral fraud, has prevented a fair submission of the controversy. (*Pico v. Cohn* (1891) 91 Cal. 129, 133 [25 P. 970, 971], *aff'd* (1891) 91 Cal. 129.) Where "extrinsic fraud," is related to the fraudulent actions of an opposing party which prevent his or her opponent from having a trial. (*Pico, Supra,* 91 Cal. At 134.) However, "when he has a trial [the party] must be prepared to meet and expose perjury then and there." (*Id.*)

In this matter, if there was some fraud or mistake it is not enough to re-litigate the matter. Mr. Vidor and other tenants had multiple hearings at the rent board, and the appeals process. There was no "extrinsic fraud" under the *Pico* case by which to set aside the judgment since the tenants of Vulcan Lofts had their day in court years ago. There is simply no "fraud or mistake" or even new evidence which would operate to allow the tenant to challenge the previously granted certificate of exemption from rent control to Vulcan Lofts.

IV. Public Policy Favors Reliance On *Vidor*

It is the public policy of California that there is an end to litigation at some point, and decided matters should not be reopened. "The public policy underlying the principle of res judicata that there must be an end to litigation requires that the issues involved in a case be set at rest by a final judgment." (*Jorgensen v. Jorgensen* (1948) 32 Cal.2d 13, 18.) The certificate of occupancy at issue in this case was decided by this rent board 12 years ago, there can be no re-litigation of the certificate.

The public policy of finality of judgment is easily ascertained when reviewing state law on appealing decisions or moving to reconsider decisions. Under state law, a motion for reconsideration must be filed within 10 days of the notice of an entry of order. (Code Civ. Proc., § 1008.) A motion for a new trial must be filed before judgment is entered, or within "15 days of the date of mailing notice of entry of judgment by the clerk of the court pursuant to Section 664.5, or service upon him or her by any party of written notice of entry of judgment," or within 180 days after the entry of judgment, whichever is earliest;" (Code Civ. Proc., § 659.) A notice of appeal must be filed before the earliest of:

a) 60 days after the superior court clerk serves on the party filing the notice of appeal a document entitled "Notice of Entry" of judgment or a filed-endorsed copy of the judgment, showing the date either was served;
b) 60 days after the party filing the notice of appeal serves or is served by a party with a document entitled "Notice of Entry" of judgment or a filed-endorsed copy of the judgment, accompanied by proof of service; or
c) 180 days after entry of judgment.

Cal. Rules of Court, 8.104

"The purpose of the 180–day outside limit derives from the need for finality. Without an outside time limit, orders could be appealed years after the fact based on deficiencies in service." (*In re Marriage of Mosley* (2010) 190 Cal.App.4th 1096, 1102.) This rule is an ironclad bar to any review of a previous decision by the board. "[T]he requirement as to the time for taking an appeal is mandatory, and the court is without jurisdiction to consider one which has been taken subsequent to the expiration of the statutory period. In the absence of statutory authorization, neither the trial nor appellate courts may extend or shorten the time for appeal, even to relieve against mistake, inadvertence, accident, or misfortune. Nor can jurisdiction be conferred upon the appellate court by the consent or stipulation of the parties, estoppel, or waiver." (*Branner v. Regents of University of California* (2009) 175 Cal.App.4th 1043, 1049.)

Since a decision as to the entire property was rendered in *Vidor*, and the time to appeal that decision has long since lapsed, public policy favors ensuring that the previous determination of this board is final and that the certificate of exemption award is not re-examined.

V. Vulcan Lofts Would Be Prejudiced If Required To Reopen The Matter

The fact is that there has already been a determination that Vulcan Lofts is exempt from rent control. The determination was made after a significant fact finding investigation (see *Vidor*); it was sanctioned by the trial court and the appellate court. The evidence presented to the rent board in the *Vidor* related to the renovation of Vulcan Lofts in 1984. The original hearing on the petition for a claim of exemption was held over 12 years ago and a finding of fact and law was made shortly after. Since that time the building has changed hands and parties and documents relevant to that litigation have vanished with the passing of time[2]. Having to litigate the same matters again without the benefit of all the records would severely hamper the owners of Vulcan Lofts—especially since they have been operating under the assumption that the building has been exempt from rent control since the building was purchased. Opening up the building to exemption challenges at this point is incredibly prejudicial to Vulcan Lofts.

[2] Tenant's counsel even admits that they were unable to obtain a copy of the rent board file in time for the filing of the appeal.

VI. The Administrative Decision Was Properly Rendered Considering The Above

An administrative decision can be issued where a certificate of exemption has already been issued. (O.M.C. 8.22.110.F.1.d.) In this case there was a matter decided after the presentation of evidence and, as stated above, there was a determination on the merits. The administrative decision is proper in this case and should not be overturned on these grounds.

VII. The Owner's Response Is Irrelevant To The Court's Determination

As discussed at length above, the issue with the administrative decision has nothing to do with the presentation of evidence or facts. The hearing officer's decision was based on a long resolved case providing a certificate of exemption to Vulcan Lofts. The issue of whether a proper response was filed is moot because the rent board lack jurisdiction to hear the matter all together. In any event, a response was filed with the rent board and signed under the penalty of perjury.

CONCLUSION

This appeal ignores the litigation and fact finding that underlie this rent board's *Vidor* decision. State law prohibits a litigated case from being reopened and the judgment in *Vidor* must be final and applied to this case to deny this appeal.

Respectfully Submitted,

ERICKSEN ARBUTHNOT

JASON W. MAUCK

JWM:ll

Enc. *Vidor v Oakland*

Decision, further evidence must be developed in two respects: [¶] (1) Pertinent history of the subject property, including use and construction projects undertaken, from 1985 to date; and [¶] (2) The authenticity and significance, or lack of authenticity and significance, of certain Exhibits introduced by the parties at the June [22] hearing, as follows: Building Permit Applications; Certificates of Occupancy; Temporary Certificates of Occupancy; letters and other documents contained in the files of the Oakland Building Services Department."

*2 Then on August 22, 2005, the hearing officer sent a letter to the director of the Community and Economic Development Agency asking that she "arrange to have the person most knowledgeable concerning the practices of the Building Services Department in the mid-and late-1980's" appear to testify at the second hearing.

A second day of hearings was conducted on September 29, 2005. Ray Derania, the interim building official for the City of Oakland, appeared as the person most knowledgeable about practices of the building department. After hearing the additional evidence presented, the hearing officer rendered a lengthy written decision. As is relevant here, he rejected the rent petitions, ruling Vulcan had "proven by a preponderance of the evidence that the tenants' units were created from space that was formerly entirely non-residential, and that the units either did or should have received Certificates of Occupancy after January 1, 1983."

Vidor and the other tenants filed an appeal to Oakland's rent board. The rent board conducted a public hearing and denied the appeal unanimously.

Vidor alone then filed a petition for a writ of administrative mandamus. He argued the decisions issued by the rent board and the hearing officer were not supported by substantial evidence and that he had not received a fair hearing. The trial court conducted a hearing on Vidor's petition and denied it.

Vidor then filed the present appeal. [1]

II. DISCUSSION [2]

A. Sufficiency of the Evidence

Vidor contends certain aspects of the ruling issued by the hearing officer are not supported by substantial evidence.

When a party files a petition for writ of administrative mandamus contending the administrative record does not support the findings, the superior court reviews the record using either an independent judgment standard or a substantial evidence standard. (Code Civ. Proc., § 1094.5, subd. (c); *Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 811.) Where the administrative decision substantially affects a vested fundamental right, the trial court must apply the independent judgment test. (*Goat Hill Tavern v. City of Costa Mesa* (1992) 6 Cal.App.4th 1519, 1525-1526.) When the administrative decision involves primarily economic interests, the trial court must determine if the findings of the administrative board are supported by substantial evidence. (*Concord Communities v. City of Concord* (2001) 91 Cal.App.4th 1407, 1414; *Carson Harbor Village, Ltd. v. City of Carson Mobilehome Park Rental Review Bd.* (1999) 70 Cal.App.4th 281, 287.)

The petition here involves Vidor's request for a decrease in rent, an economic interest that does not involve a fundamental vested right. (Cf. *San Marcos Mobilehome Park Owners' Assn. v. City of San Marcos* (1987) 192 Cal.App.3d 1492, 1500, holding the decision of a rent board must be reviewed under the substantial evidence standard.) Accordingly, the trial court's review of the administrative proceedings below was governed by the substantial evidence standard.

*3 When a decision of the trial court applying the substantial evidence standard is challenged on appeal, the same substantial evidence standard applies. (*Desmond v. County of Contra Costa* (1993) 21 Cal.App.4th 330, 334-335.) The issue is whether the administrative decision is based on substantial evidence in light of the entire administrative record. (*Ibid.*) When making that determination, the reviewing court must review the administrative record, apply the substantial evidence test, and "begin with the presumption that the record contains evidence to sustain the [administrative] board's findings of fact." (*Carson Harbor Village, Ltd. v. City of Carson Mobilehome Park Rental Review Bd., supra,* 70 Cal.App.4th at p. 287.)

Here, Vidor challenges the sufficiency of the evidence in two primary respects. First, he argues the evidence was insufficient to support the hearing officer's conclusion that

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(Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)
Only the Westlaw citation is currently available.

Court of Appeal, First District, Division 5, California.

Richard VIDOR, Plaintiff and Appellant,
v.
CITY OF OAKLAND COMMUNITY AND ECONOMIC DEVELOPMENT AGENCY, Defendant and Respondent;
Vulcan Properties, LLP, et al., Real Parties in Interest and Respondents.

No. A120973.
|
(Alameda County Super. Ct. No. RG06287844).
|
Oct. 6, 2009.

Attorneys and Law Firms

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Opinion

JONES, P.J.

*1 Appellant Richard Vidor filed a petition for writ of administrative mandamus challenging a decision by the City of Oakland's rent board to deny his request for a decrease in rent. The trial court denied the petition ruling the rent board had not prejudicially abused its discretion and Vidor had not been denied a fair hearing. Vidor now appeals contending (1) certain aspects of the rent board's decision are not supported by substantial evidence, and (2) he was not given a fair hearing. We reject these arguments and affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

In December 1985, J.R. Orton and James Alexander purchased what formerly was the Vulcan Foundry located on San Leandro Street in Oakland. Operating through a partnership known as Vulcan Properties, L.P., Orton and Alexander then converted the foundry into 59 residential artist live/work units in three different buildings.

In March 1998, appellant Richard Vidor rented a unit in Building C of the property. In the years that followed, Vulcan Properties increased Vidor's rent from $900 per month in 1998 to $1,266 per month in 2005.

In May 2005, Vidor filed a petition with the City of Oakland's rent board alleging his rent had been increased illegally. The petition was consolidated with similar petitions that had been filed by three other tenants who lived in units at the Vulcan property.

A hearing on the petitions was conducted on June 22, 2005. The primary issue was whether the units at the Vulcan property were exempt from Oakland's rent control ordinance. Section 8.22.030(A)(5) of the ordinance states that the rent restrictions set forth therein do not apply to "Dwelling units which were newly constructed and received a certificate of occupancy on or after January 1, 1983.... To qualify as a newly constructed dwelling unit, the dwelling unit must be entirely newly constructed or created from space that was formerly entirely non-residential." The parties disagreed whether the Vulcan property ever received a "certificate of occupancy" and whether the property was "formerly entirely non-residential."

The officer conducting the hearing received documentary evidence and heard testimony from witnesses. There was considerable dispute about the authenticity of some of the documents and whether Oakland's building department had provided the parties with full and accurate records. At the conclusion of the hearing, the parties agreed the hearing officer could go to the building department and independently review the documents located there.

On August 11, 2005, the hearing officer served notice that a second hearing was needed. The notice stated as follows: "Following a review of the testimony and documentary evidence presented at the hearing, it has become apparent that, in order to render a proper

the building in which he lived, (Building C) received a certificate of occupancy after January 1, 1983.

At the hearing, Vulcan presented a building permit that indicated a final inspection had been completed for Building C in 1987. The hearing officer also heard testimony from Ray Derania, Oakland's interim building official, who stated that a final inspection, once completed, is "authorization to occupy the building. And, for this particular building, a change in use, a certificate of occupancy would be following from that." Derania explained further, "in Oakland and many jurisdictions ... the building permit is the last document to be final. So you're supposed to assure that the electrical permit had been final beforehand, the plumbing permit, the mechanical permit. If you have a Health Department approvals, that's been done. If you had Public Works approvals. At the conclusion of that, then, all right, and the building is okay, you final the building permit. That triggers the preparation issuance of the certificate of occupancy for new buildings and buildings of change of uses." Given the presumption that official duty has been regularly performed, (Evid.Code, § 664) the hearing officer evaluating this evidence reasonably could conclude that Vulcan had *in fact* obtained a certificate of occupancy for Building C after January 1, 1983.[3]

Vidor also challenges the hearing officer's conclusion that Building C was formerly entirely nonresidential.

Vulcan presented testimony that indicated that the property at issue formerly had been a steel foundry. Vulcan also presented documentary evidence that prior to its purchase, the buildings on the property "had been in use in their entirety as a foundry and were converted in their entirety to artist loft and live/work." In addition, Vulcan presented building permits that described the proposed construction at the property as a "change to R." Derania, the building official, testified that designation meant the project was adding residences to "an existing non-residential use." Again, the officer evaluating this evidence reasonably could conclude that prior to Vulcan's work, the property at issue was "entirely non-residential."

*4 None of the arguments Vidor makes convince us the trial court erred.[4] As to the former issue, Vidor contends the evidence was insufficient because Vulcan never produced a final certificate of occupancy for any of the buildings on the property. Vidor argues that the documents Vulcan did produce, certificates of occupancy that did not have an official stamp, and temporary certificates of occupancy that had expired, were inadequate as a matter of law. Vidor is correct that the documents he cites do not appear to be final certificates of occupancy. However, this point is not dispositive. As we have explained, the record contains substantial evidence that Vulcan in fact obtained a certificate of occupancy for Building C. "If such substantial evidence be found, it is of no consequence that the [hearing officer] believing other evidence, or drawing other reasonable inferences, might have reached a contrary conclusion. [Citations.]" (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 874, italics omitted.)

As to prior nonresidential use, Vidor argues the hearing officer's conclusion was flawed because it was inconsistent with a document he submitted that showed on April 13, 1987, a tenant at the property named Peter Smith filed an application for a building permit to perform work on an " 'existing live-work studio.' " The evidence Vidor cites does support an inference that on some date prior to April 1987 the property may have been used for residential purposes. But that is of no consequence. Evidence of residential use prior to April 1987 does not defeat the trial court's conclusion that the property was entirely nonresidential before it was purchased and renovated by Vulcan in December 1985. Again, the hearing officer's conclusion is supported by substantial evidence even though there is other evidence in the record that might have supported a different result. (*Bowers v. Bernards, supra.* 150 Cal.App.3d at p. 874.)

B. Whether Vidor Received a Fair Hearing

Vidor contends the trial court should have granted his petition for a writ because he did not receive a fair hearing from the rent board.

A petition for writ of administrative mandamus may be granted if a party has not received a fair trial before an administrative body. (Code Civ. Proc., § 1094.5, subd. (b).) On appeal, the trial court's factual findings with respect to whether a party received a fair hearing will be upheld if supported by substantial evidence. However, the trial court's ultimate determination as to whether the administrative proceedings were fundamentally fair is a question of law that this court reviews de novo on appeal. (*Nightlife Partners, Ltd. v. City of Beverly Hills* (2003) 108 Cal.App.4th 81, 87; *Clark v. City of Hermosa Beach* (1996)

48 Cal.App.4th 1152, 1169; *Rosenblit v. Superior Court* (1991) 231 Cal.App.3d 1434, 1443.)

Here, Vidor presents four arguments when arguing the underlying hearing before the rent board was unfair. First, he contends the decision issued by the hearing officer was unfair because it was inconsistent with the decision issued in a prior case: *Garsson v. Collins*-T04-1063. We reject this argument because Vidor has not cited any authority to support his position. The issue is forfeited. (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852.) It is also unpersuasive. In the prior case, the same hearing officer who presided over this case initially ruled that a tenant was not entitled to a decrease in rent even though the landlord had never obtained a certificate of occupancy. The decision issued by the hearing officer states the "landlord credibly testified that he did not apply for a Certificate because he was informed by City representatives that the City grants such certificates only for buildings that are entirely newly constructed, and not those in which the exterior structure remains essentially intact. The tenant did not dispute this testimony." The record in this case strongly suggests that Oakland city officials misinformed the landlord in the prior case. The testimony of Derania and the documentary evidence presented indicates a certificate of occupancy can be issued for buildings where the exterior structure remains essentially intact. In any event, the mere fact that the hearing officer in the prior case rendered a different decision in a different dispute between different parties and based on different evidence does not demonstrate unfairness.

*5 Next, Vidor contends he did not receive a fair hearing because the hearing officer sought and allowed the introduction of additional evidence after the conclusion of the first day of testimony. Vidor contends that act was inconsistent with the court's statement at the end of the first day that "the record is now closed." While the hearing officer did state the record was "closed," all parties knew the hearing officer would in fact receive additional evidence because they had agreed he could go to the building department and review the records there. It is apparent that after that review, the hearing officer believed additional evidence was needed. On August 11, 2005, he sent the parties notice stating, "Following a review of the testimony and documentary evidence presented at the hearing, it has become apparent that, in order to render a proper Decision, further evidence must be developed...." Then on August 22, 2005, the hearing officer asked that the person most knowledgeable with Oakland's building department appear to present testimony. Ray Derania, Oakland's interim building official, appeared in response to that request and he testified at the second hearing. We see no unfairness in these actions. It is well settled that a trial court is granted broad discretion to determine whether it is appropriate to reopen a case and receive additional evidence. (*Rosenfeld, Meyer & Susman v. Cohen* (1987) 191 Cal.App.3d 1035, 1052.) It is also settled that a trial court has the discretion to call and examine a witness in furtherance of justice. (*Travis v. Southern Pacific Co.* (1962) 210 Cal.App.2d 410, 424-425.) An officer conducting an administrative hearing, a much less formal proceeding, (*Blinder, Robinson & Co. v. Tom* (1986) 181 Cal.App.3d 283, 289) would at a minimum possess similar powers. We conclude the hearing officer here did not abuse his discretion or provide an unfair hearing simply because he sought and allowed the introduction of additional evidence that he believed was necessary in order to render a fair decision.

