

HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD
REGULAR MEETING

August 16, 2018
7:00 P.M.
CITY HALL, HEARING ROOM #1
ONE FRANK H. OGAWA PLAZA
OAKLAND, CA

AGENDA

1. CALL TO ORDER
2. ROLL CALL
- 3.. CONSENT ITEMS
 - i. Approval of Minutes
 - a. July 26, 2018
- 4.. OPEN FORUM
- 5.. NEW BUSINESS
 - A. Appeal Hearings in:
 - 1) T16-0734, Beard v. Stewart
 - 2) T15-0626, Lyngen v. Beacon
 - B. Rent Efficiency Ordinance Report-Richard Illgen, City Attorney's Office
 - C. Board discussion of establishing a regular policy committee
6. SCHEDULING AND REPORTS
7. ADJOURNMENT

2018 AUG - 9 PM 9:43
OFFICE OF THE CITY CLERK
OAKLAND

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, 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.

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

**Meeting
July 26, 2018
7:00 p.m.**

**City Hall, Hearing Room #1
One Frank H. Ogawa Plaza, Oakland, CA**

MINUTES

1. CALL TO ORDER

The HRRRB was called to order at 7:08 p.m. by Board Chair Jessie Warner

2. ROLL CALL

MEMBER	STATUS	PRESENT	ABSENT	EXCUSED
U. Fernandez	Tenant			X
D. Mesaros	Tenant	X		
T. Mason	Tenant alt.		X	
Ed Lai	Homeowner Alt.			X
R. Stone	Homeowner	X		
M. Cook	Homeowner	X		
J. Warner	Homeowner	X		
K. Blackburn.	Homeowner Alt.			X
K. Friedman	Landlord	X		
B. Scott	Landlord Alt.			X
D. Madison	Landlord Alt.		X	

Staff Present

Luz Buitrago Deputy City Attorney
Barbara Kong-Brown Senior Hearing Officer

3. CONSENT ITEMS

a. Board Minutes, June 14, 2018

J. Warner stated that during Board discussion of T17-0305, Mountain v. CNML Crescent, that B. Scott stated the owner should not have included this unit in the rent increase and that he knew the tenant's move-in date because it is on the lease, and that the tenant did not move in at the time the capital improvements were done (pages 6-7).

b. Board Minutes June 28, 2018

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The motion to affirm the hearing decision in T17-0015, Gaona v. Fong, was not approved by consensus, but carried.

c. Board Minutes, July 12, 2018

There were no board minutes for approval for June 14, and 28, 2018. In T16-0237, Szymanski v. Madison Park Financial, Board member D. Mesaros stated that she did not use the word "appropriate" when she moved to remand the hearing decision for a hearing on the merits. Staff was directed to listen to the tape and make appropriate corrections. The tape states that D. Mesaros stated that the cited case (Court of Appeals decision in Vidor v. City of Oakland, Vulcan Properties LLP et al, Real Parties in Interest, A120973 2009) was not "applicable".

M. Cook moved to approve all the minutes as corrected. K. Friedman seconded. The Board voted as follows:

Aye: J. Warner, D. Mesaros, R. Stone, K. Friedman, M. Cook
Nay: 0
Abstain: 0

The motion was approved by consensus.

4. OPEN FORUM SPEAKERS

Clifford Fried
Panos Lagos
Jackie Zaneri
Hilda Chen
James Vann (item # 6C)
Susan Schacher (yielded to James Vann)
Arlinda Befort
Lydia Henkel
Kendra Edwards
Grant Rich
Emily Wheeler
Kelly Phillips
James Vann
Susan Schacher (yielded to James Vann)

5. NEW BUSINESS

A. Hearing in appeal cases:

i.

a. L17-0171, Berger v. Tenants

This case was pulled from the Appeal Hearings Calender and will be re-scheduled to September 20, 2018.

b. T16-0683, Prager v. Lagos

The Board postponed hearing this case based on insufficient information regarding new construction cases that have been decided in prior hearing decisions. Staff prepared a report regarding prior construction cases but did not have enough time to place the report on the agenda. The report will be placed on the Board agenda for September 20, 2018. The case is re-scheduled to September 27, 2018.

c. L16-0011, Tyler v. Tenants

The owner dismissed his appeal.

B. Board Attendance

Michele Byrd, Director of Housing and Community Development, addressed the Board regarding board member attendance; that 7 meetings or 30% of the scheduled meetings for the past year were cancelled due to lack of a quorum; that some members had not attended any Board meetings in the past year. There were questions from the Board about the two members who had not attended the meetings and Ms. Byrd responded that steps would be taken to remove and replace them. The Board discussed getting a larger pool of alternates.

C. Staff Report-Substantial Rehabilitation

Michele Byrd presented the staff report recommending amendments to the substantial rehabilitation exemption, which are similar to the San Francisco substantial rehabilitation exemption:

- Limit the exemption to buildings which are at least 50 years of age, are vacant and essentially uninhabitable and require substantial renovation to comply with contemporary decent, safe and sanitary housing standards
- Owner proof that no preemptive, no fault evictions or displacement occurred within 12 months prior to beginning the renovation;
- Prohibit only cosmetic improvements alone from qualifying as substantial rehabilitation;
- Require substantial improvements equal to at least 75% of costs of newly constructed residential buildings pursuant to City of Oakland Bureau of Building Construction Valuation for Building Permits;
- Exclude rehabilitation costs that are paid for by insurance proceeds;
- Grant as a temporary exemption for 20 years

During the past six years 44 exemptions were granted for substantial rehabilitation which affected 223 units, which is less than .03% of the units subject to the Rent Adjustment Ordinance.

The Board discussed the recommendations, and asked questions about the definition of various terms, including: "cosmetic improvements", "substantial rehabilitation," and "essentially uninhabitable." Further, Board members registered concerns and proposed modifications to these amendments in the following areas:

- Ensure that the objective being met is to increase inventory of new units
- Bring back units that are offline back into service.
- Identify how many vacant units and/or buildings we have that could be positively impacted by this provision.
- Units must be uninhabitable and exemption must not cause displacement.
- Grant exemption only to buildings no one has wanted to touch.
- Consider increasing the timing for no preemptive evictions from 12 months to a longer timeframe.
- Ensure against abuse of cosmetic improvements; prohibit gold plating.
- Put a cap on the amount of cosmetic work allowed in a given substantial rehab project.
- Add land costs and architectural fees to the exclusions for calculating substantial rehabilitation cost.
- Decrease number of years (consider five or ten years) for exemption, look to amortization period for paying off cost or rehab; look at capital improvement amortization periods.

Other comments included noting the Board's ability to more concretely specify restrictions through Board regulations, and the need to use a race and equity lens when making revisions to the proposed amendments.

The Board discussed the purpose of the substantial rehabilitation exemption, which is an incentive to an owner to bring a blighted, uninhabitable building versus using the exemption the wrong way, and that it would increase the housing stock because such a building would be vacant and owners needed a fair return; and that affordable units versus high end units should be encouraged. The Board also discussed the issue of speculation, tenant displacement, and the need for more funding for affordable housing. There was discussion about the housing market, that rents were coming down, and things could change in a recession. Related, Board members commented on the need to tie the consideration of this exemption to housing policy.

The Board discussed the need for additional information such as:

- Information regarding prior hearing decisions on substantial rehabilitation cases.
- Obtaining recommendations from the non profit organizations in affordable housing such as Enterprise. However, the moratorium expires on October 21, 2018, and due to time constraints there may not be an opportunity for

their input. In addition, there was concern expressed that tying this exemption to a discussion of development of affordable housing may be mixing apples and oranges.

- Surveying vacant buildings, and assessing public land for building..
- Current data regarding the number of empty units, their condition, and how these units could be made affordable..

Three motions were subsequently made and voted on, as follows:

- (1) K. Friedman moved for a reasonable moratorium on the substantial rehabilitation exemption, and to get a policy expert to present recommendations. M. Cook seconded. D. Mesaros made a friendly amendment which was not accepted. D. Mesaros made a substitute motion for a moratorium of 3 years for further study. J. Warner seconded.

The Board voted as follows:

Aye: J. Warner, D. Mesaros, R. Stone,
Nay: M. Cook, K. Friedman
Abstain: 0

The motion carried by a vote of 3-2.

- (2) M. Cook moved that if the City Council rejects the motion on the three year moratorium, accept the staff recommendation to limit the substantial rehabilitation exemption to units that are vacant and uninhabitable and make additional modifications to the staff recommended amendments to address Board concerns. K. Friedman seconded. The Board voted as follows:

Aye: D. Mesaros, R. Stone, M. Cook, K. Friedman
Nay: J. Warner
Abstain: 0

The motion carried by a vote of 4-1.

- (3) J. Warner moved to eliminate the substantial rehabilitation exemption. D. Mesaros seconded.

The Board voted as follows:

Aye: J. Warner, D. Mesaros. R. Stone,
Nay: M. Cook, K. Friedman
Abstain: 0

The motion carried by a vote of 3-2.

6. SCHEDULING & REPORTS

- a. Board discussion of establishing a regular policy committee will be agendized for August 16, 2018
- b. Staff will provide a report regarding new construction cases
- c. Staff will provide a report on cases by hearing officers regarding the substantial rehabilitation exemption

7. ADJOURNMENT

The meeting was adjourned by consensus at 10:00 p.m.

CHRONOLOGICAL CASE REPORT

Case Nos.: T16-0734

Case Name: Beard v. Stewart

Property Address: 1470 Alice Street, #206, Oakland, CA

Parties: James Beard (Tenant)
Thomas Preston (Property Owner)
Lucky Stewart (Property Owner)

TENANT APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	December 29, 2016
Owner Response filed	February 3, 2017
Hearing Decision issued	August 3, 2017
Tenant Appeal filed	September 6, 2017
Owner's Request to Dismiss Late Appeal	September 14, 2017
Administrative Appeal Decision	September 15, 2017
Tenant's Request for Appeal Board Determination of Good Cause for Filing Late Appeal	September 27, 2017
Good Cause Appeal Hearing Notification	November 16, 2017
Owner Response to Appeal & Good Cause Letter	April 12, 2018

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Ttl. 0734 MS/SK

RECEIVED
CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM

CITY OF OAKLAND RENT ADJUSTMENT PROGRAM Mail To: P. O. Box 70243 Oakland, California 94612-0243 (510) 238-3721	For date stamp 2015 DEC 29 PM 2: 25
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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 James Beard	Rental Address (with zip code) 1470 Alila St # 200 Oakland, CA 94612	Telephone
Your Representative's Name	Mailing Address (with zip code)	Telephone
Property Owner(s) name(s) Lucky Stewart Alice B. Beilly, LLC	Mailing Address (with zip code) 1145 Bush St San Francisco, CA 94109	Telephone

Number of units on the property: 21

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 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 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 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 type="checkbox"/>	(i) My rent was not reduced after the expiration period of the rent increase based on capital improvements.
<input type="checkbox"/>	(j) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).
<input type="checkbox"/>	(k) I wish to contest an exemption from the Rent Adjustment Ordinance (OMC 8.22, Article I)

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

Date you moved into the Unit: 3-15-2014 Initial Rent: \$ 1400 /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: 03/2014. 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		
11-3-2016	12-1-2016	\$ 1400	\$ 1450.86	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
10-27-2016	11-1-2016	\$ 1331.50	\$ 1400	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
4-28-2016	6-1-2016	\$ 1261.50	\$ 1331.50	<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

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

List case number(s) of all Petition(s) you have ever filed for this rental unit: T15-0395 & T16-0228

III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:

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

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

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

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

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IV. VERIFICATION: The tenant must sign:

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

James P. Bee
Tenant's Signature

11-15-2016
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).

James P. Bee
Tenant's Signature

11-16-2016
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): _____

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Decreased Services 2016

1. Water Damaged Storage Room: I reported the damage to previous property manager, Sandra Berry by phone in December 2015. I sent an email for a request to repair water damaged storage room in January 2016. Sandra made a visual inspection but never assigned anyone to repair it. I showed the current manager the water damages in the garage and storage unit in June 2016. See Oakland Code enforcement record ID#1604227. Notified building code inspection 11/2/2016. Violation verified.
2. Lack of Management: Building code violation verified, record ID#1604229. California state law requires a 24-hour manager to live on site if the apartment complex has 16 or more units. 1470 Alice street has at least 21 units. There is no central office inside the building for me to drop by and talk to the resident manager one on one and they never return my phone calls. They only take maintenance request forms to be put in the mail drop box but there is never any request forms available and when I do get in contact with management they deny my maintenance requests.
3. Exposed wiring in the garage electrical sockets: building code violation verified 11-3-2016, record ID#1604227. In the parking garage where there is also reported water damage there is an exposed electrical socket with live wire sticking out of the socket. Electricity also travels through water. Safety hazard. Its hazardous to have an electrical socket without an electrical cap. A simple cap will solve this issue.
4. Improper plumbing done without permits and not up to code: violation verified by Oakland building code inspection on 11/3/2016. Record ID#1604227 ABS replacement piping was discovered in 2 areas of the garage which should be cast iron piping. Also buckets hanging from the pipes to catch leaks. One of the buckets contained human waste.
5. Front door entry code was removed from the digital code/call box: The service was removed in late April 2016. Sandra Berry gave me the entry code to the building when I moved in on 3-15-2014. A reasonable solution is to change the code and not remove it all together. A perfect example, if the front door entry code is 5150 and its been an existing code for 10 years then change the code to 2020. The code should be changed every 2 years, not removed all together. I need this code in case I lose my front door key, I can get in the building to get into my unit. Since the removal of the front door entry code took place, I have made several requests to get a spare key to the building and they refused in writing.
6. Carpet in my unit is coming undone and there are bumps and waves in my carpet. I have been reporting this since early fall.
7. My screen sliding door was removed but never replaced: I reported screen door issues to the Alice B building management team early May 2016. The screen door could not stay on the tracks property management removed it in early august 2016 with the promise to replace it that never happened and now I'm the only tenant in the whole building without a screen door. The screen door is necessary so I can open my sliding glass door in the spring through fall months and get air flow without dangerous insects entering my unit causing allergic reactions and medical attention.
8. Cleaning services in common areas have been removed since may 2016. As soon as the new owners took possession of the apartment complex they fired the old management team and

Commented [J1]:

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cleaning service personnel and discontinued regular cleaning services in all common areas that kept the building odor free and clean.

9. The sliding glass door doesn't lock: See the judgment for T15-0395. Non locking sliding glass door was reported to property management prior to T15-0395. Despite judges order in T15-0395, the lock was never properly fixed.
10. Pest control services have been decreased since the new owners and property management has taken over in late April 2016. A few times a year pest control would treat our apartment units and the building to prevent pests. There are yellow jackets, spiders, fruit flies that have entered my unit since the removal of pest control prevention services and screen door.
11. Sliding glass door is jammed: the sliding glass door is jammed shut and it will not open. I reported it December 26,2016. This isn't the first time this has happened.
12. The overhead pipes leak in the garage and there are large floods every time it rains. That's a slip hazard I have been reporting all water related issues, leaks and floods since January 2016.

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Sent from my iPhone

Print

12/20/2016

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: right;"> RECEIVED CITY OF OAKLAND RENT ARBITRATION PROGRAM 2017 FEB -3 PM 3:09 </div>
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Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your response being rejected or delayed.

CASE NUMBER T 16- 0734

OWNER RESPONSE

Please print legibly.

Your Name Lucky Stewart Alice B. Building, LP	Complete Address (with zip code) 1145 Bush St. San Francisco, CA 94109	Phone: _____ Email: _____
Your Representative's Name (if any) Greg McConnell JR McConnell The McConnell Group	Complete Address (with zip code) 300 Frank H. Ogawa Plaza Suite 460 Oakland, CA 94612	Phone: _____ Fax: _____ Email: _____
Tenant(s) name(s) James Beard	Complete Address (with zip code) 1470 Alice St. #206 Oakland, CA 94612	

Have you paid for your Oakland Business License? Yes No Number _____
(Provide proof of payment.) Included, page 5

Have you paid the Rent Adjustment Program Service Fee? (\$30 per unit) Yes No
(Provide proof of payment.) Included, page 6

There are 22 residential units in the subject building. I acquired the building on 4 / 15 / 16.

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

I. RENTAL HISTORY

The tenant moved into the rental unit on March 15, 2014.

The tenant's initial rent including all services provided was \$ 1400 / 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? 3/15/14

Is the tenant current on the rent? Yes No

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

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

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

Date Notice Given (mo/day/year)	Date Increase Effective (mo/day/year)	Amount Rent Increased		Did you provide NOTICE TO TENANTS with the notice of rent increase?
		From	To	
11/1/16	12/1/16	\$ 1,400.00	\$ 1,450.85	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
* 4/28/16	6/1/16	\$ 1,261.50	\$ 1,331.50	<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

* Per rent program order in tenant petition T15-0395

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)
12/1/16	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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_____	<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"/>

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.

**** Justification - See attached RAP banking calculator ****

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.

**** Justification - See Attachment A ****

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.**

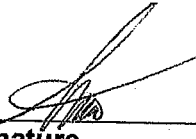
NOTE: If you do not file a timely Response, you will not be able to produce evidence at the Hearing, unless you can show good cause for the late filing.

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

2/3/17

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

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	15-Mar-2014	MUST FILL IN D9, D10, D11 and D14	Case No.:	T16-0734	CHANGE YELLOW CELLS ONLY
Effective date of increase	1-Nov-2016		Unit:	206	
Current rent (before increase and without prior cap. improve pass-through)	\$1,400				
Prior cap. imp. pass-through					
Date calculation begins	15-Mar-2014				
Base rent when calc. begins	\$1,400				

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
3/15/2016				1.7%	\$ 24.25	\$ 1,450.85
3/15/2015				1.9%	\$ 26.60	\$ 1,426.60
3/15/2014				-	-	\$1,400

Calculation of Limit on Increase

Prior base rent	\$1,400.00
Banking limit this year (3 x current CPI and not more than 10%)	6.0%
Banking available this year	\$ 50.85
Banking this year + base rent	\$ 1,450.85
Prior capital improvements recovery	\$ -
Rent ceiling w/o other new increases	\$ 1,450.85

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.

T16-0734; Beard v. Alice B. Building, LP
Attachment A

Landlord Response to tenant claims:

1. This claim was not filed within sixty (60) days of the occurrence. Moreover, tenant filed petition T16-02228 on May 4, 2016. He did not claim this as a violation in that petition. The case was heard by Hearing Officer Stephen Kasdin on August 8, 2016. Mr. Kasdin sent notices asking for a re-hearing because the tape recorder malfunctioned.

On October 1, 2016, tenant sent notice requesting that T16-0228 be dismissed. Thus, tenant did not file a timely claim on this issue and did not prosecute the other claims he had. This petition must be dismissed.

2. Landlord disputes resident manager claim and will present evidence at hearing. Similar to issue one above, claim is not timely.
3. Landlord disputes wiring claim and will present evidence at hearing. Similar to issues one and two above, claim is not timely.
4. Landlord disputes plumbing claim and will present evidence at hearing. Similar to previous issues, claim is not timely.
5. Entry code issue was included in T16-0228 which tenant dismissed. Claim is untimely and barred by tenant dismissal. Landlord disputes claim and any entitlement to reductions in rent.
6. Landlord disputes carpet claim and will defend issue at hearing.
7. Screen door issues were included in T16-0228 which tenant dismissed. Claim is untimely and barred by tenant dismissal. Landlord disputes claim and any entitlement to reductions in rent.
8. Cleaning issue was included in T16-0228 which tenant dismissed. Claim is untimely and barred by tenant dismissal. Landlord disputes claim and any entitlement to reductions in rent.
9. Sliding door issue was included in T16-0228 which tenant dismissed. Claim is untimely and barred by tenant dismissal. Landlord disputes claim and any entitlement to reductions in rent.
10. Pest control issue was included in T16-0228 which tenant dismissed. Claim is untimely and barred by tenant dismissal. Landlord disputes claim and any entitlement to reductions in rent.
11. Sliding door issue was included in T16-0228 which tenant dismissed. Claim is untimely and barred by tenant dismissal. Landlord disputes claim and any entitlement to reductions in rent.
12. Landlord disputes pipe claim and will defend issue at hearing.

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Additional Responses:

13. Landlord denies violations of rent increase provisions. Landlord brought rent back to level after repairs completed and tenant compensated based on prior petitions.
14. Landlord did give tenant explanation of rent adjustment. Tenant did not give landlord written request for explanations of rent adjustment.
15. Landlord contests all claims of service reductions, code violations, and allegations of multiple rent increases within a twelve (12) month period.
16. Landlord denies each and every allegation in petition and reserves the right to supplement the response prior to hearing and provide additional testimony at hearing.

RECEIVED
CITY OF OAKLAND
RENT ARBITRATION PROGRAM
2017 FEB -3 PM 3:09

000021
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P.O. BOX 70243, OAKLAND, CA 94612-2043

CITY OF OAKLAND

Department of Housing and Community Development
Rent Adjustment Program

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

HEARING DECISION

CASE NUMBER: T16-0734, Beard v. Stewart

PROPERTY ADDRESS: 1470 Alice St., #206, Oakland, CA

DATE OF HEARING: May 25, 2017

DATE OF INSPECTION: June 21, 2017

DATE OF DECISION: August 3, 2017

APPEARANCES: James Beard (Tenant)
Nancy M. Conway (Attorney for Tenant)
Thomas Preston (Landlord Agent)
Joanna Ediin (Witness for Landlord)
Steve McSween (Witness for Landlord)
Greg McConnell (Landlord Representative)
J. R. McConnell (Landlord Representative)

SUMMARY OF DECISION

The tenant's petition is partly granted.

CONTENTIONS OF THE PARTIES

The tenant filed a petition on December 29, 2016, which alleges that a proposed rent increase from \$1,400 to \$1,450.86 per month, effective December 1, 2016, and past rent increases, exceed the CPI Adjustment and are unjustified or is greater than 10%; that the owner did not give him a summary of the justification for the proposed rent increase despite his written request; that the current contested rent increase is the second rent increase in a 12-month period; that at present there exists a health, safety, fire or building code violation in his unit; and that his housing services have been decreased, as follows:

000022

- (1) Water damaged storage room
- (2) Lack of resident manager
- (3) Exposed wiring in garage electrical sockets
- (4) Improper plumbing
- (5) Change in front door entry system
- (6) Worn carpeting
- (7) Sliding screen door removed
- (8) Cleanliness of common areas
- (9) Sliding glass door does not lock
- (10) Inadequate pest control
- (11) Sliding glass door is jammed
- (12) Leaking overhead pipes in garage

The owner filed a response to the petition, which alleges that the alleged prior rent increases were, in fact, not rent increases, but restoration of prior rent after the tenant was awarded restitution in connection with decreased housing services; that the current proposed rent increase is justified by banking; and denies that the tenant's housing services have decreased.

