

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

AUGUST 2, 2018

7:00 P.M.

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

AGENDA

1. CALL TO ORDER
2. ROLL CALL
3. OPEN FORUM
4. NEW BUSINESS
 - A. Appeal Hearing in cases:
 - a. T16-0622; Hall v. Leung
 - b. T16-0539; Hudson v. Lantz Properties LLC
 - c. T16-0549; Beasley v. Horejsi
5. SCHEDULING AND REPORTS
6. 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, Cantonés,

2018 JUL 25 PM 2:59
CITY OF THE CITY OF OAKLAND

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

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

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

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

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

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

CHRONOLOGICAL CASE REPORT

Case Nos.: T16-0622

Case Name: Hall v. Leung

Property Address: 1015 E. 22nd Street, Oakland, CA

Parties: Jaimeson Hall (Tenant)
Jenny Leung (Property Owner)
Christopher Hodgson (Property Owner Representative)

OWNER APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	November 1, 2016
Owner Response filed	December 14, 2016
Hearing Decision issued	April 12, 2017
Owner Appeal filed	May 3, 2017

000003

File: 0622 RC/BC

RECEIVED
CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM

<p>CITY OF OAKLAND RENT ADJUSTMENT PROGRAM Mail To: P. O. Box 70243 Oakland, California 94612-0243 (510) 238-3721</p>	<p>For date stamp: 2016 NOV - 1 AM 11: 25</p>
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Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed.

TENANT PETITION

Please print legibly

Your Name <i>Jaimeson Hall</i>	Rental Address (with zip code) <i>1015 E 22nd St, 94606</i>	Telephone --
Your Representative's Name	Mailing Address (with zip code)	Telephone
Property Owner(s) name(s) <i>Jenny Leung</i>	Mailing Address (with zip code) <i>4123 Broadway #108 Oakland 94611</i>	Telephone --

Number of units on the property: 4

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

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

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

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

Date you moved into the Unit: 4/31/11 Initial Rent: \$ 1200.00 /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: 8/31/16. If never provided, enter "Never."

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

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

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

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

List case number(s) of all Petition(s) you have ever filed for this rental unit: T14-0256

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



Date

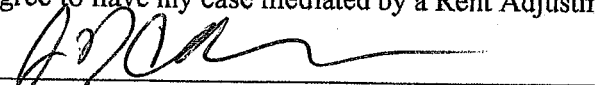
V. MEDIATION AVAILABLE: Mediation is an entirely voluntary process to assist you in reaching an agreement with the owner. If both parties agree, you have the option to mediate your complaints before a hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal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

I, Jaimeson Hall, believe that the issues causing a reduction in services to my unit are:

1. Lack of adequate heat due to substandard gas heater in unit (less than 72 degrees year round).
2. Excessive humidity/mold due to lack of vapor barrier under building and improperly designed drainage. (Greater than 40% year round.) This affects ability to heat unit properly as moist air requires MUCH greater "heat" than dry air to bring up to the appropriate temperature. With unaddressed leaking in unit in both the front storage area and the back stairwells connecting the upstairs and downstairs portions of the unit this is a constant problem.
3. Lack of amperage with respect to Mr. Rowan's the previous landlord's temporary solutions to #1 and #2. Also, the previous owner, Mr. Rowan provided two electric heaters and a large dehumidifier and agreed to stipend the cost and/or run them off of house power instead of the unit's power. *Current landlord has served a cease and desist on the use of house power and not agreed to stipend the cost.* I rented unit with cost of gas heat factored in not electric. I also did not factor in cost of dehumidifier as a necessary expense for habitability.
4. Lack of consistent hot water for the shower due to broken mixing valve.
5. Lack of security doorknob and latch on rear security gate and lack of lock on side gate recommended by OPD.
6. Continued leaking in both the back stairwell and lower unit front storage area contributing to both the humidity and mold issues as outlined in 2 above.


Jaimeson G. Hall

Dated: October 31, 2016

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RECEIVED

For filing stamp CITY OF OAKLAND RENT ARBITRATION PROGRAM

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

2016 DEC 14 PM 1:11

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

CASE NUMBER T 16 - 0622

OWNER RESPONSE

Please print legibly.

Your Name Jenny Leung	Complete Address (with zip code) 4123 Broadway #108 Oakland CA 94611	Phone: _____ Email: _____
Your Representative's Name (if any)	Complete Address (with zip code)	Phone: _____ Fax: _____ Email: _____
Tenant(s) name(s) Jaimeson Hall William Faas	Complete Address (with zip code) 1015 E 22nd St. Oakland, CA 94606	

Have you paid for your Oakland Business License? Yes No Number 28062871
(Provide proof of payment.)

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

There are 4 residential units in the subject building. I acquired the building on 08 / 05 / 2016

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

I. RENTAL HISTORY

The tenant moved into the rental unit on Jaimeson Hall; 4/1/11 -- William Faas 7/1/12

The tenant's initial rent including all services provided was \$ 1200.00 / month.

Have you (or a previous Owner) given the City of Oakland's form entitled NOTICE TO TENANTS OF RESIDENTIAL RENT ADJUSTMENT PROGRAM ("RAP Notice") to all of the petitioning tenants? Yes No I don't know If yes, on what date was the Notice first given? 8/31/16

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? _____. 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. X

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

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

II. JUSTIFICATION FOR RENT INCREASE

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

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

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

III. DECREASED HOUSING SERVICES

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

IV. EXEMPTION

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

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

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

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

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

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

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

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

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

V. IMPORTANT INFORMATION

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


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

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

VI. VERIFICATION

Owner must sign here:

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



Owner's Signature

12/10/16

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

12/10/16

Date



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: T16-0622, Hall v. Leung
PROPERTY ADDRESS: 1015 E. 22nd Street, Oakland, CA
DATE OF HEARING: February 28, 2017, March 10, 2017, March 29, 2017
DATE OF INSPECTION: March 9, 2017
DATE OF DECISION: April 12, 2017
APPEARANCES: Jaimeson Hall, Tenant
Terrylynne Turner, Witness for Tenant
Christopher Hodgson, Owner Representative

SUMMARY OF DECISION

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

CONTENTIONS OF THE PARTIES

The tenant filed a petition on November 1, 2016, claiming that his housing services had decreased. His claims of decreased services include a lack of adequate heat; excessive humidity and mold due to lack of a vapor barrier and improper drainage; lack of adequate amperage; loss of the benefit of running the electric heaters and dehumidifier on house power; lack of consistent hot water in shower; lack of security doorknob and latch on rear security gate and lack of lock on side gate; and continued leaking in both the back stairwell and lower unit storage area (which cause a further problem with the humidity).

The owner filed a timely response to the tenant petition on December 14, 2016, denying that there had been a decrease in housing services.

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THE ISSUES

1. When, if ever, was the form *Notice to Tenant of the Residential Rent Adjustment Program (RAP Notice)* first served on the tenant?
2. Was the tenant current on his rent or lawfully withholding rent at the time he filed his petition?
3. Since the tenant signed a *Stipulation Re: Dismissal/Judgment* in November of 2014, when do the tenant's claims in this case begin?
4. Because the tenant can no longer reside in the downstairs portion of the unit, when does the tenant's claim end?
5. Have the tenant's housing services decreased? If yes, in what amount?
6. What if any restitution is owed between the parties, and how does it impact the rent?

EVIDENCE

Rental History: The tenant testified that he lives in a rental unit in a 4 unit building. He moved in in April of 2011. His initial rent was \$1,200 a month, and this has not been increased since he moved into the unit. When he moved into the unit it was owned by George Rowan, who sold the building to Jenny Leung in August of 2016.¹

The tenant further testified that when he was rented the unit it consisted of an upstairs section and a downstairs section, also referred to as a townhome unit. In the downstairs portion was the only kitchen in the unit, plus a dining room, a bedroom and a bathroom and a storage area that was under the front set of stairs. There was an opening from the downstairs living area into this storage area at all relevant times. The upstairs section had bedrooms, a living area and a bathroom, although no kitchen. There is a set of enclosed stairs that connect these two portions of the unit.

The tenant and his mother (Terrylynne Turner) further testified that when the unit was initially rented, the lease was signed by Ms. Turner and her daughter, Rachaell Kirstin Castro Mondino, with the understanding that the unit would be occupied by Mr. Hall (the tenant) and his sister Ms. Mondino. During the time the tenant's sister lived in the unit, she lived in downstairs portion and the tenant lived upstairs. Ms. Mondino moved out of the unit in August of 2012 and Mr. Hall moved downstairs. At that time William Faas moved into the unit and resided upstairs.

When Mr. Faas moved into the unit he added a kitchen into one of the upstairs areas that had previously been rented as a bedroom. The kitchen depicted in Exhibit 37 shows the upstairs kitchen area. The sink, stove and refrigerator depicted in those photos were added by Mr. Faas.

With respect to the issue of rent payments, the tenant testified that he pays \$600 a month in rent and the other tenant pays \$600 a month in rent. The rent payments have always been paid separately as long as Mr. Faas has lived in the unit.

¹ Exhibit 5. This Exhibit, and all other exhibits referred to in this Hearing Decision, was admitted into evidence without objection.

Mr. Hodgson testified that he is the property manager for the new owner of the property who purchased the property in August of 2016. On August 31, 2016, he posted a 24 hour notice to enter the premises in an envelope on the door of all 4 units on the premises.² He did this because the new ownership needed keys to all the units and he had to come to the facility with a locksmith to get all the keys. The envelope in which he posted the notice to enter also contained a copy of the *RAP Notice*.

During the Hearing on February 28, 2017, the tenant testified that he was only ever given the *RAP Notice* as an attachment to an email sent to him by the new manager of the building on October 15, 2016. His statement that he first received the *RAP Notice* on August 31, 2016, which was listed on the *Tenant Petition*, was a mistake. During the Hearing on March 29, 2017, the tenant acknowledged receiving Exhibit 46, a *24-hour notice to enter the premises*, which was posted on his door on August 31, 2016. He did not remember that a *RAP Notice* was included in the envelope. He had no explanation for why his *Tenant Petition* would have the same date for receipt of the *RAP Notice*. He then testified that "he must have" received the *RAP Notice* on that date.

Official Notice is taken of a prior case between the tenant and the prior owners, Kiet Leong and George Rowan (T14-0256.) In the *Tenant Petition* filed in that case, the tenant stated that he never received the *RAP Notice*. The owner, in his *Landlord Response*, in response to the question "when was the tenant first served with the *RAP Notice*," checked the box that said "I don't know."

The tenant testified that over the years he has had multiple disputes with the prior owner about the rent and the condition of the property. Because of those disputes there were periods of time during which he withheld rent, or paid a lower rent amount because of the conditions or because he paid for something out of pocket related to the use of the apartment and with the owner's permission. Additionally, the prior RAP case against George Rowan was dismissed by the tenant after he settled a claim against Mr. Rowan in response to an *Unlawful Detainer* action that had been filed.

A *Stipulation re: Dismissal and Judgment* was admitted into evidence as Exhibit 44. This stipulation arose after the *Unlawful Detainer* action filed in 2014. The tenant had been withholding rent because of the conditions. The *Stipulation* states that the tenant was to remain in possession of the rental unit and that any "rent that was past due prior to and up to October 31, 2014 is waived as compensation for damages." The *Stipulation* included a release from any and all claims arising from the tenancy and "any other prior acts."

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² Exhibit 46.

The tenant and his mother testified that other than the months listed below (starting in November of 2014) the tenant paid rent of \$600 a month. His roommate paid the other half of the rent.³

Months:	Payment Amount	Months	Payment Amount
September 2015	\$594	May 2016	0 (See below)
February 2016	\$523.92	June 2016	0 (See below)
April 2016	\$13.11	July 2016	0 (See below)

As to these times when the tenant did not pay full rent: the tenant testified that in September of 2015 he withheld \$6.00 in rent because he had purchased a part for the toilet in his unit at the request of the owner. In February of 2016, the tenant paid \$523.92. The tenant did not remember why he withheld \$77 in rent that month.

In April of 2016, the tenant paid \$13.11 in rent. This was explained in a letter he wrote to the prior owner in April of 2016, in which the tenant was being compensated for the purchase of a dehumidifier and the extra costs of electricity for running a space heater and a dehumidifier (see decreased services section below.). The prior owner did not seek any further money from the tenant in response to the letter of April 5, 2016.

At the Hearing held on February 28, 2017, the tenant testified on cross-examination that he does not recall if he paid rent in May, June or July of 2016. At the Hearing held on March 29, 2017, the tenant testified that he believes he paid rent of \$400 a month from May to July of 2016. These checks were not produced. The tenant was directed to provide proof of these checks to the Hearing Officer by April 6, 2017. No checks were produced.

Mr. Hodgson testified Jenny Leung is the new owner of the property and he is the building manager. He visited the building with her in May of 2016 as she was considering purchasing the building and was first in the tenant's unit in August of 2016. Mr. Hodgson testified that when Ms. Leung purchased the building, she was informed by Mr. Rowan that Mr. Hall had not paid rent from May-July of 2016.

Before Jenny Leung purchased the building, Mr. Rowan informed her that there had been a previous Rent Board case with the tenant and was further informed that the tenant was starting the process again. Mr. Rowan also referred to the unit in which the tenant lives as a "townhouse unit" and it was clear that this was one unit in which both Mr. Faas and Mr. Hall were residing. This particular townhouse unit is the only unit like it in the building.

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³ There was testimony that during the time preceding the *Stipulation* his roommate was also not paying rent (or his rent was not accepted by the owner. Since all restitution here will be limited to after November of 2014 (see below) it is not necessary to determine what amount the roommate paid or even consider the fact that the tenant was withholding rent before November of 2014.

Decreased Housing Services:

Heat: The tenant testified that there has never been adequate heat in the downstairs portion of the unit. There is one gas heater in the back corner of the bedroom which has never worked properly.⁴ This is the only heater to cover the area of this room, the bathroom, hallway, kitchen area and living room portion of the downstairs of the unit.

The tenant provided a declaration from his sister about the time she lived in the unit. The declaration reads: "...the gas heater was of insufficient size to heat the entire apartment unit to even 60 degrees,⁵ requiring both the use of an electric heater and the running the oven while open to heat the apartment so I was able to sleep without excessive shivering."⁶

The tenant further testified that this gas heater would only heat a small corner of the back bedroom; otherwise the rest of the rooms were quite cold unless he provided supplemental heat. The temperature in his unit in the winter is not more than 54° if all he has turned on is the gas heater.

The tenant further testified that after complaining about the lack of heat in the unit, which he had done many times in the past, Mr. Rowan, the prior owner, provided him with a portable electric heater and agreed to pay the increased electric bills associated with the use of the electric heat. Additionally, Rowan agreed that he would fix the heater, but never did. The tenant would provide information to the owner about the excess electricity costs for using electric heat in the unit on a once yearly basis, and then deduct that amount from the rent.

The tenant produced a letter he wrote to the prior owner on April 5, 2016, about (amongst other things) the lack of adequate heat in the unit and the deduction for the increased electric bills.⁷ The tenant further testified that when Ms. Leung purchased the building he informed her about the lack of heat in the lower portion of the unit by email.

In the prior case between the tenant and the former owner (T14-0256) the tenant claimed decreased services arising from the lack of heat in the downstairs portion of the unit. On cross-examination, the tenant testified that part of the *Stipulation* in the prior *Unlawful Detainer* action was that the owner would repair the heater. The *Stipulation* states "Plaintiff will provide one additional heater to the Defendant."⁸

The tenant further testified that on August 23, 2016, Mr. Hodgson visited his unit. The tenant tried to tell him about the problems in the unit but Mr. Hodgson was not paying

⁴ See photograph of heater, Exhibit 35 # 7.

⁵ It is understood that she is referring to heating the downstairs portion of the unit, not the upstairs as well.

⁶ Exhibit 1. This Exhibit, and all other exhibits referred to in this Hearing Decision, was admitted into evidence without objection.

⁷ Exhibit 2

⁸ Exhibit 44

attention to him. At that point, the tenant told Hodgson that he would send him information by email.

On September 13, 2016, Terrylynne Turner, the tenant's mother, wrote an email to Jenny Leung, the new owner, about the "habitability" issues in the unit. This email included complaints about the lack of adequate heat, the excessive humidity and mold, the lack of amperage, the lack of consistent hot water in the shower; the lack of a security doorknob on the rear security gate and the continued leaking in the back stairwell and lower unit front storage area.⁹

The tenant further testified that in response to this letter, there were multiple inspections and communications back and forth between the new management and the tenant. On September 20, 2016, the tenant's mother received an email from the manager of the property about testing the heater in the tenant's unit and the tenant received a 24 hour notice to enter.¹⁰ On September 22, 2016, the tenant met with Christopher (the manager) and showed him the lack of heat in the unit and the problems with the excessive humidity. He was told that the repairs would be forthcoming.

The tenant further testified that *PG&E* came to the unit on October 28, 2016, to check on the heater in his unit. *PG&E* issues a *Service Report* and a *Hazard Notice* stating that the heater had undergone a "safety check" and the heater was "disconnected due to potential hazard." The "hazard" was that the heater was vented into the stairway leading to the upper portion of the unit.¹¹ The tenant did not give the owner a copy of the *PG&E* notice.

In November of 2016, the owner provided two electric oil radiator heaters to the tenant. They supplied new ones because the tenant had informed the owner that the electric plugs on his older heaters had burned from the inadequate amperage in the electrical system. The owner stated in an email dated November 1, 2016, that a "professional electrician has verified the electricity in the apartment will more than support the heaters and provides a standard amount of electricity (amperage) for a space of its size."¹²

The tenant further testified that he contacted the City of Oakland Planning Department to have an inspection done on his apartment in October of 2016. The inspection was performed and in early November of 2016 a *Notice of Violation* was issued.¹³ As a result of the inspection the unit was "yellow tagged". The tenant produced a document from the City entitled CE ROUTING SLIP.¹⁴ This document notes that the owner was directed to "remove gas range & gas heater. Remove shower and repair electrical wiring. Should

⁹ Exhibit 8, page 1.

¹⁰ Exhibits 9 and 13

¹¹ Exhibit 20

¹² Exhibit 21

¹³ Exhibit 29, pages 5-6

¹⁴ Exhibit 23

have filed check to determine open area used as closet near front door and rear stairs leading up to rear unit. Non tempered window at rear stairs.”

The tenant testified that as he understood it the owner was attempting to get the problems with the heat repaired, but then after the inspection, the owner learned that the heater in the unit could not be repaired because the unit itself was not considered habitable space. On December 3, 2016, the tenant received a letter from the owner, via email, specifying that the “space currently has three heaters that provide adequate and stable heat.”¹⁵ The heaters that were referenced were all space heaters. This letter additionally states: “We were in the process of replacing a non-operating and previously installed gas heater on the wall but the City of Oakland building inspector has now stepped in and asked that we not repair it because it was not previously approved by the city to be there.”

The owner’s agent testified that after Ms. Leung purchased the unit, he made several trips to the property and met the tenant. He was not told of any problem with the heater. His first knowledge (and the first knowledge of J Properties—the legal name of the owner) of any problem in the unit came when he received the email from Ms. Turner (Exhibit 8). At that point he started investigating the lack of heat, which was an issue they took seriously.

As part of the investigation into the lack of heat, they made at least three visits to the unit to try to repair the problem. At first they determined that the heater did not put out adequate heat and they were unable to repair the heater. Then, in late October of 2016, on the date that they were scheduled to replace the heater, he got a call from Randy Schimm, an inspector from the City of Oakland, telling him not to repair the heater. The owner had not sought a permit to replace the heater. Mr. Hodgson was unable to testify as to the name of the company that was scheduled to replace the heater on the day he was called by Randy Schimm.

The owner’s agent additionally testified that it has been difficult working with the tenant and his mother, both of whom have blocked his access to the unit or shouted him down about several things over the months. Because of that he has had a difficult time getting workers to come to make repairs, because he feels he has to disclose the combative nature of the relationship.

The owner’s agent testified that on approximately November 2, 2016, a *Notice of Violation* was issued regarding the unit which he received about a week later. The *Notice* states “unapproved basement unit being used for habitable space with unapproved gas heat. Discontinue use as habitable space. Remove kitchen/bathroom and return to open storage space. Obtain permits, inspections and approvals for open storage area.”¹⁶ In response to the *Notice of Violation* the owner has removed the shower and tub from the bathroom in the downstairs unit. Additionally, on January 2, 2017, the owner served a

¹⁵ Exhibit 24, page 2

¹⁶ Exhibit 29, page 5-6

Notice to Cease on the tenants directing them to not use the downstairs portion of the unit.¹⁷

The owner's agent testified that he has removed part of the kitchen and the tub and shower in the bathroom. He is trying to get a permit to maintain the half bath in the downstairs portion of the unit.

Excessive Humidity: The tenant testified that there is a significant amount of humidity in the lower part of the unit. At first he just noticed that there were water leaks and pooling water in various pieces but at some point he noticed that the humidity meter in his snake's cage was reading 90%. This caused the tenant to investigate the humidity in his unit further. The tenant testified that the normal humidity inside a building is 30-40%; while in his unit in the summer the humidity levels remain in the 60% range, in the winter in the 70% range and when it rains it is in the 80% range. He knows this because he purchased a humidity gauge. The tenant provided photographs of two humidity gauges he had in his apartment. The photographs, taken in March of 2016, show humidity readings of 72% (in the kitchen/dining room area) and 62%.¹⁸ He also provided additional photographs of the humidity gauge taken in the last year showing readings of 50%, 64%, 71% and 77%.¹⁹ Photographs showing the placement of the humidity meter was entered into evidence as Exhibit 35, ## 1-2 and 5.

In April of 2016, the tenant sent a letter to Mr. Rowan documenting a prior conversation between them where Rowan had agreed to purchase a dehumidifier for the unit.²⁰ The tenant further wrote to Mr. Rowan later in April of 2016, complaining about the excess humidity in the unit, and the fact that the tenant had just learned that the underside of the house had been inappropriately sealed (making the moisture problem worse.)²¹ Attached to the second letter were the photographs of the humidity gauges taken in March of 2016.

Additionally, the letter documents that Mr. Hall was planning on taking a rent reduction in May to July of 2016 to \$400 a month. (Although as noted above, there is no proof of any rent payments during that period.)

The tenant testified that in investigating the source of the humidity in his unit, he and the former property manager, Kevin Ota, looked at the crawl space underneath his unit. They discovered that it was moist, covered with mold and efflorescence (a crystalline deposit on surfaces of masonry, stucco or concrete).²² This was caused by poor work done by a prior contractor in 2014, who was attempting to control for rodents by completely sealing the underside of the building. Additionally, the excess moisture was in part caused by a leak from a water heater in the laundry room, immediately adjacent

¹⁷ Exhibit 25

¹⁸ Exhibit 3, page 5

¹⁹ Exhibit 32. These photographs were taken on various dates in 2016 and are all recording the interior humidity in the center of the lower portion of the tenant's unit.

²⁰ Exhibit 2 (note that the dehumidifier is referred to inaccurately in the letter as a "humidifier.")

²¹ Exhibit 3

²² Exhibit 3, pages 3 and 4

to the tenant's unit, which had been leaking tens of gallons of water a day back in 2014. All of this moisture was locked under the tenant's unit when the prior contractor sealed the area (including the vents that were necessary to provide an escape for the excess moisture).

The tenant further testified that he had an agreement with Mr. Rowan that he could use the "house power" to provide power to the dehumidifier. The tenant had learned that the storage area connected to his unit had electricity that was on the "house power" rather than being charged to the tenant's PG&E bill, so he used the outlet in that area to power the dehumidifier. Mr. Hall's request to use house power to power the dehumidifier is noted in the letter the tenant wrote to Mr. Rowen on April 8, 2016.²³

The tenant testified that Mr. Rowan did not respond to his letter of April 8, 2016, regarding the humidity in the unit and took no action to repair the problems. Nor did Rowan object to his using the house power to power the dehumidifier.

The declaration from the tenant's sister, Rachael Mondino, additionally discusses the water damage in the unit during the time she lived there.²⁴

Official Notice is taken that in the prior case regarding this unit, the tenant complained of excessive moisture in his unit.

On June 2, 2016, a representative of the new owner visited the building with Christopher Hodgson (the manager). The tenant does not know this other person's name. The unnamed person asked the tenant why he had the fans and dehumidifier set up in the unit and the tenant informed him of the problems with the humidity in the unit.

As noted in the section above on the heater, after the new owner was sent a letter regarding habitability problems in September of 2016, the new ownership started investigating the problem.

The owner representative testified that when he visited the unit and met Mr. Hall in August of 2016, he did not notice there was a dehumidifier in the unit, nor was he informed of any problems in the unit until the September 13, 2016, email.

The owner representative testified that he paid no attention to the tenant's complaints about humidity in the unit because the unit did not feel humid to him. He did acknowledge receipt of photographs of the meters showing the humidity in the unit, but did not know where to start with any complaint about the humidity.

Lack of adequate amperage: The tenant testified that there is lack of adequate amperage in the electricity system that provides power to the unit. He knows this because over the years he has had several of his electric appliances blow up from being

²³ Exhibit 3

²⁴ Exhibit 1

plugged into the electric outlets in his unit. These include a subwoofer, an air purifier and several electric heaters. He also regularly has to reset the breakers after they would "pop."

He complained about this to the old owner in the past (see April 8, 2016 letter)²⁵ and to the new owner with the email his mother sent in September of 2016.

The tenant further testified that the new owner sent several electricians to check the electric outlets. However, these electricians checked the electric capacity, they were not also running electricity in the upstairs portion of the unit, where there are additional electrical appliances all connected to the same meter.

The owner's representative testified that on October 27, 2016, a licensed electrician came to the unit in response to the tenant's complaints. As far as he knows, this electrician did not test anything about the upstairs portion of the unit and they did not enter the upstairs together. The electrician tested the downstairs outlets and found a burned out outlet. Other than that the electrician found that the electricity provided in the downstairs of the unit supported the electric heaters that were in use. The owner's representative specifically stated that he did not pay attention to the dehumidifier or ask the electrician any questions about whether it's operation would impact the electricity in the unit.

At no time did the owner's representative see any burned out electrical appliance.

Loss of the benefit of running the electric heaters and dehumidifier on house power: The tenant testified that he had an agreement with Mr. Rowan, the prior owner, to run the space heater and the dehumidifier through the "house power" rather than through the electrical outlets in his unit. This was to allow the cost to be borne by Mr. Rowan, rather than him. The tenant had learned some time in the past that there was an electric outlet in the storage area in the front of the unit that was connected to the "house power" rather than to his PG&E bill. He knew that because at some point the light in the storage area went out and when the tenant investigated he learned that the owner had not paid the PG&E bill that he was getting for the house power (the house power also covers the lights around the building and in the laundry room.)