Next, Vidor contends he "should have been allowed to submit additional evidence which was not readily available to [him] at the time of the second hearing...." Vidor's argument on this point is unclear. He tried to present additional evidence to the rent board and to the trial court and he was rebuffed on both occasions. We cannot determine whether Vidor is arguing the rent board erred, the trial court erred, or both. However, we need not try to sort the issue out because we reject Vidor's argument on procedural grounds. Vidor has not cited any authority to support his argument. He has forfeited the issue. (*Benach v. County of Los Angeles, supra,* 149 Cal.App.4th at p. 852.)

Finally, Vidor contends the rent board hearing officer should have concluded the evidence presented by Vulcan was unreliable because it was not the best evidence that Vulcan could have been presented to show it had obtained certificates of compliance or that the property formerly had been entirely nonresidential. Vidor bases this argument on Evidence Code sections 412 and 413.[5] However, the technical rules of evidence do not apply in administrative hearings. (*Big Boy Liquors, Ltd. v. Alcoholic Bev. Etc. Appeals Bd.* (1969) 71 Cal.2d 1226, 1230.) "[N]either the trier of fact nor the board was required to weigh the evidence in accordance with the

provisions of sections 412 and 413 of the Evidence Code." (*Ibid.*) [6]

We concur: SIMONS, and BRUINIERS, JJ.

III. DISPOSITION

*6 The judgment denying the petition for writ of administrative mandate is affirmed.

All Citations

Not Reported in Cal.Rptr.3d, 2009 WL 3182549

Footnotes

1 The briefs Vidor has filed describe the other tenants who filed rent petitions as "real parties in interest." In fact, none of the other tenants filed an appeal, and none has made an appearance in this action. The legal rights of the other tenants are not at issue in this appeal.

2 While this appeal was being briefed, the parties each filed a request for judicial notice. We deferred ruling on the requests until the merits of the appeal. Having now considered the requests, we rule as follows:

On December 12, 2008, Vidor filed a request asking this court to take judicial notice of (1) the administrative decisions issued in *Garsson v. Collins*-T04-0163, a case involving different parties that also arose under Oakland's rent control ordinance, (2) a printout from a website that allegedly is operated by Orton Development, (3) this court's unpublished opinion in *Old Mother's Cookies, LLC v. City of Oakland* (Nov. 10, 2008, A117899) and (4) Oakland's ordinance No. 7248. We decline to take judicial notice of the first items because many of them are already part of the record on appeal. We decline to take judicial notice of the second and third items because they were never presented to the trial court below. (See *Brosterhous v. State Bar* (1995) 12 Cal.4th 315, 325 .) We decline to take judicial notice of the fourth item because it is not relevant to any issue that has been properly presented to this court. (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1089 fn. 4.)

On March 18, 2009, the City of Oakland filed a motion asking this court to take judicial notice of (1) its rent control ordinance, and (2) the related regulations. The unopposed request is granted. (See Cal. Rules of Court, rule 8.54(c).) On March 18, 2009, Vulcan Properties et al. filed a motion asking this court to take judicial notice of (1) Oakland's rent control ordinance, (2) the regulations that implement Oakland's rent control ordinance, and (3) a grant deed for the subject property that was recorded on December 31, 1985. Requests one and two are granted. Request three is denied. (*Brosterhous v. State Bar, supra,* 12 Cal.4th at p. 325.)

3 Having reached this conclusion, we need not decide whether the hearing officer was also correct when he ruled that Vidor was not entitled to a decrease in rent because Building C "should have received" a certificate of occupancy.

4 Vidor scatters what could be interpreted as challenges to the sufficiency of the evidence throughout his briefs. As required by the California Rules of Court, we will only address those arguments that are presented correctly through appropriate headings. (See Cal. Rules of Court, rule 8.204(a)(1)(B).)

5 Evidence Code section 412 states: "If weaker and less satisfactory evidence is offered when it was within the power of the party to produce stronger and more satisfactory evidence, the evidence offered should be viewed with distrust."

Evidence Code section 413 states: "In determining what inferences to draw from the evidence or facts in the case against a party, the trier of fact may consider, among other things, the party's failure to explain or to deny by his testimony such evidence or facts in the case against him, or his willful suppression of evidence relating thereto, if such be the case."

6 In his opening brief, and again in his reply brief, Vidor makes statements that seem to argue Vulcan was not entitled to any rent increases because its conversion of the Vulcan Foundry into residential units violated Oakland's municipal ordinances. We declined to address this issue because it is not presented properly through appropriate headings. (See Cal. Rules of Court, rule 8.204(a)(1)(B).)

CHRONOLOGICAL CASE REPORT

Case Nos.:	T16-0495	
Case Name:	Arnold v. Farley Levine Properties	
Property Address:	4246 Gilbert Street, Oakland, CA	
Parties:	David Arnold	(Tenant)
	Barbara Farley	(Property Owner)
	Michael Levine	(Property Owner)

OWNER APPEAL:

Activity	Date
Tenant Petition filed	September 2, 2016
Owner Response filed	October 10, 2016
Hearing Decision issued	July 14, 2017
Owner Appeal filed	August 24, 2017
Tenant Response to Owner Appeal	October 6, 2017
Owner Reply to Tenant Appeal Response	October 16, 2017

T16-0495 MS/BC

CITY OF OAKLAND **RENT ADJUSTMENT PROGRAM** **Mail To: P. O. Box 70243** **Oakland, California 94612-0243** **(510) 238-3721**	For date stamp. RECEIVED SEP – 2 2016 OAKLAND RENT ADJUSTMENT

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

TENANT PETITION

Please print legibly

Your Name	Rental Address (with zip code)	Telephone
David Arnold	4246 Gilbert St. Oakland 94611	
Your Representative's Name	Mailing Address (with zip code)	Telephone
Property Owner(s) name(s) Barbara Farley Farley Levine Properties LLC	Mailing Address (with zip code) 7 King Avenue, Piedmont CA 94611	Telephone

Number of units on the property: 5.

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

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

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

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

Date you moved into the Unit: June 10, 2010 Initial Rent: $ 1600 /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: July 2 2015. If never provided, enter "Never."

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

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

Date Notice Served (mo/day/year)	Date Increase Effective (mo/day/year)	Amount Rent Increased From	To	Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
July 15 2016	Sept 1 2016	$ 1942.47	$ 2136.47	■ Yes ☐ No	■ Yes ☐ No
		$	$	☐ Yes ☐ No	☐ Yes ☐ No
		$	$	☐ Yes ☐ No	☐ Yes ☐ No
		$	$	☐ Yes ☐ No	☐ Yes ☐ No
		$	$	☐ Yes ☐ No	☐ Yes ☐ No
		$	$	☐ Yes ☐ No	☐ Yes ☐ No

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

List case number(s) of all Petition(s) you have ever filed for this rental unit: T15-0205 ; T16-0331

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

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IV. VERIFICATION: The tenant must sign:

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

Tenant's Signature

8-23-2016

Date

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

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

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

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

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

Tenant's Signature _____ Date _____

VI. IMPORTANT INFORMATION:

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

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

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

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

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CITY OF OAKLAND RENT ADJUSTMENT PROGRAM P.O. Box 70243 250 Frank H. Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721	For filing stamp. RECEIVED CITY OF OAKLAND RENT ARBITRATION PROGRAM 2016 OCT 10 AM 9:23

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 - T16-0495 **OWNER RESPONSE**

Please print legibly.

Your Name	Complete Address (with zip code)	Phone: [redacted] Email: [redacted].com
FARLEY LEVINE PROPERTIES LLC	7 KING AVENUE PIEDMONT, CA 94611	
Your Representative's Name (if any)	**Complete Address (with zip code)**	Phone: [redacted] Fax: [redacted] Email: [redacted].com
Barbara S. Farley	7 KING AVENUE Piedmont, CA 94611	
Tenant(s) name(s)	**Complete Address (with zip code)**	
DAVID ARNOLD	4246 Gilbert Street Oakland, CA 94611	

Have you paid for your Oakland Business License? Yes ☑ No ☐ Number 28050341
(Provide proof of payment.)

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

There are 5 residential units in the subject building. I acquired the building on 12/24/2014

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

I. RENTAL HISTORY

The tenant moved into the rental unit on June 10, 2010.

The tenant's initial rent including all services provided was $ 1750 / month.

Have you (or a previous Owner) given the City of Oakland's form entitled **NOTICE TO TENANTS OF RESIDENTIAL RENT ADJUSTMENT PROGRAM ("RAP Notice")** to all of the petitioning tenants?
Yes ✓ No ___ I don't know ___ If yes, on what date was the Notice first given? 4-25-16, 7-15-16

Is the tenant current on the rent? Yes ✓ No ___

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

If a contested increase was based on **Capital Improvements**, did you provide an **Enhanced Notice to Tenants for Capital Improvements** to the petitioning tenant(s)? Yes ✓ No _____ . If yes, on what date was the Enhanced Notice given? 7-15-16 . Did you submit a copy of the Enhanced Notice to the RAP office within 10 days of serving the tenant? Yes ✓ No _____ . Not applicable: there was no capital improvements increase._____

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

Date Notice Given (mo/day/year)	Date Increase Effective (mo/day/year)	Amount Rent Increased From	Amount Rent Increased To	Did you provide NOTICE TO TENANTS with the notice of rent increase?
7-15-2016	9-1-2016	$ 1942.47	$ 2136.47	☑ Yes ☐ No
		$	$	☐ Yes ☐ No
		$	$	☐ Yes ☐ No
		$	$	☐ Yes ☐ No
		$	$	☐ Yes ☐ No
		$	$	☐ Yes ☐ No

II. JUSTIFICATION FOR RENT INCREASE

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

Date of Increase	Banking (deferred annual increases)	Increased Housing Service Costs	Capital Improve-ments	Uninsured Repair Costs	Fair Return	Debt Service (if purchased before 4/1/14)
9-15-16	☐	☐	☒	☐	☐	☐
_____	☐	☐	☐	☐	☐	☐
_____	☐	☐	☐	☐	☐	☐
_____	☐	☐	☐	☐	☐	☐
_____	☐	☐	☐	☐	☐	☐
_____	☐	☐	☐	☐	☐	☐
_____	☐	☐	☐	☐	☐	☐

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

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III. DECREASED HOUSING SERVICES

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

IV. EXEMPTION

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

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

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

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

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

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

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

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

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

V. IMPORTANT INFORMATION

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

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

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

VI. VERIFICATION

Owner must sign here:

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

Barbara S. Farley
Owner's Signature

October 8, 2016
Date

VII. MEDIATION AVAILABLE

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

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

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

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

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

_____ _____

Owner's Signature **Date**

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

CITY OF OAKLAND

Department of Housing and Community Development
Rent Adjustment Program

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

HEARING DECISION

CASE NUMBER:	**T16-0495, Arnold v. Farley Levine Properties**
PROPERTY ADDRESS:	**4246 Gilbert Street, Oakland, CA**
DATE OF HEARING:	**June 2, 2017**
DATE OF DECISION:	**July 14, 2017**
APPEARANCES:	**David Arnold, Tenant** **Barbara Farley, Owner** **Michael Levine, Owner**

SUMMARY OF DECISION

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

CONTENTIONS OF THE PARTIES

The tenant filed a petition on September 2, 2016, contesting a rent from $1,942.47 to $2,136.47 on the grounds that the increase exceeds the Consumer Price Index (CPI) Adjustment, are unjustified or is greater than 10%.

The owner filed a timely response to the tenant petition on October 10, 2016, claiming that the rent increase was justified by capital improvements.

THE ISSUES

1. Did the owners serve the tenant with an "Enhanced Notice" and, if so, was a copy of the Notice filed with the Rent Adjustment Program within 10 days after it was served upon the tenant?

2. Is a rent increase justified by Capital Improvements and, if so, in what amount?
3. What is the current rent and what, if any, restitution is owed?

EVIDENCE

Rental History: The tenant testified that he moved into the subject rental unit in June of 2010, at an initial rent of $1,600 a month. He received the *RAP Notice* sometime during the first few years of his tenancy. He was also given it on July 2, 2015, when the new owner purchased the property. His unit is in a three apartment townhouse in which each unit has its own address. On the same lot is a duplex.

The tenant was served a rent increase notice on July 15, 2016, purporting to increase his rent from $1,942.47 to $2,136.47, effective September 1, 2016. He has continued to pay the old rent of $1,942.47, and will continue to do so until he receives a Hearing Decision in this matter.

The owner agrees that the tenant has been paying the old rent of $1,942.47 a month.

Capital Improvements:

Official Notice is taken that an *Enhanced Notice to Tenants of Capital Improvements* was served on the RAP on July 14, 2016. The tenant testified that he received the *Enhanced Notice* with the rent increase documents.[1]

The owner testified that she purchased the property in December of 2014. The building was built in 1909, and when she purchased it, there were substantial problems with the building. There was a lot of dry rot and termite damage on the property. The owner produced a 13-page inspection report from *Giant Jim Inspection Services* dated October 13, 2014.[2] This report was provided to the owner in the course of the purchase process by the prior owner. This document contains more than 25 references to structural problems throughout the building in which the tenants live, including the presence of fungus, wood boring beetles, and termites throughout the building; and earth-wood contact and water under floor coverings.

Specifically, the report showed that there was structural damage caused by subterranean termites in the following places:

- framing and sheathing;
- subfloor and joist;
- the landing and stringers;
- subarea;
- exterior trench.

[1] See Exhibit 10. This exhibit, and all other exhibits referred to in this Hearing Decision, was admitted into evidence without objection.
[2] Exhibit 1.

The report also showed evidence of a wood boring beetle infestation extending into inaccessible areas and dry rot in the hall bathrooms of two of the units, as well as dry rot to the exterior wood siding. There was also fungus damage to the deck and framing, fascia boards, eave boards, rafter tails, second story eaves, stair pads, ends of second story beams, and ends of patios support beams.

The report also showed that the toilet in the tenant's bathroom was loose, improperly mounted or unlevel.

The report estimated the repair work to cost $29,275.

The owner further testified that the work was done to make the tenants safe and to upgrade the building. There is new lighting around the building. The laundry room was rebuilt. It was in such bad shape that the machines were going to fall through the floor if the work was not done. The owner replaced walkways, added seismic strengthening throughout the building, added brick where prior walkways were cement, added handrails where there were not handrails in the past, and made other changes to the property.

Permits:

The owner testified that she initially began work on the project in February of 2015. She originally began without receiving permits because she believed she was simply repairing problems with dry rot and did not need a permit. On cross-examination the owner testified that she received a stop work order from the *City of Oakland*.[3] This Order states in the section "description of violation" that the work that had to be stopped included "structural underpinning and foundation bolt and repair, siding, roof framing, stairs/stringers. Rear units deck and railing repairs, siding."

The owner produced permit # RB1501630, dated April 15, 2015, with a project description that states "Termite work, dry rot repair."[4] The job value was listed as $25,000 and the permit cost was $1,649.54. The owner produced proof of payment, dated April 15, 2015. After the Hearing, in response to a request, the owner produced a *Permit Inspection Record* from the *City of Oakland* showing that this permit had been finaled on June 2, 2016.[5]

The owner further testified that as the work for the dry rot and termite repair was in progress, she kept getting reports from the contractors that the damage was more extensive than they previously believed. She was additionally informed that the building was not seismically safe, and it was suggested to her that seismic work be done in the process. She informed the *City of Oakland* about the seismic work. The owner testified that the permit approval process included approval of the seismic work.

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[3] Exhibit 12, p. 4
[4] Exhibit 8, p. 1
[5] Exhibit 14, p. 20. This document relates to permit number RB1600465. However, a review of the records shows that this is the new permit number given to "complete the expired permit RB1501630."

Since none of the documents produced by the owner from the *City of Oakland* had any reference to the seismic work, she was asked to produce any records from the permit department related to the seismic work. She agreed to provide those records within 7 days after the Hearing.

On June 8, 2017, the Hearing Officer received a packet of information from the owner. This included a letter, a new permit for the seismic work dated June 6, 2017, which was finaled on June 8, 2017, and proof of an inspection performed on the seismic work.[6]

The owner's letter states that she went to the *Permit Department* to gather the documents related to the seismic work after she realized that the permits "did not indicate the extent of work undertaken and paid for and did not reflect the retrofit bolting of the building to the foundation which had occurred." The letter states that when she was at the inspection department she was told by the inspector that final approval of a project is broad approval of the work done. She was also informed that she could take out a retroactive permit for the work that was done. As a result, she took out a new permit, had an inspection of the seismic work done by a private party, and the new permit was signed off as "finaled." The permit, number RB1702442 was taken out on June 6, 2017, and finaled on June 8, 2017.[7]

Lee Deslippe:

The owner hired *Lee Deslippe* as a contractor to repair the significant damage to the property. The work began in February 2015. The owner produced an invoice from *Deslippe* which is divided into different sections. Section 1, which relates to the laundry room, states that repairs were done to the laundry room "because of dry rot".[8] The initial laundry room charge was $2,000.

The invoice further states:

> "The next day Susanne requested we remove existing entry porch to laundry room because this porch was also riddled with dry-rot and/or termites. Extended laundry room with new foundation, floor joist, subfloor, walls, 1 door, 1 window, sheer walls, roof, rafters, roof sheeting, new entry light, and exterior switch. 4 each water heaters had to be removed to complete 12x12 tile floor and new floor area. A new ceiling light fixture was installed before insulation and sheetrock."