THE ISSUES

- (1) What rent increases are at issue in this case?
- (2) Was the tenant given a summary of the justification for the proposed rent increase?
- (3) When did the tenant receive the form Notice to Tenants (RAP Notice)?
- (4) Is a 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

Contested Rent Increases: The tenant's petition alleges that in the year 2016, his rent was increased from \$1,261.50 to \$1,331.50 and from \$1,331.50 to \$1,400 per month, in addition to the increase from \$1,400 to \$1,450.86.

Official Notice is taken of Case No. T15-0395, Beard v. The Lapham Co. The Order in that case, issued on January 6, 2016, states, in part: "2. The Base Rent is \$1,400 per month. 3. Because of an ongoing decrease in housing services, the current rent, before reduction due to rent overpayments, is \$1,330 per month. 4. Because of past decreased housing services, the tenant has overpaid rent in the amount of \$822. This overpayment is adjusted by a rent reduction for 9 months. 5. The rent is temporarily reduced by \$68.50 per month, to \$1,261.50 per month . . . 6. In November 2016, the rent will increase to \$1,330 per month. 7. When the balcony doors lock, the owner may increase the rent by \$70 per month . . ."

Rent History: At the Hearing, the tenant testified that, consistent with the statement in his petition, he moved into the subject rental unit on March 1, 2014, at a rent of \$1,400 per month. The parties agreed that the tenant's rent is current and that he has continued to pay rent of \$1,400

per month. The tenant testified that he will continue to pay this amount until there is a Hearing Decision in this case.

Justification for the Rent Increase: The contested current rent increase notice¹ refers to the proposed rent increase as a “banked increase.”

RAP Notice: At the Hearing, the tenant testified that he had received the RAP Notice in 2014.

Decreased Housing Services:

Storage Area: The tenant testified that he has a storage locker provided by the owner that is next to his parking space in the parking garage below the building in which he lives. The tenant keeps tools and supplies that he uses for his work in this locker, including lengths of rope, carabiners, and wrenches. This is very convenient, since he can easily load needed equipment into his truck and go to work. It is also a secure area, in which the tenant is comfortable leaving his tools, rather than leaving them in his truck, where they can be stolen. In the winter of 2015-2016, rain water flooded into the storage locker, which ruined some his equipment and made it impossible for him to use the locker.

He moved his tools into his apartment in or about April 2016. The tenant submitted photos of the locker, which depict water damaged and moldy walls and floor of the locker, and rust or mold on a number of tools.² He also submitted photos of tools and tool bags against a wall inside his apartment, which extend for an estimated 8 feet.³

The tenant submitted a copy of an email to the owner’s agent on December 9, 2016.⁴ This email states, in part: “As you can tell, I have been trying to get you and the previous management to fix the water damages in the building including my storage space.” The tenant testified that the locker was repaired in mid-April 2017.

The owner submitted a page of a document entitled “Addendum A – House Rules,” which was attached to the tenant’s lease.⁵ This document states, in part: “Tenant assumes all risks associated with the loss, damage, or destruction of personal property of items kept in the storage space.”

Resident Manager: The tenant testified that there is no resident manager in the 22-unit building in which he lives; there is only a “drop box” for payment of rent. Further, the owner’s agents have been unresponsive to emails and a letter regarding maintenance requests.

Joanna Ediin, a witness for the owner, testified that she has been the manager for the building in which the tenant lives since April 2016. She resides at 1450 Alice St. – which is 2 doors away –

¹ Exhibit No. 9. This Exhibit, and all others to which reference is made in this Decision, were admitted into evidence unless otherwise noted.

² Exhibit Nos. 3A, B, C & F

³ Exhibit Nos. 3 D & E

⁴ Exhibit No. 1A

⁵ Exhibit No. 8B

and is the manager of both buildings. She receives email requests for repairs, and tenants can call her 24 hours a day. The owner submitted an email from Wing Loo, a City of Oakland Building Inspector, to J. R. McConnell, one of the owner's representatives, dated November 16, 2016.⁶ This email states, in part: "manager can be within a group of apartment buildings which are in close proximity to each other; close complaint as non-actionable. Wloo."

Exposed Wiring: The tenant testified that there is an electrical outlet approximately 20 feet from his parking space in the garage that he used to charge the battery on his electric drill. In or about October 2016, the outlet box was damaged so that there was an exposed wire. He then used other outlets in the garage. However, in April 2017, "blocking caps" were placed over all outlets in the garage, which prevents anyone from using them. Ms. Ediin testified that the garage outlets are for the use of building management, not the tenants, and that they were covered over because they were felt to be a fire hazard.

Plumbing / Garage: The tenant testified that an overhead pipe in the garage was leaking in the Fall of 2016, and the owner placed buckets on the pipe to catch leaking water. The tenant submitted a photo depicting this, as well as a photo showing 2 areas of standing water on the floor of the garage.⁷ The tenant played a video taken on March 13, 2016, which showed water appearing to enter under a wall of the garage, approximately 10 feet from his parking space. The tenant testified that he was afraid of slipping in the wet areas. Ms. Ediin testified that the drain in the garage becomes clogged from time to time.

Entry System: The tenant testified that, consistent with the attachment to his sworn petition, the system for entering the front door of the building was changed in April 2016.

Carpeting: The tenant testified that several areas of the carpet in his unit are bumpy and coming undone. The tenant further testified that he told the building management people about this in October 2016. On June 21, 2017, the unit and building premises were inspected by Barbara Cohen, a Hearing Officer with the Rent Adjustment Program, in the presence of the tenant and owner representatives; the tenant's attorney participated by telephone. Following her inspection, Ms. Cohen wrote a Declaration, a copy of which is attached as Attachment "A."

Ms. Cohen's Declaration states, in part: "Opening the [front] door was an obvious challenge because the carpet in the unit was stuck underneath the door . . . The door did not open all the way. In order to enter the unit I had to walk over the carpet, which was bunched up and raised off the floor. This was a tripping hazard. . . In the center of the living room, there is a raised bump in the carpet. This is also a tripping hazard. Additionally, in the corner of the living room, the carpet is pulling away from the wall." These conditions are depicted in photographs taken by Ms. Cohen, which are part of her Declaration.

Ms. Ediin testified that tenants have been informed that she receives all written requests for repairs, and that she has never received a repair request from the tenant regarding his carpeting. She checks the box in which tenants place repair requests 5 days a week. On questioning by the owner's representative, the tenant testified that a City Building Inspector inspected his unit at his

⁶ Exhibit No. 7A

⁷ Exhibit Nos. 5A & 5B

request. The tenant further testified that the Inspector found no Code violations in his unit. The owner submitted a document from the City Inspection Services agency, which states that on November 2, 2016, the tenant requested an inspection.⁸ The tenant's request did not include any condition inside his unit, including the carpeting, and the inspection record from various days in November 2016, does not mention carpeting.

Screen Door: The tenant testified that the sliding screen door to his balcony came off its track in August 2016. A maintenance person removed the door, and it was not replaced until April 2017.

Common Areas: The tenant testified that the quality of common area cleaning – such as hallway and elevator cleaning – has declined since a new management company took over in April 2016. Ms. Ediin testified that she is at the subject building 5 days a week, and that the common areas are swept and cleaned weekly by herself and her husband, Steve McSween. She further testified that, on more than one occasion, the tenant has written insulting comments on notices that she has posted.

Sliding Glass Door: The tenant testified that the sliding glass door to his balcony did not lock and was not repaired until January 30, 2017. This claim was the subject of a prior petition, Case No. T15-0395, and the tenant was granted a rent reduction until it was repaired. At the Hearing, the tenant also testified that the door jammed shut around Christmas, 2016, and was repaired on January 30, 2017. Ms. Ediin testified that the door has been repaired twice since April 2016, when she became the building manager

Pest control: The tenant testified that, because there was no screen door leading to the balcony, insects would enter his unit if the door was open. The tenant further testified that, under prior management, the building was treated for insects twice a year. This practice has stopped and, as a result, flies enter his unit through the vent in the bathroom. Ms. Ediin testified that common areas are professionally treated to control pests once a month.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Rent Increase at Issue: Aside from the proposed rent increase from \$1,400 to \$1,450.86, the other “rent increases” alleged in the petition are not rent increases at all. Rather, the tenant's rent had been temporarily reduced due to substandard conditions and rent overpayments.

RAP Notice: It is found that the tenant received the RAP Notice in the year 2014.

Justification for the Rent Increase: The rent increase notice states that the proposed rent increase is justified by banking. Since the tenant was given this information, there was no need for the owner to again state this justification in response to an inquiry by the tenant.

Banking: An owner is allowed to bank rent increases and use them in subsequent years, subject to certain limitations.⁹ The parties agree on the dates and rent amounts entered into the Banking

⁸ Exhibit Nos. 6 & 7

⁹ 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.¹⁰ Therefore, as set forth in this Table, the maximum rent for the tenant's unit is \$1,450.85 per month, effective December 1, 2016.

Decreased Housing Services: Under the Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent¹¹ and may be corrected by a rent adjustment.¹² 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.¹³

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 2014, far more than 90 days before filing his petition on December 29, 2016. Therefore, in accordance with the Regulations and Board decision,¹⁴ the tenant can only be granted relief on his claims for decreased housing services beginning 90 days before the date on which he filed his petition. Allowable claims of decreased housing services therefore begin on September 29, 2016.

Storage Area: The section of the rental agreement cited by the owner releases the owner from liability for "loss or damage to tenant's property." However, the tenant's claim is not one for damages; rather, it is the loss of his ability to use the storage space. Therefore, the lease provision – which is contained in a form document prepared by the owner and is therefore to be strictly construed against the owner – does not defeat the tenant's claim.

The tenant parks his truck next to the storage area, in which he stores the tools that he needs for work. This is certainly an important amenity for the tenant. Otherwise, he must either leave the equipment in his truck - where it would not be secure - or else carry it to and from his apartment each day. It is found that the owner had notice of the flooding no later than December 9, 2016, and the leak should reasonably have been repaired by mid-January 2017. It was not repaired until mid-April 2017. The tenant's lack of use of his storage area reduced the package of housing services by 5% from mid-January through mid-April 2017. As set forth on the Table below, the tenant overpaid rent during that time.

¹⁰ 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.

¹¹ O.M.C. Section 8.22.070(F)

¹² O.M.C. Section 8.22.110(E)

¹³ O.M.C. Section 8.22.090(A)(2)

¹⁴ Appeal Decision in Case No. T09-0086, Lindsey v. Grimsley, et al.

Resident Manager: Both Oakland¹⁵ and California¹⁶ law require that every apartment building with 16 or more units to have a resident manager, janitor, housekeeper or other responsible person.

The California Code of Regulations states that:

“A manager, janitor, housekeeper, or other responsible person shall reside upon the premises and shall have charge of every apartment house in which there are 16 or more apartments,....in the event that the owner ...does not reside upon said premises. Only one caretaker would be required for all structures under one ownership and on one contiguous parcel of land.”¹⁷

It is found that, consistent with the statement of Wing Loo, the owner has complied with this requirement. Further, the tenant presented no evidence that his housing services were diminished because a resident manager does not live in his building. Therefore, the claim is denied.

Exposed Wiring: The testimony of the owner’s agent that the garage outlets were never intended to be used by tenants is credited. Further, the “exposed wire” and closure of the outlets had minimal effect upon the tenancy. The claim is denied.

Plumbing / Garage: Water on the floor of a large parking garage is neither unusual nor particularly dangerous. This had little effect upon the tenant, and the claim is denied.

Entry System: This change occurred more than 90 days before the tenant filed his petition; this claim is untimely and denied.

Carpeting: It is noted that the City Inspector found no problem in the tenant’s unit in November 2016. It is frankly inconceivable that the extent of carpet damage described by Ms. Cohen could have developed in only a few months as a result of natural wear and tear, rather than by vandalism or misuse. The claim is denied.

Screen Door: The door should reasonably have been replaced in the Fall of 2016. The lack of a screen door reduced the package of housing services by 1% from September 29, 2016 until April 2017. As set forth on the Table below, the tenant overpaid rent during that time.

Common Areas: Standards of cleanliness are very subjective, and the testimony of both the tenant and Ms. Ediin was equally convincing. Additionally, Ms. Cohen found no problems related to common area cleanliness. Therefore, the tenant has not sustained his burden of proof, and the claim is denied.

Sliding Glass Door: It is found that the owner acted reasonably in repairing the door more than once, and the claim is denied.

¹⁵ O.M.C. 15.08.230.R

¹⁶ 25 Cal.C.Reg., Section 42

¹⁷ 25 CCR § 42

Pest control: It is found that the owner's contract for pest control is adequate. Further, the tenant's claim that insects enter because there was no screen door is part of his claim regarding the screen door, as discussed above. Therefore, the claim is denied.

VALUE OF LOST SERVICES

Service Lost	From	To	Rent	% Rent Decrease	Decrease /month	No. Months	Overpaid
Storage Area	15-Jan-17	15-Apr-17	\$1,400	5%	\$70.00	4	\$280.00
Screen Door	1-Oct-16	15-Apr-17	\$1,400	1%	\$14.00	7	\$98.00
TOTAL LOST SERVICES							\$378.00

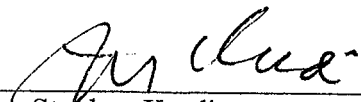
Conclusion: Before consideration of past decreased housing services, the rent is \$1,450.85 per month, effective December 1, 2016. The tenant has therefore underpaid rent of \$50.85 per month for 9 months, a total of \$457.65. This amount is set off against the \$378.00 overpayment for decreased housing services, resulting in total underpayment of \$79.65. The underpayment is ordered repaid over a period of 3 months.¹⁸

The rent is temporarily increased by \$26.55 per month, to \$1,477.40 per month, beginning with the rent payment in September 2017 and ending with the rent payment in November 2017.

ORDER

1. Petition T16-0734 is partly granted.
2. The Base Rent is \$1,450.85 per month.
3. Because of rent underpayments, the rent is temporarily increased by \$26.55 per month, to \$1,477.40 per month, beginning with the rent payment in September 2017 and ending with the rent payment in November 2017.
4. In December 2017, the rent will decrease to \$1,450.85 per month.
5. Right to Appeal: **This decision is the final decision of the Rent Adjustment Program Staff.** Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within twenty (20) calendar days after service of the decision. The date of service is shown on the attached Proof of Service. If the Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.

Dated: August 15, 2017



 Stephen Kasdin
 Hearing Officer
 Rent Adjustment Program

¹⁸ Regulations, Section 8.22.110(F)

Rent Adjustment Program

CITY OF OAKLAND

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

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

CALCULATION OF DEFERRED CPI INCREASES (BANKING)

Initial move-in date	15-Mar-2014	MUST FILL IN D9, D10, D11 and D14	Case No.:	CHANGE YELLOW CELLS ONLY
Effective date of increase	1-Dec-2016		Unit:	
Current rent (before increase and without prior cap. improve pass-through)	\$1,400			
Prior cap. imp. pass-through				
Date calculation begins	15-Mar-2014	If the planned increase includes other than banking put an X in the box→		
Base rent when calc. begins	\$1,400			

ANNUAL INCREASES TABLE

Year Ending	Debt Serv. or Fair Return increase	Housing Serv. Costs increase	Base Rent Reduction	Annual %	CPI Increase	Rent Ceiling
3/15/2016				1.7%	\$ 24.25	\$ 1,450.85
3/15/2015				1.9%	\$ 26.60	\$ 1,426.60
3/15/2014				-	-	\$1,400

Calculation of Limit on Increase

Prior base rent	\$1,400.00
Banking limit this year (3 x current CPI and not more than 10%)	6.0%
Banking available this year	\$ 50.85
Banking this year + base rent	\$ 1,450.85
Rent ceiling w/o other new increases	\$ 1,450.85

CITY OF OAKLAND



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

Department of Housing and Community Development
Rent Adjustment Program

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

DECLARATION RE: SITE INSPECTION

CASE NUMBER: T16-0734, Beard v. Stewart
PROPERTY ADDRESS: 1470 Alice Street, #206, Oakland, CA
DATE OF INSPECTION: June 21, 2017

I, Barbara M. Cohen, declare as follows:

1. I am a Hearing Officer with the City of Oakland's Rent Adjustment Program.
2. On June 21, 2017, I performed an inspection at 1470 Alice Street, #206, Oakland, CA, in the unit and the common areas of the building.
3. I was asked to inspect the building regarding the tenant's claims of decreased housing services.
4. Present at the inspection were tenant James Beard, owner representative JR McConnell, manager Joanne Ediin, owner representative Thomas Preston, and owner representative Steve (last name unknown). The tenant representative, Nancy Conway, appeared by phone. Only JR McConnell and Joanne Ediin accompanied me into the tenant's unit. All the parties accompanied me on the common area inspection.
5. In this case I was asked to inspect the carpet in the tenant's unit; whether insects are coming through the bathroom fan assembly; the tenant's storage unit in the garage; water on the floor in the garage; and common area cleanliness.
6. When I knocked on the tenant's apartment door from the common area hallway, the tenant came to the door from inside the unit and attempted to open his door. Opening the door was an obvious challenge because the carpet in the unit was stuck underneath the door, making it difficult to open the door. The door did not open all the way. In order to enter the unit I had to walk over the carpet, which was now bunched up and raised off the floor. This was a tripping hazard. (See photographs of the carpet, attached as Photographs 1-4)

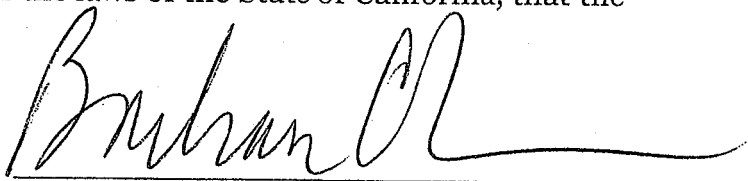
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ATTACHMENT "A" 1

7. In the center of the living room, there is a raised bump in the carpet. This is also a tripping hazard. Additionally, in the corner of the living room, the carpet is pulling away from the wall.
8. The tenant was asked to show me the insects coming through the bathroom fan assembly. He stated that he had sprayed Raid, which had killed the insects and that since his screen door had been repaired, this condition was no longer as bad as it had been in the past.
9. The tenant accompanied me to the garage, pointing out areas of concern regarding common area cleanliness as we went. He pointed to several cigarette butts that were in a rock garden under the stairwell and stated that the elevator was dusty. I saw three cigarette butts in the rock garden, and noticed that the floor in the elevator was stained, but otherwise the common area seemed well kept. (See photographs 5-8.)
10. In the garage the tenant pointed to a pipe on the ceiling in front of parking space 12 (which is not the tenant's parking space.) The pipe had an obvious leak. (Photo 9.) There were two small puddles of water underneath the pipe, on the garage floor. These puddles are in a path that the tenant could take from his parking space to the garage exit. There is a wide enough space in the garage that it is possible to walk around these puddles. (Photos 10-12.)
11. The tenant also pointed out an area on the floor of the garage where there are signs of water staining. He stated that this area, which is adjacent to his parking space, gets very wet when it is raining. He also pointed out several areas on the ceiling where there are signs of water damage. He stated that when it is raining water enters the garage from the ceiling and drips onto the floor. (Photographs 12-15.)
12. The photographs attached to this Declaration are true and correct copies of the photographs I took at the inspection.

