

HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD
REGULAR MEETING

August 23, 2018
7:00 P.M.
CITY HALL, HEARING ROOM #2
ONE FRANK H. OGAWA PLAZA
OAKLAND, CA

AGENDA

1. CALL TO ORDER
2. ROLL CALL
3. CONSENT ITEMS

None

4. OPEN FORUM
5. NEW BUSINESS

A. Appeal Hearings in:

- 1) T16-0726, Rennella v. Best Bay Apartments, Inc.
- 2) T17-0081, Comeaux v. Duffield

6. SCHEDULING AND REPORTS
7. ADJOURNMENT

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

Esta reunión es accesible para sillas de ruedas. Si desea solicitar adaptaciones relacionadas con discapacidades, o para pedir un intérprete de en español, Cantonese, 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

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perfumes a esta reunión como cortesía para los que tienen sensibilidad a los productos químicos. Gracias.

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

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

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

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

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

CHRONOLOGICAL CASE REPORT

Case Nos.: T16-0726

Case Name: Rennella v. Best Bay Apartments, Inc.

Property Address: 245 Lee Street, No. 210, Oakland, CA

Parties: Viviana Renella (Tenant)
Brice Knight (Owner Representative)
Jun Lu (Owner Representative)

OWNER APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	December 28, 2016
Owner Response filed	January 18, 2017
Hearing Decision issued	June 2, 2017
Owner Appeal filed	June 22, 2017

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T16-0726 MS / BKB

CITY OF OAKLAND RENT ADJUSTMENT PROGRAM Mail To: P. O. Box 70243 Oakland, California 94612-0243 (510) 238-3721	For date stamp. <div style="text-align: center;"> <p>RECEIVED</p> <p>DEC 28 2016</p> <p>OAKLAND RENT ADJUSTMENT</p> </div>
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Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed.

TENANT PETITION

Please print legibly

Your Name Viviana Remella	Rental Address (with zip code) 245 Lee St. #210 Oakland CA 94610	Telephone
Your Representative's Name	Mailing Address (with zip code)	Telephone
Property Owner(s) name(s) Best Bay Properties	Mailing Address (with zip code) 160 Franklin St Suite 300, Oakland 94607	Telephone

Number of units on the property: _____

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

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

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

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

Date you moved into the Unit: _____ Initial Rent: \$ _____ /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: _____. If never provided, enter "Never."

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

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

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

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

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

III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:

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


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

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

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

IV. VERIFICATION: The tenant must sign:

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



Tenant's Signature

11/20/16

Date

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

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

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

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

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

Tenant's Signature

Date

VI. IMPORTANT INFORMATION:

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

File Review

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

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

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

CITY OF OAKLAND RENT ADJUSTMENT PROGRAM P.O. Box 70243 250 Frank H. Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721	For filing stamp. RECEIVED CITY OF OAKLAND RENT ARBITRATION PROGRAM 2017 JAN 18 PM 3:20
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Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your response being rejected or delayed.

CASE NUMBER T16-0726

OWNER RESPONSE

Please print legibly.

Your Name BEST BAY APARTMENTS	Complete Address (with zip code) 160 FRANKLIN ST Suite 300 OAKLAND, Ca 94607	Phone: _____ Email: _____@com
Your Representative's Name (if any) _____	Complete Address (with zip code) _____	Phone: _____ Fax: _____ Email: _____
Tenant(s) name(s) VIVIANA REMELLA	Complete Address (with zip code) 245 LEE STREET #210 OAKLAND, Ca 94610	

Have you paid for your Oakland Business License? Yes No Number 00187131
 (Provide proof of payment.)

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

There are 46 residential units in the subject building. I acquired the building on 9/30/2015

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

I. RENTAL HISTORY

The tenant moved into the rental unit on 12-1-2007.

The tenant's initial rent including all services provided was \$ 1,400 / 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? 11-04-2008

Is the tenant current on the rent? Yes No

7-31-2015
9-30-2015
12-7-2007

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.** RECEIVED CITY OF SEATTLE RENT ARBITRATION PROGRAM 2017 JAN 18 PM 3:21

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

Date Notice Given (mo/day/year)	Date Increase Effective (mo/day/year)	Amount Rent Increased		Did you provide NOTICE TO TENANTS with the notice of rent increase? <input type="checkbox"/> Yes <input type="checkbox"/> No
		From	To	
1-25-15	3-1-2015	\$ 1570	\$ 1604	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No

II. JUSTIFICATION FOR RENT INCREASE

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

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)
1/25/15	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

III. DECREASED HOUSING SERVICES

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

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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.

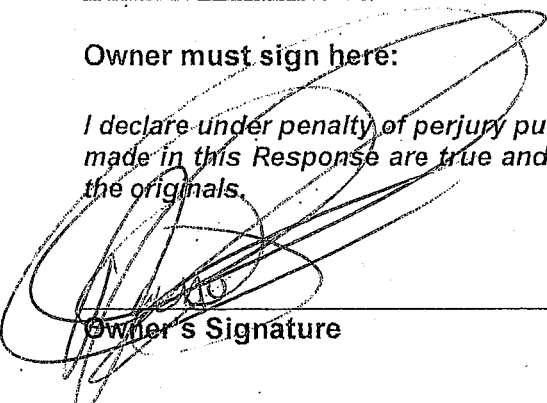
VI. VERIFICATION

Owner must sign here:

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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.

2017 JAN 18 PM 3:21
1-17-2017



Owner's Signature

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

30 Day Notice of Change of Monthly Rent

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To Viviana Pennella (Resident) for the

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(And all other occupants in possession)

premises located at: 245 Lee St

(Address)

Unit 210, (if applicable) Oakland, California 94610

(City)

(Zip)

NOTICE IS HEREBY GIVEN, in accordance with Civil Code Section 827, that thirty (30) days after service upon you of this Notice, or March 1, 2015, whichever is later, your monthly rent is payable in advance on or before the

(Date)

1st day of each month, will be the sum of \$ 1604, instead of \$ 1570, the current monthly rent.

Except as herein provided, all other terms of your tenancy shall remain in full force and effect.
A negative credit report reflecting on your credit history may be submitted to a credit reporting agency if you breach the terms of your obligations

Date

1-25-15

Owner/Agent

[Signature]



Form provided by the East Bay Rental Housing Association®
www.ebrha.com
Form 30 Day Notice of Change of Monthly Rent© (02/12)



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CONFIRMATION OF LEASE
TENANT ESTOPPEL CERTIFICATE

The name of "Tenant" is: Vivianna Rennella & ~~Manisha Gangopadhyay~~

The name of the "Owner" of the Leased Premises is: George R. Heath, Jr.

The "Leased Premises" is 245 Lee Street, Oakland, California.

Apartment Number 210

Tenant hereby certifies to Owner and its buyer and their successors and assigns that all of the information and statements contained in this Tenant Estoppel Certificate relate to the Leased Premises and are true and correct.

1. That Vivianna Rennella & ~~Manisha Gangopadhyay~~ is the Tenant of the above Leased Premises pursuant to the Lease Agreement.

a. Original Date of Lease (Lease Commencement): 12/1/2007

b. Original Date Lease Terminates: 11/31/2008

h. Month to Month Lease: Yes / No

c. Original Monthly Rent: \$ 1400

d. Parking: Yes / No

i. Parking Lease: Yes / No

e. Tenant's Parking Rent: \$ _____

j. Tenant's Parking Space: 2

f. Pets: Yes / No

k. # of Pets: 1 Dogs, Cats 1, Other _____

g. Pet Rent: Yes / No

l. Current monthly pet rent amount: \$ 0

m. Current Monthly Rent is: \$1604, which is due on the 1st day of the month and has a late charge of \$ 10% if the rent is paid after the 5th day of the month.

n. The rent has been paid through (date): 7/31/15

Exhibit A

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CITY OF OAKLAND



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

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

NOTICE TO TENANTS OF THE RESIDENTIAL RENT ADJUSTMENT PROGRAM

- Oakland has a Rent Adjustment Program ("RAP") that limits rent increases (Chapter 8.22 of the Oakland Municipal Code) and covers most residential rental units built before 1983. It does not apply to subsidized units, most single family dwellings, condominiums and some other types of units. For more information on which units are covered, contact the RAP office.
- You have a right to file a petition with the RAP to contest a rent increase that is greater than the annual general rent increase ("CPI increase"). An owner can increase rent more than the CPI rate, but with limits, for: capital improvements, operating expense increases, and deferred annual rent increases ("banking"). No annual rent increase may exceed 10%. The owner must provide you with a written summary of the reasons for any increase greater than the CPI rate if you request one in writing. If the owner decreases your housing services, this may be an increase in your rent. Decreased housing services include substantial problems with the condition of a unit.
- To contest a rent increase, you must file a petition with the RAP within sixty (60) days of whichever is later: (1) the date the owner served the rent increase notice; or (2) the date you first received this Notice To Tenants. Information and the petition forms are available from the RAP office: 250 Frank H. Ogawa Plaza, 6th Fl., Oakland, CA 94612 or: <http://www.oaklandnet.com/government/ricd/rentboard/tenant.html>. If you contest a rent increase, you must pay your rent with the contested increase until you file a petition. After your petition is filed, if the rent increase notice separately states the amount of the CPI rate, you have to pay your rent plus the CPI increase. If the CPI rate has **not** been stated separately, you may pay the rent you were paying before the rent increase notice. If the increase is approved and you did not pay it you will owe the amount of the increase retroactive to the effective date of increase.
- Oakland has eviction controls (the Just Cause for Eviction Ordinance and Regulations, O.M.C. 8.22) which limit the grounds for evictions in covered units. For more information contact the RAP office.
- Oakland charges owners a Rent Program Service Fee per unit per year. If the fee is paid on time, the owner is entitled to get half of the fee from you. Your payment for the annual fee is not part of the rent. Tenants in subsidized units are not required to pay the tenant portion of the fee.

TENANTS' SMOKING POLICY DISCLOSURE

- ☒ Smoking (circle one) IS or IS NOT permitted in Unit 210, the unit you intend to rent.
- ☒ Smoking (circle one) IS or IS NOT permitted in other units of your building. (If both smoking and non-smoking units exist in tenant's building, attach a list of units in which smoking is permitted.)
- ☒ There (circle one) IS or IS NOT a designated outdoor smoking area. It is located at _____

I received a copy of this notice on posted _____ (Date) [Signature] _____ (Tenant's signature)

此份屋崙 (奧克蘭) 市租客權利通知書附有中文版本。請致電 (510) 238-3721 索取副本。
La Notificación del Derecho del Inquilino está disponible en español. Si desea una copia, llame al (510) 238-3721.
Baùn Thoàng Baùn quyềàn lổ i của ngõõõỉ thueã trong Oakland nàõy củõng còu baềng tiềang Viềat. Nềã còu
moãt baùn sao, xin go i (510) 238-3721.

Effective 8/1/14

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BEST BAY APARTMENTS, INC.

CHANGE IN MANAGEMENT

Name: Viviana Rennella, Manisha Gangopadhyay
245 Lee St., Unit 210
Oakland, CA

Dear Viviana Rennella, Manisha Gangopadhyay,

We are proud to inform you that Best Bay Apartments, Inc. will be your new Management Company. We would like to introduce you to your new Property Manager, Sheila Ehsan, who will supervise your On-Site Resident Manager(s) and is located in our offices at 160 Franklin St. #300, Oakland, CA 94607, phone number (510) 982-0634. Starting 9/30/2015 all rents must be paid to:

245 Lee St Operating

If mailed, checks should be sent to:

160 Franklin St. #300

Oakland, CA 94607

Please see attached welcome packet addressing how you can pay your rent moving forward, as well as, other topics.

Please be advised that the building is covered by the residential rent adjustment program ("RAP"). We have provided you with a RAP notice attached to this letter.

All maintenance requests, noise complaints, Notices of Intent to Vacate and any other requests must be in writing form, you will receive some forms from us in the welcome packet. Also you will be able to request forms from your On-Site Resident Managers.

Please do not hesitate to call us for any further questions or concerns. We are excited to serve you.

Sincerely,

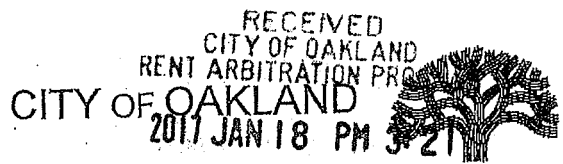
Brice Knight

Senior Property Manager

Office:!

Fax:

000014



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

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

NOTICE TO TENANTS OF THE RESIDENTIAL RENT ADJUSTMENT PROGRAM

- Oakland has a Rent Adjustment Program ("RAP") that limits rent increases (Chapter 8.22 of the Oakland Municipal Code) and covers most residential rental units built before 1983. It does not apply to subsidized units, most single family dwellings, condominiums and some other types of units. For more information on which units are covered, contact the RAP office.
- You have a right to file a petition with the RAP to contest a rent increase that is greater than the annual general rent increase ("CPI increase"). An owner can increase rent more than the CPI rate, but with limits, for: capital improvements, operating expense increases, and deferred annual rent increases ("banking"). No annual rent increase may exceed 10%. The owner must provide you with a written summary of the reasons for any increase greater than the CPI rate if you request one in writing. If the owner decreases your housing services, this may be an increase in your rent. Decreased housing services include substantial problems with the condition of a unit.
- To contest a rent increase, you must file a petition with the RAP within sixty (60) days of whichever is later: (1) the date the owner served the rent increase notice; or (2) the date you first received this Notice To Tenants. Information and the petition forms are available from the RAP office: 250 Frank H. Ogawa Plaza, 6th Fl., Oakland, CA 94612 or: <http://www.oaklandnet.com/government/hcd/rentboard/tenant.html>
- If you contest a rent increase, you must pay your rent with the contested increase until you file a petition. After your petition is filed, if the rent increase notice separately states the amount of the CPI rate, you have to pay your rent plus the CPI increase. If the CPI rate has not been stated separately, you may pay the rent you were paying before the rent increase notice. If the increase is approved and you did not pay it you will owe the amount of the increase retroactive to the effective date of increase.
- Oakland has eviction controls (the Just Cause for Eviction Ordinance and Regulations, O.M.C. 8.22) which limit the grounds for evictions in covered units. For more information contact the RAP office.
- Oakland charges owners a Rent Program Service Fee per unit per year. If the fee is paid on time, the owner is entitled to get half of the fee from you. Your payment for the annual fee is not part of the rent. Tenants in subsidized units are not required to pay the tenant portion of the fee.

TENANTS' SMOKING POLICY DISCLOSURE

- Smoking (circle one) IS or IS NOT permitted in Unit _____, the unit you intend to rent.
- Smoking (circle one) IS or IS NOT permitted in other units of your building. (If both smoking and non-smoking units exist in tenant's building, attach a list of units in which smoking is permitted.)
- There (circle one) IS or IS NOT a designated outdoor smoking area. It is located at _____.

I received a copy of this notice on _____ (Date) _____ (Tenant's signature)

此份屋崙(奧克蘭)市租客權利通知書附有中文版本。請致電(510)238-3721索取副本。
La Notificación del Derecho del Inquilino está disponible en español. Si desea una copia, llame al (510) 238-3721.
Baùn Thoàng Baùo quyềàn lồi cuõa ngồðøi thueã trong Oakland nàøy cuõng còu baèng tieáng Vieät. Nêã còu mỗät baùn sao, xin gồì (510) 238-3721.

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RECEIVED
CITY OF OAKLAND
RENT ARBITRATION PROGRAM
2017 JAN 18 PM 3:21
bestbayapts.com

30 DAY NOTICE TO VACATE

I hereby advise Best Bay Apartments (BBA) Inc. that I will vacate my apartment # _____ at _____

_____ on _____ for the following reason:
BUILDING ADDRESS DATE OF MOVE OUT

REASONS FOR LEAVING)

TENANT ACKNOWLEDGEMENTS:

- The date given above is definite vacating date.
- Should I subsequently wish to cancel or extend my notice to a later date, I will notify BBA Inc. immediately through written request. I understand that it may be impossible to grant my request.
- I understand someone will be entering my apartment to do a pre-move-out assessment within the first several days of giving this notice. I understand that no security deposit determinations will occur during this initial walk-through appointment.
- I understand that the giving of this notice does not relieve me of any liability that I may have under my present Rental Agreement.
- I understand that my obligation to pay rent will be extended beyond my 30-day notice date if I fail to surrender all the keys and garage openers in my possession or control to the personnel at the offices of BBA Inc. (Address Below) and a written receipt for such keys and openers has been handed to me. I agree not to leave keys inside my apartment or with the building manager.
- Tenant relinquishes all rights the undersigned has in the lease agreement including the right to occupy the premises.

