

**HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD**  
**FULL BOARD SPECIAL MEETING**  
**January 12, 2023**  
**5:00 P.M.**  
**Meeting Will Be Conducted Via Zoom**

**AGENDA**

**PUBLIC PARTICIPATION**

The public may observe and/or participate in this meeting in many ways.

**OBSERVE:**

• To observe, the public may view the televised video conference by viewing KTOP channel 10 on Xfinity (Comcast) or ATT Channel 99 and locating City of Oakland KTOP – Channel 10

• To observe the meeting by video conference, please click on the link below:  
When: Jan 12, 2023 5:00 PM Pacific Time (US and Canada)

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/86931432318>

Or One tap mobile :

US: +16694449171,,86931432318# or +16699009128,,86931432318#

Or Telephone:

Dial(for higher quality, dial a number based on your current location):

US: +1 669 444 9171 or +1 669 900 9128 or +1 346 248 7799 or +1 719 359 4580 or +1 253 205 0468 or +1 253 215 8782 or +1 507 473 4847 or +1 564 217 2000 or +1 646 558 8656 or +1 646 931 3860 or +1 689 278 1000 or +1 301 715 8592 or +1 305 224 1968 or +1 309 205 3325 or +1 312 626 6799 or +1 360 209 5623 or +1 386 347 5053

Webinar ID: 869 3143 2318

International numbers available: <https://us02web.zoom.us/j/86931432318>

**COMMENT:**

There are two ways to submit public comments.

• To comment by Zoom video conference, click the “Raise Your Hand” button to request to speak when Public Comment is being taken on an eligible agenda item at the beginning of the meeting. You will be permitted to speak during your turn, allowed to comment, and after the allotted time, re-muted. Instructions on how to “Raise Your Hand” are available [here](#).

• To comment by phone, please call on one of the above listed phone numbers. You will be prompted to “Raise Your Hand” by pressing “\*9” to speak when Public Comment is taken. You will be permitted to speak during your turn, allowed to comment, and after the allotted time, re-muted. Please unmute yourself by pressing “\*6”.

If you have any questions, please email [hearingsunit@oaklandca.gov](mailto:hearingsunit@oaklandca.gov).

## HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD SPECIAL MEETING

1. CALL TO ORDER
2. ROLL CALL
3. PUBLIC COMMENT
  - a. Comments on all agenda items will be taken at this time. Comments for items not on the agenda will be taken during open forum.
4. CONSENT ITEMS
  - a. Renewal: Adoption of AB 361 Resolution (pp. 4-6)
  - b. Approval of Board Minutes, 10/27/2022 (pp. 7-12)
5. APPEALS\*
  - a. T22-0111, Williams v. Dawson (pp. 13-76)
  - b. L14-0065, 525-655 Hyde Street CNML Properties, LLC (pp. 77-581)
  - c. T22-0078, Bolanos v. Wu (pp. 582-633)
6. INFORMATION AND ANNOUNCEMENTS
7. SCHEDULING AND REPORTS
8. OPEN FORUM
9. ADJOURNMENT

*Note: Appeal parties do not need to comment on their case during public comment or open forum.*

---

*\*Staff appeal summaries will be available on the Rent Adjustment Program's website and the City Clerk's office at least 48 hours prior to the meeting pursuant to O.M.C. 2.20.070.B and 2.20.090*

As a reminder, alternates in attendance (other than those replacing an absent board member) will not be able to take any action, such as with regard to the consent calendar.

### **Accessibility:**

Contact us to request disability-related accommodations, American Sign Language (ASL), Spanish, Cantonese, Mandarin, or another language interpreter at least five (5) business days before the event. Rent Adjustment Program (RAP) staff can be contacted via email at [RAP@oaklandca.gov](mailto:RAP@oaklandca.gov) or via phone at (510) 238-3721. California relay service at 711 can also be used for disability-related accommodations.

Si desea solicitar adaptaciones relacionadas con discapacidades, o para pedir un intérprete de en Español, Cantonés, Mandarín o de lenguaje de señas (ASL) por

favor envíe un correo electrónico a [RAP@oaklandca.gov](mailto:RAP@oaklandca.gov) o llame al (510) 238-3721 o 711 por lo menos cinco días hábiles antes de la reunión.

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 [RAP@oaklandca.gov](mailto:RAP@oaklandca.gov) 或致電 (510) 238-3721 或711 California relay service.

---

# OAKLAND HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD (HRRRB)

RESOLUTION NO. \_\_\_\_\_

---

**ADOPT A RESOLUTION DETERMINING THAT CONDUCTING IN-PERSON MEETINGS OF THE HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD (HRRRB) AND ITS COMMITTEES WOULD PRESENT IMMINENT RISKS TO ATTENDEES' HEALTH, AND ELECTING TO CONTINUE CONDUCTING MEETINGS USING TELECONFERENCING IN ACCORDANCE WITH CALIFORNIA GOVERNMENT CODE SECTION 54953(e), A PROVISION OF AB-361.**

**WHEREAS**, on March 4, 2020, Governor Gavin Newsom declared a state of emergency related to COVID-19, pursuant to Government Code Section 8625, and such declaration has not been lifted or rescinded. *See* <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf>; and

**WHEREAS**, on March 9, 2020, the City Administrator in their capacity as the Director of the Emergency Operations Center (EOC), issued a proclamation of local emergency due to the spread of COVID-19 in Oakland, and on March 12, 2020, the City Council passed Resolution No. 88075 C.M.S. ratifying the proclamation of local emergency pursuant to Oakland Municipal Code (O.M.C.) section 8.50.050(C); and

**WHEREAS**, City Council Resolution No. 88075 remains in full force and effect to date; and

**WHEREAS**, the Centers for Disease Control (CDC) recommends physical distancing of at least six (6) feet whenever possible, avoiding crowds, and avoiding spaces that do not offer fresh air from the outdoors, particularly for people who are not fully vaccinated or who are at higher risk of getting very sick from COVID-19. *See* <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>; and

**WHEREAS**, the CDC recommends that people who live with unvaccinated people avoid activities that make physical distancing hard. *See* <https://www.cdc.gov/coronavirus/2019-ncov/your-health/about-covid-19/caring-for-children/families.html>; and

**WHEREAS**, the CDC recommends that older adults limit in-person interactions as much as possible, particularly when indoors. *See* <https://www.cdc.gov/aging/covid19/covid19-older-adults.html>; and

**WHEREAS**, the CDC, the California Department of Public Health, and the Alameda County Public Health Department all recommend that people experiencing COVID-19 symptoms stay home. *See* <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/steps-when-sick.html>; and

**WHEREAS**, persons without symptoms may be able to spread the COVID-19 virus. *See* <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>; and

**WHEREAS**, fully vaccinated persons who become infected with the COVID-19 Delta variant can spread the virus to others. *See* <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated.html>; and

**WHEREAS**, the City's public-meeting facilities are indoor facilities that do not ensure circulation of fresh / outdoor air, particularly during periods of cold and/or rainy weather, and were not designed to ensure that attendees can remain six (6) feet apart; and

**WHEREAS**, holding in-person meetings would encourage community members to come to City facilities to participate in local government, and some of them would be at high risk of getting very sick from COVID-19 and/or would live with someone who is at high risk; and

**WHEREAS**, in-person meetings would tempt community members who are experiencing COVID-19 symptoms to leave their homes in order to come to City facilities and participate in local government; and

**WHEREAS**, attendees would use ride-share services and/or public transit to travel to in-person meetings, thereby putting them in close and prolonged contact with additional people outside of their households; and

**WHEREAS**, on October 14 and December 9, 2021; January 27, February 10, March 10, April 14, May 12, June 9, July 28, September 8, and October 27, 2022, the Housing, Residential Rent and Relocation Board (HRRRB) adopted a resolution determining that conducting in-person meetings would present imminent risks to attendees' health, and electing to continue conducting meetings using teleconferencing in accordance with California Government Code Section 54953(e), a provision of AB-361; now therefore be it:

**RESOLVED:** that the Housing, Residential Rent and Relocation Board (HRRRB) finds and determines that the foregoing recitals are true and correct and hereby adopts and incorporates them into this resolution; and be it

**FURTHER RESOLVED:** that, based on these determinations and consistent with federal, state and local health guidance, the Housing, Residential Rent and Relocation Board (HRRRB) renews its determination that conducting in-person meetings would pose imminent risks to the health of attendees; and be it

**FURTHER RESOLVED:** that the Housing, Residential Rent and Relocation Board (HRRRB) firmly believes that the community's health and safety and the community's right to

participate in local government, are both critically important, and is committed to balancing the two by continuing to use teleconferencing to conduct public meetings, in accordance with California Government Code Section 54953(e), a provision of AB-361; and be it

**FURTHER RESOLVED:** that the Housing, Residential Rent and Relocation Board (HRRRB) will renew these (or similar) findings at least every thirty (30) days in accordance with California Government Code section 54953(e) until the state of emergency related to COVID-19 has been lifted, or the Housing, Residential Rent and Relocation Board (HRRRB) finds that in-person meetings no longer pose imminent risks to the health of attendees, whichever occurs first.