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

June 22, 2017



Barbara M. Cohen
Hearing Officer
Rent Adjustment Program

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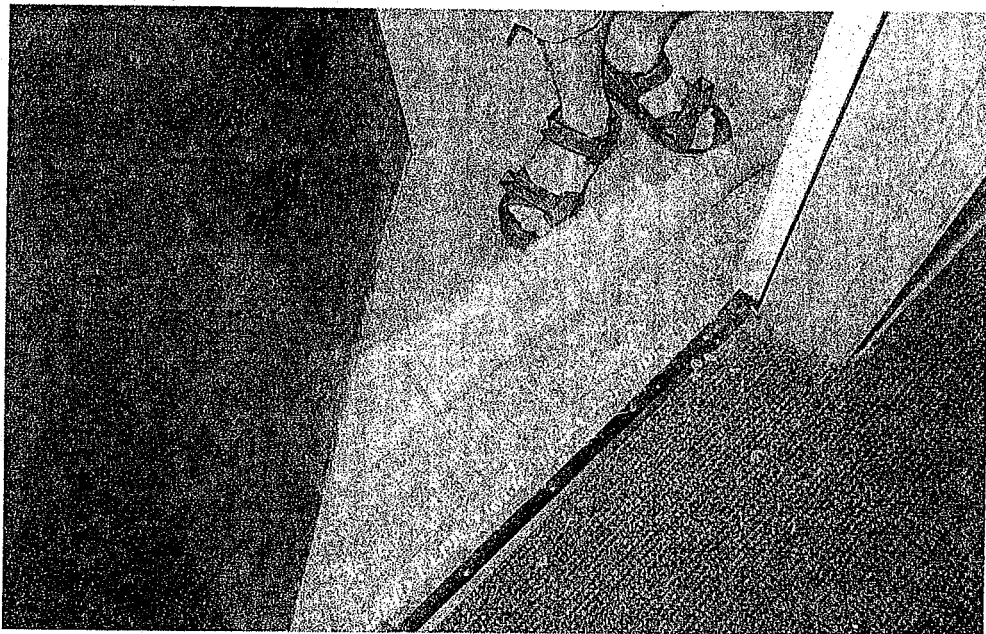


Photo 1, Beard v. Stewart, Carpet

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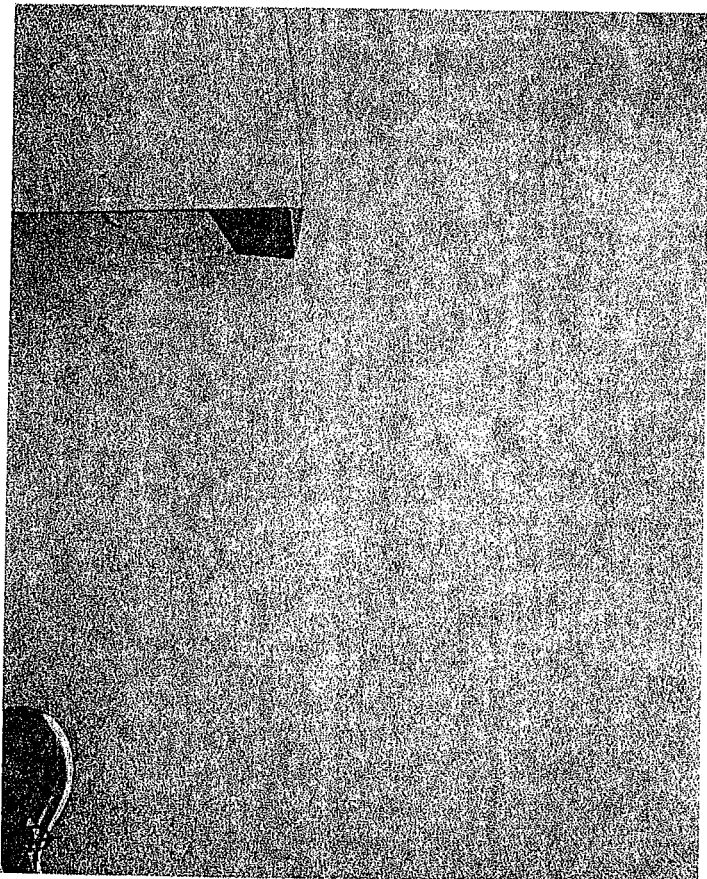


Photo 2, Beard v. Stewart,
Carpet

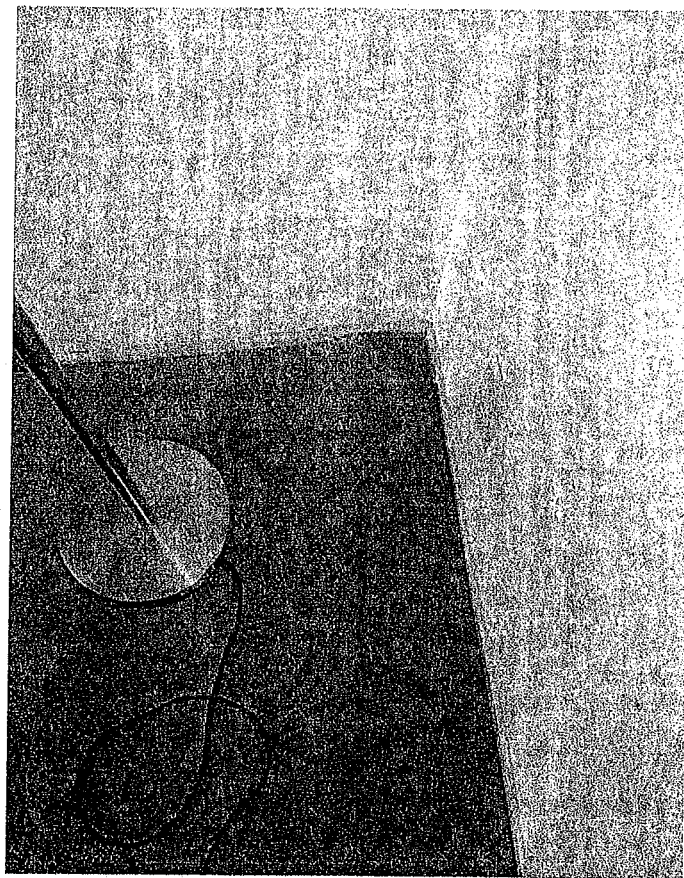


Photo 3, Beard v. Stewart,
Carpet

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ATTACHMENT "A" 1.4

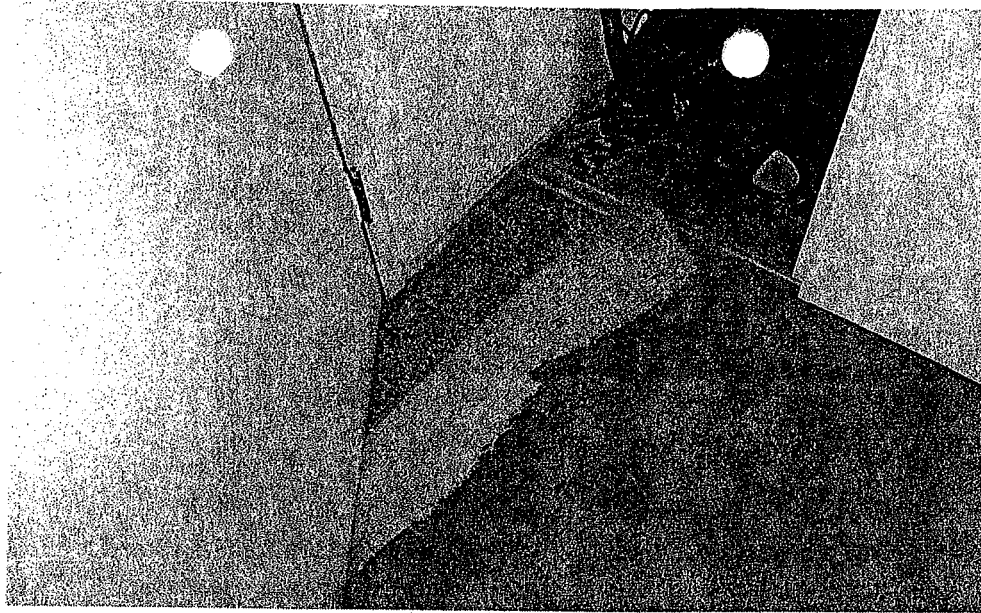


Photo 4, Beard v. Stewart, Carpet



Photo 5, Beard v. Stewart, Rock Garden



Photo 6, Beard v. Stewart, Rock Garden

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ATTORNEY GENERAL'S OFFICE



Photo 7, Beard v. Stewart, Rock Garden

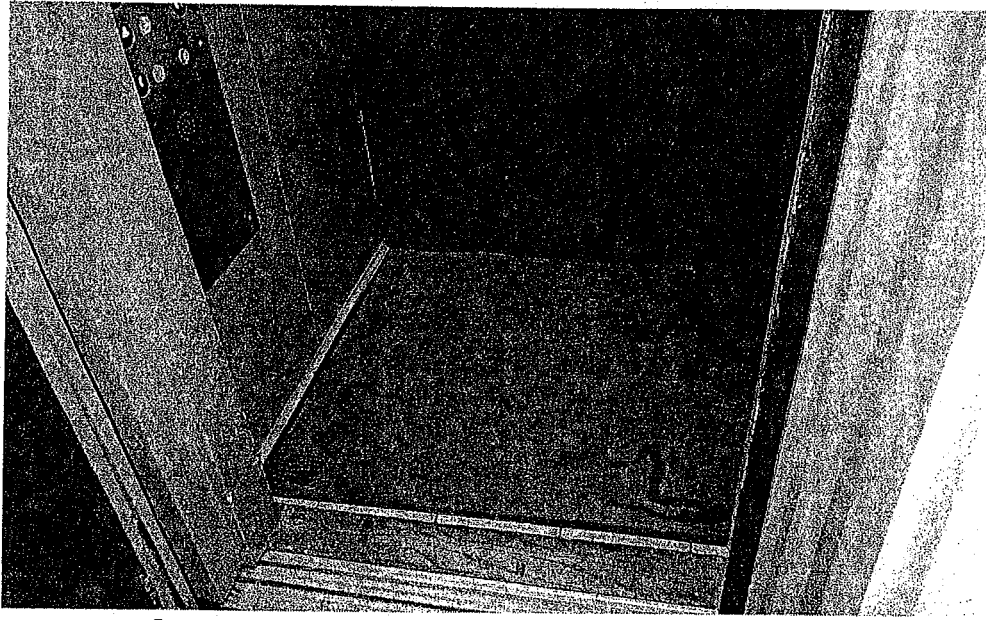


Photo 8, Beard v. Stewart, Elevator

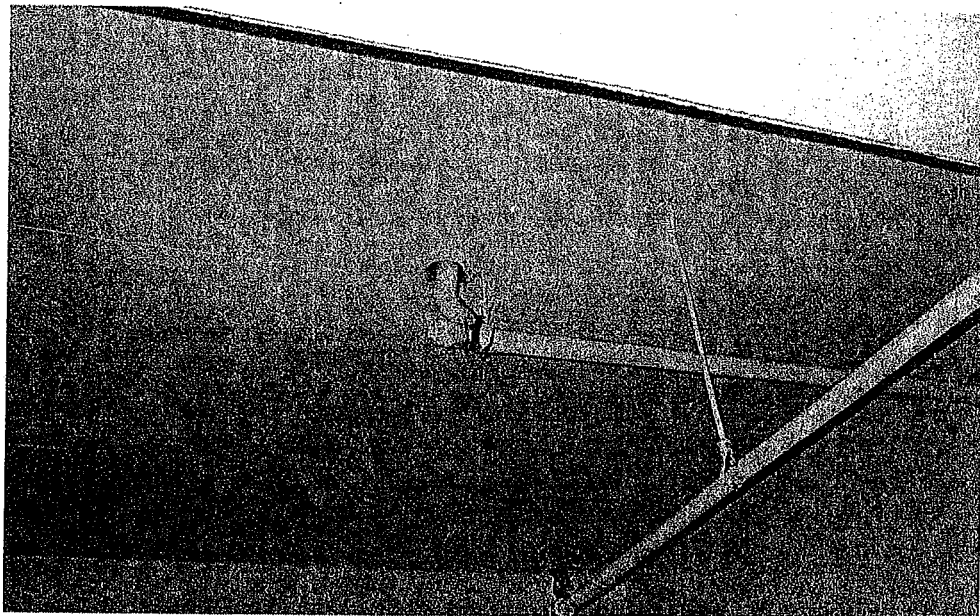


Photo 9, Beard v. Stewart, Leaking Pipe

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ATTACHMENT "A" A. 6

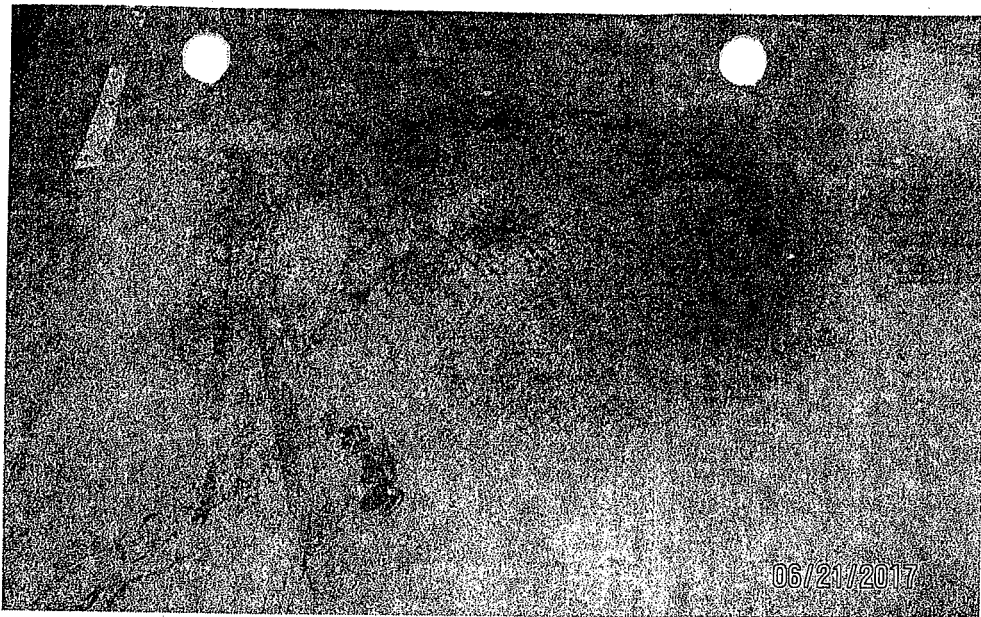


Photo 10, Beard v. Stewart, Water garage floor



Photo 11, Beard v. Stewart, Water garage floor



Photo 12, Beard v. Stewart, water garage floor

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ASPHALT "A" 17

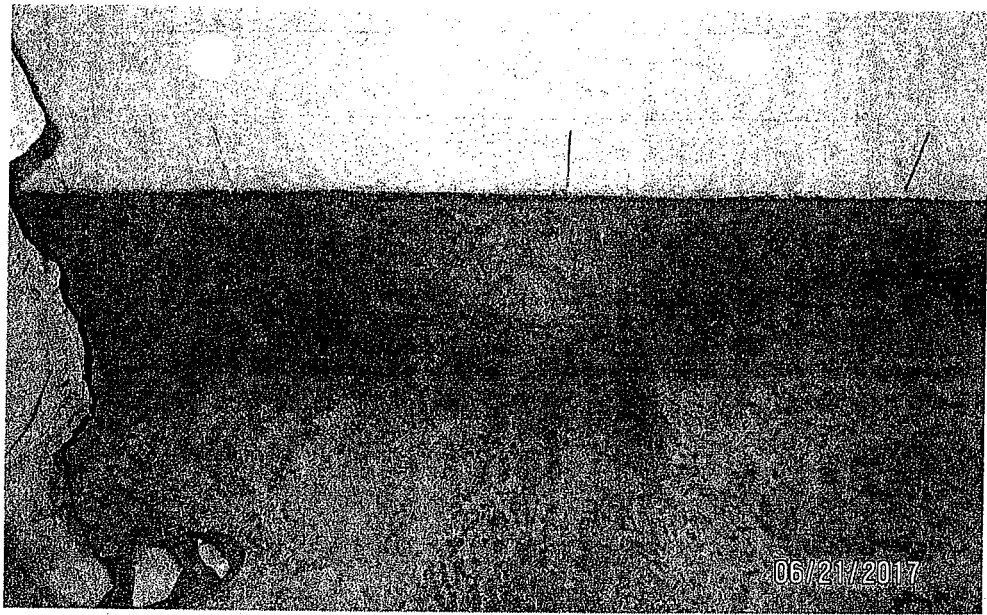


Photo 13, Beard v. Stewart, water stains

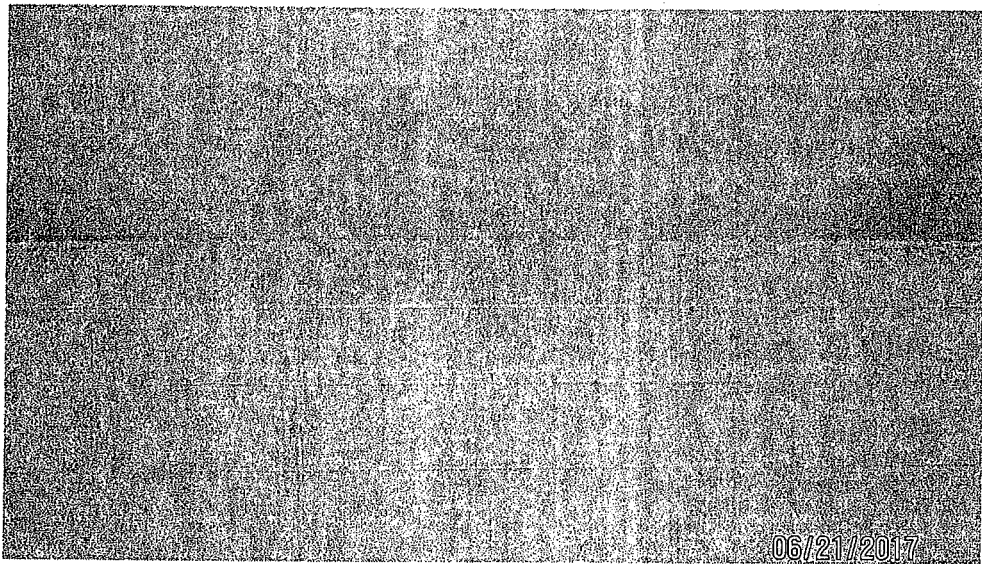


Photo 14, Beard v. Stewart, Signs of water entry

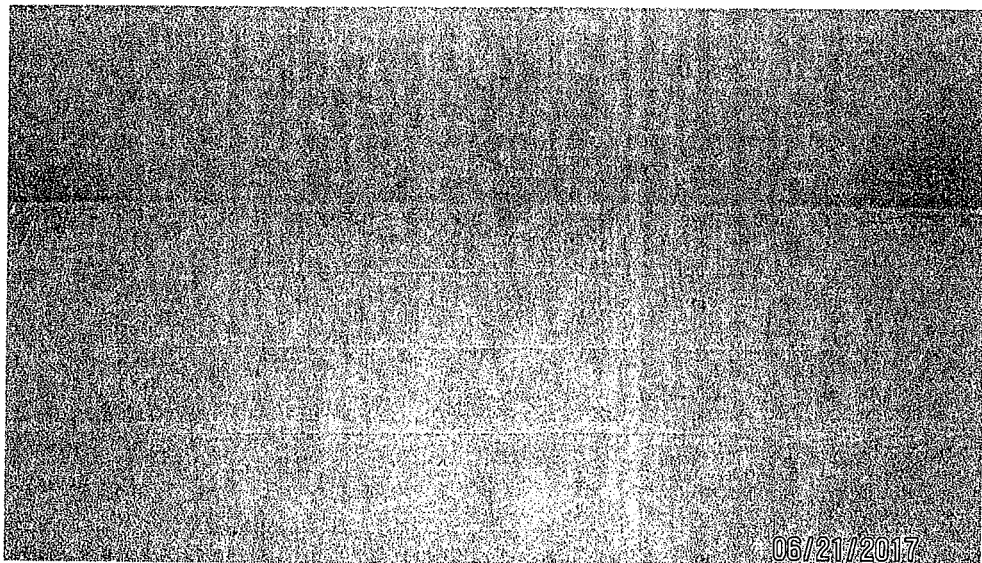


Photo 15, Beard v. Stewart, Signs of water entry

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ATTACHMENT "A" D.F

PROOF OF SERVICE

Case Number T16-0734

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

James Beard
1470 Alice St #206
Oakland, CA 94612

Tenant Representative

Nancy M. Conway
345 Franklin St
San Francisco, CA 94102

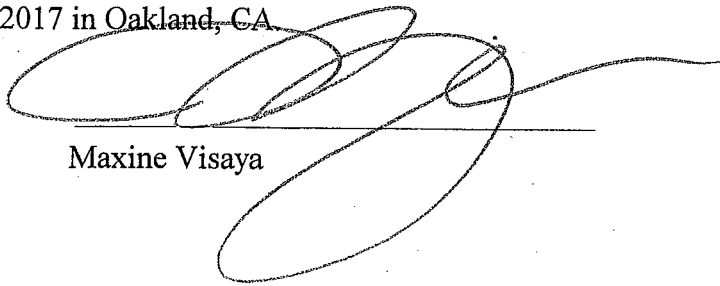
Owner Representative

The McConnell Group
300 Frank Ogawa Plaza Ste. 460
Oakland, CA 94612

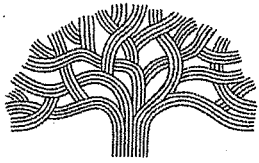
Thomas Preston
1145 Bush St
San Francisco, CA 94109

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on August 14, 2017 in Oakland, CA.


Maxine Visaya

000039



CITY OF OAKLAND

**CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM**

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

For date stamp.

2017 SEP -6 AM 9:57

APPEAL

Appellant's Name James Beard		<input type="checkbox"/> Owner <input checked="" type="checkbox"/> Tenant	
Property Address (Include Unit Number) 1470 Alice Street, #206			
Appellant's Mailing Address (For receipt of notices) 1470 Alice Street, #206 Oakland, CA 94612		Case Number T16-0734	<i>8/3/2017 decision 8/14/2017 served by mail dated.</i>
Name of Representative (if any) Nancy M. Conway		Representative's Mailing Address (For notices) 345 Franklin Street, Second Floor San Francisco, CA 94102	

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

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

For more information phone (510) 238-3721.

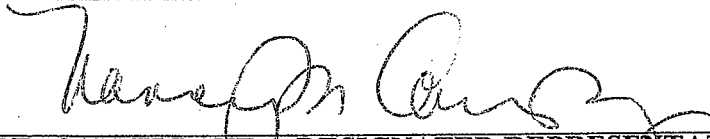
- f) I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. (In your explanation, you must describe how you were denied the chance to defend your claims and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue a decision without a hearing if sufficient facts to make the decision are not in dispute.)
- g) The decision denies the Owner a fair return on my investment. (You may appeal on this ground only when your underlying petition was based on a fair return claim. You must specifically state why you have been denied a fair return and attach the calculations supporting your claim.)
- h) Other. (In your explanation, you must attach a detailed explanation of your grounds for appeal.)

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

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

I declare under penalty of perjury under the laws of the State of California that on September 5, 2017, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<u>Name</u>	JR Mc Connell
<u>Address</u>	300 Frank H. Ogawa Plaza, Ste. 460
<u>City, State Zip</u>	Oakland, CA 94612
<u>Name</u>	Thomas Preston
<u>Address</u>	1145 Bush St.
<u>City, State Zip</u>	San Francisco, CA 94109

	9/15/2017
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

Tenant Petitioner James Beard appeals the decision of the Hearing Officer on the basis that certain findings of fact were not based on substantial evidence; the decision is inconsistent with a prior decision in case T15-0395 and the state and local law was not properly applied to the facts.

1. CARPET

There was no substantial evidence to support Hearing Officer Kasdin's findings of fact and conclusions of law denying decreased housing services for damaged and poorly installed carpet that the Hearing Officer who inspected found posed a tripping hazard.

To verify the condition of the carpet and to determine if it constituted a tripping hazard as the Petitioner tenant testified, the Hearing Officer Kasdin sent another Hearing Officer Cohen to the subject premises to verify that the condition of the carpet was consistent with the tenant's testimony. Hearing Officer Cohen inspected and reported back under oath that the carpet was tripping hazard.

The only evidence presented by the landlord on the condition of the carpet was that seven months earlier an city inspector did not cite the landlord for the carpeting condition. The tenant asserted that he called the Department of Building Inspection to the premises primarily for the garage and storage unit issues and that the inspector was a building not housing code inspector and did not cite the landlord for any housing code issues. The tenant submitted evidence he had emailed his complaints regarding the carpet to the manager. He also attested to the fact that he filled out and deposited maintenance requests in the unattended lobby box. The evidence did not support the finding.

Hearing officer Cohen observed the carpet was "a tripping hazard" and corroborated the tenant's testimony and description of the carpet's condition. She documented the condition with photographs and sworn statement. Hearing officer Kasdin's denial of this decreased housing service and his conclusion that the condition could only have been caused by the tenant's vandalism was without any factual basis and was inconsistent with tenant petitioner's testimony of the tenant and testimony of inspecting hearing officer Cohen. There was no testimony offered from the building inspector or property management as to the carpet's condition.

The tenant could have presented testimony related to the condition of the carpet including that of witness who visited his apartment, his discussions with the building inspector - who advised the tenant to contact the property owner to see if they would fix it, prior to him citing the owner, and the fact that the carpet was replaced in his unit after the inspection and that there were similar problems in other units. He was denied an opportunity to present said evidence. At the hearing the only issue according to the Hearing Officer was the condition of the carpet. There would have been no reason to send out Hearing Officer Cohen to arrive at his decision.