The tenant further testified that in October of 2016 he received a *Notice to Cease* stating that he had to stop using the house electricity for the personal use in his unit.²⁶ Along with the *Notice to Cease* he received a letter from the owner stating that "PG&E has informed us that house power use at the building has spiked substantially in recent months, resulting in a bill 10x higher than the previous average."²⁷ The tenant testified that there was a fan running in the crawl space that an agent of the owner had installed in order to deal with the humidity in the crawl space. This fan was connected to the laundry room power.²⁸ The tenant did not put the fan in that location. The only way the

²⁵ Exhibit 3

²⁶ Exhibit 17, page 2

²⁷ Exhibit 17, page 1

²⁸ A photograph of this fan was entered into evidence as Exhibit 34.

tenant used house power was by connecting the dehumidifier into the electric outlet in the storage area in his unit.

Since he had to stop using the house power his bills for electricity alone have gone up to approximately \$270 a month (for running the dehumidifier and the electric heater) when it used to be only \$100 a month. The tenant did not produce these electric bills to show the change to his billing.

Lack of consistent hot water in shower: The tenant testified that the water in the shower was never hot enough. For the entire time he has lived in the downstairs portion of the unit, the water in the shower was not as hot as the water in the sink in the bathroom. He showed this to Chris on multiple occasions after Jenny Leung purchased the building and referred to it in the email about habitability problems that was sent on September 13, 2016.²⁹ He previously had pointed it out to the prior owner who had assured him it would be taken care of by Kevin, but nothing Kevin did actually repaired the problem. This complaint was in approximately 2015 or 2016.

The tenant testified that he believes that his complaints about the shower were a part of his previous RAP petition against George Rowan. Official Notice is taken of the prior case between the tenant and Mr. Rowan, case T14-0256. The tenant did not make a complaint about the shower temperature with the documents he filed in that case.

The owner's representative testified that he has never gone to the unit specifically to check on the hot water; but he has checked it multiple times to see if it was hot enough when he was there for other reasons. He tested the hot water on three occasions by putting his hand under the water from the shower on multiple occasions. He never measured the water with a thermometer or measure it against the water in the bathroom sink. The water has always seemed hot enough to him; on one occasion he had to remove his hand because the water was "too hot".

Lack of security doorknob: The tenant testified that after the new owner purchased the property, she had the knob removed from the security gate outside his unit in order to rekey all the locks to the unit. The new owner had a new deadbolt installed, but it broke off in the tenant's hand because it was not installed correctly. For a few months there was no doorknob or deadbolt on the back of his security gate. During this time there were no break-ins or other security problems. The only issue was that it was difficult to shut the door fully.

The tenant communicated to the owner about this in the email sent by Ms. Turner on September 13, 2016.

The tenant produced a 24 hour notice to enter from the owner that he received on November 16, 2016. This notice states that on November 17, 2016, someone would be

²⁹ Exhibit 8, page 1

coming to the unit to repair the "damaged exterior doorknob."³⁰ It was repaired in November of 2016.

The owner representative testified that the security doorknob was missing a part of the knob but there was never a security problem because the door to the tenant's bedroom, which is on the other side of this security door, also has a deadbolt lock that worked. According to a December 3, 2016, letter from the owner to the tenant, this was repaired on November 17, 2016.³¹

Lack of lock on side gate: The tenant testified that the new owner removed a lock on the outside gate that leads to a side yard.

The owner representative testified that this lock was removed because this is the area where the *PG&E* meters are, and *PG&E* needed access to the area.

Continued leaking in both the back stairwell and lower unit storage area: The tenant testified that there were ongoing leaks in the front storage area and in the interior staircase that connected the bottom part of the unit from the top portion of the unit. This started before 2014 and continued over the years. His sister complained about this in her declaration. He produced photographs of water entry in these areas taken in October of 2016.³² The leaks in the storage area cause mold to grow on many of the items that were stored there.

The tenant's prior case against George Rowan, T14-0256, contains allegations about water entry in these areas. This problem was listed on the email that Ms. Turner sent to the new owner in September of 2016.³³

At the Hearing, the owner's representative denied that there were any signs of water damage in the storage area of the back stairwell.

At the Inspection by this Hearing Officer there were obvious signs of water entry in the storage area adjacent to the living room in the downstairs portion of the unit.³⁴ The paint was peeling in a variety of places, particularly around the door frame. There was additional water damage in the stairwell area that connects the bottom portion of the unit to the top portion of the unit.

On cross-examination, the tenant testified that there is mold in the unit growing under the front stairs, there is mold on all the window sills, in the back stairwell on the ceiling and on the toilet in the bathroom. At the Inspection by this Hearing Officer there were signs of possible mold and mildew in the front storage area, the closet in the tenant's bedroom, under the tenant's bedroom rug, and on the tenant's bedroom wall. There

³⁰ Exhibit 22

³¹ Exhibit 24, page 3

³² Exhibit 31.

³³ Exhibit 8

³⁴ See Inspection Photos 3-6

were also signs of water damage and peeling paint on the exterior of the building, adjacent to the tenant's bedroom.

Mr. Hodgson testified that when he got the email from the tenant's mother regarding concerns about leaking and mold he looked at the walls in the tenant's unit and did not see any signs of mold. He did not look in the back stairwell or the area under the stairs when he did this investigation. He further testified that the stairwell connecting the two parts of the unit is actually an exterior stairwell that should not have been required to be water tight. He later testified that the stairwell is a hallway connecting the two parts of the unit.

Hodgson further testified that he has gone to the unit multiple times to look for water entry, including during times it was raining. He did not see any at any time before the tenant's petition was filed. He did see signs of water entry (but no active leak) in the back stairwell on one of his recent visits to the property in February of 2017, when he visited the unit during an exceptionally rainy day.

The owner representative further testified that dealing with the tenant has been very challenging. He has called him names (once having called him a "shyster" and "shady dude"); he has threatened him, and he has refused entry on at least one occasion (December 6, 2016) after a *24 Hour Notice* to enter was posted. The tenant wouldn't let him in because he said he was sick and had not received the notice to enter, which was still posted on his door.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

The Rent Adjustment Ordinance (Ordinance) requires an owner to serve the *RAP Notice* at the start of a tenancy³⁵ and together with any notice of rent increase or change in the terms of a tenancy.³⁶ An owner can cure the failure to give notice at the start of the tenancy, but may not raise the rent until 6 months after the first *RAP Notice* is given.³⁷ The tenant credibly testified that did not receive a *RAP Notice* when he moved into the unit, or at any time when George Rowan owned the building.

The owner representative convincingly testified that he gave the tenant a *RAP Notice* along with a notice to enter that was served on August 31, 2016. The tenant testified that while he did not remember getting the *RAP Notice* with that notice to enter, he did write that he received the *RAP Notice* on August 31, 2016 on his petition, so he must have received it that day.

It is found that the tenant received the *RAP Notice* on August 31, 2016.

³⁵ O.M.C. § 8.22.060(A)

³⁶ O.M.C. § 8.22.070(H)(1)(A)

³⁷ O.M.C. § 8.22.060 (C)

Was the tenant current on his rent or lawfully withholding rent at the time he filed his petition?

In order to file a petition, a tenant must be current on his or her rent or lawfully withholding rent.³⁸ The owner has the burden of proof to establish that the tenant was not current on his rent. The tenant filed his Petition on November 1, 2016.

It is clear from the evidence that Mr. Hall withheld some rent that he owed to the prior owner in February of 2016, April of 2016 and May-July of 2016.

However, at the time the tenant filed his petition, there were ongoing problems in his unit regarding the lack of an operating heater, excessive moisture and water entry and a host of other issues. A tenant may exercise the option not to pay rent when a unit's condition is in breach of the implied warranty of habitability.³⁹ The statutory authority for rent withholding is Code of Civil Procedure § 1174.2. It provides that a substantial breach of the implied warranty of habitability may be raised as a defense to an unlawful detainer action. To confer standing to file a Rent Adjustment petition, a tenant must show that he or she might prevail in court in a claim for a habitability breach, that is, the tenant must present a prima facie case that he or she is withholding the rent legally. Here, the tenant has established that there was a lack of heat (amongst other things) which is a clear habitability problem.

Due to these circumstances, the tenant is considered to be current lawfully withholding rent at the time his petition was filed.⁴⁰

Since the tenant signed a *Stipulation Re: Dismissal/Judgment* on November 3, 2014, when does the tenant's claims in this case begin?

Under the Oakland Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent⁴¹ and may be corrected by a rent adjustment.⁴² However, in order to justify a decrease in rent, a decrease in housing services must be the loss of a service that seriously affects the habitability of a unit or one that was provided at the beginning of the tenancy that is no longer being provided. The tenant has the burden of proof with respect to each claim.

In a decreased services case, where the *RAP Notice* has been given at the beginning of a tenancy, a tenant is only allowed relief for 90 days prior to the filing of the petition⁴³. However, where no *RAP Notice* was given before the tenant petition was filed, (or was not given at any time before 90 days before the tenant petition is filed) the tenant can seek restitution for up to three years.

³⁸ O.M.C. & Regulations, § 8.22.090

³⁹ O.M.C. & Regulations, § 8.22.090

⁴⁰ The underpayment is included in the restitution section below.

⁴¹ O.M.C. § 8.22.070(F)

⁴² O.M.C. § 8.22.110(E)

⁴³ Board Decision in Case No. T09-0086, Lindsey v. Grimsley, et al. as modified by O.M.C. § 8.22.090(A)(3)

In this case, the *RAP Notice* was served on August 31, 2016, and the tenant petition was filed on November 1, 2016. Here, since no *RAP Notice* was given earlier than 90 days before the tenant petition was filed, the tenant is entitled to restitution for conditions as far back as May of 2014. However, because of the *Stipulation* signed by the tenant and the prior owner in November of 2014, the tenant gave up all claims that could have been made prior to November 3, 2014. Therefore, the tenant's claims for restitution begin on November 4, 2014.

Because the tenant can no longer reside in the downstairs portion of the unit, when does the tenant's claim end?

The tenant filed his petition prior to being informed that he could no longer live in the downstairs portion of the unit effective January 9, 2017. The tenant was informed of the removal of this right in a *Notice to Cease* on January 2, 2017. This *Notice* requires the tenant to stop residing in the downstairs portion of the unit as of one week after the notice was given.

The tenant was informed at the Hearing that since his petition did not claim a decreased service related to the loss of the right to live in the downstairs portion of the unit, this issue was not a subject of the *Tenant Petition* he filed. As of the Hearing dates, the tenant had not yet filed a petition regarding the loss of services associated with this *Notice to Cease*.

Because the tenant can no longer reside in the downstairs portion of the unit, his claims associated with the conditions in the downstairs portion of the unit cease on January 9, 2017.

Have the tenant's housing services decreased? If yes, in what amount?

In order to claim a decrease in housing service, a tenant must establish that he has given the owner notice of the conditions and the opportunity to repair the problem. Each of the tenant's concerns are discussed separately below:

Heat: The tenant has established that he has not had a working installed heater at any time that he was living in the downstairs portion of the unit. The Oakland Building Maintenance Code provides that heating facilities shall be capable of maintaining a room temperature of 68° and "such facilities shall be *installed* and maintained in a safe condition and in accordance with the Oakland Building Construction Code..." O.M.C. § 15.08.260. (Emphasis added). Failure to provide an installed heater violates this Code and is a breach of the warranty of habitability.

The fact that episodically the tenant has been provided with space heaters does not change this result. Space heaters are not installed, as required by law. However, this problem was limited to the downstairs portion of the unit. The tenant is entitled to restitution of overpaid rent, from November 3, 2014 through January 9, 2017, for the failure to provide an installed heater capable of maintaining a reasonable room

temperature. This failure amounts to a loss of service of 10% of the rent. (See chart in restitution section below.).

The fact that the original loss was caused by the prior owner does not change this result. The Ordinance states that "owner' means any owner, lessor or landlord, as defined by state law, of a covered unit that is leased or rented to another, and the representative, agent, or successor of such owner, lessor or landlord." O.M.C. § 8.22.020. Therefore, the new owner stands in the shoes of the old owner.

Excessive Humidity: This matter is combined with the issue of the leaks (See below.)

Lack of adequate amperage: The tenant has established that there was insufficient electrical supply in his unit to cover the electrical service he needed to run both the multiple space heaters in his unit and the dehumidifier. While this was likely in the same condition as when he moved in, this became an issue because the tenant was required, to maintain the unit in a barely habitable way, to constantly run a dehumidifier and several electric heaters. While he testified that he complained about this to the old owner, this was not a part of the prior RAP proceeding. It was first mentioned in writing in the April 8, 2016, letter to the prior owner.

No action was taken by the prior owner to deal with the lack of adequate amperage. All action taken by the new owner after September 13, 2016, was inadequate as the electrician never went upstairs or considered the unit as a whole. Nor did the electrician consider the ongoing need for the dehumidifier. Mr. Hall was convincing that the electric outlets would ruin his electrical appliances and that it was the electricity in the unit as a whole that was the problem.

This matter should have been repaired two weeks after it was first brought to the prior owner's attention. The tenant is entitled to restitution of overpaid rent of 5% of the rent from April 22, 2016 through January 9, 2017, because of this condition.

Loss of the benefit of running the electric heaters and dehumidifier on house power: Even if the tenant could establish that he had the right to plug into "house power," he did not provide any evidence of *PG&E* bills after he had to stop using "house power" that would show that his *PG&E* bills increased. A rough estimate of his *PG&E* bills is inadequate when the tenant had the ability to provide proof of his loss. This claim is denied.

Lack of consistent hot water in shower: The owner representative's testimony that he checked the hot water in the shower on three occasions and it was hot enough was convincing. This claim is denied.

Lack of security doorknob: The evidence is clear that there was a period of time between September 13, 2016 and November 17, 2016, when the security doorknob was not working properly. This should have been repaired immediately upon notice.

The fact that the tenant had other locking doors does not solve the problem with the lack of a working lock on this door. This door leads to a staircase that connects the upper and lower portions of the unit, and is essentially a hallway of the tenant's unit. Therefore, it was required to be as secure as it had been in the past. Since the owner's actions caused it to break, the owner should have repaired it immediately. The tenant is entitled to restitution of overpaid rent of 2% of the rent for the period of time that this door lock was not operable. (See chart below.)

Lack of lock on side gate: The fact that the lock of the side gate was removed does not appear to have affected the tenant. The side gate does not provide direct access to the tenant's unit. It leads to two doors that do provide access, but providing those doors were locked, the side gate lock is only an additional safety feature. Furthermore, the owner reasonably needed access to this area to get to the *PG&E* meters. This claim is denied.

Continued leaking in both the back stairwell and lower unit storage area and excess humidity in the unit: The tenant has established that there have been ongoing leaks in both the front storage area and the back staircase through the entire time he has been living in the downstairs portion of the unit. This was a claim in his prior case in T14-0256. Additionally, the tenant has established that there has been an ongoing issue of excess humidity in his unit. This appears to be due in part to the leaks, but also due to the trapping of fluid in the crawl space under the tenant's unit. It is clear that he complained about the humidity again to Mr. Rowan back in 2016, because Mr. Rowan paid for the dehumidifier he purchased.

At the Inspection by this Hearing Officer there was paint peeling in a variety of places, particularly around the door frame of the storage area. There was additional water damage in the stairwell area that connects the bottom portion of the unit to the top portion of the unit. There was also signs of mold or mildew in the bedroom closet, under the bedroom rug and on the bedroom wall. There were also signs of peeling paint and moldy areas on the exterior of the building, on the other side of the wall from the tenant's bedroom. This exposed stucco is an obvious source of wicking moisture that could cause the mold growth in the tenant's unit.

The fact that Mr. Hodgson has not seen water entry on his trips to the unit does not change this conclusion. Hodgson did acknowledge that on one of his trips to the unit, on a particularly rainy period, he saw signs of prior water entry. Further, there are multiple photographs of water entry, and multiple signs in the unit of past water entry. Additionally, there are multiple signs of unusually high humidity levels in the unit. While the City of Oakland does not have a standard for levels of humidity, the Building Maintenance Code states that a room the "dampness of habitable rooms" is inadequate sanitation. O.M.C. § 15.08.340. Additionally, there is significant evidence of signs of mold and mildew in the unit, which is a sign of water entry and excessive humidity.

The tenant is entitled to restitution of overpaid rent of 8% of the rent, from November 3, 2014 through January 9, 2017, for the leaks, water entry, humidity and mold in the unit.

What if any restitution is owed between the parties, and how does it impact the rent?

The chart below lists the tenant's claims of decreased services. The losses he experienced, for which he is entitled to restitution, are set off against the underpayments of rent that were not otherwise explained.

Mr. Hall underpaid rent on several occasions since November of 2014, when these reductions begin. In September of 2015, he deducted \$6.00 from the rent because he purchased a part for the toilet. This is not an "underpayment" because the reduction was with the agreement of the owner and is not related to any of Mr. Hall's claims. He also deducted \$76.08 in February of 2016. Mr. Hall did not remember why he deducted this amount of rent. Therefore, this amount is listed as an underpayment on the chart below.

In April of 2016, Mr. Hall deducted rent in the amount of \$586.89 and only paid rent of \$13.11. That deduction was for payment of the dehumidifier and for the costs associated with the extra *PG&E* payments being made for the use of the dehumidifier and space heaters. There is no evidence that Mr. Rowan objected to this rent decrease; and these particular losses are not a part of the tenant's claims. Therefore, this rent payment is not considered an "underpayment" here. However, there is no evidence of Mr. Hall paying any rent in May-July of 2016. These are underpayments. Therefore, the total underpayments related to Mr. Hall, that are entered on the below chart, equals \$1,876.08 (\$76.08 for February 2016 and \$600 each for May-July of 2016.).

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VALUE OF LOST SERVICES

Service Lost	From	To	Rent	% Rent Decrease	Decrease /month	No. Months	Overpaid
Heat	3-Nov-14	9-Jan-17	\$1,200	10%	\$120.00	26.25	\$ 3,150.00
Electricity	22-Apr-16	9-Jan-17	\$1,200	5%	\$ 60.00	10.00	\$ 600.00
Security Doorknob	13-Sep-16	17-Nov-16	\$1,200	2%	\$ 24.00	2.25	\$ 54.00
Leaks, moisture and mold	3-Nov-14	9-Jan-17	\$1,200	8%	\$ 96.00	27.00	\$ 2,592.00
\$ -							-
TOTAL LOST SERVICES							\$ 6,396.00

UNDERPAID RENT

From	To	Monthly Rent paid	Max Monthly Rent	Difference per month	No. Months	Sub-total
1-Feb-16	31-Jul-16	various	various			\$(1,876.08)
\$ -						
TOTAL UNDERPAID RENT						\$(1,876.08)

RESTITUTION

MONTHLY RENT	\$1,200
TOTAL TO BE REPAID TO TENANT	\$ 4,519.92
TOTAL AS PERCENT OF MONTHLY RENT	377%
AMORTIZED OVER 12 MO. BY REG. IS	\$ 376.66

Mr. Hall is entitled to restitution for overpaid rent in the amount of \$4,519.92.

Overpayments of this size are normally adjusted over a period of 12 months⁴⁴. For now this \$376.66 a month is subtracted from the tenant's current legal rent of \$1,200 for a total rent of \$823.34 a month. From May of 2017 through April of 2018, the tenant's rent is \$823.34 a month. It is up to the tenant to work out the rent payments he makes with his co-tenant.

Additionally, if the owner wishes to pay the tenant the restitution in one lump sum, she has the authority to do so. If the owner pays the tenant restitution, the tenant must stop deducting the restitution.

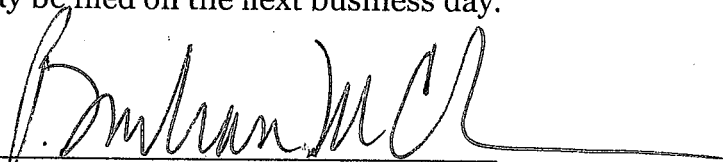
ORDER

1. Petition T16-0622 is granted in part.

⁴⁴ Regulations, Section 8.22.110(F)

2. The tenant's base rent is \$1,200 a month.
3. The tenant is owed restitution for decreased services in the amount of \$4,519.92.
4. From May 2017 through April of 2018 the tenant's rent is \$823.34 a month.
5. The tenant's rent reverts to the base rent in May of 2018.
6. Nothing in this Order prevents the Owner from increasing the rent providing any rent increase notice is served pursuant to the laws of the Rent Adjustment Ordinance and Civil Code § 827.
7. **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: April 12, 2017



Barbara M. Cohen
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE

Case Number T16-0622

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

Jaimeson Hall
1015 East 22nd St
Oakland, CA 94606

Owner

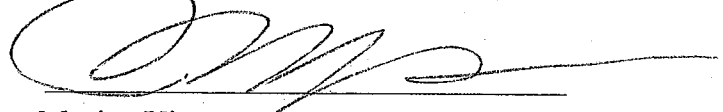
Jenny Leung
4123 Broadway #108
Oakland, CA 94611

Owner Representative

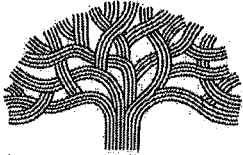
Christopher Hodgson
4123 Broadway #108
Oakland, CA 94611

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 April 13, 2017 in Oakland, CA.


Maxine Visaya

000032

 CITY OF OAKLAND	CITY OF OAKLAND RENT ADJUSTMENT PROGRAM P.O. Box 70243 Oakland, CA 94612-0243 (510) 238-3721	20 FRI 5 PM 1:32 For date stamp
	<u>APPEAL</u>	

Appellant's Name Jenny Leung		<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant	
Property Address (Include Unit Number) 1015 E 22nd St Oakland CA 94606			
Appellant's Mailing Address (For receipt of notices) 4123 Broadway #108 Oakland CA 94611		Case Number T16-0622	
		Date of Decision appealed 4/12/17	
Name of Representative (if any) Christopher Hodgson		Representative's Mailing Address (For notices) 4123 Broadway #108 Oakland, CA 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.)

Submissions to the Board are limited to 25 pages from each party. Please number attached pages consecutively.
 Number of pages attached: 4

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

I declare under penalty of perjury under the laws of the State of California that on
 May 3, 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	Jaimeson Hall
Address	1015 E 22nd St
City, State Zip	Oakland, CA 94606
Name	
Address	
City, State Zip	

	Jenny Leung	5/3/17
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE		DATE

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

APPEAL T16-0622

Other: Calculation of the Value of lost services is flawed. Re: Underpaid rent.

The rent for the apartment in question is \$1200. This is the monthly rent figure used by the hearing officer to calculate the value of loss of services. The residents have previously decided between themselves how to split the \$1200 monthly rent amount. They pay \$600 each.

A March 29th date for the hearing was called specifically asking for the residents to produce proof of payment over the past 3 years.

For the \$600 Jaimeson Hall portion of the rent: no checks were produced by the resident for the months of May, June and July of 2016.

For the \$600 Bill Faas Portion of the rent: no checks were produced at all.

However, the hearing officer counted the Jaime Hall portion of the missing checks as underpayment, but not the Bill Faas portion. Both the missing Jaime Hall checks and Bill Faas checks are simply months where no proof of payment was produced. No explanation is provided to differentiate a missing Jaime Hall check from a Bill Faas missing check. The resident was given multiple opportunities to produce proof of rent payment after it was specifically requested by the hearing officer.

The Calculation of the Value of lost services is based off of a base rent of \$1200 yet half of that amount (\$600) each month was not proved to have been paid over the entire time period in question.

The decision is not supported by adequate evidence. Re: Electricity/ "lack of adequate amperage"

This is referring to the portion of the hearing officer's finding under "Electricity" in the Value of lost services section, and otherwise called "lack of adequate amperage" in the tenant petition and hearing decision.

The hearing officer used the basis that the upstairs portion of the unit was not inspected by an electrician, where there were no complaints about amperage made, to justify the majority of a 5% rent decrease from April 22nd 2016 to January 9th 2017 (totaling \$600, amortized over 12 months), under "Electricity" in the Value of Lost Services section of the finding. However, in doing so the hearing officer appears to be confusing an electric *meter* with an electric *breaker*. This apparent technical misunderstanding forms the basis for this portion of the hearing decision. For the electric capacity of a particular electric outlet in this context, how many appliances per *breaker* switch would have an effect on how the outlet performed. How many residential appliances per PGE *meter* would not. For example, a large home is usually on one meter.

This value of lost services of \$600.00 total, amortized over 12 months, should removed completely or reduced from the finding. It is largely based on a technical misunderstanding by the hearing officer.

The Finding of Fact and Conclusion of Law from page 16 of the hearing decision reads:

"The tenant has established that there was insufficient electrical supply in his unit to cover the electric service he needed to run both the multiple space heaters in his unit and the dehumidifier. While this was likely the same condition as when he moved in, this became an issue because the tenant was required, to maintain the unit in a barely habitable way, to constantly run a dehumidifier and several electric heaters. While he testified that he complained about this to the old owner, this was not part of the RAP proceeding. It was first mentioned in writing in the April 8, 2016 letter to the prior owner.

No Action was taken by the previous owner to deal with the lack of adequate amperage. **All action taken by the new owner after September 13, 2016, was inadequate as the electrician never went upstairs or considered the unit as a whole.** Nor did the electrician consider the ongoing need for a dehumidifier. Mr. Hall was convincing that the electric outlets would ruin his electrical appliances and that it was the **electricity in the unit as a whole that was the problem.**

This matter should have been repaired two weeks after it was first brought to the prior owners attention. The tenant is entitled to restitution of overpaid rent of 5% of the rent from April 22, 2016 through January 9 2017, because of the condition."

From the evidence portion of the hearing decision on pages 9 and 10:

"The tenant testified that there is a lack of adequate amperage in the electricity system that provides power to the unit. He knows this because over the years he has had several of his electrical appliances blow up from being plugged into the electrical outlets in his unit. These include a subwoofer, an air purifier and several electric heaters. He also regularly has to reset the breakers because they would "pop."

He complained about this to the older owner in the past (see April 8 2016 letter) and to the new owner with the email his mother sent in September of 2016.

The tenant further testified that the new owner sent several electricians to check the electric outlets. However, these electricians checked the electric capacity, they were not also running electricity in the upstairs portion of the unit, where there are additional electrical appliances all connected to the same meter.

The owner's representative testified that on October 27, 2016, a licensed electrician came to the unit in response to the tenant's complaints. As far as he knows, the electrician did not test anything about the upstairs portion of the unit and they did not enter the upstairs portion together. The electrician entered the downstairs outlets and found a burned out outlet. Other than that the electrician found that the electricity produced in the bottom portion of the unit supported the electric heaters that were in use. The owner's representative specifically stated that he did not pay attention to the dehumidifier or ask the electrician any questions about whether its operation would impact the electricity in the unit."

Also from the Evidence section of the hearing decision, on page 6.

The owner stated in an email dated November 1st, 2016 that “a professional electrician has verified the electricity in the apartment will more than support the heaters and provides a standard amount of electricity (amperage) for a space of its size.”

For the dehumidifier concern, a professional licensed electrician previously verified that the capacity of the apartment is appropriate. The tenant’s complaint was that there was lack of adequate amperage to run his appliances, however the electrician verified that all of these appliances could be run at the same time if needed. A dehumidifier was never specifically considered; however this device is designed for in-home use with the same demands on electricity as other devices that the electrician did specifically consider including: space heaters, a stereo system, tv, etc. What is important is that the specifications of the electrical outlets are configured for a space of that size, which was confirmed by the electrician.