APPROVED BY THE FOLLOWING VOTE

AYES:

NOES:

ABSENT:

ABSTENTION:

\_\_\_\_\_  
Date:

ATTEST

\_\_\_\_\_  
BRIANA LAWRENCE-MCGOWAN  
Rent Adjustment Program, Housing &  
Community Development Department

**HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD  
FULL BOARD SPECIAL MEETING**

**October 27, 2022**

**5:00 P.M.**

**VIA ZOOM CONFERENCE**

**OAKLAND, CA**

**MINUTES**

**1. CALL TO ORDER**

The Board meeting was administered via Zoom by H. Grewal, Housing and Community Development Department. He explained the procedure for conducting the meeting. The HRRRB meeting was called to order by Chair Ingram at 5:03 p.m.

**2. ROLL CALL**

<b>MEMBER</b>	<b>STATUS</b>	<b>PRESENT</b>	<b>ABSENT</b>	<b>EXCUSED</b>
R. NICKENS, JR.	Tenant			X
Vacant	Tenant			
J. DEBOER	Tenant Alt.	X		
M. REAGAN	Tenant Alt.			X
D. INGRAM	Undesignated	X		
C. OSHINUGA	Undesignated	X		
E. TORRES	Undesignated	X		
Vacant	Undesignated Alt.			
Vacant	Undesignated Alt.			
T. WILLIAMS	Landlord	X		
Vacant	Landlord			
Vacant	Landlord Alt.			
K. SIMS	Landlord Alt.	X		

**Staff Present**

Kent Qian

Harman Grewal

Linda Moroz

Briana Lawrence-McGowan

Mike Munson

Deputy City Attorney

Business Analyst III (HCD)

Hearing Officer (RAP)

Administrative Analyst I (RAP)

KTOP

**3. PUBLIC COMMENT**

- a. No members of the public spoke during public comment.

**4. CONSENT ITEMS**

- a. Renewal—Adoption of AB 361 Resolution & Approval of Board Minutes, 9/22/2022: Chair Ingram moved to renew the adoption of AB 361 resolution and to approve the Board Minutes from 9/22/2022. Member J. deBoer seconded the motion.

The Board voted as follows:

**Aye:** D. Ingram, C. Oshinuga, E. Torres, J. deBoer, T. Williams, K. Sims  
**Nay:** None  
**Abstain:** None

The motion and minutes were approved.

**5. APPEALS\***

- a. L22-0028, Richerson v. Tenants

Appearances: Robert Richerson Owner

This case involved an owner petition for a certificate of exemption for properties on Magnolia Street. The Hearing Officer granted the petition based on evidence that the two units were converted from non-residential use to residential use without any evidence of prior residential activity. However, the Hearing Officer also decided that even though the properties are exempt from the Rent Ordinance, they were not exempt from the Just Cause Ordinance because they were not built from the ground up, which is required for an exemption from the Just Cause Ordinance. Since the property is not exempt from the Just Cause Ordinance, the Hearing Officer also decided that the property is subject to the rent program service fee. The owner appealed the decision and argues that he was not aware that the hearing would decide whether the property was subject to the Just Cause Ordinance, and that even though the properties were converted, they should be considered built from the ground up according to the zoning laws.

The owner contended that he tried to contact RAP to get information for the exemption and that he was told that all he had to do was present an occupancy permit. The owner argued that the Hearing Officer never mentioned nor asked whether the units were converted units, converted with their existing structure, or if they were built from the ground up. The owner contended that the Hearing



Officer did mention that converting a commercial property may still require compliance with the Just Cause for Eviction Ordinance and payment of the rent program service fee. The owner argued that the garage outline in back of the property was never commercial, it was an accessory storage unit, and that zoning allowed him to keep the outline of the garage because of the historic nature of the property. The owner contended that the construction was from the ground up—which included a new foundation, new walls, and a new two-story addition which was attached to the property, and made it into a brand new structure. The owner argued that even though part of the structure is on the footprint of the old garage, zoning gave approval, and that this complies with ground up construction. The owner contended that he didn't convert the existing structure, it was all brand new, and that it was zoning's determination that he could do that.

The owner contended that the church used to be on the City's historical list, that it was considered commercial and that he converted it into residential. The owner argued that the Hearing Officer quoted that a new construction exemption from the Just Cause for Eviction Ordinance does not apply to units that are not newly constructed from the ground up or to units that were created as a result of rehabilitation improvement or conversion of a commercial space—however, the garage is not a commercial space and was built from the ground up. The owner contended that he was willing to accept the rent program service fee on what was previously the church, but argued that it is also a historical unit in the City of Oakland, made from brick, and that he completed extensive structural work on the inside of the building because he couldn't tear down the brick walls and had to maintain them exactly as they were. The owner contended that a new foundation and walls were put up on the inside of the building and that the exterior walls are no longer the structure—they are held up by the new structure, which were completed as ground up construction. The owner argued that based on building codes, he maintained the historical parts of the property, but completed ground up construction of a new structure.

After parties' arguments, questions to the parties, and Board discussion, Vice Chair Oshinuga moved to affirm the Hearing Officer's decision. Member E. Torres seconded the motion.

The Board voted as follows:

**Aye:** D. Ingram, C. Oshinuga, E. Torres, J. deBoer, T. Williams, K. Sims  
**Nay:** None  
**Abstain:** None

The motion was approved.

b. T22-0089, Terry v. Momentus II, LLC

Appearances:	Chela Terry	Tenant
	Laura Bloom	Tenant Representative
	Guru Prabhu	Owner

This case involved a tenant petition for decreased housing services and to contest a certificate of exemption. On July 14, 2022, the Rent Adjustment Program (RAP) issued a notice of incomplete petition, noting various deficiencies in the petition—including lack of a proof of service, lack of a statement that the tenant was current on rent or lawfully withholding rent, the petition was not completed or signed under oath, and the decreased housing services claim did not include a statement of what services were reduced or eliminated. The notice gave 30 days for the petitioner to respond and indicated that the failure to respond would result in dismissal. On August 19, 2022, the Hearing Officer dismissed the petition on the grounds that the tenant failed to respond to the notice of incompleteness petition. The tenant appealed the decision, arguing that she responded to the notice of incomplete petition by sending documents to RAP via priority mail on August 11, 2022, with an expected delivery date of August 12, 2022, which was within the 30 days.

The tenant contended that she is appealing the dismissal of this case, that she had to file restraining orders on her neighbors, and that she had restraining order hearings around that time, which caused a delay. The tenant argued that her neighbors are committing hate crimes and stalking her family, that the case dismissal will harm her and her children, and that her rights will be violated. The tenant contended that her mail was not acknowledged as being received and that her case was dismissed even though documents should have been received by RAP on August 12<sup>th</sup>. The tenant argued that she provided a complete petition and proof of service within 30 days, and that she has a priority mail tracking number dated August 11<sup>th</sup>. The tenant contended that 37 to 40 pages should have been delivered to RAP, which included the proof of service and statements of why the rent was behind, which included her signature.

The tenant contended that there are ongoing decreased housing services and that the whole bathroom ceiling came down in March 2022, which was two days after code enforcement inspected the property. The tenant argued that code enforcement came by briefly, only checked the apartment upstairs, and that the upstairs tenant hid the damage that was causing the ceiling to leak with sewage, toilet water, and bathwater. The tenant argued that the tenant upstairs is suffering from mental illness and took her caulking from around her tub, which makes water go in between the walls—and that video evidence was sent to RAP.