An additional cost of $4,800 was listed for these expenses.

The invoice further states that:

> "When removing old entry porch and siding more dry-rot was discovered at old exterior wall and floor joist of bathroom at 4442 Gilbert....;" and "the next day the

[6] See exhibit 14
[7] Exhibit 14, p. 3
[8] Exhibit 3, page 1

discovery of the dry-rot extended under the bath tub and up the exterior wall, including completely rotted exterior sheer wall."

The owner testified that the cost of this portion of the invoice ($6,000) was not charged to the tenant in this case.

Sections 2 and 3 of the *Deslippe* invoice relates to demolishing and replacing the 2 front entry porches—including the one at 4246 Gilbert, which is the tenant's address.[9] The invoice states that 19 floor joists were replaced because of dry rot or termite damage.[10] The owner testified that the reason the porches needed to be demolished was because there was dry rot underneath the porches. In order to ensure no further dry rot, the owner installed a brick patio and walkway. The cost was listed as $35,400.

Section 4 of the *Deslippe* invoice relates to a seismic work done on the property at a cost of $11,000.[11] The owner testified that *Deslippe* informed her that the building was not seismically safe, so he informed her of what needed to be done to retrofit the building. The invoice specifies that this work was "signed off by the city inspector."

Section 5 of the *Deslippe* invoice relates to a French drain that was installed on the property at a cost of $4,500. This was necessary to divert water away from the property to avoid further degradation.

Section 6 and 6a of the *Deslippe* invoice relates to work done on the unit at 4244 Gilbert at a cost of $6,000 and $8,000.

Section 7 of the *Deslippe* invoice relates to a new concrete foundation cap that was installed on the property as part of the foundation work. This was part of the seismic retrofit. The cost for this portion of the invoice was $3,750.

Section 8 of the *Deslippe* invoice relates to brick that was installed on the porches and steps after they were rebuilt. The cost for this portion of the invoice was $9,600.

The owner produced proof of payment to *Mr. Deslippe* showing proof of payment of $69,500 to *Lee Deslippe*.[12] The last check, made payable to Lee Deslippe for $15,000, notes the words "final payment/settlement" in the subject line.[13]

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[9] Exhibit 3, page 1
[10] Exhibit 3, page 2
[11] Exhibit 3, page 2
[12] Exhibit 4, pp 1-4, (check number 1006, dated February 2, 2015, for $10,000; check number 1007, dated February 26, 2015, for $10,000; check number 1016, dated March 13, 2015, for $10,000; check number 1017, dated March 26, 2015, for $10,000; check number 1019, dated April 4, 2015, for $10,000); Exhibit 6, page 9 (check number 1036, dated May 14, 2015, for $4,500); Exhibit 7, p. 21 (check number 1058, dated August 12, 2015, for $15,000)
[13] Exhibit 7, p. 21

Brickhouse Construction:

The owner testified that *Brickhouse Construction* was hired to install a wall as part of the extension of the laundry room as well as the roofing for the new structure. The owner of *Brickhouse* is the son of *Lee Deslippe* and he was hired to help his father finish the job. The owner testified that this work began because of the dry rot findings and that the more that was uncovered, the more dry rot was found, all of which necessitated more work. The owner produced invoices from *Brickhouse* as follows:

Date	Amount	Project Title
July 9, 2015	$1,428.50	Dry rot finding (extra work)
July 11, 2015	$3,456.50	Dry rot finding (extra work)
July 24, 2015	$ 575.00	Gilbert St. Restoration

The invoice dated July 9, 2015, includes the cost of removal of redwood shingles ($596.70), removal of building paper ($146.25), removal of wall sheathing ($222.30), removal of 2 windows ($100.00), the temporary installation of two windows ($60.00), the removal of roofing ($40.80), removal of roof sheathing ($50), debris removal ($125), the installation of felt roofing paper ($26), gutter removal ($50) and trim board removal ($11).

The invoice dated July 11, 2015, includes the cost of removal of joists ($32.50), removal of wall framing ($18); removal of wall framing ($20); install of joists ($57.50); installation of sheathing ($292.50); installation of building paper ($175.50); installation of windows (in bathroom) ($740); installation of window flashing ($250); treat area with bleach ($52.50); install shingles ($1,170); install window trim ($590); install wall framing ($28); and install wall framing ($30).

The owner further testified that some of the work done by *Brickhouse* was unit specific work to install a window at 4244 Gilbert (not this tenant's unit.) This unit's bathroom was right above the laundry room, and the dry rot from the laundry room extended to that bathroom. The invoice dated July 11, 2015, shows that there was an installation charge for windows and flashing, totaling $990 for work in the unit.

Additionally, the owner produced proof of payment to *Brickhouse* $4,883.06. These payments were made in check number 1053, dated July 29, 2015, for $575, with a notation that says "remove fence and flat brick veneer;"[14] check number 1042, dated July 6, 2015, for $384, with a notation that says "brickwork on sides, finish interior;"[15] check number 1043, dated July 6, 2015 for $1,536 with a notation that says "work per contract;"[16] check number 1046, dated July 10, 2015, for $960, with a notation that says "progress payment, finishing brickwork and laundry room;"[17] and with check number

[14] Exhibit 7, p 4
[15] Exhibit 7, p 6
[16] Exhibit 7, p 6
[17] Exhibit 7, p 15

1047, dated July 10, 2015, for $1,428.06, with a notation that says "dry rot on north wall under roof tear out."

Home Depot:

The owner produced a credit card statement from *Southwest Visa* showing *Home Depot* charges of $45.24 and $18.51.[18] No receipts were produced for these charges.

The owner produced a receipt from *Home Depot* dated March 12, 2015, totaling $65.35.[19] She testified this was for electric lighting on the perimeter of the premises.

The owner produced a receipt from *Home Depot* showing a charge of $146.30.[20] It was not possible to read the receipt or the date. The owner testified it was for the purchase of landscaping supplies. Another *Home Depot* receipt for $322.39 was provided showing the purchase of landscaping supplies on July 6, 2015.

The owner produced a receipt from *Home Depot* dated March 25, 2015, for $20.70 for mortar and grout.[21] She testified that this was for the stairs outside the laundry room.

The owner further produced a series of invoices from purchases made on her *Home Depot* credit card in August and September of 2015.[22] She testified that these charges were for supplies purchased for the back stairway for the laundry room, the bender board for the landscaping, shingles for the roof line and the fence. It shows charges of $125.73 (lumber, bender board, fence posts), $414.25 (lumber, fence), $110.19 (redwood, bender board), $73.77 (lumber, plumbing), $101.34 (plumbing), and $113.36 (caulking, roof edge, shingles) totaling $936.64. These were all reflected on a bill that had a closing date of September 21, 2015.[23]

The owner further produced a series of invoices from purchases at *Home Depot* made in October and November of 2015. It shows charges of $135.28 (wax extender, exhaust fan); $36.89 (paint); $31.22 (piping); $47.70 (caulking, pipes, thinner); $-136.12 (piping, tile and grout); $443.95 (handrail brackets, paint, shelve supports, stain); $31.26 (cornerbead), $94.13 (caulking, hardware), $51.17 (hardware and grout), $30.59, $275.90 (hardware), $123.65 (lumber), $17.64(hardware), $-58.13 (pipes), $-61.78 (unknown), $-175.17 (handles), and $123.65 (lumber). The total bill, with a closing date of November 20, 2015, shows charges of $1,319.38 and credits of $431.20.[24] The owner testified that most of the things purchased on this bill related to the plumbing redone in the laundry room, the flooring, electrical lights and paint in the laundry room. All the washers, dryers and water heaters were replumbed.

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[18] Exhibit 5, page 2-3
[19] Exhibit 6, p. 11
[20] Exhibit 7, p 13
[21] Exhibit 7, p 27
[22] Exhibit 7, pp 28-32
[23] Exhibit 7, p 28.
[24] Exhibit 7, pp 45-56

Gonzalo Garcia:

The owner testified that Gonzalo Garcia installed a new lawn in the front of the property, installed a sprinkler system and planted roses. A check to Garcia for $980 dated July 15, 2015 was provided.[25] There was no invoice for this work. Garcia is also the gardener who regularly does work on the premises. The owner did not charge any of Garcia's regular monthly work as a capital improvement.

The owner also produced an invoice from Garcia dated October 5, 2015, for $400 with proof of payment. The invoices specifies that there was a gardening charge of $220 and an "owner" charge of $280. The owner testified that when she provided him plants to install he would charge her an additional amount to the regular gardening monthly charge of $220.

Jon Given:

The owner testified that next to the laundry room there was a concrete patio that had buckled from the disrepair on the property. She had this replaced with a brick patio. An invoice for $3,750 was provided from Mr. Given.[26] Proof of payment to Mr. Given of $3,800 was provided.[27]

An additional check to Mr. Given (#1109), dated November 16, 2015, was also provided for $1,556.32.[28] An invoice for this work was provided. The invoice stated that it was for milling the timber for the windows and trim. The owner testified that this work was for windows. No windows were replaced in Mr. Arnold's apartment.

Michael Monhan and Dale Zimmerman: The owner testified that Michael Monhan and Dale Zimmerman did work around the unit. She provided checks payable to Monahan for $1,974.21, $300, $650, $700, $850, and $350.[29] She provided invoices from Monhan for $300, dated September 18, 2015 (windows and ripping out dry rot), for $650 dated September 25, 2015 (brick stairs off laundry room, painting), for $700, dated October 5, 2015 (new windows and shingles), for $850 dated November 13, 2015 (blinds in a unit-$50, construct brick stair by laundry room-$800) and for $350 (for dry rot repair in the bathroom which was not in the tenant's unit).[30]

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[25] Exhibit 7, page 16
[26] Exhibit 7, p. 18
[27] Exhibit 7, pp. 19-20
[28] Exhibit 7, p. 38
[29] Exhibit 7, page 20 shows check number 1056, dated 8/11/15 for $1,974.21. Exhibit 7, page 22 shows check number 1068, dated 9/18/15, for $300. Exhibit 7, p 25 shows check number 1070, dated 9/25/15, for $650. Exhibit 7, p 33 shows check number 1073, dated 10/5/15, for $700. Exhibit 7, p. 36 shows check number 1103, dated 11/14/15, for $850. Exhibit 7, p 43 shows check number 1106 dated 11/25/15, for $350. All these checks were payable to Michael Monahan.
[30] Exhibit 7, pp. 20-43

The owner produced checks payable to Zimmerman for $1,300, $1,032.39 and $650.[31] She provided invoices from Zimmerman for $1,032.39 (dry rotted windows for unit 4242A) and $650 (windows, downspout and painting).

The owner testified that the windows that Monhan and Zimmerman worked on were unit specific relating to a different unit than the tenant's unit in this case.

The owner further testified that the stairs outside the laundry room was new construction based on the extension of the laundry room and a new stairway was necessary.

East Bay Glass:

The owner produced an invoice from *East Bay Glass* for $1,040.14.[32] She testified that this invoice was for the windows installed in another tenant's unit.

Alfred Williams:

The owner testified that this worker worked with Mr. Monhan on the project. She produced an invoice for $240, and proof of payment, for work done to help clean up and to install the laundry room handrail.

An invoice and proof of payment from Mr. Williams dated 11/25/15 was provided for $150 for work done to repair the floor and dry rot in bathroom in a unit on the property. (Not the tenant's unit.)

Francisco Nunez:

The owner produced an invoice and proof of payment to *Francisco Nunez* for work done on roofing the new portion of the laundry room and installing gutters.[33] The invoice and proof of payment was for $2,000. The check, number 1110, was dated November 18, 2015.

Early California Iron Works:

The owner produced copies of checks made payable to *Early California Iron Works* for $4,000.[34] She testified that this was payment for work done by that company on the wrought iron railings on the property. No invoice was provided.

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[31] Exhibit 7, pp. 20-22
[32] Exhibit 7, p. 35
[33] Exhibit 7, pp 40-41
[34] Exhibit 6, pages 8 and 10. Check number 1034, daed May 8, 2015, for $2,000 and check number 1037, dated June 2, 2015, for $2,000.

Additional Expenses:

The owner produced a VISA bill showing charges from *AF Supply Manhattan* for $913.64, *General Plumbing* for $53.82, *Naturehills* for $415.68, *Meyer Plumbing* for $81.10, and *Orchard Nursery* for $48.81.[35] The owner testified that these charges were for work done on the property. Except as noted below, no invoices were provided.

Official Notice is taken that in case T16-0108 the owner testified that the *Meyer Plumbing* charge was for work done in that tenant's bathroom. The tenant in that case lived in a different unit than the tenant in this case.

The owner produced an invoice from *NatureHills* for $415.68. This purchase was for cherry trees planted on the property.

The owner produced an invoice from *1800-Lighting* for $926. She testified that this was for perimeter lighting to improve the lighting around the property.[36] The owner produced proof of payment of same.

The owner testified that work was done around the front yard. It was torn up and landscaped. A new sprinkler systems was installed. Soil was purchased produced for this project. The owner produced an *Ace Hardware* receipt of $45.72 for the purchase of potting soil and a large plant. An additional receipt from *Ace* for potting soil was produced totaling $9.84.

The owner produced a receipt from *Luxe Décor* for lighting. The cost was $357.[37]

The owner produced a check to and an invoice from *Economy Lumber* for $283.88 for the wood railings purchased for the porches. She testified there was no railing on the porches previously to this work being done.[38]

With respect to the laundry room work, the owner testified that the laundry room has coin operated washers and dryers. Three hot water heaters are also housed in the laundry room.

The Tenant's testimony:

The tenant testified that at the time he moved into the unit it was owned by the previous owner, who did not do any maintenance on the property for the 7 years he was living there before the property was purchased by the new owner.

None of the work that was done on the property was done inside his unit and all the work was done to repair previously deferred maintenance.

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[35] Exhibit 5, p. 2
[36] Exhibit 6, page 1
[37] Exhibit 6, page 4
[38] Exhibit 6, pp 6-7

The tenant testified that his stairs were replaced because of the extensive amount of dry rot under his stairs. The tenant produced a portion of a deposition taken of Ms. Farley on August 2, 2016, as a result of a lawsuit he had filed against the ownership related to the conditions in his unit.

In the deposition the following testimony was given:

> "**Q.** What work was being performed to the entryway of David Arnold's unit?
>
> **A.** It had dry rot in the stairs, and they were crushed; the stairs were kind of crushed and sagging. And I notified the tenants that I had gotten a complaint from the Chamaleses that their stairway was dangerous and that they were concerned that they were going to be injured by it, and I—and it appeared on the termite report that there was dry rot in both stairways, in fact, in all the stairways.
>
> So my goal was to get those, the safety issues addressed first in the building.....
>
> **Q.** –excuse me. Describe the project, if you can.
> **A.** First of all, I wanted to see if the stairs could be repaired, and they were significantly damaged enough so that just putting in new boards—there was foundation problems as well. And so I had to rip out the stairways at both—both entries.
> And I didn't want to have to deal with the rotting wood again, so I said, Let's put in—I'm going to upgrade and put in brick stairs and walkways because I considered it a hazard, both for tripping and for danger to the tenants coming in and out of the building.
> And so they tore out the stairs and then built—built new stairs and broke out the walkways with sledge hammers and poured new concrete and put in new brick stairs and walkways.
> **Q**.....So for the brick stairs that area at the entrance to David Arnold's unit, those used to be wood?
> **A.** It was wood and then concrete. The walkway was concrete."[39]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Did the owner serve the Enhanced Notice as Required?

"A notice of rent increase based on a capital improvements(s) (other than after an owner's petition) must include the following:

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

[39] Deposition, Exhibit 13, pp 133-135.

ii. Within ten (10) working days of serving a rent increase notice . . . based in whole or in part on capital improvements, an owner must file the notice and all documents accompanying the notice with the Rent Adjustment Program. Failure to file the notice with[in] this period invalidates the rent increase."[40] It is found that the owners provided to the tenant all of the information required by the Rent Adjustment Ordinance, and filed a copy with the Rent Adjustment Program within the required time limit.

Is a rent increase justified by Capital Improvements and, if so, in what amount?

A rent increase in excess of the C.P.I. Rent Adjustment may be justified by capital improvement costs.[41] Capital improvement costs are those improvements which materially add to the value of the property and appreciably prolong its useful life or adapt it to new building codes. Normal routine maintenance and repair is not a capital improvement cost, but a housing service cost.[42] In order for a capital improvement to be allowed, the improvement must primarily benefit the tenant rather than the owner.

As long as the capital improvement pass-through does not exceed 10% of the rent, the costs are to be amortized over a period of five years, divided equally among the units which benefit from the improvement.[43] Where a 5 year amortization period would result in a rent increase greater than 10%, the owner is entitled to a longer amortization period.[44] The owner is entitled to seek 70% of the costs expended.[45] The reimbursement of capital expense must be discontinued at the end of the amortization period.

An owner has discretion to make such improvements, and does not need the consent or approval of tenants. Additionally, the improvements must have been completed and paid for within 24 months prior to the date of the proposed rent increase.[46] An owner has the burden of proving every element of his/her case by a preponderance of the evidence.

"Equipment otherwise eligible as a capital improvement will not be considered if a 'use fee' is charged (i.e. coin-operated washers and dryers).[47]

The RAP Regulations limit those costs which are considered "deferred maintenance." The regulations state:

> "4. The following may not be considered as capital improvements: . . .