The decision is not supported by adequate evidence. Re: Heat.

In the upstairs portion of the unit, the apartment has an installed, vented heater capable of heating the entire space of the up and downstairs of the apartment to a temperature of 68 degrees, 3 ft above the floor of the entire unit, required by OMC.15.08.260.

The apartment was rented to the residents as one unit. There is no Oakland ordinance that requires an installed heater on every floor, only an installed heater that can heat space to 68 degrees.

The ordinance reads:

Heating System. All habitable space shall be provided with heating facilities capable of maintaining a room temperature of 68° F at a point 3 feet above the floor. Such facilities shall be installed and maintained in a safe condition and in accordance with the Oakland Building Construction Code and all other applicable laws. Unvented heaters shall not be permitted. All heating devices or appliances shall be of an approved type.

The hearing officer did not consider the fact that there is an installed heater on the upper floor in this finding. The tenant did not suggest that the installed heater would not heat the lower floor. The “Heat” portion of the ruling is not supported by adequate evidence because the hearing officer never considered the unit as a whole or incorporated the upstairs installed gas heater into her ruling. The fact that space heaters were episodically provided to the tenant does not discount the presence of an adequate installed heater on the top floor capable of heating the entire space without the addition of space heaters.

I was denied sufficient opportunity to respond to the petitioners claim. Re: Rap Notice.

In the Finding of Fact on page 14, the hearing officer wrote:

In a decreased services case, where a RAP Notice has been given at the beginning of a tenancy, a tenant is only allowed relief for 90 days prior to filing out of the petition. However, where no RAP notice was given before the tenant petition was filed, (or was not given at any time before 90 days before the tenant petition was filed) the tenant can seek restitution for up to three years.

There is good reason to believe the resident would have received the RAP sheet during previous ownership. Access to this particular paperwork from the time period before the building changed ownership is difficult for current ownership. For example, the resident was served a 3 day notice by previous ownership on 10/1/14. In Oakland, for this form to be valid it needs to be accompanied by a RAP notice. This 3-day notice was served *after* a the referenced previous rent board case with previous ownership.

Importantly, recounted in the hearing decision, the resident has repeated difficulty recalling when he received certain paperwork, specifically when he received a RAP sheet from current ownership. This suggests he also may have trouble recalling paperwork from previous ownership.

From the evidence portion of the hearing decision on page 2:

During the hearing on February 28, 2017, the tenant testified that he was only ever given the *RAP Notice* as an attachment to an email sent to him by the new manager for the building on October 15, 2016. His statement that he first received the *RAP Notice* on August 31, 2016, which was listed on the *Tenant Petition*, was a mistake. During the hearing on March 29, 2017, the tenant acknowledged receiving Exhibit 46, a *24-hour notice to enter the premises*, which was posted on his door on August 31, 2016. He did not remember that a RAP Notice was included in the envelope. He had no explanation for why his tenant petition would have the same date for the receipt of the RAP Notice. He then testified that "he must have" recited the RAP Notice on that date.

000038

CHRONOLOGICAL CASE REPORT

Case Nos.: T16-0539

Case Name: Hudson v. Lantz Properties, LLC

Property Address: 443 Lee Street, #201, Oakland, CA

Parties: Renia Hudson (Tenant)
Edgar Lantz (Property Owner)

OWNER APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	September 29, 2016
Owner Response filed	November 14, 2016
Hearing Decision issued	April 14, 2017
Owner Appeal filed	May 3, 2017

000039

T16-0589 KM/SR

<p>CITY OF OAKLAND RENT ADJUSTMENT PROGRAM Mail To: P. O. Box 70243 Oakland, California 94612-0243 (510) 238-3721</p>	<p>RECEIVED CITY OF OAKLAND RENT ARBITRATION PROGRAM 2016 SEP 29 PM 3:49</p> <p>For date stamp.</p>
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Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed.

TENANT PETITION

Please print legibly

Your Name <i>Renia Hudson</i>	Rental Address (with zip code) <i>443 Lee St. # 201 Oakland, Ca. 94610</i>	Telephone
Your Representative's Name	Mailing Address (with zip code)	Telephone
Property Owner(s) name(s) <i>Lantz Properties, LLC</i>	Mailing Address (with zip code) <i>5339 Broadway, Suite 400 Oakland, Ca. 94615-1903</i>	Telephone

Number of units on the property: 37

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

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

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

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

Date you moved into the Unit: 11/19/1996 Initial Rent: \$ 650 /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: 8/30/16. If never provided, enter "Never."

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

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

Date Notice Served (mo/day/year)	Date Increase Effective (mo/day/year)	Amount Rent Increased		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
8/30/2016	10/1/2016	\$ 1009.69	\$ 1050.88	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

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

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

III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:

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

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

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

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

IV. VERIFICATION: The tenant must sign:

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

Renee Heed
Tenant's Signature

9/29/2016
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).

Renee Heed
Tenant's Signature

9/29/2016
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): _____

Renia Hudson

9/29/16

On August 30th, 2016 I received a notice in the mail and one was slid under the door to my apartment notifying me of an rent increase above the normal increase due to Capital improvement cost. My bathroom had a hole in the ceiling, The trap door above my bath tub was loose and paint was falling in my tub, and my apartment had 3 huge leaks from the apartment above me and one was water infested. The hole over the bath tub had gotten larger, which by the way was leaking periodically, and several calls and emails were sent to Kantz Properties, 5 months later I was contacted and told that it would take 2-3 days max. to fix my ceiling then I was told that I would get a brand new bathroom. It took over a week, I had no access to my bath tub or shower for several days, and had to use the shower downtown Oakland at my gym and one day at my neighbors apartment. I was inconvenienced and my time was money just like his breakdown of fees to fix what had deteriorated in my bathroom. I have no receipts to justify what he is claiming and I don't feel like the cost to maintain the apartment's bathroom which was inhabitable should be turned over to me to pay. It took longer because the measurements on some materials weren't correct and when the sink was replaced the smell of glue was extremely overpowering and I had to stay somewhere else. which

RECEIVED
CITY OF OAKLAND
RENT ARBITRATION PROGRAM

2016 SEP 29 PM 3:50

RECEIVED
CITY OF OAKLAND
RENT ARBITRATION PROGRAM

2016 SEP 29 PM 3:50

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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	RECEIVED CITY OF OAKLAND RENT ARBITRATION PROGRAM 2016 NOV 14 PM 12:22 For filing stamp.
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Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your response being rejected or delayed.

CASE NUMBER T16-0539

OWNER RESPONSE

Please print legibly.

Your Name LANTZ PROPERTIES LLC EDGAR A. LANTZ	Complete Address (with zip code) 5339 BROADWAY #400 OAKLAND, CA 94618	Phone: _____ Email: _____
Your Representative's Name (if any)	Complete Address (with zip code)	Phone: _____ Fax: _____ Email: _____
Tenant(s) name(s) RENIA HUDSON	Complete Address (with zip code) 443 LEE ST # 201 OAKLAND, CA 94610	

Have you paid for your Oakland Business License? Yes No Number **2843900 "EXHIBIT 1"**
 (Provide proof of payment.)

Have you paid the Rent Adjustment Program Service Fee? (\$30 per unit) Yes No **"EXHIBIT 2"**
 (Provide proof of payment.)

There are 28 residential units in the subject building. I acquired the building on 6/29/1984

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

I. RENTAL HISTORY

The tenant moved into the rental unit on 12/1/1996.

The tenant's initial rent including all services provided was \$ 650.00 / month.

Have you (or a previous Owner) given the City of Oakland's form entitled **NOTICE TO TENANTS OF RESIDENTIAL RENT ADJUSTMENT PROGRAM ("RAP Notice")** to all of the petitioning tenants?
 Yes No I don't know If yes, on what date was the Notice first given? 11/19/1996

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 X No ____ . If yes, on what date was the Enhanced Notice given? 8/31/2016 . Did you submit a copy of the Enhanced Notice to the RAP office within 10 days of serving the tenant? Yes X No ____ . Not applicable: there was no capital improvements increase. _____

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

"EXHIBIT 6"

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

II. JUSTIFICATION FOR RENT INCREASE

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

<u>Date of Increase</u>	<u>Banking (deferred annual increases)</u>	<u>Increased Housing Service Costs</u>	<u>Capital Improvements</u>	<u>Uninsured Repair Costs</u>	<u>Fair Return</u>	<u>Debt Service (if purchased before 4/1/14)</u>
<u>10/1/2016</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/> "EXHIBIT 3"	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

III. DECREASED HOUSING SERVICES

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

IV. EXEMPTION

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

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

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

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

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

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

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

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

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

V. IMPORTANT INFORMATION

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

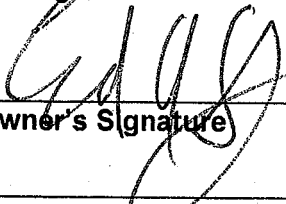
NOTE: If you do not file a timely Response, you will not be able to produce evidence at the Hearing, unless you can show good cause for the late filing.

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

VI. VERIFICATION

Owner must sign here:

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



Owner's Signature

11/11/2016

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

LANTZ PROPERTIES LLC

LANDLORD RESPONSE TO I & III OF TENANT PETITION

Hudson vs. Lantz Case Number: T16-0539

I. Grounds for Petition

Hudson checked "(a) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are greater than 10%."

Lantz response: This statement is untrue. We did not use the CPI index, we used the Capital Improvement passthrough which is part of the City of Oakland Municipal Code Section 8.22 and by Rules and Procedures adopted by the Oakland City Council.

Hudson checked "(f1) The housing services I am being provided have decreased."

Lantz response: The letter that was in the Tenant Package dated 9/9/2016 was extremely hard to read and not on point, but it appears that Ms. Hudson is claiming she was inconvenienced for seven days while we removed all the old tile, sheetrock in the shower and bathtub area, then installed a new bathtub, new shower walls, new bathroom floor, new bathroom sink, new bathroom countertop and repainting the entire bathroom. The total cost was \$3531.05 of which she was asked to pay 70% or \$2471.74 of the cost or \$41.19 per month according to the rules of the Rent Adjustment Program. That cost per month increase meant that Ms. Hudson's rent went from \$1009.69 (including \$1.25 Oakland Rent Service Fee) to \$1050.88 (including \$1.25 Oakland Rent Service Fee). This rent is for a two-bedroom apartment, with security parking included, one block from Lake Merritt. Ms. Hudson was in total agreement when we did the job. Ms. Hudson said she could shower at the gym and we reimbursed her for that cost. It was only when her anniversary date came up and we sent her the \$41.19 per month passthrough, which expires in five years, that she complained. I don't believe Ms. Hudson is unhappy about her new bathroom. She is only unhappy about having to pay 70% of the cost.

Hudson checked "(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."

Lantz response: Lantz Properties is not aware of any existing health, safety, fire or building violations in her apartment and Ms. Hudson did not attach any reports.

III. Description of Decreased or Inadequate Housing Services.

Hudson checked "Yes" "Are you being charged for services originally paid by the owner?"

Lantz response: Ms. Hudson did not say which services she is being charged for which were originally paid by the owner.

Hudson checked "Yes" "Have you lost services originally provided by the owner or have the conditions changed?"

Lantz response: Ms. Hudson described conditions that were temporary while we were redoing her bathroom.

Hudson checked "Yes" "Are you claiming any serious problem(s) with the condition of your rental unit?"

Lantz response: Ms. Hudson described conditions that were temporary while we were redoing her bathroom.

Sincerely,

Edgar A. Lantz



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: T16-0539, Hudson v. Lantz Properties

PROPERTY ADDRESS: 443 Lee St, #201, Oakland, CA

DATES OF HEARING: March 10 & April 13, 2017

DATE OF DECISION: April 14, 2017

APPEARANCES: Renia Hudson (Tenant; by Telephone on April 13, 2017)
Jack Easterling (Witness for Tenant)
Edgar Lantz (Owner)
Bruce Harmon (Witness for Owner)

SUMMARY OF DECISION

The tenant's petition is partly granted.

CONTENTIONS OF THE PARTIES

The tenant filed a petition on September 29, 2016, which alleges that a proposed rent increase from \$1,008.44 to \$1,050.88, effective October 1, 2016, exceeds the CPI Adjustment and is unjustified or is greater than 10%; that at present there exists a health, safety, fire or building code violation in her unit; and that her housing services have been decreased due to loss of use of her bathroom for an unreasonably long period of time.

The owner filed a response to the petition, which alleges that the proposed rent increase is justified by capital improvements, and denies that the tenant's housing services have decreased.

THE ISSUES

(1) Is a rent increase justified by capital improvements and, if so, in what amount?

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- (2) When did the tenant first receive the form Notice to Tenants (RAP Notice)?
- (3) Have the tenant's housing services been decreased and, if so, by what percentage of the total housing services that are provided by the owner?

EVIDENCE

Capital Improvement Costs: The owner submitted a list of purported costs for labor and materials in the tenant's unit.¹ No other documentation was submitted.

RAP Notice: The tenant testified that she first received the RAP Notice before the year 2016.

Decreased Housing Services: At the Hearing, the tenant testified that there was significant damage from water intrusion into her bathroom in March or April 2015 that was not repaired until mid-November 2015.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Capital Improvement Costs: The Rent Adjustment Ordinance states: "In order for an owner to file a response to a tenant petition . . . the owner must provide the following: . . . Documentation supporting the owner's claimed justification(s) for the rent increase."² The Board has held that "[I]n order for a landlord to establish an exemption for a substantially rehabilitated building . . . a landlord must provide evidence independent of his own testimony or summaries prepared in anticipation of the hearing to substantiate the costs of new construction."³ The same principle applies in a capital improvement case.

A list of purported expenses prepared by the owner – without invoices, proof of payment, or other substantial documentation – clearly does not meet the required evidentiary standard for a rent increase. Therefore, the contested rent increase is invalid. Before considering the tenant's claim of decreased housing services, the rent remains \$1,008.44 per month.

Decreased Housing Services: Under the Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent⁴ and may be corrected by a rent adjustment.⁵ However, in order to justify a decrease in rent, a decrease in housing services must be either the elimination or reduction of a service that existed at the start of the tenancy or a violation of the housing or building code which seriously affects the habitability of the tenant's unit.

There is also a time limit for claiming decreased housing services. A tenant petition must be filed within 90 days after the date of service of a rent increase notice or change in the terms of a tenancy or the date the tenant first receives the RAP Notice, whichever is later.⁶ Because the

¹ Exhibit No. 1. The tenant objected to the admission of this document into evidence because the owner had not submitted any receipts or other documentation. The objection was overruled, and the document was admitted into evidence.

² O.M.C. Section 8.22.090(B)(1)

³ T04-0158, *Ulman v. Breen & Orton*

⁴ O.M.C. Section 8.22.070(F)

⁵ O.M.C. Section 8.22.110(E)

⁶ O.M.C. Section 8.22.090(A)(2)

tenant filed her petition far more than 90 days after she received the RAP Notice, as well as more than 90 days after her bathroom was repaired, her claim of decreased housing services must be denied.

ORDER

1. Petition T16-0539 is partly granted.
2. The rent remains \$1,008.44 per month.
3. The tenant's claim of decreased housing services is denied.
4. **Right to Appeal:** **This decision is the final decision of the Rent Adjustment Program Staff.** Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within twenty (20) calendar days after service of the decision. The date of service is shown on the attached Proof of Service. If the Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.

Dated: April 14, 2017



Stephen Kasdin
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE

Case Number T16-0539

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

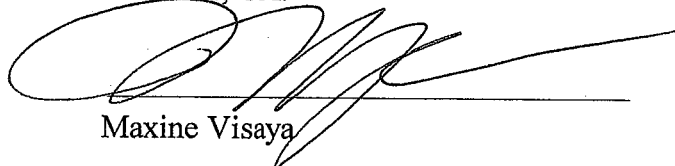
Renia Hudson
443 Lee St #201
Oakland, CA 94610

Owner

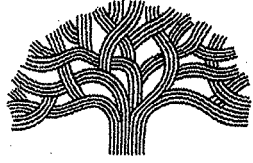
Edgar Lantz/Lantz Properties LLC
5339 Broadway Suite 400
Oakland, CA 94618

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 April 14, 2017 in Oakland, CA.


Maxine Visaya

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CITY OF OAKLAND

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

RECEIVED
CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM
For date stamp.
2017 MAY -3 PM 2:28

APPEAL

Appellant's Name LANTZ PROPERTIES LLC / EDGAR A. LANTZ		<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant	
Property Address (Include Unit Number) 443 LEE ST #201, OAKLAND, CA 94610			
Appellant's Mailing Address (For receipt of notices) 5339 BROADWAY #400, OAKLAND, CA 94618		Case Number T16-0539	Date of Decision appealed 4/14/2017
Name of Representative (if any) BRUCE HARMON	Representative's Mailing Address (For notices) 5339 BROADWAY #400 OAKLAND, CA 94618		

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.

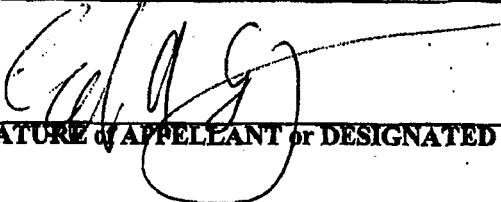
- f) I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. (In your explanation, you must describe how you were denied the chance to defend your claims and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue 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: 17.

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

I declare under penalty of perjury under the laws of the State of California that on 5/3, 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	RENIA HUDSON
Address	443 LEE ST #201
City, State Zip	OAKLAND, CA 94610
Name	
Address	
City, State Zip	

	5/3/2017
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.
- 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.

Hudson v. Lantz T16-0439

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

h) Other

When submitting the Landlord's Response, my assistant mistakenly did not include the time sheets or copies of the receipts. They are included in this appeal. The work was begun in December 2015 and finished in January 2016.

The capital improvements were given to Ms. Hudson on August 31, 2016 and were to begin October 1, 2016.

Ms. Hudson filed a Tenant Petition on September 29, 2016.

Ms. Hudson paid the new rent amount including capital improvements in her October 2016 rent payment.

Lantz Properties LLC files an Owner's Response on November 14, 2016.

There was a Rent Board hearing Hudson v Lantz March 10, 2017.

Hearing decision was made on April 14, 2017. Capital Improvement costs were not given because Landlord failed to include copies of timesheets and copies of receipts to substantiate the cost for my claim for capital improvements.

Respectfully Submitted,
Edgar Lantz

[Print](#) | [Close Window](#)

Subject: Your Build.com Order #62967080
From: "Build.com" <customerservice@build.com>
Date: Mon, Aug 17, 2015 3:51 pm
To: lantzproperties@lantzproperties.com

VISA
R13-207
710.57

(800) 375-3403 Open 7 Days a Week

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Order Number: 62967080
Ordered on Aug 17, 2015

Bathroom | Kitchen | Lighting | Hardware | Savings

Hello Bruce,

Thank you for choosing Build.com. If there's anything else we can do to help you, contact me directly at (800) 375-3403 x9506 or at brian.eckert@build.com

Helpful Links

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- [Set Up A Return](#)
- [Help](#)

Happy Home Improving,
Brian

How was your shopping experience?
Write a review. We want to know!

[Submit Review »](#)



[Build.com](#)
[Build.com Network Store](#)
Smarter Home Improvement™

Order Information

Ordered on: Aug 17, 2015
Total: \$2,842.30
Shipping Method: Freight (LTL)
Payment Method: Visa
Credit Card: XXXX-XXXX-XXXX-5606

Order Number
62967080

[Check Order Status](#)

Please Note: Your order will appear as "Build-Charge.com" on your credit card statement

Shipping To

Billing To

Bruce Harmon
Lantz Properties LLC
5339 Broadway #400
Oakland, CA 94618

Bruce Harmon
Lantz Properties LLC
1102 Silverado Trail
Callistoga, CA 94515

Product Description

Unit Price Qty Total

Swanstone SS-60-3 Bathtub Wall Panel System in \$661.00 4 \$2,644.00
Swanstone for 30" x 60" Tub, 60" Tall

Finish: Bisque

Leaves the Warehouse in 1 to 2 business days

Subtotal: \$2,644.00
Tax: \$198.30
Shipping & Handling: \$0.00
Grand Total: \$2,842.30

HELPFUL LINKS

- [My Account](#)
- [Help](#)
- [Return Policy](#)
- [Shipping Policy](#)

CONTACT US

(800) 375-3403
newsletter@Build.com
[Contact Page](#)

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(3)

Invoice

MORAN SUPPLY
 415 40th Street
 Oakland CA 94609
 510-652-7437 Fax 510-652-7499

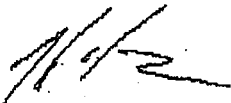
INVOICE DATE	INVOICE NUMBER
11/02/15	S1188963.001
REMIT TO:	PAGE NO.
MORAN SUPPLY P.O. BOX 3088 OAKLAND CA 94609	1

BILL TO:
 LANTZ PROPERTIES LLC
 1102 SILVERADO TRAIL
 CALISTOGA, CA 94515

SHIP TO:
 LANTZ PROPERTIES LLC
 1102 SILVERADO TRAIL
 CALISTOGA, CA 94515

CUSTOMER NUMBER	CUSTOMER ORDER NUMBER	ORDERED BY	SHIP DATE
329	R13201	JOSE C GUERRERO	11/02/15
DESCRIPTION	ORDER QTY	SHIP QTY	UNIT PRICE
JUAN BENAVIDES	PK PICK-UP	2% 10th Net Due 30th	11/02/15
DEARBORN 226-3 WASTE & OVERFLO	1	1	64.194
			64.19
Subtotal			64.19
S&H CHGS			0.00
Sales Tax			6.10
Amount Due			70.29

2015/11/02 12:38:24 PM S1188963.1



JOSE

WARNING: Certain of the galvanized, bronze, plastic and other products sold by Moran Supply contain lead, lead compounds or other chemicals known to the State of California to cause cancer, birth defects or other reproductive harm.

If paid by 12/10/15 you may deduct \$1.28
 Invoice is due by 12/31/15 net of any cash discount.

All claims for shortage or errors must be made at once. Returns require written authorization and are subject to handling charges. Special orders are non-returnable. Past due invoices will be subject to 2% late charge.

(4)

000060

Visa R13-201



More saving.
More doing.™

3838 HOLLIS AVE. EMERYVILLE, CA 94608
** RECEIPT REQUIRED FOR ALL REFUNDS**

0627 00001 77014 11/02/15 12:05 PM
CASHIER TXH4536

0000-999-735 CA LBR FEE <A,U>	0.02N
CA LUMBER FEE	
0000-999-735 CA LBR FEE <A,U>	
500.02	0.10N
858197005052 GDF STUDS <A>	
502.42	12.10
MAX REFUND VALUE \$11.77/5	
739767154809 BLDG PAPER <A>	9.48
MAX REFUND VALUE \$9.22	
791556029705 TUB <A>	269.00
MAX REFUND VALUE \$261.60	
0000-424-600 1X3X8PRIME <A>	4.74
.719IN X 2.5IN X 96IN PRMD FJ BOARD	
RSN: 4 50% MKDN	-2.37
MAX REFUND VALUE \$2.30	
PRO REWARDS	
292.95 Platinum	-8.06
MUST RETURN ALL ITEMS FOR A FULL REFUND	

SUBTOTAL	285.01
SALES TAX	27.69
TOTAL	\$312.70
XXXXXXXXXXXX7193 VISA	312.70
AUTH CODE 08932G	TA

P.O.#/JOB NAME: R19201

<U> - NON-DISCOUNTABLE ITEM

PRO REWARDS SAVINGS \$8.06

CUSTOMER PRO XTRA ID ###-###-9111
MEMBERSHIP LEVEL: Platinum

Pro Rewards 2015 Savings	\$ 457.35
Total qualifying spend	\$16505.65
Addl. spend for next level	\$ 8494.35

MEMBERSHIP LEVEL: Pro Xtra Paint Rewards

Pro Xtra Paint 2015 Savings	\$ 0.00
Total qualifying spend	\$ 0.00
Addl. spend for next level	\$2000.00

Pro Xtra 2015 Savings	\$ 0.00
Total Program Spend	\$16505.65

Thank you for being a Pro Xtra member!
Sign in to your Pro Xtra account and
enter your credit cards to access
receipts!



(5)

VISA R13 201



More saving.
More doing.™

3838 HOLLIS AVE. EMERYVILLE, CA 94608
** RECEIPT REQUIRED FOR ALL REFUNDS**

0627 00001 77014 11/02/15 12:05 PM
CASHIER TXH4586

0000-999-735 CA LBR FEE <A,U>	0.02N
CA LUMBER FEE	
0000-999-735 CA LBR FEE <A,U>	
590.02	0.10N
858197005052 GDF STUDS <A>	
592.42	12.10
MAX REFUND VALUE \$11.77/5	
739767154809 BLDG PAPER <A>	9.48
MAX REFUND VALUE \$9.22	
791556029705 TUB <A>	269.00
MAX REFUND VALUE \$261.60	
0000-424/600 1X3X8PRIME <A>	4.74
719IN X 2.5IN X 96IN PRMD FJ BOARD	
RSN: 4 60% MKDN	-2.37
MAX REFUND VALUE \$2.30	
PRO REWARDS	
292.95 Platinum	-8.06
MUST RETURN ALL ITEMS FOR A FULL REFUND	

SUBTOTAL	285.01
SALES TAX	27.69
TOTAL	\$312.70
XXXXXXXXXXXX7196 VISA	312.70
AUTH CODE 08932G	TA

P.O.#/JOB NAME: R13201

<U> - NON-DISCOUNTABLE ITEM
PRO REWARDS SAVINGS \$8.06

CUSTOMER PRO XTRA ID ###-###-9111
MEMBERSHIP LEVEL: Platinum

Pro Rewards 2015 Savings	\$ 457.35
Total qualifying spend	\$16505.65
Addl spend for next level	\$ 8494.35

MEMBERSHIP LEVEL: Pro Xtra Paint Rewards

Pro Xtra Paint 2015 Savings	\$ 0.00
Total qualifying spend	\$ 0.00
Addl spend for next level	\$2000.00

Pro Xtra 2015 Savings	\$ 0.00
Total Program Spend	\$16505.65

Thank you for being a Pro Xtra member!
Sign in to your Pro Xtra account and
enter your credit cards to access
receipts!