The owner contended that the tenant is not current on rent, that the property was acquired in February 2021, and that there have been some hostile issues between some of the tenants. The owner contended that since he is not a legal expert, he hired Alan Horowitz as his attorney, and that his attorney is in direct contact with the tenant. The owner argued that his attorney has made sure that every video and complaint received is noted, that he goes through each video, reviews the laws, city ordinances, and all of the rules and regulations, and then makes determinations. The owner contended that his attorney confirmed that there is no legal stand to vacate the other tenant, that they ensure complaints are addressed, and that they involve the right experts and make decisions regarding the complaints. The owner argued that he has e-mails and texts to confirm that the bathroom was repaired within 24 hours, and that when there was water leakage, it was taken care of. The owner contended that city inspectors looked at everything and did not find any violations and that he cannot just vacate somebody because of one person's complaints. The owner contended that they take complaints seriously, that city inspectors have come to the property three times, and that they have completed every repair. The owner argued that they are very meticulous in managing the property, and that the turn-around time is 24 to 48 hours for repairs.

After parties' arguments, questions to the parties, and Board discussion, Vice Chair Oshinuga moved to reverse the Hearing Officer's decision, to remand the case back to the Hearing Officer for a full hearing, and to allow the petitioner a reasonable amount of time to re-submit documents noted in the notice of incomplete petition prior to the hearing. Member K. Sims seconded the motion.

The Board voted as follows:

**Aye:** D. Ingram, C. Oshinuga, E. Torres, J. deBoer, T. Williams, K. Sims  
**Nay:** None  
**Abstain:** None

The motion was approved.

## 6. SCHEDULING AND REPORTS

- a. City Attorney Kent Qian mentioned that the governor announced that he intends to end the statewide declaration of emergency at the end of February 2023, which will prevent the Board from adopting AB 361 resolution to meet virtually; and that all Boards and Commissions will have to return to in-person meetings in March 2023.
- b. Chair Ingram announced that there will only be one HRRRB meeting in November due to the Thanksgiving holiday; and one meeting in December due to Christmas.

## **7. INFORMATION AND ANNOUNCEMENTS**

- a. Chair Ingram mentioned that Member deBoer is being appointed as a regular tenant representative and that another new member is being appointed as a tenant alternate. Chair Ingram also acknowledged that Member Hudson resigned.
- b. Chair Ingram reminded the Board that he sent out links for the CA mortgage relief program, which is still accepting applications for property owners behind on their mortgages and property taxes.

## **8. OPEN FORUM**

- a. James Vann from the Oakland Tenants Union spoke and stated the board's recommendation on landlord compliance with the rent registry went to the Community Economic Development Committee and is scheduled to go to City Council at their next meeting. Mr. Vann congratulated the Board on developing a set of rational guidelines in response to an issue and thanked them.

## **9. ADJOURMENT**

- a. The meeting was adjourned at 6:54 p.m.

## CHRONOLOGICAL CASE REPORT

Case No.: T22-0111

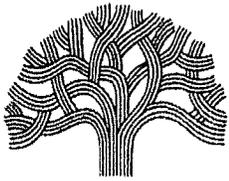
Case Name: Williams v. Dawson

Property Address: 548 37<sup>th</sup> Street, Oakland, CA 94609

Parties: Kevin Dawson (Owner)  
Robert Williams (Tenant)

### OWNER APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	June 29, 2022
Administrative Decision mailed	September 13, 2022
Owner Appeal filed	October 3, 2022
Tenant Response to Owner Appeal	October 19, 2022



CITY OF OAKLAND

# CITY OF OAKLAND RENT ADJUSTMENT PROGRAM

250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612-0243  
(510) 238-3721  
CA Relay Service 711  
[www.oaklandca.gov/RAP](http://www.oaklandca.gov/RAP)

For Rent Adjustment Program date stamp.

# RECEIVED

JUN 29 2022

OAKLAND RENT  
ADJUSTMENT PROGRAM

T22-0111

MF/AS

10/4

## TENANT PETITION

Please fill out this form as completely as you can. Use this form to contest a rent increase, seek a rent decrease, and/or contest an owner exemption from the Rent Adjustment Program. Failure to provide the required information may result in your petition being rejected or delayed. See the last pages of this petition packet ("Important Information Regarding Filing Your Petition") or the RAP website for more information. **CONTACT A HOUSING COUNSELOR TO REVIEW YOUR PETITION BEFORE SUBMITTING.** To make an appointment email [RAP@oaklandca.gov](mailto:RAP@oaklandca.gov).

### Rental Unit Information

37<sup>TH</sup> Street 548 Oakland, CA 94609  
Street Number Street Name Unit Number Zip Code

Move-in Date: JAN 1, 1997 Initial Rent at Move-In: \$ 600.00 Current Rent: \$ 866

Is your rent subsidized or controlled by a government agency (such as HUD or Section 8), other than Oakland Rent Adjustment Program? (See page 5 "Jurisdiction" for more information)

Yes  
 No  
 Not sure

Are you current on rent?  Yes (\*Note: You must be current on your rent or lawfully withholding rent in order to file a petition. Checking "No" without providing an adequate explanation may result in your petition being dismissed.)  
 No\*

If not current on rent, explain why: \_\_\_\_\_

When (if ever) did the property owner first provide you with the City form, NOTICE TO TENANTS OF THE RESIDENTIAL RENT ADJUSTMENT PROGRAM ("RAP Notice")?

I first received the RAP Notice on: DEC 2019  
 I was never provided with the RAP Notice  
 I do not remember if I ever received the RAP Notice

Case number(s) of any relevant prior Rent Adjustment case(s): \_\_\_\_\_

### Tenant Information (List each tenant petitioner in unit. If you need more space, attach additional sheet.)

Robert Williams  
First Name Last Name  
Mailing Address (if different from above): \_\_\_\_\_  
Primary Telephone: (510) 326-9189 Other Telephone: \_\_\_\_\_ Email: \_\_\_\_\_

\_\_\_\_\_  
First Name Last Name  
Mailing Address (if different from above): \_\_\_\_\_  
Primary Telephone: \_\_\_\_\_ Other Telephone: \_\_\_\_\_ Email: \_\_\_\_\_

### Tenant Representative (Check one): No Representative Attorney Non-Attorney

\_\_\_\_\_  
First Name Last Name Firm/Organization (if any)  
Mailing Address: \_\_\_\_\_  
Phone Number: \_\_\_\_\_ Email: \_\_\_\_\_

**Property Owner Information**

Property Owner  
 First Name: KEVIN Last Name: DAWSON  
 Company/LLC/LP (if applicable): PRIVATE INVESTMENT EQUITY LLC  
 Mailing Address: P.O. BOX 20599 OAKLAND, CA 94620  
 Phone Number: (510) 845-0777 Email: \_\_\_\_\_

Property Manager (if applicable)  
 First Name: \_\_\_\_\_ Last Name: \_\_\_\_\_ Name of Management Company: \_\_\_\_\_  
 Mailing Address: \_\_\_\_\_  
 Phone Number: \_\_\_\_\_ Email: \_\_\_\_\_

**GROUNDS FOR PETITION**

Select the grounds for this petition from the list below. Check all that apply. You must check at least one box. To contest a rent increase, select item(s) from Category A. If you have experienced a decrease in housing services and/or have issues with the condition of your unit, or are being charged for utilities in violation of the law, select item(s) from Category B. For more information on each of the grounds, see Oakland Municipal Code (O.M.C.) Sections 8.22.070 and 8.22.090 (Rent Adjustment Ordinance) and the corresponding Regulations. A copy of the Ordinance and Regulations are available here: [www.oaklandca.gov/resources/read-the-oakland-rent-adjustment-program-ordinance](http://www.oaklandca.gov/resources/read-the-oakland-rent-adjustment-program-ordinance).

A.	<b>Unlawful Rent Increase(s)</b> (Complete section A on page 3)	<input checked="" type="checkbox"/> (A1) I received a rent increase above the allowable amount.
		<input type="checkbox"/> (A2) I received a rent increase that I believe is unlawful because I was not given proper notice, was not properly served, and/or was not provided with the required RAP Notice ("Notice to Tenants of the Residential Rent Adjustment Program").
		<input type="checkbox"/> (A3) I received a rent increase and do not believe I should be required to pay it because a government agency has cited my unit for serious health, safety, fire, or building code violations. (You must attach a copy of the citation to your petition.)
B.	<b>Decreased Housing Services</b> (Complete section B on page 3)	<input type="checkbox"/> (B1) The property owner is providing me with fewer housing services than I previously received and/or I am being charged for services originally paid for by the owner. (Check this box for petitions based on bad conditions/failure to repair.)
		<input type="checkbox"/> (B2) I am being unlawfully charged for utilities.
C.	<b>Other</b>	<input type="checkbox"/> (C1) My rent was not reduced after a prior rent increase period for capital improvements.
		<input type="checkbox"/> (C2) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake.
		<input type="checkbox"/> (C3) The initial rent amount when I first moved in was unlawful because the property owner was not permitted to set the initial rent without limitation. O.M.C. § 8.22.080 (C).