RELEASE OF THE SECURITY DEPOSIT IS SUBJECT TO THE FOLLOWING PROVISIONS:

- The entire premises (including parking any additional storage) must be vacated on or before the move-out date specified in this notice.
- The entire unit must be clean. Dirt of any kind is not considered normal wear and tear. This includes, but is not limited, inside windows, blinds, stove ovens, refrigerators, carpets, parking spaces and storage units.
- Damage to the rented premises will be deducted from tenants Security Deposit. Such damage includes, but is not limited to, larger than thin nail holes in wall, dings, scrapes, scratches, burns and bent or damaged blinds. If you have specific questions regarding damage contact BBA Inc. prior to your move-out date.
- The rented premises must be free of all debris, rubbish, and personal effects. All debris, rubbish and personal items must be removed from the property.
- Tenant's obligation to pay rent for the premises will be extended beyond tenant's 30-day notice date if tenant fails to deliver all keys and openers to the building and premises at the offices of BBA Inc. and receive a receipt for such keys and openers. Do not leave keys, key cards, parking passes or garage openers in the rent unit or with the building manager.
- All covenants and conditions of Rental Agreement must have been fulfilled and rent must be paid through the 30th day from the date the 30 day notice was received by BBA or the date set forth in the lease agreement, whichever is greater.
- A forwarding address must be clearly set forth below.
- Security Deposit refunds are subject to a post-move-out inspection to be performed by BBA Inc.

Forwarding Address: _____

Tenant Phone #: _____

YOUR SECURITY DEPOSIT WILL BE RETURNED BY CHECK MAILED TO THE FORWARDING ADDRESS SHOWN ABOVE. THIS CHECK WILL BE MADE PAYABLE JOINTLY TO ALL DESIGNATED TENANTS SET FORTH ON THE LEASE AGREEMENT.

RESIDENT _____ DATE _____ MANAGEMENT SERVICES _____ DATE RECEIVED _____

Please hand in at the BBA Office, notice is not valid until signed and dated by BBA Office personnel.

O/
F/A

180 FRANKLIN ST., STE. 300
OAKLAND, CA 94607

000016



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

CITY OF OAKLAND

Housing and Community Development Department
Rent Adjustment Program

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

HEARING DECISION

CASE NUMBER: T16-0726, Rennella v. Best Bay Apartments

PROPERTY ADDRESS: 245 Lee Street, No. 210, Oakland, CA

DATE OF HEARING: April 18, 2017

DATE OF DECISION: June 1, 2017

APPEARANCES:

Viviana Rennella	Tenant
Karen Gordon-Brown	Witness for Tenant
Brice Knight	Owner Representative
Jun Lu	Owner Representative

SUMMARY OF DECISION

The tenant's petition is GRANTED IN PART.

INTRODUCTION

Viviana Rennella filed a petition on December 28, 2016, which claims that the following housing services have been decreased:

- No elevator for 1 month due to repair;
- Pool removed;
- Flooding in garage/laundry
- Plastic sheets left outside during construction make noise;
- Stove is broken.
- Removal of patio furniture.

The owner filed a timely response and denies that the tenant's services have been decreased.

THE ISSUES

1. When, if ever, did the tenant receive the Notice of the Rent Adjustment Program?

2. Have the tenant's housing services been decreased and if so, what amount of restitution is owed to her?

On March 6, 2017, staff sent a deficiency notice to tenant, requesting a list of her complaints regarding decreased housing services. The due date for her response was March 16, 2017. The tenant submitted her response on April 7, 2017. It was not submitted on a timely basis. Staff sent this list to the owner on April 10, 2017. The owner representative testified that they have not received this notice and they cannot respond to these complaints. They object to the claim of decreased housing services based on lack of notice of the complaints.

EVIDENCE

Notice of the Existence of the Rent Adjustment Program/Rent History

The tenant testified that she moved into her unit in December 2007 at an initial monthly rent of \$1,450.00. She currently pays \$1,604.00 monthly. She first received the Notice of the existence of the Rent Adjustment Program (RAP) in 2007.

Decreased Housing Services

Swimming Pool

When the tenant moved into the subject building there was a swimming pool for the tenants' use. The tenant testified that this a reason for her choosing to move into the building. The pool was removed in late September 2016 and filled in with dirt. The tenants no longer have use of the pool.

Plastic Sheets

The owner laid down plastic sheets where the pool had been removed in December 2016 or January 2017 and it was just removed last week. The sheets made a lot of noise which was disturbing. The tenant did not complain about this to the management.

Laundry Room/Garage

There were two inches of water in the laundry room/garage and the tenant had to do laundry in this water for one month during December 2016 or January 2017 due to the rain. The tenant complained verbally to the lead maintenance man. The tenant's understanding is that if there is a maintenance complaint they should contact Sheila or the property manager for Best Bay Apartments, or Darlene, but there is no set procedure for contacting her.

The owner representative testified that all complaints should be in writing, to Sheila or Darlene. The tenants received a notice on September 30, 2015, that

maintenance orders should be in writing. The tenant testified that she has received this notice.

Witness Gordon-Brown testified that one can also use the on-line process to notify Sheila. The tenant testified that she is now aware of this process.

Stove

The tenant testified that the tenant in the upper unit poured drano which dripped into the tenant's stove and destroyed the range. She reported this in September 2015. "The maintenance man came and it sort of works. Whenever he comes I tell him the spiral needs to be replaced," The tenant did not speak to Darlene or Sheila. She reported this in December 2015 and three times in 2016. It has not been fixed. The stove has four burners and only one works.

The owner representative testified that he has no notice of this complaint. All work orders are done by the maintenance team. The tenant has issued work orders which have been taken care of. He has no knowledge of anything that the tenant discussed with the maintenance man.

Elevator

There was a "town hall" meeting with the owner before September 2016 and the tenants notified the owner that the elevator was failing. The tenants were notified that the elevator would be out of use for a month due to repairs. The elevator was inoperable for one month in January 2017. The tenants received a rent reduction for this time period, which constituted a 10% reduction for all tenants.

Patio

There was a patio on the upper level. It was re-done and paved over. There were chairs and picnic tables, and the chairs and picnic tables were removed in late September 2016. The tenant did not notify management of this complaint.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Notice of the Existence of the Rent Adjustment Program

The Rent Adjustment Ordinance requires an owner to serve notice of the existence and scope of the Rent Adjustment Program (RAP Notice) at the start of a tenancy¹ and together with any notice of rent increase required RAP notice.² The tenant first received the notice of the existence of the Rent Adjustment Program (RAP) in 2007.

¹ O.M.C. Section 8.22.060(A)

² O.M.C. Section 8.22.060(C)

Decreased Housing Services

Section 8.22.090 (2) O.M.C. provides that a tenant petition must be filed within 90 days after the date of service of a rent increase notice or the date the tenant first receives the RAP notice, whichever is later. This includes a complaint for decreased housing services, which is defined as a rent increase.⁶ The tenant received the RAP notice initially in December 2007. She did not file the tenant petition for decreased housing services until December 2016. Therefore, restitution is limited to 90 days prior to the filing of the tenant petition, which is September 28, 2016.

Under the Oakland Rent Ordinance, a decrease in housing services is considered to be an increase in rent and may be corrected by a rent adjustment.³ 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, a service that was provided that has been removed or one that is required to be provided in a contract between the parties. The tenant has the burden of proving decreased housing services by a preponderance of the evidence. The tenant also has the burden of proving notice to the owner about a complaint and the owner must be afforded a reasonable opportunity to respond to the complaint.

In this case the tenant filed her list of decreased housing services on April 7, 2017, which was past the due date of March 16, 2017. Although review of the case file indicates that staff mailed the list on April 10, 2017, the owner representative testified credibly that the owner has not received notice of the tenant's complaints of decreased housing services.

However, there is actual notice of the removal of the pool, patio tables and chairs, the plastic sheets and the elevator. The owners removed the pool, patio tables and chairs, and placed the plastic sheets over the pool, and was aware of the elevator's need for repair.

The removal of the pool is an amenity which the tenant testified was a reason for her to move to the building and her enjoyment was clearly diminished by loss of use of the pool. Loss of this amenity constitutes a 10% decreased service.

The removal of the patio tables and chairs is also an amenity where the tenant could enjoy sitting and eating outdoors and her loss of use of these items constitutes a 3% decreased housing service.

The intermittent noise caused by the plastic sheets during storms did not amount to a serious condition regarding habitability and compensation for this item is denied.

Moreover, the tenant was compensated for the inconvenience caused by the elevator which was a ten percent reduction of her rent for one month, which is adequate compensation for this item. Regarding the stove and water in the laundry room/garage

³ O.M.C. Section 8.22.070 (F)

the tenant has not sustained her burden of proof regarding notice to the owner of these complaints. She acknowledged receipt of the notice from management about making repair requests in writing. Compensation for these items is denied.

Furthermore, the complaint about the laundry room is no longer an issue. However, the owner is now on notice of the tenant complaint about the stove.

The preferred method of evaluating decreased housing services is consideration of all services provided by an owner and then determining the percentage by which total services provided by the owner have decreased because of the lost housing services. Based on the totality of the circumstances and considering the total bundle of housing services, the value of the decreased housing services is stated in the following table.

VALUE OF LOST SERVICES

Service Lost	From	To	Rent	% Rent Decrease	Decrease /month	No. Months	Overpaid
Pool	10/1/16	5/23/17	\$1,604	10%	\$160.40	8	\$1,283.20
Patio furniture	10/1/16	5/23/17	\$1,604	3%	49.20	8	\$393.60
TOTAL							\$1,676.80

ORDER

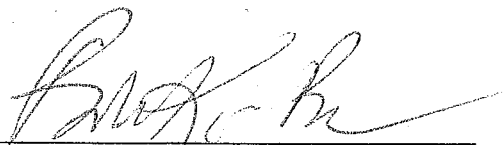
1. Petition T16-0726 is granted in part.
2. The tenant has overpaid rent for past decreased housing service totaling \$1,676.80
3. The tenant's monthly rent is stated below as follows:

Base Rent	\$1,640.40
-rent overpayment for past decreased housing service- \$1,676.80/12=\$139.73	- 139.73
-\$49.20 current decreased housing service-patio furniture; -\$139.73 for pool removal=\$189.93	- 49.20
Current rent payment commencing June 1, 2017, and ending May 1, 2018	\$1,450.47

4. When the owner restores the pool he may increase the tenant's monthly rent by \$139.73 upon proper notice in accordance with Section 827 of the California Civil Code.

5. When the owner restores the patio furniture he may increase the tenant's monthly rent by \$49.20 upon proper notice in accordance with Section 827 of the California Civil Code.
6. Right to Appeal: **This decision is the final decision of the Rent Adjustment Program Staff.** Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within twenty (20) days after service of the decision. The date of service is shown on the attached Proof of Service. If the Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.

Dated: June 1, 2017



Barbara Kong-Brown, Esq.
Senior Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE

Case Number T16-0726

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

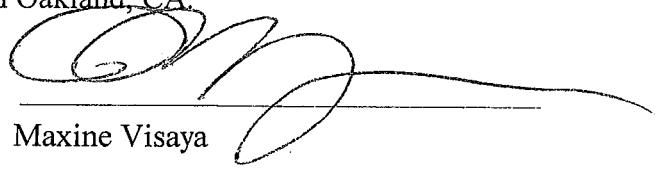
Viviana Rennella
245 Lee St #210
Oakland, CA 94610

Owner

Best Bay Properties
160 Franklin St Suite 300
Oakland, CA 94607

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.

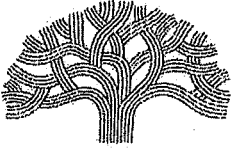
I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on June 02, 2017 in Oakland, CA.



Maxine Visaya

000023

RENT ADJUSTMENT PROGRAM
2017 JUN 22 PM 3:55 For date stamp.

 CITY OF OAKLAND	CITY OF OAKLAND RENT ADJUSTMENT PROGRAM P.O. Box 70243 Oakland, CA 94612-0243 (510) 238-3721	APPEAL
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Appellant's Name Best Bay Apartments, Inc.		<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant
Property Address (Include Unit Number) 245 Lee Street, No. 210, Oakland, CA		
Appellant's Mailing Address (For receipt of notices) 2744 E. 11th Street, Oakland, CA 94601		Case Number T16-0762 -0726 ms
		Date of Decision appealed 6/1/17
Name of Representative (if any) Joshua D. Baker	Representative's Mailing Address (For notices) 1000 Brannan Street, Suite 402 San Francisco, CA 94103	

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

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

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

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RENT A
2017 JUN 22 PM 3:51

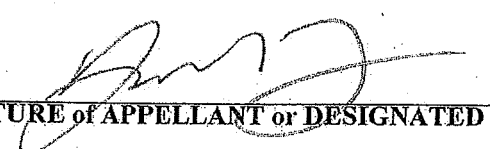
- f) I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. (In your explanation, you must describe how you were denied the chance to defend your claims and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue 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: 2

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

I declare under penalty of perjury under the laws of the State of California that on June 22, 2017, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

Name	Viviana Rennella
Address	245 Lee Street #210
City, State Zip	Oakland, CA 94610
Name	
Address	
City, State Zip	

	6/22/17
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

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

NPT 17-0726

ADDITIONAL INFORMATION FOR APPEAL

June 22, 2017

Case Number: T16-0726
Property Address: 245 Lee Street, No. 210, Oakland, CA
Case Name: Rennella v. Best Bay Apartments, Inc.
Petition Decision Date: June 1, 2017
Service of Decision: June 2, 2017

It is Appellant's position that the Rent Board's Decision in this case provides an unreasonable reduction of rent for the items that the Rent Board found to be decreased housing services. The Decision stated that the loss of the swimming pool constituted a 10% decreased service and the removal of the patio tables and chairs constituted a 3% decreased housing service.

Swimming Pool

Appellant contends that the evidence in this case was insufficient to prove the removal of the swimming pool constituted a 10% decrease in services for Tenant, which amounts to \$160.40 per month of reduced rent. Based upon a review of rental properties in the neighborhood of 245 Lee Street, the presence of a swimming pool at a property, or lack thereof, does not result in such a large change in the rental rate. In some instances, the presence of a pool has little to no impact on the market rate of a unit.

Appellant and the property's owner decided to remove the pool because it created a safety hazard for the residents and there were concerns it was leaking and in need of major repair. The swimming pool that was removed was not a pristine brand new swimming pool but an old and worn down pool. In considering the value of such a pool to a tenant, it is important that one consider the pool as it was and not as it could have been if it had undergone significant improvements and repairs.

Even if Appellant were to concede that the removal of the swimming pool resulted in a decreased service, Appellant contends that the testimony at the hearing about prior use of the pool was mainly from Tenant's witness and not Tenant. Appellant does not believe Tenant presented sufficient evidence to warrant such a significant percentage of her rent being connected to the swimming pool. Therefore, Appellant respectfully requests that the Rent Board reconsider the percentage to a more reasonable amount.

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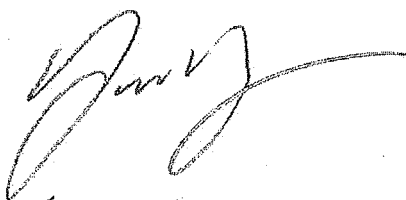
Patio Table and Chairs

Appellant also contends that the evidence presented by the Tenant with regard to the patio table and chairs was not sufficient to warrant a 3% reduction in rent due to the removal of these items while the property was undergoing common area improvements. Therefore, Appellant respectfully requests that the Rent Board reconsider the percentage to a more reasonable amount.

Closing

Appellant does not believe that the decision in this case was reasonable or equitable based upon the facts and evidence in this matter. Objectively, the presence of a swimming pool does not have a significant impact on the market rent of a unit and subjectively, Tenant failed to present sufficient evidence to prove the removal of the pool equated to a 10% reduction of services. Further, the pool at issue here was in need of repair and by no means in top condition.

Appellant asks the Rent Board to consider this Appeal and reconsider the decision.



6/22/17

Joshua Baker
Attorney for Appellant, Best Bay Apartments, Inc.

CHRONOLOGICAL CASE REPORT

Case Nos.: T17-0081
Case Name: Comeaux v. Duffield
Property Address: 3830 Maybelle Avenue, #1, Oakland, CA
Parties: Micheline Comeaux (Tenant)
Joan Duffield (Property Owner)

OWNER APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	February 8, 2017
Owner Response filed	April 21, 2017
Hearing Decision issued	July 21, 2017
Owner Appeal filed	August 9, 2017

000028

T17.0081 MS / BC

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. <p style="text-align: right;">2017 FEB -8 PM 3:34</p>
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Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed.