2. EXTERIOR SLIDING GLASS DOOR LOCK TO PATIO. SECURITY CONCERN.

On January 30, 2017, after the instant Petition was filed the landlord hired a contractor to repair the sliding glass door lock. The tenant credibly testified that the lock had never been repaired and was not lockable. He testified that in December of 2016 it became not only unlockable but jammed and was unable to be opened because the lock jammed shut.

There was no evidence the lock was replaced at any time prior to January 30th, 2017, nor was there any written notice that the locking mechanism was replaced or repaired nor that the tenant was notified of said fact by management.

The neighboring resident building manager attested to having fixed the door a couple of times, but the tenant denied that and there was nothing to corroborate the locking mechanism was replaced. The prior decision of the hearing officer stands in stark contrast to the current decision and points out that it is a security concern to have a non-operative lock on the exterior door in the City of Oakland.

There may have been some confusion on the part of the resident manager as to the door being jammed, the door coming off its track and the locking mechanism that was ordered repaired by the prior decision, in case case T15-0395.

3. SLIDING SCREEN DOOR TO PATIO. COMFORT & HEALTH & SAFETY (INSECTS, MOSQUITOES)

The sliding screen door is to a private outdoor patio. The patio doorway contains both the sliding glass door and the sliding screen door. The screen door was removed in April 2016 by maintenance and was not returned for 9 months, until after the petition was filed. The amount of reduction for loss of this service was arbitrarily low. There is no air conditioning in the unit. The screen door provides ventilation and was an amenity that the tenant found desirable and was marketed as benefit when the property was rented to the tenant.

4. COMMON AREA CLEANLINESS

Other tenants of the subject property testified in rent board hearing that since the present property manager took over cleanliness of the common area deteriorated and that they had never observed the common areas to be cleaned or vacuumed by the current property manager.

5. RESIDENT MANAGER

California law 25 CCR Section 42, requires buildings with 16 units or more to have a resident property manager. Hearing Officer Kasdin found that the owners complied with the requirement because the manager testified that she lived in an adjacent building in a contiguous parcel. The Hearing Officer apparently assumed that the subject premises were owned by the

same property owners. However there was no evidence to support that theory. At the hearing it was implied that the property was part of a contiguous parcel owned by the same owner, there was no evidence to support that. The hearing officer referenced building inspector's hearsay comments in reaching his finding and rendering his decision. Building Inspector Woo's comment that the comments that the owners complied with the requirement because their manager testified that she lived in the adjacent building in a contiguous parcel.

Public records disclose there is not any fact basis for this conclusion and that the apartment buildings are on separate parcels, owned by different owners. See attached evidence. Additionally, the hearing officer refused to allow examination of the resident manager on the number of hours, schedule or payment arrangements between her and her husband and the owners of the subject property.

The property the subject of this petition is owned by Alice B Building LLC. The property occupied by the alleged resident manager is owned by 885 25th Avenue LLC, with a completely different mailing address.

Inquiries as to when the manager comes to the property, how she and her husband are compensated and any documentation of the cleaning schedule were not allowed to be explored by the hearing officer.

There previously had been a resident manager for the subject 22 unit building. Now there is none. The resident manager was replaced by a box in the entry of the building, where you cannot get rent receipts or response to complaints. Complaints about maintenance must be deposited in the unmanned drop box and the same as requests for repairs. There is no way to document receipt of rent, nor to document requests for repairs.

6. RENT INCREASES INVALID

Prior decision awarded tenant petitioner a decreased housing service of \$70 per month because the exterior sliding glass door lock was inoperable. Prior to the filing of the instant petition it was not repaired.

In order to raise the rent to its original base rent the landlord had to first replace the broken lock and then issue a notice of change in the terms of tenancy, restoring the rental amount. Here there was no evidence presented that the lock was repaired by the landlord. The tenant testified the sliding glass door lock was repaired for the first and only time on January 30, 2017, after the tenant challenged the rent increases. There was no evidence presented by the landlord to corroborate the date the sliding glass door lock was repaired.

The tenant formally wrote and questioned the rent increases. The manager never responded. The rent was increased and the reason for the increase not explained as required by the Ordinance and the Hearing Officer's Decision in case T15-0395 .

The patio door never locked until a new locking mechanism was installed by a locksmith

January 30, 2017, after the Petition was filed. The notice of change in terms of tenancy was not served as required by law to lawfully increase the rent. Thus the amount of rent increased by \$70 and then by banked increases on top of that amount should be null and voided and refunded to the tenant petitioner. A proper notice of change in terms of tenancy must be served prior to any rent increase. Civil Code Section 827.

7. TESTIMONY OF "RESIDENT MANAGER" not substantiated or corroborated.

Resident manager provided no documentation to corroborate her testimony. Her testimony was self serving. Her performance was at issue and apparently no one supervises her work. She claimed to have made repairs to the door on which the hearing officer relied on for his decision. There was no substantive evidence that the door was repaired prior to the rent increase. Nor was there any evidence to corroborate that repairs were made to the patio door. There were no receipts and no notices that repairs are completed so your rent is being increased. Manager conceded the lock was replaced in January 30, 2017, undisputed.

The lock needed to be replaced and same was adjudicated in prior decision. The door lock was fixed was not fixed and operable until January 30th, 2017. The landlord presented no correspondence or evidence that the lock was replaced or fixed prior to that date.


Property management retaliated against Petitioner Beard by removing his screen door from the premises in April 2016, claiming it was "being repaired." The sliding screen door was not returning it despite many calls until after this second petition was filed.

8. Good cause for day delay in filing.

Petitioner met with his attorney last Thursday, August 31, 2017 to discuss his appeal. The last day for filing was September 5, 2017. The attorney representative agreed to prepare and file the instant appeal. However, she was called from her office to the VA Hospital at Fort Miley on Friday, where her son had an emergency amputation. She spent the weekend with her son and planned to return to work but received a call at midnight Labor Day he had a severe infection and was at the hospital with him first thing in the morning to meet with his team of doctors. Upon returning to her office, late Tuesday afternoon, petitioner's attorney finalized the appeal. It was timely served on the representative for the landlord respondent.

2017 SEP 14 PM 1:46

Memorandum

To: Connie Taylor, Program Manager, Oakland Rent Arbitration Program
From: Gregory McConnell, Owner Representative 
Date: 9/14/2017
Subject: T16-0734 - Request to Dismiss Late Appeal

The owners of 1470 Alice St. respectfully demand that the Rent Arbitration Program dismiss the appeal of the Hearing Officer's Decision.

Section 8.22.120 (A) (1) - Appeal procedure provides,

Either party may appeal the Hearing Officer's decision, including an administrative decision, within fifteen (15) days after service of the notice of decision by filing with the Rent Adjustment Program a written notice on a form prescribed by the Rent Adjustment Program setting forth the grounds for the appeal.

The city allows an additional five days for mailing. Therefore, in the decision, the Hearing Officer wrote:

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

The hearing decision was served by mail on August 14, 2017. Twenty days from August 14, 2017 was September 3, 2017; however, because this date fell on a Sunday and the subsequent Monday was a City holiday, the due date rolled over to Tuesday, September 5, 2017. The tenant's appeal was filed Wednesday, September 6, 2017.

The tenant representative claims the filing was late due to a family emergency on the last day of filing. However, that does not explain why she waited until the last day to file. The Rent

Board regulations, however, would have allowed the tenant to file an appeal and provide additional documentation within 15 days.

Section 8.22.120 - APPEALS. A. Statement of Grounds for Appeal and Supporting Documentation

1. A party who appeals a decision of a Hearing Officer or administrative decision must clearly state the grounds for the appeal on the appeal form or an attachment. The grounds for appeal must be stated sufficiently clearly for the responding party, and the Board to reasonably determine the basis for the appeal so that the responding party can adequately respond and the Board can adequately adjudicate the appeal.
2. A party who files an appeal must file any supporting argument and documentation and serve it on the opposing party within fifteen (15) days of filing the appeal along with a proof of service on the opposition party.

Thus, the tenant could have filed the appeal himself to preserve his rights. And the representative would have had 15 days to supplement the appeal.

This tenant is a vexatious litigant. He has filed case after case and knows the system well. For example, after the Hearing Officer ruled against him in this case, on his own, he filed a new petition using the exact same allegations that had been denied in T16-0734. This new petition is case number T17-0419

The owner should not be put to the expense and stress of responding to this litigious tenant over and over again, nor should the Rent Arbitration Program. Please enforce the rules and dismiss the appeal and also dismiss the new tenant petition, T17-0419.

Respectfully submitted.

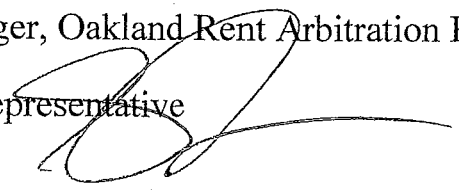


THE McCONNELL GROUP
Consultants and Advocates

San Francisco, CA 94104

SEP 14 10 17 AM

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Respectfully submitted.



P.O. BOX 70243, OAKLAND, CALIFORNIA 94612-0243

Department of Housing and Community Development
Rent Adjustment Program

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

ADMINISTRATIVE APPEAL DECISION

CASE NO(S)/NAME(S): T16-0734; Beard v. Stewart

Property Addresses: 1470 Alice Street, #206, Oakland, CA

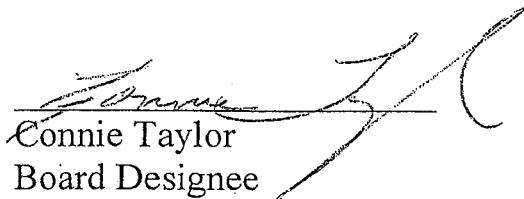
A Hearing Decision was mailed to all parties in the above-referenced case on August 14, 2017. The parties had twenty calendar days after service of the decision to file an appeal. The final day to appeal the Hearing Decision was Tuesday, September 5, 2017. The tenant filed an appeal on September 6, 2017, one day late.

Therefore, the appeal is being dismissed with prejudice. The Hearing Decision issued on August 14, 2017 is the final decision of the City of Oakland.

NOTICE TO PARTIES

Pursuant to Ordinance No(s). 9510 C.M.S. of 1977 and 10449 C.M.S. of 1984, modified in Article 5 of Chapter 1 of the Municipal Code, the City of Oakland has adopted the ninety (90) day statute of limitations period of Civil Procedure, Section 1094.6.

YOU ARE HEREBY NOTIFIED THAT YOU HAVE NINETY (90) DAYS FROM THE DATE OF MAILING OF THIS DECISION WITHIN WHICH TO SEEK JUDICIAL REVIEW OF THE DECISION OF THIS BOARD IN YOUR CASE.



Connie Taylor
Board Designee
Residential Rent and Relocation Board

Date 9/15/17

PROOF OF SERVICE

Case Number T16-0734

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

Today, I served the attached Administrative Appeal 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

James Beard
1470 Alice St #206
Oakland, CA 94612

Tenant Representative

Nancy M. Conway
345 Franklin St
San Francisco, CA 94102

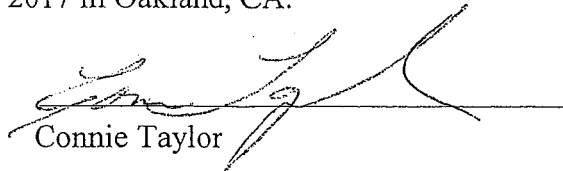
Owner Representative

The McConnell Group
300 Frank Ogawa Plaza Ste. 460
Oakland, CA 94612

Thomas Preston
1145 Bush St
San Francisco, CA 94109

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on September 15, 2017 in Oakland, CA.


Connie Taylor

000051

LAW OFFICES OF
NANCY M. CONWAY
345 FRANKLIN STREET
SAN FRANCISCO, CALIFORNIA 94102
Tel. 415/241-1140

RECEIVED

SEP 27 2017

September 27, 2017

RENT ADJUSTMENT PROGRAM
OAKLAND

Connie Taylor
Oakland Rent Adjustment Board
Frank Ogawa Plaza
Oakland, CA

Re: Good Cause For One Day Late Filing of Appeal
Beard v. Stewart, T16-0734

Dear Ms. Taylor:

I am the attorney for James Beard in the above matter he brought before the rent board. A decision issued partially in his favor. Mr. Beard decided to appeal the decision and came to my office with a draft of his appeal. I agreed to file the appeal for him. I was unable to file it timely due to my family medical emergency.

On September 5, 2017, the last day it was to be filed I was dealing with an emergency meeting with several teams of doctors who along with our son asked us to be present to discuss with vascular surgeons, podiatric surgeons, the hospitalist and infectious disease doctors, our son's options vis-a-vis treatment options that included a third amputation of part of his foot, the amputation of his remaining leg below the knee, which would have resulted in him being a double amputee, or continued to efforts to stem the infection. This was complicated by the fact that he was recovering from heart failure. Our eldest son is a 100% disabled combat veteran.

We were not done with these hospital meetings until late in the afternoon and when I returned from my office in San Francisco, it was four o'clock. I called the rent board regarding filing it by fax or electronically and was told it could not be filed electronically or by fax. By that time there was insufficient time to get it to Oakland by five p.m. in person. I served it by mail that day on the other side and filed it the next morning.

I hope you will agree that this constitutes good cause for late filing. There was no prejudice to the opposing parties or to the agency.

Sincerely yours,

LAW OFFICES OF NANCY M. CONWAY


Nancy M. Conway

000052

CITY OF OAKLAND

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



Department of Housing and Community Development
Rent Adjustment Program

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

November 16, 2017

Nancy M. Conway
345 Franklin Street
San Francisco, CA 94102

Re: Good Cause for One Day Late Filing of Appeal
Beard v. Stewart, T16-0734

Dear Ms. Conway:

You filed an appeal on behalf of your client, James Beard, which was one-day late. On September 27, 2017, you submitted a letter asking that the Board consider the reasons the appeal was filed late.

Therefore, you are scheduled to appear before the Rent Board as follows:

DATE: January 11, 2018
TIME: 7:00 P.M.
PLACE: CITY HALL, HEARING ROOM 1, One Frank H. Ogawa Plaza, Oakland

The purpose of your appearance before the Rent Board is to present the reasons(s) that you filed a late appeal. If the Board decides there is good cause for the late filing, the appeal will be reinstated and scheduled for a hearing.

A handwritten signature in cursive script that reads "Connie Taylor".

Connie Taylor
Program Manager
Rent Adjustment Program

000053

PROOF OF SERVICE

Case Number T16-0734

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 Letter re: Appeal Good Cause Hearing 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

James Beard
1470 Alice St #206
Oakland, CA 94612

Tenant Representative

Nancy M. Conway
345 Franklin St
San Francisco, CA 94102

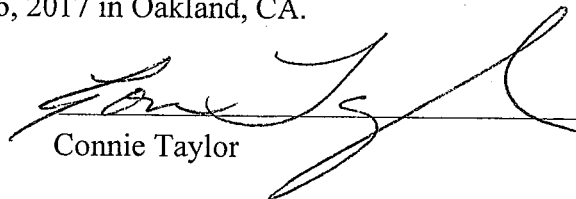
Owner Representative

The McConnell Group
300 Frank Ogawa Plaza Ste. 460
Oakland, CA 94612

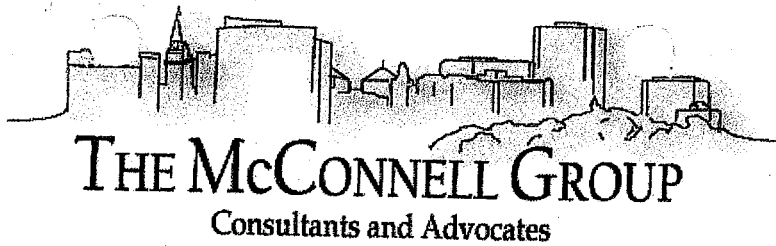
Thomas Preston
1145 Bush St
San Francisco, CA 94109

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 November 16, 2017 in Oakland, CA.

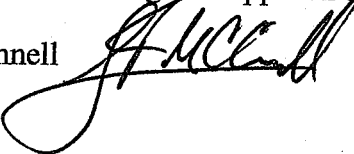

Connie Taylor

000054



RECEIVED
CITY OF OAKLAND
2018 APR 12 09:11:02

Memorandum

To: Rent Adjustment Program Appeal Board
From: JR McConnell 
Date: 4/12/2018
Subject: Additional documentation re: T16-0734

It is our understanding that this hearing is a continuation of the hearing originally scheduled for January 11, 2018. That hearing was set as an order with the purpose of determining the merits of the Tenant's late appeal filing. A November 16, 2017 notice from former RAP Manager, Connie Taylor, to Tenant Representative Nancy Conway states:

The purpose of your appearance before the Rent Board is to present the reasons that you filed a late appeal. If the Board decides there is good cause for the late filing, the appeal will be reinstated and scheduled for a hearing.

We will be prepared to address the late filing issue. In addition, please find the following documents:

- a) Hearing Decision: T17-0419, Beard v. Stewart
- b) Owner objection to late appeal
- c) 11/16/17 Notice of appeal hearing

Thank you.

CITY OF OAKLAND



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

Housing and Community Development Department
Rent Adjustment Program

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

HEARING DECISION

CASE NUMBER: T17-0419, Beard v. Stewart

PROPERTY ADDRESS: 1470 Alice Street, Unit 206

DATE OF HEARING: December 14, 2017

DATE OF DECISION: February 5, 2018

APPEARANCES: James Beard, Tenant
Thomas Preston, Agent for Owner
Joanna Ediin, Agent for Owner
Greg McConnell, Owner Representative
JR McConnell, Owner Representative

SUMMARY OF DECISION

The tenant's petition is denied.

CONTENTIONS OF THE PARTIES

The tenant filed a petition on July 17, 2017, claiming that his housing services had decreased. The claims of decreased services involve: the loss of the electrical outlets in the garage; broken light switches in his unit; master locks were changed without providing tenants two keys; elevator problems associated with an expired permit; and, mold in the garage in the storage unit next to the tenant's.

The owner filed a timely response to the tenant petition on October 4, 2017, claiming that there had been no decrease in the tenant's housing services.

///

///

THE ISSUE

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

EVIDENCE

Decreased Housing Services:

Loss of the electrical outlets in the garage: Official Notice is taken of the Hearing Decision in Case No. T16-0734, Beard v. Stewart, which involved the same parties as in the present case. In that prior case, the parties agreed that in April 2017, the owner placed "blocking caps" over all electrical outlets in the parking garage below the subject building. One of the tenant's claims of decreased housing services was that he could no longer charge his power tools in the garage.

The property manager in that prior case testified that the outlets were only for the use of building management, and they were covered over because they were felt to be a fire hazard. The Findings of Fact in that case states, in part: "The testimony of the owner's agent that the garage outlets were never intended to be used by tenants is credited. Further, the . . . closure of the outlets had minimal effect upon the tenancy. The claim is denied." That case is currently on appeal.

Broken light switches in his unit: At the Hearing, the tenant testified that a light switch in his bedroom and living room have never worked. The bedroom switch activates an outlet; there is no overhead light in this room. The living room has a dual switch. One switch activates an outlet, and the other activates the overhead light. On this fixture, only the switch that activates the outlet does not work. Both switches were repaired in September 2017. The parties agreed that there are 3 outlets in the bedroom and at least one outlet in the living room as well as the ceiling light.

Master locks were changed without providing tenants two keys: The tenant testified that in May 2017 a new entry system was installed in the subject building. Previously, tenants could open the front door with a key as an alternative to the electronic entry system. Now, the front door can only be opened with a "fob." The tenant contends that, if there were a power outage, he might be unable to enter the front door. There has not been such a power outage since the new system was installed.

Ms. Ediin, the property manager, testified that the change occurred in April 2016, not in 2017, the new system was installed to provide greater security for the tenants, and that there is a backup system with 2 large batteries. Official Notice is taken of the prior case referenced above, in which the tenant stated in his sworn petition that a new building entry system was installed in April 2016. That claim was denied since the petition was filed past the filing deadline.

Elevator problems associated with an expired permit: The tenant testified that the inspection permit for the building elevator had expired in October of 2016; it was renewed prior to the Hearing.¹ At the Hearing, when asked how this affected the functioning of the elevator, the tenant testified that on 2 occasions the elevator would not operate because someone had not fully closed the door on another floor.

Ms. Ediin testified that the elevator functioned well. That she called to arrange the annual inspection a little late and that the inspection was not scheduled until after the permit expired. After the inspection, which occurred in January of 2017, she was informed that some maintenance work was necessary. She arranged this work right away, had the work done and then received her elevator permit in August of 2017.²

Mold in the garage in the storage unit next to the tenant's: The tenant testified that there is mold in the garage storage locker next to his, and that he believes the presence of this mold is harmful to his health. In the prior case, it was found that the tenant's housing services were temporarily decreased because of mold in *his* storage locker because he was unable to store his work tools in the locker. The tenant testified that he complained about this to Ms. Ediin last year; Ms. Ediin denied that she had ever received such a complaint.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Decreased Housing Services:

Loss of the electrical outlets in the garage: The tenant made the identical claim in the prior case discussed above. Under the legal doctrine of *res judicata*, a valid, final judgment on the merits is a bar to a subsequent action by parties on the same cause of action. *Mycogen Corp. v. Monsanto Co.*, 28 Cal. 4th 888, 896 (2002). "A party cannot by negligence or design withhold issues and litigate them in consecutive actions. Hence the rule is that the prior judgment is *res judicata* on matters which were raised or could have been raised, on matters litigated or litigable." *Amin v. Khazindar*, 112 Cal. App. 4th 582, 589-590 (2003). A party cannot have more than "one bite at the apple," and the claim is denied.³

Broken light switches in his unit: This claim is denied for two reasons. First, since the condition is unchanged since he tenant moved in, his housing services have not been decreased. Secondly, O.M.C. Section 15.08. 260(C), being part of the Building Maintenance Code, states, in part: "Every habitable room shall contain at least two electrical convenience receptacles or one convenience receptacle and one switched electric light fixture." There is no Code violation, and the claim is denied.

¹ See photo of expired permit, Exhibit 1

² See Exhibit 6

³ While the tenant's initial complaint in his first petition was about the temporary loss of electricity in the garage, at the Hearing the tenant testified to the complete loss of electricity. The Hearing Decision in the prior case specifically denied the tenant's permanent loss of use of electricity.

Master locks were changed without providing tenants two keys: It is more likely than not that this event occurred in the year 2016, and is therefore time-barred, as was found in the prior case. Further, since prior building tenants may well have kept their front door keys, the new system does provide greater tenant security, and the likelihood that a power outage would coincide with a failure of the backup batteries is highly unlikely. For both of these reasons, the claim is denied.