**A. Unlawful Rent Increase(s)**  
 (Complete this section if any of the grounds for petition fall under category A, above)

**List all rent increases you wish to contest.** Begin with the most recent increase and work backwards. If you never received the RAP Notice, you can contest all past increases. See the "Important Information" page at the end of this petition packet for more information on time limits for contesting rent increases. If you need additional space, attach a separate sheet or an additional copy of this form.

- For petitions contesting a rent increase on the grounds that the unit has been cited by a government agency for serious health, safety, fire, or building code violations, **you must attach a copy of the citation** to your petition. Failure to attach a copy of the citation may result in your petition being dismissed.

Date received rent increase notice: (Month/Day/Year)	Date rent increase went into effect: (Month/Day/Year)	Amount of increase:		Received RAP Notice with notice of rent increase?	
		FROM	TO	YES	NO
SEP 3, 2020	JAN 1, 2021	\$ 700.00	\$ 770.00	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DEC 2, 2020	JAN 1, 2021	\$ 770.00	\$ 866.00	<input type="checkbox"/>	<input type="checkbox"/>
MAY 28, 2022	JUL 1, 2022	\$ 847.00	\$ 943.00	<input type="checkbox"/>	<input type="checkbox"/>
		\$	\$	<input type="checkbox"/>	<input type="checkbox"/>
		\$	\$	<input type="checkbox"/>	<input type="checkbox"/>

**B. Decreased Housing Services**  
 (Complete this section if any of the grounds for petition fall under category B, above)

**List all the conditions that you believe entitle you to a rent decrease.** If your petition is based on problems related to your unit, or because the owner has taken away service(s) or is charging for services originally provided by the owner, you must complete this section. If you need more space, attach a separate sheet or an additional copy of this form.

- You are strongly encouraged to submit documentary evidence** (photographs, inspection reports, correspondence with your landlord, etc.) together with your petition. Evidence may be submitted up to seven calendar days prior to your hearing.
- You may wish to have a City inspector come inspect your unit** for possible code violations in advance of your hearing. Copies of any inspection report(s) may be submitted in support of your petition. To schedule an inspection, contact the City of Oakland Code Enforcement Unit at (510) 238-3381, or file a complaint online at <https://www.oaklandca.gov/services/file-a-complaint-with-code-enforcement>. Note: if additional items are cited in an inspection report that were not included in your original petition (below), you must file an additional petition listing those items in order for RAP staff to consider them as a part of your claim.

	Description of problem or decreased housing service (list separately):	Date problem or decreased service started: (Month/Day/Year)	Date first notified owner or manager of problem: (Month/Day/Year)	Date problem or service was fixed, if ever: (Month/Day/Year)	What is the dollar value of your claimed loss?
1.					\$
2.					\$
3.					\$
4.					\$



### TENANT VERIFICATION

(Required)

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

Robert Williams  
Tenant 1 Signature

6/27/2022  
Date

\_\_\_\_\_  
Tenant 2 Signature

\_\_\_\_\_  
Date

### CONSENT TO ELECTRONIC SERVICE

(Highly Recommended)

Check the box below if you agree to have RAP staff send you documents related to your case electronically. If all parties agree to electronic service, the RAP will send certain documents only electronically and not by first class mail.

- I/We consent to receiving notices and documents in this matter electronically at the email address(es) provided in this response.

### MEDIATION PROGRAM

Mediation is an optional process offered by RAP to assist parties in settling the issues related to their Rent Adjustment case as an alternative to the formal hearing process. A trained third party will work with the parties prior to the hearing to see if a mutual agreement can be reached. If a settlement is reached, the parties will sign a binding agreement and there will not be a formal hearing. If no settlement is reached, the case will go to a formal hearing with a Rent Adjustment Hearing Officer, who will then issue a hearing decision.

Mediation will only be scheduled if both parties agree to mediate. Sign below if you agree to mediation in your case.

**I agree to have the case mediated by a Rent Adjustment Program staff mediator.**

\_\_\_\_\_  
Tenant Signature

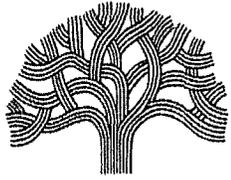
\_\_\_\_\_  
Date

### INTERPRETATION SERVICES

If English is not your primary language, you have the right to an interpreter in your primary language/dialect at the Rent Adjustment hearing and mediation session. You can request an interpreter by completing this section.

- I request an interpreter fluent in the following language at my Rent Adjustment proceeding:
- Spanish (Español)
  - Cantonese (廣東話)
  - Mandarin (普通话)
  - Other: \_\_\_\_\_

**-END OF PETITION-**



CITY OF OAKLAND

**CITY OF OAKLAND**

**RENT ADJUSTMENT PROGRAM**

250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612-0243  
(510) 238-3721  
CA Relay Service 711  
[www.oaklandca.gov/RAP](http://www.oaklandca.gov/RAP)

For Rent Adjustment Program date stamp.

**PROOF OF SERVICE**

**NOTE: YOU ARE REQUIRED TO SERVE A COPY OF YOUR PETITION (PLUS ANY ATTACHMENTS) ON THE PROPERTY OWNER PRIOR TO FILING YOUR PETITION WITH RAP. You must include a copy of the RAP form "NOTICE TO PROPERTY OWNER OF TENANT PETITION" (the preceding page of this petition packet) and a completed PROOF OF SERVICE form together with your Petition.**

- 1) Use this PROOF OF SERVICE form to indicate the date and manner of service and the person(s) served.
- 2) Provide a completed copy of this PROOF OF SERVICE form to the person(s) being served together with the documents being served.
- 3) File a completed copy of this PROOF OF SERVICE form with RAP together with your Petition. Your Petition will not be considered complete until this form has been filed indicating that service has occurred.

On the following date: 6 / 28 / 2022 served a copy of (check all that apply):

**TENANT PETITION** plus 14 attached pages (number of pages attached to Petition not counting the Petition form, NOTICE TO PROPERTY OWNER OF TENANT PETITION, or PROOF OF SERVICE)

**NOTICE TO PROPERTY OWNER OF TENANT PETITION**

Other: \_\_\_\_\_

by the following means (check one):

**United States Mail.** I enclosed the document(s) in a sealed envelope or package addressed to the person(s) listed below and at the address(es) below and deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.

**Commercial Carrier.** I deposited the document(s) with a commercial carrier, using a service at least as expeditious as first-class mail, with all postage or charges fully prepaid, addressed to the person(s) listed below and at the address(es) below.

**Personal Service.** I personally delivered the document(s) to the person(s) at the address(es) listed below or I left the document(s) at the address(es) with some person not younger than 18 years of age.

**PERSON(S) SERVED:**

Name	<u>KEVIN DAWSON</u>
Address	<u>P.O. Box 20599</u>
City, State, Zip	<u>OAKLAND, CA. 94620</u>



# **IMPORTANT INFORMATION REGARDING FILING YOUR PETITION**

---

## **TIME TO FILE YOUR PETITION**

Your Tenant Petition form must be received by the Rent Adjustment Program within the required time limit for filing. RAP staff cannot grant an extension of time to file your Petition.

- For Petitions contesting a rent increase, you have 90 days from the date of notice of increase or from the first date you received the RAP Notice (whichever is later) to file a Petition. If you did not receive a RAP Notice with the rent increase you are contesting but have received one in the past, you have 120 days to file a Petition. If you have never received a RAP Notice, you may contest all rent increases.
- For Petitions claiming decreased housing services, you have 90 days from either the date you first became aware of the decreased service or the date you first received the RAP Notice (whichever is later) to file a Petition. If the decreased housing service is ongoing, you may file a Petition at any time. See O.M.C. §§ 8.22.090 (A)(2)-(3) for more information.

## **CONTACT A HOUSING COUNSELOR TO REVIEW YOUR PETITION BEFORE SUBMITTING**

To make an appointment, email [RAP@oaklandca.gov](mailto:RAP@oaklandca.gov) or call (510) 238-3721. Although the Housing Resource Center is temporarily closed for drop-in services, assistance is available by email or telephone.