TENANT PETITION

Please print legibly

Your Name <i>Michelle Comeaux</i>	Rental Address (with zip code) <i>3830 MAYBELLE AVE #2 OAKLAND, CA. 94619</i>	Telephone -
Your Representative's Name	Mailing Address (with zip code)	Telephone
Property Owner(s) name(s) <i>Joan Duffield</i>	Mailing Address (with zip code) <i>6137 LA SALLE AVENUE OAKLAND, CA. 94709</i>	Telephone (- - - -)

Number of units on the property: 8

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

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

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

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

Date you moved into the Unit: October 21, 2011 Initial Rent: \$ \$1575.00 /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: Dec. 28, 2012. 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		
1/31/2017	4/1/2017	\$ 1,716.15	\$ 1,750. ⁴⁷	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
1/27/16	4/1/2016	\$ 1,687.47	\$ 1,716.15	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
2/26/2015	4/1/2015	\$ 1,656.32	\$ 1,687.47	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
12/28/2012	2/1/2013	\$ 1,575	\$ 1,622.25	<input 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

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

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

III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:

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

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

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

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

IV. VERIFICATION: The tenant must sign:

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

Michelle Comery
Tenant's Signature

2/7/2017
Date

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

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

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

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

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

Tenant's Signature

Date

VI. IMPORTANT INFORMATION:

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

File Review

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

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

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

10fl

I told the LANDLORD (JOAN DUFFIELD)
in 2015.

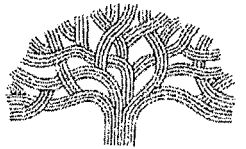
- 1.) The unit windows have mildew, AND moisture, there is also very cold air coming through the windows.
~~AND moisture~~
- 2.) PG&E bill is extremely high because of the windows not being sealed.
- 3.) The windows do not lock, I had to purchase small locks for the windows from ACE HARDWARE store, to make sure the windows are secure.
- 4.) There are termites in the living window. ~~AND~~
- 5.) Mildew/mold in the bathroom tub.
- 6.) Mc Donald termite control came out on JANUARY 20, 2017 to do an inspection. The results were e-mailed to her AND I AND pictures. She never contacted me to inform me of when the problem would be solved. After 16 days I emailed 000032

2 of 2

her to ask about the situation.
She claimed that she didn't know
what I was talking about, when
Mc Donald termite Control spoke to
her about coming out to the
property.

000033

RECEIVED

 CITY OF OAKLAND	CITY OF OAKLAND RENT ADJUSTMENT PROGRAM P.O. Box 70243 Oakland, CA 94612-0243 (510) 238-3721	For date stamp: APR 21 2017 RENT ADJUSTMENT PROGRAM OAKLAND PROPERTY OWNER RESPONSE
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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 T17-0081

Your Name JOAN DUFFIELD	Complete Address (with zip code) 4510 CLAREWOOD DR OAKLAND CA 94618	Telephone: _____ Email: _____ <i>COMJ</i>
Your Representative's Name (if any)	Complete Address (with zip code)	Telephone: _____ Email: _____
Tenant(s) Name(s) MICHELINE COMEAUX	Complete Address (with zip code) 3830 MAYBELLE AVE OAKLAND CA #1 94619	Telephone: _____ Email: _____
Property Address (If the property has more than one address, list all addresses) 3830 MAYBELLE AVE OAKLAND 94619		Total number of units on property 8

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

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

Date on which you acquired the building: 1/02/11

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

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

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

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

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

Date of Contested Increase	Banking (deferred annual increases)	Increased Housing Service Costs	Capital Improvements	Uninsured Repair Costs	Debt Service	Fair Return
4/1/17	<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"/>

CPI
✓

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

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

The tenant moved into the rental unit on 10/21/11

The tenant's initial rent including all services provided was: \$ 1575 / 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? 10/1/11

Is the tenant current on the rent? Yes No

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

Date Notice Given (mo./day/year)	Date Increase Effective	Rent Increased		Did you provide the "RAP NOTICE" with the notice of rent increase?
		From	To	
12/28/12	2/1/13	\$ 1575	\$ 1622 ²⁵	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
1/7/14	3/1/14	\$ 1622 ²⁵	\$ 1656 ³²	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
2/26/15	4/1/15	\$ 1656 ³²	\$ 1687 ⁴⁹	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
2/27/16	4/1/16	\$ 1687 ⁴⁷	\$ 1716 ¹⁵	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
2/27/17	4/1/17	\$ 1716 ¹⁵	\$ 1750 ⁴⁷	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

III. EXEMPTION

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

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

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

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

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

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

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

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

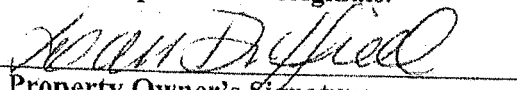
The unit is located in a building with three or fewer units. The owner occupies one of the units continuously as his or her principal residence and has done so for at least one year.

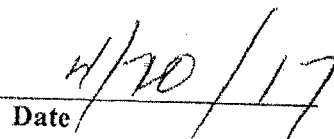
IV. DECREASED HOUSING SERVICES

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

V. VERIFICATION

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


Property Owner's Signature


Date

IMPORTANT INFORMATION:

Time to File

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

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

File Review

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

Mediation Program

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

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

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

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

Property Owner's Signature

Date

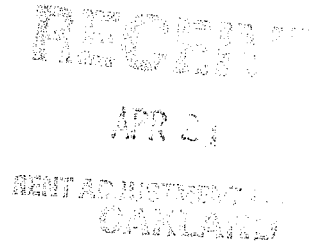
April 20, 2017

To: City of Oakland Rent Adjustment Program

Re: Case T17 0081 MS/BC

Tenant: Micheline Comeaux, 3830 Maybelle Ave#1, Oakland CA 94619

Property Owner: Joan Duffield



Request for dismissal of this petition.

The claim for decrease of service is based on the fact that tenants PG&E bill increased this year due to a cold and long winter. The windows about which she complains are the same windows that were in the apartment when she moved in in 2011. There is no decrease in service.

The termite work was done as soon as it was brought to my attention. Please see documentation. And in fact the tenant's inexplicable behavior delayed the work being done on 2 occasions - lied to a service provider when she ordered her own termite report without telling me. Why? You'd have to ask her. And then she didn't respond to the release from the termite firm for over 2 weeks. Please see attached documentation.

She has not complained to me about window locks which were provided with the unit when she moved in in 2011.

Her other complaints stem from her own poor housekeeping habits.

In fact, she communicates directly with my manager who complies with any maintenance request immediately, as he does for all tenants.

Furthermore I consider this harassment by this tenant. She has a long history of acting out, harassing other tenants and neighbors,(Jason Overman, Rebecca Kaplan's Communications Director when her son broke his window). When asked by others to respond she becomes aggressive so that the other tenants and neighbors are afraid of her. They have only made complaints anonymously. In 2015 I was forced to file an Unlawful Detainer based on her violating her lease. The court issued a stipulation for her to comply with various terms of her lease including not engaging in any conduct that disturbs other occupants or face eviction.

The only rent increases have been for the amount of the CPI.

The rent increase was for the CPI

000038



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

CITY OF OAKLAND

Department of Housing and Community Development
Rent Adjustment Program

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

HEARING DECISION

CASE NUMBER: T17-0081, Comeaux v. Duffield
PROPERTY ADDRESS: 3830 Maybelle Ave, #1, Oakland, CA
DATE OF HEARING: June 7, 2017
DATE OF INSPECTION: June 14, 2017
DATE OF DECISION: July 21, 2017
APPEARANCES: Micheline Comeaux, Tenant
Joan Duffield, Owner

SUMMARY OF DECISION

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

CONTENTIONS OF THE PARTIES

The tenant filed a petition on February 8, 2017, contesting a series of rent increases.

Additionally, the tenant claimed that her housing services had decreased and that at present there exists a health, safety, fire or building code violation in the unit. The claims of decreased services involve: mildew and moisture on the windows and air coming through the windows; PG&E bill is extremely high; the windows do not lock; termites; and mildew and mold in the bathroom tub.

000039

The owner filed an untimely response to the tenant petition on April 21, 2017, claiming that the latest rent increase was a CPI rent increase and denying that the tenant's housing services had decreased.

THE ISSUES

1. Did the owner have good cause for filing a late response to the tenant petition?
2. When, if ever, was the form *Notice to Tenants of the Rent Adjustment Program* (RAP Notice) first served on the tenant?
3. What rent increases can the tenant contest?
4. Was the rent increase served on January 29, 2017, validly served?
5. Have the tenant's housing services decreased?
6. What, if any, restitution is owed between the parties and how does it affect the rent?

EVIDENCE

Owner Response: The owner testified that the address listed as her address on the *Tenant Petition*, 6137 La Salle Avenue, Oakland, CA, is the address for *Coldwell Banker*, which is an old business address for her and she no longer works there. When she failed to file a response to the petition, the owner was notified by an analyst with the RAP regarding the pending petition. Prior to this communication, she had not received any correspondence from the Rent Adjustment Program (RAP) about a case. This communication with the analyst occurred on April 20, 2017. The owner filed her *Property Owner Response* on April 21, 2017. The owner further testified that she has not given her tenants a different mailing address for her than the previous one she had at *Coldwell Banker*.

Rental History: The tenant testified that she moved into the subject rental unit in October 2011 at an initial rent of \$1,575 a month. She received the *RAP Notice* when she moved into the unit.

On January 29, 2017, the tenant received a *30 Day Notice of Change of Monthly Rent* purporting to increase her rent from \$1,716.15 to \$1,750.47, effective April 1, 2017.¹ This document was served with a *RAP Notice*. The owner testified that the rent increase notice was served by being left on the tenant's gate. It was not also served by mail. The parties agree that the tenant has been paying the rent increase.

The tenant listed her history of rent increases on her petition (which was signed under penalty of perjury).

Decreased Housing Services: The tenant raised the following claims: mildew and moisture on the windows and air coming through the windows; PG&E bill is extremely high; the windows do not lock; termites; and mildew and mold in the bathroom tub.

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

Mildew and moisture on the windows: The tenant testified that there was a lot of air coming into the unit and condensation around the windows since she moved into the building. The tenant produced photographs showing the staining around the frames of the windows and the moisture around the windows. This exists in the living room, her bedroom, her children's bedroom and the bathroom. (See Exhibit 2, Photos C, L, M, O, P, S, Q, R, T-V.) The photos were taken in January of 2017, on a day that it was not raining outside. When she moved into the unit there was no mold or mildew around the windows, but there has been mold and mildew for quite some time. The tenant testified that she opens the windows regularly to try to decrease the condensation.

The tenant further testified that she has complained to the owner about the mildew and moisture on and around the windows sometime in 2016 and no action has been taken to repair the problem.² The tenant wipes the windows down with rags and dish washing liquid approximately once every two months, but it does not impact the staining. The tenant complained again about it in writing in February of 2017.³ This letter, which was sent to the owner at the work address the tenant had for her, was returned to the tenant as "refused".

The tenant further testified that she contacted the *City of Oakland* Housing Inspectors who did an inspection of her unit in February of 2017. A *Notice of Violation* was issued, but the document was not provided to the RAP by the tenant. The tenant did not think that the *Notice* said anything about the mold and mildew around the windows.

The owner testified that she never notified the tenants in her building that she no longer could be reached at the work address she had used in the past because the tenants have other ways to contact her by email or by dropping things into her mailbox on the property. She has never received a *Notice of Violation* about the tenant's complaints. The owner further testified that the City of Oakland may have her old work address in its database, as she has not updated her address with the City.

The owner testified that the tenant had never notified her about a problem with mold and mildew around the windows prior to filing her petition. The first she heard about this problem was after the tenant sent her an email about the termites, which was in February of 2017. At one point in the past, the tenant complained about the windows leaking air, but never about mold or moisture. The owner further testified that she or her manager makes regular inspections of the units in her building and the last time was in September of 2016, when there was a leak of some kind of leak in a different unit. At that time, the tenant's windows did not appear as they appear in the photographs. The owner testified that it has been a particularly wet winter since the inspection in September of 2016.

² The tenant also testified that in 2015 she had a conversation with the owner where she asked her if there was anything she could do about the air coming into the unit through the windows and the owner said there was nothing she could do. The tenant informed the owner that *PG&E* had a program for helping owners install double paned windows.

³ Exhibit 7

The owner further testified that she gave the tenant (and other tenants) a notice on how to decrease condensation in one's home in February of 2017, in part because most of the tenants have washer/dryers in their units; which adds to condensation.⁴ Additionally, the windows are single pane windows.

The owner testified that she takes mold complaints seriously. She has not had the tenant's unit tested for mold or responded to the tenant's complaint about mold.

At the Inspection by this Hearing Officer there was staining on the window framing and window sills throughout the unit. It appears to be mold and mildew. (See Inspection Photos 1-15, 18-20, attached to the Hearing Decision.)

PG&E Bills: The tenant testified that her PG&E bills are very high because of air coming into the unit through the windows. The tenant produced copies of her PG&E bills showing that the new usage charges for her bill due on February 8, 2017, was for \$205.13; the new usage charges for her bill due on January 6, 2017, was for \$118.44; and her new usage charges for her bill due on November 8, 2016, was for \$59.92.⁵

Windows do not lock: The tenant testified that not all the windows in her unit fully lock. She complained to the owner about the windows not locking in 2011. The owner did not fix the windows. The tenant has had to provide her own locking mechanism on several of the windows, which she has purchased at *Ace Hardware*. The windows are more secure because of the locks the tenant has provided.

The tenant testified that the Housing Inspector noted that there were windows that did not lock in her unit.

The owner testified the windows are aluminum frame sliding glass windows that do lock. In order to lock them, you have to push down with force. She was never notified about a problem with the locks on the tenant's windows.

At the Inspection by this Hearing Officer the lock on the second bedroom windows and the bathroom window did not work properly. Present on all the windows were additional locks that the tenant had installed. In the second bedroom and the bathroom, even after pushing down hard on the locks, they did not attach to the window frame.

Termites: The tenant testified that in early 2016 she noticed bug activity on her living room window sill. She sprayed with bug spray but did not report it to the owner as she did not think it was an ongoing problem. Then in January of 2017 she noticed a lot of wood dust and more bugs on her windowsill. Her father told her that the bugs were termites. Prior to this date the tenant had seen a termite control notice in the carport (See Exhibit 4) which had the name and telephone number of a company that had

⁴ Exhibit 8

⁵ Exhibit 3. These amounts do not include the adjustment of \$29.69 given to her in the bill due in November of 2016.

inspected the property in December of 2010. The tenant called that company and someone came and did an inspection on January 20, 2017.⁶

The Pest Report from *McDonald* shows the presence of subterranean termites in the tenant's unit and in the subarea and that there was excessive moisture in the area of the window sill.⁷ The tenant further testified that during the inspection the inspector called the owner to inform her of his findings. Also, he informed the tenant that he was sending the owner photographs and a copy of his report. Additionally, the tenant provided photographs of the termites.⁸

The tenant testified that she contacted Ms. Duffield by email on February 6, 2017, asking for an update on the termite work since nothing had been done.⁹ The owner responded saying that this was the first she had heard of the termites. The tenant then contacted John McDonald at the termite company asking if the company had contacted Ms. Duffield. Mr. McDonald sent the tenant back an email confirming that his inspector had contacted the owner.¹⁰

The tenant further testified that the owner had arranged for termite treatment in her unit in February of 2017. Since then the tenant has not seen any further termites.

The owner testified that she did not know anything about the termite problem in the tenant's unit until she received the tenant's email on February 6, 2017. She contacted the termite company who had done the report and was upset with them for going to the property without her permission. She arranged for another company, *East Bay Structural*, to do a full inspection of the entire property. This was done on February 13, 2017.¹¹ The inspector found termites in the tenant's unit and fungus and rot under the subfloor of her bathroom. The owner also provided information to all the tenants about how to deal with condensation in their units to prevent further problems. The owner arranged to have *East Bay Structural* do the work suggested in the report and the termites have been eliminated.

At the Inspection by this Hearing Officer no termites were seen.

Mold and mildew around bathtub: The tenant testified that there is mold and mildew around the bathtub in her unit. This has been going on since 2016. She provided photographs of the problem.¹² In February of 2017, she complained to Ms. Duffield verbally about mildew in the bathroom when Ms. Duffield came to her unit to do a termite inspection with *East Bay Structural*. She also mentioned the problem in the

⁶ Exhibit 5. It appears that the tenant called *Mitts Termite Company*, which was the company listed on the termite control notice. However, *McDonald Termite Company* was the company that responded to the tenant phone call.

⁷ Exhibit 5, pages 5-6

⁸ See photos A-H of Exhibit 2.