Elevator problems associated with an expired permit: The expired permit had no effect upon the functioning of the elevator and, therefore, no effect upon the tenant's housing services. The occasional failure of the elevator testified to by the tenant was related to other tenants' carelessness and not any problem with the elevator itself. The claim is therefore denied.

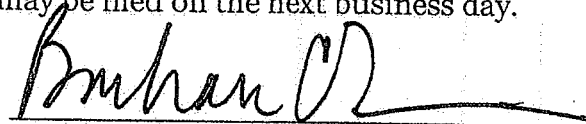
Mold in the garage in the storage unit next to the tenant's: The presence of mold in an area in which the tenant would be present for occasional, very brief periods of time, and in an open area, would have a minimal, if any effect upon anyone. Further, this locker is in an underground parking garage, where the air quality is hardly ideal. This is a frivolous claim, and is denied.

ORDER

1. Petition T17-0419 is denied.

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

Dated: February 5, 2018



Barbara M. Cohen
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE
Case Number T17-0419

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 documents listed below 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:

Documents Included
Hearing Decision

Owner
Alice B. Building LLC
1145 Bush St
San Francisco, CA 94109

Owner
Lucky Stewart & Thomas Preston
1145 Bush St
San Francisco, CA 94109

Owner Representative
Greg McConnell/JR McConnell/ The McConnell Group
300 Frank H. Ogawa Plaza Ste. #460
Oakland, CA 94612

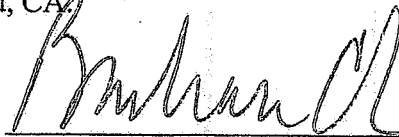
Tenant
James Beard
1470 Alice St #206
Oakland, CA 94612

Tenant Representative
Mercedes Gavin
145 Town Center #543
Corte Madera, CA 94925

000060

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 8, 2018, in Oakland, CA.



Barbara Cohen
Oakland Rent Adjustment Program

000061

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



Department of Housing and Community Development
Rent Adjustment Program

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

November 16, 2017

Nancy M. Conway
345 Franklin Street
San Francisco, CA 94102

Re: Good Cause for One Day Late Filing of Appeal
Beard v. Stewart, T16-0734

Dear Ms. Conway:

You filed an appeal on behalf of your client, James Beard, which was one-day late. On September 27, 2017, you submitted a letter asking that the Board consider the reasons the appeal was filed late.

Therefore, you are scheduled to appear before the Rent Board as follows:

DATE: January 11, 2018
TIME: 7:00 P.M.
PLACE: CITY HALL, HEARING ROOM 1, One Frank H. Ogawa Plaza, Oakland

The purpose of your appearance before the Rent Board is to present the reasons(s) that you filed a late appeal. If the Board decides there is good cause for the late filing, the appeal will be reinstated and scheduled for a hearing.

A handwritten signature in cursive script that reads "Connie Taylor".

Connie Taylor
Program Manager
Rent Adjustment Program

000062

PROOF OF SERVICE

Case Number T16-0734

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 Letter re: Appeal Good Cause Hearing 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

James Beard
1470 Alice St #206
Oakland, CA 94612

Tenant Representative

Nancy M. Conway
345 Franklin St
San Francisco, CA 94102

Owner Representative

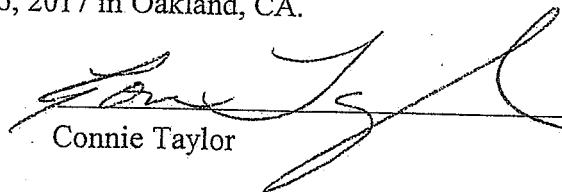
The McConnell Group
300 Frank Ogawa Plaza Ste. 460
Oakland, CA 94612

Thomas Preston
1145 Bush St
San Francisco, CA 94109

RECEIVED
CITY OF OAKLAND
2017 NOV 12 AM 11:02

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 November 16, 2017 in Oakland, CA.


Connie Taylor

000063

CHRONOLOGICAL CASE REPORT

Case Nos.: T15-0626
Case Name: Lyngen v. Beacon Properties
Property Address: 580 Jean Street, #1, Oakland, CA
Parties: Erik Lyngen (Tenant)
Karen Graf (Property Owner)

TENANT APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	November 19, 2015
Owner Response filed	January 6, 2016
Hearing Decision	April 27, 2016
1 st Tenant Appeal filed	May 20, 2016
Appeal Panel Decision	February 16, 2017
Amended Order Re. Hearing on Remand	June 6, 2017
Hearing Decision on Remand	August 18, 2017
2 nd Tenant Appeal filed	September 8, 2017

T15-0626 KM/BKB

CITY OF OAKLAND RENT ADJUSTMENT PROGRAM Mail To: P. O. Box 70243 Oakland, California 94612-0243 (510) 238-3721	For date stamp: 2015 NOV 19 AM 11:52
--	--------------------------------------

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>Erik Lyngen</i>	Rental Address (with zip code) <i>580 Jean St., #1 Oakland, CA 94610</i>	Telephone <i>510-658-2197</i>
Your Representative's Name	Mailing Address (with zip code)	Telephone
Property Owner(s) name(s) <i>Rent Paid to Property Management Company: Beacon Properties</i>	Mailing Address (with zip code) <i>466 40th Street Oakland, CA 94609-2522</i>	Telephone <i>(510) 428-1864</i>

Carlton Tanner
 Number of units on the property: 9

Type of unit you rent (circle one)	House	Condominium	<input checked="" type="radio"/> Apartment Room, or Live-Work
Are you current on your rent? (circle one)	<input checked="" type="radio"/> 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. **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"/>	(f) The housing services I am being provided have decreased. (Complete Section III on following page)
<input checked="" type="checkbox"/>	(g) 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"/>	(h) The contested increase is the second rent increase in a 12-month period. <i>Since decrease in ^{housing} services is</i>
<input type="checkbox"/>	(i) The notice of rent increase based upon capital improvement costs does not contain the "enhanced notice" requirements of the Rent Adjustment Ordinance or the notice was not filed with the Rent Adjustment Program (effective August 1, 2014). <i>rent increase.</i>
<input type="checkbox"/>	(j) My rent has not been reduced after the expiration period of the rent increase based on capital improvements.
<input type="checkbox"/>	(k) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).

+ 24 pages of attachments 000065

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

Date you moved into the Unit: 12/1/10 Initial Rent: \$ 1,195.00 /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: 11/23/10. 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		
9/27/15	12/1/15	\$1280.00	\$1450.88	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
8/8/14*	8/11/14	\$ TBD	\$ TBD	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
8/8/14*	8/11/14	\$ TBD	\$ TBD	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
8/8/14*	2/1/14	\$ TBD	\$ TBD	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

None

* 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: n/a

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

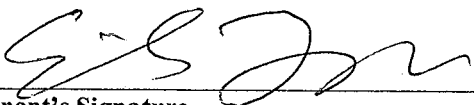
If you answered "Yes" to any of the above, please attach a separate sheet listing a description of the reduced service(s) and problem(s). Be sure to include at least the following: 1) a list of the lost housing service(s) or serious problem(s); 2) the date the loss(es) began or the date you began paying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

* Loss of Parking / Construction Zone / Fence 000066

IV. VERIFICATION: The tenant must sign:

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



Tenant's Signature

11/19/15

Date

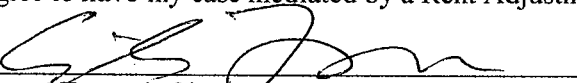
V. MEDIATION AVAILABLE: Mediation is an entirely voluntary process to assist you in reaching an agreement with the owner. If both parties agree, you have the option to mediate your complaints before a hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal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

11/19/15

Date

VI. IMPORTANT INFORMATION:

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

File Review

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

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

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

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Attachment to Petition to Oakland Rent Board
Submitted in person with entire petition on 11/19/15

Erik Lyngen
580 Jean St., Apt. #1
Oakland, CA 94610

510-658-2197 / Lyngen@berkeley.edu

SUMMARY OF RENT INCREASE & RELATED DECREASE IN HOUSING SERVICES

On September 27, 2015 I got a rent increase notice alleging I was liable to pay for **\$10,252.78** worth of construction work that was recently completed at our apartment building. The work--a **voluntary** seismic retrofit--**lasted about a year**, during which time we **lost access to our parking spaces** and had to **live in a construction zone**, and with a **dilapidated fence**.

NOTE: the above dollar amount represents over **400 hours of my wages** at UC Berkeley.

I CONTEST THE RENT INCREASE ON THE FOLLOWING GROUNDS:

1. It is *not my property*. I was *not consulted*. I *did not ask for, nor agree to* the construction.
2. A voluntary seismic reinforcement on a soft-story apartment building *does not qualify* to be "passed through" to the tenant because it does not satisfy the definition of a "capital improvement" (O.M.C. 8.22.020) since it does not primarily benefit the tenant.
 - a. The benefit extends to many parties, including:
 - i. Property Owner
 - ii. City of Oakland
 - iii. County of Alameda
 - iv. Tenant (*temporary* beneficiary)
 - b. Since tenancy is temporary, but a seismic reinforcement of a soft-story building is **permanent**, the owner is the one who primarily benefits from this sort of construction.

Put another way: Who will be the primary beneficiary when the tenant moves out?

3. If the tenants are forced to pay in full (or in part) for a voluntary seismic reinforcement, the following conditions should be met:

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(3-page Petition +)

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- a. Tenants should be entitled to **equity in the property**. All equity holders shall be paid their share upon sale of the property.

Re-phrased: Why shouldn't the party that pays for a seismic retrofit get equity in the property?

- b. The payments should be **spread out over the useful life of the improvement**. In the case of seismic reinforcement, this should be *at least 30 years*.
- c. Tenants should have **full access to financial and construction records** related to the project *to ensure fiduciary duty* to the tenants was met.

Restated: If the tenants are paying—in this case *paying in full*, totaling over **\$92,000**—we have a right to know how every dollar of our money was spent.

Case in Point

We the tenants (collectively) are being charged **\$22,275** *over* the “valuation of the proposed work” as stated in the permit application.

Why is there a discrepancy of almost 25%?

How can we audit the financial dealings if we don't have full access?

RELATED POINT RELATED TO FINANCIAL DISCLOURE

How can I be assured that the landlord has not received “incentives” such as city, state, or county money, or insurance rebates, etc. that are not allowed to be passed on to the tenants?

If we have to pay any amount, I request that the amount be audited.

4. The landlord is *claiming to be grandparented in* under a previous law, but **does not qualify**, because:
 - a. **substantial work was not performed before August 1, 2014**. (see attached grandparant clause)
 - b. **The work did not start until August 11, 2014**. (see attached landlord letter of August 8, 2014)

Furthermore, in the same letter, the landlord stated that the **work would take 3 to 4 weeks to be completed**, when, in fact, **it took about a year**. The

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due diligence requirement of the grandparent clause was clearly not met (see attached schedule of inspections).

LIVING IN A CONSTRUCTION ZONE

Every time we entered or exited our apartment (see attached diagram) our family had to walk through the **construction zone** with the dust and debris, piles of materials, cords, open pits (sometimes with standing water), wires, and so on. Besides being **dangerous** and a **nuisance** and a **blight**, the construction **took 10 times longer** than we were originally told it would. (see landlord letter)

For months on end, our soft-story, 9-unit apartment building was held up with temporary supports of metal, **shimmed with 4-inch loose (un-nailed) pieces of wood** (see pictures). Considering this situation was LESS SAFE than it was before construction started, I am surprised that the Certificate of Occupancy (COO) was not revoked, and that we were not relocated.

In the City paperwork, I think I saw something mentioning the COO was on HOLD, but I didn't fully understand what this meant. Could someone look into this, please?

The construction was done on an **expired building permit** after **6 months passed with no inspections and limited activity. (See attached inspection schedule)** Furthermore, the original permit was filled out so incompletely, that it makes one wonder if it was just sloppiness, or if there were ulterior motives. Particularly alarming to me was the fact that the Hazardous Materials Declaration was not checked.

How do I now what was in that dust that was plastered against my apartment door?

Furthermore, the Construction Lending Agency Declaration was not filled out properly according to (Section 8172, Civil Code). Maybe this relates to why the project started and stopped like it did (and took a year to complete).

(see attached pages from original permit application)

PARKING TAKEN AWAY

Furthermore the compensated we received for losing access to our parking spaces was inappropriately low (in my case, \$0.27 per person, per day). We live on the top of a steep hill in a neighborhood with extremely difficult parking (even before all 9 tenant vehicles were displaced to the street). I have two children (now 10 and 3 years old), and my wife has ongoing health issues. **I value the loss of full access to my parking space at \$11.60 per day.**

(see attachment for details)

FALLING DOWN FENCE

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To make matters worse, directly out from my back door is a **dilapidated fence (see attached pictures)**, which is the boundary to a **8-foot drop down to big rocks**. This is a **blight** and a **nuisance**, takes away from the expected enjoyment of my dwelling, and is a **serious safety hazard**. We have asked for this to be fixed a year and a half ago, but the only thing that was done was a crew came out to examine the situation so they could put a bid in on the job.

The **broken down fence puts my children in danger**. Furthermore, I have to look at it, my visitors see it, and I am irritated that it has not been fixed. Every time we walk to the laundry room we have to move a broken gate. I value the fence situation at \$5 per day.

A handwritten signature in black ink, appearing to be 'W. S. Jones' or similar, written in a cursive style.

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. 2016 JUN -6 PM 3:57
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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 T15-0626

OWNER RESPONSE

Please print legibly.

Your Name Beacon Properties (agent to Owner)	Complete Address (with zip code) 466 40th Street Oakland, CA 94609	Phone: 510-428-1864 Email: beacprop@pacbell.net
Your Representative's Name (if any)	Complete Address (with zip code)	Phone: _____ Fax: 510-601-1917 Email: _____
Tenant(s) name(s) Erik Lyngen Sarah Guy	Complete Address (with zip code) 580 Jean St #1 Oakland, CA 94610	510-658-2197

Have you paid for your Oakland Business License? Yes No Number 1974718
 (Provide proof of payment.)

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

There are 9 residential units in the subject building. I acquired the building on 9/15/99.

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

I. RENTAL HISTORY

The tenant moved into the rental unit on 12/01/2010.

The tenant's initial rent including all services provided was \$ 1195.00 / 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? 11/22/10

Is the tenant current on the rent? Yes No except disputed amount

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? 9/25/15 . 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	
9/25/15	12/01/15	\$ 1280.00	\$ 1450.88	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
11/30/13	1/01/14	\$ 1250.00	\$ 1280.00	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
11/19/12	1/01/13	\$ 1195.00	\$ 1250.00	<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

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)
<u>12/01/15</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<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.

Amay (agent)
Owner's Signature

1/5/16
Date

VII. MEDIATION AVAILABLE

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

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

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

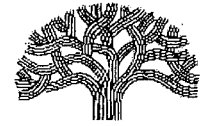
If you want to schedule your case for mediation, sign below.

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

Owner's Signature

Date

CITY OF OAKLAND



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

Housing and Community Development Department
Rent Adjustment Program

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

HEARING DECISION

CASE NUMBER: T15-0615, Foucault v. Beacon
T15-0626, Lyngen v. Beacon
T15-0627, Ballinger v. Beacon
T15-0633, Langston v. Beacon

PROPERTY ADDRESS: 580 Jean Street, No. 1, 5, 7, 9
Oakland, CA 94610

DATE OF HEARING: March 16, 2016

DATE OF DECISION: April 27, 2016

APPEARANCES:	Erik Lyngen	Tenant
	Carole Langston	Tenant
	Peter Foucault	Tenant
	Shannon Foucault	Tenant
	Jana Ballinger	Tenant
	Scott Isacksen	Owner Representative
	Carlton Tanner	Owner Representative

SUMMARY OF DECISION

The tenants' petitions are GRANTED IN PART.

INTRODUCTION

Tenant Erik Lyngen filed a petition on November 13, 2015, which contests a monthly rent increase from \$1,280.00 to \$1,450.88, purportedly effective December 1, 2015, and alleges various decreased housing services.

Tenant Jana Ballinger filed a petition on November 23, 2015, which contests a monthly rent increase from \$1,361.00 to \$1,531.88, purportedly effectively December 1, 2015, and a decreased housing service

Tenant Carole Langston filed a petition on November 24, 2015, which contests a monthly rent increase from \$1,140.00 to \$1,310.88, purportedly effective December 1, 2015.

Tenants Foucault filed a petition on November 20, 2015, which contests a monthly rent increase from \$1,174.00 to \$1,344.88, purportedly effective December 1, 2015.

The tenants contend that the capital improvements should not be grandfathered because substantial work was not performed for a period of almost a year. The tenants received notice of the seismic retrofit on June 3, 2014. They were notified that they could not park in their parking spaces on June 10, 2014. Construction was delayed and was not completed until July 14, 2015.

All the tenants stated complaints in their petitions about the loss of use of their parking spaces, and the construction area which lasted from June 2014 until July 2015. Tenant Lyndgen complained about the fence. Tenant Ballinger complained about the back stairs.

The owner, Beacon Properties, filed timely responses to each tenant petition, and contends that the rent increases are justified on the basis of capital improvements and the tenants have not suffered any decreased housing services.

The owner representative contends that the capital improvement project consisted of a seismic retrofit to a soft story building, and 100% of the costs should be passed through to the tenants because the project was initiated prior to August 1, 2014, and was unavoidably delayed due to the death of the original engineer for the project.

THE ISSUES

1. Is the owner entitled to a capital improvement pass-through? If so, in what amount?
2. Are the tenants' challenges to the rent increases and decreased housing service claims timely filed?
3. If so, did the tenants suffer decreased housing services?

EVIDENCE

Rent History and RAP Notice

The following Table shows the dates of each tenant's move-in date and when they first received the RAP notice.

Tenant	Move in Date	Date of first RAP Notice	Current Rent
Foucault	1/1/10	On move-in and 11/19/2012 ¹	\$1,174.00
Langston	7/1/07	9/25/07 ²	\$1,140.00
Ballinger	4/8/11	3/22/11	\$1,361.00
Lyngen	12/1/10	11/23/10	\$1,280.00

Capital Improvements

The owner representative testified that the capital improvement project consisted of a seismic retrofit of a soft story building. The subject building consists of nine units. The original building permit was issued in April 2014 and the contract was signed for \$92,275.00. The work began prior to August 2014. However, the original engineer, John Morrison, died, and there were problems with the original design. It took longer and the costs were greater. \$23,953 was paid prior to August 1, 2014. The last payment was made in August 2015. The owner provided a summary, invoices, and proof of payments as follows:³

Date paid	Vendor	Amount
6/2/14	J. Cain	\$2,380.00
7/17/14	John Morrison, Inc.	\$21,573.75
8/19/14	Tuan and Morrison	\$21,573.75
3/11/15	Tuan and Morrison	\$2,100.00
3/11/15	John Morrison, Inc.	\$630.00
9/15/15	John Morrison, Inc.	\$43,147.50
		\$870.00
TOTAL		\$92,275.00

The owner provided the tenants with enhanced notices about the capital improvement project and filed copies of these notices with the Rent Adjustment Program on September 28, 2015.⁴

Tenant Lyngen testified that the tenants were not consulted about the soft story seismic retrofit and it is not a capital improvement and does not primarily benefit the tenants. The owner testified that the policy in Oakland is to allow a capital improvement

² Ex. No. 16, Signed RAP notice by tenant

³

⁴ Ex. No. 13, Enhanced Notice

pass-through for seismic retrofit. Tenant Ballinger testified that the work was unpermitted and there were no inspections during a six month period. There was an inspection on August 20, 2014, and the work did not pass inspection.

Decreased Housing Services

Parking Spaces

Tenant Ballinger testified that they could not park in their parking spaces from August 14, 2015 to July 2015, due to construction materials, drywall, and dust. It was very inconvenient to park on the street because the subject building is located at the top of a steep hill. Tenants Ballinger, Foucault and Langston received \$601.67 from the owner to compensate them for the parking situation. Tenant Lyndgen deducted \$400.00 from his rent payments because of the parking situation.

Construction Zone

The tenants testified that they were forced to live in a construction zone for a year during the seismic retrofit. Excavated troughs were left uncovered; there was a lack of caution tape in potentially dangerous areas; and piles of building materials were stacked on the property. Tenants Ballinger and Foucault testified that it was difficult to access storage space because of the construction and there was dust everywhere. Tenant Foucault testified that he has breathing issues and had to step over an open pit.

Fence

Tenant Lynggen testified that the fence was dilapidated and started falling down and he complained about the fence to Aaron, the broker, one and a half years ago. They sent someone out to look at the fence but nothing was done. He provided photos of the fence which indicates that part of the fence is missing, falling, and the wood is dilapidated.⁵ The owner representative testified that he was not aware of any problem with the fence. Tenant Lyndgen testified that the fence was fixed in February 2016.

Backstairs

Tenant Ballinger testified that the back stairs were wobbly but she did not tell anyone about the problem and they were fixed in February 2016.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

RAP Notice

The tenants all received the notice of the existence of the Rent Adjustment Program (RAP) at or close to the time of their dates of move-in, in 2007, 2010, and 2011. Tenant Langston's petition states that she first received the RAP notice in

⁵ Ex. No. 19-24

September 2015. However, the owner provided a RAP notice dated September 25, 2007, signed by the tenant.

Capital Improvements

A rent increase in excess of the C.P.I. Rent Adjustment may be justified by capital improvement costs.⁶ Capital improvement costs are those improvements which materially add to the value of the property and appreciably prolong its useful life or adapt it to new building codes. Normal routine maintenance and repair is not a capital improvement cost, but a housing service cost.⁷

The improvements must primarily benefit the tenant rather than the owner. Capital improvement costs are to be amortized over a period of five years, divided equally among the units which benefited from the improvement. The reimbursement of capital expense must be discontinued at the end of the 60-month amortization period.⁸

An expense must pass three tests to meet the threshold definition of a Capital Improvement cost:

- (1) It must materially add to the value of the property
AND
- (2) It must either
 - A. Appreciably prolong the useful life of the property or
 - B. Adapt it to new building codesAND
- (3) It must primarily benefit the tenant

A rent increase based upon capital improvements will only be given for those improvements which have been completed and paid for within 24 months prior to the date of the proposed rent increase.⁹

The owner complied with the enhanced notice requirements. The rent increase based on capital improvements is valid. This capital improvement adds value to the entire building, prolongs the useful life of the subject building and the tenants primarily benefit from the seismic retrofit.