DID NOT
INCLUDE
TUB
\$269.00

(6)

000062

Invoice

MORAN SUPPLY
 415 40th Street
 Oakland CA 94609
 510-652-7437 Fax 510-652-7499

DATE	INVOICE NUMBER
11/03/15	S1188997.001
REMIT TO:	PAGE NO.
MORAN SUPPLY P.O. BOX 3088 OAKLAND CA 94609	1

BILL TO:
 LANTZ PROPERTIES LLC
 1102 SILVERADO TRAIL
 CALISTOGA, CA 94515

SHIP TO:
 LANTZ PROPERTIES LLC
 1102 SILVERADO TRAIL
 CALISTOGA, CA 94515

CUSTOMER NUMBER	CUSTOMER ORDER NUMBER	PREPARED BY	SHIP DATE
329	r 13201	JOSE C GUERRERO	11/03/15
BUYER	SHIP TO	TERMS	ORDER DATE
RICHARD MORRIS	PK PICK-UP	2% 10th Net Due 30th	11/03/15
DESCRIPTION	ORDER QTY	SHIP QTY	UNIT PRICE
1-1/2 DWV COPPER ADJ P-TRAP	1	1	75.490
1-1/2 DWV FTGX 1-1/2 ODTRAP AP	1	1	20.633
Subtotal			96.12
S&H CHGS			0.00
Sales Tax			9.13
Amount Due			105.25

2015/11/03 08:48:08 AM S1188997.1

WARNING: Certain of the galvanized, bronze, plastic and other products sold by Moran Supply contain lead, lead compounds or other chemicals known to the State of California to cause cancer, birth defects or other reproductive harm.

If paid by 12/10/15 you may deduct \$1.92
 Invoice is due by 12/31/15 net of any cash discount.

All claims for shortage or errors must be made at once. Returns require written authorization and are subject to handling charges. Special orders are non-returnable. Past due invoices will be subject to 2% late charge.

(7)

R 13 20 (and
B.

THANK YOU FOR SHOPPING AT
GRAND LAKE ACE HARDWARE #2651
(510) 652-1936

11/05/15 9:26AM SUE	551	SALE
SS	2 EA	7.99 EA
PACKAGED SCREWS, ASSTD SIZES		15.98
5173380	1 EA	5.99 EA
6x1-5/8 DRYWALL SCREW-FINE,		5.99
4518312	1 EA	5.99 EA
"HARVEYS" WAX RING EXTRA THIC		5.99
5	1 EA	3.49 EA *
5333760		3.49

SUB-TOTAL:	31.45	TAX:	2.99
DISCOUNT:		TOTAL:	34.44
	BC AMT:		34.44

BK CARD#: XXXXXXXXXXXX7198
ID: 670120265197
AUTH: 01703G AMT: 34.44
Host reference #:042336 Bat#0329
SWIPED
CARD TYPE:VISA EXPR: XXXX

Trace # 3053096344

Bank card 34.44



==>> JRNL#A42336
CUST # *5

<<==

THANK YOU JOSE GUERRERO
FOR YOUR PATRONAGE

Name : X _____
I agree to pay above total amount
according to card issuer agreement
(merchant agreement if credit voucher)
Acct: CASH SALE

Customer Copy

(8)

000064

Park

Visa R13-201

PARKHEAD PRODUCTS
830 45TH AVE
OAKLAND, CA 94601
510-532-5931
5436848050036303

SALE

CUSTOMER'S ORDER NO.
NAME *Lanz P*
ADDRESS *Spk*
CITY

MD: 0300 Store: 0001 Terr: 0004
Batch #: 098 REF#: 00000002
11/19/15 RRN: 532321004380
Trans ID: 465323790757052 13:57:55
APPR CODE: 02641G
VISA
*****2864

19-15

Swiped

SOLD BY CASH O.G.

AMOUNT \$328.50

APPROVED

THANK YOU

CUSTOMER COPY

*W/ Visa
LFT Splash
RT cap*

TAX

*300 -
28 50
328 50*

*Paid in full
Visa*

RECEIVED BY

TAX

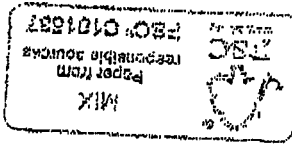
TOTAL

Thank You

ALL CLAIMS AND RETURNED
GOODS MUST BE ACCOMPANIED BY THIS BILL.

(9)

000065



More saving.
More doing.™

3638 HOLLIS AVE. EMERYVILLE, CA 94608
** RECEIPT REQUIRED FOR ALL REFUNDS**

0627 00010 14687 01/14/16 10:02 AM
CASHIER TIANNA - TAM5998

721015311249 OVAL LAV <A>	39.00
20"X17" ARAGON WHITE DROP IN SINK	
MAX REFUND VALUE \$38.03	
034449637169 4" BATH FCT <A>	39.00
FOUNDATIONS 4" INDL BATH FAUCET CH	
MAX REFUND VALUE \$38.03	
041193460264 P TRAP <A>	21.27
P-TRAP 1-1/2" CHROME, 17 GAUGE	
MAX REFUND VALUE \$20.74	
037103250552 HFHKM8PC <A>	5.97
8PC METRIC FOLDING HEX SET	
MAX REFUND VALUE \$5.82	
000346308051 JIGSAWBLADE <A>	5.97
BOSCH 4-1/4" PRGSSR JIGSAW BLADE 3PK	
MAX REFUND VALUE \$5.82	
025613966199 SUPPLY LINE <A>	
3/8"ODX1/2"IPX20" BRAID FCT SUP LINE	
205.84	11.68
MAX REFUND VALUE \$11.38/2	
038703311661 PUTTY <A>	2.20
14OZ PLUMBERS PUTTY	
MAX REFUND VALUE \$2.14	
-----PRO REWARDS-----	
125.09 Go2G	-3.13
MUST RETURN ALL ITEMS FOR A FULL REFUND	

SUBTOTAL	121.96
SALES TAX	11.59
TOTAL	\$133.55

XXXXXXXXXXXX7198 VISA USD\$ 133.55
 AUTH CODE 09919G/5100626 TA
 Chip Read
 AID A0000000031010 VISA CREDIT
 TVR 808008000
 IAD 06010A03602400
 TSI 6800
 ARC 00

(10)

000066

Capitai Improvement Cost Work Sheet

Resident: Renia Hudson
 Address: 443 Lee Str. #201

LABOR

	11/2 - 11/6	11/16 - 11/20	1/11-1/15	Total Hours	Hourly Cost	Total Labor Cost
Carmen	20	0	7	27	40.45	\$1,092.15
Silvestre	0	1.5		1.5	44.15	66.225
Erasmo	21.25	0		21.25	30.39	645.79
Abundio	28	0		28	20.14	563.92
				<u>77.75</u>		<u>\$ 2,368.08</u>

MATERIAL

Shower Walls	\$710.57
Countertop	328.50
Sink/faucet	39.00
Faucets	39.00
P-trap	21.27
Braided line	11.68
Plummers Putty	2.20
Tax	10.75
	<u>1,162.97</u>

(11)

000067

390000

**2015 Fringe Benefits
Lantz Properties LLC - Revised - June 2015**

Employee Name	Start Date	Base Rate	S.U.I. 6.10%	Training 0.10%	F.U.I.A. 0.60%	Workmans Comp. 8.70%	Base Rate Total State/Fed.	Vacation		Holiday		Dental		Kaiser		SEP IRA 3.00%	Total Benefit Cost Per Hour
								Annual	Hourly	7 Days = 56 Hrs	Hourly	Annual	Hourly	Annual	Hourly		
Class Code 9011-1																	
Guerrero, Carmen	4/6/1986	\$24.80	\$1.51	\$0.02	\$0.15	\$2.16	\$28.64	\$4,583.04	\$2.20	\$1,604.06	\$0.77	\$2,250	\$1.08	\$14,580.00	\$7.01	\$0.74	\$11.81
Guerrero, Erasmo	6/28/2000	\$16.85	\$1.03	\$0.02	\$0.10	\$1.47	\$19.46	\$3,113.88	\$1.50	\$1,089.86	\$0.52	\$3,000	\$1.44	\$14,484.00	\$6.96	\$0.51	\$10.93
Lopez, Abundio	3/15/2010	\$13.95	\$0.85	\$0.01	\$0.08	\$1.21	\$16.11	\$1,145.60	\$0.55	\$801.92	\$0.39	\$750	\$0.36	\$4,800.00	\$2.31	\$0.42	\$4.02
Moreno, Silvestre	3/10/1985	\$26.06	\$1.59	\$0.03	\$0.16	\$2.27	\$30.10	\$4,815.89	\$2.32	\$1,685.56	\$0.81	\$4,500	\$2.16	\$16,608.00	\$7.98	\$0.78	\$14.06

Base Rate
+ Benefits

Guerrero, Carmen	\$40.45
Guerrero, Erasmo	\$30.39
Lopez, Abundio	\$20.14
Moreno, Silvestre	\$44.15

(12)

LANTZ PROPERTIES LLC TIME SHEET

EMPLOYEE FULL NAME: **JOSE GUERRERO**

WEEK BEGINNING: **11-2-15**

	MON ²	TUE ³	WED ⁴	THR ⁵	FRI ⁶	SAT	Bldg. Code	REG	OT	2x OT
8	00						OB			
	15						1V			
	30	R13	R13	R13	R13	R5-1512	D2			
	45	201	201	201	201	check	D3			
9	00	Remain Finish put	pick up	plumbing			D4			
	15	tiles	Drainage	new material			H1			
	30	and	and	walls		R-7-3372	H2			
	45	tub	put	on		and 3345	H3			
10	00	new shower		R5	check		W1			
	15	tub		1512	check		PEAL			
	30			put	check		C1			
	45			new			2			
11	00			store	R5-1512		3			
	15				ORDER		4			
	30				windows		5			
	45						6			
12	00						7			
	15						8			
	30						9			
	45						10			
1	00		R12	Fix	Fix	R4203	11			
	15		O.P. Jec	Water	Front	check	12			
	30		R5	leak	light	Paint	13			
	45		1512		and	ok	14			
2	00		check		beck	R12	15			
	15	Fix	keys		light	105	16			
	30	drainage								
	45		R5-1501		check	heater				
3	00		Fix	R9-7	minibls			REG	OT	2x OT
	15		Screen	fix		R9-7	Sub Total:			
	30		door	mail	Box	R4	pick up			
	45		R4-203	lock	303	Dr. P. A. and	Sub Total:	VAC	HOL	15 min = .25 30 min = .50 45 min = .75
4	00		Fix		check	Fix				
	15		Windows	R12	Paint	Front door	Notes:			
	30			102	Fix	lock	lock			
	45			heater	check					
5	00									
	15									
	30					R10-104	Total Hours:			
	45					15-5-1512				
6	00	8-13-201	4-13-201	6-13-201	15-13-201		Signature:			
	15		15-12-00	15-9-7	6-5-1512					
	30		125-5-1512	25-12-102	15-4-303	15-5-1512	(13)	000069	73.04	2.250x
	45					125-7-333				

39.15 reg
 40
 81.50
 73.04
 000069
 2.250x

INTZ PROPERTIES LLC TIME SHEET

EMPLOYEE FULL NAME:

JOSE GUERRERO

WEEK BEGINNING:

11/16

Leak 2 hr

		MON ¹¹	TUE ¹²	WED ¹³	THR ¹⁴	FRI ¹⁵	SAT	Bldg. Code	REG	OT	2x OT
8	00				Cleaner	Water		OB			
	15							10			
	30	RS1506	RS1506	R162	R151	R13305		1V			
	45	Put	Fix	Put	201			8V			
9	00	Check Book	K - new		1 pickup	check		D2			
	15	on	Floor	Refrigerator		Walls		D3			
	30	the			material	FOR		D4			
	45	Garage	Fix	R10303				H1			
10	00		Paint	tap	put		terminals	H2			
	15				we	Refrigerator		W1			
	30					Required		PEAL			
	45					old		C1			
11	00				R18	sink		2			
	15				Check	and		3			
	30		Put		Floors	Paint		4			
	45		Walls		and			5			
12	00				Carpet			6			
	15							7			
	30							8			
	45							9			
1	00				R67	Put		10			
	15				put	new	Fix	11			
	30		Clean	back	sink	Front		12			
	45		Carpet	Windows	and	Window		13			
2	00				Paint	tap		14			
	15				R15306			15			
	30				Put			16			
	45				electrical						
3	00				Con to				REG	OT	2x OT
	15				Store		Patch	Sub Total:	64	.45	
	30	RS1512	Put	Put			Walls	VAC		HOL	15 min = .25
	45	Paint	Walls	moderating				Sub Total:		8	30 min = .50 45 min = .75
4	00	Windows		Cabinet	cleaning			Notes:			
	15			Walls	Hallways						
	30			Carpet							
	45										
5	00										
	15	8	8	8	8	8					
	30										
	45										
6	00	65-5-1506	8-5-1506	125-10-2	8-13-201	8-7-3345					
	15	15-5-1512		125-8-18							
	30			125-6-7							
	45			275-15-306							

Sub Total:	64	.45	
Sub Total:		8	

Notes:
40 hr
72.45
+OT

Total Hours:
Signature: *[Signature]*

000070

LANTZ PROPERTIES LLC TIMESHEET

EMPLOYEE FULL NAME: <i>Silvestre Moreno</i>											
WEEK BEGINNING: <i>11/16/15</i>											
	MON	TUE	WED	THR	FRI	SAT	Bldg. Code	REG	OT	2x OT	
8	00						OB				
	15	---	---	---	---		1V				
	30						D2				
	45		R12	R10		R10	D3				
9	00	B	#306	#305	R16	#104	D4				
	15		Fix				H2				
	30		Blinds		#4		H3				
	45		toilet				O1				
10	00	---	---	---	---	---	O2				
	15		R12	R8			W1				
	30	R12	#306	#2	R13	R3	PEAL				
	45	#105	306		#201		C1				
11	00	New					R2				
	15	Bath					R3				
	30	light	R9				R4				
	45		#3	R10	R9	clogged	R5				
12	00	R13		All	All		R6				
	15	---	---	---	---	---	R7				
	30	---	---	---	---	---	R8				
	45	---	---	---	---	---	R9				
1	00	#209	R13	check	R9	R13	R10				
	15	Fix			All		R11				
	30	toilet	All	dryer		#107	R12				
	45		check			New	R13				
2	00	R13	dryer		R10	Garbage	R14				
	15	#306					R15				
	30	R13			#104	disposal	R16				
	45	All									
3	00		R4				Sub Total:	REG	OT	2x OT	
	15	---	#203	B		R6					
	30	R11				#13					
	45	R10				R16					
4	00	R9			#11	check	Sub Total:	VAC	HOL	15 min = .25	
	15	R8	R10			Ref			H	30 min = .50	
	30	R2	#305							45 min = .75	
	45	---	---	---	---	---					
5	00						Total Hours:	72 reg 8 hot 80 int			
	15	8.0	8.0	8.0	8.0	8.0					
	30										
	45	1.75-0B	1.5-12-30b	1.5-10-305	1.75-16-4	1.75-10-104					
6	00	1.75-12-105	1.25-12-301	1.5-8-2	1.5-13-201	2.25-3-1945	Signature:	<i>Silvestre Moreno</i> 000071			
	15	1.5-13-209	1.25-9-3	2-10-A	1.75-9-A	2-13-107					
	30	1.5-13-306	1.25-13-A	3-0B	1.75-10-104	2-6-13					
	45	1.75-13-A	1.25-4-203		1.25-16-4						

1.75
(1.75)
(1.75)
(15)

LANTZ PROPERTIES LLC TIME SHEET

EMPLOYEE FULL NAME: Abundio Lopez

WEEK BEGINNING: 11/2/15

		2 MON	3 TUE	4 WED	5 THR	6 FRI	SAT	Bldg. Code	REG	OT	2x OT
8	00	R 13	R 13	R 13	R 13	R 4		OB			
	15	AP#	AP#	AP#	AP#	AP#		10			
	30	201	201	201	201	303		1V			
	45				Ponien	3		8V			
9	00	Quiton	Armando	Limpia	do			D2			
	15	do		ndo		R 7		D3			
	30		Plomeria	Paredes	Linolin	AP#		D4			
	45	A. s. l. e. s. i	y	y	y			H1			
10	00	de		cielo				H2			
	15		Sacando	de	beisbol	Pascha		W1			
	30	baño				ndo		PEAL			
	45		Tina	baño				C1			
11	00	en	y	y		Proof		2			
	15							3			
	30	AP#	Pascha	Pascha				4			
	45		do	do				5			
12	00	201		cielo y				6			
	15			Paredes				7			
	30	---	---	---	---	---		8			
	45							9			
1	00	---	---	---	---	---		10			
	15		Pizo	Primita	R 4	R 4		11			
	30			ndo y		AP#		12			
	45				AP#			13			
2	00			Pintar	303	303		14			
	15			do		Pascha		15			
	30					Pasivo		16			
	45			baño		y					
3	00					Primita					
	15					do					
	30				Esce	R 4					
	45				Peardo	AP# 7					
4	00										
	15				Pasivo	Ponien					
	30				y	Castinos					
	45				Recoje	Limpando					
5	00	8	8	8	ndo	Repisera					
	15	8-13-201	8-13-201	8-13-201	basura	do					
	30				8	R 10					
	45				4-13-201	Likadora					
6	00				4-4-303	8.45					
	15					6-4-303					
	30										
	45					2-9-7					

Sub Total:	REG	OT	
	40	175	
Sub Total:	VAC	HOL	15 min = .25
			30 min = .50 45 min = .75
Notes: 80 75			
Total Hours: 40.45 min			
Signature: <u>Abundio Lopez</u>			

LANTZ PROPERTIES LLC TIMESHEET

EMPLOYEE FULL NAME: Erasmo Guerrero

WEEK BEGINNING: 11-2-15

		MON 2	TUE 3	WED 4	THR	FRI	SAT	Bldg. Code	REG	OT	2x OT
8	00							OB			
	15							10			
	30	R-16	R-13	R-13	R-7	R-13		1V			
	45		APT	APT	APT	APT		8V			
9	00	Pintar	#203	#203	#203	#203		D2			
	15	los	(20)	trabaja con				D3			
	30	Raxones	trabaja con			Power		D4			
	45	de la	con	carromero	Power			H1			
10	00	cosina	carromero		el	toiler		H2			
	15	y	Panicado	MM	MM	y		W1			
	30	baño	la	R-13		las		PEAL			
	45		finca	APT		puertas		C1			
11	00	labar		#303		el		2			
	15	la alomba		carromero	Power	baño		3			
	30	MM		la	el			4			
	45	R-13		finca	PT			5			
12	00							6			
	15							7			
	30							8			
	45	APT			Power	R-4		9			
1	00	#203	Power	MM	PT	APT		10			
	15	ir por		R-7	carromero	#		11			
	30	material		APT	R-4	pedimier		12			
	45	a la tienda	el	#3333	APT	el		13			
2	00			el estofar	#302	baño		14			
	15			el sin		y		15			
	30	trabaja con		de la	limpiar	limpiar		16			
	45			cosina	el	la					
3	00	carromero			baño	puerta					
	15	en el			y						
	30	baño	aspirar		escribier						
	45			MM	la						
4	00			reca. Ter							
	15			alumbado							
	30			R-13							
	45			APT		MM					
5	00	8	8	#203							
	15			8	8	R-10	4-13-201				
	30	4-10-13	8-13-201	2-13-201	15-7-3333	#104	4-4-A				
	45	4-10-201		175-13-303	3-4-302	carromero	45-10-1340				
6	00			15-7-3333		la Pigeonera					
	15			15-13-201							
	30					8-45					
	45										

Sub Total:	REG	OT	2x OT
	40	.75	
Sub Total:	VAC	HOL	15 min = .25 30 min = .50 45 min = .75

Notes: 80.00
16.75 96.75

Total Hours: 40-45
Signature: Erasmo Guerrero

CHRONOLOGICAL CASE REPORT

Case Nos.: T16-0549

Case Name: Beasley v. Horejsi

Property Address: 3764 39th Avenue, #D, Oakland, CA

Parties: Linda Akenduca Beasley (Tenant)
Satchidananda Mims (Tenant)
Michael E. Horejsi (Property Owner)

OWNER APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	October 4, 2016
Owner Response filed	November 2, 2016
Hearing Decision issued	March 15, 2017
Owner Appeal filed	April 3, 2017
Tenant's Response to Owner Appeal	July 17, 2018

000074

T116-0549 KM/BC

CITY OF OAKLAND RENT ADJUSTMENT PROGRAM Mail To: P. O. Box 70243 Oakland, California 94612-0243 (510) 238-3721	For date stamp. <div style="text-align: right;"> RECEIVED CITY OF OAKLAND RENT ARBITRATION PROGRAM 2016 OCT -4 PM 4:39 </div>
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Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed.

TENANT PETITION

Please print legibly

Your Name Akenduca Beasley aka Linda J. Beasley	Rental Address (with zip code) 3764 39th Ave. Apt D. Oakland, CA 94619	Telephone
Your Representative's Name Self	Mailing Address (with zip code) PO Box 19304, Oakland CA 94619	Telephone
Property Owner(s) name(s) Michael E. Horejsi	Mailing Address (with zip code) P.O. Box 2883 Castro Valley, CA 94546	Telephone

Number of units on the property: 7

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

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

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

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

Date you moved into the Unit: 7/24/1982 Initial Rent: \$ 425.00 /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: 06/05/2002 . If never provided, enter "Never."

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

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

Date Notice Served (mo/day/year)	Date Increase Effective (mo/day/year)	Amount Rent Increased		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
Not served***	Oct 1, 2016	\$ 828	\$ 882.42	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
June 30, 2016	Aug 1, 2000	\$ 675	\$ 780.00	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Aug 23, 1999	Oct 1, 1999	\$ 650	\$675.00	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
June 30, 1998	Aug 1, 1998	\$ 625	\$650.00	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
June 1, 1991	July 1, 1991	\$ 525	\$ 625.00	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Dec 26, 185	Feb 1, 1986	\$	\$ 525.00	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

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

List case number(s) of all Petition(s) you have ever filed for this rental unit: No. T03-0300

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.

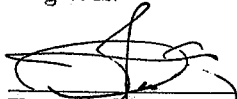
- Are you being charged for services originally paid by the owner? Yes No
- Have you lost services originally provided by the owner or have the conditions changed? Yes No
- Are you claiming any serious problem(s) with the condition of your rental unit? Yes No

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

10-3-2016

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

10-3-2016

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): _____

BEASLEY, AKENDUCA D.: TENANT PETITION ATTACHMENT

Regarding legally withholding rent: The rent is current in accordance with a court order issued by the Superior court of California.

II. RENTAL HISTORY

Service of Notice.

*** On or about 8/27/16, Petitioner discovered the notice to increase rent folded up, in the inside of the bottom right side of the front door at residence 3764 39th Ave. Apt. D., Oakland, CA 94619. The Notice was not served within the confines of applicable California law. For example service under applicable law requires:

Personal service - To serve you personally, the person serving the notice must hand you the notice (or leave it with you if you refuse to take it).

Substituted service on another person -If the landlord can't find you at home, the landlord should try to serve you personally at work. If the landlord can't find you at home or at work, the landlord can use "substituted service" instead of serving you personally.

To comply with the rules on substituted service, the person serving the notice must leave the notice with a person of "suitable age and discretion" at your home or work and also mail a copy of the notice to you at home. A person of suitable age and discretion normally would be an adult at your home or workplace, or a teenage member of your household.

Service of the notice is legally complete when both of these steps have been completed. The three-day period begins the day after both steps have been completed.

Posting and mailing - If the landlord can't serve the notice on you personally or by substituted service, the notice can be served by taping or tacking a copy to the rental unit in a conspicuous place (such as the front door of the rental unit) and by mailing another copy to you at the rental unit's address. (This service method is commonly called "posting and mailing" or "nailing and mailing.")

Service of the notice is not complete until the copy of the notice has been mailed. The three-day period begins the day after the notice was posted and mailed.

See California Civil Code §§ 827; 1162; Walters v. Meyers (1990) 226 Cal.App.3d Supp. 15

III. Description of Decreased or Inadequate Housing Services

Services: dates are estimated below, exact dates not known at this time. Services not believed to be in compliance with California Civil Code §1941.

Date Decreased/Inadequate Services Amount (\$)

Table with 3 columns: Date, Decreased/Inadequate Services, Amount (\$). Rows include: 7/2015 Heater doesn't function; 7/2007 Bath Tub - rusted and full of mold; 7/2007 Bathroom Mold and Mildew; 7/2007 Defective stove.

		board
7/2007	Hole in closet	To be determined by rent board
7/2007	Window Screens	To be determined by rent board
1/2005	Parking- is a part of the original rental agreement.	(\$25 per month.)- should be noted, No. T03-0300 tenant petition filed challenged increase and the land lord rescinded the increase.
7/2005	Electrical wiring and power surges- causes a lot of lightbulbs to blow out within a few days of instillation.	To be determined by rent board

Several documents have been ordered masked from public view by the Superior Court of California. Documents in support of this petition will be filed at a later time. Along with any other information the Rent board indicates it needs to make a determination in this case. If you have questions or concerns please contact petitioner Akenduca D. Beasley by means above.

CITY OF OAKLAND RENT ADJUSTMENT PROGRAM P.O. Box 70243 250 Frank H. Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721	For filing stamp. <div style="text-align: center;"> RECEIVED NOV - 2 2016 <small>OAKLAND RENT ADJUSTMENT</small> </div>
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Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your response being rejected or delayed.

CASE NUMBER T16-0549

OWNER RESPONSE

Please print legibly.

Your Name <i>Michael E Horejsi</i>	Complete Address (with zip code) <i>P.O. Box 2883 Castro Valley Ca 94596</i>	Phone: _____ Email: _____
Your Representative's Name (if any) <i>Self.</i>	Complete Address (with zip code)	Phone: _____ Fax: _____ Email: _____
Tenant(s) name(s) <i>Linda Beasley</i>	Complete Address (with zip code) <i>3764 39th Ave Apt D Oakland, Ca 94619</i>	

Have you paid for your Oakland Business License? Yes No Number 2826364
 (Provide proof of payment.)

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

There are 7 residential units in the subject building. I acquired the building on 1/6/94.

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

I. RENTAL HISTORY

The tenant moved into the rental unit on 7/24/1982.

The tenant's initial rent including all services provided was \$ 832.48 / month. *Rent was set at this figure, RAB Hearing Decision, Jan 22, 2004. Tenant did not pay this amount.*

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? 5 June 2002

Is the tenant current on the rent? Yes No

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

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

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

Date Notice Given (mo/day/year)	Date Increase Effective (mo/day/year)	Amount Rent Increased		Did you provide NOTICE TO TENANTS with the notice of rent increase?
		From	To	
Aug 26, 2016	Oct 1, 2016	\$ 832.48	\$ 882.42	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Rent set by RAB 03-0300 Jan 22, 2016	Oct 1 2013	\$ 800.00	\$ 832.48	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No

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 Improvements	Uninsured Repair Costs	Fair Return	Debt Service (if purchased before 4/1/14)
Aug 26, 2016	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jan 22, 2016	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/> never paid	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

III. DECREASED HOUSING SERVICES

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

IV. EXEMPTION

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

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

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

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

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

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

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

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

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

V. IMPORTANT INFORMATION

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

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

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

VI. VERIFICATION

Owner must sign here:

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


Owner's Signature

30 Oct 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

30 Oct 2016
Date



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: T16-0549, Beasley v. Horejsi
PROPERTY ADDRESS: 3764 - 39th Ave., #D, Oakland, CA
DATE OF HEARING: January 27, 2017
DATE OF DECISION: March 15, 2017
APPEARANCES: Linda Akenduca Beasley (Tenant)
Satchidananda Mims (Tenant)
Michael E. Horejsi (Owner)

SUMMARY OF DECISION

The tenant's petition is partly granted.