⁹ Exhibit 6, page 1

¹⁰ Exhibit 6, page 3. The owner objected to the admission of the last email in this chain of emails, which is an email from John McDonald to the tenant on the grounds that she had not been sent that email. The owner's objection was overruled.

¹¹ Exhibit 9

¹² Exhibit 2, photos I, J and K.

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letter she wrote about other issues, after filing her petition.¹³ In early 2016, she also complained to her verbally about the bathroom mildew and the bathroom window not locking. The caulking around the tub has not been repaired.

The owner testified that she was never told about any problem with the tub caulking until doing the inspection about the termites. She informed her manager to re-caulk the tub. The work was scheduled, but the tenant cancelled the appointment because she was not available that day.¹⁴ The tenant informed her that she would make an appointment directly with the manager to get it done.

The tenant further testified that there was no offer to have the caulking done on her tub and that the Housing Inspector from the *City of Oakland* returned to her unit in April and noted that the work had not been done.

At the Inspection by this Hearing Officer the caulk around the tub was not stained. (See Inspection Photos 16-17).¹⁵ The tenant stated at the inspection that she got a scrubber brush and cleaned it herself.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Did the owner have good cause for filing a late response to the tenant petition?

The Rent Adjustment Ordinance requires an owner to file a response to a tenant petition within 35 days after service of a notice by the Rent Adjustment Program (RAP) that a tenant petition was filed.¹⁶ "If a tenant files a petition and if the owner wishes to contest the petition, the owner must respond . . ."¹⁷

In this case, the tenant listed the legal address she had for the owner on her *Tenant Petition*. This address is the owner's old work address. The owner never informed the tenants that this is no longer a good address for her. Nonetheless, because this address was the only address at which the owner was "served" with the *Tenant Petition*, the owner did not receive actual notice of the *Tenant Petition* until she received information from an analyst that there was a pending petition. She filed her *Owner Response* one day after being notified.

The owner had good cause for the late filing of the *Owner Response*. The owner was permitted to testify and provide evidence at the Hearing. However, in the future the owner should provide her tenants with a valid legal address for serving documents.

///

¹³ Exhibit 7

¹⁴ The owner did not produce a *Notice To Enter the Premises* regarding the caulking repair.

¹⁵ At the inspection the tenant said she fixed the problem herself.

¹⁶ O.M.C. § 8.22.090(B)

¹⁷ O.M.C. § 8.22.070(C)(2)

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When, if ever, was the form *Notice to Tenants of the Rent Adjustment Program (RAP Notice)* first served on the tenant?

The Rent Adjustment Ordinance (Ordinance) requires an owner to serve the *RAP Notice* at the start of a tenancy¹⁸ and together with any notice of rent increase or change in the terms of a tenancy.¹⁹

The testimony was uncontroverted that the *RAP Notice* was provided to the tenant when she moved into the building in 2011.

What rent increases can the tenant contest?

The tenant's petition is ambiguous. On the first page, under "Grounds for Petition," the tenant checked boxes (f1) and (f2), which relate to claims of decreased housing services. She did not check any box relating to contesting rent increases. However, on page 2, under the section "rental history" the tenant listed rent increases from 2015, 2016 and 2017, and checked the "yes" box that says "Are you contesting this increase in this petition?"

When reading the tenant petition as a whole, it is clear that the tenant intended to contest the rent increases she has received since 2015.

However, once the *RAP Notice* has been given, a tenant has 90 days to contest a rent increase where the *RAP Notice* was served with the increase or 120 days when the *RAP Notice* was not served with the increase.²⁰ O.M.C. § 8.22.090 (A)(2)(a).

In this case, the tenant's claims regarding the rent increases from 2015 and 2016 are untimely.

The only rent increase the tenant can contest is the rent increase notice she received on January 31, 2017, purporting to increase her rent from \$1,716.15 to \$1,750.47, effective April 1, 2017.

Was the rent increase served on January 29, 2017, validly served?

The California Civil Code requires that all rent increase notices must be served in person or by mail. Civil Code § 827. Posting a rent increase notice on a tenant's gate is not proper service.

The Rent Adjustment Ordinance requires that all rent increase notices be served in accordance with state law. O.M.C. § 8.22.090(A)(1)(d). The Ordinance also states that "a tenant may not petition to contest a rent increase justified in an amount up to an including the CPI Rent Adjustment and/or any Banking Rent Increase....". O.M.C. §

¹⁸ O.M.C. § 8.22.060(A)

¹⁹ O.M.C. § 8.22.070(H)(1)(A)

²⁰ The 90 day rule became effective in September of 2016. Prior to that, a tenant had 60 days to contest a rent increase providing he or she had been served with a *RAP Notice* at the inception of the tenancy.

8.22.070 (B)(2). However, section 8.22.070 relates to the amount of the rent increase, not the manner of service. Where a rent increase is served without proper notice, as was the case here, the tenant can contest that increase even if the amount is below the CPI and banking allowable amount.

Therefore, the rent increase notice served on the tenant in January of 2017, purporting to increase her rent to \$1,750.47, effective April 1, 2017, was invalid. The tenant's rent remains \$1,716.15. The tenant has overpaid rent, as noted in the table below.

Have the tenant's housing services decreased?

Under the Oakland Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent²¹ and may be corrected by a rent adjustment.²² However, in order to justify a decrease in rent, a decrease in housing services must be the loss of a service that seriously affects the habitability of a unit or one that was provided at the beginning of the tenancy that is no longer being provided.

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

Further, in a decreased services case, where the *RAP Notice* has been given at the beginning of a tenancy, tenants are only allowed relief for 90 days prior to the filing of the petition²³.

Mildew and moisture on the windows: The tenant has established that there is staining that appears to be mildew and mold on her windows that were not there when she moved into the unit. This is a changed condition and a decrease in housing services. It appears to be caused by the water that enters the unit through the windows (as depicted in the tenant's photographs.) While the owner denies knowing about this problem, the owner testified that she does annual inspections and inspected the unit in September of 2016. The tenant's testimony that this has been going on for several years was believable. At the Inspection by this Hearing Officer, the staining and water damage was present in the living room window, the bathroom and both bedroom windows.

The tenant is entitled to a 2% ongoing rent decrease for this condition and restitution of overpaid rent beginning on November 10, 2016 (90 days prior to the petition filing date) until the owner repairs the condition.

PG&E Bills: The tenant cannot recover damages in a RAP petition. Additionally, if her PG&E bills are high because of air coming in from these windows, this is not a changed condition since she moved in. The single pane windows were the same when she moved into the unit. This claim is denied.

²¹ O.M.C. § 8.22.070(F)

²² O.M.C. § 8.22.110(E)

²³ Board Decision in *Lindsey v. Grimsley, et al.*, HRRRB T09-0086, as modified by the Ordinance § 8.22.090(A)(3) 000046

Windows do not lock: The tenant has established that the windows in her bathroom and the second bedroom do not lock properly. The tenant was convincing that she informed the owner about this problem in 2011, and this should have been noted at a reasonable inspection by the owner, especially in light of the obvious replacement locks installed by the tenant. The replacement locks are not sufficient. This is a habitability issue that effects the tenant's safety.

The tenant is entitled to an ongoing 5% rent decrease for this condition and restitution of overpaid rent beginning on November 10, 2016.

Termites: The tenant acted reasonably when she called the termite company (whose notice she had seen in the carport) when she learned that the bugs in her unit were termites. That inspection was performed on January 20, 2017.

While there is a dispute in the testimony as to whether or not the owner was first notified about the termites in January or February of 2017, when she got the email from the tenant in February of 2017, she acted quickly and reasonably. She had an inspection performed, and did the suggested work. These actions bolster the owner's testimony that she did not hear about the problem in January.²⁴

Getting rid of termites is a process that takes an inspection and authorization for the work to be done. The owner acted reasonably and repaired the problem quickly. Therefore, this claim is denied.

Mold and mildew around bathtub: Again there is a dispute as to whether or not the tenant informed the owner about this problem prior to filing her petition. However, at the time of the Inspection by this Hearing Officer, the bathtub was clean of mildew stains. The tenant stated at the inspection that she had cleaned it herself.

If this problem was the kind of problem that could be resolved by the tenant cleaning it herself, then it does not rise to the level of a decrease in housing services. This claim is denied.

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

As noted above, due to an invalid rent increase notice, the tenant's base rent remains \$1,716.15 a month. However, due to the conditions of the mold and mildew around the windows and the non-locking windows, the tenant is entitled to an ongoing rent decrease of 7% (\$120.13). The tenant's current legal rent, before consideration of restitution, is therefore \$1,596.02 a month.

²⁴ Since the owner had her old work address on file, it is possible that the termite company employee contacted someone at *Coldwell Banker*, and did not speak directly with Ms. Duffield.

Additionally, she has been overpaying rent since April of 2017, when she began paying the rent increase.

The chart below documents the tenant's rent overpayments and restitution owed for her decrease in housing services. She is owed a total of \$1,158.39.

VALUE OF LOST SERVICES							
Service Lost	From	To	Rent	% Rent Decrease	Decrease /month	No. Months	Overpaid
Mildew windows	10-Nov-16	31-Jul-17	\$1,716	2%	\$ 34.32	8.5	\$ 291.75
Non-locking windows	10-Nov-16	31-Jul-17	\$1,716	5%	\$ 85.81	8.5	\$ 729.36
					\$ -		-
TOTAL LOST SERVICES							\$ 1,021.11

OVERPAID RENT						
From	To	Monthly Rent paid	Max Monthly Rent	Difference per month	No. Months	Sub-total
1-Apr-17	31-Jul-17	\$1,750	\$1,716	\$ 34.32	4	\$ 137.28
				\$ -		-
TOTAL OVERPAID RENT						\$ 137.28

RESTITUTION		
	MONTHLY RENT	\$ 1,716.15
	TOTAL TO BE REPAID TO TENANT	\$ 1,158.39
	TOTAL AS PERCENT OF MONTHLY RENT	67%
AMORTIZED OVER	9 MO. BY REG. IS	\$ 128.71

Overpayments of this size are normally adjusted over a period of 9 months²⁵. For now \$128.71 a month is subtracted from the current legal rent of \$1,596.02 for a total rent of \$1,467.31 a month. From August of 2017 through April of 2018, the tenant's rent is \$1,467.31 a month.

However, should the owner eradicate the mildew and staining around the tenant's windows, she can increase the rent by 2% (\$34.32 a month); and if the owner repairs the window locks, she can increase the rent by 5% (\$85.81 a month). In order to increase the rent after repairs the owner must provide the necessary notice pursuant to Civil Code § 827.

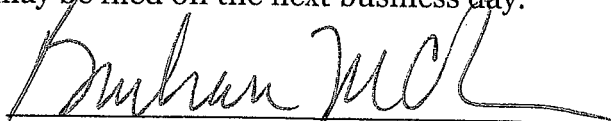
Additionally, if the owner wishes to pay the tenant the restitution in one lump sum, she has the authority to do so. If the owner pays the tenant restitution, the tenant must stop deducting the restitution.

²⁵ Regulations, Section 8.22.110(F)

ORDER

1. Petition T17-0081 is granted in part.
2. The tenant's base rent is \$1,716.15 a month. The 2017 rent increase is invalid.
3. Due to ongoing conditions, the tenant is entitled to a 7% rent decrease. The tenant's current legal rent, before consideration of restitution, is \$1,596.02 a month.
4. Due to past decreased services and overpaid rent, the tenant is owed restitution of \$1,158.39. This overpayment is adjusted by a rent decrease for the next 9 months in the amount of \$128.71 a month.
5. The tenant's rent for the months of August 2017 through April 2018 is \$1,467.31 per month. The rent reverts to \$1,596.02 a month in May of 2018 (if the repairs have not been completed and/or a rent increase notice has not been sent).
6. If the owner wishes to, she can repay the restitution owed to the tenant at any time. If she does so, the monthly decrease for restitution ends at the time the tenant is provided restitution.
7. If the owner eradicates the mildew stains around the tenant's windows, she can increase the rent by 2% (\$34.32); and if the owner provides locking windows, she can increase the rent by 5% (\$85.81). **In order to increase the rent after repairs the owner must provide the necessary notice pursuant to Civil Code § 827.**
8. Nothing in this Order prevents the owner from increasing the rent at any time, provided that the rent increase notice is served pursuant to Civil Code § 827 and the Rent Adjustment Ordinance. Should the owner increase the rent before the repairs are done, the deductions for the mildew and non-locking windows should continue as a percentage of the rent.
9. **Right to Appeal: This decision is the final decision of the Rent Adjustment Program Staff.** Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within twenty (20) calendar days after service of the decision. The date of service is shown on the attached Proof of Service. If the Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.