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[40] O. M. C. § 8.22.070(H)
[41] O.M.C. § 8.22.070(C)
[42] 2014 Regulations Appendix, § 10.2.2(5)
[43] 2014 Regulations Appendix § 10.2.3 (2)
[44] 2014 Regulations Appendix § 10.2.3 (2)
[45] 2014 Regulations Appendix § 10.2.3(3)(a)
[46] 2014 Regulations Appendix, § 10.2.1
[47] 2014 Regulations Appendix, § 10.2.2(6)

b. Costs for work or portion of work that could have been avoided by the landlord's exercise of reasonable diligence in making timely repairs after the landlord knew or should reasonably have known of the problem that caused the damage leading to the repair claimed as a capital improvement.

i. Among the factors that may be considered in determining if the landlord knew or reasonably should have known of the problem that caused the damage:

(a) Was the condition leading to the repairs outside the tenant's unit or inside the tenant's unit?

(b) Did the tenant notify the landlord in writing or use the landlord's procedures for notifying the landlord of conditions that might need repairs?

(c) Did the landlord conduct routine inspections of the property?

(d) Did the tenant permit the landlord to inspect the interior of the unit?

ii. Examples:

(a) A roof leaks and, after the landlord knew of the leak, did not timely repair the problem and leak causes ceiling or wall damage to units that could have been avoided had the landlord acted timely to make the repair. In this case replacement of the roof would be a capital improvement, but the repairs to the ceiling or wall would not be.

(b) A problem has existed for an extended period of time visible outside tenants' units and could be seen from a reasonable inspection of the property, but the landlord's agents either had not inspected the property for an unreasonable period of time, or did not exercise due diligence in making such inspections. In such a case, the landlord should have reasonably known of the problem. Annual inspections may be considered a reasonable time period for inspections depending on the facts and circumstances of the property such as age, condition and tenant complaints.

iii. Burden of Proof

(a) The tenant has the initial burden to prove that the landlord knew or should have reasonably known of the problem that caused the repair.

(b) Once a tenant meets the burden to prove the landlord knew or should have reasonably known, the burden shifts to the landlord to prove that the landlord exercised reasonable diligence in making timely repairs after the landlord knew or should have known of the problem.[48]

[48] Regulations Appendix, Section 10.2.2(4)

It is obvious from the testimony and the documents provided that a substantial amount of the work done on this project was caused by the prior deferred maintenance in the building. The "termite report" details more than 25 very significant structural problems throughout the building in which the tenant lives. These problems include the presence of extensive fungus, wood boring beetles and termites, in addition to earth-wood contact. At the Hearing, the owners testified that there was major dry rot and termite damage in the building.

Such damage does not appear overnight. Common experience tells us that these problems certainly existed for a number of years before the owners purchased the building in December 2014. There is no doubt that at least the majority of these problems would have been noted during reasonable annual inspections by the prior owners. A reasonably diligent owner would then have taken steps to undertake maintenance and make timely repairs that would have avoided the extensive work performed by the current owners. These facts are supported by the tenant's uncontroverted testimony that the prior owner did no common area maintenance or repair work during the 7 years he has lived there prior to the new owner purchasing the property. The owner's testimony that the laundry room floor was so full of dry rot that the joists were rotted and it seemed like the washer and dryer might fall through the floor, was also particularly convincing.

Therefore, applying the standards cited above, none of the work that was performed to correct damage caused by dry rot or insects is eligible as a capital improvement cost.

Costs Allowed and Disallowed: An owner has the burden of proving that a rent increase is justified. The applicable rules of evidence in an administrative hearing are stated in Government Code Section 11513:[49] "Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs . . . ." In order to prove a capital improvement cost, both an invoice and proof of payment are necessary. Therefore, the following costs are allowed and disallowed:

Building Permits:

The building permit dated April 15, 2015, which cost $1,649.54, describes the proposed work as "termite work, dry rot repair." Since it is impossible to tell what part of this cost might have been for expenses that did not include dry rot repair, none of this cost is allowed.

The second permit, for the seismic work, was finaled on June 8, 2017, after the Hearing in this case. The owner can only seek a rent increase for those costs expended and paid for prior to the rent increase notice being served. Since this cost was paid for after the owner sent the rent increase notice, it is not allowed.

In the permit category, there is no allowable pass through.

[49] Regulations, Section 8.22.110(E)(4)

Lee Deslippe:

By reviewing Mr. Deslippe's invoice, it is clear that the majority of this work was either necessitated by dry rot and/or termites (including earth-wood contact at the foundation); was work associated with the laundry room which was entirely full of dry rot; was routine maintenance and repair; or was related to a bathroom that was not in the tenant's unit. Other relatively minor expenses that might otherwise be allowed are not apportioned in the billing. However, the cost of a French Drain that benefits the three units in the tenant's building, in the amount of $4,500, is allowed.

There were two additional costs on Mr. Deslippe's invoice that relate specifically to seismic work done on the property. Section 4 relates to dowelled anchors that were seismically retrofitted. The cost was $11,000. Additionally, the concrete foundation cap, listed in Section 7 of the invoice, also relates to the seismic improvement. Both these costs would be allowed, if the permits that were taken out by the owner covered those costs.

As noted above, the owner testified at the Hearing that the original permits included the seismic retrofit that was done. She was asked to provide proof of that after the Hearing. Instead, she produced a new finaled permit that showed that the permit for the seismic work was not taken out until after the Hearing. While she stated in her letter that the Building Inspector told her that the final approval is broad approval of the work done, this letter and the words attributed to the Building Inspector, are hearsay.

The Rent Adjustment Program Regulations[50] incorporate the statutory guidelines governing administrative hearings. These rules state that evidence shall be admitted "Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions."[51]

"'Hearsay evidence' is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated. . . . (b) Except as provided by law, hearsay evidence is inadmissible."[52]

The letter sent by the owner in response to the request for permit information related to the seismic is hearsay evidence. The words she claimed were said by the inspector, is hearsay within hearsay. These are not admissible since there was no other evidence to support a finding that the initial permit covered the seismic work done on this project.

In order to be considered a capital improvement, an owner must have a permit for those costs for which permits are required. See *Falcon et al v. Bostrum et al, HRRRB Cases T13-0279 and T13-0283*. The fact that the owner received a retroactive permit means that the work was not "complete" until the permit was finaled. Since the permit was not

[50] Regulations, § 8.22.110(E)(4)
[51] Government Code, § 11513
[52] Evidence Code, § 1200

finaled until June 8, 2017, all costs associated with the seismic retrofit was not completed until that day and are disallowed.[53]

The owner may pass through the $4,500 for the French drain.

Brickhouse Construction:

The documents provided by the owner show that the primary purpose for the work done by *Brickhouse* was related to dry rot repair and/or window removal and installation that was related to dry rot repair. These charges are not allowed because they were necessitated by deferred maintenance.

Home Depot:

Allowed: The receipt from *Home Depot* dated March 12, 2015, is allowed as it was for lighting around the perimeter of the building. This is a common area improvement that applies to all the units on the property. The cost of $65.35 is allowed.

The July 6, 2015, receipt for $322.39 is allowed as landscape expenses for the entire property. Landscaping expenses are an allowable expense that benefits all the tenants on the property.

The owner testified that the *Home Depot* invoice from August-September of 2015, included laundry room costs and landscaping costs. The laundry room costs are disallowed because they were necessitated by deferred maintenance. The costs for the landscaping and fence are allowed. Where it is impossible to tell, the costs are disallowed, as the owner has the burden of proof. Therefore, the allowable expenses from this include $125.73 (landscaping and fence), $414.25 (lumber and fence), and $110.19 (redwood and bender board). The other costs are disallowed.

The owner is entitled to a $1,037.91 charge for the *Home Depot* expenses to the entire property.

Disallowed: The owner produced a credit card statement from *Southwest Visa* showing charges of $45.24 and $18.51. These charges are not allowed as no receipts were produced.

The receipt from *Home Depot* showing a charge of $146.30 is not allowed as it was not possible to read the receipt or the date.

The receipt from *Home Depot* dated March 25, 2015, for $20.70 was for expenses associated with the dry rot repair of the laundry room and is not allowed.

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[53] This is a different result than was reached by the Hearing Officer in T16-0108, where the seismic work was allowed after the case was remanded to the Hearing Officer. In that case, the Hearing Officer did not discuss the issue of permits and whether or not permits had been received for the seismic work.

The *Home Depot* bill from October and November of 2015, appears to be primarily for the laundry room. While the owner testified that this included a charge for electrical lights those expenses were not clear from the documents provided, nor did the owner point out that particular expense.

Gonzalo Garcia:

The charge from Mr. Garcia for $280 for planting is a landscape expense and is allowed. This cost was proven by the October 5, 2015, invoice and proof of payment was established. The owner did not have any invoice for the July 15, 2015, check written to Garcia. An invoice is required.

The owner is entitled to a $280 capital improvement expense for the entire property.

Jon Given:

Mr. Given's work on the concrete patio ($3,800), to replace it with brick, was necessitated by deferred maintenance and is not allowed. The additional check to Mr. Given for $1,556.32 was for windows that were replaced in a different apartment than Mr. Arnold's and the charge is not allowed.

There is no allowable expense for Mr. Given's work.

Michael Monhan and Dale Zimmerman:

Much of Mr. Monahan's work was due to dry rot. The remainder of the work was either routine maintenance and repair (minor painting); was done in a unit that was not this tenant's unit; or involved work on the laundry room that was necessitated because of the extensive dry rot. Additionally, the purpose of the laundry room is for the use of coin-operated washers and dryers. Since the cost of the machines is not an eligible capital improvement cost, neither is the cost associated with the use of these machines. Therefore, none of the cost of Mr. Monahan's labor is allowed.

The same is true for Mr. Zimmerman. Most of his work was for work done in another unit or was work related to dry rot.

There is no allowable expense for the work done by Monhan and Zimmerman.

East Bay Glass:

The glass expense was for a different tenant's unit and cannot be passed on to this tenant.

Alfred Williams:

The labor primarily involved repair due to dry rot, and the cost is not allowed.

Francisco Nunez:

This work was either routine maintenance or work in connection with the laundry room. Therefore, this cost is denied.

Early California Iron Works:

No invoice was provided for this work done to provide railings on the property. Therefore, the cost is not allowed.

Additional Expenses:

The owner produced a VISA bill showing some expenses. Where no comparable invoice was provided, these costs were not allowed. Therefore, the charges from *AF Supply Manhattan* for $913.64, *General Plumbing* for $53.82, *Meyer Plumbing* for $81.10,and *Orchard Nursery* for $48.81 are disallowed.

The owner produced an invoice from *NatureHills* for $415.68 and this charge was shown on the VISA bill. This is an allowable landscaping charge. Additionally, the owner provided an invoice and proof of payment to *1800-Lighting* for $926 for perimeter lighting. This is an allowable expense.

The owner also established landscaping expenses at *Ace Hardware* for soil and other expenses of $45.72 and $9.84 for a total of $55.56. These costs are allowed.

The owner provided an invoice and proof of payment for the costs of $357 at *Luxe Décor* for lighting. This is an allowable expense.

The *Economy Lumber* charge for $283.88 for the wood railings is not an allowable expense as it relates to the dry rot repair. While the owner testified that there were wood railings placed on the walkway of the tenant's apartment that were not present before the work was completed, the photographs provided show that there were wrought iron railings installed on the walkway from the tenant's unit. While there appears to be a small area where there are wood railings attached to the tenant's porch, it is more likely than not that the need for this was because of the required dry rot repair to the tenant's porch. Additionally, Official Notice is taken that the owner in this case, testified in T16-0108, that the $283 *Economy Lumber* charge was to be apportioned by 2/3 to the tenant in that case, because it was for work on his unit. This cost is not allowed.

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

The attached Table sets forth the proper calculation for a rent increase based upon both expenses that benefit all the units on the property (5), and the expense for the French Drain which benefits all the units in the tenant's building (3). The allowable rent increase is $24.67 per month. Therefore, the tenant's rent can be increased by $24.67 per month, to $1,967.14 effective September 1, 2016.

The legal rent for the 11 months from September 2016 through July 2017 was $1,967.14 per month, a total of $21,638.54. During that period of time the tenant paid $1,942.47 per month, a total of $21,367.17. This was an underpayment of $271.37. The underpayment is ordered repaid over a period of 3 months.[54] The current rent of $1,967.14 per month is temporarily increased by $90.46 per month, to $2,057.60 per month, beginning with the rent payment in August 2017 and ending with the rent payment in October 2017. The rent then returns to $1,967.14 in November of 2017.

On September 1, 2021, the tenant's rent will be reduced by the capital improvement pass-through of $24.67.

ORDER

1. Petition T16-0495 is granted in part.

2. The tenant's base rent is $1,942.47 a month.

3. The owner is entitled to a capital improvement pass-through in the amount of $24.67 per month, effective September 1, 2016, for a period of 60 months. This pass-through expires on August 31, 2021.

4. The current rent, before a temporary increase due to underpaid rent, is $1,967.14 per month. However, the tenant has underpaid rent in the total amount of $271.37. This underpayment is adjusted over a period of 3 months.

5. The rent of $1,967.14 per month is temporarily increased by $90.46 per month, to $2,057.60 per month, beginning with the rent payment in August of 2016 and ending with the rent payment in October of 2017.

6. In November of 2017, the rent will return to $1,967.14 per month.

7. The anniversary date for future rent increases is September 1.

8. 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: July 14, 2017

Barbara M. Cohen
Hearing Officer
Rent Adjustment Program

[54] Regulations, Section 8.22.110(F)

IMPROVEMENTS BENEFITING ALL UNITS BUILDING WIDE

Effective Date of Rent Increase: 1-Sep-16
Number of Residential Units: 5

IMPROVEMENT OR REPAIR	DATE COMPLETED	FULL COST	Amortizable Cost (70%)	# of Units		Allowable Cost per Unit (Pre Amortization)	Date Validation (2 years ago max)
Home Depot (lighting)	31-Mar-15	$65.35	$45.75	5		$9.15	OK
Home Depot (landscaping)	31-Jul-15	$322.39	$225.67	5		$45.13	OK
Home Depot (landscape/fence)	30-Sep-15	$125.73	$88.01	5		$17.60	OK
Home Depot (fence)	30-Sep-15	$414.25	$289.98	5		$58.00	OK
Home Depot (landscape/fence)	30-Sep-15	$110.19	$77.13	5		$15.43	OK
Garcia	30-Oct-15	$280.00	$196.00	5		$39.20	OK
Nature Hills (landscaping)	30-Mar-15	$415.68	$290.98	5		$58.20	OK
1800 Lighting (lighting)	30-Mar-15	$926.00	$648.20	5		$129.64	OK
Ace Hardware (landcaping)	30-Apr-15	$55.56	$38.89	5		$7.78	OK
Luxe Décor (lighting)	30-Apr-15	$357.00	$249.90	5		$49.98	OK
Subtotal			$2,150.51			$430.10	
Place X in box if property is mixed use.							
Residential square footage							
Other use square footage							
Percent residential use							
Total Cost Per Unit Allocated to Residential Units			$2,150.51			$430.10	

0001131

IMPROVEMENTS LIMITED TO SPECIFIC UNITS

Total Allowable Unit-Specific Pass-through (Column D)	$3,150.00

IMPROVEMENT OR REPAIR	DATE COMPLETED	FULL COST	Amortizable Cost (70%)	# Units	Allowable Cost per Unit (Pre-Amortization)	APPLIES TO UNITS	Date Validation (2 years ago max)
French Drain	1-Jun-15	$4,500.00	$3,150.00	3	$1,050.00	Tenant's building OK	
Totals			$3,150.00		$1,050.00		

AMORTIZATION

Sum of Unit Specific Costs (Column D below):	$1,050.00

Unit	Current Rent	Building Wide Pass through	Unit Specific Pass-through	Total Pass through on Unit	Years to Amortize (5 yrs min)	Allowable Increase $	Increase % (must be 10% or less)
4246 Gilbert	$1,942.47	$430.10	$1,050.00	$1,480.10	5	$24.67	1.27%

PROOF OF SERVICE

Case Number T16-0495

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
David Arnold
4246 Gilbert St
Oakland, CA 94611

Owner
Farley Levine Properties LLC
7 King Ave
Piedmont, CA 94611

Owner Representative
Barbara Farley
7 King Ave
Piedmont, CA 94611

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 July 14, 2017 in Oakland, CA.

Maxine Visaya

RECEIVED
CITY
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. 2017 AUG 24 PM 3:04

APPEAL

Appellant's Name FARLEY/ LEVINE PROPERTIES LLC	☒ **Owner** ☐ **Tenant**
Property Address (Include Unit Number) 4246 Gilbert Street, Oakland, CA 94611	
Appellant's Mailing Address (For receipt of notices) 7 KING AVENUE PIEDMONT CALIFORNIA 94611	**Case Number** T16-0495 **Date of Decision appealed** 7-14-2017
Name of Representative (if any) BARBARA J. FARLEY	**Representative's Mailing Address (For notices)** 7 KING AVE. PIEDMONT CALIFORNIA 94611

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.*) See ATTACHED APPEAL 7-25-2017

Submissions to the Board ***are limited to 25 pages from each party.*** *Please number attached pages consecutively. Number of pages attached:* 24.

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 Aug. 24, 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	DAVID ARNOLD
Address	4246 Gilbert Street
City, State Zip	Oakland, CA 94611
Name	
Address	
City, State Zip	

Barbara J. Farley	8/24/17
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.

Farley Levine Properties LLC
7 King Avenue
Piedmont, CA 94611

July 23, 2017

City of Oakland
Department of Housing and
Community Development
Rent Adjustment Program
P.O. Box 70243

Attention: Residential Rent and Relocation Board

Re: **Case Number T16-0495 Arnold v. Farley Levine Properties, LLC**
Property Address: 4246 Gilbert St., Oakland, CA
Date of Hearing: June 2, 2017
Date of Decision: July 14, 2017

NOTICE OF APPEAL

Owners, Farley Levine Properties LLC, hereby appeal the Hearing Decision and Order entered by Barbara M. Cohen, Hearing Officer of the Rent Adjustment Board (RAB) entered July 14. 2017 in Case Number T-16-0495.