CONTENTIONS OF THE PARTIES

Tenant Beasley filed a petition on October 4, 2016, which alleges that a proposed rent increase from \$828 to \$882.42, effective October 1, 2016, and a rent increase in the year 2000, exceed the CPI Adjustment and are unjustified or is greater than 10%; that the owner did not give her a summary of the justification for the proposed rent increase despite her written request; that she did not receive the form Notice to Tenants (RAP Notice) at least 6 months before the effective date of the contested rent increase or together with the contested rent increase; that the contested rent increase is the second rent increase in a 12-month period; that her rent has not been reduced after the expiration period of the rent increase based on capital improvements; that at present there exists a health, safety, fire or building code violation in her unit; and that her housing services have been decreased due to problems with the heater; the bathtub; mold and mildew; the stove; the closet; window screens; and electrical problems; and that parking was a part of her original rental agreement.

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The owner filed a response to the petition, which alleges that the tenant was given the RAP Notice on July 24, 2002 and together with both contested rent increases; that the current rent increase is justified by Banking; and denies that the tenant's housing services have decreased.

THE ISSUES

- (1) Did the owner respond to the tenant's request for the justification for the current rent increase?
- (2) When, if ever, did the tenant receive the RAP Notice?
- (3) Was the current contested rent increase notice served in accordance with legal requirements?
- (4) Is a current rent increase justified by Banking and, if so, in what amount?
- (5) Have the tenant's housing services been decreased and, if so, by what percentage of the total housing services that are provided by the owner?

EVIDENCE

Request for Justification of Rent Increase: At the Hearing, the tenant testified that the owner responded to her request for the justification for the rent increase.

RAP Notice: At the Hearing, the tenant testified that she received the RAP Notice "many years ago." On Page 2 of her sworn petition, the tenant wrote that she received the Notice in the year 2002, as well as together with both contested rent increases.

Service of Rent Increase Notice: The tenant testified that the current rent increase notice was "stuck in her door," and that she never received a copy in the mail. The tenant further testified that the mail carrier sometimes does not deliver mail properly. At times, mail is placed in the "community box," rather than in her individual mail box. Also, she sometimes gets other tenants' mail in her box, and her mail is put in the mail boxes of others. The owner testified that he mailed a copy to the tenant on August 26, 2016, and that it was not returned to him by the postal service.

Rent History: The parties agreed that the tenant's rent has not been increased since the year 2004, when the rent was \$828 per month. The parties stipulated that a document signed by both of them on August 15, 2016, entitled "Stipulation Re: Dismissal / Judgment" (Stipulation) in an Alameda County Superior Case entitled Horesji v. Beasley, Mims" could be admitted into evidence.¹

This Stipulation states, on page 2, "Defendants acknowledge that their current rent is \$828 and that they owe an additional \$25/month for parking, which is not rent." This document further states that "Defendant shall pay to plaintiff \$3,856.84, which constitutes a bargained for amount of all rents, fees, parking fees, etc. and costs due and owing for the premises through 8/31/16. . . Defendant shall pay \$100 every month, along with his/her monthly rent, beginning with September 2016 . . ."

¹ Exhibit No. 1. This Exhibit, and all other Exhibits to which reference is made in this Decision, were admitted into evidence without objection.

Decreased Housing Services:

Heater: The tenants testified that there is one gas heater in her unit. Beginning about 3 years ago, the heater would not come on using the thermostat, although the pilot light was lit. The tenants notified the owner at that time, but nothing was done. The above-mentioned Stipulation, dated August 15, 2016, states, in part: “within 30 days, plaintiff [the owner] shall inspect and repair as necessary the following defects . . . heater.” The tenants testified that the thermostat was replaced in late November 2016. The owner testified that his first notice about this problem was when he received the tenant’s petition in the present case, which was mailed to him on October 19, 2016.

Bathtub: The tenant testified that the bathtub in her unit was re-surfaced in the year 2002. At that time, the owner’s repair person told her that the tub would need to be re-surfaced every few years. The tenant testified that she told the owner “a couple of years later,” but the tub has not been re-surfaced. One of the items listed in the Stipulation is “bathtub.” The tenant submitted photos of the tub that were taken in July and August 2016.² The tenant testified that the condition was the same at the time of the Hearing.

These photos depict several areas on the bottom of the tub where the surface is completely worn away and the metal below is rusted. The tenants testified that, because of this condition, they cannot take baths and place plastic mats on the tub floor when they take showers. The tenants further testified that the owner’s repair person put the toilet into the tub when he made repairs.

The owner testified that the rusted areas are the result of “hammer marks” or something similar, and that the damage was caused by the tenants. The owner further stated that he did nothing regarding the tub after signing the Stipulation.

Mold: The tenants testified that there is a window in their bathroom, but no fan. They open the window after showering, but there is significant mold on the wall and window above the shower. A photo submitted by the tenants supports the claim of mold accumulation.³ The Stipulation includes inspection and repair of “bathroom mold and mildew.” The tenants testified that this problem has existed for 20 years, and that the mold “comes from the walls.” The owner testified that he has cleaned the bathroom walls, the last time being 5 or 6 years ago. He inspected in November 2016, at which time he saw soap scum, but no mold.

Stove: The tenants testified that the burners on the electric stove in their unit do not heat consistently, and that they notified the owner about this problem 2-3 years ago. The Stipulation lists “defective stove.” The owner testified that he inspected the stove in November 2016, and the burners performed normally.

Closet: The tenants testified that there is a hole in the wall of the closet in that was caused by a leaking roof. They cover the hole, and it has no effect upon their tenancy.

² Exhibit Nos. 2B through 2D

³ Exhibit No. 3

Screens: The tenants testified that they moved into the unit in 1982, and there were window screens on the windows at that time. They fell into disrepair, and were replaced in November 2016. The list of repairs in the Stipulation includes “window screens.”

Electrical problems: The tenants testified that at times the lights in the unit flicker. There was no evidence of the cause of this problem.

Parking: The tenants testified that one parking space was included in their original rental agreement.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Request for Justification of Rent Increase: It is found that the owners complied with the tenants’ request.

RAP Notice: It is found that the tenants received the RAP Notice in the year 2002, as well as together with both contested rent increases. A tenant petition must be filed within 90 days of the date of service of a rent increase notice or the date the tenant first receives the RAP Notice, whichever is later.⁴ Therefore, the tenant’s petition was filed far too late to contest the rent increase in the year 2002.

Service of Rent Increase Notice: Rent Adjustment proceedings are governed by State law as well as the Rent Adjustment Ordinance (O.M.C.). Under State law,⁵ a written notice of rent increase must be served either by delivering a copy to the tenant personally or by serving a copy by mail under the procedures prescribed in Code of Civil Procedure Section 1013. This Code section requires that the document be deposited in a mailbox, post office or other facility maintained by the U. S. Postal Service.

The owner’s testimony that he mailed the rent increase notice to the tenants is found to be credible, and a letter correctly addressed and properly mailed is presumed to have been received in the ordinary course of mail.⁶ It is likely that the tenant did not receive the mailed notice due to problems with the postal service. This is not the fault of the owner. Therefore, it is found that the 2016 rent increase notice was properly served upon the tenant.

Banking: The Rent Adjustment Ordinance⁷ 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.**” (emphasis added). Therefore, the tenant’s current rent – which includes parking – is \$853 per month.

An owner is allowed to bank rent increases and use them in subsequent years, subject to certain limitations.⁸ The parties agree on the dates and rent amounts entered into the Banking

⁴ O.M.C. Section 8.22.090 (A)(2)

⁵ Civil Code Section 827(b)(1)

⁶ Evidence Code Section 641.

⁷ O.M.C. Section 8.22.020

⁸ O.M.C. Section 8.22.070(C); Regulations Appendix, Section 10.5.1

calculations shown on the attached Table. The method of calculation on this Table has been approved by the Rent Board.⁹ As set forth in this Table, the maximum rent for the tenant's unit is \$904.18 per month. This is more than the amount stated in the contested rent increase notice. Therefore, before consideration of the tenant's claims of decreased housing services, the rent is \$882.42 per month, effective October 1, 2016.

Decreased Housing Services: Under the Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent¹⁰ and may be corrected by a rent adjustment.¹¹ However, in order to justify a decrease in rent, a decrease in housing services must be either the elimination or reduction of a service that existed at the start of the tenancy or a violation of the housing or building code which seriously affects the habitability of the tenant's unit. Also, an owner must have notice of a problem, and a reasonable opportunity to make needed repairs, before a claim of decreased housing services will be granted.

There is also a time limit for claiming decreased housing services. A tenant petition must be filed within 90 days after the date of service of a rent increase notice or change in the terms of a tenancy or the date the tenant first receives the RAP Notice, whichever is later.¹²

However, when a tenant complains of ongoing problems with his or her unit, the Board has declared that such claims should not be completely denied if the tenant received the RAP Notice more than 90 days before the petition was filed. The tenant first received the RAP Notice in the year 2002, far more than 90 days before filing her petition on October 4, 2016. Therefore, in accordance with the Regulations and Board decision,¹³ the tenant can only be granted relief on her claims for decreased housing services beginning 90 days before the date on which she filed her petition. Allowable claims of decreased housing services therefore begin on July 4, 2016.

Heater: This was an item included in the court Stipulation, dated August 15, 2016. Contrary to his testimony at the Hearing, the owner obviously had notice of this problem before the court appearance in mid-August 2016. Heat is a basic housing service, and the heater should have been repaired before July 4, 2016. The lack of heat reduced the package of housing services by 10% from July 4 through November 30, 2016. As set forth on the Table below, the tenants overpaid rent during that time.

Bathtub: There is no evidence that the damage to the tub – which was also an item listed in the Stipulation – was caused by the tenants' misuse; the owner's testimony to the contrary was mere speculation. The tenants' testimony that they have been unable to take baths is supported by photos of several areas of the tub. This condition has reduced the housing services by 3% since July 4, 2016. Because of the current decrease in housing services, the rent is reduced by 3%, being \$26.47 per month, to \$855.95 per month. This rent decrease will remain in effect until the bathtub is re-surfaced or replaced, as specified in the Order below.

⁹ Appeal Decision, Case No. 98-02, et al. Merlo v. Rose Ventures III et al. The Board has designated this decision to be a Precedent Decision.

¹⁰ O.M.C. Section 8.22.070(F)

¹¹ O.M.C. Section 8.22.110(E)

¹² O.M.C. Section 8.22.090(A)(2)

¹³ Appeal Decision in Case No. T09-0086, Lindsey v. Grimsley, et al., as modified by O. M. C. Section 8.22.090(A)(3)

Further, the tenant has overpaid rent since August 4, 2016. As set forth on the Table below, the tenant overpaid rent during that time.

Mold: Mold is caused by excess moisture in the air. When asked the cause of the mold in their bathroom, the tenants testified that they believed it “comes from the walls.” This is not a condition that the owner can correct and, therefore, the claim is denied.

Stove: The testimony of the parties was equally credible, and the tenants have not sustained their burden of proof. For this reason, the claim is denied.

Closet: Since the tenants testified that the hole in the wall does not affect their tenancy, the condition does not constitute a decreased housing service. The claim is denied.

Screens: This item is listed in the Stipulation. Since there were intact screens at the start of the tenancy, their dilapidation reduced the tenants’ housing services by 1% from July 4 through November 30, 2016. As set forth on the Table below, the tenants overpaid rent during that time.

Electrical problems: Intermittent flickering of the lights is a vague claim, and there is no practical way in which an Order can be stated to allow an owner to correct the problem; the claim is therefore denied.

Parking: This claim is addressed earlier in this Decision. Parking is a housing service, and the separate charge is part of the Base Rent. Therefore, the claim is denied.

VALUE OF LOST SERVICES

Service Lost	From	To	Rent	% Rent Decrease	Decrease /month	No. Months	Overpaid
Heat	4-Jul-16	30-Nov-16	\$828	10%	\$ 82.80	5	\$414.00
Bathtub	4-Jul-16	8-Mar-17	\$828	3%	\$ 24.84	9	\$223.56
Screens	4-Jul-16	30-Nov-16	\$828	1%	\$ 8.28	5	\$ 41.40
TOTAL LOST SERVICES							\$678.96

RESTITUTION

TOTAL TO BE REPAYED TO TENANT \$678.96

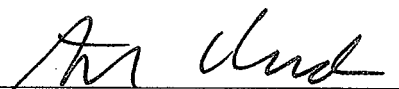
Conclusion: The current rent is \$855.95 per month, effective October 1, 2016. The tenants paid a total of \$4,968 for the months of October 2016 through March 2017. The full amount of rent for this time period was \$5,135.70 (\$855.95 x 6). Before considering past decreased housing services, this was an underpayment of \$167.70. However, because of past decreased housing services, as set forth in the Table above, the tenants overpaid \$678.96.

The underpayment and overpayment are set off against each other. This results in a total overpayment of \$511.26. This overpayment is ordered repaid over a period of 9 months.¹⁴ The current rent of \$855.95 per month is temporarily reduced by \$56.81 per month, to \$799.14 per month, beginning with the rent payment in April 2017 and ending with the rent payment in March 2018. When the bathtub is re-surfaced or replaced, the owner may increase the rent by \$26.47 per month, after giving proper notice in accordance with Civil Code Section 827.

ORDER

1. Petition T16-0549 is partly granted.
2. The Base Rent is \$882.42 per month.
3. Because of an ongoing decrease in housing services, the current rent, before reduction due to rent overpayments, is \$855.95 per month.
4. Because of past decreased housing services, the tenant has overpaid rent in the amount of \$511.26. This overpayment is adjusted by a rent reduction for 9 months.
5. The rent is temporarily reduced by \$56.81 per month. The current rent is \$799.14 per month, beginning with the rent payment in April 2017 and ending with the rent payment in March 2018.
6. In April 2018, the rent will increase to \$855.95 per month.
7. When the bathtub is re-surfaced or replaced, the owner may increase the rent by \$26.47 per month, after giving proper notice in accordance with Civil Code Section 827.
8. The Anniversary Date for future rent increases is October 1.
9. **Right to Appeal:** This decision is the final decision of the Rent Adjustment Program Staff. Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within twenty (20) calendar days after service of the decision. The date of service is shown on the attached Proof of Service. If the Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.

Dated: March 15, 2017



Stephen Kasdin
Hearing Officer
Rent Adjustment Program

¹⁴ Regulations, Section 8.22.110(F)

CITY OF OAKLAND



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

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

CALCULATION OF DEFERRED CPI INCREASES (BANKING)

Initial move-in date	24-Jul-1982	MUST FILL IN D9, D10, D11 and D14	Case No.:	
Effective date of increase	1-Oct-2016		Unit:	
Current rent (before increase and without prior cap. improve pass-through)	\$853		CHANGE YELLOW CELLS ONLY	
Prior cap. imp. pass-through				
Date calculation begins	1-Oct-2006			
Base rent when calc. begins	\$853			

If the planned increase includes other than banking put an X in the box→

ANNUAL INCREASES TABLE

Year Ending	Debt Serv. or Fair Return increase	Housing Serv. Costs increase	Base Rent Reduction	Annual %	CPI Increase	Rent Ceiling
10/1/2016				2.0%	\$ 20.91	\$ 1,066.32
10/1/2015				1.7%	\$ 17.47	\$ 1,045.41
10/1/2014				1.9%	\$ 19.17	\$ 1,027.94
10/1/2013				2.1%	\$ 20.75	\$ 1,008.77
10/1/2012				3.0%	\$ 28.78	\$ 988.02
10/1/2011				2.0%	\$ 18.81	\$ 959.24
10/1/2010				2.7%	\$ 24.72	\$ 940.44
10/1/2009				0.7%	\$ 6.37	\$ 915.71
10/1/2008				3.2%	\$ 28.20	\$ 909.35
10/1/2007				3.3%	\$ 28.15	\$ 881.15
10/1/2006				-	-	\$853

Calculation of Limit on Increase

Prior base rent	\$853.00
Banking limit this year (3 x current CPI and not more than 10%)	6.0%
Banking available this year	\$ 51.18
Banking this year + base rent	\$ 904.18
Prior capital improvements recovery	\$ -
Rent ceiling w/o other new increases	\$ 904.18

Notes:

1. You cannot use banked rent increases after 10 years.
2. CPI increases are calculated on the base rent only, excluding capital improvement pass-throughs.
3. The banking limit is calculated on the last rent paid, excluding capital improvement pass-throughs.
4. Debt Service and Fair Return increases include all past annual CPI adjustments.
5. An Increased Housing Service Cost increase takes the place of the current year's CPI adjustment.
6. Past increases for unspecified reasons are presumed to be for banking.
7. Banked annual increases are compounded.
8. The current CPI is not included in "Banking", but it is added to this spreadsheet for your convenience.

PROOF OF SERVICE

Case Number T16-0549

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

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

Tenants

Akenduca Beasley aka Linda J. Beasley
P.O. Box 19304
Oakland, CA 94619

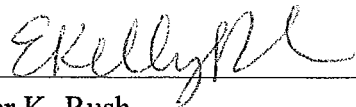
Akenduca Beasley aka Linda J. Beasley
3764 39th Ave #D
Oakland, CA 94619

Owner

Michael E. Horejsi
P.O. Box 2883
Castro Valley, CA 94546

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 15, 2017 in Oakland, CA.



Esther K. Rush

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KM

City of Oakland Residential Rent Adjustment Program 250 Frank Ogawa Plaza, Suite 5313 Oakland, California 94612 (510) 238-3721		RECEIVED CITY OF OAKLAND RENT ARBITRATION PROGRAM APPEAL 2017 APR -3 PM 4:00	
Appellant's Name Michael E. Horejsi		Landlord <input checked="" type="checkbox"/>	Tenant <input type="checkbox"/>
Property Address (Include Unit Number) 3764 39 th Avenue, Apt. D Oakland, CA 94619			
Appellant's Mailing Address (For receipt of notices) Michael E. Horejsi P.O. Box 2883 Castro Valley, CA 94546		Case Number T16-0549	
		Date of Decision appealed March 15, 2017	
Name of Representative (if any) N/A		Representative's Mailing Address (For notices) N/A	

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


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

Revised 5/29/09

7. Other. You must attach a detailed explanation of your grounds for appeal. Submissions to the Board are limited to 25 pages from each party. Number of pages attached 23. Please number attached pages consecutively. *w/ Exhibits*

8. You must serve a copy of your appeal on the opposing party(ies) or your appeal may be dismissed. I declare under penalty of perjury under the laws of the State of California that on April 3, 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 : Akenduca Beasley aka Linda Beasley
Address : P.O. Box 19304
City, State Zip : Oakland, CA 94619
Name : Saichidonanda Mims
Address : 3764 39 th Avenue, Apt. D
City, State Zip : Oakland, CA 94619

 SIGNATURE OF APPELLANT or DESIGNATED REPRESENTATIVE	<u>3 April 2017</u> DATE
--	------------------------------------

IMPORTANT INFORMATION:

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

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

Revised 5/29/09

APPEAL ISSUES

Tenants were allowed to file an appeal of the rent increase **despite** the fact that they were behind in their rent. This is a violation of OMC 8.22 0904b and their appeal should be denied. Tenants were behind in their rent by an amount of \$2,000 when they filed. This issue was **not** addressed in the decision.

The tenants refused to pay the lawful rent increase, which was to begin on October 1, 2016. This requirement was spelled out in the RAP notice issued with the rent increase. This was acknowledged by the hearing officer, but omitted from the decision. This is a violation of OMC 8.22 70 D5. They are currently behind on their rent increase 6 months. This fact again was omitted from the decision.

Tenants' appeal is a litigation of the same issues between the same parties settled by a Stipulated Judgment, no longer subject to an appeal. This matter has been judged and litigation is prohibited by the Doctrine of res judicata. The tenants' appeal regarding all housing service issues must be denied.

The housing service reduction regarding the heater, in addition to being barred by the doctrine of res judicata, is also barred by the state law. Tenants caused their heater to not work by turning off the gas. This is an improper use of a gas fixture, CCC Section 1941.2b. The tenants, by turning off the gas, caused an unlivable condition to occur. If the tenant fails to meet the requirement articulated in CCC Section 1941.2, no action can be taken against the landlord concerning any violation of the implied warranty of habitability. CCC Sections 1929, 1942. Any claim for reduced housing service must be denied.

The reasons for denial of a housing service reduction regarding the window screens are essentially as previously stated. The screens were damaged by an identical hole in each screen; this is not normal fair wear and tear. The tenant has a responsibility under CCC Section 1941.2d to not damage property.

The reasons for denial of a housing service reduction regarding the tub are also as stated previously. Additionally, there is indisputable evidence that the tub finish is damaged and that it occurred while tenants were living in the apartment. It is well established that chipped porcelain, or other damaged surface, is not considered fair wear and tear. In this case, the tenant was absolved of her responsibilities under CCC Section 1941.2d. In addition, the landlord was levied a reduction of rent for the previous 6 months, and also fined with a permanent 3% reduction in rent for the remainder of the tenants' stay in the unit. For all of the above reasons, this claim should be denied. There is no basis in law for this ruling.

This decision denies me a fair return on my investment. Not only was my requested banked rent increase denied, but the unit rent was decreased by 3%. The collected rent on this unit has not covered the basic cost of maintaining and operating the unit for the past three years.

1. BANKED RENT

The rent was last increased on February 2, 2004, R.H.P.R. Case TO3-300. The rent at that time was set at \$832.48. A separate fee for parking in the amount of \$25 per month was paid, treated and accounted for as a separate service fund. Tenant refused to pay more than \$828 per month in rent and \$25 extra for rent of her parking. I do not know how she determined that to be the amount of rent due.

Since tenants' rent had not been increased for 12 years, considerable rent has been banked. An election was made to legally request a rent increase, including some of the banked rent permitted.

Tenants were served on August 26, 2016 with a rent increase of 6%. The increase was effective on October 1, 2016.

It appears that the playing field is not level – these decisions all came off the bottom of the deck. They are arbitrary and not supported by law. It appears that every effort was made to assure the tenants did not get an increase in rent – this is unacceptable.

The rent in this unit is less than half the rent of the lowest 25% of apartments rented in the 94619 zip code. A survey conduction in 2015 ranged rents from \$1,695 to \$2,850 for a 2 bedroom unit. See Exhibit ___/

II. SUPERIOR COURT STIPULATED JUDGMENT

This Stipulation between parties resulted from an unlawful detainer action. (See file)

The tenant is compelled to pay her rent plus \$100 in delinquent rent from September 2016 to June 2018.

This Stipulation eliminated the landlord from receiving any more money for delinquent rent, or the tenants from attaining anymore reimbursement in rent relief for any complaints she may have had concerning the apartment for the period of time prior to August 31, 2016.

The tenants' petition is barred by the Doctrine of Collateral Estoppel, which precludes relitigation of a suit on a different cause of action involving a party to the first case – this is considered legal harassment. It is also barred by the doctrine of res judicata as previously stated.

The Stipulation issuing Court maintains sole jurisdiction over this case until September 20, 2018.

The Stipulation also, in paragraph 6, contains a specified wavier to wit: "With the exception of the rights set forth herein, the parties waive all other rights known to them at this time."

Paragraph 6 also contains a very vague list of things with no explanation of any particular problems. There was no penalty specified for the results of dealing with these issues. The instructions were:

'within 30 days plaintiff shall inspect and repair as necessary the following defects'

No particular defects were noted. This is a typical unlawful detainer maneuver. My attorney at the time suggested an inspection be delayed to assure tenant was able to pay the amounts agreed upon or be evicted. However, contrary to the hearing officer's statement, this was the first notice of any particular problem from this tenant, beyond the shower.

The statement of (inspect and repair as necessary) was apparently interpreted by the hearing officer as some kind of blanket, all-encompassing repair commitment.

My point of reference for 'inspect and repair as necessary' is the California Consumer Affairs Outline – Landlord's and Tenant's Responsibility for Habitability and Repairs: Legal Guide LT-8. Landlord's responsibilities are defined by California Civil Code Section 1941 and the Tenant's Responsibilities under California Civil Code Section 1941.2. For Information See Exhibit ___.

I also consulted the California Apartment House Association's guide to 'wear and tear' or 'damages' to determine if the tenant is responsible for damages to the apartment. See Exhibit ___.

An inspection of the unit was completed on November 2, 2016. I returned to the unit several times after that to complete the work and installed needed items. The heater and shower issues were resolved on that date. Although the inspection was late, it was well within the 90 day limit set by R.A.P.R. 10.2.2 4b. For results and actions taken see letter dated January 24, 2017 in file.

III. RENT REDUCTIONS

I reject the rent reductions concerning the shower, heater and window screens. The findings are not supported by the facts, the law, or the authority of the hearing officer.

A. On page 6 of the decision, the hearing officer listed a beginning date for loss of service as July 4, 2016 for the heater, shower and window screens. This is improper because the tenant settled all claims for any possible alleged loss of service which occurred prior to August 31, 2016 as previously stated.

B. The hearing officer does **not** have the authority to override a Superior Court Judge who maintains jurisdiction over the case.

C. The tenant waived all rights to further claims in the Stipulation.

D. The causation of the damage to the tub was due to tenant's actions/neglect – explanation to follow.

E. The damage to the window screens are due to tenant's actions/neglect.

F. Tenant's additional claim for damages prior to August 31, 2016 are precluded by the Doctrine of Collateral Estoppel and the Doctrine of res judicata.

G. Rent reduction provided for the window screens and heater continued through November 2016. Both of these items were addressed during my visit on November 2, 2016. See letter dated Jan. 24, 2017.

There was a statement in the Decision that work was not done in the apartment until late November 2016. This statement is incorrect and contrary to my testimony and letter of January 14, 2017 concerning the issue. To settle the issue, receipts for materials purchased as a result of my November 2, 2016 inspection are attached as Exhibit _____. On November 4, 2016, window cranks, a window casement operator, on/off push switch, and cabinet knobs were purchased, and an order for window screens was placed on November 5, 2016. All items were included in the letter sent to the tenants.

None of the alleged decreased housing services include substantial problems with the condition of the unit.

The only months that are available for a rent reduction are the months of September and October 2016.

IV THE LAW AND OTHER REQUIREMENTS

What follows are the laws I have referenced above, which I used to determine what was 'repair as necessary' identified in the Stipulation.

The general rule is that:

"When a landlord (property owner) rents an apartment to a tenant (Renter), the rented property must be fit to live in. In other words, the rented property must be 'habitable.' During the time that the property is being rented, the landlord must do maintenance work and make repairs which are necessary to keep it habitable. However, a landlord is not responsible for repairing damage caused by the tenant, or the tenant's guest, children or pets." See Exhibit _____

The following landlord responsibilities are relevant to the issues presented to the Rent Board.