Dated: July 21, 2017



Barbara M. Cohen
Hearing Officer
Rent Adjustment Program

000049



Photo 1, Living Room Window

Inspection Photos

000050



Photo 2, Living Room Window

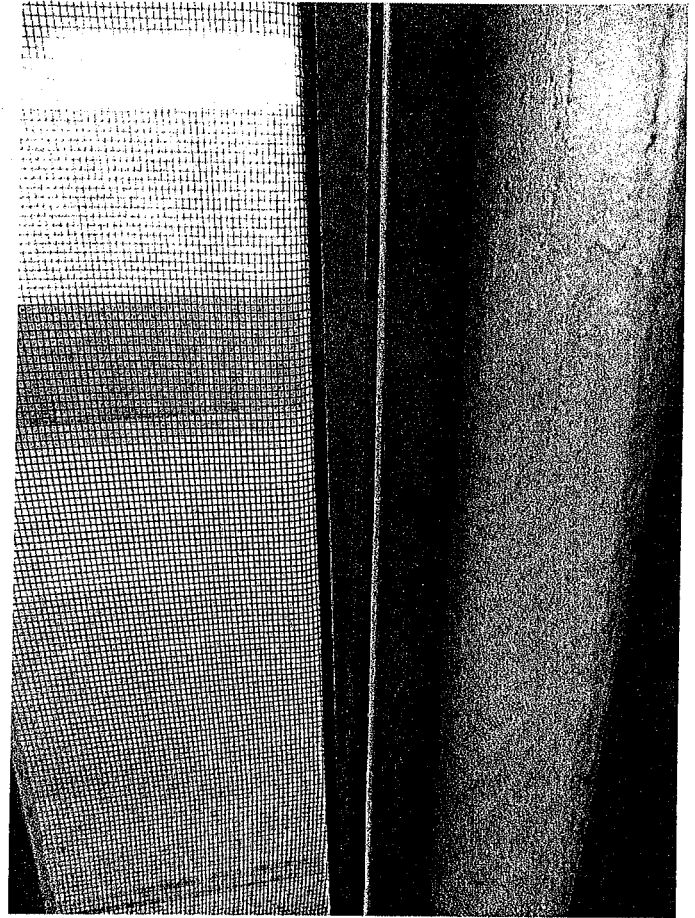


Photo 3, Living Room Window

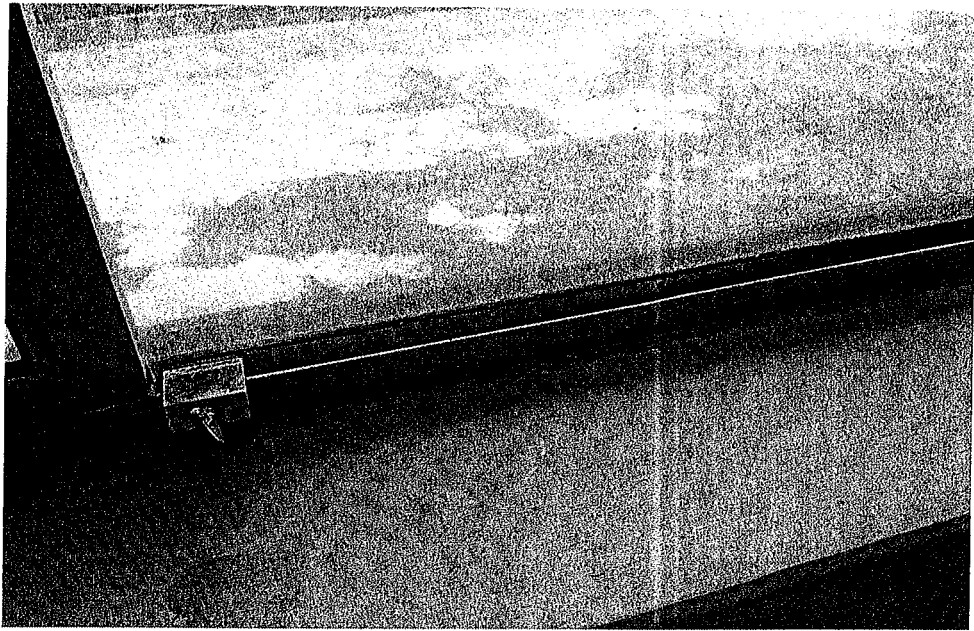


Photo 4, Living Room Window

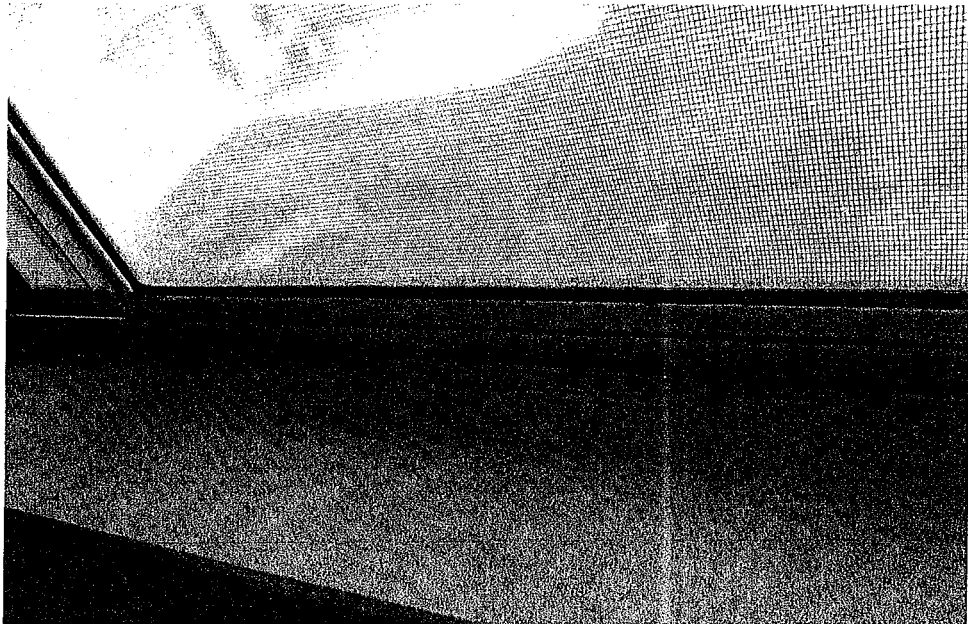


Photo 5, Living Room Window

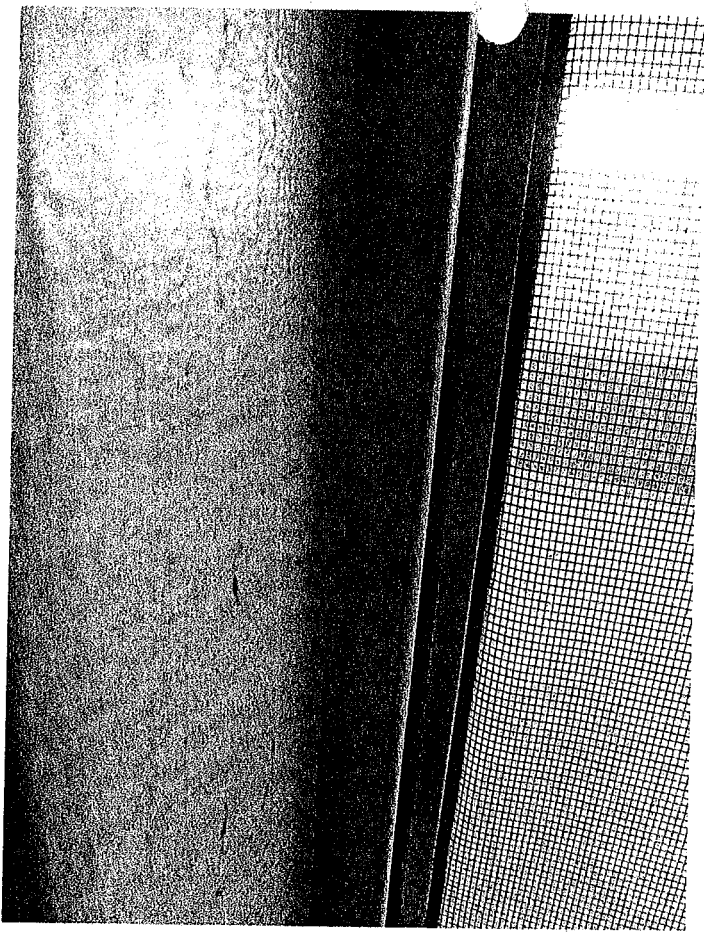


Photo 6, living room window

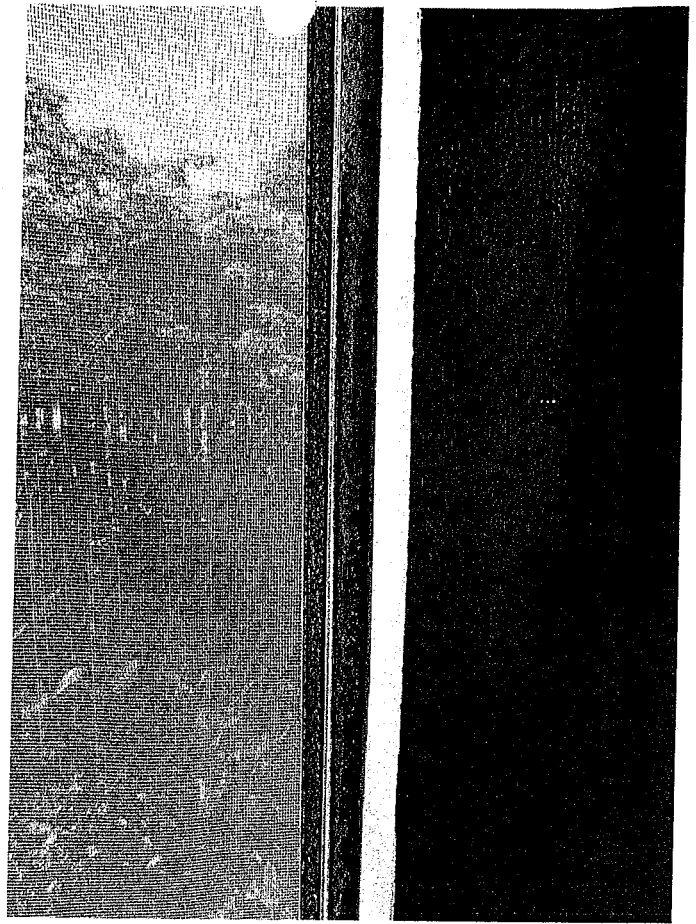


Photo 7, bdrm window

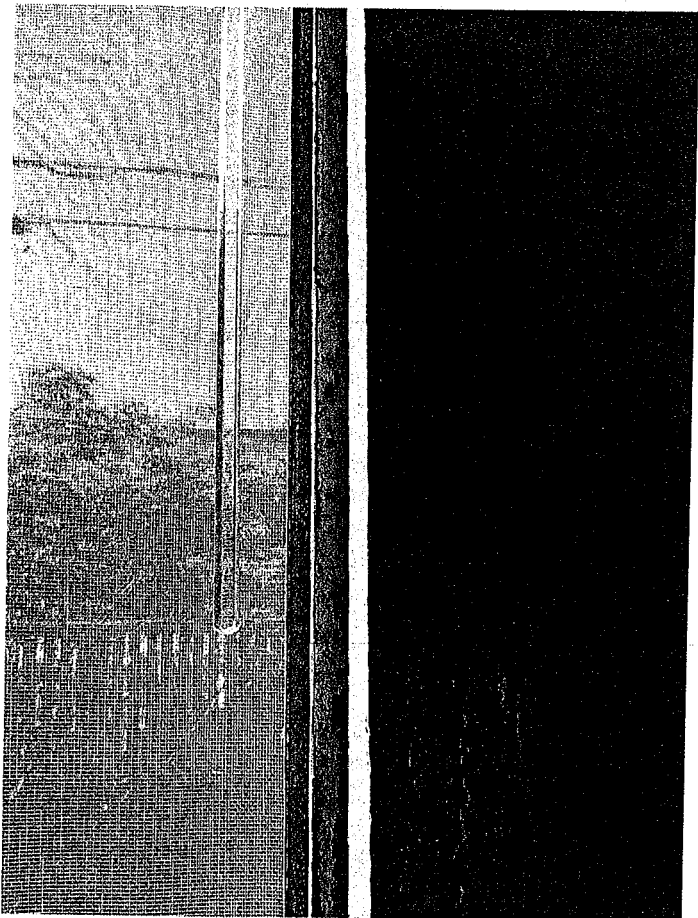


Photo 8, bedroom window

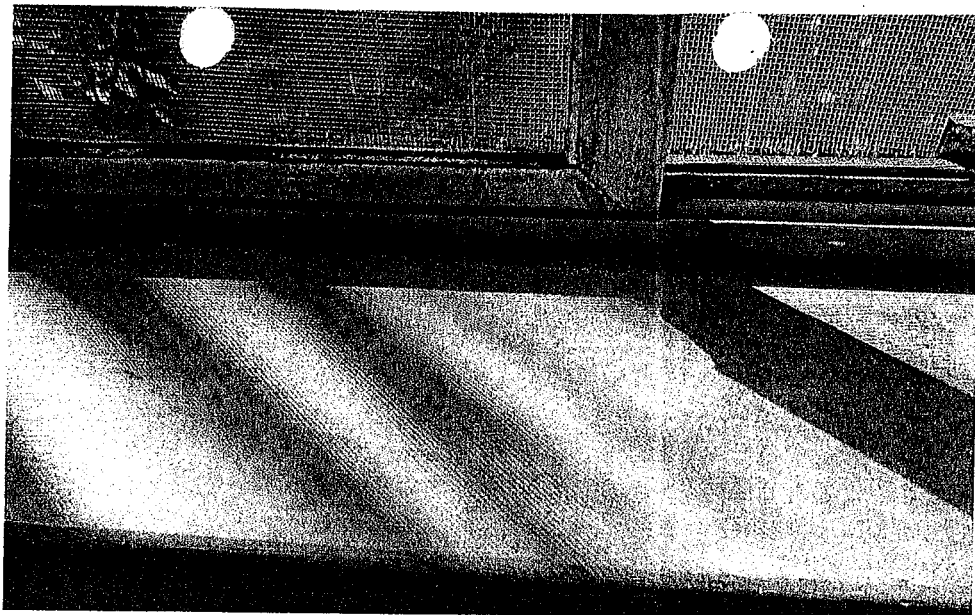


Photo 9, bedroom window

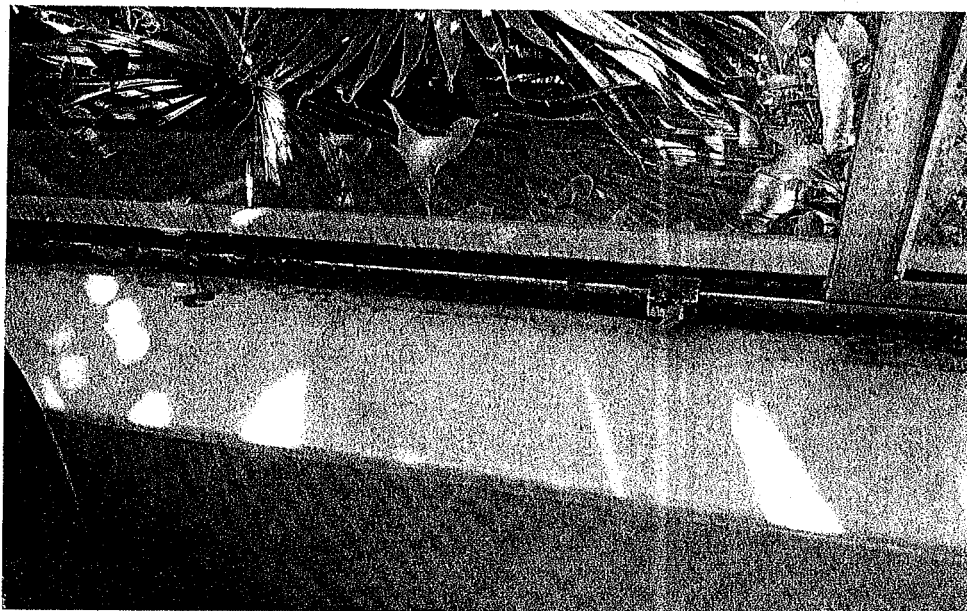


Photo 10, bdrm window



Photo 11, bdrm window

000054

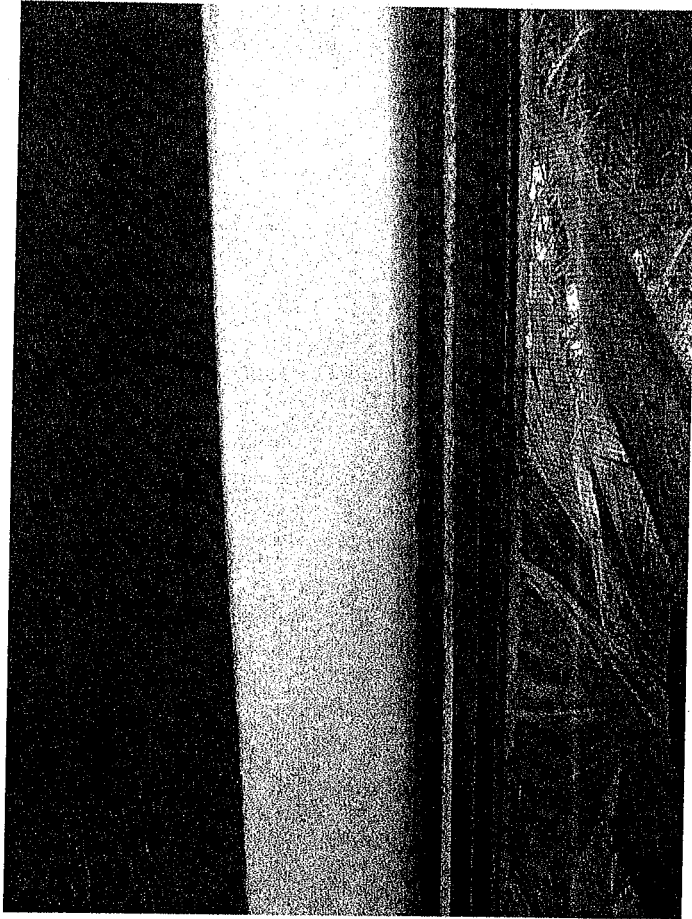


Photo 12, bdrm window

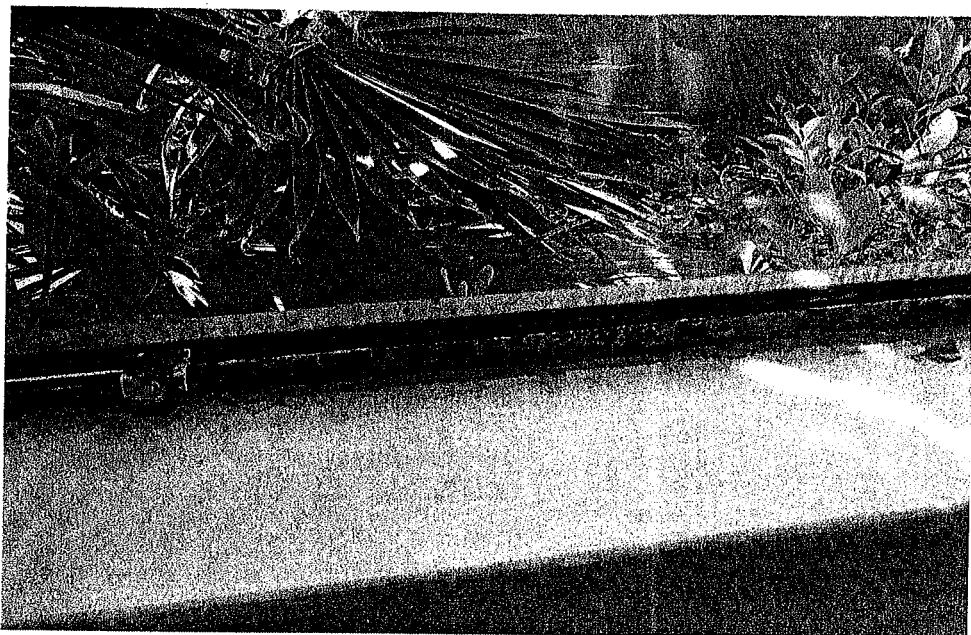


Photo 13, bdrm window



Photo 14, bathroom window

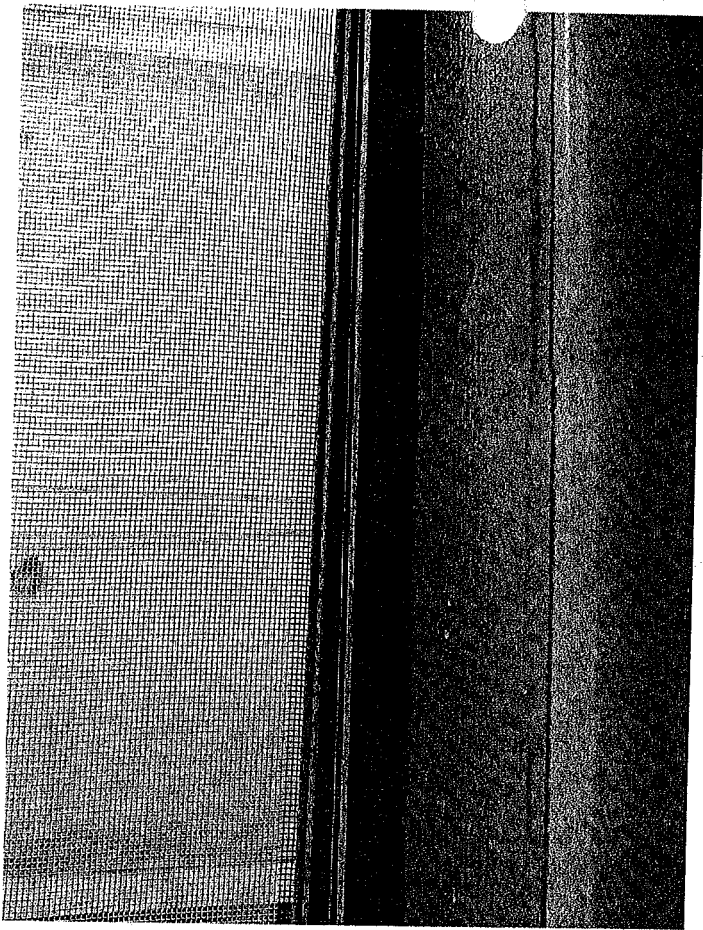


Photo 15, bathroom window

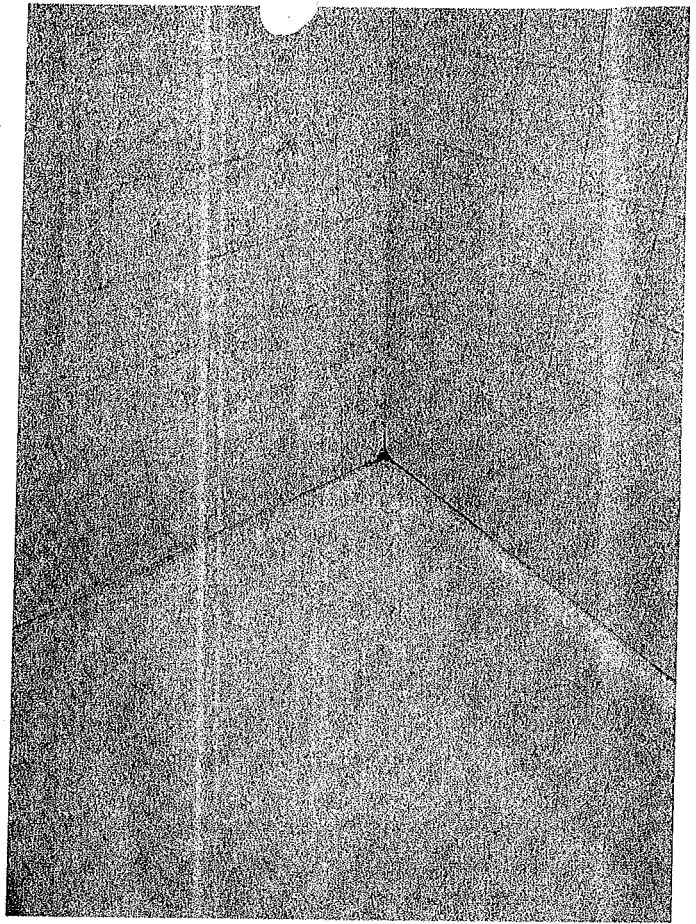


Photo 16, tub

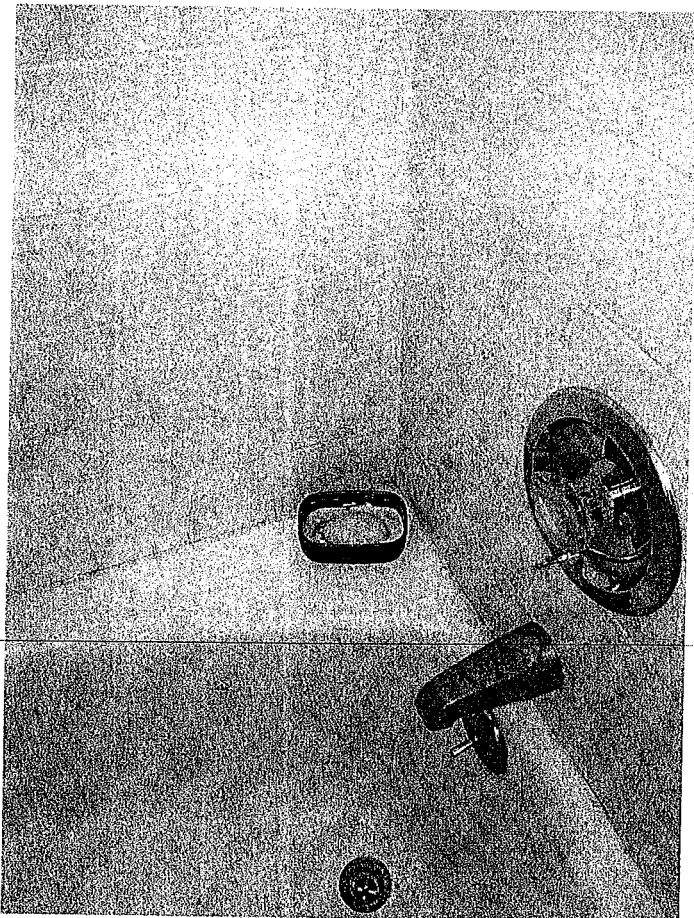


Photo 17, tub

000057

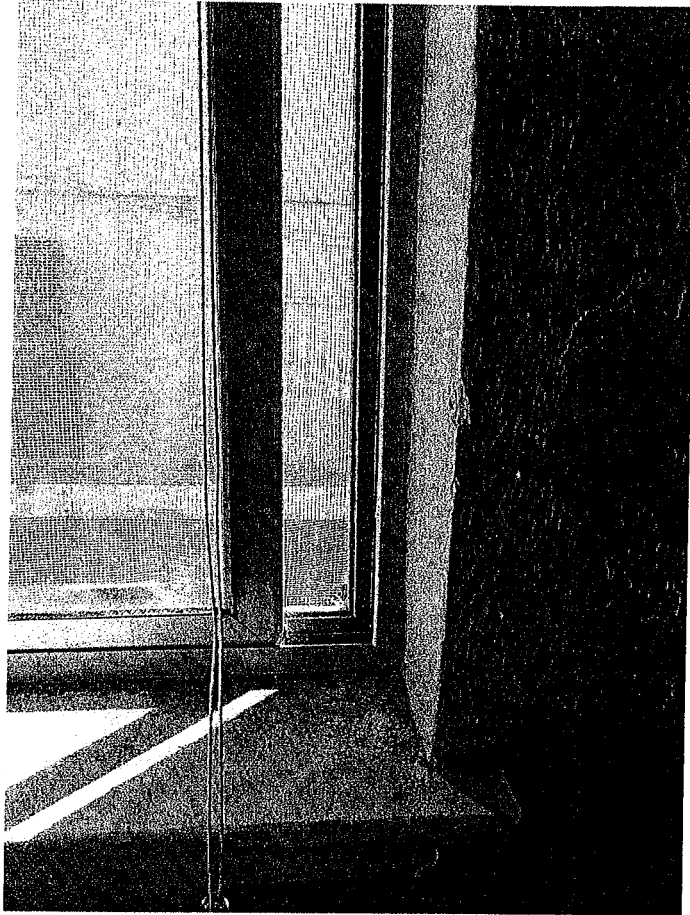


Photo 18, 2nd bdrm window



Photo 19, 2nd bdrm window

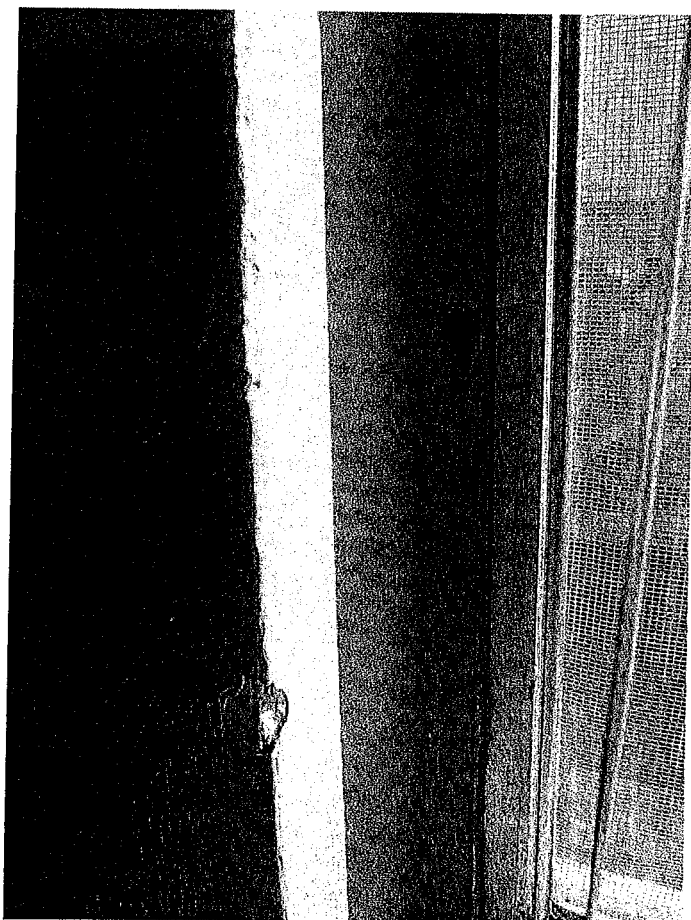


Photo 20, 2nd bdrm window

PROOF OF SERVICE

Case Number T17-0081

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

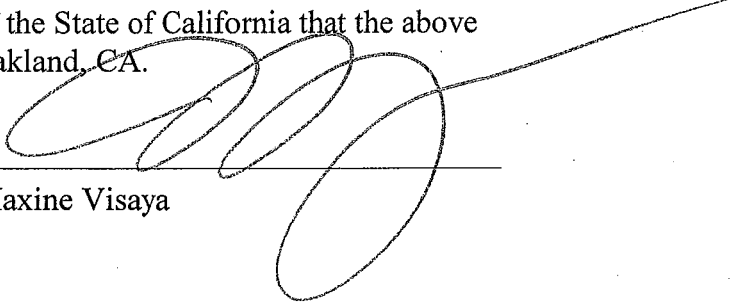
Micheline Comeaux
3830 Maybelle Ave #1
Oakland, CA 94619

Owner

Joan Duffield
4510 Clarewood Dr
Oakland, CA 94618

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on July 26, 2017 in Oakland, CA.

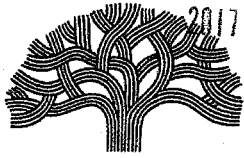


Maxine Visaya

000061

RECEIVED
CITY OF OAKLAND
RENT ARBITRATION PROGRAM

RECEIVED
CITY OF OAKLAND
RENT ARBITRATION PROGRAM



CITY OF OAKLAND

**CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM**

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

For date stamp.
2017 AUG -9 AM 11:18

APPEAL

Appellant's Name JOAN DUFFIELD		<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant	
Property Address (Include Unit Number) 3830 MAYBELLE AVE OAKLAND 94619 #1			
Appellant's Mailing Address (For receipt of notices) 4510 ELADEWOOD DR, OAKLAND 94618		Case Number 717 - 0081 Connealy v. Duffield	Date of Decision appealed July 21, 2017
Name of Representative (if any)		Representative's Mailing Address (For notices)	

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

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

For more information phone (510) 238-3721.


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

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

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

I declare under penalty of perjury under the laws of the State of California that on Aug 9th 2017, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

Name	MICHELINE COMEAUX
Address	3830 MAYBELLE AVE #1
City, State Zip	OAKLAND CA 94619
Name	
Address	
City, State Zip	

	<u>Aug 8, 2017</u>
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

For more information phone (510) 238-3721.

August 8, 2017

Appeal to Decision Case #T17-0081 Comeaux v. Duffield

Decreased Housing Service – Mildew and Moisture on window sills; window latches not working properly. The tenant has not established in any way that she provided notice of the problems and therefore there was no opportunity to fix the problems.

Tenant has provided no evidence that she informed me of mildew, moisture or window latches not working

The tenant has provided absolutely no evidence that she informed me that there was mold and mildew on her window sills. If it had gone on for years why didn't she complain? She filed her complaint on February 8, 2017 but notified me on Feb 13, 2017 when I entered with a termite inspector.

Had ample opportunities to notify

There were ample opportunities for the tenant to notify myself or the maintenance person of this condition. He cleans her yard at least 3 times per year, I enter with an inspector yearly, to certify the back flow device which is in her yard and she has made other repair requests. In addition the water main runs under her apartment with access being through a trap door in one of the closets and the so there were at least 2 additional entries to inspect those items. See Notices to Enter and receipt for work done. Each time the tenant was in her apartment.

12/26/16 Plugged drain – Corrected by Chris's Quality Sewer

9/21/16 Backflow test

9/5/16 Water inspection for leaks