I. INTRODUCTION

The ruling by the Rental Adjustment Board in this instance, is premised on Oakland Municipal Code § 8.22.070 ("OMC") and 2014 Regulations Appendixes 10.2.21-3 and sections of the Oakland rental laws that relate specifically to rental increases based on Capital Improvements.

The purpose of the Oakland Ordinance as stated is to provide "decent, safe, affordable and sanitary residential rental housing" in Oakland. (OMC. § 8.22.010). In order to "further the welfare of all persons who live, work, or own residential rental property in the City" Oakland recognizes in its statute that "the City depends in part on attracting persons who are willing to invest in residential rental property in the city. It is therefore, necessary that the City Council take actions that encourage investment in residential housing while also protecting the welfare of residential tenants." (OMC § 8.22.010 B).

This "purpose" is further defined as 'encouraging rehabilitation of rental units, encouraging investment in new residential rental property in the city" and allowing efficient property owners opportunity for both a fair return on their property and rental income sufficient

to cover the increasing cost of repairs, maintenance, insurance, employee services, additional amenities and other costs of operation." (OMC § 8.22.010 C).

Under the City of Oakland Rent Adjustment Program Owner's Guide to Rent Adjustment – Revised 6-19-15, the Guide provides with respect to Capital Improvements in pertinent part:

Capital Improvement can justify a rent increase based on the owners' costs for long term improvements to the property. A portion of the cost of these improvements, determined by a formula in the RAP Regulations, can be passed on to those tenants who are affected by the improvements. The dost is spread out (amortized) over multiple years as a temporary rent increase or "pass through", which ends after the amortization period ...**Capital improvements are those improvements or major repairs that materially add to the value of the property and appreciably prolong its useful life or adapt it to new building codes.**"

"A pass through for capital improvements is available only for those improvements that have been completed and paid for within the 24 month period prior to the effective date of the proposed rent increase." (Owner's Guide to Rent Adjustment – Revised 6-19-15 p. 7).

But, the Ordinance Definition of Capital Improvements under OMC 8.22.020 provides:

> Capital improvements" means those improvements to a covered unit or common areas That materially add to the value of the property and appreciably prolong its useful life or adapt it to new building codes. Those improvements must primarily benefit the tenant rather than the owner. Capital improvement costs that may be passed through to tenants include seventy percent (70%) of actual costs, plus imputed financing, Capital improvements costs shall be amortized over the useful life of the improvement as set forth in an amortization schedule developed by the Rent Board. Capital improvements do not include the following as set forth in the regulations: correction of serious code violations not created by the tenant, improvement or repairs required because of deferred maintenance; or improvements that are greater in character or quality than existing improvements ("gold plating" "over improving") excluding improvements approved in writing by the tenant, improvements that bring the unit up to current building or housing codes, or the cost of a substantially equivalent replacement. "

II. FACTUAL BACKGROUND.

The Owners in the instant case are first time rental property owners in Oakland. They are in their late 60's and early 70's and have taken their life savings to invest in rental property in Oakland in the hopes of supplementing their income in retirement.

In December 2014 Owners purchased a 5 unit apartment building located at 4244 – 4246 Gilbert Street in Oakland. The termite report prior to purchase identified approximately $29,000 in repair work, dry rot and termite damage.

Two units of the building are housed in a 1909 two story duplex structure where most of the damage was located. The Owners purchased the property in December 2014 and set about to correct any deficiencies found. As repairs progressed the Owners were advised by the contractor that the building was so old that repairs would be temporary as the life of the adjacent structure would ultimately fail requiring additionally opening up of the same area to fix the subsequently failed structure. The support beams, cross beams and struts required updating.

Further the dry rot and termite damage could be repaired but repair to the old construction would depend on the 100 year old structure supporting the new repair work into the future. The owner was advised that the age of the building did not warrant investment in simple repairs.

Over the course of a year the Owners invested over $117,428.62 in a complete tear out of the entire support perimeter wall around the 107 year old building, bolting the building to the foundation in a retrofit, jacking the building up and installing new support joists, cross beams, raising the level of the foundation to deal with moisture entry, installation new drainage, installed new landscaping and lighting, tore out and expanded a room housing 3 water heaters and a washer and dryer, installed new brick stairs, porches, walkways, patios and railings on all stairs and walkways around the building.

When conferring with the Owners CPA virtually all work undertaken was described as Capital Improvements, unavailable for repair deduction on the owner's tax return. The improvements had to be amortized over the life of the building.

a. Capital Improvement Rental Increase

Owners read the Oakland Municipal Code regarding raising existing rent based on Capital Improvements. The two 3 bedroom units, 4244 and 4246 Gilbert street, that benefitted the most from the work were located in the 107 year old building.

In December 2015 after preparing a full accounting of the expenses, conferring with a CPA on complying with the Oakland Rental Board calculations and preparation of all the required forms, receipts, invoices and proof of payment, a rental increase was noticed for unit 4244. Notice was properly given to the Renal Adjustment Board at the same time. The tenant appealed the rental increase and the Rental Board ultimately denied recovery for **all** work undertaken except lighting and landscaping. After Appeal of the Rent Board ruling, remand by the HRRRB and Amended Decision by the Rental Board in June 8, 2017(a full year and a half after the notice of rental increase) the Rental Board ordered a $166.92 per month increase,

In April of 2016 the Owner sent a notice of rental increase based on the same repairs to the tenant in Unite 4246 within the same building as the prior notice of rental increase. The tenant challenged the rental increase and the rental board took evidence at a hearing on June 2, 2017 issuing a decision on July 14, 2017 denying all work except lighting and landscaping or 99% of the $117,428.62 of all Capital Improvements and allowing only $2,150.51 as Capital Improvements for a $ 24.16/mo. rental increase.

Owners appeal this decision.

III. Rental Adjustment Board Ruling

Despite the language of the ordinance and the Rental Boards publication that "**Capital improvements are those improvements or major repairs that materially add to the value of the property and appreciably prolong its useful life or adapt it to new building codes**" which perfectly describes the reason for and work done on the Owners property, 1% of the work done was deemed by the Rental Board to be Capital Improvements.

A. The Rental Board Rulings are Inconsistent

In the prior application for recovery of costs for Capital Improvements (see T 16-0108, Chamales v. Farley) for the identical retrofit expense for another tenant, the Housing Residential Rent and Relocation Board (HRRRB) ruled (Decision May 1, 2017) that "seismic work ...as a capital improvement even if performed as part of the pest control work" was allowed as a capital improvement. Therefore the $11,000 and $3,750 seismic cap were allowed as a Capital expense on remand. The hearing officer subsequently allowed the expense.

But in the current appeal before the Rental Board, the hearing officer denied recovery stating:

> "There are two additional costs on Mr. Deslippes invoice that relate specifically to seismic work done on the property. Section 4 relates to dowelled anchors that were seismically retrofitted. The cost was $11,000.00 Additionally, the concrete foundation cap [$3,750.00] listed in Section 7 of the invoice also relates to the seismic improvements. Both these costs could be allowed if the permits that were taken out by the owner covered those costs."

The actual building permits for pest control work were subsequently expanded when it was determined to undertake the retrofit work while the building was opened for the termite work. But the building department did not note it on the actual permit. They nonetheless inspected and approved all work. During the hearing the hearing officer inquired about the failure of the building permit to reference the retrofit work. The hearing officer gave the owner the opportunity to prove that the building permit related to the retrofit within 7 days of the hearing. The owner went back to the building department and asked that the permit show the work actually approved. The building department advised that it <u>was not necessary</u> because there was a final inspection and approval, but if the owner wanted the work further inspected they would accommodate and retroactively update the description and issuance of a retroactive permit for the seismic retrofit. The owner incurred the expense to have this done.

This was submitted to the hearing officer within the 7 days allotted. Nonetheless, the hearing officer rejected the retrofit work as a capital improvement advising:

> "In order to be considered a capital improvement an owner must have a permit for those costs for which permits are required...The fact that the owner received a retroactive permit means that the work was not complete until the permit was finaled" (hearing decision p. 15).

The hearing officer then rejected the owner's representation that the building department advised that the subsequent inspection was not necessary as the work had been approved as "hearsay" and therefore not considered admissible before her.

The hearing officer's ruling that now the permit is finalized only in June 2017, when the work and approval was completed in 2015 deprives the owner of ever recovering for this charge because under the statute the rental increase must be within 24 months of the work being done and completed. The hearing officer has created a no win for the owner as the 24 months will already have passed for any recovery under the statute.

But the Ordinance is being arbitrarily interpreted to deny recovery when the work was already completed and paid for in 2015. At best the subsequent explanatory permit and inspection is redundant to the prior existing approval. But the hearing officer inappropriately failed to interpret the Ordinance in a manner consistent with common usage and strained to deny the work as a Capital Improvement. Her actions are inconsistent with the purpose of the ordinance, arbitrary and punitive in nature. Her decision should be reversed. .

The hearing officer created a no recovery scenario so no increase in rental is possible.

B. All Capital Improvements Denied because of Deferred Maintenance

Much of the hearing officer's rationale for denial of any recovery for the over $117,000 in construction costs and work as capital improvements is in her citation to Regulations Appendix, Section 10.2.2(4) as follows:

> "Costs for work or portion of work that could have been avoided by the landlord's exercise of reasonable diligence in making timely repairs after the landlord knew or should reasonably have known of the problem that caused the damage leading to the repair claimed as a capital improvement.
>
> Among the factors that may be considered in determining if the landlord knew or reasonably should have known of the problem that caused the damage:
> (a) Was the condition leading to the repairs outside the tenants unit or inside the tenants unit?
> (b) Did the tenant notify the landlord in writing or use the landlord's procedures for notifying the landlord of conditions that might need repairs?
> (c) Did the landlord conduct routine inspections of the property?
> (d) Did the tenant permit the landlord to inspect the interior of the unit? (ORB Decision p 13)

One would normally conclude that the above regulation would NOT apply to the NEW Owners in this case because **they did not own the property prior to December 2014 and had no ability to inspect or maintain a building they did not own.**

Nor is **all** the work be attributed to "pest and dry rot and neglect "since the dry rot and pest related work **did not constitute all of the work done.** Of the $117,000 of work done only $29,000 was pest and dry rot related or only **25% of the cost incurred.** Yet the hearing officer arbitrarily concluded that **all** the work was for neglect, she states:

> "It is obvious from the testimony and the documents provided that a substantial amount of the work done on this project was caused by the prior deferred maintenance in the building....Such damage does not appear overnight. Common experience tells us that these problems certainly existed for a number of years before the owners purchased the building in December 2014....Therefore applying the standards cited above, none of the work that was performed to correct damage caused by dry rot or insects is eligible as a capital improvement cost." (ORB Decision p. 14)

While the hearing officer states that "none of the work that was performed to correct damage caused by dry rot or insects is eligible as a capital improvement cost" she makes no differentiation between the pest work and the new construction to upgrade the property. Instead she arbitrarily attributes all construction to pest and dry rot work. This is error.

C. **Laundry /Hot Water Heater Room**

1. **Lee Deslippe Invoice**

a. Mr. Deslippe, the main contractor utilized by the Owners undertook most of the work on the property. Mr. Deslippe undertook more than $90,000 worth of work yet **none** of it was allowed by the hearing officer as Capital Improvements.

The room, housing the washer/dryer also houses 3 separate hot water heaters, which service units 4244, 4244A and 4246. Dry rot was found in the floor under the washer and in two of the four stair supports in the porch exiting the building.[1]

The work initially consisted of "removal of washer and dryer, removal of two layers of linoleum floor covering and plywood sub floor because of dry rot; repair, treated with copper green and replaced plywood subfloor and installed new 12 x 12 vinyl self stick floor tile.

$2,000.00

[1] The laundry room is adjacent to a bathroom in unit 4244 which had a common wall which also had dry rot. None of the construction relating to the dry rot in the adjacent bathroom or wall was included in the capital improvement calculations for unit 4246.

When dry rot was found in the porch outside the laundry room, the owner decided to tear out the porch and create a NEW internal space by extending the room, converting the porch to inside space with "NEW flooring, construction of new foundation, floor joist, subfloor, walls, 1 door, 1 window, sheer walls, roof, rafters, roof sheeting, new entry light and exterior switch, 4 [sic] each water heaters had to be removed to complete 12 x 12 tile floor and new floor area. A new light fixture was installed before insulation and sheet rock." **$4,800.00**

All of Mr. Deslippe's charges for the New construction, expansion of the room, new foundation is disallowed as Capital Improvements by the hearing officer as "work necessitated by dry rot and or termites" (decision p 15). Further the hearing officer concludes that "the purpose of the laundry room is for the use of a coin operated washers and dryers. Since the cost of the machines is not an eligible capital improvement cost, neither is the cost associated with the use of these machines." (Decision p. 17).

Only **25%** of the new construction even related to dry rot or termites and more than 50% of the room's space is occupied by 3 separate water heaters that service the units of the building. The Owner did not seek recovery for the cost of the washer or dryer, nor is the cost associated with maintenance of the machines sought. Such costs are unrelated to the structure of the room which houses more than just the washer and dryer. Yet **all** costs associated with this construction has been denied as a capital improvement for purposes of rent recovery. The ruling is in error.

In total $10,860.00 in new construction, room extension, stairs, lighting, plumbing and railing have all been **denied** capital improvement status.

a. Michael Monahan

As part of the new construction, Michael Monahan, a carpenter and stone layer undertook to create new steps out of the laundry/hot water heater room. He poured new concrete and foundation for a new wood railing and installed a brick stairway and landing exiting the room. This was entirely new construction.

9-25-15 (check 1070) constructed new brick stairway out of laundry/hot water heater room to walkway, poured new concrete and fabricated steps, installed new brick stairs on top of mortar and grouted and washed stairs **$650.00**

11-13-15 (check 1103) finished construction of brick stairs with construction of new hand rail and rerouted water in garden with construction of drain and bender board redirection of water **$850.00**

The hearing officer denied **all** cost recovery as Capital Improvements for this work. The hearing officer states:

> "Much of Mr. Monahan's work was due to dry rot. ...or involved work on the laundry room that was necessitated because of the extensive dry rot. Additionally the purpose of

the laundry room is for the use of coin operated washers and dryer. Since the cost of the machines is not an eligible capital improvement cost, neither is the cost associated with the use of these machines. Therefore none of the cost of Mr. Monahans labor is allowed." (Decision p. 17)

Yet, **none** of this work was due to dry rot as this was new construction connected to other new construction. This related exclusively to the entire reconfiguration of the room by the owner and new construction to accommodate that expansion of the room. Nor was the use of the machines an issue since the room also accommodated 3 hot water heaters that required space, venting, plumbing and access. The ruling is in error.

b. Home Depot

The Home Depot charge for materials for the re-plumbing of the hot water heaters and washer are recoverable costs because at least 75% are for the hot water heaters and hardware for construction of new stairs.

12-1-15 check # 1108 $1319.38 $ 560.00 building materials, electrical for lighting install, hardware, paint, lumber, handrail brackets and plumbing materials for the hot water heaters and washer in the laundry room.

The invoices and proof of payment were provided for these charges yet it was disallowed by the hearing officer denied recovery for these charges as follows:

'The Home Depot bill from October – November of 2015 appears to be primarily for the laundry room. While the owner testified that this included a charge for electrical lights those expenses were not clear from the documents provided nor did the owner point out that particular expense.'

Again association with the laundry room in any respect is fatal to any recovery despite the fact that the costs related to lighting and plumbing for the hot water heaters. The hearing officer's classification of **all** materials as related to the laundry room as being disallowed is error. Nor did the hearing officer ask for clarity from the Owner regarding this charge.

c. . Francisco Nunez - roofer

When construction of the new roof over the laundry/ hot water heater room was complete Mr. Nunez, a professional roofer came in to install the water proof membrane over the wood, sealed it and then installed asphalt shingles and a new gutter at the edge of the shingles directing the water down a new downspout to the garden.

$2,000.00

The hearing officer denied all of this work as Capital Improvements as follows:

"this work was either routine maintenance or work in connection with the laundry room therefore this cost is denied." (Decision p. 17)

But, this is not maintenance work and is completely New Construction in an area that previously did not exist. Hence it is not for deferred maintenance. Nor was the new construction part of deferred maintenance. This denial rests entirely on the hearing officer's classification of all work in connection with the laundry room to be disallowed. Such a broad denial of Capital Improvement classification cannot stand. The ruling is in error.

D. Entry Porches/ Perimeter Walls of Building/Retrofit:

As the termite report indicates the termite damage was along the north wall of the main building housing units 4244, and 4246, and two minor spots on the south wall. Dry rot was also found in the front porches of each of the two units. After work for the repair had commenced the contractor advised the owner that while repairs could be made to address the dry rot and pest damage such repairs would depend on the old structure sustaining the repairs. Instead it was recommended that the entire perimeter of the building over 212 feet, be torn out, new venting and a new support structures be installed and the new structure be retrofitted or bolted to the foundation.

The termite report identified 19 joists out of 71 that were impacted by dry rot or pests. While **72% of the building had no damage,** the structure was old and the walls had no venting and the building was not bolted to its foundation. The owner determined to proceed with the contractors' recommendation.

The Owner as well determined to install new brick stairs, walkways and have wrought iron railings installed along the stairs and walkways. This did not relate to any pest work and was an upgrade to the property.

The owner authorized the following work:

a. Lee Deslippe:

1. Demo & Replace and Retrofit

"Approximately 212 ft. of perimeter walls including center wall that supports the entire original front building, The walls are constructed of pressure treated 3 x 6 wood, top plate, bottom plate, and studs; Demo & replace 2 front entry porches 4244 Gilbert St. and 4246 Gilbert St. The new framing was all constructed with pressure treated wood including new ¾" plywood subfloors, treads & risers.