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

⁶ O.M.C. Section 8.22.070(C)

⁷ Regulations Appendix, Section 10.2.2(5)

⁸ Regulations Appendix, Section 10.2

⁹ Regulations Appendix, Section 10.2.1

"Enhanced Notice" Requirements: "For any rent increase based on capital improvements commenced prior to the implementation date, if such rent increase is noticed on or after the implementation date of this Ordinance, the new noticing requirements under this Ordinance are required."¹⁰ A rent increase notice based on capital improvements "must include the following:

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

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

The owner complied with the enhanced notice requirement and provided a documentation of capital improvement costs for the seismic retrofit.

Additionally, as of August 1, 2014, the Rent Ordinance was amended to limit a capital improvement pass-through to a maximum of 70%.¹¹ However, the new Ordinance "does not apply to capital improvements on which permits have been taken out and substantial monies paid or liabilities incurred (other than permit fees) prior to the implementation date of the Ordinance (August 1, 2014), and the Owner reasonably, diligently pursues completion of the work."

The owner paid 25% of the project costs which constitutes substantial monies paid and the liability was incurred prior to August 1, 2014. However, the seismic retrofit took approximately one year to complete, from June 13, 2014, until July 14, 2015, which does not meet the requirement that the owner reasonably diligently pursues completion of the work. Therefore, the owner is not entitled to a capital improvement pass-through of 100% of the cost of this project.

The owner is entitled to a 70% capital improvement pass-through to the tenants for the seismic retrofit (.70 x \$92,275.00=\$64,592.50). A monthly capital improvement pass-through of \$119.62 is granted. The allowed capital improvement allocation is itemized in the Table attached to this Decision.

Decreased Housing Services

Under the Oakland Rent Ordinance, a decrease in housing services is an increase in rent. 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

¹⁰ Ordinance No. 13226

¹¹ Resolution 85306 C.M.S.

one that is required to be provided in a contract between the parties.¹² The tenant has the burden of proving decreased housing services by a preponderance of the evidence.

Additionally, a tenant petition for decreased housing services must be filed within 60 days of the date of service of a rent increase notice or the date the tenant first receives written notice of the existence and scope of the RAP, whichever is later.¹³ The tenants' petitions were not filed until November 2015. The Board has held that a petition claiming decreased housing services must be filed within sixty days after the decrease in services occurred, or within sixty days after the next rent increase notice and Notice to Tenants is served, whichever is later.¹⁴

Loss of Parking Spaces/Construction Zone

The tenants' petitions are untimely filed regarding the loss of the parking spaces. The construction ended in July 2015, and the tenants did not file their petitions until November 2015, which is far more than 60 days after the loss of use of the parking spaces. Furthermore, the tenants were given rent decreases for the loss of use of the parking spaces. Compensation for this item is denied.

Back Stairs-Tenant Ballinger

Tenant Ballinger testified that she did not notify anyone about the problem with the stairs, and they have now been repaired. Therefore, compensation for this item is denied.

Fence-Tenant Lyngen

The condition of the fence constitutes a safety issue. However, compensation is limited to 60 days prior to the filing of tenant Lyngen's petition, which is itemized in the following Table:

VALUE OF LOST SERVICES							
Service Lost	From	To	Rent	% Rent Decrease	Decrease /month	No. Months	Overpaid
Fence	9/19/15	2/1/16	\$1,280.00	5%	\$64.00	5	\$320.00
TOTAL LOST SERVICES							320.00

ORDER

1. The owner is entitled to a 70% capital improvement pass-through.

¹² Green v. Superior Court, 10 Cal.3rd 616 (1974)

¹³ O.M.C. Section 8.22.090 (A)(2)

¹⁴ Lindsey v. Graham, T09-0086

2. Tenant Ballinger's claim for decreased housing services is denied.
3. The tenants' claims for decreased housing services for the loss of parking and construction are denied on the basis of timeliness.
4. Tenant Lyngen's claim for decreased housing services regarding the fence is granted in part.
5. The tenants' rents are set below as follows:

a. Tenant Lyngen

New Rent effective 12/1/15	\$ 1,399.62
Plus rent underpayments totaling \$717.72 less rent overpayment for fence of \$320.00; net underpayment is \$397.72/6=\$66.29	\$ 66.29
Rent payment commencing June 1, 2016 and ending November 1, 2016	\$ 1,465.91

The capital improvement pass-through expires December 1, 2020.

b. Tenant Ballinger's rent is stated below as follows:

New Rent effective 12/1/15	\$ 1,480.62
Plus rent underpayments totaling \$717.72/6=\$119.62	\$ 119.62
Rent payment commencing June 1, 2016 and ending November 1, 2016	\$ 1,600.24

The capital improvement pass-through expires December 1, 2020

c. Tenants Foucault rent is stated below as follows:

New Rent effective 12/1/15	\$ 1,273.68
Plus rent underpayments totaling \$686/9=\$76.22	\$ 76.22
Rent payment commencing June 1, 2016 and ending February 1, 2017	\$ 1,349.90

The capital improvement pass-through expires December 1, 2021.

d. Tenant Langston's rent is stated below as follows:

New Rent effective 12/1/15	\$ 1,239.68
Plus rent underpayments totaling \$684.00/9=\$76.00	\$ 76.00
Rent payment commencing June 1, 2016 and ending February 1, 2017	\$ 1,315.68

The capital improvement pass-through expires December 1, 2021

6. The owner is entitled to increase rents to which he is otherwise entitled upon proper notice in accordance with the Rent Ordinance and the notice requirements of Section 827 of the California Civil Code.

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

Dated: May 5, 2016



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

City of Oakland Capital Improvements Calculator Worksheet

IMPROVEMENTS BENEFITING ALL UNITS BUILDING WIDE

Effective Date of Rent Increase
Number of Residential Units

1-Dec-15
9

IMPROVEMENT OR REPAIR	DATE COMPLETED	FULL COST	Amortizable Cost (70%)	# of Units	Allowable Cost per Unit (Pre-Amortization)	Date Validation (2 years ago max)
Seismic Retrofit	1-Jul-15	\$92,275.00	\$64,592.50	9	\$7,176.94	OK

Subtotal		\$64,592.50	\$7,176.94
Place X in box if property is mixed use.			
Residential square footage			
Other use square footage			
Percent residential use			
Total Cost Per Unit Allocated to Residential Units			\$7,176.94

000085

IMPROVEMENTS LIMITED TO SPECIFIC UNITS

Total Allowable Unit Specific Pass-through (Column D)

\$0.00

IMPROVEMENT OR REPAIR	DATE COMPLETED	FULL COST	Amortizable Cost (70%)	# Units	Allowable Cost per Unit (Pre-Amortization)	APPLIES TO UNITS	Date Validation (2 years ago - max)
Totals							
\$0.00							

AMORTIZATION

Sum of Unit Specific Costs (Column D below):

\$0.00

Unit	Current Rent	Building Wide Pass-through	Unit Specific Pass-through	Total Pass-through on Unit	Years to Amortize (5 yrs. min)	Allowable Increase \$	Increase % (must be 10% or less)
Ballinger	\$1,361.00	\$7,176.94		\$7,176.94	5	\$119.62	8.79%
Foucalt	\$1,174.00	\$7,176.94		\$7,176.94	6	\$99.68	8.49%
Langston	\$1,140.00	\$7,176.94		\$7,176.94	6	\$99.68	8.74%
Lyngen	\$1,280.00	\$7,176.94		\$7,176.94	5	\$119.62	9.34%

980000

PROOF OF SERVICE

Case Number T15-0615; T15-0626; T15-0627; T15-0633

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

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

Beacon Properties
Mark Slafkes
466 40th Street
Oakland, CA 94609

Peter & Shannon Foucault
580 Jean Street #5
Oakland, CA 94610

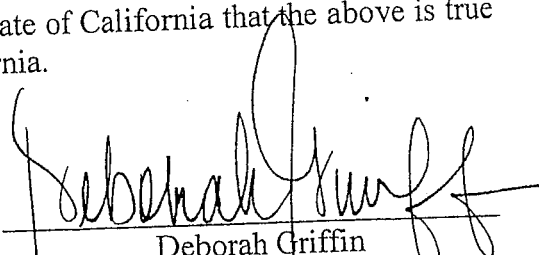
Erik Lyngen
580 Jean Street #1
Oakland, CA 94610

Jana Ballinger
Jim Gilman
580 Jean Street #9
Oakland, CA 94610

Carole Langston
580 Jean Street #7
Oakland, CA 94610

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **May 5, 2016** in Oakland, California.


Deborah Griffin
Oakland Rent Adjustment Program

000087



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

Housing and Community Development Department
Rent Adjustment Program

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

HOUSING RESIDENTIAL RENT AND RELOCATION BOARD

APPEAL PANEL DECISION

Case Number: T15-0615, Foucault v. Beacon Properties
T15-0626, Lyngen v. Beacon Properties
T15-0627, Ballinger v. Beacon Properties
T15-0633, Langston v. Beacon Properties

Property Address: 580 Jean Street, Units 1,5,7,9
Oakland, CA

Date of Appeal Hearing: February 16, 2017

Appearances: Karen Graf Owner Appellant
Aaron Young Owner Representative
Erik Lyngen Tenant Appellant

Tenant Lyngen filed a petition which contested a rent increase and alleged decreased housing services. The Hearing Decision granted the owner a 70% capital improvement increase based upon an amendment to the Rent Ordinance effective August 1, 2014. The ordinance "grandfathered" work on which permits had been taken out and substantial monies paid or liabilities incurred prior to August 1, 2014, and the owner reasonably diligently pursues completion of the work.

The owner did not appear at the Hearing. The only evidence adduced at the Hearing was testimony by the owner representative that the original engineer died and there were problems with the original design; and that it took longer and costs were greater. The Hearing Decision stated that the project took approximately one year to complete, from June 13, 2014, to July 14, 2015, which did not meet the requirement that the owner reasonably diligently pursue completion of the work.

Both the owner and tenant Lyngen appealed the Hearing Decision in T15-0626. The owner also appealed the Hearing Decision in T15-0615, T15-0627 and T15-0633.

Grounds for Tenant Appeal

The tenant filed an appeal on May 20, 2016, and contends that the capital improvements should not be grandfathered because the project that should have taken three weeks took one year and the loss of parking and the tenants living under construction was one year and that the owner did not exercise due diligence in the project completion. No pass-through should be allowed because it was an unpermitted project, and the permit expired in 6 months, and it was not fully paid.

Grounds for Owner Appeal

The owner filed an appeal on May 25, 2016, and contends that they exercised due diligence in seeking the project to completion, the tenants were compensated for the loss of parking during the construction period, and the project was permitted and approved by final inspection.

Appeal Hearing and Decision

Tenant Appeal

After questions to the parties and Panel Discussion, K. Friedman moved to affirm the Hearing Decision based on the Hearing Officer's rationale. U. Fernandez seconded.

The Appeal Panel voted as follows;

Aye: U. Fernandez, E. Lai, K. Friedman

Nay: 0

Abstain: 0

The motion was approved by consensus.

Owner Appeal

After questions to the parties and Panel discussion, E. Lai moved to remand the case back to the Hearing Officer to conduct a hearing to receive further testimony and make findings on the issue of whether the owner exercised due diligence to complete the project. The Hearing Officer is directed to make findings based on the testimony regarding due diligence. K. Friedman seconded.

The Appeal Panel voted as follows:

Aye: K. Friedman, E. Lai

Nay: U. Fernando

Abstain: None

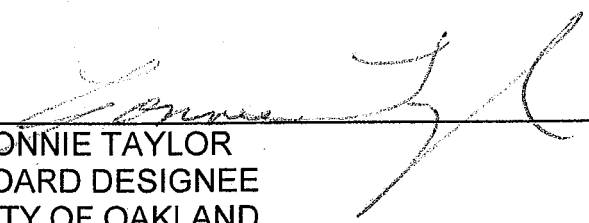
The Motion carried.

NOTICE TO PARTIES

This decision is the final decision of the City of Oakland.

Pursuant to Ordinances No. 9510 C.M.S. of 1977 and 10449 C.M.S. of 1984, modified in Article 5 of Chapter 1 of the Municipal Code, the City of Oakland has adopted the ninety (90) day statute of limitations period of Civil Procedure, Section 1094.6.

YOU ARE HEREBY NOTIFIED THAT YOU HAVE NINETY (90) DAYS FROM THE DATE OF MAILING OF THIS DECISION WITHIN WHICH TO SEEK JUDICIAL REVIEW OF THE DECISION OF THIS BOARD IN YOUR CASE.



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

DATE 3/13/17

PROOF OF SERVICE

Case Number T15-0626

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 Appeal Panel 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

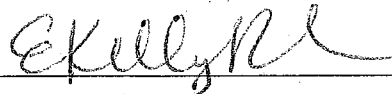
Erik Lyngen
580 Jean St #1
Oakland, CA 94610

Owner

Beacon Properties
466 40th St
Oakland, CA 94609

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

000091

PROOF OF SERVICE

Case Number T15-0615

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 Appeal Panel 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

Peter Foucault
580 Jean St #5
Oakland, CA 94610

Shannon Foucault
580 Jean St #5
Oakland, CA 94610

Owner

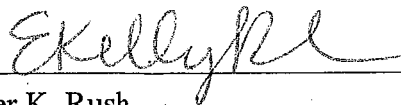
Mark Slafkes
466 40th St
Oakland, CA 94609

Owner Representative

Beacon Properties
466 40th St
Oakland, CA 94609

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

000092

City of Oakland Residential Rent Adjustment Program 250 Frank Ogawa Plaza, Suite 5313 Oakland, California 94612 (510) 238-3721	2016 MAY 20 PM 3: 39 APPEAL
Appellant's Name Erik Lyngen	Landlord <input type="checkbox"/> Tenant <input checked="" type="checkbox"/>
Property Address (Include Unit Number) 580 Jean St., #1 Oakland, CA 94610	
Appellant's Mailing Address (For receipt of notices) 580 Jean St., #1 Oakland, CA 94610	Case Number T15-0626 Date of Decision appealed April 27, 2016
Name of Representative (if any)	Representative's Mailing Address (For notices)


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

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

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

8. You must serve a copy of your appeal on the opposing party(ies) or your appeal may be dismissed. I declare under penalty of perjury under the laws of the State of California that on May 20, 2006, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

Name	Carlton Tanner / Mark Slatkes
Address	Beacon Properties - 466 40th Street
City, State Zip	Oakland, CA 94609
Name	
Address	
City, State Zip	

	5/20/16
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

IMPORTANT INFORMATION:

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

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

Oakland
Rent Board's
Copy

Case T15-0626
Erik Lyngen
580 Jean St., #1
Oakland, CA 94610

I appeal the decision issued in case T05-0626 on the following grounds:

1. Oakland's policy to consider seismic retrofit construction projects to be capital improvements (the cost of which can be passed through to the tenants) is based on an **overly vague, unenforceable definition**, and is egregious.

The wording in the definition of a capital improvement:

"primarily benefit the tenant"

is too vague to be meaningful or enforceable.

What does "primarily" mean? First and foremost? The most number of ways? Overwhelmingly? Slightly more than another? Slightly more than *all* others?

What does "benefit" mean? Financial benefit? Psychological/emotional benefit? Personal safety benefit? Public Safety? Public good? Temporary benefit? Permanent benefit? Tax benefit? Combination of these? If so, how weighted?

Who decides? Who interprets? Under who's authority?

2. Even if we let the poorly worded definition stand, The following example, bolstered by common sense, shows that **I (the tenant) cannot possibly be the primary beneficiary:**

The primary benefit of a seismic retrofit is essentially **permanent**, as it is structurally designed to withstand an earthquake.

But this benefit is not portable.

If I pay for the benefit over 5 years, and then move out, I cannot take the benefit with me. It remains a benefit to the landlord and the city/county, and the public, generally, but is no longer a benefit to me, personally, in any way.

3. If I am not entitled to deeded equity in the building, for the structural improvement that I paid for, it amounts to an **unconstitutional seizure of my property.**

4. A voluntary seismic upgrade does NOT fall under the definition of a capital improvement in the OMC 8.22 since it does NOT primarily benefit the tenant. In her FEMA report, analyzing municipal seismic retrofit policies, including cost-benefit discussions Cymthia Hoover, seismic engineer is clear: **Hazard mitigation is primarily a public benefit.**

Since cities vary widely in determining who benefits from seismic upgrades and who should pay the costs, it is obviously an unsettled legal question. It is clear that the "Oakland Rent Board" wishes their definition and policy to go unquestioned, but it clearly needs a sound legal decision by a superior court.

5. I lost housing services (parking, living in a construction zone) for over a year, and (a dangerous fence situation) for 18 months, and (due to an error by the hearing officer) was **not correctly compensated.**

The fence repair request was done by email, but the current maintenance supervisor said he didn't know about it until recently. Why am I the one paying for poor communication on the part of the outgoing maintenance person at the property management company?

I reject the hearing officer's denial of compensation to me based on untimeliness on all three issues above. As stated in the decision, the tenant must petition within 60 days of getting the RAP or within 60 days of the next notice of rent increase, whichever is LATER. **It WAS TIMELY because the next rent increase notice was given at the end of September 2015 and I petitioned in November of 2015.**

6. A few more policy issues to decide on:

At the hearing, the landlord's representative added the words "So far" to the approximately \$93,000 cost he was trying to pass through. The Regulations seem to state that the work has to be completely finished and completely paid for, if the landlord wants to pass on the cost. **WAS THIS EVEN A LEGAL PASS THROUGH?**

Should a tenant be entitled to examine the financial "books", the contracts, insurance documents, contractor notes, and so on, considering the tenant is paying for the work?

Is the tenant liable for cost overruns? In some situations? In all situations?

This construction work performed was unpermitted. Doesn't unpermitted construction result in the landlord NOT being able to pass the cost on to the tenant?

Can the tenant demand a **sworn statement that no tax, insurance, or other benefits were granted** to the landlord (thereby lessening the amount the tenant has to pay)?

This landlord seemed to have gotten a loan for the seismic retrofit. If so, how can a tenant verify that fact? If true, the law says the tenants payments cannot be higher than the monthly repayment the landlord makes to the bank. How can this be verified?

This job seems to have **NOT COMPLIED WITH FEDERAL Americans with Disabilities Act (ADA) requirements.** Who is responsible to bring it into compliance? Certainly not the tenant!

Since there was incomplete paperwork done relating to the initial required soft-story screening, as well as the permit application paperwork, our health was put in jeopardy. Who is responsible, and why are we not compensated.

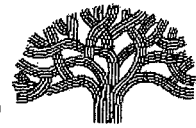
Lastly, for what it's worth,

7. Information published on the **City of Oakland's website** regarding tenant-landlord disputes is so poorly written and presented, as to be **practically undecipherable.**

The **hearing itself**, too, was confusing and **incomplete**, since essentially the only instructions we were given were to not interrupt someone. Two example (among many possible) is the hearing officer did not ask what the cause of the job finishing WAY over bid was. Or when was the problem with the erroneous material discovered, by whom, and what was the cause.

Similarly the **Hearing Decision** in case **T05-0626**, besides being **incomplete**, is so riddled with errors (minor and substantial) as to be nothing short of onerous to read, understand, and respond to. A quick perusal found more than **20 mistakes**. One mistake was a misspelling of the plaintiff's name in the case reference. The other name was completely wrong. When I eventually found the case, it had two different case numbers! Legal research is difficult enough without these sorts of errors.

CITY OF OAKLAND



250 FRANK H. OGAWA PLAZA SUITE 5313, P.O. BOX 70243 OAKLAND,
CALIFORNIA 94612-2034

Housing and Community Development Department
Rent Adjustment Program

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

AMENDED ORDER RE HEARING ON REMAND

CASE NUMBER: T15-0615, Foucault v. Beacon
T15-0626, Lyngen v. Beacon
T15-0627, Ballinger v. Beacon
T15-0633, Langston v. Beacon

PROPERTY ADDRESS: 580 Jean Street, Nos. 1,5,7, & 9
Oakland, CA

BACKGROUND

As of August 1,2014, the Rent Ordinance was amended to limit a capital improvement pass-through to a maximum of 70%. However, the new Ordinance "does not apply to capital improvements on which permits have been taken out and substantial monies paid or liabilities incurred (other than permit fees) prior to the implementation date of the Ordinance (August 1, 2014), and the Owner reasonably diligently pursues completion of the work.

The Hearing Officer issued a Hearing Decision which granted a rent increase \$92,276.00 in costs. However, \$27,682.50 of the costs were disallowed on the grounds that on the grounds that these costs did not meet the requirement for a 100 % pass-through. The owner did not appear at the underlying Hearing.

Both parties appealed the Hearing Decision. Regarding the tenant appeal, The Board affirmed the Hearing Decision based on the Hearing Officer's rationale.

The owner appealed the decision and contends that she reasonably diligently pursued completion of the work and is entitled to a 100% capital improvement pass-through. The Board voted to remand the case to the Hearing Officer to conduct a hearing to receive further testimony and make findings on the issue of whether the owner exercised due diligence to, complete the project. The Hearing Officer was directed to make findings based on the testimony regarding due diligence.

Pursuant to the Board's direction, a Hearing was scheduled for June 6, 2017. and the Hearing Officer issued an Order to re-open the hearing on May 23, 2017. Staff received a telephone call from tenant Langston who said that she did not receive the Order until yesterday, June 5, 2017, and she was not present at the Hearing. The owner also stated that she received the Order at 5:50 p.m. yesterday. Based on this information the Hearing will now be re-scheduled as followed:

DATE: June 27, 2017
TIME: 10:00 a.m.
PLACE: 250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612

Order to Produce Evidence

All tangible evidence, including but not limited to documents and pictures, must be submitted to the rent adjustment program not less that seven (7) days prior to the hearing. Black out all sensitive information on the documents you submit, like bank or credit card account numbers and social security numbers. Evidence presented later may be excluded from consideration. The Hearing Officer will also use the official records of the City of Oakland and Alameda County Tax Assessor as evidence.

Requests to Change Date

A request for a change in the date or time of hearing must be made on a form provided by the Rent Adjustment Program. The party requesting the continuance must try to agree for alternate dates with the opposing parties. If an agreement cannot be reached, check the appropriate box on the Request. A change will be granted only for good cause. A second request for a change of date will be granted only for exceptional circumstances.

Hearing Record

The Rent Adjustment Program makes an audio recording of the hearing. Either party may bring a court reporter to record the proceedings at their own expense.

Representatives

Any party to a hearing may be designate a representative in writing or on the record at the hearing.

Interpreter

The hearing must be conducted in English. Any party may bring a person to the hearing to interpret for them. The interpreter will be required to take an oath that they are fluent in both English and the relevant foreign language and they will fully and to the best of their ability translate the proceedings. The Rent Adjustment Program will also provide Spanish, Cantonese or Mandarin interpreters on request.