## **DOCUMENTS SUBMITTED IN SUPPORT OF PETITION**

All attachments submitted together with your Petition must be numbered sequentially. You may submit additional evidence in support of your Petition up to seven days before your hearing. You must serve a copy of any documents filed with RAP on the other party and submit a PROOF OF SERVICE form.

## **SERVICE ON PROPERTY OWNER**

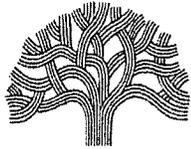
You are required to serve ALL the following documents on the property owner and/or the property owner's representative:

1. Copy of RAP form entitled "NOTICE TO PROPERTY OWNER OF TENANT PETITION" (*included in petition packet and available on RAP website*).
2. Copy of completed Petition form and attachments.
3. Completed PROOF OF SERVICE form (*included in petition packet and available on RAP website*).

You may serve the property owner and/or the owner's representative by mail or personal delivery. A copy of the completed PROOF OF SERVICE form must be submitted to RAP together with your Petition. Your Petition will not be considered complete until a PROOF OF SERVICE form is filed indicating that the owner has been served.

## **FILING YOUR PETITION**

Although RAP normally does not accept filings by email or fax, RAP is temporarily accepting Petitions via email during the COVID-19 local state of emergency. You may also fill out and submit your Petition online through the RAP website or deliver the Petition to the RAP office by mail. 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 send your Petition by mail, a postmark date does not count as the date it was received. Remember to file a PROOF OF SERVICE form together with your Petition.



CITY OF OAKLAND

**CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM**

250 Frank H. Ogawa Plaza, Suite 5313 Oakland, CA  
94612-0243  
(510) 238-3721  
CA Relay Service 711  
[www.oaklandca.gov/RAP](http://www.oaklandca.gov/RAP)

## **NOTICE TO PROPERTY OWNER OF TENANT PETITION**

### **ATTENTION: IMMEDIATE ACTION REQUIRED**

If you are receiving this NOTICE together with a completed TENANT PETITION form, it means that a tenant has filed a case against you with the Oakland Rent Adjustment Program ("RAP") (commonly referred to as the "Rent Board").

➤ **YOU MUST FILE A RESPONSE WITHIN 35 CALENDAR DAYS AFTER THE PETITION WAS MAILED TO YOU (30 DAYS IF DELIVERED IN-PERSON).**

➤ TO RESPOND:

- 1) Complete a **PROPERTY OWNER RESPONSE** form found on the RAP website. (<https://www.oaklandca.gov/services/respond-to-a-tenant-petition-for-the-rent-adjustment-program>)
- 2) Serve a copy of your **PROPERTY OWNER RESPONSE** form on the tenant (or the tenant's representative listed on the petition) by mail or personal delivery.
- 3) Complete a **PROOF OF SERVICE** form (which is attached to the Response form and also available on the website) and provide a copy to the tenant (or tenant's representative) together with your **PROPERTY OWNER RESPONSE** form.
- 4) Submit your **PROPERTY OWNER RESPONSE** form and completed **PROOF OF SERVICE\*** form to RAP through RAP's online portal, via email, or by mail.

*\*Note: The Response will not be considered complete until a PROOF OF SERVICE is filed indicating that the tenant has been served with a copy.*

**DOCUMENT REVIEW:** The tenant is required to serve on you all documents the tenant filed in this case in addition to the petition. Additionally, all documents are available for review at RAP.

**FOR ASSISTANCE:** Contact a RAP Housing Counselor at (510) 238-3721 or by email at [RAP@oaklandca.gov](mailto:RAP@oaklandca.gov). Additional information is also available on the RAP website and on the PROPERTY OWNER RESPONSE form.

**000021**

# Private Investment Equity LLC

1939 Harrison Street, Suite 915, Oakland, Cal. 94612

P.O. Box 20599, Oakland, CA 94620

Email: pie@proadjuster.com

Telephone 510/845-0777

Fax 510/845-1777

---

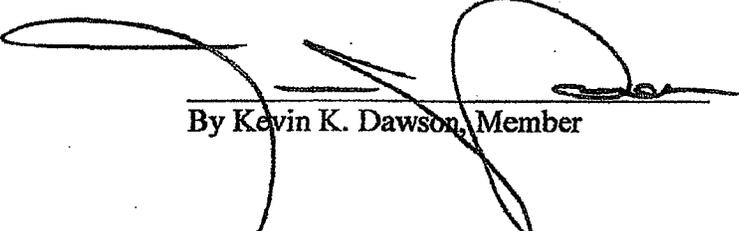
## Notice of New Owner/Agent (California Civil Code Section 1962)

To: Robert Williams and Resident(s) (tenants and subtenants) in possession and all others in possession of the premises designated by the number and street as 548-37th Street, Oakland, CA 94609.

1. Effective immediately, Private Investment Equity, LLC, telephone number 510-845-0777, shall be the Owner/Agent of unit in which you reside, listed above.
2. Rent is due in advance on 1st day of each and every month, at \$700.00 per month, beginning with the payment falling due on January 1, 2020, payable to Private Investment Equity, LLC and shall be delivered to P.O. Box 20599, Oakland, CA 94620.
3. Payments may be made in the form of personal check, cashier's check, or money order.
4. The agent for service of process is Kevin K. Dawson and for the purpose of receiving and receipting for all notices and demands. The address for service of process is 1939 Harrison Street, Suite 915, Oakland, CA 94612.

Private Investment Equity LLC

12/12/19  
Date

  
By Kevin K. Dawson, Member

000022

**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
9/3/20	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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 1997/JANUARY

The tenant's initial rent including all services provided was: \$ 600<sup>00</sup> / 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? 12/12/2019

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	
9/3/2020	12/1/2020	\$ 700 <sup>00</sup>	\$ 770 <sup>00</sup>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No

### III. EXEMPTION

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

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

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

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

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

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

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

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

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

### IV. DECREASED HOUSING SERVICES

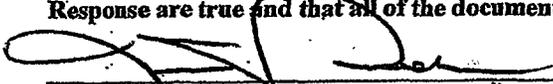
If the petition filed by your tenant claims Decreased Housing Services, state your position regarding the tenant's claim(s) of decreased housing services. If you need more space attach a separate sheet. Submit any documents, photographs or other tangible evidence that supports your position.

*Claims made by tenant for conditions that pre-dated my ownership and those conditions have been cured.*



**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 Lewis K. Dawson Date 9/4/2020  
IMPORTANT INFORMATION: Private Investment Equity, LLC

**Time to File**

This form **must be received** by the Rent Adjustment Program (RAP), 250 Frank H. Ogawa Plaza, Suite 5313, 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

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

# **Private Investment Equity LLC**

P.O. Box 20599, Oakland, CA 94620

Telephone 510/845-0777

Fax 510/845-1777

Email: [pie@proadjuster.com](mailto:pie@proadjuster.com)

---

September 3, 2020

Robert Williams  
548 37<sup>th</sup> Street  
Oakland, California 94609

Re: Rent increase **effective December 1, 2020**

Dear Robert Williams:

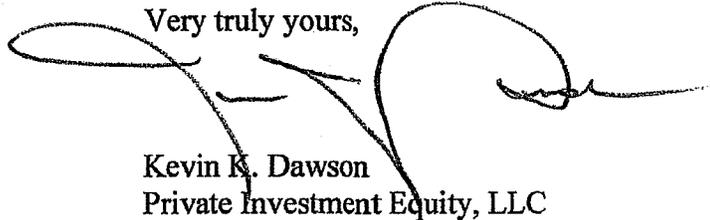
I have completed a calculation to be used in the rent increase allowed for 2020-21. The aggregate increase allowed is based on an annual allowance of 10.0% for the period effective December 1, 2020 through November 30, 2021.

The increase is based upon the Capital Improvement cost (Regulations Section 10).

Your total increase is \$70.00 monthly, and will raise your rent from \$700.00 to \$770.00 effective December 1, 2020.

The City of Oakland Residential Rent Adjustment Program disclosure is attached.

Very truly yours,



Kevin K. Dawson  
Private Investment Equity, LLC

000026

November 27, 2020

Robert Williams  
548 37<sup>th</sup> Street  
Oakland, CA 94609

Kevin Dawson  
1939 Harrison Street, Suite 915  
Oakland, CA 94612

Kevin Dawson:

Enclosed is U. S. Postal Money Order, number 27046106098, in the amount \$70.00, for rental increase effective December 1, 2020.