Porches & steps completely coated with Red Guard waterproofing and crack preventing membrane. All underpinning perimeter walls covered with ¾" pressure treated plywood wall material with 8 x 16 screened louver vents for cross ventilation, Replaced 19 each 2 x 8 floor joist that had dry rot and or termite damage. Installed pressure blocks between new joists. "

$ 35,400.00

"All new perimeter walls approximately 160 each dowelled anchors are now seismic retrofitted by dowelling the pressure treated bottom plate to the concrete foundation with 5/8 x 12 galvanized all thread 3 x 3 square washers and 5/8 nuts. The all thread where embedded 6" deep into concrete with Simpson Tie Epoxy which meets all county and city building code regulations and has been signed off by city inspector."

$11,000.00

"The new concrete foundation cap approximately 10-12" high was constructed at driveway edge at 4244 Gilbert St. A#4 rebar was dowelled into existing foundation 6" and placing a horizontal #4 bar across the top approximately 25'. This cap foundation has the dowelled anchor bolts square 3 x 3 washers with 5/8" nuts."

$3,750.00

"At the time of city inspection all repairs were passed except pressure blocking at unit 4244 porch cripple wall. This work has been completed.

The new brick Mc Nair Calaveras solids where laid on the newly framed water proofed porches and steps that were first covered with concrete under lament brick and then mortar. The walkways and lower steps were al placed on a new 4" concrete slab with mortar."

$9,600.00

The hearing officer **denied all of Mr. Deslippes work** as capital improvements as follows:

> "By reviewing Mr Deslippe's invoice, it is clear that the majority of this work was either necessitated by dry rot and or termite (including earth wood contact at the foundation); was work associated with the laundry room which was entirely full of dry rot; was routine maintenance and repair; or was related to a bathroom that was not in the tenants unit. Other relatively minor expenses that might otherwise be allowed are not apportioned in the billing.

The seismic retrofit work identified above was discussed in section A herein where the hearing officer **denied all recovery** of rental increase based on capital improvements for seismic work. Based on the expressed concern of the hearing officer in the hearing that the existing permits did not adequately identify the retrofit work, the owner went to the building department and obtained an additional explanatory and retroactive permit to demonstrate that the work was already included. Nonetheless, the hearing officers denied any rental increase based on the subsequent permit because the new retroactive permit meant the work had not been completed until June 2017. The hearing officer discounted the Building Department's representations as hearsay that such permit was unnecessary because the work had already been approved. The hearing officers ruling constitutes an abuse of discretion and should be reversed.

b. Brickhouse Construction

Brickhouse Construction was retained to undertake the brick work on the front porch of unit 4246, construct and install new handrails on the front porch of 4246; shingle the side of the new outside wall of the laundry room and install new flashing on the side of the new construction.

Brick house Construction was retained under several contracts:

> **7-6-15** **$3,840.00** of which **$2,440.00** related specifically to the tenants unit. Specifically the work included: ($1475.00) for the installation of two hand railings on the tenants newly constructed front porch of a total of 6' of wood crafted handrail. The hand railings had to be crafted elsewhere so this cost related to their installation. In addition new building paper and cement backer board was installed on the front porch framing. Approximately 42 square feet of McNeer flat brick veneer was installed on the two sides of the exterior stairway. New 1" x 1" trim was installed around the foundation vent locations.

This was new construction. **All was disallowed as a capital improvement by the hearing officer.**

> **7-6-15** **$965.00** Laundry Room included **new** installation of approximately 60 sq. ft. of GAF Timberline HD Composition Shingles down the new outside wall of the building from the flashing at roof to the base of the building. Facia board was installed on the side corner of the outside wall. ." Install 1 x 1"- 8' and 1" x 4" – 26' exterior ruff sawn corner trim boards; install waterproof cover plate at exterior switch location for sconce light; install skim coat to newly installed \drywall; prep dry wall with PVA primer; apply white paint over newly installed dry wall on walls ceiling."

All was disallowed as a capital improvement by the hearing officer

> **7-24.-15** **$575.00** this includes the cost of **$274.00** for the materials of veneer brick that were used to face the side walls of the front porch of unit 4246., **$176.00** removal of fencing along walkway where a new drain was installed and **$125.00** for hauling away debris from old stairs, fencing. This was new construction

All was disallowed as a capital improvement by the hearing officer.

The hearing officer denied all recovery as follows:

> "the documents provided by the owner show that the primary purpose for the work done by Brickhouse was related to dry rot repair and or window removal and installation that related to dry rot repair. These charges are not allowed because they were necessitated by deferred maintenance. " (Decision p. 16)

The hearing officer broadly conflates other work into the above charges which related specifically to the installation of brick work and railing on the entirely new front porch of the tenant in unit 4246. This did not constitute repair and instead constituted new construction for which capital improvement status should have been available.

c. Economy Lumber

The invoice for the new handrails and porch underlayment for unit 4246 is represented by this invoice. This is a new railing that was installed by Brickyard construction and should have been added to Capital Improvements as it represents new construction.

$283.88

E. Brickwork and Railings

The new owner constructed new brick walkways to two units in the front of the building and constructed a brick patio in the back of the building where new drainage was installed. None of this work was necessitated by neglect or repair work

1. John Given:

8-3-15	**$1600.00**	install new brick patio and drainage (check 1054)
8-6-15	**$ 2200.00**	install new brick walkway (check 1055)

Nonetheless the hearing officer incorrectly denies all such work stating:

> "Mr. Given's work on the concrete patio ($3800.00) to replace it with brick, was necessitated by deferred maintenance and is not allowed."

On the contrary the walkway work was in the front of the building for the new walkways. There was no deferred maintenance on the walkways at all. This was simply new construction to match the new porches and stairs installed. The $2200.00 charge had nothing to do with the back walkway.

The back walkway charge for $1600 was as well new construction. A new brick patio was installed where none had existed before. It provided new drainage where none had existed before. This was new construction and should have been allowed as a capital improvement.

2.. Wrought Iron Railings

New wrought Iron railings were contracted for on May 8, 2015 evidenced by letter of that date and check number 1034 dated the same date for **$2000.00**

Wrought iron railings along the walkway of the two front apartments were entirely new construction. Along the new brick walkways. Two payments of $2000.00 were made, one on 5-8-15 check no. 1034 and a second check on June 2, 2015 check no 1037 for a total of $4000.

Since only one of the walkways is to the tenants' apartment the charges were split between the two apartments.

The hearing officer has improperly disallowed the charge for this work stating:

"Early California Iron Works: No invoice was provided for this work done to provide railings on the property. Therefore the cost is not allowed. "

This charge has been improperly denied as a contract was provided as evidence of this charge, along with the cancelled check for payment. As well pictures of the work were submitted into evidence and testimony as well given regarding this charge. Denial of this charge for lack of an invoice, where the owner received no invoice, is an abuse of discretion.

F. Arbitrary rulings inconsistent with law.

Finally, if all documents, receipts, invoices, cancelled checks do not exist then recovery is arbitrarily denied by the rental Board hearing officer.

1. Early California Iron Works

In the instant case the owner contracted to fabricate and install new wrought iron railings along the new brick walkways for each of the two walkways in the front of the building. But because the iron worker is an artisan he was not set up to create invoices and order forms so the Owner wrote him a letter confirming work on the wrought iron railings and attaching a copy of the down payment of $2000.00 sent to him. The artisan performed the work on the property thus creating an enforceable contract under California law. But the hearing officer denied all recovery for this expense as follows:

"Early California Iron Works:
No invoice was provided for this work done to provide railings on the property. Therefore, the cost is not allowed." (Decision p. 18)

2. Home Depot

Multiple charges to the Owners Home Depot account were produced in the hearing which reflected purchase of supplies for construction by the workmen on the property. The hearing officer arbitrarily denied recovery for building materials. The October 2015 invoice for

10-17-15 invoice **$938.64** charges for fencing, fence posts, bender board stakes and garden material

This charge was arbitrarily disallowed as the hearing officer incorrectly states that the October November 2015 " charge appears to be primarily for the laundry room" this is incorrect as none of it was for the laundry room.

3. Lighting

The hearing officer arbitrarily denied recovery for lighting which was normally one of the few charges allowed. Nonetheless this charge was denied for lack of a formal invoice. Yet a formal invoice was not issued.

9-10-15	**913.64**	**southwest visa charge AF Supply Manhatton – light fixtures - outside**

The hearing officer denies the visa charge from AF Supply as lacking an invoice. But this was a phone order for lighting fixtures as indicated on the southwest visa. The Visa charge constitutes proof of the order and charges incurred and should have been considered a capital improvement. an invoice for this lighting and should have been allowed.

4. . Gonzalo Garcia

Check	**1048**	**7-15-15**	**980.00**	**landscaping front lawn and roses**
Check	1082	10-13-15	280.00	landscaping

The hearing officer has disallowed the $980.00 charge for installing a new lawn, sprinkler system and roses in the front of the building and landscaping around the tenants apartment for lack of an invoice. However when Mr. Gonzalo did landscaping instead of regular gardening he frequently failed to provide an invoice for the work. Invoices were routinely left to monthly charges and only occasionally included extra work as in the $280.00 charge added to his regular monthly billing.

This charge was improperly omitted from the hearing officers' calculation.

IV. OAKLANDS ORDINANCE IS UNCONSTITUTIONALLY VAGUE

A. Oakland Municipal Code § 8.22 is Void for Vagueness

While the purpose of Oakland's Ordinance states that it "depends…on attracting persons who are willing to invest in residential rental property in the city…" (OMC § 8.22.010 B), and 'encourag[es] rehabilitation of rental units …allowing efficient property owners opportunity for both a fair return on their property and rental income sufficient to cover the increasing cost of repairs, maintenance, insurance, employee services, additional amenities and other costs of operation." (OMC § 8.22.010 C),the reality is that the Oakland Rental Board discourages such

investment and precludes any recovery by the investor that allows recovery of the " cost of repair, maintenance or other costs relating to investment in rental property in Oakland.

There is No Notice to the residential rental property owner that : **(1)** the Oakland Ordinance relating to "Capital Improvements" is inconsistent with both State and Federal Tax law creating out of whole cloth new definitions, standards of compliance depriving the property owner of a way of determining what will or will not constitute a Capital Improvement; **(2)** No Notice that the categories under the Ordinance disallowing Capital Improvement status are so broad and vague as to allow **all** construction, renovation, repair, or restoration to be precluded from Capital Improvement status; **(3)** No Notice that if a small percentage of the work undertaken is categorized as due to neglect of the property then **all** even remotely related repairs will be denied Capital Improvement status; **(4)** No Notice that if construction, renovation or repair relates to the structure which houses a coin operated washer or dryer, irrespective of other appliances in the room that **all** construction touching the room that houses the washer and dryer will be denied Capital Improvement Status; **(5)** No Notice that the term that Capital Improvements must "primarily benefit the tenant not the owner" is nowhere defined but may be arbitrarily defined by the Rental Board to deny Capital Improvements status to construction or improvements; **(6)** No Notice that the Ordinance may be interpreted differently from hearing officer to hearing officer and that inconsistent rulings on the same work is not only possible but accepted; **(7)** No Notice that the Oakland Rental Board does not provide published opinions to the public so they can determine what is or is not defined as Capital Improvements under the Ordinance; **(8)** No Notice that the Ordinance is so Vague and inconsistent with existing state and federal law that the residential property owner has no way of determining the proper application of the Ordinance.**(9)** No Notice that a new property owner will be held responsible for all neglect or deferred maintenance of all prior property owners; **(10)** NO Notice that despite the fact it is not a published requirement a new property owner will be deemed to be stepping in the shoes of the prior owner of the property for purposes of denying recovery for work and construction undertaken by the new owner..

Because of these unacceptable inconsistencies the Oakland Ordinance violates the 5th Amendment to the US Constitution and provides for arbitrary and discriminatory application of the law.

"Living under a rule of law entails various suppositions, one of which is that '[all persons] are entitled to be informed as to what the State commands or forbids'" (*Lanzetta v. New Jersey*, 306 U. S. 451, 453 (1939)). "This requirement of clarity in regulation is essential to the protections provided by the Due Process Clause of the Fifth Amendment to the U.S. Constitution. (See, *United States v. Williams,* 553 U. S. 285, 304 (2008). It requires the invalidation of laws that are impermissibly vague.

The U.S. Supreme Court has held that "a regulation is not vague because it may at times be difficult to prove an incriminating fact but rather because it is unclear as to what fact must be proved." *United States v. Williams*, 553 U. S. 285, 304 (2008).

Oakland Municipal Code §8.22 defines "Capital Improvements" as "those improvements to a covered unit or common areas that materially add to the value of the property and

appreciably prolong its useful life or adapt it to new building codes. Those improvements must primarily benefit the tenant rather than the owner." Yet the application of that Ordinance in the instant case is honored only in its breach as none of the improvements that otherwise would qualify as Capital Improvements under State or Federal Tax Laws qualify as such under the Oakland Rental Board Ordinance.

Because the Oakland Rental Board fails to define the terms it uses in denying recovery for the residential property owner and consistently and arbitrarily creates classifications for denial of recovery the Oakland Ordinance is Unconstitutionally Vague and void as a matter of law.

V. THE OAKLAND ORDINANCE FAILS TO FOLLOW STATE OR FEDERAL LAW

Both state and Federal Tax laws already define the term "Capital Improvement" which is supported by tax regulations and 9th circuit cases as well as U.S. Supreme court Cases. The IRS has defined what constitutes real property "capital improvement" as follows:

- Fixing a defect or design flaw
- Creating an addition, physical enlargement or expansion
- Creating an increase in capacity, productivity or efficiency
- Rebuilding property after the end of its economic useful life
- Replacing a major component or structural part of the property
- Adapting property to a new or different use (T.D 9564; REG-168745-03).

The Federal courts as well have elaborated on the above definition. When new property is added to already existing property, "**capitalization**" is "**required.**" So too when replacement components or material sub components are installed these costs must be **capitalized.** *Smith v Commissioner* 300 F 3d 1023 (9th Cir 2002); *Portland Gasoline Co. v Commissioner* 8 T. C. M (CCH) 449 (1949) aff'd on other issues 181 F 2d 538 (5th Cir 1950). So too, replacing and installing new components and structural parts constitute **capital** improvements. (See *Blue Creek Coal, Inc. v. Commissioner, T.C Memo.* 1984-579; *Swig Investment Co. v. United States*, US 98 F.3rd (1359) (Fed. Cir 1996); *Trenton-New Brunswick Theatres Co. v. Commissioner*, T.C. Memo 1954-69; Teitelbaum v. Commissioner 294 F 2d 541 (7th Cir 1961).

In California the 9th Circuit Court of Appeal in the case of *Smith v. Commissioner* 300 F 3d 1023 (9th Cir 2002) concluded that replacement of an aluminum smelting cell lining was a replacement of an essential component of the cell extending the life of the cell and requiring **capitalization**. Also adding new building components that improve utility are **capital** improvements. In R.K.O *Theatres, Inc. v. United States* 163 F. Supp. 598 (Ct. Cl. 1958) the court opined that new fire doors and escapes added to a theater increased the value of the property for use in the taxpayer's theatre business and thus were **"capital"** improvements. The case law is extensive in holding that addition of new components or structural parts, replacing existing components with upgraded components (or sub components) that improve utility **requires capitalization**. *Smith v. Commissioner* 300 F 3rd 1023 (9th Cir. 2002); See also *Ingram Industries Inc. v Commissioner* T.C Memo 2000-323.)

In *Phillips & Easton Supply Co. v. Commissioner*, 20 T.C. 455 (1953) installing a new floor in the taxpayers building was a **capital** expenditure where the old floor was 46 years old and had deteriorated so that further repairs were not practical. Similarly in *Denver & "Rio Grande W. R.R. Co. v. Commissioner*, 279 F. 2d 368 (10th Cir) substantial restoration, strengthening and improvement of a viaduct was not for incidental repairs but for a replacement of a major portion of the viaduct which could no longer be repaired. Hence it was deemed a **capital** improvement. Extensive case law deals with building improvements, where new additions, structural parts, replacing existing components with upgraded components or sub components that improve utility and longevity all constitute **capital** improvements. *Smith v. Commissioner* 300 F 3rd 1023 (9th Cir 2002).

The distinction made between a capital improvement and a "repair" has been described in various cases as "keeping" something operational as opposed to adding improvements which increases the life, longevity, and operating proficiency of the property." *Estate of Walling v. Commissioner* 373 F. 2d 190, 192-193 (3rd Cir 1967):

In the established tax case of *Illinois Merchants Trust Co. v Commissioner* 4 B.T.A 103, 106 (1926) acq, C.B.V-2,2 in a determination whether an expenditure was a capital one the court held it necessary to keep in mind the "*purpose*" for which the expenditure was made. If the purpose was simply to maintain the property it constituted a repair but **where the expenditure replaces, alters or improves the property or prolongs its life or increases its value it is a "capital improvement."**

When new property is added to already existing property, "**capitalization**" is required. *Smith v Commissioner* 300 F 3d 1023 (9th Cir 2002); *Portland Gasoline Co. v Commissioner* 8 T. C. M (CCH) 449 (1949) aff'd on other issues 181 F 2d 538 (5th Cir 1950). (See *Blue Creek Coal, Inc. v. Commissioner, T.C Memo.* 1984-579; *Swig Investment Co. v. United States*, US 98 F.3rd (1359) (Fed. Cir 1996); *Trenton-New Brunswick Theatres Co. v. Commissioner,* T.C. Memo 1954-69; Teitelbaum v. Commissioner 294 F 2d 541 (7th Cir 1961).