Failure to Appear for Hearing

If the petitioner fails to appear at the hearing as scheduled, the Hearing Officer may either conduct the hearing and render a decision without the petitioner's participation, or dismiss the petition. If the respondent fails to appear at the hearing as scheduled, the Hearing Officer may either issue an administrative decision without a hearing, or conduct the hearing and render a decision without the respondent's participation

Accommodations

Hearings are held in a wheelchair accessible facility. Contact the Office of the City Clerk, One Frank H. Ogawa Plaza, or call (510) 238-3611 (VOICE) or (510) 839-6451 (TTY) to arrange the following services: 1) Sign interpreters or Phonic Ear Hearing Device for the hearing impaired; 2) large print, Braille, or cassette tape text for the visually impaired. The City of Oakland complies with applicable City, State and Federal disability related laws and regulations protecting the civil rights of persons with environmental illness/multiple chemical sensitivities (EI/MCS). Auxiliary aids and services and alternative formats are available by calling (510) 238-3716 at least 72 hours prior to the hearing. Please refrain from wearing strongly scented products to the hearing.

Service Animals

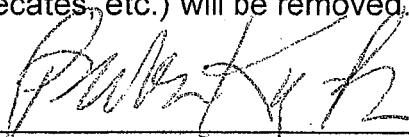
The City of Oakland Rent Adjustment Program is committed to providing full access to qualified persons with disabilities who use services animals or emotional support animals.

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

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

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

Date:
June 6, 2017



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

PROOF OF SERVICE

Case Number T15-0626

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 AMENDED ORDER RE HEARING ON REMAND 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

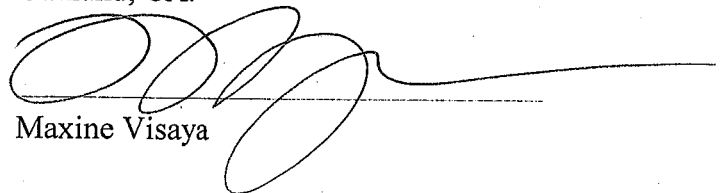
Erik Lyngen
580 Jean St #1
Oakland, CA 94610

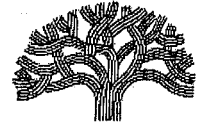
Owner

Beacon Properties
466 40th St
Oakland, CA 94609

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on June 06, 2017 in Oakland, CA.


Maxine Visaya



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

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

HEARING DECISION ON REMAND

CASE NUMBER: T15-0615, Foucault v. Beacon
T15-0626, Lyngen v. Beacon
T15-0627, Ballinger v. Beacon
T15-0633, Langston v. Beacon

PROPERTY ADDRESS: 580 Jean Street, No. 1, 5, 7, 9
Oakland, CA 94610

DATE OF HEARING: June 27, 2017

DATE OF DECISION: August 18, 2017

APPEARANCES:	Karen Graf	Owner
	Aaron Young	Owner Agent
	Carole Langston	Tenant
	Erik Lyngen	Tenant

SUMMARY OF HEARING DECISION ON REMAND

The Hearing Decision granted a capital improvement pass-through of 70% totaling \$64,593.50. Upon Remand, the Hearing Officer grants a capital improvement of 100%.

SUMMARY OF APPEAL DECISION

Background

Tenant Erik Lyngen filed a petition on November 13, 2015, which contests a monthly rent increase from \$1,280.00 to \$1,450.88, purportedly effective December 1, 2015.

Tenant Jana Ballinger filed a petition on November 23, 2015, which contests a monthly rent increase from \$1,361.00 to \$1,531.88, purportedly effectively December 1, 2015.

Tenant Carole Langston filed a petition on November 24, 2015, which contests a monthly rent increase from \$1,140.00 to \$1,310.88, purportedly effective December 1, 2015.

Tenants Foucault filed a petition on November 20, 2015, which contests a monthly rent increase from \$1,174.00 to \$1,344.88, purportedly effective December 1, 2015.

City Council Ordinance No. 13226 C.M.S. approved by the City Council on May 6, 2014, amended the rent increases for Capital Improvements to 70%, effective August 1, 2014. However, some in-progress Capital Improvements were grandfathered under the old rules, as follows:

The new Ordinance and Regulation amendments will not apply to capital improvements on which permits have been taken out (unless no permits are required for any of the work) and substantial work performed and substantial monies paid or liabilities incurred (other than permit fees) prior to the implementation date of the Ordinance (August 1, 2014), and the Owner reasonably, diligently pursues completion of the work...

The Hearing Decision granted a 70% capital improvement pass-through totaling \$64,593.50, or a monthly rent increase of \$119.62. The subject building consists of nine units. The owner did not attend the underlying hearing. The owner filed an appeal, and contended that she reasonably diligently pursued completion of the work and is entitled to a 100% capital improvement pass-through based on the Rent Ordinance in effect prior to August 1, 2014.

Appeal Decision

After the parties' presentation and Board discussion, the Board voted to remand the Hearing Decision to the Hearing Officer to conduct a hearing to receive further testimony and make findings on the issue of whether the owner exercised due diligence to complete the project despite the fact that the owner did not appear at the underlying Hearing. The Hearing Officer was directed to make findings based on the testimony regarding due diligence.

Due Diligence

Evidence

The owner submitted a five page chronology¹ and 120 pages of documents in support of her contention that she reasonably diligently pursued completion of the seismic retrofit work, and also testified regarding her efforts to complete the project. Following are key dates regarding the completion of the seismic retrofit for a soft story building:

¹ Ex. Nos. 53-59

TASK	DATE
1. Agreement signed with Cain, Engr.	4/19/13
2. Executed Agreement with John Morrison, Contractor	2/4/14 ²
3..Building permit issued B1400426-seismic retrofit-soft story building	4/17/14
4. Cain advised that he did not approve the order for the frames; Owner email to (Meslafkes, partner) states she is “beyond speechless.”	6/25/14;6/30/14³
5 Issues between Cain and Morrison re frame specifications	7/2/14; 7/12/14; ⁴
6. Issue resolved-frames ordered.7-10 days for delivery-once on site things will move quickly(Contractor)	7/14/14 ⁵
7. Issue re stucco removal	7/21/14; 7/24/14 ⁶
8. 1st Progress billing from JM-\$21,574	7/14/14 ⁷
9. Complaint by owner about Cain	7/27/14 ⁸
10. Owner requests contractor to choose another structural engineer; Owner complaint about Cain (engineer)	8/4/14⁹; 8/6/14¹⁰
11. Progress billing from JM-\$21,574-Moment frames are onsite and shoring has been installed	8/13/14 ¹¹
12. Contractor advises that potential engineer stated there were major errors in the Cain design plan and did not want to assume the project-Contractor wanted direction on how to attach new seismic hardware that was not covered in his plans. Licensed structural engineer needed.	9/10/14¹²
13. SDC Engineers sent proposal to contractor	9-12-14 ¹³
14. Owner requests update on status of obtaining new structural engineer from contractor	9/21/14 ¹⁴
15. TR Engineers sent proposal to contractor	10/6/14 ¹⁵

² Ex. Nos. 26-28

³ Ex. Nos. 83-84

⁴ Ex. Nos. 86-89

⁵ Ex. No. 91

⁶ Ex. Nos. 92-93

⁷Ex. Nos. 35-38;90

⁸ Ex. No. 99

⁹ Ex. No

¹⁰ Ex. No. 94

¹¹ Ex. Nos. 39-43; 97-98

¹² Ex. No. 100

¹³ Ex. Nos. 8-12; 30-34

¹⁴ Ex. No. 1021

¹⁵ Ex. Nos. 13-17

TASK	DATE
16. Owner requests update again from contractor re new engineer-states she asked on 9/29/14 if there was response from new engineer	10/11/14 ¹⁶
17. Contractor provided two proposals for engineer	10/14/14 ¹⁷
18. Owner authorized TR as new engineer on 10/21/14 per email	10/25/14 ¹⁸
19. Contractor advises TR will provide new plans by Friday (11/7/14)	11/5/14 ¹⁹
20. Owner emailed contractor to determine if new plans and timetable were determined and requested update	11/16/14 ²⁰
21. Contractor replied "I know this seems like it goes on forever. We finally got structural engineer to agree that the frames as purchased will work if we make the footings bigger and possible add some shear walls. We will schedule th footings this coming week and hope to have an inspection by early the following week. I think this means the end in sight."	11/30/14
22. Owner left message for contractor to call re status and emailed partner to follow up on status	12/22/14; 1/10/15; 2/8/15 ²¹
23. Owner requests times estimate on completion from contractor	2/8/15 ²²
24. Partner responds that third engineer, IIRC requests additional shear in parking area which requires stripping surfaces and replacing with plywood panels using shear attachment protocols, new sheet rock and painting; huge hurdle caused by bad behavior and death of first engineer seems to have passed. Contractor has found an engineer that will work with the moment panels specified y the original engineer. If the original engineer had been responsive to requests of the contractor, this whole installation would have been completed about 8 months ago...."	2/8/15 ²³
25. TR sent invoice for \$2,730.00	2/24/15 ²⁴
26. Owner requests status update	3/15/15

¹⁶ Ex. No. 103

¹⁷ Ex. No. 103

¹⁸ Ex. No. 106

¹⁹ Ex. No. 105

²⁰ Ex. No. 107

²¹ Ex. No. 55

²² Ex. No. 111

²³ Ex. No. 110

²⁴ Ex. Nos. 18-19

TASK	DATE
27. Owner confirmed conversation on 4/6/15 with contractor that City inspections to be done week of 4/8/15	4/8/15 ²⁵
28. Contractor advised owner that inspections occurred 4/9/15	4/9/15 ²⁶
29. Owner confirmed conversation with contractor that job will be completed next week	4/29/15²⁷
30. Owner left message for contractor re status	May 2015
31. Owner called contractor. Was advised frames are up-now connecting existing building and structure; then bottoms/concrete, then cover exposures-welding inspector scheduled	6/3/15
32. Welding inspection by AMC(Engineers)	6/5/15 ²⁸
33. City inspector-O.K. to Lathe	6/24/15
34. Owner left several messages for contractor re status; owner advised no contact from contractor since 6/24/15 and he does not return calls; "What is going on? When will this job be finished?"	7/1, 10 & 13, 2015
35. Contractor advised owner stucco will take two weeks-new foreman	7/13/15 ²⁹
36. Final inspection by AME (engineers)	8/11/15 ³⁰
37. Final inspection by City	8/14/15

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The owner executed an Agreement with John Morrison contractor on February 4, 2014, which stated that the seismic retrofit work would be completed within 10 weeks. The owner encountered issues between the Cain, the first engineer and the contractor, regarding the frames specifications in July 2014. Then the first engineer died in August 2014. The contractor interviewed potential engineers who declined the work on the grounds that there were errors made in the plans by the first engineer. Proposals were submitted by SDC Engineers and TR Engineers. TR was selected and new plans were submitted by November 2015. The new engineer agreed to use the original frames and the contractor advised that the "end is in sight" on November 30, 2014.

From December 2014 to February 2015 the owner made calls to the contractor for a status update which were unanswered. A third engineer was hired in February 2015 who agreed to work with the moment panels specified by the original engineer. The contractor stated that the project would have been completed in June 2014 if the

²⁵ Ex. No. 112

²⁶ Ex. No. 112

²⁷ Ex. No. 113

²⁸ Ex. Nos. 24-25

²⁹ Ex. No. 119

³⁰ Ex. No. 20-23

original engineer had been response to his requests. The owner continued to request status updates in March, May June, and July 2015. The project was "finalized" by the City Inspector on August 14, 2015.

Based on the testimony and documents provided by the owner the Hearing Officer finds that the owner reasonably, diligently pursued completion of the work, and is entitled to 100% of the capital improvement pass-through in the amount of \$92,275.00, effective December 1, 2015. The monthly rent increase is \$170.88. The owner has complied with the enhanced notice requirement.³¹ The allowed monthly rent increase based on capital improvements is \$170.88 per unit, effective December 1, 2015, and expires on December 1, 2020.

ORDER

1. The owner is entitled to a 100% capital improvement pass-through, amortized over five years, amortized among nine units.
2. The tenants' rents are set below as follows:

a. Tenant Lyngen

Base rent	\$1,280.00
New Rent effective 12/1/15	\$1,450.88
Plus rent underpayments totaling \$ 3,075.84/12=\$256.32	\$ 256.32
Rent payment commencing September 1, 2017 and ending August 2018	\$1,707.20

The capital improvement pass-through expires December 1, 2020. On January 1, 2021, the monthly rent will be reduced by \$170.88.

b. Tenant Ballinger's rent is stated below as follows:

Base rent	\$1,361.00
New Rent effective 12/1/15	\$1,531.88
Plus rent underpayments totaling \$3,075.84/12=\$256.32	\$ 256.32
Rent payment commencing September 1, 2017 and ending August 1, 2018	\$1,788.20

The capital improvement pass-through expires December 1, 2020.

³¹ Enhanced notice provided on September 28, 2015, within the 10 day period after service of the notice of increase to tenants-attached to Owner Response

On January 1, 2021, the monthly rent will be reduced by \$170.88.

c. Tenants Foucault rent is stated below as follows:

Base rent	\$1,174.00
New Rent effective 12/1/15	\$1,344.88
Plus rent underpayments totaling \$3,075.84/12=\$256.32	\$ 256.32
Rent payment commencing September 1, 2017 and ending August 1, 2018	\$ 1,601.20

The capital improvement pass-through expires December 1, 2020. On January 1, 2021, the monthly rent will be reduced by \$170.88.

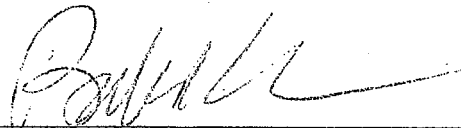
d. Tenant Langston's rent is stated below as follows:

Base rent	\$ 1,140.00
New Rent effective 12/1/15	\$ 1,310.88
Plus rent underpayments totaling \$3,075.84/12=\$256.32	\$ 256.32
Rent payment commencing September 1, 2017 and ending August 1, 2018	\$ 1,567.20

The capital improvement pass-through expires December 1, 2020. On January 1, 2021, the monthly rent will be reduced by \$170.88.

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

Dated: August 18, 2017



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

PROOF OF SERVICE

Case Number T15-0615, T15-0626, T15-0627, T15-0633

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 on Remand 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

Peter Foucault
580 Jean St #5
Oakland, CA 94610

Shannon Foucault
580 Jean St #5
Oakland, CA 94610

Erik Lyngen Beacon Properties
580 Jean St #1
Oakland, CA 94610

Jana Ballinger
580 Jean St #9
Oakland, CA 94610

Jim Gilman
580 Jean St #9
Oakland, CA 94610

Carole Langston
580 Jean St #7
Oakland, CA 94610

Owner

Mark Slafkes
466 40th St
Oakland, CA 94609

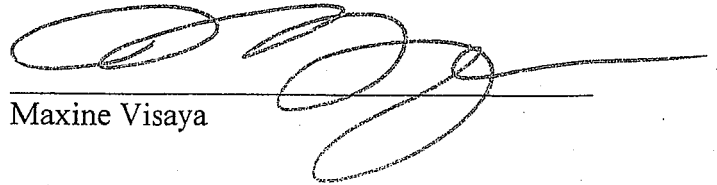
Owner Representative

Beacon Properties
466 40th St
Oakland, CA 94609

000110

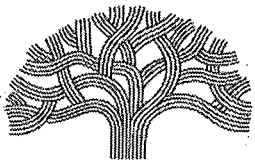
I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on August 21, 2017 in Oakland, CA.



Maxine Visaya

PLVS 3 page attachment

 CITY OF OAKLAND	CITY OF OAKLAND RENT ADJUSTMENT PROGRAM 250 Frank Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721	For date stamp: RENT ADJUSTMENT PROGRAM 2017 SEP -8 AM 10:28
	<u>APPEAL</u>	

Appellant's Name Erik Lyngen		<input type="checkbox"/> Owner <input checked="" type="checkbox"/> Tenant	
Property Address (Include Unit Number) 580 Jean St., #1 Oakland CA 94610			
Appellant's Mailing Address (For receipt of notices) same as above		Case Number T15-0626	Date of Decision appealed August 18, 2017
Name of Representative (if any) n/a		Representative's Mailing Address (For notices) n/a	

NOTE: At least 3 clerical errors including

CALCULATION ERROR

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.

The bulk of the "underpayment" should be amortized over 60 months, not 1 year. The correct underpayment is much less than stated.

- 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.)

see attachment

For more information phone (510) 238-3721.

000112

- f) I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. (In your explanation, you must describe how you were denied the chance to defend your claims and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue a decision without a hearing if sufficient facts to make the decision are not in dispute.)
- g) The decision denies the Owner a fair return on my investment. (You may appeal on this ground only when your underlying petition was based on a fair return claim. You must specifically state why you have been denied a fair return and attach the calculations supporting your claim.)
- h) Other. (In your explanation, you must attach a detailed explanation of your grounds for appeal.)

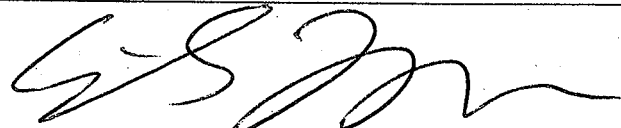
Submissions to the Board are limited to 25 pages from each party. Please number attached pages consecutively.
 Number of pages attached: _____

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

I declare under penalty of perjury under the laws of the State of California that on Sept. 8, 2017, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<u>Name</u>	Beacon Properties (owners' representative)
<u>Address</u>	466 40th Street
<u>City, State Zip</u>	Oakland, CA 94609
<u>Name</u>	Mark Slafkes - owner
<u>Address</u>	c/o Beacon Properties 466 40th Street
<u>City, State Zip</u>	Oakland, CA 94609

also sent to

	9/8/17
---	--------

SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE

DATE

→ Karen ~~Graf~~ Graf - owner
 466 40th Street
 Oakland, CA 94609

~~App sent to
 City of Oakland
 Rent Adjustment Board
 PO Box 70295
 Oakland, CA 94620-0295
 9/8/17~~

For more information phone (510) 238-3721.

Hand deivered
 E. H. Davis

Attachment for

9/8/17
1 of 3

Appeal of 8/18/17 Hearing Decision
Case T15-0626 (Lyngen vs. Beacon)

① The hearing appeal board remanded the case back to the hearing officer to accept additional evidence.

accepted new evidence

This goes against regulations/policy and ~~has~~ the dissenting appeal board member stated they are not supposed to consider new evidence; ~~but~~ sending it back for new evidence is ultimately the same thing.

② It was so unusual to do so that Mr. Lie couldn't formulate the words to the motion and after about five tries, a city attorney had to state what he thought Lie was trying to say.

unusual

000114

③ Karen Graf stated at the beginning of the (co-owner)

Attachment for
Case T15-0626
(Lyngen vs. Beacon)

9/8/17
2 of 3

Appeal Hearing that she hadn't received notice in the mail about the original hearing and that is why she should be allowed to give evidence now.

This is spurious. Beacon Properties has been the owners' representative long before, during, and continues to be. Beacon Properties received notice, as did the co-owner Mark Slafkes whose address was used sometimes in Paperwork related to this case*. ~~Slafkes~~ ^{Graf} address was never made available and obviously the property management company or the co-owner could and should have told ~~Slafkes~~ ^{Graf} there was a hearing. I find it unbelievable that she didn't know about it.

*Was used specifically as Owners address.

000115

about hearing is not credible in my opinion.

Graf's

PROPERTY

④ Because of the above (and the general sloppiness and incoherence of the process, ~~see~~ see my earlier statements in the file) I have not received DUE PROCESS Under the 8th & 14th amendment of the US Constitution.

PROPERTY
rent
without
compensation

⑤ Furthermore under the same clauses, ~~regardless~~ regardless of the reckless nature of the process (see City of Oakland's Auditor's Report slamming the Rent Adjustment Program) it is unconstitutional for you to ~~take~~ take my money ~\$10,000 to ~~retrofit~~ retrofit the building without compensation. ~~seismically~~ seismically. "Having a safe building" is not compensation since that is already a legal requirement to rent out an apartment in California (and Federal Law).

 000116



AGENDA REPORT

**TO: HOUSING, RESIDENTIAL RENT
AND RELOCATION BOARD**

**FROM: Rent Adjustment Program
City Attorney's Office**

**SUBJECT: Ordinance to Amend the Rent
Adjustment Ordinance to Alleviate
Rent Program Backlog**

DATE: August 8, 2018

The Rent Adjustment Program (Rent Program) continues to face a backlog of appeals. There is a current backlog of 67 cases and appeals are being scheduled through December 2018. The City Council will be asked to adopt certain streamlining measures to help alleviate the current backlog and prevent future backlogs. A copy of the proposed ordinance is attached as Attachment "A." Staff request that the Board review and comment on these recommendations.

RECOMMENDATION

To alleviate Rent Program hearing and appeal backlogs, amendments to the Rent Adjustment Ordinance are being proposed that will:

- (1) allow appeals to be considered without full hearings, or, in the alternative, direct the Rent Board to decrease time limits for appeal hearings;
- (2) limit the appeals the full board will consider, referring others to Appeal Panels or a single appeal officer;
- (3) remove the option for parties to choose a hearing before the full Board rather than an Appeal Panel;
- (4) authorize a single appeal hearing officer to hear select appeals (for example appeals by parties failing to appear at hearings) with such cases to be determined by staff;
- (5) increase the number of terms board members may serve; and
- (6) establish more stringent attendance requirements for board members; and

The Ordinance will also amend the Tenant Protection Ordinance to clarify that the definition of "Owner" in the Tenant Protection Ordinance has the same meaning as "Landlord" in the Just Cause for Eviction Ordinance to correct a drafting error.

BACKGROUND

The Rent Board has one of the most difficult and time-consuming jobs of any commission in the City. Board members are to be applauded for the important work they do on a volunteer basis. The intent of these ordinance amendments is to better facilitate the ability of the Board to address the increasing number of appeals, including limiting the time the Board spends

000117

preparing and hearing cases. Scheduling board hearings every week is asking a lot of the volunteer board members.

During the past few years, the number of cases presented to the Rent Board for hearings has increased substantially (see Table 1 below). The backlog of cases is due to the increase in the number of cases and the cancellation of a number of meetings due to lack of a quorum. Due to the extreme backlog of cases, it has been difficult for appeals to be heard in a timely manner. Currently, there are 67 appeals pending with the Rent Program.

The increase in appeals has exacerbated the backlog despite staff's efforts to combat the backlog that include scheduling additional Appeal Panel meetings. Currently the Rent Program schedules meetings four times a month--one regular Board meeting and three Panel meetings (although a panel meeting may be converted to a full board hearing as needed). Fewer are scheduled during holiday periods and some meetings are cancelled for lack of quorum. Staff tries to schedule three appeals per meeting, which results in a maximum of 12 appeals that can be heard per month. However, because of the holiday periods, loss of quorums, and continuances of cases, often fewer than three cases are being heard in a meeting. This is insufficient to keep up with the number of appeals being filed, let alone reduce the backlog. Over the last fiscal year (2016-17), the Board heard 62 appeals, while over this same period, 93 appeals were filed. At this rate, the backlog will only continue to increase.