For: 548 37<sup>th</sup> Street  
Oakland, CA 94609

Respectfully,

*Robert Williams*  
Robert Williams

UNITED STATES POSTAL SERVICE		POSTAL MONEY ORDER	
Serial Number	Year, Month, Day	Post Office	U.S. Dollars and Cents
27046106098	2020-11-24	946091	\$70.00
Amount		Seventy Dollars and 00/100 *****	
Pay to	Kevin Dawson		Clerk 29
Address	From Robert Williams		
	Address 548 37 <sup>th</sup> Street		
	Oakland, CA 94609		
Memo	SEE REVERSE WARNING • NEGOTIABLE ONLY IN THE U.S. AND POSSESSIONS		
⑆00000800⑆		27046106098⑆	

000027

# **Private Investment Equity LLC**

1939 Harrison Street, Suite 915, Oakland, Cal. 94612

P.O. Box 20599, Oakland, CA 94620

Email: [pie@proadjuster.com](mailto:pie@proadjuster.com)

Telephone 510/845-0777

Fax 510/845-0777

---

December 2, 2020

Robert Williams  
548 37<sup>th</sup> Street  
Oakland, California 94609  
*Via hand delivery and USPS*

Re: **NOTICE OF CHANGE TO TERMS OF TENANCY**  
(Civil Code Section 827)

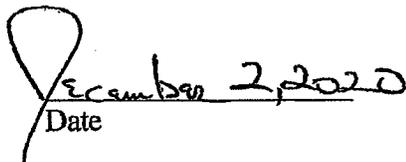
Dear Robert:

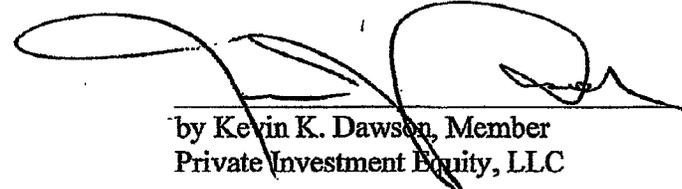
I have attached a "Notice of Change to Terms of Tenancy (Civil Code Section 827)" as well as a "Notice to Tenants of the Residential Rent Adjustment Program" to effect a change in your rental fees based upon your EBMUD service charges.

I am terminating tenant paid EBMUD water and sewer service charges and will provide those services and pay for these services. The amounts paid by you will be added to your monthly rental.

Your \$770.00 monthly rental fee will increase \$96.00 effective January 1, 2021. Your new rent will be \$866.00 effective on that date.

I will provide an analysis of your paid water service fees under separate cover.

  
December 2, 2020  
Date

  
by Kevin K. Dawson, Member  
Private Investment Equity, LLC

000028

March 28, 2022

Robert Williams  
548 37<sup>th</sup> Street  
Oakland, CA 94609

Kevin Dawson  
P. O. Box 20599  
Oakland, CA 94620

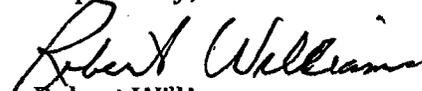
Via U. S. Mail

Kevin Dawson:

Enclosed is a certified cashiers check number 0001364261 in the amount of \$2253.51, for the second quarter's rent (April, May and June 2022).

Rent	\$2310.00
Water	\$ 288.00
Rent Deduction	- \$ 344.49
	<hr/>
	\$2253.51

Respectfully,

  
Robert Williams

000029



CREDIT UNION

5901 Gibraltar Drive, Pleasanton, CA 94588  
(800)649-0193 • 1stunitedcu.org

0001364261

03/28/22 13:21:00

ROBERT J WILLIAMS

1026

CHECK NUMBER: 00 0001364261 CHECK AMOUNT: 2,253.51

KEVIN DAWSON

The credit union does not provide stop-payment service on this check (Com. Code section 3411 et seq.). If this check is lost, destroyed, or stolen, the member's only recourse is to complete and submit a Declaration of Loss and Notice of Claim, and a hold will be placed on the member's funds equal to the amount of the check during the claim period, which is not less than 90 days (Com. Code section 3312 et seq.). 1st United Credit Union does not warrant, and submission of the Declaration of Loss and Notice of claim, does not guarantee payment of the amount of this check.

RECEIVED BY

X

DETACH THIS PORTION BEFORE DEPOSITING

THIS DOCUMENT HAS A TRIPLE WATERMARK. THE FRONT OF THE DOCUMENT HAS A MICRO-PRINT SIGNATURE LINE AND HOLOGRAM. ABSENCE OF THESE FEATURES WILL INDICATE A COPY.



CREDIT UNION  
5901 Gibraltar Drive, Pleasanton, CA 94588  
(800)649-0193 • 1stunitedcu.org

OFFICIAL



CHECK

0001364261

03/28/22

49-55

1031



Two Thousand Two Hundred Fifty-Three and 51/100

AMOUNT

\*\*\*\*\*2,253.51

PAY TO THE ORDER OF KEVIN DAWSON

DRAWER: 1st UNITED CREDIT UNION

ISSUED BY: MONEYGRAM PAYMENT SYSTEMS, INC.  
P.O. BOX 9476 MINNEAPOLIS MN 55480  
DRAWEE: BOKF, NA, EUFAULA, OK

MP

AUTHORIZED SIGNATURE



000030

# Private Investment Equity LLC

1939 Harrison Street, Suite 915, Oakland, Cal. 94612

P.O. Box 20599, Oakland, CA 94620

Email: pie@proadjuster.com

Telephone 510/845-0777

Fax 510/845-0777

---

May 28, 2022

Robert Williams  
548 37<sup>th</sup> Street  
Oakland, California 94609

Re: Rent Increase effective July 1, 2022

I have completed a calculation to be used in the rent increase allowed effective July 1, 2022.

The aggregate increase allowed is based on an annual allowance of 2.7% for 2020, 1.9% for 2021 and 6.7% for the period effective July 1, 2022. The maximum allowable increase is **10%** and the excess is banked for future usage.

Your increase is \$77.00, and will raise your base rent from \$770.00 to **\$847.00** effective July 1, 2022. Additionally, the EBMUD water and sewer charge of **\$96.00** raises the monthly rental fee to **\$943.00**. This is the cost of your monthly base rent plus the utility reimbursement.

---

The City of Oakland Residential Rent Adjustment Program disclosure is attached.

May 28, 2022  
Date

  
by Kevin K. Dawson, member,  
Private Investment Equity, LLC  
P.O. Box 20599, Oakland, CA 94620  
Telephone: 510-845-0777

000031

CITY OF OAKLAND



Department of Housing and Community Development  
 Rent Adjustment Program  
<http://rapwb.oaklandnet.com/about/rap/>

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

HOVER OVER CELL FOR INSTRUCTIONS

INPUT IN YELLOW CELLS ONLY

**CALCULATION OF DEFERRED CPI INCREASES (BANKING)**

Initial move-in date	1-Jan-1997	MUST FILL IN D10, D11, D12 and D16. D13 should be filled in if it applies.	Case No.:	
Effective date of increase	1-Jul-2022		Unit:	
Current base rent (before increase and without any prior cap. improve pass-throughs)	\$770.00			
Is there a continuing cap. imp. pass-through?	\$0.00			
Date calculation begins	7/1/2011			
Base rent when calc. begins	\$700.00			

**ANNUAL INCREASES TABLE**

Year Ending	Debt Serv. or Fair Return Increase	Increased Housing Serv. Costs Increase	Base Rent Reduction	Annual CPI Percentage	Allowable CPI Increase	Rent Ceiling
7/1/2022				6.7%	\$59.73	\$951.27
7/1/2021				1.9%	\$16.62	\$891.53
7/1/2020				2.7%	\$23.00	\$874.91
7/1/2019				3.5%	\$28.81	\$851.91
7/1/2018				3.4%	\$27.07	\$823.10
7/1/2017				2.3%	\$17.90	\$796.03
7/1/2016				2.0%	\$15.26	\$778.14
7/1/2015				1.7%	\$12.75	\$762.88
7/1/2014				1.9%	\$13.99	\$750.13
7/1/2013				2.1%	\$15.14	\$736.14
7/1/2012				3.0%	\$21.00	\$721.00
7/1/2011				-	-	\$700

**Calculation of Limit on Increase**

Current base rent	\$770.00
Maximum percentage Increase	10.0%
Ceiling on allowable increase - dollar amount	\$77.00
Allowable Percentage CPI increase this year	6.7%
Allowable Increase Based on CPI - Dollar Amount	\$51.59
Banked Amount	\$129.68
Sum of Banking amount and current CPI	\$181.27
Total Allowable Increase- the smaller of "ceiling on allowable increase" and "sum of banking and current CPI"	\$77.00
Prior capital improvements recovery	\$0.00
Rent ceiling w/o other new increases	\$847.00

**OWNER FILL IN:**

Banking Dollar Amount	CPI Dollar Amount	Total Increase

**Notes:**

- You cannot use banked rent increases after 10 years.
- CPI increases are calculated on the base rent only, excluding capital improvement pass-throughs.
- The banking limit is calculated on the last rent paid, excluding capital improvement pass-throughs.
- Debt Service and Fair Return Increases include all past annual CPI adjustments.
- An Increased Housing Service Cost increase takes the place of the current year's CPI adjustment.
- Past increases for unspecified reasons are presumed to be for banking.
- Banked annual increases are compounded.
- The rent increase notice must specify what amount is being taken as the CPI and what is taken for banking and may not exceed the amount specified on the calculator.
- During the local health emergency due to Covid 19, no rent increases above the CPI can be given until the emergency is lifted.