But Oakland has adopted none of the Federal or State law definitions of what constitutes Capital Improvements and instead has adopted a broad, vague, undefined, labyrinth of what does not constitute a Capital Improvements. Indeed the exceptions have overcome entirely what is accepted as a Capital improvement. The ordinance states:

> Capital improvements do not include the following as set forth in the regulations: correction of serious code violations not created by the tenant, improvement or repairs required because of deferred maintenance; or improvements that are greater in character or quality than existing improvements ("gold plating" "over improving") (OMC 8.22.020)

NO NOTICE: As applied in the instant case, the Rental Board has defined virtually all of the work undertaken as precluding Capital Improvement status because the prior owner of the building allowed termite damage and dry rot to occur. Hence, despite the fact that the new owner did not own the property, they are nonetheless deemed to have knowledge of and be

responsible for all the repairs and upgrades the prior owner failed to do. This is because of the **unwritten, but applied,** rule that the new owner "stands in the shoes of the prior owner." Again the New owner has NO NOTICE that they will be held responsible and indeed punished for the neglect of the prior property owner.

NO NOTICE: Oakland's Ordinance applicable to Capital Improvements is in fact punitive in nature as it punishes new property owners by denying recovery for work the rental board classifies as "deferred maintenance or even remotely related to deferred maintenance." Since literally all construction on older buildings can be classified and denied Capital Improvement status under such a vague and broad term, the Ordinance is Unconstitutionally Void for Vagueness.

NO NOTICE: Because Oakland's Capital Improvement Ordinance is inconsistent with State and Federal laws, Oakland creates a conflict between how the residential property owner is to classify its construction under the state and federal tax filing. Since none of the construction undertaken by the Owner has been classified as Capital Improvements by a State Administrative Board the Owner should be able to deduct **all** of such work as "repairs" on its tax return and obtain an immediate tax deduction for such.

This puts the city in direct conflict with the Federal and State government who hold different rules and definitions of the terms used by the City.

NO NOTICE: A denial of Capital Improvement status to all work related to correction of dry rot or pest infestation is an arbitrary and unfounded basis for denial of Capital Improvement status. Moreover, such interpretation is **punitive** to the new property owner who undertakes such expense as none of it is ever recoverable. Instead this interpretation rewards neglect of owner's by never holding them responsible for their negligence. It encourages property owners NOT to undertake upgrades or repairs under current Rental Board Interpretation because they will never be able to recover such costs. Such interpretation promotes neglect, and denies property owners fair return on their investment, the exact opposite of what the Ordinance states as its purpose.

VI. DENYING CAPITAL IMPROVEMENT TO 90% OF WORK UNDRTAKEN TO UPGRADE PROPERTY CONSTITUTES ABUSE OF DISCRETION

The hearing officers' holding that "none of the work that was performed to correct damage caused by dry rot or insects is eligible as a capital improvement cost" (Hearing officer decision p. 14) extended this finding well beyond the 25% of the work that could legitimately be classified as termite and dry rot repair. Instead the hearing officer applied this prohibition to all of the work undertaken so as to deny any recovery for capital improvement status on 99% of the work undertaken. This is an abuse of discretion.

Because OMC § 8.22 is impermissibly vague it has allowed the hearing officers who interpret the ordinance to make up definitions, create out of whole cloth applicable exclusions

from the law and arbitrary extensions of the ordinance so as to deny Capital Improvement status to legitimate improvements and repairs.

The U.S Supreme Court has addressed this issue as follows: "the void for vagueness doctrine addresses at least two connected but discrete due process concerns: first, that regulated parties should know what is required of them so they may act accordingly; second, precision and guidance are necessary so that those enforcing the law do not act in an arbitrary or discriminatory way." See *Grayned v. City of Rockford,* 408 U. S. 104, 108–109 (1972).

With $117,428.62 in work normally recognized as "Capital Improvements" by the Federal and State taxing authorities yet only $2,150.51 of such expense approved as Capital Improvements by the Oakland Rental Board, there is a serious disconnect as to what actually constitutes Capital Improvements for the City of Oakland.

There is NO NOTICE to the property owner that the Oakland Rental Board would consider new additions, structural parts, replacing existing components with upgraded components or sub components that improve utility and longevity to an old building which are normally considered Capital Improvements Smith *v. Commissioner* 300 F 3rd 1023 (9th Cir 2002) would not be considered as such by the Oakland Rental Board. The Oakland Rental Boards findings are arbitrary and discriminatory against NEW residential property owners.

The Rental Boards Interpretation of this ordinance fails to give the property owner proper NOTICE that such expenses are not recoverable despite language in the ordinance to the contrary. Further such interpretation is inconsistent with state and federal law that authorizes all such construction and work to be classified as Capital Improvements. *Moss v. Commissioner*, 831 F.2d 833, 835 (9th Cir 1987); (Quoting *Estate of Walling, Estate of Walling v. Commissioner* 373 F. 2d 190, 192-193 (3rd Cir 1967): The vagueness of a rental regulation and ordinance that punishes a property owner by promising recovery of funds via application for capital improvement increases in rent only to subsequently impose unpublished rules against them so no recovery is possible, creates an unenforceable law. Such rulings make the ordinance unconstitutionally vague in violation of the 5th Amendment to the US constitution. The Ordinance is therefore Void as a matter of law. The rental boards ruling cannot stand.

VII. RENTAL BOARD FAILS TO COMPLY WITH OMC § 8.22.020

By Oakland's own ordinance bringing property into compliance with Oakland Building Codes by definition constitute Capital Improvements.

OMC 8.22.020 provides:

"Capital improvements" means those improvements to a covered unit or common areas That materially add to the value of the property and appreciably prolong its useful life or adapt it to new building codes.....Capital improvements [include] improvements that bring the unity up to current building or housing codes....."

In each instance of the work performed on the subject property the Owners upgraded and brought a 107 year old building into compliance with 2015 building code standards consistent

with all the requirements of the building department. Yet none of the work has been classified or recognized as a Capital Improvement. The hearing officer's findings are inconsistent with OMC 8.22.020 which specifically provides that bringing the building into compliance with the Oakland Building Code grants to such work Capital Improvement status.

All upgrades in the instant case benefited the tenants, removed structural deficiencies in the building never addressed, strengthened the building, added new structural components, provided new seismic retrofit, added space shared by all tenants for laundry service, upgraded stairs, porches and walkways for safer ingress and egress to their units, provided new venting and doors for maintenance and extended the life of the building by over 50 to 60 years. In every instance the work was not simply pest or dry rock work but the vast majority of work brought the building into compliance with current building codes and by the language of the above Ordinance must be considered Capital Improvements. Failure of the Board to grant such status demonstrates the arbitrary nature of its rulings as it picks and chooses which portions of the law it wants to enforce and ignores other sections.

If Oakland is to utilize the rules under this ordinance it cannot pick and choose which sections it intends to enforce. The case law is extensive in holding that addition of new components or structural parts, replacing existing components with upgraded components (or sub components) that improve utility requires **capitalization**. *Smith v. Commissioner* 300 F 3rd 1023 (9th Cir. 2002); See also *Ingram Industries Inc. v Commissioner* T.C Memo 2000-323. The upgrades here brought the building into compliance with state federal and local laws. By Oakland's own definition the work undertaken constitutes capital improvements. The decision of the hearing officer to the contrary is error.

Conclusion

For the foregoing reasons it is respectfully requested that all listed items denied as capital improvements be listed as capital improvements consistent with local state and federal law and the hearing officers findings be reversed as the Ordinance is impermissibly vague and the ruling cannot stand.

Dated: July 23, 2017

Respectfully Submitted

Barbara S. Farley

Barbara S. Farley
Owner/Manager
Farley Levine Properties LLC

Farley Levine Properties LLC
7 King Avenue
Piedmont, CA 94611

July 25, 2017

City of Oakland
Department of Housing and
Community Development
Rent Adjustment Program
P.O. Box 70243

Attention: Residential Rent and Relocation Board

Re: **Case Number T16-0495 Arnold v. Farley Levine Properties, LLC**
Property Address: 4246 Gilbert St., Oakland, CA
Date of Hearing: June 2, 2017
Date of Decision: July 14, 2017

NOTICE OF APPEAL

SUPPLEMENTAL SUBMISSION

Owners, Farley Levine Properties LLC, has appealed the Hearing Decision and Order entered by Barbara M. Cohen, Hearing Officer of the Rent Adjustment Board (RAB) entered July 14. 2017 in Case Number T-16-0495 with a Notice of Appeal filed July 24, 2017.

This supplemental submission is filed to address a ruling by the above hearing officer regarding representations made to the Owner by the Oakland Building Department, and the hearing officer's rejection as "hearsay" of such representations.

FACTUAL STATEMENT

During the June 2, 2017 hearing before Hearing Officer, Barbara B. Cohen, the Owner presented the permits obtained from the City of Oakland regarding construction that was undertaken at the property.

Initially termite repair work described was only supposed to be repair work not requiring permit but when the contractor expanded the work to undertake construction the City notified the Owner that a Permit was required. Immediately the owner obtained a building permit from the City of Oakland. The termite work affected only 25% of the perimeter of the building, but the building was old the Contractor recommended the owner to remove the entire perimeter of the building to expose all supports and install new supports and venting. He also found that the building required retrofit, as well as a raising of the foundation to avoid water intrusion. The work was described as follows:

"Approximately 212 ft. of perimeter walls including center wall that supports the entire original front building, The walls are constructed of pressure treated 3 x 6 wood, top plate, bottom plate, and studs; Demo & replace 2 front entry porches 4244 Gilbert St. and 4246 Gilbert St. The new framing was all constructed with pressure treated wood including new ¾" plywood subfloors, treads & risers.

Porches & steps completely coated with Red Guard waterproofing and crack preventing membrane. All underpinning perimeter walls covered with ¾" pressure treated plywood wall material with 8 x 16 screened louver vents for cross ventilation, Replaced 19 each 2 x 8 floor joist that had dry rot and or termite damage. Installed pressure blocks between new joists. "

$ 35,400.00

"All new perimeter walls approximately 160 each dowelled anchors are now seismic retrofitted by dowelling the pressure treated bottom plate to the concrete foundation with 5/8 x 12 galvanized all thread 3 x 3 square washers and 5/8 nuts. The all thread were embedded 6" deep into concrete with Simpson Tie Epoxy which meets all county and city building code regulations and has been signed off by city inspector."

$11,000.00

"The new concrete foundation cap approximately 10-12" high was constructed at driveway edge at 4244 Gilbert St. A#4 rebar was dowelled into existing foundation 6" and placing a horizontal #4 bar across the top approximately 25'. This cap foundation has the dowelled anchor bolts square 3 x 3 washers with 5/8" nuts."

$3,750.00

"At the time of city inspection all repairs were passed except pressure blocking at unit 4244 porch cripple wall. This work has been completed.

The new brick Mc Nair Calaveras solids where laid on the newly framed water proofed porches and steps that were first covered with concrete under lament brick and then mortar. The walkways and lower steps were all placed on a new 4" concrete slab with mortar."

$9,600.00

This evidence was presented to the hearing officer. During the hearing, the hearing officer stated that she did not see in the permits where the retrofit work had been indicated. The hearing officer gave the Owner 7 days to prove that the work was property permitted. Upon review the Owner did not see the verbiage in the permit that was reflective of the work actually undertaken and previously approved. The Owner went to the Oakland Building Department and inquired why the permits did not reflect approval of the retrofit work. The Building Department inspector who had reviewed the work said **"it was not necessary"** as construction work frequently expands and the "broad **approval obtained was sufficient."**

The owner explained to the building department that the Rental Board was in fact not accepting the work as approved because it was not indicated on the permit. The Building Department said that no one had contacted them from the rental board (which is just two floors up from the building department in the same building) and that the building department considers the final approval of all work done.

The Owner nonetheless insisted that the building department retroactively describe the work undertaken and approved. The Building Department then gave the Owner the option of paying for a retroactive permit and testing of the retrofit to "prove" that the work was properly installed. The Owner then spent another $572.50 plus $900.00 Inspection service to obtain retroactive permits and the supplemental inspection to prove that the work had been properly done. This was submitted to the hearing officer within the 7 days allotted by her for proof.

Hearing Officers Denial of Recovery

Nonetheless, the entire retrofit and construction was rejected by the hearing officer as follows:

> "As noted above, the owner testified at the Hearing that the original permits included the seismic retrofit that was done. She was asked to provide proof of that after the Hearing. Instead, she produced a new finaled permit that showed that the permit for the seismic work was not taken out until after the hearing. While she stated in her letter that the Building Inspector told her that the final approval is broad approval of the work done, this letter and the words attributed to the Building Inspector are hearsay.
>
> The Rent Adjustment Program Regulations incorporate the statutory guidelines governing administrative hearings. These rules state that evidence shall be admitted 'Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.'
>
> Hearsay evidence is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated. ...(b) Except as provided by law, hearsay evidence is inadmissible. (Evidence Code § 1200).
>
> The letter sent by the owner in response to the request for permit information related to the seismic is hearsay evidence. The words she claimed were said by the inspector, is hearsay within hearsay. These are not admissible since there was no other evidence to support a finding that the initial permit covered the seismic work done on this project."
>
> In order to be considered a capital improvement, an owner must have a permit for those costs for which permits are required, (See Falcon et al v Bostrum et al, HRRRB cases T13-0279 and T13-0283. The fact that the owner received a retroactive permit means that the work was not "complete" until the permit was finaled. Since the permit was not finaled until June 8, 2017, all costs associated with the seismic retrofit was not completed until that day and are disallowed." (Decision p. 16)

Seismic Work

The work was previously approved by the building department as indicated in Lee Deslippe's invoice:

> "At the time of city inspection all repairs were passed except pressure blocking at unit 4244 porch cripple wall. This work has been completed. "

The statements in the Owners letter to the hearing officer that the building department had already passed on the permit for the work is corroborated by Lee Deslippes invoice to the same effect. Therefore the hearing officer's statement that: ". The words she [the owner] claimed were said by the inspector, is hearsay within hearsay. These are not admissible since there was no other evidence to support a finding that the initial permit covered the seismic work done on this project." **is a misstatement of fact. In fact the building department's statement is corroborated by Lee Deslippes invoice.** Nor do the statements submitted by the Owner regarding their communication with the Building Department constitute hearsay since, it is the owner who is testifying what was said. It is direct testimony of first hand statements. Further the statements of the Building Inspector to the Owner fall within an "exception" to the Hearsay Rule § 1221 which states:

> "Evidence of a statement offered against a party is not made inadmissible by the hearsay rule if the statement is one of which the party, with knowledge of the content thereof has by words or other conduct manifested his adoption or his belief in its truth."

The owner believed the truth of the statements made by the building inspector at the time of paying the invoice to Lee Deslippe for work that was completed. The statement by the Building inspector in June 2017 which corroborated earlier representations made by the same department when approving all the same work simply confirmed the approval already received.

The owners and building department's efforts to satisfy a Rental Board hearing officer's demand for "language" that was otherwise unnecessary prompted the issuance of a superfluous permit and extra inspection totally unnecessary to the Building Department's approval. In any event the additional permit and approval were "RETROACTIVE" to the earlier permit time and do not constitute approval in June 2017 because they are retroactive.

The hearing officer's insistence upon Proof beyond what the City's own building Department provides or regards as sufficient are not required by the Code or the rent control ordinance. The hearing officer's strained efforts to deny any recovery for work already approved by the Building Department and the HRRRB by other application (Chamales Case Number T16-0108) constitutes an abuse of discretion. The foregoing is contrary to law and demonstrates the arbitrary nature of this hearing officers rulings. The hearing officer's rulings cannot stand.

July 25, 2017

Respectfully Submitted

Barbara S. Farley

Barbara S. Farley

David Arnold
4246 Gilbert St.
Oakland, CA 94611

October 6, 2017

Response to Appeal
Case number: T16-0495
Case title: Arnold v. Farley Levine Properties

Dear members of the rent board,

Please consider the following in your attention to this appeal.

I. Procedural issues

1. According to the Rent Adjustment Program rules and procedures, Mrs. Farley was required to provide the rent board with proof of service of her appeal, and of any supporting argument or documentation, within 15 days of filing the appeal.

   Mrs. Farley declares under penalty of perjury that she served her appeal to me by mail on August 24th, a full two weeks after the deadline. [1]

   Mrs. Farley provides no justification for failing to meet the timing requirements for the appeal process.

2. Further, while she asserts in her declaration under penalty of perjury that she addressed it to me at my correct address:

   4246 Gilbert St.
   Oakland CA 94611

   In fact, on the envelope she has omitted the zip code. [2] As a result, I did not receive the appeal until a friend and neighbor found it on my doorstep and alerted me, well after my deadline to respond had passed.

Based on the Rent Adjustment Program rules and procedures for appeal, Mrs. Farley's appeal should be dismissed.

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[1] Exhibit 1
[2] Exhibit 2

II. Redundancy

My case, T16-0495, was postponed with the explicit intention of awaiting the result of the appeal of case T16-0108, a petition against the same capital improvements made by a fellow tenant in my building. The rent board's decision in that appeal was explicitly referred to and incorporated into the decision made by the hearing officer in my case. Further appeal is frivolous, an abuse of the RAP process, and a significant inconvenience to all those involved.

III. Factual Misstatements and Misrepresentations

Mrs. Farley has demonstrated a pattern of, whether by malice or mistake, failing to correctly represent facts in her statements, declarations and arguments. A few of her most relevant misrepresentations are highlighted here, excluding the mailing address perjury noted above.