Tenant consistently ignored her responsibility under lease for notifying me of defects

Not only did the tenant have ample opportunity to notify me so I could correct the problem in so doing the tenant ignored her responsibility for notifying me of any defects or maintenance issues as she and agreed to in the lease documents: "Conditions of Premises", "House Rules" and "Mold and Mildew Addendum". Each is attached.

There is substantial evidence from her own testimony that she makes a practice of ignoring problems and her responsibility under lease agreement

The tenants claim is not believable based on her testimony of a much more serious condition: termites. She admitted she didn't tell me about seeing termites when she saw them in early 2016 even though her father told her that the bugs she saw were termites. She stated in her testimony that she saw termites in early 2016 and yet I wasn't notified until 2017. Failure to notify me about moisture and termites is a serious breach of her responsibility under her lease documents and has the potential to create significant damage to the building affecting all tenants.

The moisture is caused by condensation which is identified in her lease documents. The accepted practice is to increase ventilation and to clean the moisture from the window sills. And in fact the "Mold and Mildew Addendum" which is part of the lease document specifically states so. The tenant also testified that she cleaned the window sills about every 2 months which is just inadequate by any standards.

Annual Maintenance checks would not have identified window issues or window sill issues

The building is in exceptional condition with preventative maintenance being performed regularly. It is our practice to respect each tenant's privacy and to get in and out as quickly as we can focusing on general maintenance items. We do annual inspections for leaks, and fans in the kitchen, bathroom and the furnace closet, so we don't enter the bedrooms unless there is a specific issue. If the blinds are drawn which they almost always are we wouldn't see the windows or the window sills. And we don't comment on housekeeping conditions unless they present a fire hazard.

I do not ignore tenant requests for maintenance

In fact I am a pro-active property manager with on-site maintenance across the street at 3833 Maybelle.

Gave notice that I would perform repairs on June 16th but tenant refused entry to repair person

See attached

Tenant has history of ignoring lease obligations and not taking responsibility

This tenant has a consistent history of violating her lease, creating problems with neighbors on both sides of the property, other tenants and refusing to take responsibility for her actions. She has been a consistent management problem so I have attached the documentation of her history which includes a Superior Court stipulation from Feb 26, 2015 for having a pit bull in her apartment – a very significant disruption for the entire building.

Material Errors in Hearing Officers Statements

Not leaks, condensation

The hearing officer states that water enters through the windows – it does not. The moisture is caused by condensation on the windows during a very wet winter. We discussed this at length in the hearing. Please refer to the transcript. Also see the notice I provided to all tenants regarding condensation mitigation, although the tenant in unit #1 is the only tenant having a problem with it. The condensation is caused by excess moisture inside and cooler air outside (see attached notice).

Hearing officer doesn't understand basic tenant/owner relationship established by lease

The hearing officer stated that the tenant acted responsibly when she called the termite company. That is absolutely not the case and shows a shocking lack of knowledge on the part of the hearing officer

regarding the basic tenant/owner relationship created by the lease and addenda. The crawl space under the building is not tenant space and no tenant is authorized to enter that space. The termite company the tenant called knows that the crawl space is off limits. They performed the inspection because the tenant told them that I had authorized the tenant to schedule the inspection which is not true. I would never order a termite inspection of only one unit. When I was finally notified on Feb 8th that there were termites in Unit #1 I immediately scheduled an inspection of the total building by East Bay Structural and a walk through of each of the units to look for additional evidence of termites.