Some appeals are not heard for more than one year after the petition was filed. The Rent Ordinance has a goal of hearing an appeal 30 days after a Hearing Officer issues a decision; decisions are generally issued from 60 to 90 days after a petition is filed. The delay in hearing appeals is due to multiple factors: the volume of appeals, limited Board meeting dates, loss of meeting quorum (sometimes due to lack of an owner or tenant representative), continuances granted to parties, a panel referral of an appeal case to the full Board, and in some cases a Board member's conflict of interest causing a matter to be continued. In some cases, a new petition on a new issue and appeal is filed for the same unit before the prior appeal is decided, causing much confusion and difficulty in addressing the rent for the unit. In other circumstances, tenants and owners are left in limbo, with some tenants electing to vacate rather than take the risk of owing a substantial amount of back rent or facing an eviction over the rent.

The tables below provide information regarding the number of petitions, appeals and hearings.

Table 1: RAP Petition and Appeal Data by Year

Fiscal Year	# of Petitions	# of Appeals
2011-2012	385	20
2012-2013	411	39
2013-2014	551	82
2014-2015	739	98
2015-2016	864	99
2016-2017	990	93

Table 2: RAP Petition and Appeal Data from July 2016 to July 2017

Month/Year	# of Petitions Filed	# of Appeals Filed	# of Appeals Heard
July 2016	55	5	4
August 2016	71	4	0
September 2016	77	11	5
October 2016	86	8	12
November 2016	75	7	2
December 2016	60	7	2
January 2017	71	4	6
February 2017	116	4	3
March 2017	110	18	7
April 2017	74	16	8
May 2017	86	7	4
June 2017	109	2	6
July 2017	72	7	13
Total	1,062	100	72

Table 3. Petitions and Other Filings Received 2015 – Q1 2018

	2015	2016	2017	Q1 2018
Tenant Petitions	699	738	701	178
Landlord Petitions	77	97	274	143
Total Petitions	776	835	975	321
Citations	3	14	34	3
Ellis Act	17	21	11	1
Total Filings	796	870	1020	325

Note: appeals generally lag 3 to 4 months behind petition filings.

To address the quorum problem, alleviate the backlog of cases, and have cases heard in a timely manner, staff recommends that the City Council adopt the following amendments to the Rent Adjustment Ordinance O.M.C. Chapter 8.22:

1. Reduce hearing times for parties at appeal hearing;
2. Limit appeals to the full board to exemption cases and other important cases;
3. Remove the option for parties to elect a case to be heard by the full Board rather than an Appeal Panel;
4. Allow a single hearing officer to hear appeals for no-show cases;
5. Increase the number of terms Board members may serve from 2 to 3;
6. Enhance Board member attendance requirements.

ANALYSIS

Increase the Number of Appeals the Board or Appeal Panel Can Address at One Meeting By Reducing the Time for Appeal Hearing Presentations

Currently the Rent Board or Appeal Panels hear only two to three appeals per meeting, and sometimes only one. This is insufficient to keep up with the number of appeals the Rent

Program receives. Under current Rent Program regulations, parties have the right to a full appeal hearing for every case, including 15 minutes on each side for arguments, rebuttals, and responses questions from the Board. The Board then has approximately 15 minutes to discuss and decide the appeal for a total of 45 minutes per appeal. The extended time for appeal hearings means that only three appeals may be heard during each Board or Appeal Panel meeting, and maximum of twelve appeals are heard each month assuming that no appeals are continued and no meetings are cancelled for lack of quorum. When the Board hears fewer than three appeals per meeting it is generally due to continuances or the Board needing to conduct other business, such as regulations.

San Francisco's rent program has approximately double the number of cases as Oakland. Despite the case load, the rent board there usually hears appeals within two months by limiting the time allocated to consideration of individual appeals. San Francisco's rent board hears about 10-15 appeals per month in a single meeting because the board considers appeals without full hearings and decides cases on the record and written arguments on appeal. Parties can speak under the time limits permitted for the public to speak on agenda items (3 minutes).

Allowing the Rent Board to consider appeals without full appeal hearings in Oakland will enable the Rent Board or Appeal Panel to consider significantly more appeals per hearing and will significantly reduce the backlog.

Alternatively, the Council could direct the Rent Board to reduce the time limits parties have for appeal hearings. The Board or Appeal Panel can increase the time if needed for a particular case. This will also permit the Board or Appeal Panel to hear more appeals per meeting.

In order for the Rent Board to handle more appeals per meeting additional City administrative staff and City Attorney resources will be necessary. More staff is needed now and will be needed to schedule and notice appeals, prepare meeting packets, and address continuances. Rent Board packets with two to three appeals are 100 to 150 pages; doubling the number of appeals will require substantial additional work for a volunteer Board. To assist the Board, the City Attorney's Office would prepare case summaries for Board packets so that the Board members can more efficiently review cases prior to the appeal hearings. To implement this recommendation, two additional Deputy City Attorneys would be needed. Currently the Rent Program funds two full-time equivalent attorneys-one is a full time dedicated to the Rent Program, another is half-time, and the other half an attorney equivalent is the litigation attorneys who handle administrative writs and appeals contesting rent decisions filed in the Superior and appellate courts.

Limit Appeals to Full Board and Allow Simple Appeals to be Heard by a Single Appeal Hearing Officer

Because the full Board requires at least four members for a quorum with one of each category (tenant, owner, and neutral), Board meetings are more likely to be cancelled due to lack of quorum. The Board must also consider legislative matters, such as regulations, during full Board meetings. Board training occurs during Board meetings and can take up the substantial portion of a Board meeting.

This legislation would limit appeals to the full Board only for exemption cases and other important cases as determined by staff. The proposal would also remove the option for a party to elect for an appeal to be heard by the full Board instead of an Appeal Panel. Because Board meeting time is limited, scheduling only exemption cases and other important cases before the Board will allow more Board time for legislative matters and for the Board to decide only the appeals that benefit from the attention of the full Board.

This legislation would also allow simple appeals to be heard by a single appeal officer--such as appeals from hearing decisions where the landlord or the tenant did not file a response or appear at the hearing. The main issue in these appeals is whether the party had good cause to not file a response or appear at the hearing. A single appeal hearing officer should be able to decide these appeals without having to take up Board or Appeal Panel time.

Parties to administrative appeals do not have a right to any particular form of administrative appeal. In some cities with mobile home rent controls, the hearing is before a board or city council and there is no administrative appeal; the next review is by administrative writ to the superior court.

Increase Term Limits for Board Members and Establish More Stringent Attendance Requirements

Currently board members may serve only two three-year terms as regular members and two additional terms as alternates. This legislation would increase the number of terms a regular member or an alternate can serve in either capacity to three each.

Most members are appointed mid-way through existing terms, so members rarely serve two full terms as regular or alternate members. Accordingly, members who regularly attend meetings are often termed out and may not be reappointed, only to be replaced by a new board member who may not be available for every meeting. This change should also assist in Board efficiency and consistency of Board decisions by not having to orient new Board members. It would also improve the consistency of appeal decisions as greater institutional memory would remain for a longer period. Increasing the number of terms would allow Board members with good attendance to be reappointed for an additional term, while still providing the Mayor and Council discretion to decide whether a given member should be reappointed.

Staff also recommends that the Council establish more stringent attendance requirements for Board members to better ensure quorums at Board and Appeal Panel meetings and to make it easier for the Mayor or Council to remove Board members who do not meet attendance requirements. Currently, Board members must be absent from three consecutive meetings to constitute good cause for removal. This means that a member may attend four out of twelve Board meetings and still would not be subject to removal for lack of attendance. This legislation would allow removal for absence from three meetings in six months. This legislation would also create an attendance requirement for alternates to be available for at least half of Appeal Panel meetings in a six-month period. Under Section 601 of the City Charter, the City Council may remove Board members for cause and these changes would provide one of the causes.

One of the problems in achieving quorums for the Rent Board and Appeal Panels is the quorum requirement to have one of each of the three categories present—homeowner, owner, and tenant. We do not offer a recommendation on this problem, but the Council could consider removing or modifying the requirement that a representative of each be present at meetings. An alternative for Appeal Panels might be to permit a panel to be comprised of all homeowner representatives instead of requiring one of each representative to be present.

Additional Regulation and Administrative Changes Being Considered.

The Rent Program is also considering additional regulation and administrative changes to speed up appeals and petitions. These include:

Appeals

1. Limit continuances to maximum of two.
2. Schedule 6-8 appeals per meeting (currently 3) (requires additional administrative and city attorney staffing).
3. Schedule backup cases in event an appeal is dropped or continued.
4. Appeals scheduled as soon as appeal package complete.
5. One board meeting per month with panel scheduled every other week.
6. City Attorney to prepare written summaries of appeals for Board and parties.
7. City Attorney draft appeal decisions.

Petitions and Hearings

1. Encourage more mediations.
2. Limit cases to maximum of two continuances (except in cases of extreme emergency).
3. Implement having a Code Inspector (position is in the Rent Program budget) conduct site inspections instead of Hearing Officers.
4. Schedule uncontested simple exemption cases for shorter times and more cases in one day.

Board

1. Staff to provide an information sheet for prospective board members with expectations.
2. Board members, including alternates, expected to attend at least two meetings per month.
3. Require new Board member attendance at a staff-led orientation and no appointment without orientation.
4. Schedule Appeal Panels in advance, with Rent Program Manager assigning members for each panel.
5. Attendance expectations for regular meetings.
 - a. Assign members and alternates to regular meeting dates per month,
 - b. Board members are expected to attend and notify staff if he/she will not be in attendance, and failure to timely notify staff equals absence even if excused.
 - c. Set out what constitutes excused absence.

Comments by Owners and Tenants

In the process of preparing the ordinance, the Mayor's office, the Rent Program, and City Attorney's office held separate meetings with owners and tenants to vet the proposal. There were two main concerns from each, but these concerns were not unanimously held by the representatives in each group.

Term Limits. The original proposed ordinance would have removed terms limits for Board members. One representative from the landlords and one from the tenants objected, so the proposal was modified to increase the terms to three. One tenant representative still objected wanting to maintain the two-term limitation. The other owner and tenant representatives did not object. The objecting tenant representative offered doubling the number of alternates from six to twelve as a way of addressing the issue.

Single Appeal Officer. Owner and tenant representatives generally did not object to the idea of a single appeal officer hearing limited types of appeals. They expressed concern that the appeal officer should be sufficiently independent.

Other comments. Some on both sides expressed concern about the Board holding evidentiary hearings as opposed to hearings on the record. Current law permits the Board to hold evidentiary hearings in a very limited set of circumstances. The Board has only held one evidentiary hearing and that was on stipulated facts. In the limited circumstances where new facts can be raised, cases are sent back to the hearing officer.

Attachment “A”

INTRODUCED BY COUNCILMEMBER _____

CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

AN ORDINANCE AMENDING THE RENT ADJUSTMENT ORDINANCE (O.M.C.8.22.010 ET SEQ.) TO CREATE EFFICIENCY AND REDUCE APPEAL TIMES TO (1) LIMIT THE APPEALS TO THE FULL BOARD; (2) AUTHORIZE A SINGLE APPEAL OFFICER TO HEAR SELECT APPEALS; (3) EXTEND TERM LIMITS FOR BOARD MEMBERS TO THREE TERMS AND ESTABLISH MORE STRINGENT ATTENDANCE REQUIREMENTS FOR BOARD MEMBERS; AND (4) LIMIT ORAL ARGUMENT TIME ON APPEALS

WHEREAS, the City of Oakland intends to have fair and timely resolution of Rent Program cases in the interest of justice; and

WHEREAS, when appeals are not heard timely, or when appeal hearings are cancelled, it causes hardship to the public in Oakland, including to landlords and tenants; and

WHEREAS, in order to minimize Rent Board and Appeal Panel meeting cancellations, it will be helpful to clarify attendance requirements for both regular and alternate Board members; and

WHEREAS, currently Board members with excellent attendance records may not be reappointed due to term limits; and

WHEREAS, extending term limits to three terms would allow Board members to continue service while retaining Mayoral discretion on reappointments; and

WHEREAS, in order to resolve and prevent a backlog of cases, the use of Appeal Panel for most appeals and a single hearing officer to resolve simple appeals should be encouraged; and

WHEREAS, the City Council wishes to allow the Rent Board to consider appeals more quickly in order to resolve and prevent a backlog of appeals; and

WHEREAS, this action is exempt under the California Environmental Quality Act ("CEQA") pursuant to, but not limited to the following CEQA Guidelines: §15378

(regulatory actions), § 15061 (b)(3) (no significant environmental impact), and § 15183 (actions consistent with the general plan); and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. Modification of Section 8.22.040 of the Oakland Municipal Code. Section 8.22.040 of the Oakland Municipal Code is hereby amended to read as follows (additions are shown as double underline and deletions are shown as ~~strikethrough~~):

8.22.040 - Composition and functions of the Board.

A. Composition.

1. Members. The Board shall consist of seven (7) regular members appointed pursuant to Section 601 of the City Charter. The Board shall be comprised of two (2) residential rental property owners, two (2) tenants, and three (3) persons who are neither tenants nor residential rental property owners. The Board shall also have six (6) alternate members, two (2) residential rental property owners, two (2) tenants and two (2) persons who are neither a tenants nor residential rental property owners appointed pursuant to Section 601 of the Charter. An alternate member may act at Board meetings in the absence of a regular Board member of the same category, and at Appeal Panels meetings without such an absence.
2. Appointment. A Board member is deemed appointed after confirmation by the City Council and upon taking the oath of office.
3. Board members serve without compensation.

B. Vacancies and Removal.

1. A vacancy on the Board exists whenever a Board member dies, resigns, or is removed, or whenever an appointee fails to be confirmed by the City Council within two City Council meetings of nomination by the Mayor.
2. Removal for Cause. A Board member may be removed pursuant to Section 601 of the City Charter. Among other things, conviction of a felony, misconduct, incompetency, inattention to or inability to perform duties, or absence from three consecutive meetings~~three regular meetings in a six-month period for regular members or not being available to attend more than half of Appeal Panel meetings in a six-month period for alternate members,~~ except on account of illness or when absent from the city by permission of the Board, constitute cause for removal.
3. Report of Attendance. To assure participation of Board members, attendance by the members of the Board at all regularly scheduled and special meetings of the Board shall be recorded, and such record shall be provided annually to the Office of the Mayor and to the City Council.

C. Terms and Holdover.

1. Terms. Board members' terms shall be for a period of three (3) years beginning on February 12 of each year and ending on February 11 three (3) years later. Board members shall be appointed to staggered terms so that only one-third (1/3) of the Board will have terms expiring each year, with no

more than one Board member who is neither a residential rental property owner nor a tenant, and no more than one rental property owner and no more than one tenant expiring each year. Terms will commence upon the date of appointment, except that an appointment to fill a vacancy shall be for the unexpired portion of the term only. No person may serve more than three(3) consecutive full terms as a board member, nor more than three(3) consecutive full terms as an alternate. Time served as a board member shall be considered separately from time served as an alternate. For purpose of this paragraph, a full term means a full-three year term or a remainder term of more than half of a full term (one and half years).

2. Holdover. A Board member whose term has expired may remain as a Board member for up to one year following the expiration of his or her term or until a replacement is appointed whichever is earlier. The City Clerk shall notify the Mayor, the Rent Program, the Board, and affected Board member when a Board member's holdover status expires. Prior to notification by the City Clerk of the end of holdover status, a Board member may fully participate in all decisions in which such Board member participates while on holdover status and such decisions are not invalid because of the Board member's holdover status.

D. Duties and Functions.

1. Appeals. The Board, ~~or an Appeal Panel,~~ or an Appeal Officer hears appeals from decisions of hearing officers under the procedures set out in O.M.C. Section 8.22.120.
2. Regulations. The Board may develop or amend the regulations, subject to City Council approval.
3. Reports. The Board shall make such reports to the City Council or committees of the City Council as may be required by this chapter, by the City Council or City Council Committee.
4. Recommendations. The Board may make recommendations to the City Council or appropriate City Council committee pertaining to this chapter or City housing policy when requested to do so by the City Council or when the Board otherwise acts to do so.
5. Regular Meetings. The Board or an Appeal Panel shall meet regularly ~~on the second and fourth Thursdays of each month unless cancelled.~~ Rent Program staff is authorized to schedule these regular meetings either for the full Board or for an Appeal Panel.
6. Special Meetings. The Board or an Appeal Panel may meet at additional times as scheduled by the Board Chair or Rent Program staff.

E. Appeal Panels.

1. Appeal Panels shall hear appeals of Hearing Officer decisions.
2. Rent Program staff shall determine whether an appeal should be heard by an Appeal Panel, ~~or the full Board,~~ or an Appeal Officer in accordance with O.M.C. 8.22.120. ~~A party to an appeal may, however, elect not to have his/her case heard by a panel and instead to be heard by the full Board. A party may so elect by notifying the Rent Adjustment Program not more than ten (10) days after the notice of the panel hearing is mailed.~~
3. All Appeal Panel members must be present for a quorum. A majority of the Appeal Panel is required to decide an appeal.

4. Membership on an Appeal Panel is determined by Rent Program staff. Membership need not be permanent, but may be selected for each panel meeting. Appeal Panels may be comprised solely of Alternate Board Members, solely of Regular Board Members, or a combination of Regular Members and Alternate Members.

F. Appeal Officer

1. Staff may designate a single Appeal Officer to hear appeals designated in O.M.C. 8.22.120(B)(2).
2. The Appeal Officer may be a Staff person not involved in the decision appealed, a contract person hired for this purpose, or a Board member who is neither a tenant nor a residential rental property owner.

SECTION 2. Modification of Section 8.22.120 of the Oakland Municipal Code. Section 8.22.120 of the Oakland Municipal Code is hereby amended to read as follows (additions are shown as double underline and deletions are shown as ~~strikethrough~~):

8.22.120 - Appeal procedure.

A. Filing an Appeal.

1. Either party may appeal the Hearing Officer's decision, including an administrative decision, within fifteen (15) days after service of the notice of decision by filing with the Rent Adjustment Program a written notice on a form prescribed by the Rent Adjustment Program setting forth the grounds for the appeal.
2. The matter shall be set for an appeal hearing and notice thereof shall be served on the parties not less than ten days prior to such hearing.

B. Assignment of Appeals

1. Staff shall assign to the Board only those appeals that involve an Owner's petition seeking a certificate of exemption, a claim of exemption in response to a Tenant's petition, or other important decisions as determined by Staff.
2. Staff may assign to an Appeal Officer appeals that consist only of issues that meet all of the following criteria: (1) routine, (2) procedural; and (3) non-substantive. Examples include issues such as whether good cause exists for failing to appear at a hearing or failure to meet deadlines such as a petition deadline, a response deadline, or deadline to submit evidence. The Regulations may specify other appeals that may be assigned to an Appeal Officer.
3. All other cases may be assigned by Staff to Appeal Panels.

BC. Appeal Hearings. The following procedures shall apply to all ~~Board and Appeal Panel~~ appeal hearings:

1. The ~~Board or Appeal Panel~~Appeal Body shall have a goal of hearing the appeal within thirty (30) days of filing the notice of appeal.
2. All appeal hearings conducted by the ~~Board or Appeal Panel~~Appeal Body shall be public and recorded.
3. Any party to a hearing may be assisted by an attorney or any person so designated.
4. Appeals shall be based on the record as presented to the Hearing Officer unless the ~~Board or Appeal Panel~~Appeal Body determines that an evidentiary hearing is required. If the ~~Board or Appeal Panel~~Appeal Body deems an evidentiary hearing necessary, the case will be continued and the ~~Board or Appeal Panel~~Appeal Body shall issue a written order setting forth the issues on which the parties may present evidence. All evidence submitted to the ~~Board or Appeal Panel~~Appeal Body must be submitted under oath.
5. ~~Should the appellant fail to appear at the designated hearing, the Board or Appeal Panel~~Appeal Body may dismiss the appeal.
5. The presentation time for parties is limited to three minutes, unless the regulations allow for more time. The Appeal Body or the chair of the Appeal Body may also allow additional time in an individual appeal.

CD. ~~Board or Appeal Panel~~Appeal Body's Decision Final. The ~~Board~~Appeal Body's decision is final. Parties cannot appeal to the City Council. Parties cannot appeal the decision of an Appeal Panel or an Appeal Officer to the full Board.

DE. Court Review. A party may seek judicial review of a final decision of the ~~Board or Appeal Panel~~Appeal Body pursuant to California Civil Code Section 1094.5 within the time frames set forth therein.

SECTION 3. DIRECTIONS TO RENT ADJUSTMENT BOARD. The Rent Adjustment Board shall propose changes to the Rent Adjustment Regulations to conform the regulations to the changes hereby made to the ordinance and propose such changes to the City Council within 120 days of the adoption of this Ordinance.

SECTION 4. This action is exempt under the California Environmental Quality Act ("CEQA") pursuant to, but not limited to the following CEQA Guidelines: §15378 (regulatory actions), § 15061 (b)(3) (no significant environmental impact), and § 15183 (actions consistent with the general plan).

SECTION 5. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

SECTION 6. Effective Date. This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL-WASHINGTON, GALLO, GIBSON MCELHANEY, GUILLÉN, KALB, KAPLAN AND
PRESIDENT REID

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

Date of Attestation: _____

DRAFT

NOTICE AND DIGEST

AN ORDINANCE AMENDING THE RENT ADJUSTMENT ORDINANCE (O.M.C.8.22.010 ET SEQ.) CREATE EFFICIENCY AND REDUCE APPEAL TIMES TO (1) LIMIT APPEALS TO THE FULL BOARD; (2) AUTHORIZE A SINGLE APPEAL HEARING OFFICER TO HEAR SELECT APPEALS; (3) EXTEND TERM LIMITS FOR BOARD MEMBERS TO THREE TERMS AND ESTABLISH MORE STRINGENT ATTENDANCE REQUIREMENTS FOR BOARD MEMBERS; AND (4) LIMIT ORAL ARGUMENT TIME ON APPEALS

This Ordinance amends the Rent Adjustment Ordinance to (1) limit the appeals to full board to exemption cases and other important cases; (2) authorize a single appeal officer to hear select appeals involving routine, procedural, non-substantive issues; (3) extend term limits to three terms and establish more stringent attendance requirements for board members; and (4) limit oral argument time on appeals to three minutes.