1. At the time of the stop-work order dated April 13, 2015, Mrs. Farley had, according to her own submission for pass through capital improvements, already spent $53,529.38 on the work. However, in responding to the stop-work order, she requested a permit for work with a job value of $25,000. Mrs. Farley testified under oath, and wrote in her appeal, that based on an inspection she expected termite and dry rot repair work in the amount of $29,000. Despite her prior knowledge of the expected scale of the project, despite having given instruction to contractors for the work scope to expand considerably, and the admonishment of the city office, the permit Mrs. Farley sought vastly underrepresented the work even already paid for. This suggests at best a knowing misconstrual of the facts of the construction to the city.
2. Mrs. Farley continuously refers to the portion of work related to dry rot repair as $29,000 (see pps. 2, 6, 18,). However, she simultaneously asserts that the scope and extent of the repair work expanded continuously throughout the project. She never makes any attempt to present, much less justify, a revised estimate for the amount of the work done that was a simple expansion of work necessary to facilitate an effective dry rot repair.
3. On page 3 of her appeal, Mrs. Farley states that the notice of rent increase was sent in April 2016. In fact, the notice was sent on July 15, 2016 for an effective date of September 1, 2016.
4. On page 3 of her appeal, Mrs. Farley declares the allowed pass through of the July 14, 2017 hearing decision to be $2,150.51, when in fact the total pass through allowed was $1,480.10.
5. On page 4 of her appeal, Mrs. Farley declares the amount of work deemed by the Rental Board to be Capital Improvements to be 1% of the total work done. In fact, the total amount of work deemed to be pass-through allowable capital improvements was $7,572.16, or 6.5%.

IV. Regarding the allowability of a 2-year retroactively issued permit

Mrs. Farley argues that the rent board should accept a new permit, number RB1702442, which she obtained on June 8, 2017, as valid for the purposes of supporting the work done from January to December 2015.

This permit was requested more than two years after the majority of work done, well after the rental increase was issued, and even after the hearing on the petition of that increase had occurred.

The city cannot allow permits granted so long after work done and rent increases issued to justify those rent increases. 2 years allows significant changes to building codes and other relevant law, rent markets, and other substantially material factors, while introducing loopholes in the form of builders and landlords delaying construction expenses until they can start collecting increased rent. Simply, the law required Mrs. Farley to properly permit the work being done at the time it was being done, which she failed to do.

V. On standing in the shoes of the prior owner.

Mrs. Farley argues that she should not stand in the shoes of the prior owner, having been given no notice of such "unwritten... rule".

I would point Mrs. Farley to California civil code CC1084 and similar, which provide explicitly that "the transfer of a thing transfers also all of its incidents, unless expressly excepted" - all rights, responsibilities, and obligations. Common sense and common law hold that the sale of a property does not somehow absolve all responsibility for diligent maintenance, and CC 1084 supports that conclusion.

VI. Regarding Mrs. Farley's legal arguments on notice, definitions and

Mrs. Farley argues that she has a right to increase rent due to a deficiency in "notice" to her, the owner.

I would call the board's attention to the fact that Mrs. Farley is a lawyer, barred in California. She has been practicing law for decades; her proficiency and expertise is abundantly evidenced in her appeal, with extensive references to the constitution, prior caselaw, tax cases, supreme court opinions, and extensive legalese.

But Mrs. Farley has no inalienable right to increase rent on her rent controlled apartments. It is her duty to follow the city's code and regulations and abide by the law should she wish to do so. As I am sure Mrs. Farley knows, ignorance is no excuse under the law.

Other landlords and tenants in this city with no legal expertise and considerably fewer resources have been able to understand and comply with the city's code and the Rent Board's regulations. The rent board provides plentiful resources for both landlords and tenants to gain clarification and understanding on anything they might need to know. If Mrs. Farley truly believes that, to quote her, there is a "serious disconnect as to what actually constitutes capital improvements for the city of Oakland", I would encourage this Board to refer her to these resources so that she might gain clarification in the future.

I would also call the board's attention to Mrs. Farley's repeated quotation of the OMC article defining capital improvements, to note that she conveniently leaves out the next sentence in the code: **"Those improvements must primarily benefit the tenant rather than the owner."** She leaves out that crucial clause three times in her appeal, sometimes abruptly ending her quote before it, others elipsisizing around it entirely. This calculated manipulation of her presentation of the intent of the law to suit her ends, at best, implies that she needs no hand-holding to understand her responsibilities.

At worst, in this combined with her repeated manipulation of facts to lean to her favor, her brazen underrepresentation of costs to one city department while inflating them to another, her repeated attempts at rent increase on specious grounds such as work done on coin op laundry facilities even after such increases were clearly disallowed by this department, Mrs. Farley impugns her integrity in her pursuit of profit.

Thank you for your time and consideration.
SIGNED, UNDER PENALTY OF PERJURY
Sincerely,

David Arnold

Enclosure

EXHIBIT 1

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.*) See ATTACHED APPEAL 7-25-2017

Submissions to the Board ***are limited to 25 pages from each party.*** *Please number attached pages consecutively.* *Number of pages attached:* 24

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 Aug. 24, 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	DAVID ARNOLD
Address	4246 Gilbert Street
City, State Zip	Oakland, CA 94611
Name	
Address	
City, State Zip	

Barbara J. Farley	8/24/17
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	**DATE**

For more information phone (510) 238-3721.

000166

From:

[redacted] Properties LLC
7 King Avenue
Piedmont, CA 94611

TO:

David Arnold
4246 Gilbert Street
Oakland, California

Farley Levine Properties LLC
7 King Avenue
Piedmont, CA 94611

October 15, 2017

City of Oakland
Department of Housing and
Community Development
Rent Adjustment Program
P.O. Box 70242

Attention: Residential Rent and Relocation Board

Re **Case Number T16-0495 Arnold v. Farley Levine Properties, LLC**
Property Address: 4246 Gilbert Street, Oakland, CA 94611
Date of Hearing: June 2, 2017
Date of Decision: July 14, 2017
Date of Appeal: July 24, 2017

REPLY TO RESPONSE TO APPEAL

Owners, Farley Levine Properties, LLC, submits this Reply to the Response to Appeal filed by David Arnold on October 6, 2017 but not received until October 12, 2017. The Owner submits this Reply because of the many misstatements made in Mr. Arnold's submission to the Board. The Reply will address the Objections in the order submitted. The personal attacks made by Mr. Arnold will not be responded to as they simply highlight the lack of merit to the arguments made.

I. Procedural Objection

Mr. Arnold challenges the appeal as untimely and lacking the correct zip code stating that "I did not receive the appeal until a friend and neighbor **found it on my doorstep** and alerted me, well after my deadline to respond had passed." (Arnold Response p. 1 ¶ 5)

Had Mr. Arnold reviewed the file he would have discovered that the appeal was filed 10 days after the Decision of July 14, 2017 on July 24, 2017. (See **Exhibit A,** a true and correct copy of the face sheet of Owners Appeal reflecting the date it was filed.). The Owner received thereafter a Notice of Deficiency in Owner Appeal indicating that the Appeal Board required that a Form be filled out by the Owner (A true and correct copy of the Rental Board letter of August 17, 2017 is submitted herewith as **Exhibit B**) and served on Mr. Arnold. As noted in the August 17, 2017 letter from the Rent Board it states:

> " For your Appeal to be accepted as timely, your completed Appeal form must be submitted to this office within ten (10) calendar days from the date of this letter. " (See **Exhibit B**)

The forms were filled out and the papers filed with the Rent Control Board on August 24, 2017 and served by mail on Mr. Arnold the same date. The papers were in an oversized envelope so was left by the Post Office on Mr. Arnold's "doorstep". Mr. Arnold admits to having received the papers yet

complains that for lack of a zip code somehow the delivery does not count. He cites no authority for this proposition, as there is none.

Further he complains that he received the package "well after my deadline to respond had passed." But his assertion is incorrect. Mr. Arnold has 35 days from the filing of the appeal. Since the Board did not accept the appeal until August 24, 2017 (See Form of Appeal as **Exhibit C** reflecting August 24, 2017 as the date received by the board) Mr. Arnold had 35 days from that date to respond which he has done.

In fact the Owner received a letter from the Rent Board advising that it had received the owners appeal on August 24, 2017, (within the 10 days allowed by the Rent Board) and advising that the next step was that the Residential Rent and Relocation Board would be scheduling a hearing. (A true and correct copy of the Rent Adjustment Program letter of August 31 is submitted herewith as **Exhibit D**). No hearing has yet been scheduled.

Mr. Arnold's objection is without merit.

II. Redundancy Objection

Mr. Arnold next complains that his case "T16-049, was postponed with the explicit intention of awaiting the result of the appeal of Case T16-0108 against the same capital improvements made by a fellow tenant." (Arnold Response p 2 ¶ 1). He states that:

> "the rent board's decision on that appeal was explicitly referred to and incorporated into the decision made by the hearing officer in my case. Further appeal is frivolous, an abuse of the RAP process and a significant inconvenience to all those involved. "

The two appeals involving the two units in the same building had significant overlap but did not involve identical improvements. Nonetheless, Mr. Arnold is correct the hearing officer ruled inconsistently with the prior hearing officer's conclusions in the parallel action. This serves as one of the bases under OMC Chapter 8.22 Rent Board Regulations for the Owners Appeal. (See the Owners Appeal pages 4-5).

Mr. Arnold apparently supports the Owners assertion of inconsistency in the rulings by two separate hearing officers on the same subject. This serves as one of the bases for appeal of this ruling.

III Factual Misstatements and Misrepresentations - Objections

Without addressing the merits of the appeal or the legal issues involved Mr. Arnold cites to what he classifies as misstatements of the owner. Yet, Mr. Arnold's assertions are in themselves misstatements of facts and he neglects to refute any of the bases for appeal presented by the Owner.

1. Cost of work undertaken. Arnold takes exception to the expenses incurred by the owner claiming that as of April 13, 2015 for pass through capital improvements the Owner had already spent $53,529.38 yet sought a permit for $25,000.00 and that the termite work was $29,000.00. Somehow Arnold complains that the work was intentionally underreported and misrepresented.

   This is incorrect.

   First, not all work undertaken even required a building permit. Building permits under the Oakland building code must relate to: "Plan review", Demolition, electrical, excavation, fence, mechanical, floodplain development, plumbing, sign and/or tree preservation." (See Chapter 500 Oakland Building Regulations). In fact regular pest control work does not require a building

permit at all. Further the evidence submitted to the hearing officer demonstrates that the owner received two pest reports one for $25,000 and one for $29,000 much of which required no demolition, plumbing, electrical, excavation, mechanical work at all. (See pest reports submitted to the hearing officer)

No permit was required for the upgrading of replacement lighting fixtures to be installed in all outside outlets; or the landscaping and tear out of the plants and trees for installation of sprinkler systems and new landscape. Nor did the brick work and walkways, railings installed on the porches, wrought iron railings installed along the walkways, installation of brick patios require building permits.

Work on the property commenced in late February 2015 upgrading the property. By late March 2015 the work expanded to tearing out stairs in unit 4244 that were deemed to have dry rot. It was determined at that time to replace with brick the former porch and stairs to upgrade the stairs and avoid future dry rot. This demolition triggered the necessity of obtaining a building permit. A permit was obtained within a couple of days of notice by the city and obtained without issue. The permit covered the anticipated demolition and reconstruction.

Mr. Arnold's objections are without merit.

2. Mr. Arnold next complains about the reference in the petition to $29,000 of dry rot repair claiming that the Owner does not segregate out what was not dry rot repair. On the contrary for purposes of argument the Owner points out that even if the entire $29,000 of the highest estimated pest report work all constituted dry rot repair, the rent board's disallowance of $117,428.62 in improvements (all except $2,150.51) is an abuse of discretion since under a worse case scenario the pest control work would only amount to $29,000.00. Yet the rent board disallowed all of the improvements except $2,150.51.

   Mr. Arnold's objection is without merit

3. Mr. Arnold next asserts as a lie, Ms. Farley's statement: that the notice of rent increase was sent in April 2016, claiming it was really sent in July 2016.

   Again Mr. Arnold misstates the facts. The original rental increase notice was sent in April 2016 but a moratorium on rent increase was thereafter instituted and the Rent Board advised the owner to withdraw the original rent increase and re-notice the rent increase after the moratorium had been lifted which is exactly what the Owner did. A new notice was sent in July 2016 for a September 1 increase.

   Mr. Arnold's objection is without merit and irrelevant.

4. Item 4 and 5. Mr. Arnold next takes exception to the figures used by the Owner on appeal claiming that the pass through charge was really $1,480.10 rather than $2,150.51 utilized by the Owner. (Response p 2 ¶ 6. He claims further that the allowed capital improvements are really $7,572.16 rather than $2.150.51 as asserted by the Owner" (Response p. 2 ¶ 7).

   But Mr. Arnold. Is wrong. His calculations and numbers appear nowhere in the Hearing Board's decision. The $2,150.51 utilized by the Owner is referenced in the Hearing Board decision p. 18 ¶8 and the attached schedule prepared by the hearing officer.

   Mr. Arnold's objections are without merit.

IV. 2 Year Retroactivity Permit – Objection

Mr. Arnold provides no support for his position that the additional retroactive permit obtained by the Owner to reflect the work already done should somehow not be considered by the board as it was obtained after construction concluded.

Mr. Arnold provides no authority for his position. The additional inspection and permit was not required for the approval of the subject work as the permits issued and final sign off by the building department covered all the work undertaken. The owner was advised of this by the Building Department supervisor. The additional permit was superfluous and retroactive and obtained only to show the hearing officer that the work was actually done. The building department did not require such permit. The hearing officer's denial of capital improvement status to the already completed work is improper and should be reversed. (See Supplemental Submission of Owner filed July 25, 2017 addressing this issue).

Mr. Arnold adds nothing to this argument as his position lacks merit.

V. Standing in the Shoes of Prior Owner - Objection

Next Mr. Arnold cites to California Civil Code §1084 for the proposition that a purchaser of real property assumes all the "incidents [of ownership] unless expressly excepted." Mr. Arnold extrapolates from that code section that the purchase of the real property "does not absolve all responsibility for diligent maintenance." (Response p 3 ¶ 5). But Mr. Arnold's argument fails because Civil Code §1084 has no application to California real property. Nor has Mr. Arnold cited any authority, either in ordinance, statute or case law that supports his positon.

California Civil Code §1084 states:

> " The transfer of a thing transfers also all its incidents, unless expressly excepted; but the transfer of an incident to a thing does not transfer the thing itself."

Real Property is not a "thing." A thing refers to the transfer of personalty, not real property. Nor does this statute have any application to the arguments made by the Owner in this proceeding.

Here the Rental Board asserts that somehow the new owner's improvements cannot be classified as capital improvements because the former owner failed to maintain the building and all of the new owner's upgrades and reconstruction must be classified as neglected maintenance. This is a false argument.

The new owner upgraded areas not previously requiring repair. The new owner retro-fitted the entire building and installed venting that did not previously exist under the building. The new owner put in brick patios, walkways, wrought iron railings, and new brick stairways that did not exist before. The new owner expanded the laundry room allowing venting, and easier maintenance. None of these improvements were maintenance issues created by the former owner. Yet the Rental Board has disallowed them all. This is error as a matter of law.

Mr. Arnold's argument has no merit.

VI. Legal arguments on notice, definitions, and - Objections

Finally Mr. Arnold argues that the Owner's complaint regarding lack of Notice somehow should have been overcome because the Owner is a lawyer and has a duty to follow the Oakland's regulations claiming "ignorance is no excuse under the law." (Response p. 3 ¶ 8)

But the owner complains about lack of Notice because the statutes and case law are in conflict with the actions taken by the Rental Board. Mr. Arnold's claim of ignorance implies that the law is available and clear on the subject. But that is not true in this case. The law does not address what is and is not a capital improvement. The Oakland Ordinance on its face is in accord with existing State and Federal law. Yet in its application the Rent Board imposes undisclosed rules and interpretations nowhere found in the statute. For example, the statute nowhere states that the rent board has the authority to deny capital improvement status to improvements the rent board deems the prior owner should have undertaken. Where in the statute does it give notice to the property owner that they should not even consider applying for capital improvement status if the prior owner could previously have undertaken the work yet failed to act leaving the new owner stuck with the construction?

Similarly where does it say in the code, statute or law that the presence of a coin operated washer or dryer in a room nullifies any improvements to that room for capital improvement status? There is no Notice anywhere that the law will be applied in this manner.

Similarly, where is the property owner notified that a capital improvement will always be classified as a "repair" if any repair work was actually undertaken that touches what otherwise would have been classified as a capital improvement under the law? The arbitrary application of undisclosed rules made up by the rental board to deny capital improvement status for improvements to property cannot withstand scrutiny. The 5th amendment clause of the US constitution precludes the arbitrary and discriminatory fabrication of rules so a party has no way of knowing what is required of them for recovery under the ordinance.

Mr. Arnold refers to unidentified resources where these definitions exist, but cites no such resources, case law, statute or authority. As such his references are hollow and his argument without merit.

1. Omission of the reference to "improvements must primarily benefit the tenant rather than the owner."

In his last argument Mr. Arnold chides the owner for failure to include the reference to the improvements as "primarily benefiting the tenant rather than the owner" as a manipulation of the statute's application. But such reference does not aide Mr. Arnold's position. Virtually all of the improvements claimed were in the building occupied by Mr. Arnold. The retrofit, venting, walkways in brick, new railings, lighting, landscaping, expansion of the laundry room directly benefit Mr. Arnold. Mr. Arnold occupies the entire floor of a two story duplex where all of the retrofitting was undertaken. The venting of the building directly under the building inhabited by Mr. Arnold benefits only his and the unit below his apartment The brick walkway, porch, wrought iron railings, stairs and new railings to Mr. Arnold's unit are for Mr. Arnolds unit alone. The landscaping undertaken benefits Mr. Arnold's unit the most. The laundry room expansion houses the water heater that services Mr. Arnold's unit and the washer and dryer are utilized by Arnold.

This was exhaustively established at the hearing and in briefing. The Owner is not required to structure its presentation to suit Mr. Arnold. Mr. Arnold's objections are without merit.

For the foregoing reasons the objections of Mr. Arnold have failed to set forth a single argument that refutes or undermines the appeal taken by the owner. The ruling by the rental board must be reversed.

Dated: October 15, 2017

Respectfully submitted

Barbara S. Farley