## 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. For more information on which units are covered, contact the RAP office.
- Starting on February 1, 2017, an owner must petition the RAP for any rent increase that is more than the annual general rent increase (“CPI increase”) or allowed “banked” rent increases. These include, but are not limited to, capital improvements and operating expense increases. For these types of rent increases, the owner may raise your rent only after a hearing officer has approved the increase. No annual rent increase may exceed the maximum increase which changes annually with a 10% cap. You have a right to contest the proposed rent increase by responding to the owner’s petition.
- **Contesting a Rent Increase:** You can file a petition with the RAP to contest unlawful rent increases or decreased housing services. To contest a rent increase, you must file a petition (1) within ninety (90) days of the notice of rent increase if the owner also provided this Notice to Tenants with the notice of rent increase; or (2) within 120 days of the notice of rent increase if this Notice to Tenants was not given with the notice of rent increase. If the owner did not give this Notice to Tenants at the beginning of your tenancy, you must file a petition within ninety (90) days of first receiving this Notice to Tenants. Information. The petition forms are available from the website at [Rent Adjustment Program Petition and Response Forms](#).
- If you contest a rent increase, you must pay your rent with the contested increase until you file a petition. If the increase is approved and you did not pay the increase, 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. Tenants in subsidized units are not required to pay the tenant portion of the fee.
- Oakland has a Tenant Protection Ordinance (“TPO”) to deter harassing behaviors by landlords and to give tenants legal recourse in instances where they are subjected to harassing behavior by landlords (O.M.C. 8.22.600).
- The owner \_\_\_ is \_\_\_ is not permitted to set the initial rent on this unit without limitations (such as pursuant to the Costa-Hawkins Act). If the owner is not permitted to set the initial rent without limitation, the rent in effect when the prior tenant vacated was \_\_\_\_\_.

### 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.

June 21, 2022

Robert Williams  
548 37<sup>th</sup> Street  
Oakland, CA 94609

Kevin Dawson  
P.O. Box 20599  
Oakland, CA 94620

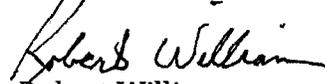
Via U.S. Mail

Kevin Dawson:

Enclosed is a certified cashiers check number 0001368157 in the amount of \$943.00, for the rent of July 2022.

Rent	\$847.00
Water	\$ 96.00
	<hr/>
	\$943.00

Respectfully,

  
Robert Williams

000034



CREDIT UNION

5901 Gibraltar Drive, Pleasanton, CA 94588  
(800)649-0193 • 1stunitedcu.org

0001368157

06/13/22 14:49:00 [REDACTED] ROBERT J WILLIAMS

1026

CHECK NUMBER: 00 0001368157 CHECK AMOUNT: 943.00

KEVIN DAWSON

The credit union does not provide stop-payment service on this check (Com. Code section 3411 et seq.). If this check is lost, destroyed, or stolen, the member's only recourse is to complete and submit a Declaration of Loss and Notice of Claim, and a hold will be placed on the member's funds equal to the amount of the check during the claim period, which is not less than 90 days (Com. Code section 3312 et seq.). 1st United Credit Union does not warrant, and submission of the Declaration of Loss and Notice of claim, does not guarantee payment of the amount of this check.

RECEIVED BY

X

DETACH THIS PORTION BEFORE DEPOSITING

THIS DOCUMENT HAS A TRUE WATERMARK. THE FRONT OF THE DOCUMENT HAS A MICRO-PRINT SIGNATURE LINE AND HOLOGRAPH. ABSENCE OF THESE FEATURES WILL INDICATE A COPY.



CREDIT UNION

5901 Gibraltar Drive, Pleasanton, CA 94588  
(800)649-0193 • 1stunitedcu.org

OFFICIAL



CHECK

0001368157

06/13/22



Nine Hundred Forty-Three and 00/100

AMOUNT

\*\*\*\*\*943.00

PAY TO THE ORDER OF KEVIN DAWSON

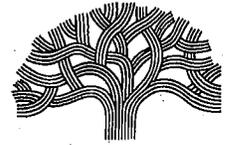
DRAWER: 1st UNITED CREDIT UNION

ISSUED BY: MONEYGRAM PAYMENT SYSTEMS, INC.  
P.O. BOX 9478 MINNEAPOLIS MN 55480  
DRAWEE: BOKF, NA, EUFAULA, OK

AUTHORIZED SIGNATURE

⑈001368157⑈ ⑆103100551⑆0160011138107⑈

000035



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

Housing and Community Development Department  
Rent Adjustment Program

TEL (510) 238-3721  
FAX (510) 238-6181  
CA Relay Service 711

## **ADMINISTRATIVE DECISION**

**CASE NUMBER:** T22-0111, Williams v. Dawson  
**PROPERTY ADDRESS:** 548 37<sup>th</sup> Street, Oakland, CA  
**PARTIES:** Robert Williams, Tenant  
Kevin Dawson, Owner

## **SUMMARY OF DECISION**

The tenant's petition is granted.

## **INTRODUCTION**

The tenant filed a petition on June 29, 2022, contesting three rent increases he received, on the following grounds: that the rent increase is above the allowable amount. The tenant submitted copies of each rent increase notice along with his petition.

The rent increases the tenant received are as follows: (1) Notice dated September 3, 2020, effective December 1, 2020, increasing the rent from \$700 to \$770 per month based upon "the Capital Improvement cost"<sup>1</sup>; (2) Notice dated December 2, 2020, effective January 1, 2021, increasing the rent from \$770 to \$866 per month due to adding EBMUD water and sewer services to the monthly rent<sup>2</sup>; and (3) Notice dated May 28, 2022, effective July 1, 2022, increasing the base rent from \$770 to \$847 per month, with a total monthly rent owed of \$943 per month as "monthly base rent plus the utility reimbursement."<sup>3</sup>

The tenant provided a Proof of Service that he served the owner with a copy of the petition and the Notice to Property Owner of Tenant Petition, along with 14 attached

---

<sup>1</sup> According to the Tenant Petition, this rent increase was served with a copy of the *RAP Notice*. The attachments to the petition include what appears to be the *RAP Notice* related to this rent increase. The tenant also stated on his petition that he first received the *RAP Notice* in December 2019.

<sup>2</sup> The Tenant Petition does not specify whether this rent increase was served with a copy of the *RAP Notice*, and none of the attachments to the petition include a *RAP Notice* for this rent increase.

<sup>3</sup> The Tenant Petition does not specify whether this rent increase was served with a copy of the *RAP Notice*, and none of the attachments to the petition include a *RAP Notice* for this rent increase.

pages, via U.S. Mail on June 28, 2022.<sup>4</sup> On August 17, 2022, the Notice of Remote Settlement Conference and Hearing, Notice to Parties, Copy of Petition, and Landlord Response Form were mailed to the owner by the Rent Adjustment Program. To date, no response has been received from the owner.

### **Reason for Administrative Decision**

An Administrative Decision is a decision issued without a Hearing. The purpose of a Hearing is to allow the parties to present testimony and other evidence to allow resolution of disputes of material fact. However, in this case, sufficient uncontested facts have been presented to issue a decision without a Hearing and there are no material facts in dispute. Therefore, an Administrative Decision, without a Hearing, is being issued.