CCC Section 1941 b: Plumbing facilities in good working order, including hot and cold running water, connected to a disposal system. (no problem)

CCC Section 1941 d: Heating facilities in good working order. (no problem, heater turned off by tenant)

CCC Section 1941 i: A working toilet, wash basin, and bathtub or shower, the tub shower must be in a room that is ventilated, and that allows privacy.

(Note: The tenant did not complain that she did not have hot and cold running water. Tenant did not complain of a lack of ventilation; tenant did want a fan in addition to the window. There is no requirement to provide both [window and fan]. Tenant did not complain of not having a bathtub or shower, only one is required.)

Tenant claimed building code violations, but presented no evidence of any violation.

What follows are the laws and general rules I used to determine whether the tenant is complying with the law and their legal responsibilities.

General Rules: "A tenant must take reasonable care of the rental property and common areas, such as hallways. This means that the tenant must keep those areas in good condition. A tenant also must repair all damages that he or she causes, or that is caused by the tenant's guests, children or pets."

The following laws are relevant to the issues in this appeal:

CCC Section 1941.2 a: Keep the premises 'as clean and sanitary as the condition of the premises permits.' (Note: The tenants' housekeeping is deplorable.)

CCC Section 1941.2 b: Use and operate gas, electrical and plumbing fixtures properly. (example of improper use includes overloading the electrical outlets. Flushing large, foreign objects down the toilet and allowing any gas, electrical or plumbing fixtures to become filthy.)

(Note: In this case, no one could accuse the tenant of having a bathtub that is **not** filthy. The gas heater did not operate because the **tenant turned off the gas** – this is improper use of a gas fixture.)

CCC Section 1941.2 d: Not destroy, damage, or deface the premises, or allow anyone else to do so.

(Note: Tub and window screens were damaged.)

CCC Section 1941.2 e: Not remove any part of the structure, dwelling unit, facilities, equipment or appurtenance, or allow anyone else to do so.

(Note: This pertains to the window screen clips that secure the window screens to the window.)

"If the tenant does not perform these duties and causes the property to become uninhabitable, the tenant cannot require the landlord to repair the property to make it habitable."

OMC 8.22.360 4 – This provides an eviction remedy for damage to the property and refusal to pay for the damages.

Both HUD and the California Apartment House Association consider chipped porcelain as tenant damage. The later identifies damaged window screens as tenant damage.

This unit rents for \$828 a month and is not in perfect condition. It is not in the same condition as a \$3,000 a month unit, nor is it required to be. The implied warranty of habitability is not violated merely because the rental unit is not in perfect, aesthetically pleasing condition, nor is the implied warranty of habitability violated if there are minor housing code violations, which standing alone, do not affect habitability. Green v. Superior Court (1974)

V. BATHTUB

The bathtub was inspected on November 2, 2016. Fresh damage was noted on the surface of the tub. Damage consisted of numerous small areas of damaged porcelain on the bottom of the tub, as well as the sides and upper ledge – these were not caused by normal wear. Several areas of irregular chipped porcelain were noted, most were roughly 1 inch in diameter or less. Areas of mineral stains were also observed.

It was obvious the tub and tile walls had not been cleaned in a very long time. The accumulation of soap scum was heavy.

The tub had been refinished in 2002 and the finish showed no sign a failure, peeling or blistering.

This is a steel tub, most new ones have a lifetime warranty. All units have their original tubs, they are over 60 years old and still serviceable.

When the tub was resurfaced, a five year warranty and recommended instructions for cleaning and use were provided. See Exhibit ____.

1. Use only non-abrasive bathmats.
2. Avoid trapping water against the surface for a long period of time.
3. Use non-suction bathmats.
4. Suction bathmats will harm finish. and
5. Do not leave any bathmats on the floor from day to day.

The tenant was provided with these instructions and failed to follow them. While at the unit on March 10, 2017, it was noted that several inches of water and bleach was standing in the tub, as well as the suction type bathmats [not recommended]. I doubt this tenant would treat a new resurface better than the one she has.

Contrary to the tenant's claims, the new resurfaced tubs have a warranty of over 10 years; one installer informed me he had one in his house that was 20 years old. A new roof has a warranty of 3 years and a life expectancy of 25 years.

Tenants provided photos taken in preparation for their unlawful detainer trial which occurred in August 2016. In retrospect, I believe the photos presented at the hearing showed considerably more 'rust' than was present in the photos I took on November 2, 2016. I believe the tenants possibly enhanced, with shoe polish, damaged areas in the bottom of the tub.

Upon close of the hearing, I was going to provide some photos for the file – for some reason I didn't. I believe the hearing officer indicated he had enough material to make a decision. After reviewing the decision, it appears that the photos are relevant and should have been part of the record. Please enter these in the record. See Exhibit ____.

The hearing officer should conduct a joint on-site visit to inspect the actual, true condition and damage to the tub.

The statement by the hearing officer that 'there is no evidence that the damage to the tub was caused by tenant misuse' is irrelevant. This conclusion is interesting. "Misuse" is the mother of damage. The wrong standard is being applied. First, he acknowledges that there is damage to the tub, I concur. Second, it is irrelevant whether it was caused intentionally or through carelessness or the tenants' misuse. In this case, the tub would not rust if the porcelain was intact. The tenant, in some manner, damaged the porcelain; also damaged was the rust barrier under the porcelain in some areas, this is black and ordinarily is revealed under a normal chip.

The tenants, through some means, caused damage to the tub, which, according to tenants, created so much rust to occur in the tub that they can no longer use the tub and has now become uninhabitable in their minds. The tenants, and no one else, created this condition. CCC Section 1941.2.

The law regarding this issue is covered in IV above.

1. The damage to the surface enamel of the tub is considered tenant damage by both HUB and the California Apartment House Association. See Exhibit ____.
2. CCC Section 1941.2 d restricts tenant from either destroying or damaging the property.
3. A general rule is that if the tenant causes the property to become uninhabitable, the tenant cannot require the landlord to repair the property to make it habitable.
4. CCC Section 1941 i states that a landlord provide either a bathtub or shower, both are not required. This is not a habitability issue.

The tenants freely admit they are able to use the shower. A problem with their complaint is if there is rust, which I did not see, it's far more sanitary than the normal state of sanitation in the rest of the tub and enclosure. CCC Section 1941.2 b requires tenants to prevent plumbing fixtures from becoming filthy.

For all of the above reasons, this claim should be denied. Tenants should be required to repair the damaged areas in the tub as normally is required or pay for such service to be provided.

No credible legal authority was provided for this ruling.

This claim is barred by the doctrine of res judicata and collateral estoppel. It should be dismissed.

VI. WINDOW SCREENS

The tenants complained of window screens in their appeal since 2007 (whatever that means).

An inspection was conducted on November 2, 2016. The window screens are constructed with an aluminum metal screen, surrounded by a metal frame. Each screen is secured to the window frame by four metal clips. These screens do not deteriorate – some have been in place in excess of 60 years.

The inspection revealed that four of the screens had a single 3/8 inch hole, about pencil or pen size in each one. The likelihood of this happening due to age is not possible. The condition of the screens otherwise were excellent – no deterioration was noted. Additionally, about 6 of the securing clips were gone. This allowed the screen to fit loosely; in some cases, the screen was 1 inch away from the window.

The window screens were replaced with screens that did not have holes – all missing clips were replaced. The tenant was not, as yet, charged for the damaged screens.

The California Apartment House Association identifies missing, bent or torn screens as tenant caused damage. See Exhibit ____.

The law in this matter, IV above, covers this type of damage.

CCC Section 1941.2 d states that the tenant cannot destroy property (punch hole through window screen).

CCC Section 1941.2 e states that the tenant cannot remove any part of the dwelling unit (clips securing window screens).

Testimony to the above damage was disregarded.

The rent reduction for this is not justified by law – tenants are responsible for damage caused by themselves.

As previously stated, the timeframe specified by the RAP overrides a Superior Court judgment for Stipulation. This is barred by the Doctrine of Collateral Estoppel. This matter was resolve by that Court and still remains under its jurisdiction.

This type of ruling removes a tenant's responsibility and rewards them for damaging a landlord's property.

This is akin to a tenant appearing at a Hearing demanding that a reduction for housing services is justified because they have four broken windows. The story is that they have lived in the unit for 32 years, the windows were okay when they moved in, but fell into disrepair. Landlord had **replaced windows prior to Hearing**. RAP awards tenants rent reduction for 6 months (really?).

VII HEATER

Tenants claim their heater did not function properly since July 2015. In their testimony, they claimed beginning about 3 years ago the heater would not come on using the thermostat, although the pilot light was lit. The condition of the heater was also confirmed by myself at the hearing and in a letter dated January 14, 2017.

The statement that 'tenants notified the owner at that time (when?) and nothing was done' is unclear. No evidence of notification was provided. The rental contract requires a **written** notification, as does state law and the OMC.

The first notification I received of the heater being a problem was at the conclusion of an unlawful detainer action filed against the tenant. Obviously, since I signed the Stipulation on August 15, 2016, I was aware of the problem. The hearing officer perhaps misunderstood my answer – I was also informed on October 19, 2016 when I received the tenants' petition.

The unit was inspected on November 2, 2016. The condition of the heater was as described previously. Further investigation revealed the gas heating control at the heater was in the OFF position. This control has three different possible positions controlled by a selector knob: ON, Pilot, and OFF – the selector knob was set to the OFF position. In the OFF position, the heater is prevented from receiving and acting upon any signals received from the thermostat. No one provided testimony contrary to this fact. When the heating control knob was turned to the ON position, the heater functioned as designed when the thermostat was manipulated. No one contested this fact. Both tenants were present at the time. At that time, tenants were also informed that I was going to upgrade the thermostat. The tenants' testimony as to when the heater was fixed is incorrect. I also advised the tenants at that time that the control was in the OFF position.

This was explained in detail to the hearing officer – it was my impression he was having some difficulty understanding the concept of how heaters operate.

A similar situation would be having a lamp controlled by a wall switch that lights when the wall switch was turned on. If the lamp switch was turned OFF, even three years of manipulation of the wall switch would not cause the lamp to light. (Would this be worth 6 months of rent reduction for loss of housing service??)

Again, reference is made to the Stipulation rather than the tenants' appeal. I object to this for a variety of legal reasons. However, for the sake of discussion, the Stipulation in my view may have been signed on August 15, 2016, but contains a date thru August 31, 2016.

The hearing officer seems to suggest he can administer some type of penalty based upon this agreement. The tenant has defined penalties in this Stipulation. If she does not comply with her obligations under the Stipulation, she will be evicted, end of story. The landlord does not.

So, per the Agreement, the 30 days in my view runs from September 1 thru September 30, 2016. I agreed to repair what I am required by law to do, in accordance with the law as identified in IV above. This was not a blanket agreement to remodel the apartment, or repair tenant damages. In essence, I was a month late in turning on tenants' wall furnace that was **turned off by them (tenants)**. Presumably, this was used to again bolster their unlawful detainer defense. Tenants again defied the law in this issue:

CCC Section 1941.2 – They are required to use gas fixtures properly.

It is my position that an award of a 10% reduction in rent for six months because **tenants disabled their heater** is unwarranted, and excessive. The statement that 'contrary to his testimony at the hearing, the owner obviously had notice of this problem before the court appearance in mid-August 2016' is unsupported by facts and is mere speculation. This is why tenants are **required to actually provide written notification** of issues.

A rent reduction prior to August 31, 2016 is further barred by the Doctrine of Collateral Estoppel. A reduction of rent for the month of November 2016 is barred because the furnace operated during that month. A rent reduction during the month of September and October 2016 is excessive because heaters are not required during these months due to mild weather. This would be like allowing a 6 month 10% reduction for an inoperable air conditioning unit during the month of April.

VIII ACTION REQUESTED

Tenants' appeal should be **dismissed** based on any number of the stated objections. In the alternative, any reductions in rent based on housing services should not be allowed. None of the alleged decreased housing services include substantial problems with the condition of the unit.

The base rent should be set at \$882.42 per the noticed rent increase.

MAY 2015 - DECEMBER 2015 RENT DATA FOR OAKLAND BY ZIP CODE & UNIT TYPE

Zip Code	Rent		Median Rent/Sq. Ft.		Units
	25th %	50th %	25th %	50th %	
94601	\$998	\$1,195	\$1,338	483	27
94602	\$1,000	\$1,400	\$1,500	514	26
94603	Not enough data points for this zip code and room type				
94605	Not enough data points for this zip code and room type				
94606	\$1,150	\$1,395	\$1,575	500	50
94607	\$1,150	\$1,550	\$2,515	570	34
94608	\$1,188	\$1,225	\$1,750	585	24
94609	\$1,250	\$1,400	\$1,525	450	41
94610	\$1,450	\$1,500	\$1,895	467	62
94611	\$1,395	\$1,495	\$1,595	550	38
94612	\$1,273	\$1,495	\$1,848	548	40
94618	\$1,338	\$1,525	\$1,748	467	24
94619	Not enough data points for this zip code and room type				
94621	\$845	\$863	\$975	425	25

*More data points assume greater accuracy

Zip Code	Rent		Median Rent/Sq. Ft.		Units
	25th %	50th %	25th %	50th %	
94601	\$1,400	\$1,650	\$1,860	850	52
94602	\$1,638	\$1,795	\$2,225	1000	47
94603	\$1,370	\$1,700	\$1,700	850	38
94605	\$1,650	\$1,650	\$1,800	900	58
94606	\$1,650	\$2,000	\$2,650	918	106
94607	\$2,725	\$3,000	\$3,417	1100	104
94608	\$2,048	\$2,200	\$2,425	888	35
94609	\$2,300	\$2,698	\$2,950	972	71
94610	\$2,300	\$2,600	\$2,995	1042	77
94611	\$2,295	\$2,595	\$2,900	944	66
94612	\$2,500	\$3,281	\$3,566	1088	41
94618	\$2,525	\$2,950	\$3,350	1095	44
94619	\$1,695	\$2,515	\$2,850	1075	52
94621	\$1,400	\$1,450	\$1,600	889	45

*More data points assume greater accuracy

Zip Code	Rent		Median Rent/Sq. Ft.		Units
	25th %	50th %	25th %	50th %	
94601	\$1,150	\$1,295	\$1,500	700	77
94602	\$1,450	\$1,550	\$1,600	617	64
94603	\$1,125	\$1,200	\$1,275	700	28
94605	\$1,100	\$1,200	\$1,448	600	51
94606	\$1,455	\$1,613	\$1,975	650	119
94607	\$1,973	\$2,371	\$2,696	781	99
94608	\$1,450	\$1,550	\$1,950	775	36
94609	\$1,650	\$1,850	\$1,975	600	94
94610	\$1,800	\$1,995	\$2,395	750	136
94611	\$1,700	\$1,850	\$2,173	700	108
94612	\$1,612	\$1,950	\$2,330	750	96
94618	\$1,725	\$1,998	\$2,450	655	51
94619	\$1,275	\$1,500	\$2,220	770	60
94621	\$1,025	\$1,300	\$1,348	650	23

*More data points assume greater accuracy

Zip Code	Rent		Median Rent/Sq. Ft.		Units
	25th %	50th %	25th %	50th %	
94601	\$1,700	\$1,850	\$2,350	1150	23
94602	\$2,348	\$2,500	\$3,675	1250	24
94603	\$1,700	\$1,725	\$1,950	1100	21
94605	\$1,950	\$2,000	\$2,495	1200	22
94606	\$1,950	\$2,050	\$3,250	987	36
94607	\$2,100	\$2,630	\$3,725	1222	23
94608	Not enough data points for this zip code and room type				
94609	\$1,895	\$2,550	\$3,695	1200	34
94610	\$2,295	\$2,975	\$3,500	1168	21
94611	Not enough data points for this zip code and room type				
94612	\$2,085	\$2,595	\$3,338	1200	28
94618	\$995	\$2,048	\$3,295	1600	21
94619	\$1,900	\$2,000	\$2,923	1721	24
94621	Not enough data points for this zip code and room type				

*More data points assume greater accuracy

Be informed. Know the market. Have a plan.

Oakland remains one of the hottest real estate markets in the country, and both rents and sales prices have been trending up for some time now.

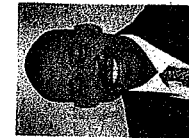
Are you taking advantage of this market? Is now the best time to sell, or exchange into another property? Is this the time to identify and utilize strategic management options to raise rents and lower expenses?

Savvy investors utilize up-to-date market data and partner with professionals who can help them plan all aspects of their investment strategy, including acquisition, management, valuation and disposition.

Call me today and let's discuss how you can realize the potential of your income property!



Nolan Jones
Partner
Real Estate Services
BRE#1506417

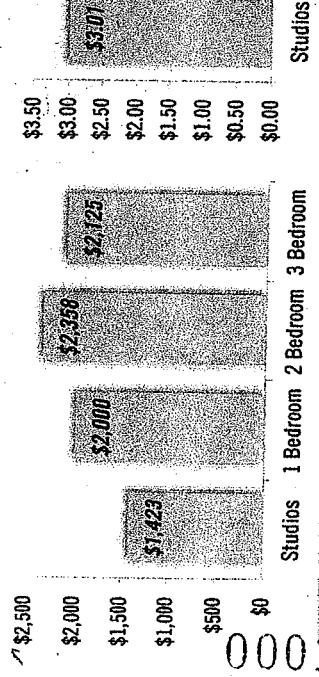


Rodger Allen
Associate
Real Estate Services
BRE#1558232

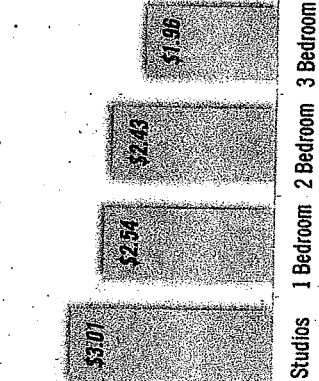
510.474.7421
rodger@baypropertygroup.com

MAY 2015 - DECEMBER 2015 RENT DATA FOR ENTIRE CITY OF OAKLAND

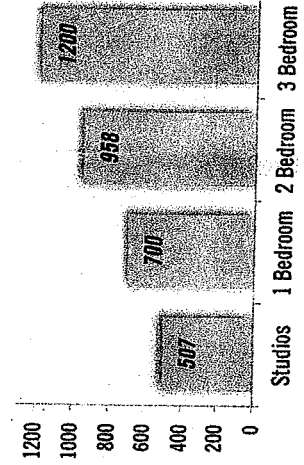
Median Rents



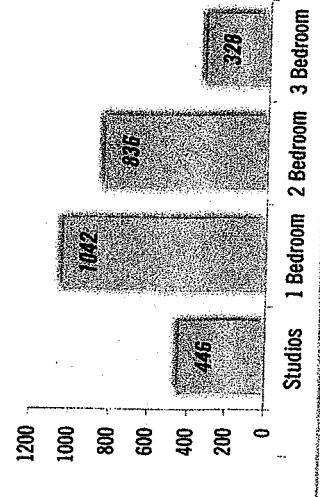
Median Rent/Sq. Ft.

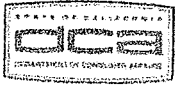


Median Square Feet



Data Points Collected





Outline - Landlords' And Tenants' Responsibilities For Habitability And Repairs: Legal Guide LT-8

May 2012

Printer Friendly Version

General Rule: When a landlord (property owner) rents an apartment or a house to a tenant (renter), the rented property must be fit to live in. In other words, the rented property must be "habitable." During the time that the property is being rented, the landlord must do maintenance work and make repairs which are necessary to keep it habitable. However, a landlord is not responsible for repairing damage caused by the tenant, or the tenant's guests, children or pets.

Landlord's Responsibilities

California Civil Code section 1941 states that when a landlord rents property to a tenant as a place to live, the property must be in a "habitable" condition. ("Habitable" means fit to live in; "uninhabitable" means not fit to live in.) Section 1941 also states that the landlord must repair problems that make the property uninhabitable - except for problems caused by the tenant or the tenant's guests, children or pets. In order for the property to be habitable, it must have all of the following:

- a) Effective waterproofing and weather protection of roof and exterior walls, including unbroken windows and doors.
 - b) Plumbing facilities in good working order, including hot and cold running water, connected to a sewage disposal system.
 - c) Gas facilities in good working order.
 - d) Heating facilities in good working order.
 - e) An electrical system, including lighting, wiring and equipment, in good working order.
 - f) Clean and sanitary buildings, grounds and appurtenances (for example, a garden or a detached garage) which are free from debris, filth, rubbish, garbage, rodents and vermin.
 - g) Adequate trash receptacles in good repair.
 - h) Floors, stairways and railings in good repair.
- In addition, the rented property must have all of the following:
- i) A working toilet, wash basin, and bathtub or shower. The toilet and bathtub/shower must be in a room that is ventilated, and that allows for privacy.
 - j) A kitchen with a sink, which cannot be made of an absorbent material (for example, wood).
 - k) Natural lighting in every room through windows or skylights. Unless there is a ventilation fan, the windows must be able to open at least halfway.
 - l) Safe fire or emergency exits leading to a street or hallway. Stairs, hallways and exits must be kept litter free. Storage areas, garages, and basements must be kept free of combustible materials.
 - m) Operable deadbolt locks on the main entry doors of rental units, and operable locking or security devices on windows.
 - n) Working smoke detectors in all units of multi-unit buildings, such as duplexes and apartment complexes. Apartment complexes also must have smoke detectors in common stairwells.

These are minimum requirements. Other conditions may make the rented property not habitable. For example, the rented property may not be habitable if it does not substantially comply with building and housing code standards that materially affect tenants' health and safety.

Tenant's Responsibilities

A tenant must take reasonable care of the rented property and common areas, such as hallways. This means that the tenant must keep those areas in good condition. A tenant also must repair all damage that he or she causes, or that is caused by the tenants' guests, children or pets. California Civil Code section 1941.2 requires the tenant to do all of the following:

- a) Keep the premises "as clean and sanitary as the condition of the premises permits."
- b) Use and operate gas, electrical and plumbing fixtures properly. (Examples of improper use include overloading electrical outlets, flushing large, foreign objects down the toilet, and allowing any gas, electrical or plumbing fixture to become filthy.)
- c) Dispose of trash and garbage in a clean and sanitary manner.
- d) Not destroy, damage, or deface the premises, or allow anyone else to do so.
- e) Not remove any part of the structure, dwelling unit, facilities, equipment or appurtenances, or allow anyone else to do so.
- f) Use the premises as a place to live, and use the rooms for their proper purposes. For example, the bedroom must be used as a bedroom and not as a kitchen.
- g) Notify the landlord when deadbolt locks and window locks or security devices do not operate properly.

If the tenant does not perform these duties and causes the property to become uninhabitable, the tenant cannot require the landlord to repair the property to make it habitable.

Similarly, the tenant cannot require the landlord to repair the property if the tenant substantially interferes with the landlord's ability to repair defects (for example, by not allowing the landlord's electrician to enter the apartment to fix faulty wiring).

In addition, the landlord is not obligated to repair damage caused by the tenant's own carelessness (for example, a toilet that will not flush because the tenant's child flushed a sock down it).

This Legal Guide is only a summary of landlords' and tenants' rights and responsibilities in this area. For more complete information, including, a discussion of tenants' remedies, please consult *California Tenants - A Guide to Residential Tenants' and Landlords' Rights and Responsibilities*.

NOTICE: We strive to make our Legal Guides accurate as of the date of publication, but they are only guidelines and not definitive statements of the law. Questions about the law's application to particular cases should be directed to a specialist.

Prepared by Legal Services Unit, June 1996. Updated May 2012.

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Select Language ▼

"WEAR AND TEAR" OR "DAMAGES"?

"Normal wear and tear" caused by ordinary comings and goings

- Well-worn keys
- "Sticky" key
- Balky door lock
- Depressurized fire extinguisher with unbroken seal
- Worn pattern in plastic countertop
- Rust stain under sink faucet
- Loose, inoperable faucet handle
- Rusty refrigerator shelf
- Discolored ceramic tile
- Loose grout around ceramic tile
- Carpet seam unraveling
- Threadbare carpet in hallway
- Scuffing on wooden floor
- Linoleum with the back showing through
- Wobbly toilet
- Rusty shower curtain rod
- Rust stain under bathtub spout
- Tracks on doorjamb where door rubs
- Door off its hinges and stored in garage
- Plant hanger left in ceiling
- Stain on ceiling caused by leaky roof
- Cracked paint
- Chipped paint (minor)
- Pleasing, professional tenant wallpapering
- Mildew around shower or tub
- Urine odor around toilet
- Discolored light fixture globe
- Odd-wattage lightbulbs which work
- Light fixture installed by tenant which fits its location
- Window cracked by settling or high wind
- Faded shade
- Paint-blistered Venetian blinds
- Sun-damaged drapes
- Drapery rod which won't close properly
- Dirty window screen
- Ants inside after rain storm
- Scrawny landscaping which was sparingly watered due to drought conditions
- Grease stains on parking space

"Damage" caused by carelessness, abuse, thievery, mysterious disappearance, accident, rules violation, or special request

- Missing keys
- Key broken off inside lock
- Door lock replaced by tenant without management's permission
- Depressurized fire extinguisher with broken seal (not used to put out fire)
- Burn in plastic countertop
- Sink discolored by clothing dye
- Missing faucet handle
- Missing refrigerator shelf
- Painted ceramic tile
- Chipped or cracked ceramic tile
- Carpet burn
- Rust marks on carpet from indoor plant container
- Gouge in wooden floor
- Tear in linoleum
- Broken toilet tank lid
- Kinked shower curtain rod
- Chip in bathtub enamel ✓
- Hole in hollow-core door
- Missing door
- Two-inch-diameter hole in ceiling
- Stain on ceiling caused by popping champagne or beer bottles
- Crayon marks on wall
- Walls painted by tenant in dark color necessitating repainting
- Amateurish tenant wallpapering
- Mildew where tenant kept aquarium
- Urine odor in carpet
- Missing light fixture globe
- Burned out or missing lightbulbs
- Light fixture installed by tenant which must be replaced
- Window cracked by movers
- Torn shade
- Venetian blinds with bent slats
- Pet-damaged drapes
- Drapery rod with missing parts
- Missing, bent, or torn window screen ✓
- Fleas left behind by tenant's pet
- Neglected landscaping which must be replaced with similar plantings"
- Caked grease on parking space



SPECIAL ORDER FORM

2569 CASTRO VALLEY BLVD.
CASTRO VALLEY, CA 94546
(510) 581-7633

DATE 11/5/16
HOME PHONE (510) 382-7652

STOMER #375 MICHAEL HOREJST

CELL PHONE _____
WORK PHONE _____

SKU #	QTY	DESCRIPTION	PRICE
<u>278A</u>	<u>4</u>	<u>18 1/8 x 48 1/4</u>	<u>4x 30.43</u>
<u>278A</u>	<u>4</u>	<u>18 1/4 x 48 1/4 DE</u>	<u>4x 30.43</u>
<u>278A</u>	<u>1</u>	<u>18 1/8 x 48 1/8 SCREEN</u>	<u>1x 30.43</u>
		<u>DE-SCREEN</u>	
		<u>FIBER ALUMINUM PLIGHT</u>	

PERSON YASMINA (SHIMMIE ATTACH)

PRICE 297.34
TAX _____
TOTAL _____

NOTES SOF #18879 & 18871
SPECIAL ORDERS LEFT AFTER 30 DAYS WILL BE RETURNED TO THE MANUFACTURER.
CUSTOM SIZE SCREENS ARE NON REFUNDABLE.