Tenant is responsible for notifying owner or manager

Under a standard lease (CAR, EBRHA) the tenant is responsible for informing the owner or management company immediately of any defects of which they become aware. A hearing officer that doesn't understand the basics of the lease relationship can't do the job. Clearly the tenant ignored her responsibility under the lease when she ordered the termite inspection without notifying the owner.

Notice of Intent to Enter Rental Premises

California Civil Code Section 1954

To Michelle Comery ("Resident") for the
(Name of resident and all other occupants in possession)

rental premises located at: 3830 Marjelle
(Address)

Unit 1, (if applicable) Oakland, California 94619
(City) (Zip) ("Premises")

PLEASE TAKE NOTICE that on 9/5 2016 (date), at approximately 10-2 (time) and during normal business hours, the Owner/Agent of the Premises, will enter the Premises for the following reason(s) [check all that apply]:

To make or arrange for the following necessary or agreed upon repairs, decorations, alterations or improvements:
check for plumbing leaks due to unusually large water bill - checking water main under rear bedroom

To supply the following necessary or agreed upon service(s):

To show the Premises to prospective or actual purchasers, mortgagees or tenants.
Notice of entry based on the above, may be given verbally if Resident has been notified in writing of the Premises being for sale within 120 days of the notice. Otherwise, a 24 hour notice is considered reasonable. Owner/Agent shall leave written evidence of the entry inside the unit. (Please fill out Notice of Entry below and leave a signed copy of this Notice in the Premises).

To show the Premises to workers, or contractors performing repairs or improvements.

To install, repair, test, or maintain smoke detectors pursuant to California Health & Safety Code Section 13113.7(e).

To inspect the installation of a waterbed or other furniture with liquid filling material and/or to insure its conformity with California Civil Code Section 1940.5(f).

To perform a move-out inspection requested by Resident pursuant to California Civil Code Section 1950.5(f)(1).
A 48 hour written notice of entry will constitute reasonable notice for this type of entry.

Pursuant to a court order.

If you wish to be present or if you have any questions, please contact Owner/Agent at:

Name: Jean Duffield Telephone: 510-333-6341

000067



Notice of Intent to Enter Rental Premises

California Civil Code Section 1954

To Michelle Gomez ("Resident") for the
(Name of resident and all other occupants in possession)

rental premises located at: 4830 Mariposa
(Address)

Unit 1, (if applicable) Oakland, California _____ ("Premises")
(City) (Zip)

PLEASE TAKE NOTICE that on 9/21 2016 (date), at approximately 3-5 pm (time) and during normal business hours, the Owner/Agent of the Premises, will enter the Premises for the following reason(s) [check all that apply]:

To make or arrange for the following necessary or agreed upon repairs, decorations, alterations or improvements:

To supply the following necessary or agreed upon service(s):

To show the Premises to prospective or actual purchasers, mortgagees or tenants.

Notice of entry based on the above, may be given verbally if Resident has been notified in writing of the Premises being for sale within 120 days of the notice. Otherwise, a 24 hour notice is considered reasonable. Owner/Agent shall leave written evidence of the entry inside the unit. (Please fill out Notice of Entry below and leave a signed copy of this Notice in the Premises).

To show the Premises to workers, or contractors performing repairs or improvements.

To install, repair, test, or maintain smoke detectors pursuant to California Health & Safety Code Section 13113.7(e).
Terry how to perform smoke detectors

To inspect the installation of a waterbed or other furniture with liquid filling material and/or to insure its conformity with California Civil Code Section 1940.5(f).

To perform a move-out inspection requested by Resident pursuant to California Civil Code Section 1950.5(f)(1). A 48 hour written notice of entry will constitute reasonable notice for this type of entry.

Pursuant to a court order.

If you wish to be present or if you have any questions, please contact Owner/Agent at:

Name: Paul Dufford Telephone: 510-333-6341

000068



The reason condensation appears in your apartment is due to a lack of adequate ventilation. As we spend more time indoors the build-up of moisture and humidity levels increase.

In fact, four people living in a 3 bedroom property would create **112 pints of moisture a week** from just breathing, cooking, showering and boiling the kettle.

So how can you reduce the condensation in your home?

Here are suggestions to reduce the condensation levels in your unit:

1. If you have a washing machine or tumble dryer in your bathroom, ensure that the ventilation is not leaking. From just one load of washing two litres of water is emitted into the air.
2. Open your bathroom window and close the bathroom door when washing and drying clothes to increase ventilation and lower moisture.
3. When taking a shower or bath, ensure that your bathroom door is kept closed to prevent steam going into cooler rooms which will cause condensation to form.
4. When cooking cover your pans with a lid to reduce moisture. Also have an opened window and use the fan. Don't turn off the fan or close the window as soon as you finish cooking - leave it on for 15-20 minutes afterwards to clear the air.
5. Similar to when cooking in the kitchen, when you are taking a shower or a bath open the window to get rid of the steam that is created when running warm water in a cold environment and close the door to the bathroom to contain the moisture. This will help reduce the amount of condensation throughout your apartment.

6. Wipe down the surfaces in the bathroom and kitchen when you have been cooking or taking a shower to remove any moisture that has settled on the surface.
7. Do not overfill your bedroom closets and kitchen cupboards to allow for increased ventilation.
8. Make sure that your furniture is away from the walls so that air can move around the rooms.
9. When using a room, such as a living room, open a window slightly to improve the ventilation in the room. Breathing is a major cause of condensation so this will help to improve the ventilation.
10. Adequate ventilation is essential to allow the moisture dissipate before it turns into condensation. Using the fan, opening the window in the bathroom and in the living room can improve the humidity levels and prevent condensation.

Lease Agreement

Condition of Premises

Tenant agrees to: (1) keep the Premises clean and sanitary and in good repair and, upon termination of the tenancy, to return the Premises to Owner in a condition identical to that which existed when Tenant took occupancy, except for ordinary wear and tear; (2) immediately notify Owner of any defects or dangerous conditions in and about the Premises of which they become aware; and (3) reimburse Owner, on demand by Owner, for the cost of any repairs to the Premises damaged by Tenant or Tenant's guests or invitees through misuse or neglect.

Appliances and Fixtures

Tenant acknowledges that all appliances, window and floor coverings, attached light fixtures, and other attached or semi-attached items are the property of Owner.

Pets

Only Approved Pets are allowed on or about the Premises. Owner may require a photo of all Approved Pets. No other animals are allowed even temporarily or with a guest, without Owner's prior written consent, excepting guide, service or signal dogs pursuant to California Civil Code Sections 54.1 and 54.2. Stray animals shall not be kept or fed in or around the Building. Strays can be dangerous and Owner must be notified immediately of any strays in or around the Building.

Approved Pets are not permitted outside Tenant's unit unless on a leash. Tenant agrees to immediately clean up any defecation in a sanitary manor. If Tenant fails to prevent any infestations of fleas, ticks, or other creatures, Tenant may be charged for cleaning, de-fleaing, deodorizing or shampooing any portion of the building or Premises. Tenant shall not permit the pets to cause any discomfort, annoyance, nuisance, or in any other way inconvenience any other Tenant. Any "mess" created by the Pet(s) shall immediately be cleaned up by Tenant. Tenant shall be liable to Owner, and shall defend Owner, hold Owner harmless, and indemnify Owner for all injuries, damages, expenses, losses or obligations of any kind incurred by or in connection with the pet.

Trash

Tenant agrees to dispose of their ordinary household trash by placing it in the Waste Management containers for periodic collection. Tenant agrees to dispose of extraordinary trash, such as damaged furniture, broken appliances and the like, by immediately hauling it to the dump themselves or by paying someone else to remove it. In the event that Tenant's trash is left outside the Premises, Owner will arrange to have it removed at Tenant's expense.

Owner's Access

California law allows Owner to enter the Premises for certain purposes during normal business hours. Owner will provide written notice to Tenant prior to entering the Premises whenever required by state law (Civil Code Section 1954).

Extended Absences

Tenant agrees to notify Owner in the event that Tenant will be away from the Premises for 14 consecutive days or more. During each absence, Owner may enter the Premises at times reasonably necessary to maintain the property and inspect for damage and needed repairs.

Quiet Enjoyment

Tenant will be entitled to quiet enjoyment of the Premises. Tenant and Tenant's guests or invitees will not use the Premises or adjacent areas in such a way as to: (1) violate any law or ordinance, including laws prohibiting the use, possession or sale of illegal drugs; (2) commit waste or nuisance; or (3) annoy, disturb, inconvenience or interfere with the quiet enjoyment and peace and quiet of any other tenant or nearby resident.

Repairs and Alterations

Tenant will not, without Owner's prior written consent, alter, re-key or install any locks to the Premises or install or alter any burglar alarm system. Tenant will provide Owner with a key or keys capable of unlocking all such re-keyed or new locks as well as instructions on how to disarm any altered or new burglar alarm system.

Except as provided by law or as authorized by the prior written consent of Owner, Tenant will not make or allow to be made any installation or modification of cable or telephone wiring, decorations (such as painting and wallpapering), alterations, or repairs (inclusively, "Changes") to the Premises. Tenant agrees to pay all costs of correcting any unauthorized Changes.

Financial Responsibility

Tenant agrees to accept financial responsibility for any loss or damage to personal property belonging to Tenant and Tenant's guests and invitees caused by theft, fire or any other cause. Owner assumes no liability for any such loss. Owner recommends that Tenant obtain a renter's insurance policy from a recognized insurance firm to cover Tenant's liability, personal property damage and damage to the Premises.

Water-filled Furniture

No waterbed or other item of water-filled furniture will be kept on the Premises.

Smoke Detectors

The Premises are equipped with functioning smoke detection devices. Tenant will be responsible for testing the devices weekly and immediately reporting any problems, maintenance or need for repairs to Owner. Tenant will not remove their batteries or otherwise disable them.

Termination

The tenancy may be terminated by Tenant by serving a 30-day written notice of termination upon Owner, and by Owner by serving a 30-day written notice of termination upon Tenant if Tenant has been in possession of the Premises for less than one year, or by serving a 60-day written notice of termination upon Tenant if Tenant has been in possession of the Premises for one year or longer. Any termination notice is subject to applicable local rent control ordinances and regulations. If the Premises are damaged by fire, flood, earthquake or any other cause so as to render them uninhabitable and therefore destroyed, the tenancy is terminated.

I have reviewed this page MC (Tenant initials)

RESIDENT POLICIES / "HOUSE RULES" ADDENDUM

This document is an Addendum and is part of the Rental or Lease Agreement, dated _____ day of Sept, 2011
(Day) (Month) (Year)
Between Don Buffell (Name of Owner/Agent) (Owner/Agent) and _____ (Resident) for the

premises located at: ^(And all other occupants in possession) 3830 Mayhelle Ave Unit 10 (if applicable)
City Oakland, California Zip 94619

GENERAL

- New policies and rules or amendments to this document may be adopted by Owner/Agent upon giving 30 days' notice in writing to Resident.
- Guests who stay more than 7 days in a 1 month/year (circle one) period constitutes a breach of the Rental/Lease Agreement. At the discretion of the Owner/Agent, guest may be required to go through the application process and, if approved, must sign a Rental/Lease Agreement.
- Resident may be assessed a charge for the actual costs, including out of pocket expenses, incurred by the Owner/Agent for any lock-out.
- Resident is responsible for any violation of these rules by Resident's guest(s).

NOISE AND CONDUCT

- Resident shall not make or allow any excessive noise in the unit nor permit any actions which will interfere with the rights, comforts or conveniences of other persons.
- Resident shall refrain from playing musical instruments, television sets, stereos, radios, and other devices at a volume which will disturb other persons.
- Resident shall refrain from activities and conduct outside of the unit (in common areas, parking areas, or recreational facilities) which are likely to annoy or disturb other persons.
- Resident shall refrain from creating, or allowing to be created, any noise that is disturbing to other residents between the hours of 10 p.m. and 8 a.m.

CLEANLINESS AND TRASH

- Resident shall keep the unit clean, sanitary and free from objectionable odors at all times.
- Resident shall ensure that papers, cigarette butts and trash are placed in appropriate receptacles so that litter is not created on or about Resident's unit.
- Resident shall ensure that trash and other materials are not permitted to accumulate so as to cause a hazard or be in violation of any health, fire or safety ordinance or regulation.
- Resident shall ensure that garbage is not permitted to accumulate and that it is placed on a daily basis in the trash containers provided for that purpose. Resident shall ensure that large boxes are broken apart before being placed in the trash containers. Resident shall be responsible, at Resident's expense, for hauling to the dump those items too large to fit in the trash containers.
- Resident shall ensure that furniture is kept inside the unit and that unsightly items are kept out of view.
- Resident shall refrain from leaving articles in the hallways or other common areas.
- Resident shall refrain from shaking or hanging clothing, curtains, rugs, and other coverings and cloths outside of any window, ledge, or balcony.
- Resident shall refrain from disposing of any combustible or hazardous material in trash containers or bins.



Form provided by the East Bay Rental Housing Association®
www.ebrha.com
Form Resident Policies and "House Rules" Addendum© (07/11)



SAFETY/SECURITY

- o Security is the responsibility of each Resident and each guest. Owner/Agent assumes no responsibility or liability, unless otherwise provided by law, for Resident's and guests' safety and security, or for injury or damage caused by the criminal acts of other persons.
- o Resident should ensure that all doors are locked during Resident's absence. Resident must notify Owner/Agent if locks become inoperable.
- o Resident should ensure that all appliances are turned off before departing from the premises.
- o When leaving for an extended period, Resident should notify Owner/Agent how long Resident will be away.
- o Prior to any planned absence from the unit, Resident shall give Owner/Agent authority to allow entry to the unit to any person or provide Owner/Agent with the name of any person or entity permitted by Resident to enter the unit.
- o Resident shall refrain from smoking in bed.
- o Resident shall refrain from using or storing gasoline, cleaning solvent or other combustibles in the unit.
- o Resident shall ensure that no personal belongings, including bicycles, play equipment or other items shall be left unattended in the halls, stairways or about the building.

MAINTENANCE, REPAIRS AND ALTERATIONS

- o Resident shall advise Owner/Agent of any items requiring repair, such as light switches or dripping faucets. Resident shall make repair requests as soon after the defect is noted as is practical.
- o Resident shall refrain from making service requests directly to maintenance personnel unless Resident is directed to do so by Owner/Agent.
- o Resident shall refrain from making any alterations or improvements to the unit without the consent of Owner/Agent.
- o Resident shall refrain from using aluminum foil as a window covering and shall obtain the approval of Owner/Agent before using any window covering visible from the exterior of the building.
- o Costs of repair or clearance of stoppages in waste pipes or drains, water pipes or plumbing fixtures caused by Resident's negligence or improper usage are the responsibility of the Resident. Payment for corrective action must be paid by Resident on demand.

PARKING

- o Number of parking spaces assigned to Resident's unit 1 space. Only one vehicle may be parked in each space.
- o Resident shall only use assigned parking spaces and shall ensure that guests park only in unassigned areas or designated guests parking areas. Resident shall ensure that posted and designated fire zones or "No Parking" areas remain clear of vehicles at all times. Resident shall refrain from parking in unauthorized areas or in another resident's designated parking space. (Vehicles parked in unauthorized areas or in another Resident's space may be towed away at the vehicle owner's expense.)
- o Only currently registered vehicles may be parked on the property. A vehicle that lacks an engine, transmission, wheels, tires, doors, windshield, or any other major part or equipment necessary to operate safely on the highways, is subject to tow under California Vehicle Code 22658. Vehicles parked in violation of local laws/ordinance are subject to tow.

The undersigned Resident(s) acknowledges(s) having read and understood the foregoing.

10/11/11 Michele Conn _____ _____
 Date Resident Date Resident
 _____ _____ _____ _____
 Date Resident Date Resident
Sept 1, 2011 Don Duffell
 Date Owner/Agent



Form provided by the East Bay Rental Housing Association®
 www.ebrha.com
 Form Resident Policies and "House Rules" Addendum© (07/11)



000073

MOLD AND MILDEW ADDENDUM

Resident(s) Name Michelle Concha
 for the premises located at 3630 Montezuma Ave Unit # _____ (if applicable),
 City Oakland, California Zip 94619

The purpose of this addendum is to provide information and guidelines regarding the potential for mold and mildew growth in and around the dwelling unit.

Due to high humidity and/or coastal conditions, dwellings in the region display an increased possibility of developing mold and mildew. Mold and mildew are found virtually everywhere in our environment (indoors, outdoors, and in both new and old structures), and cannot be eliminated. Also, there is conflicting scientific evidence as to the amount of mold and mildew that can lead to adverse health consequences. However, leading causes of indoor mold and mildew growth (such as excess moisture) can often be eliminated by undertaking appropriate precautions. Therefore, Resident agrees to all of the following statements, terms and conditions in entering into his/her Rental Agreement.

Acknowledgement of Risk: Resident acknowledges that mold and mildew risks exist and assumes responsibility for any personal injuries or property damage caused by mold or mildew.

Notice of Problems: Resident shall immediately notify Landlord of any moisture, standing water or water intrusion of any kind, or mold conditions in order to provide Landlord an opportunity to evaluate the conditions and/or to make recommendations regarding appropriate actions. Failure of the Resident to comply with this section may lead to termination of tenancy or liability for increased costs of repairs.

Resident Obligations: The Resident shall be solely responsible for properly ventilating the premises and exercising moisture control precautions, including, without limitation, performing the following obligations:

1. Ventilate the Premises and Maximize Air Circulation as Follows:
 - a. Cooking: Use the fan above the stove or open a window slightly.
 - b. Washing/Drying Clothes: Use a fan in the washing/drying area, or open a window slightly.
 - c. Bathing: Use bathroom fans while bathing, or open a window slightly. When done, hang towels and bathmats to permit air drying.
 - d. Open windows when the weather permits and humidity is below 50%
 - e. Do not place furniture against walls.
 - f. Open closet doors.
 - g. Do not leave windows open and/or unattended. Doing so poses a safety risk.
2. Avoid Unnecessary Creation of Moisture:
 - a. Do not keep an excessive number of house plants.
 - b. Avoid the use of fish tanks.
 - c. Do not cook for extended periods of time.
 - d. Do not wash or dry clothes for extended periods of time.
3. Regularly Clean the Premises:
 - a. Clean, vacuum and/or mop kitchens, bathrooms, carpets, floors, and all other portions of the premises on a regular basis so as to avoid the accumulation of dirt and debris
 - b. Remove visible moisture accumulation from floors, walls, ceilings, windows and other surfaces as soon as possible.
 - c. Immediately clean up and dry any water that spills from any water source.
 - d. Utilize mold killing products whenever possible, provided they do not damage the premises.

Form provided by the East Bay Rental Housing Association®

www.ebrha.com

Form Mold and Mildew Addendum© (06/11)



000074

- e. Immediately remove any visible mold or mildew utilizing one cup bleach in one gallon of water. Wear gloves during cleanup, do not spread the mold, only work in adequately ventilated areas, and do not undertake such cleanup if the same is hazardous to your health, the premises, and/or any personal property or fixtures.
 - f. Regularly check and clean the window tracks and keep free of condensation.
4. Maintain Proper Temperatures:
- a. Maintain indoor temperatures between 50 and 70 degrees.
 - b. If you must use a portable space heater indoors, only use electric space heaters.
 - c. Use a dehumidifier during humid months.
5. Immediately Notify Landlord of Problems If You Discover Any of The Following Problems:
- a. Any evidence of a water leak, running toilets, or excessive moisture
 - b. Any evidence of mold or mildew-like growth that cannot be removed by simply applying a common household cleaner and wiping the area.
 - c. Any failure or malfunction in the heating, ventilation, air conditioning, or laundry systems
 - d. Any inoperable doors or windows.
6. Additional Precautions: The foregoing list is not intended to be exhaustive. Instead, it is intended to provide minimum standards of compliance and examples as to the Resident's required conduct.
7. Damages: Resident understands and agrees that Resident shall be responsible for damages and injuries to persons and/or property resulting from Residents failure to perform any of the enumerated actions, and that such failures shall further constitute a material non-compliance with the rental agreement affecting health.

Resident hereby acknowledges receipt of all state-required mold addendums.

I acknowledge receipt of a copy hereof:

10/1/11
Date

Date

Date

10/1/11
Date

Date

Resident

Resident

Resident

M.A. Duffell
Resident

Owner/Agent



Feb 26, 2015

Unlawful Detainer, 3830 Maybelle Ave. #1, Oakland CA 94619

Joan Duffield, Plaintiff,

Micheline Comeaux, Defendant

Attached is additional information regarding the tenancy of Micheline Comeaux, breach of her lease by the presence of her pit bull, her history of disturbing other tenants and neighbors and her total lack of response and compliance. She has shown, over time, continual disregard for other tenants at 3830 Maybelle Ave., both neighboring properties, and her lease despite repeated written warnings and notices. In fact, when I contacted other tenants to warn them that there was a pit bull on the property I was informed that many of them had seen the dog but had not reported it to me for fear of retaliation from Ms. Comeaux and her boyfriend. The fear of retaliation was also why no one has complained about the driveway being blocked and why the letters verifying the presence of the dog are *anonymous*.

Letters from 4 tenants confirming the presence of Ms. Comeaux's pit bull over months and continued blocking of driveway by parking a car at the front of the 12' driveway so *none* of the other tenants can get in or out of their parking places

Picture of pit bull in her yard

2013 letter to tenant concerning repeated blocking of driveway

2013 complaint from neighboring property regarding hostile and aggressive behavior by Ms. Comeaux and boyfriend toward neighbor and letter to Ms. Comeaux

2014 complaint from other neighboring property regarding multiple incidences of Ms. Comeaux's garbage being thrown into that neighbor's yard, notice etc.

Joan Duffield

Housing Provider



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Daniel Marc Bornstein (SBN 169159)
Daniel Cheung (SBN 264971)
Bornstein & Bornstein
507 Polk Street, Suite 410
San Francisco, CA 94102-3339
Telephone: (415) 409-7611
Facsimile: (415) 409-9345

FILED
ALAMEDA COUNTY

FEB 26 2015

CLERK OF THE SUPERIOR COURT
By [Signature] Deputy

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

- LIMITED CIVIL JURISDICTION -

Joan Duffield

Plaintiff,

vs.

Micheline Comeaux, et al.

Defendants.

Case Number: RG1575443

STIPULATION FOR ENTRY OF FUTURE JUDGMENT.

Plaintiff(s) Joan Duffield (hereinafter "plaintiff") an

defendant(s) Micheline Comeaux (hereinafter "defendant") hereby free

and voluntarily stipulate and agree as follows:

1. IT IS HEREBY STIPULATED THAT PLAINTIFF SHALL HAVE JUDGMENT AGAINST DEFENDANT IF DEFENDANT FAILS TO DO THE FOLLOWING:

a. Defendant represents and warrants that defendant is the ~~only~~ ^{w/ her minor children} tenant and/or occupant at the

at the ^{MD}

3830 Maybelle Ave, #1

subject premises, City of Oakland and County of Alameda, State of California:

(hereinafter "subject premises").

000077

Joan Duffield

From: resident Maybelle < >
Sent: Thursday, February 19, 2015 9:03 AM
To: Joan Duffield
Subject: Pit Bull @ Apt #1

Hi Joan,

I noticed a large Pit-bull in the backyard of the very first apartment of 3830 Maybelle Ave - Oakland Ca 94619 as early as September of 2014.

I also have experienced parking issues with regards to the same tenants. Both the woman and the husband tend to block the driveway totally disregarding the other tenants. It can be quite an inconvenience.

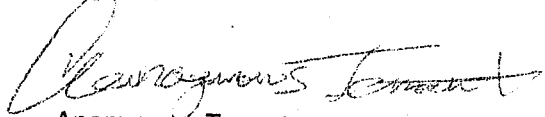
Sincerely,
Anonymous 3830 Maybelle Ave Resident

February 9, 2015

Dear Joan,

I am a tenant at 3830 Maybelle Avenue. This note is to confirm that I have seen the grey pit bull dog in the yard of Apartment #1 (I remember seeing the dog almost every day since early November 2014 until recently the dog has disappeared).

Regards,


Anonymous Tenant

Date 02/10/15

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3830 Maybelle ave. APT #1
Oakland Ca.

My name is Refugio Marco Rojas.
This letter is to verify that

I saw a dog when I came
to repair a leak in the pipe
for the dog

This happen on October 2014
and after that I saw the dog
many times

000080

January 27, 2015

I am a resident here at 3830 Mabelle Ave and a few months ago I noticed a puppy on the patio of unit #1

I didn't really think much about it, assuming that my neighbor had company and did not want to keep the dog or at that time "puppy" in the car.

Around Christmas time I heard a noise coming from the patio of unit #1 at night thinking it was a "raccoon" I continued on to my apartment but then the next day I noticed that it was a dog and I wanted to find out if dogs were now allowed because the last notice I thought all tenants received was that, dogs were not allowed here at this complex.

Lately I was informed that not only was the dog living there but it was also a pit bull and that's when I really became concerned. I was happy that my landlord did see the dog and stated to the tenant at unit #1 that not only are dogs not allowed; especially not a pit bull but that she would have to get rid of the dog at once.

I hope this can be resolved soon.

Anonymous

March 5, 2015

To: Micheline Comeaux, 3830 Maybelle Ave, Unit #1

From: Joan Duffield, Housing Provider

In the process of warning the other tenants that you were keeping a pit bull on the property I was told by 3 different tenants that you've had your guests park in the driveway blocking any entry to or exit from the property for all tenants. I was also advised that you were even rude when asked to move.

Your were warned about this before (see attached).

You are responsible for the actions of your guests that disturb the other tenants quite enjoyment of their homes as stated in your lease and addenda.

Blocking the driveway is a violation of your lease and a safety hazard because you are blocking a fire lane. Blocking the driveway in this manner is also a clear violation of the stipulation your signed on Feb 26, 2015 in the courtroom- page 2, item e., and subjects you to forfeiture of your lease and immediate eviction should it happen again.

Thank you for your cooperation.

October 16, 2013

To: Micheline Comeaux, 3830 Maybelle Ave, Unit #1

From: Joan Duffield, Housing Provider

Notice of Violation of Your Lease

It has come to my attention that your guest has been parking his car overnight in front of the mailboxes, thereby blocking the driveway. This is a violation of your lease not to mention a safety hazard and is not allowed.

According to a tenant who leaves early in the morning for work it happened twice in one week. The second time it happened was at 5:30 in the morning when she had to honk her horn to rouse your guest to move his car.

In addition any guest who stays more than 7 days in one month constitutes a breach of the lease agreement.

I take both of these violations very seriously and will be forced to take additional action if these violations continue, which may include initiating the eviction process.

June 21, 2014

To: Micheline Comeaux, 3830 Maybelle Ave, #1 Oakland CA

From: Joan Duffield, Housing Provider

I have received numerous complaints from the neighbor on the right-hand side of the building that someone has been throwing bags of garbage over the fence into her yard. I have been telling her that she must be mistaken.

Last Thurs she found another bag of garbage thrown over the fence which contained mail addressed to you. Whoever in your household is throwing the garbage over the fence must stop immediately.

Please advise me that you've taken care of this so I can notify our neighbors that it won't happen again.

Thank You.

Joan Duffield

Housing Provider, . . .

**Notice to Cease
(Oakland Municipal Code § 8.22.300, et seq.)**

TO [Tenants and all others in possession] at [address of rental unit]:

Michelle Cottant
at 3530 Mayalle Ave, Unit #1
Oakland 94619

NOTICE TO CEASE

Pursuant to the Just Cause for Eviction Ordinance (OMC §8.22.300) you are hereby notified that you are substantially violating the following material term(s) of your tenancy:

dumping garbage over the fence into neighbors
yard. per notice 6/24/14 thereby disturbing neighbor
(attach additional sheets, if needed) and creating a nuisance

Specifically, you are engaging in the following conduct [include date and time, if known]:

6/10, 6/16 & 6/26 through garbage over the fence
into neighbors yard. Neighbor found mail
addressed to you in garbage
(attach additional sheets, if needed)

Please take notice that you must correct the violation within 7 days of service of this letter. If you were personally given this notice, then you have 7 days after the date you were given the notice to correct the violation. If the notice was mailed, you have 12 days from the date of mailing to correct the violation. Should you fail to correct the violation within this time period, your landlord may bring an eviction action against you.

Copies of the Just Cause for Eviction Ordinance (O.M.C. §8.22.300) and implementing regulations, information on mediation services, lists of eviction counseling agencies, and legal services providers are available by contacting Oakland's Rent Adjustment Program, 250 Frank H. Ogawa Plaza, Fifth Floor, Oakland, CA 94612. Telephone: (510) 238-3721

Dated: 6/26/14

By: [Signature]
LANDLORD/LANDLORD'S AGENT

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From: kgspider@aol.com
Sent: 10/18/2013 11:51 AM
To:
Subject: Shattered Patio Door Incident

Hello, Joan:

An object, thrown by a child of your tenant, Micheline, 3830 Maybelle Ave., shattered the glass patio door of our condo owner at 3850 Maybelle Avenue. This incident destroyed the security of the unit and needed immediate remedying. The unit owner contacted a trusted contractor to begin repairs and got in touch with Micheline to request payment for the damages, with a repair cost of \$325.00.

In the beginning of the owner-Micheline conversation about details of the repair, Micheline apparently stated that she had a vendor who could do the repair for less money. Because of safety and security concerns (there was open access to the unit while the door was shattered and, by condo rules, contractor work on any of our units must be done by a licensed contractor), our owner wished to have the contractor he trusted do the repair.

While this conversation was going on, another guy suddenly stormed up and interjected himself into the exchange, saying, "This is the way it's going to be...!"

When our unit owner asked, "Who are you?", the reply was words to the effect of "...It doesn't matter who I am, and if you want any payment, it is going to be with our vendor, on our terms...!"
The man was rude, aggressive, and intimidating, and he obviously knew Micheline, who made no effort to remove him.

The manner in which this exchange had escalated from the initial polite request for damages suffered by an innocent party who was trying to get reimbursed for repair costs, to hostile aggression and rudeness, is very troubling to us as neighbors. We sincerely hope that it not be repeated, and we look forward to future cordial relations with all our neighbors.

If you wish any further information, please contact me. Thank you for your assistance in this matter.

Kathleen Shimmin
President, Maybelle Avenue Homeowners' Association

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Joan Duffield

From: Joan Duffield
Sent: Friday, June 16, 2017 8:37 AM
To: 'Mar Brooks'
Subject: 24 hour Notice to enter to inspect and repair window locks
Attachments: Unit #1 notice to enter june 16 2017.pdf

Importance: High

To: Micheline Comeaux
Subject: Window lock repairs

Attached is a 24 hour notice to enter so that your windows and be inspected and repairs made to any window locks that are not working . We will be there at 1 pm .

A notice is also posted on your door. Please respond in writing to this email or via text to

So I can have a record of any request for repairs, in the future all request for repairs should be made in writing to this email, joan@jduffield.com or via text message to
Then I will notify you in writing when the repairs will be made through 24 hour notice to enter.
Cuco will no longer be available for direct requests.

You could also leave a request for reapirs in my box but please text or leave a message since I check for mail in that box in frequently.

Thanks in advance for your cooperation.

Your Housing Provider,
Joan Duffield

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Notice of Intent to Enter Rental Premises

California Civil Code Section 1954

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MICHELINE COMEAUX

(Name of resident and all other occupants in possession)

("Resident") for the

premises located at: 3830 MAYBELLE AVE

(Address)

in 1 (if applicable) OAKLAND

(City)

California

94619

(Zip)

("Premises")

EASE TAKE NOTICE that on JUNE 17 2017 (date), at approximately 1-3pm (time) I during normal business hours, the Owner/Agent of the Premises, will enter the Premises for the following reason(s) [check all that apply]:

To make or arrange for the following necessary or agreed upon repairs, decorations, alterations or improvements:

repair window locks

To supply the following necessary or agreed upon service(s):

To show the Premises to prospective or actual purchasers, mortgagees or tenants.

Notice of entry based on the above, may be given verbally if Resident has been notified in writing of the Premises being for sale within 120 days of the notice. Otherwise, a 24 hour notice is considered reasonable. Owner/Agent shall leave written evidence of the entry inside the unit. (Please fill out Notice of Entry below and leave a signed copy of this Notice in the Premises).

To show the Premises to workers, or contractors performing repairs or improvements.

To install, repair, test, or maintain smoke detectors pursuant to California Health & Safety Code Section 13.7(e).

To inspect the installation of a waterbed or other furniture with liquid filling material and/or to insure its conformity with California Civil Code Section 1940.5(f).

To perform a move-out inspection requested by Resident pursuant to California Civil Code Section 1950.5(f)(1). 3 hour written notice of entry will constitute reasonable notice for this type of entry.

Pursuant to a court order.

You wish to be present or if you have any questions, please contact Owner/Agent at:

Name: Loan Duffield

Telephone: (text)