[Signature]
SIGNATURE

LESS DEPOSIT _____
BALANCE DUE _____

[Signature]
: X _____
el Horejst
MICHAEL E. HOREJST
#375 1339#

3764 Repairs

THANK YOU FOR SHOPPING AT
PETE'S HARDWARE CO
(510) 581-7633

www.peteshardware.com

INSTORE CREDIT ISSUED ON RETURNS WITHOUT RECEIPT. CHECKS REQUIRE 10 DAYS TO VERIFY
11/04/16 11:41AM JOSE 551 SALE

- 53609 1 EA 4.29 EA
- ← WINDOW CRANK HNDL ALUM 5/16" 4.29
- 3530813 1 EA 3.49 EA
- ← PUSH SWITCH ON/OFF NCKL6A 3.49
- 5065529 1 EA 15.99 EA
- ← CASEMENT OPERATOR ALUM 1762KA 15.99
- 50523 1 EA 4.29 EA
- 6d5 SCREEN PATCH ALUM 4.29
- 57276 1 EA 3.59 EA
- SHOWER DOOR ROLLER 7/8 #1901 3.59
- 55038 4 EA 2.49 EA
- ← CABINET KNOB-BRASS BP3413-3 9.96

SUB-TOTAL: \$ 41.61 TAX: \$ 3.95
DISCOUNT: TOTAL: \$ 45.56
CHARGE AMT: 45.56
654



==> JRNL#F21615 INV#633397 <<==
CUST NO: 375

14
Frank's 4

Our reputation is no secret. Our Glazecote formula is!



4316 Chamberlin Court / Oakland, CA 94619
(510) 482-3788
CA Lic. # 612463



AGREEMENT

Mike Hareisi
Job Site Name
3764 39th Ave
Street Address
Oakland CA
City State Zip
Home Phone _____ Work Phone _____

Bill To _____
Street Address _____
City State Zip
582-7662 425 8046 R
Home Phone Work Phone

COLOR: B White

Date Work Completed: 4/9/02

Special Notes _____

5 YEAR LIMITED WARRANTY
The independent company above warrants its refinishing on bathtubs, ceramic tile and sinks for a period of (5) five years from the date of completion on residential jobs and (1) one year on commercial jobs and other refinished items. Chip repairs and other repair work is warranted for one hundred twenty (120) days. This warranty is limited by problems from man-made damage, abuse, rust, leaky faucets and/or other plumbing problems, and noncompliance with the Care & Maintenance instructions printed on the back of the Agreement. This warranty is only for the repair of the problem area. The caulking must be maintained around the reglazed surface and is not covered by the warranty. A service fee may be charged for non-warranty repairs. Franchiser's liability is limited to the cost of the refinishing material only. At option of contractor or franchiser, any reimbursement will be prorated over the warranty term. Neither franchiser nor it's franchisees shall be liable for incidental, special, direct or consequential damages. All franchises are independently owned and operated.

Description/Item	Amount
Bathtub _____	\$ <u>475</u>
Tile _____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
<u>Pd (kx</u> Total	\$ <u>475</u>
<u>553</u> Sales Tax	\$ _____
Deposit	\$ _____
Total Due	\$ <u>475</u>

TERMS AND CONDITIONS

- All work is due and payable when completed unless prior arrangements in writing have been specifically made. A "Repeat Billing Charge" will be added to all accounts over 30 days old. We also reserve the right to charge interest at 1.5% per month (18% per annum) on balances 30 days or older. In the event any amount due hereunder is not paid as agreed, the undersigned jointly and severally agree to pay all costs incurred in securing payment of said unpaid balance, including a reasonable attorney's fee.
- The resurfaced items shall not have a non-skid surface unless customer specifically requests and pays for a non-skid surface.

I have resurfaced the above items using the approved safety procedures and followed the Bathcrest reglazing methods and procedures.

Mike Hareisi 4/9/02
Technician's Signature Date

I certify that the installations listed on this agreement have all been completed satisfactorily.

[Signature] _____
Customer's Signature Date

CUSTOMER ACKNOWLEDGEMENT

Both parties hereby acknowledge the receipt of this contract and the prescribed care and maintenance (printed on back). No oral agreements are accepted.

[Signature] _____ 4/9/02
Customer's Signature Date
David Th _____
Company Representative's Signature Date

EASY MAINTENANCE

Cleaning Tips

HOW CAN I KEEP MY BATHTUB LOOKING NEW?

The fixture may be used after the following date:

4/11/02

The investment you have made in your bathroom can be a lasting improvement to your home and give you many years of comfort. Please take the time to read this care and maintenance sheet. It will help you to properly maintain your bathtub.

IMPORTANT REMINDERS

Only use nonabrasive cleansers such as Bathcrest Bathroom Cleaner (a cleaner that is safe on your tub and the environment) or a spray mist cleaner that you like. Do not use abrasive cleaners. The particles in abrasive cleaners will scratch the finish and wear away the shine.

Avoid trapping water against the surface for a long period of time. Do not leave bathmats, washcloths, soap bars and/or bottles on the refinished surface. The moisture gets trapped underneath and damages the finish. Do not hang bathmats, rugs or wet towels over the edge of the bathtub.

Fix your leaky faucets. Dripping water will wear through the hardest of surfaces. Make sure that your plumbing problems are fixed immediately.

Avoid chips and scratches by keeping heavy, sharp, metal and other damaging items away from your bathroom fixtures. If a chip does occur, please contact us for repairs.

BATHMATS

You may use a non-suction type bathmat. The suction type mat will harm your new finish. Your local authorized Bathcrest franchise has approved bathmats available. Do not leave any bathmat on the tub from day to day. If you use bathmat, take it out of the tub when finished bathing or showering.

STUBBORN STAINS

For stubborn stains or scum buildup, use a Purex Dobie pad or a nylon net scrubber with the Bathcrest Bathroom Cleaner. Let the Bathcrest cleaner stand on the surface for 1-2 minutes. You may also use a more concentrated strength of the Bathcrest cleaner for stubborn stains. Do not use Scotch-Brite pads or other heavy abrasion type pads--they will only harm the finish.

DRAIN PAINS

The good old fashioned remedies work. First, clean out the hair and gunk under the strainer. Pour one cup of baking soda down the drain. Follow with one cup of white vinegar and one-half gallon of boiling water. Repeat if necessary. The baking soda will also help eliminate drain odors.

MINERAL DEPOSITS

Bathcrest Bathroom Cleaner is a great cleaner for unsightly mineral deposits on your fixtures and plumbing faucets. If more cleaning treatment becomes necessary, then try a more concentrated strength of the Bathcrest cleaner. Once a week, clean the faucets with the cleaner to maintain the shine. The Bathcrest cleaner also works well on windows, shower doors, bathtubs, sinks and tiles.

Thank you for your confidence in Bathcrest refinishing. If we can be of more service, please let us know.



000108

*If your bathtub isn't becoming to you,
you should be coming to us.*

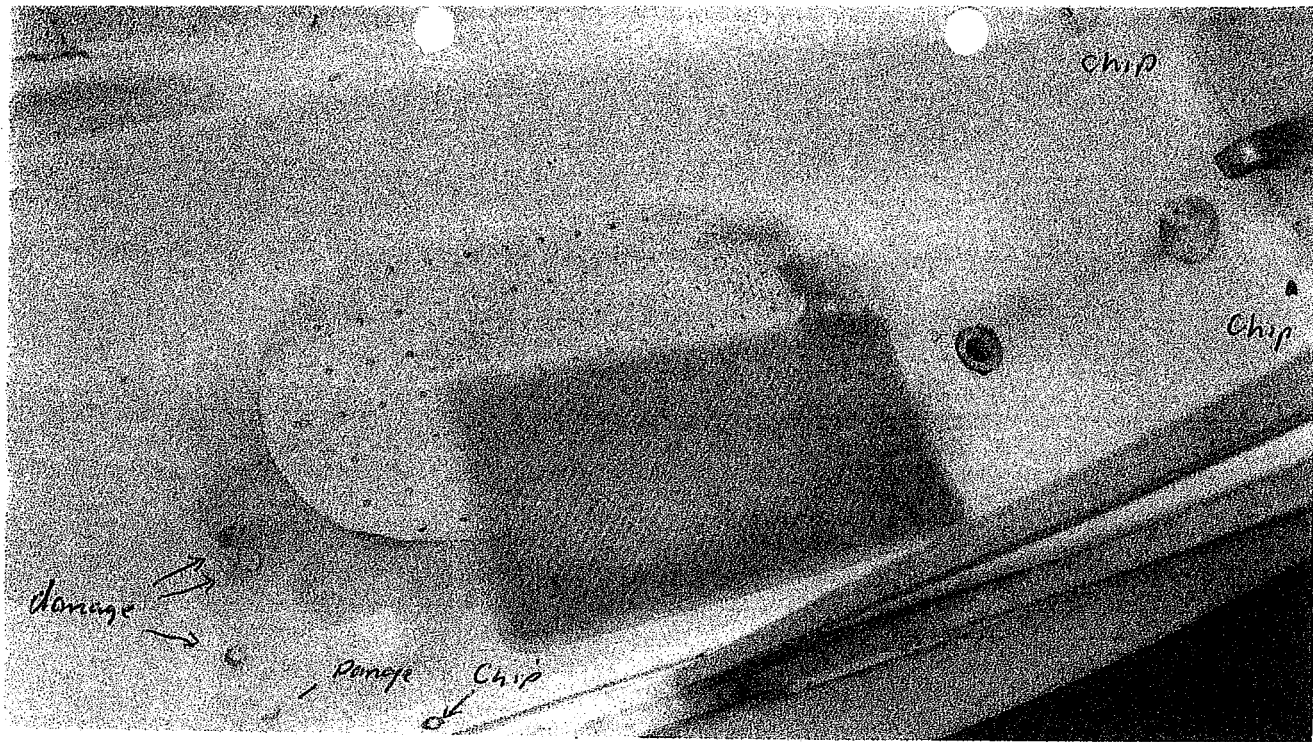
For help call 65

March 2013

Chip

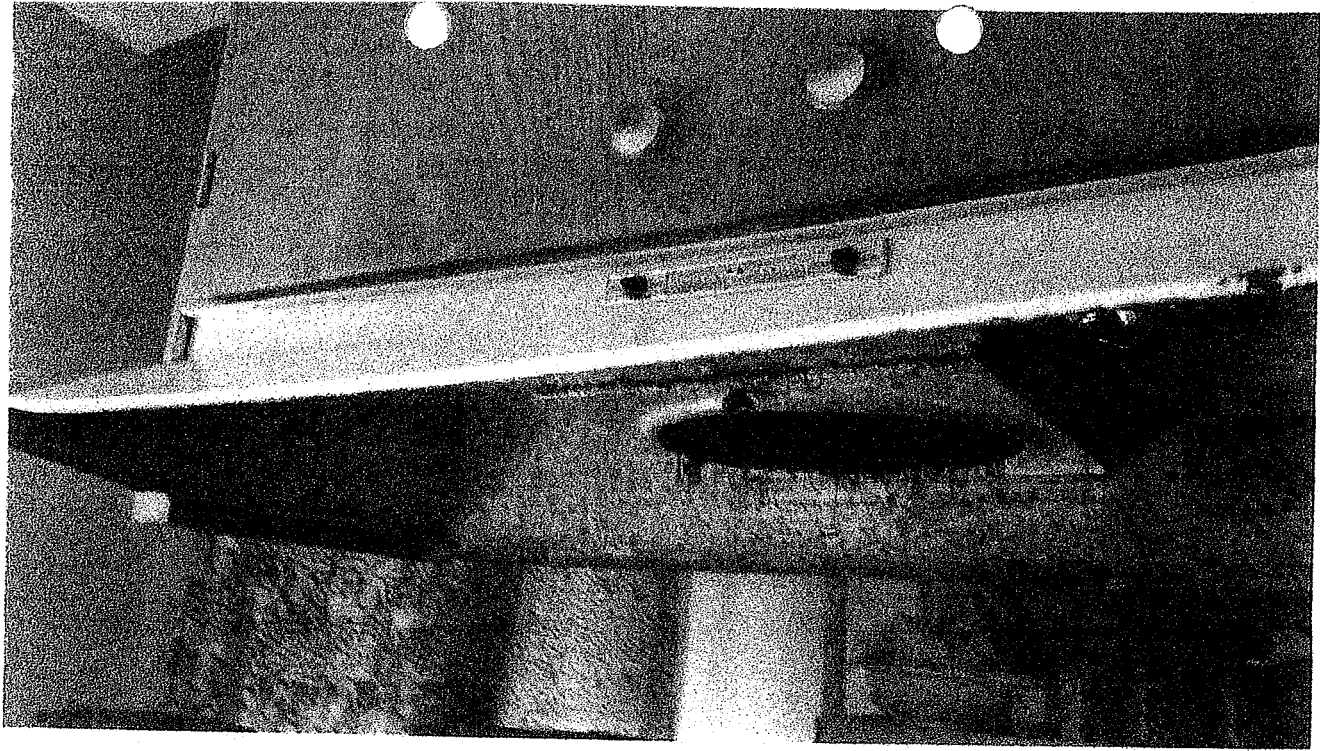
Chip

← Bleach in
Tub



2 Nov 2016

1. no Rust noted.
2. Some mineral deposits noted.
Bottom of tub not worn through
Surface finish, Body oil and soap
Scum noted.



2 NOV 2016

Range hood, fire danger
filthy



2 NOV 2016

Bedroom



2 NOV 2016

Bedroom

**EXAMPLES (Not all inclusive) of
TENANT DAMAGE versus "NORMAL WEAR AND TEAR"**

Normal costs of turning over an apartment after a tenant vacates may not be included on a claim to HUD for tenant damages. The costs an owner incurs for the basic cleaning and repairing of such items necessary to make a unit ready for occupancy by the next tenant are part of the costs of doing business. The following is a list of items typically attributable to routine use or "normal wear and tear".

Normal Wear and Tear:

- ñ Fading, peeling, or cracked paint
- ñ Slightly torn or faded wallpaper
- ñ Small chips in plaster
- ñ Nail holes, pin holes, or cracks in wall
- ñ Door sticking from humidity
- ñ Cracked window pane from faulty foundation or building settling
- ñ Floors needing coat of varnish
- ñ Carpet faded or worn thin from walking
- ñ Loose grouting and bathroom tiles
- ñ Worn or scratched enamel in old bathtubs, sinks, or toilets
- ñ Rusty shower rod
- ñ Partially clogged sinks caused by aging pipes
- ñ Dirty or faded lamp or window shades

Tenant damages usually require more extensive repair, and at greater cost than "normal wear and tear", and are often the result of a tenant's abuse or negligence that is above and beyond normal wear and tear.

Tenant Damage

- ñ Gaping holes in walls or plaster
- ñ Drawings, crayon markings, or wallpaper that owner did not approve
- ñ Seriously damaged or ruined wallpaper
- ñ Chipped or gouged wood floors
- ñ Doors ripped off hinges
- ñ Broken windows
- ñ Missing fixtures
- ñ Holes in ceiling from removed fixtures
- ñ Holes, stains, or burns in carpet
- ñ Missing or cracked bathroom tiles
- ñ Chipped and broken enamel in bathtubs and sinks
- ñ Clogged or damaged toilet from improper use
- ñ Missing or bent shower rods
- ñ Torn, stained, or missing lamp and window shades

000114

RECEIVED
CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM

2010 JUL 17 PM 2:49

THE CITY OF OAKLAND RENT ADJUSTMENT PROGRAM:

APPEAL

No. T16-0549

Michael Horejsi,
Landlord and Appellant;

vs.

Akenduca D. Beasley,
Respondent and Tenant;

CITY OF OAKLAND RENT ADJUSTMENT PROGRAM, et al.

Real Parties in Interest.

Respondent's Evidential Response To Landlord Appeal

Akenduca D. Beasley
P.O. Box 19304
Oakland, California 94619
Telephone:

Respondent -Tenant, Representing
Tenants at 3764 39th Ave Apt. D, Oakland, 94619

000115

STATEMENT OF RELEVANT FACTS

Tenant A. Beasley filed a petition on October 4, 2016, which alleges that the proposed rent increase from \$828 to \$882.42, effective October 1, 2016, and a rent increase in the year 2000, exceed the CPI Adjustment and are unjustified or is greater than 10%; that the owner did not give summary of the justification for the proposed rent increase despite her written request; that she did not receive the form Notice to Tenants (RAP Notice) at least 6 months before the effective date of the contested rent increase or together with the contested rent increase; that the contested rent increase is the second rent increase in a 12-month period; that her rent has not been reduced after the expiration period of the rent increase based on capital improvements; that at present there exists a health, safety, fire or building code violation in her unit; and that her housing services have been decreased due to problems with the heater; the bathtub; mold and mildew; the stove; the closet; window screens; and electrical problems; and that parking was a part of her original rental agreement.

The owner filed a response to the petition, which alleges that the tenant was given the RAP Notice on July 24, 2002 and together with both contested rent increases; that the current rent increase is justified by Banking; and denies that the tenant's housing services have decreased.

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The owner filed a response to the petition, which alleges that the tenant was given the RAP Notice on July 24, 2002 and together with both contested rent increases; that the current rent increase is justified by Banking; and denies that the tenant's housing services have decreased.

The decision appealed is for March 15, 2017. At this time the Residential Rent Adjustment Program did not alert Respondent of time limits as to filing response or evidence. Respondent contacted the RAP and was informed that a response or evidence is due 7 days before a hearing on appeal. So far no hearing has been scheduled for the Appeal submitted by landlord.

POINTS AND AUTHORITIES &
ARGUMENT IN OPPOSITION TO APPEAL

LEGAL AUTHORITY

Evidence Code. The Evidence Code governs proceedings in all actions [Evid. Code §12(a)] and defines “actions” to include both civil and criminal proceedings. Evid. Code §105. Unless otherwise provided in the Penal Code, the rules of evidence in civil actions are applicable to criminal prosecutions. Penal Code §1102.

Code of Civil Procedure. The Code of Civil Procedure is to be interpreted liberally in order to affect its objects and promote justice. *Justus v. Atchison* (1977) 19 Cal. 3d 564, 579, 139 Cal. Rptr. 97; Code Civ. Proc. §4, Code Commissioners’ Notes. While it is advisable to comply literally with its provisions, nothing short of a substantial departure will be fatal to a proceeding under it. *Shinn v. Cummins* (1884) 65 Cal. 97, 3 P. 133.

Certain provisions of the Code of Civil Procedure are applicable in criminal prosecutions. As used in the Code, an “action” includes a proceeding in which a party seeks punishment for a public offense. Code Civ. Proc. §22. In the Code of Civil Procedure, actions are divided into two kinds, civil and criminal, and unless it appears that the particular statute was intended to apply only to civil actions, it applies equally to criminal proceedings. *See People v. Bouchard* (1957) 49 Cal. 2d 438, 440-441, 317 P.2d 971.

**LANDLORD'S APPEAL SHOULD BE DENIED BECAUSE IT IS BASED ON
CONJECUTRE, HEARSAY & UNTRUTHFUL STATMENTS**

Tenants filed a petition challenging landlord rent increase, because the landlord agreed in court stipulation, within 30 days, to inspect and make following repairs to the apartment: bathtub, bathroom mold + mildew, hood above stove, defective stove, heater, hole in closet, window screens. He did not act within the 30 day period, thereby breaching the order issued by the court. In addition, within the court stipulation the landlord agreed to accept \$2000, he indicates in his appeal was not paid. Therefore landlord claim that rent is late is false.

Also Contrary to idea that tenants refused to pay lawful rent increase, the rent increase was challenged in the RAP hearing and was found credible by the decrease in service claims within the petition. All of the tenants claims are based from the agreement, in which landlord agreed to make repairs to the within the thirty day period.

Moreover the claims for tenants is not barred by res judicata, because they were not claims filed in a court by tenants and the defects in the apartment described were apart of settlement, governed by *California Code of Civil Procedure Section 664.6*; as a result of the landlord filing a frivolous unlawful detainer in which he indicated tenants didn't pay rent. Actually the landlord is prohibited from making claims regarding damages to the apartment. See paragraph 4 of the stipulation agreement. The court stipulation states in relevant part: paragraph (4.) plaintiff hereby waives any and all claims for rent, fees, costs, parking and late fees and daily damages for the premises above the \$3856.84 amount outlined in paragraph 1, through 8/31/16. Therefore the claims from landlord that *Cal Civ. Code Sections 1929 and 1941.2* prohibit any claim for reduction in housing services as a defense, is unsubstantiated. In court he agreed to make repairs within a reasonable time and he did not act.

With respect to the claims that were granted by RAP, relating to the heater and bathtub. *Cal. Civ. Code § 1942.4* prohibits the landlord of a dwelling from issuing a notice of a rent increase or obtaining an increase when such decreases exist. Particularly when an employee who is responsible for the enforcement of any housing law, after inspecting the premises, has notified the landlord or the landlord's agent in writing of his or her obligations to abate the nuisance or repair the substandard conditions. The conditions have existed and have not been abated 35 days beyond the date of service of the notice specified in paragraph, and the delay is without good

cause; and the conditions were not caused by an act or omission of the tenant or lessee in violation of Section 1929 or 1941.2... It was determined by the hearing officer Kasdin after examine evidence that decreases exist and neither claim, was caused by tenants. Consequently the rent increase should be denied.

The Rent Adjustment board decision indicated the following regarding tenants claims regarding the heater and bathtub: "**Heater**: This was an item included in the court Stipulation, dated August 15, 2016. Contrary to his testimony at the Hearing, the owner obviously had notice of this problem before the court appearance in mid-August 2016. Heat is a basic housing service, and the heater should have been repaired before July 4, 2016. The lack of heat reduced the package of housing services by 10% from July 4 through November 30, 2016. As set forth on the Table below, the tenants overpaid rent during that time. **Bathtub**: There is no evidence that the damage to the tub — which was also an item listed in the Stipulation — was caused by the tenants' misuse; the owner's testimony to the contrary was mere speculation. The tenants' testimony that they have been unable to take baths is supported by photos of several areas of the tub. This condition has reduced the housing services by 3% since July 4, 2016. Because of the current decrease in housing services, the rent is reduced by 3%, being \$26.47 per month, to \$855.95 per month. This rent decrease will remain in effect until the bathtub is re-surfaced or replaced, as specified in the Order below." A true and correct copy of the letter from Landlord is attached as Exhibit 1. A true and correct copy of the PG &E analysis given by technician is attached as Exhibit 2. A true and correct copy of picture of the removal of the heater taken 4/11/2018 is attached as Exhibits 3 and 4. A true and correct copy of picture of bathtub taken 2/16/2018 is attached as Exhibits 5 and 6.

On April 26, 2018, tenants discovered the building isn't grounded correctly. Akenduca and Satchidananda (tenants) spoke with a technician named Shay about fixing problems with cable and internet services. After the technician ran tests. It was learned that the building is grounded into Comcast. The technician didn't have a way of printing out his notes to give a copy to the landlord, but I was able to contact customer service and receive the relevant part of technician notes indicating building isn't grounded. Tenants had a claim involving flickering lights, the building not being properly grounded might be the problem. A true and correct copy of the conversation with Comcast customer service online is attached as Exhibit 7.

Based on 3\19\2018, PG &E inspection that the heater wasn't repaired properly and did not function when tested, and the bathtub has not been repaired as ordered, and building isn't grounded, in violation of *Cal. Civ. Code § 1942.4*, and other applicable law. Therefore rent increase should be void and the decreased calculations should be adjusted to reflect that the heater and tub were not repaired.

OBJECTIONS TO EVIDENCE

LANDLORD TEXT

OBJECTIONS

<p>Exhibit 1, pg. 11 (Bay area Property Group)</p>	<p>1. Lacks Foundation; Speculation; Lacks Relevance; Lacks Authentication. Cal. Evid. Code §§ 210, 403, 702, 1401.</p>
<p>Exhibit 1, pg. 11 (Bay area Property Group)</p>	<p><u>#1 Lack Foundation and are Speculative:</u> The statement and accompanying exhibit lack foundation and are speculative because the landlord does not state any facts upon which his purported knowledge is based.</p>
<p>Exhibit 1, pg. 11 (Bay area Property Group)</p>	<p><u>#2 Lacks Relevance:</u> Exhibit 1 is not relevant because it does not have any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action.</p>

<p>Exhibit 1, pg. 11 (Bay area Property Group)</p>	<p><u>#3 Lacks Authentication:</u> Exhibit 1 lacks authentication because landlord doesn't make it clear where exhibit came from, it appears to be Newspaper Advertisement. Not declared to be true and correct copy.</p>
<p>Exhibit 1, pg. 11 (Bay area Property Group)</p>	<p><u>#4 Hearsay:</u> The statement and accompanying exhibit are hearsay because they are based on an out of court statement offered for the truth of the matter asserted, regarding an event that occurred at tenant's home. Also Newspaper is inadmissible evidence. See <i>Bebington v California W. States Life Ins. Co.</i>, 30 Cal. 2d 157, (1947).</p>
<p>Exhibit 2, pg. 12, quote from page 5, Appeal: "What follows are the laws I have referenced above, which I used to determine what was 'repair as necessary' identified in the Stipulation. The general rule is that: "When a landlord (property owner) rents an apartment to a tenant (Renter), the rented property must be fit to live in. In other words, the rented property must be 'habitable.' During the time that the property is being rented, the landlord must do maintenance work and make repairs which are necessary to keep it habitable. However, a landlord is not responsible for repairing damage caused by the tenant, or the tenant's guest, children or pets." See Exhibit 2</p>	<p>Improper Opinion; Lacks Foundation; Speculation. Cal Evid. Code §§ 702, 720, 800, 801.</p>
<p>Exhibit 2, pg. 12 quote from page 5, Appeal: "What follows are the laws I have referenced above,</p>	<p><u>#1 Improper Opinion:</u> The statement is improper opinion testimony because the</p>

<p>which I used to determine what was 'repair as necessary' identified in the Stipulation. The general rule is that: "When a landlord (property owner) rents an apartment to a tenant (Renter), the rented property must be fit to live in. In other words, the rented property must be 'habitable.' During the time that the property is being rented, the landlord must do maintenance work and make repairs which are necessary to keep it habitable. However, a landlord is not responsible for repairing damage caused by the tenant, or the tenant's guest, children or pets." See Exhibit 2</p>	<p>landlord does not lay any foundation to establish his qualifications as an expert on determining which repairs to make or assertion about a general rule.</p>
<p>Exhibit 2, pg. 12 quote from page 5, Appeal: "What follows are the laws I have referenced above, which I used to determine what was 'repair as necessary' identified in the Stipulation. The general rule is that: "When a landlord (property owner) rents an apartment to a tenant (Renter), the rented property must be fit to live in. In other words, the rented property must be 'habitable.' During the time that the property is being rented, the landlord must do maintenance work and make repairs which are necessary to keep it habitable. However, a landlord is not responsible for repairing damage caused by the tenant, or the tenant's guest, children or pets." See Exhibit 2</p>	<p>#2 Lack Foundation and are Speculative: The statement and accompanying exhibit lack foundation and are speculative because the landlord does not state any facts upon which his purported knowledge is based.</p>
<p>Exhibit 3, quote from page pg. 4: "I also consulted the California Apartment House Association's guide to 'wear and tear' or 'damages' to determine if the tenant is responsible for damages to the apartment."</p>	<p>Hearsay, Lacks Foundation; Speculation; Lacks Relevance; Lacks Authentication. Cal. Evid. Code §§ 210, 403, 702, 1401.</p>
<p>Exhibit 3, quote from page pg. 4: "I also consulted the California Apartment House Association's guide to 'wear and tear' or 'damages' to determine if the tenant is responsible for damages to the apartment."</p>	<p>#1 Hearsay: The statement and accompanying exhibit are hearsay because they are based on an out of court statement offered for the truth of the matter asserted.</p>

<p>Exhibit 3, quote from page pg. 4: “I also consulted the California Apartment House Association's guide to 'wear and tear' or 'damages' to determine if the tenant is responsible for damages to the apartment.”</p>	<p><u>#2 Lack Foundation and are Speculative:</u> The statement and accompanying exhibit lack foundation and are speculative because the landlord does not state any facts upon which his purported knowledge is based.</p>
<p>Exhibit 3, quote from page pg. 4: “I also consulted the California Apartment House Association's guide to 'wear and tear' or 'damages' to determine if the tenant is responsible for damages to the apartment.”</p>	<p><u>#3 Lacks Relevance:</u> Exhibit 3 is not relevant because it does not have any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action.</p>
<p>Exhibit 3, quote from page pg. 4: “I also consulted the California Apartment House Association's guide to 'wear and tear' or 'damages' to determine if the tenant is responsible for damages to the apartment.”</p>	<p><u>#4 Improper Opinion:</u> The statement is improper opinion testimony because the landlord does not lay any foundation to establish his qualifications as an expert on determining if the tenant is responsible for damages to the apartment.</p>
<p>Exhibit 3, quote from page pg. 4: “I also consulted the California Apartment House Association's guide to 'wear and tear' or 'damages' to determine if the tenant is responsible for damages to the apartment.”</p>	<p><u>#5 Lacks Authentication:</u> Exhibit 3 lacks authentication because landlord doesn't make it clear where exhibit came from, book or pg. number and is not declared to be true and correct copy.</p>
<p>Exhibit 4, receipt from Pete hardware quote from page pg5: “There was a statement in the Decision that work was not done in the apartment until late November 2016. This statement is incorrect and contrary to my testimony and letter of January 14, 2017 concerning</p>	<p>Lacks Relevance; Lacks Authentication; Improper Opinion. Cal. Evid. Code §§ 210, 403, 702, 1401</p>

<p>the issue. To settle the issue, receipts for materials purchased as a result of my November 2, 2016 inspection are attached as Exhibit 1”</p>	
<p>Exhibit 4, receipt from Pete hardware quote from page pg5: “There was a statement in the Decision that work was not done in the apartment until late November 2016. This statement is incorrect and contrary to my testimony and letter of January 14, 2017 concerning the issue. To settle the issue, receipts for materials purchased as a result of my November 2, 2016 inspection are attached as Exhibit 1”</p>	<p><u>#1 Lacks Relevance:</u> Exhibit 1 is not relevant because it does not have any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action.</p>
<p>Exhibit 4, receipt from Pete hardware quote from page pg5: “There was a statement in the Decision that work was not done in the apartment until late November 2016. This statement is incorrect and contrary to my testimony and letter of January 14, 2017 concerning the issue. To settle the issue, receipts for materials purchased as a result of my November 2, 2016 inspection are attached as Exhibit 1”</p>	<p><u>#2 Lacks Authentication:</u> Exhibit 4 lacks authentication because landlord doesn’t declared it to be true and correct copy.</p>
<p>Exhibit 4, receipt from Pete hardware quote from page pg5: “There was a statement in the Decision that work was not done in the apartment until late November 2016. This statement is incorrect and contrary to my testimony and letter of January 14, 2017 concerning the issue. To settle the issue, receipts for materials purchased as a result of my November 2, 2016 inspection are attached as Exhibit 1”</p>	<p><u>#3 Improper Opinion:</u> The statement is improper opinion testimony because the landlord does not lay any foundation to establish his qualifications as an expert on determining purchasing material is the same as actually doing repairs.</p>
<p>Exhibit 5, pg. 15-16, Bath Crest</p>	<p>Lacks Foundation; Speculation; Lacks Relevance; Lacks Authentication. Cal. Evid. Code §§ 210, 403, 702, 1401.</p>

Exhibit 5, pg. 15-16, Bath Crest	#1 Lack Foundation and are Speculative: The statement and accompanying exhibit lack foundation and are speculative because the landlord does not state any facts upon which his purported knowledge is based.
Exhibit 5, pg. 15-16, Bath Crest	#2 Lacks Relevance: Exhibit 1 is not relevant because it does not have any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action
Exhibit 5, pg. 15-16, Bath Crest	#3 Lacks Authentication: Exhibit 4 lacks authentication because landlord doesn't declared it to be true and correct copy.
Exhibit 6, pg. 17	Lacks Foundation; Speculation; Lacks Relevance; Lacks Authentication. Cal. Evid. Code §§ 210, 403, 702, 1401.
Exhibit 6, pg. 17	#1 Lack Foundation and are Speculative: The statement and accompanying exhibit lack foundation and are speculative because the landlord does not state any facts upon which his purported knowledge is based.
Exhibit 6, pg. 17	#2 Lacks Relevance: Exhibit 6 is not relevant because it does not have any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action
Exhibit 8, pg. 19	Lacks Foundation; Speculation; Lacks Relevance; Lacks Authentication. Cal. Evid. Code §§ 210, 403, 702, 1401.

Exhibit 8, pg. 19	<u>#1 Lack Foundation and are Speculative:</u> The statement and accompanying exhibit lack foundation and are speculative because the landlord does not state any facts upon which his purported knowledge is based.
Exhibit 8, pg. 19	<u>#2 Lacks Relevance:</u> Exhibit 6 is not relevant because it does not have any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action
Exhibit 9, pg. 20	Lacks Foundation; Speculation; Lacks Relevance; Lacks Authentication. Cal. Evid. Code §§ 210, 403, 702, 1401.
Exhibit 9, pg. 20	<u>#1 Lack Foundation and are Speculative:</u> The statement and accompanying exhibit lack foundation and are speculative because the landlord does not state any facts upon which his purported knowledge is based.
Exhibit 9, pg. 20	<u>#2 Lack Foundation and are Speculative:</u> The statement and accompanying exhibit lack foundation and are speculative because the landlord does not state any facts upon which his purported knowledge is based.
Exhibit 9, pg. 20	<u>#3 Lacks Relevance:</u> Exhibit 3 is not relevant because it does not have any tendency in reason

	to prove or disprove any disputed fact that is of consequence to the determination of the action.
Exhibit 10, 11, pg. 21-22 picture of bedroom	Lacks Foundation; Speculation; Lacks Relevance; Lacks Authentication. Cal. Evid. Code §§ 210, 403, 702, 1401.
Exhibit 10, 11, pg. 21-22 picture of bedroom	<u>#1 Lack Foundation and are Speculative:</u> The statement and accompanying exhibit lack foundation and are speculative because the landlord does not state any facts upon which his purported knowledge is based.
Exhibit 10, 11, pg. 21-22 picture of bedroom	<u>#2 Lack Foundation and are Speculative:</u> The statement and accompanying exhibit lack foundation and are speculative because the landlord does not state any facts upon which his purported knowledge is based.
Exhibit 10, 11, pg. 21-22 picture of bedroom	<u>#3 Lacks Relevance:</u> Exhibit 3 is not relevant because it does not have any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action.
Exhibit 12, pg. 23	Hearsay, Lacks Foundation; Speculation; Lacks Relevance; Lacks Authentication. Cal. Evid. Code §§ 210, 403, 702, 1401.
Exhibit 12, pg. 23	<u>#1 Hearsay:</u> The statement and accompanying

	<p>exhibit are hearsay because they are based on an out of court statement offered for the truth of the matter asserted.</p>
<p>Exhibit 12, pg. 23</p>	<p><u>#2 Lack Foundation and are Speculative:</u> The statement and accompanying exhibit lack foundation and are speculative because the landlord does not state any facts upon which his purported knowledge is based.</p>
<p>Exhibit 12, pg. 23</p>	<p><u>#3 Lacks Relevance:</u> Exhibit 3 is not relevant because it does not have any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action.</p>
<p>Exhibit 12, pg. 23</p>	<p><u>#4 Improper Opinion:</u> The statement is improper opinion testimony because the landlord does not lay any foundation to establish his qualifications as an expert on determining if the tenant is responsible for damages to the apartment.</p>

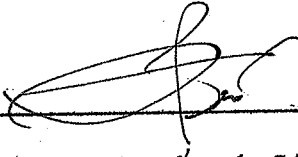
CONCLUSION

Based on the foregoing, Petitioner request that the Rent Adjustment Board deny landlord appeal and deny all claims for rent increases pursuant to *Cal. Civ. Code § 1942.4* and any other applicable law.

VERIFICATION

I, Akenduca D. Beasley am the Respondent in this proceeding. I have read the foregoing Tenant Evidentiary Response and know the contents thereof. The same is true of my own knowledge, except as to those matters that are therein stated on information and belief, and, as to those matters, I believe it to be true.

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 is executed on July 14, 2018.



Akenduca D. Beasley aka Linda Beasley

EXHIBIT

1

Letter

April 24, 2018

Linda Beasley
3764 39th Ave., #D
Oakland, CA 94619

Re: Your letter dated April 5, 2018

Dear Linda:

You raised several issues in your letter referenced above. You apparently requested that PGE conduct an inspection of your electric cook range. They [PGE] arrived on March 19, 2018 to provide the requested service. My understanding from you is that upon arrival, the PGE representative advised you that he could not check the range/perform the inspection because the range is electric [and not gas].

The PGE rep asked you if you wanted a safety check performed on the wall heater – you indicated that he told you the pilot light was too high and upon lowering the pilot light, the heater would not operate. The heater had been operating properly prior to this adjustment. According to the Service Report, there was an indication that the 'possible control valve is bad.'

Your wall heater was checked by myself on April 11, 2018. The heater burner assembly was removed and taken to Appliance Parts Distributor and bench tested. The technicians found that it functioned normally. The burner unit was reinstalled and a new 750 millivolt power generator was installed. The burner unit seemed to work well even with the lower pilot light setting.

The PGE representatives have special sensors and are normally good at detecting gas leaks; however, they are not experienced technicians. I would suggest if you want an expert evaluation of your appliances, you contact a professional to perform this service.

As far as your rent is concerned, you have paid the amount required per the Stipulation. You pay by check and therefore have a record of what you have paid. As you know, you have failed to pay the basic CPI (2%) increase mandated by the RAP since October 2016 as required by law. This failure amounts to a delinquency of \$17.06 per month since that date [2016]. You have also failed to pay the basic CPI (2.3%) increase mandated by the RAP since October 2017. This failure amounts to an additional delinquency of \$20.28 per month since October 2017.

There is also the matter of damages to the kitchen range that you have refused to pay. Further, your portion of the RAP fees of \$34.00 is also due – please include this with your May rent.

In February, wire, plastic and onion peelings were removed from your disposal – these are not items that belong in the disposal. Upon checking it again during my current visit, it was clear of debris and works properly. It does make some noise, but continues to work as designed.

000131

Linda Beasley
April 24, 2018
Page | 2

Concerning your request for painting, you have previously indicated that you intend to move when you settle the lawsuit. There is little justification for performing this type of work at this time. However, I will arrange for a contractor to come in and evaluate the work you have requested, as well as provide an estimate for the proposed work. You will be advised when this evaluation is scheduled.

Sincerely,


Mike Horejsi, Landlord/Owner

/meh

000132

EXHIBIT

2

PG & E

TECH



SERVICE REPORT
PG&E Visited your Property Today to Service Your Account

Valued Customer: 3764 39th Ave # D Oakland
 Address

Service Date/Time: 3-19-18 A.M./P.M. (P.M.)

Service Technician: Kied Confirmation/Field Order # _____

Transaction Type: Relight

- SORRY WE MISSED YOU: Unfortunately we were not able to complete your service request because it requires your presence or the presence of an adult. Please call us at 1-800-743-5000
- SORRY WE MISSED YOU: Please see reverse side for additional information

Gas Service							
Service/Inspection of Gas Equipment							
Appliance Type	Inspected	Cleaned Burner Pilot	Filter Inspected	Adjusted	Repaired	Gas Leak Repaired	Appliance Parts Replace Program Unsafe Condition Identified Refer to Licensed Contractor
Range							
Oven							
Water Heater							
Heating Appliance	✓						
Dryer							
Pool/Spa Heater							
Other							

Electric Service					
Service/Inspection of Electric Equipment					
Equipment Type	Inspected	Voltage Read	Problem Corrected	Parts/Contractor Referral	Unsafe Condition Identified Refer to Dealer
Service Panel					
Voltage Problem					
Complete Outage					
Partial Outage					
Electric Range					
Electric Water Heater					
Other					

Remarks:

Unable to do safety check on stove due to electric stove. Safety check wall furnace. Pilot light still on but heater won't turn on. Possible control valve is bad. Refer to license contractor for service. CO detector active on site.

Case #

Additional PG&E Work Required

- The work you requested will require additional PG&E follow up or repairs to complete. Please refer to your case number above when calling for additional information regarding your request.

Thank you for the opportunity to serve you

Were you satisfied with the service? Yes No If your answer is "No" how can we improve?



Exhibit 3, picture of heater taken 4/11/2018, removal of parts.

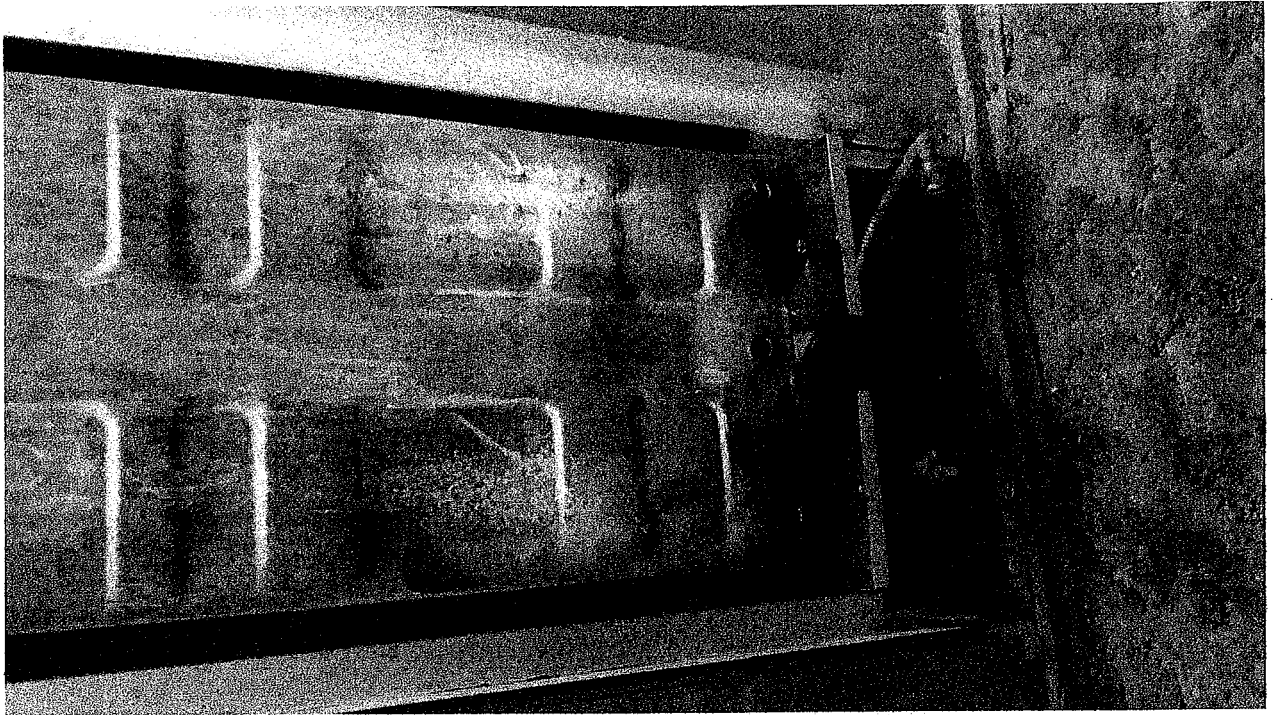


Exhibit 4, picture of heater taken 4/11/2018, removal of parts.

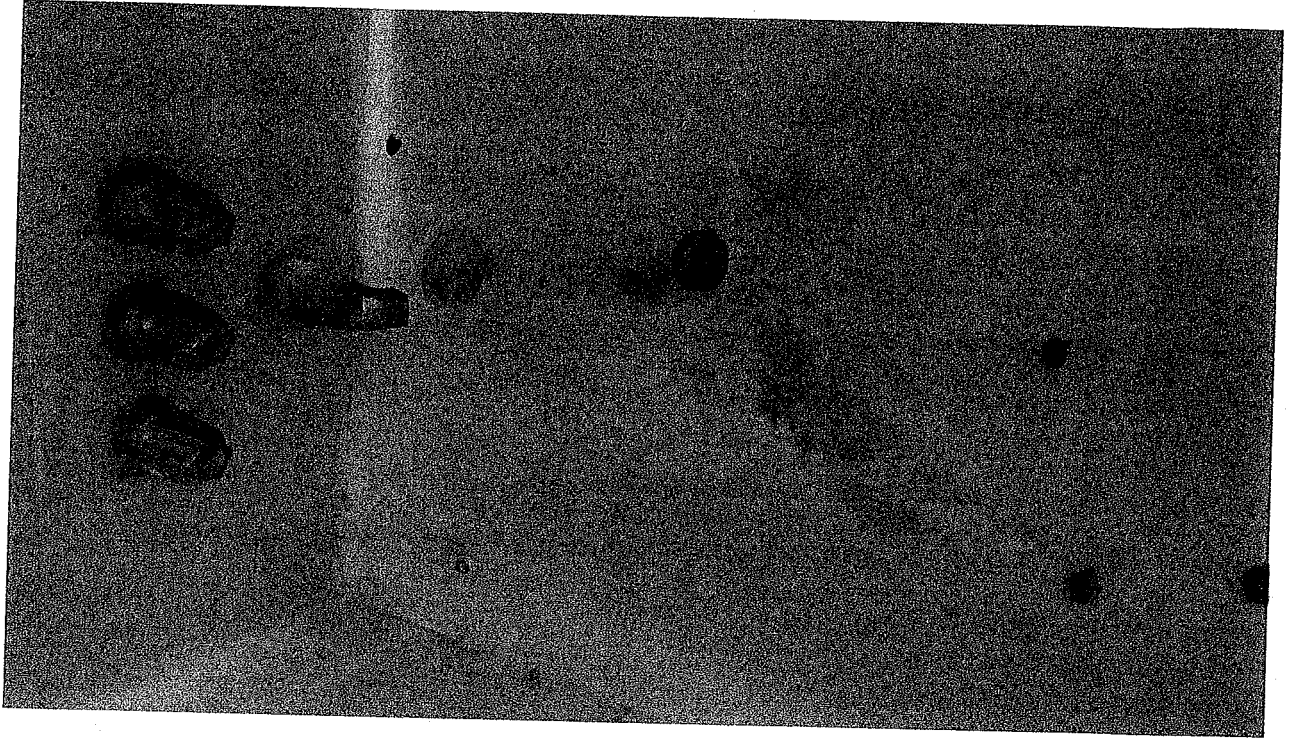


Exhibit 5, picture of tub taken 2/16/2018.

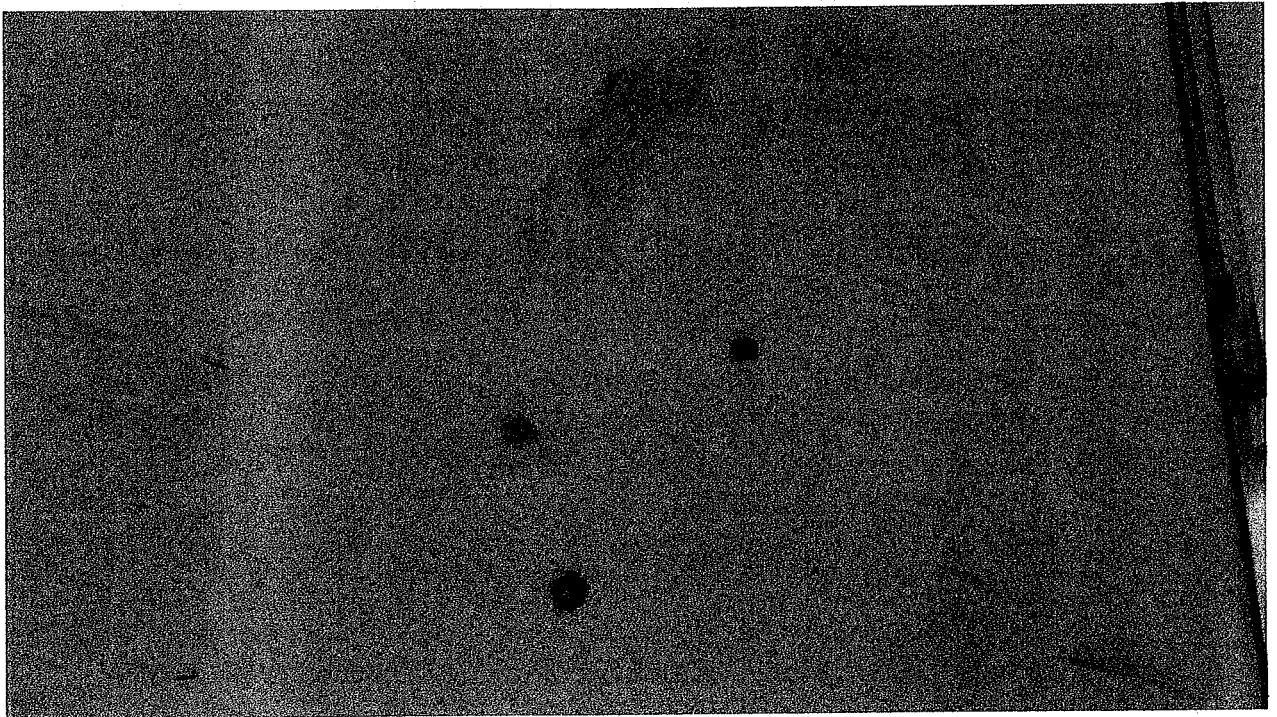


Exhibit 6, picture of tub taken 2/16/2018.

EXHIBIT

7

xfinity Chat Transcript

CHAT STARTED AT Apr 26, 2018 11:15:17 PM

11:15:17 PM AKENDUCA BEASLEY : On 4/26 a technician came to my apartment to determine problem with TV and internet service. After careful review he indicated that the building I live in is grounded into Comcast and Comcast has installed filters to compensate. I spoke with customer service earlier and the agent indicated that she did not have a way of giving me a copy of what the tech stated in his notes. It could only be obtained by warrant or subpoena. The agent indicated that she would cut and pasted a copy of what was stated in the technician notes in an email and sent it to my linda_B_year2000@hotmail.com, email address, but after looking into my account it appears that she did not send it.

The information is necessary to demand the landlord fix the problem.

---You are now chatting with Namita---

11:16:02 PM Namita : Hi Akenduca, thank you for contacting Xfinity Chat Support. My name is Namita.

11:16:08 PM AKENDUCA BEASLEY : hi

11:16:47 PM Namita : I will certainly assist you with this by checking on your account status and provide assistance as needed.

11:16:57 PM AKENDUCA BEASLEY : okay

11:17:00 PM Namita : Please provide your complete name and the complete service address, including apartment number and state zip code. This is required for the verification purposes.

11:17:36 PM AKENDUCA BEASLEY : Akenduca Beasley

11:18:01 PM AKENDUCA BEASLEY : service address: 3764 39th Ave Apt. D., Oakland, 94619

11:18:43 PM Namita : Thank you for confirming these details.

11:18:58 PM Namita : lease allow me 1-2 minutes to check this for you.

11:19:07 PM AKENDUCA BEASLEY : okay

11:22:27 PM Namita : Akenduca, please stay connected. I am still checking.

11:22:38 PM AKENDUCA BEASLEY : okay

11:23:03 PM Namita : Thank you for waiting.

11:24:17 PM Namita : Here are the notes:

000140

11:24:24 PM Namita : INSIDE MDU BOX FILTERS ARE PLACED ON ALL UNITS INSIDE APARTMENT BUILDING VOLTAGE AND INGRESS, THE BUILDING ISN'T GROUNDED

11:25:10 PM Namita : This is what is mentioned here in the note.

11:26:45 PM AKENDUCA BEASLEY : yeah the agent indicated that he mad several notes about the building, in addition to that he stated something about the building was using Comcast to ground the building.

11:27:47 PM Namita : Akenduca, this is what I found in the notes that the building isn't grounded.

11:28:50 PM Namita : yes, there one more note- " the building is using Comcast as a ground instead of PGE"

11:29:31 PM Namita : That's it. These are the two notes mentioned here.

11:29:36 PM AKENDUCA BEASLEY : okay

11:30:26 PM AKENDUCA BEASLEY : Is there a way to get a formal letter or email indicating the tech findings?

11:31:54 PM Namita : Unfortunately, we are not able to send emails to our customers. We can just chat. However, you can save a transcript of this chat by clicking on the 3 horizontal lines at the top left corner of the screen.

11:32:21 PM AKENDUCA BEASLEY : okay

11:33:03 PM Namita : While going over to your account, I see a great deal that would save your money and internet speed would increase. Would you like to have a look at this offer?

Powered By eGain

000141

Proof of Service

Case No. T16-0549

The undersigned hereby declares: I am over the age of eighteen and a tenant of 3764 39th Ave. Apt. D, Oakland, CA 94619. I am a resident of or employed in the county where the following mailing took place and my name and residence or business address is as follows:

Name: Satchidananda Mims

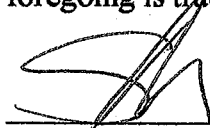
Address: PO Box 19304, Oakland, CA 94619

Documents served: Respondent's Evidential Response to Landlord Appeal and Supporting Documents

On July 16, 2018, I served a copy of the foregoing on the following person(s), by placing it in a sealed envelope addressed to those persons, with the postage fully paid, and then placing the envelope in the mail at the following place: Oakland, CA.

Person Served: Michael Horejsi, PO Box 2883, Castro Valley, CA 94546.

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



Satchidandanda Mims