#### **Local Emergency**

Oakland City Council Ordinance 13589 C.M.S., adopted on March 27, 2020, states as follows at Section 4:

##### **Rent Increase Moratorium.**

For rental units regulated by Oakland Municipal Code 8.22.010 et seq, any notice of rent increase in excess of the CPI Rent Adjustment, as defined in Oakland Municipal Code Section 8.22.020, shall be void and unenforceable if the notice is served or has an effective date during the Local Emergency, unless required to provide a fair return. Any notice of rent increase served during the Local Emergency shall include the following statement in bold underlined 12-point font: "**During the Local Emergency declared by the City of Oakland in response to the COVID-19 pandemic, your rent may not be increased in excess of the CPI Rent Adjustment (3.5% until June 30, 2020), unless required for the landlord to obtain a fair return. You may contact the Rent Adjustment Program at (510) 238-3721 for additional information and referrals.**"

The CPI Rent Adjustment at the time that the Rent Increase Moratorium was enacted was 3.5%. The Moratorium clearly states that this CPI is in effect "until June 30, 2020." The CPI Rent Adjustment, between July 1, 2020, and June 30, 2021, was 2.7%. The CPI Rent Adjustment, between July 1, 2021, and July 31, 2022, was 1.9%.

**None of the rent increase notices submitted by the tenant include the required statement in bold underlined 12-point font. Therefore, they are all invalid on this basis.**

In addition, the owner did not file a *Property Owner Petition for Approval of Rent*

---

<sup>4</sup> As stated on the Notice to Property Owner of Tenant Petition, the Property Owner Response was due 35 days after this date, which was August 2, 2022.

*Increase* with the Rent Adjustment Program regarding the first increase that the tenant is challenging (the one based on “the Capital Improvement cost”). Owners are not permitted to unilaterally pass on Capital Improvement Costs without petitioning the Rent Program and receiving approval for such increases.<sup>5</sup> Although the tenant would normally have had to challenge this rent increase within ninety (90) days after service, because it was served with the *RAP Notice*,<sup>6</sup> the increase amounts to a 10% increase, which exceeds the 2.7% CPI Rent Adjustment in effect as of December 1, 2020. Therefore, pursuant to the language of the Rent Increase Moratorium, the notice of rent increase “shall be void and unenforceable” because it had an effective date during the Local Emergency. The rent increase from \$700 to \$770 per month, effective December 1, 2020, is invalid.

The increase based on utilities that the owner attempted to pass on is also invalid. It was not granted as the result of an owner petition to the Rent Adjustment Program.<sup>7</sup> This increase also appears to have been served without a copy of the *RAP Notice*, which is required for all rent increases.<sup>8</sup> Although the tenant would normally have had to challenge this rent increase within one hundred twenty (120) days after service, because it was served without the *RAP Notice*,<sup>9</sup> the increase amounts to a 12.5% increase, which exceeds the 2.7% CPI Rent Adjustment in effect as of January 1, 2021. Therefore, pursuant to the language of the Rent Increase Moratorium, the notice of rent increase “shall be void and unenforceable” because it had an effective date during the Local Emergency. The rent increase from \$770 per month to \$866 per month, effective January 1, 2021, is also invalid.

It should also be noted that, pursuant to the Oakland Rent Adjustment Ordinance, rent increases are limited to one rent increase each twelve months.<sup>10</sup> The owner attempted to impose two (2) rent increases in a 12-month period (with effective dates December 1, 2020 and January 1, 2021). The second rent increase is invalid on this basis as well.

Finally, the increase of the tenant’s base rent from \$770 to \$847 per month, effective July 1, 2022, amounts to a 10% increase in the tenant’s base rent. According to the Tenant Petition, this rent increase was served on May 28, 2022, and the tenant challenged it 32 days later, by filing the petition on June 29, 2022.<sup>11</sup> The CPI Rent Adjustment in effect as of July 1, 2022, was 1.9%. The Local Emergency remains in effect in the City of Oakland. Therefore, in seeking to increase the tenant’s base rent in excess of 1.9%, the owner is in violation of the Rent Increase Moratorium. This third rent increase is also invalid.

For all of the reasons stated above, the tenant’s petition is granted.

///

---

<sup>5</sup> O.M.C. Section 8.22.070.C.1.

<sup>6</sup> O.M.C. Section 8.22.090.A.2.a.i.

<sup>7</sup> O.M.C. Section 8.22.070.C.1.

<sup>8</sup> O.M.C. Section 8.22.070.H.1.

<sup>9</sup> O.M.C. Section 8.22.090.A.2.a.ii.

<sup>10</sup> O.M.C. Section 8.22.070.A.1.

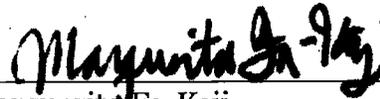
<sup>11</sup> Because this rent increase appears to have been served without the *RAP Notice*, the tenant had 120 days to challenge it. Even if it was served with the *RAP Notice*, the tenant challenged it well within the 60-day period.

## ORDER

1. The tenant's petition is granted.
2. The Remote Settlement Conference and Hearing, scheduled for October 4, 2022, is canceled.

**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: September 12, 2022



\_\_\_\_\_  
Marguerita Fa-Kaji  
Hearing Officer  
Rent Adjustment Program

**PROOF OF SERVICE**

**Case Number: T22-0111**

**Case Name: Williams v. Dawson**

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

**Today, I served the attached documents listed below by placing a true copy in a City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Oakland, California, addressed to:**

**Documents Included**

Administrative Decision

**Owner**

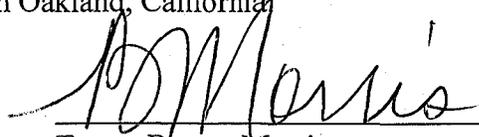
Kevin Dawson, Private Investment Equity LLC  
P.O. Box 20599  
Oakland, CA 94620

**Tenant**

Robert Williams  
548 37th Street  
Oakland, CA 94609

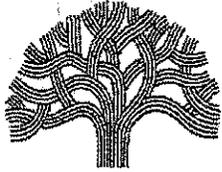
I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **September 13, 2022** in Oakland, California



Teresa Brown-Morris  
Oakland Rent Adjustment Program





CITY OF OAKLAND

**CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM**

250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612-0243  
(510) 238-3721  
CA Relay Service 711  
[www.oaklandca.gov/RAP](http://www.oaklandca.gov/RAP)

For Rent Adjustment Program date stamp.

## APPEAL

Appellant's Name <b>KEVIN K. DAWSON dba</b> <b>Private Investment Equity, LLC</b>		<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant	
Property Address (Include Unit Number) <b>548-37th Street, Oakland, CA 94609</b>			
Appellant's Mailing Address (For receipt of notices) <b>P.O. Box 20599</b> <b>Oakland, Cal. F 94620</b>		Case Number <b>T22-0111 Williams v. Dawson</b>	Date of Decision appealed <b>September 12, 2022</b>
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.)*

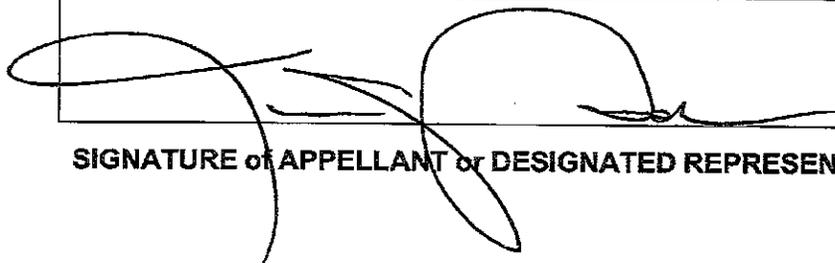
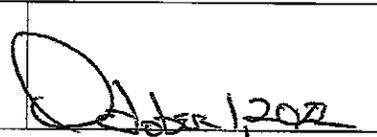
- f)  I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. (In your explanation, you must describe how you were denied the chance to defend your claims and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue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

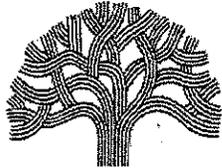
Supporting documents (in addition to this form) must not exceed 25 pages, and must be received by the Rent Adjustment Program, along with a proof of service on the opposing party, within 15 days of the filing of this document. Only the first 25 pages of submissions from each party will be considered by the Board, subject to Regulations 8.22.010(A)(4). Please number attached pages consecutively. Number of pages attached: 25

• You must serve a copy of your appeal on the opposing parties, or your appeal may be dismissed. •

I declare under penalty of perjury under the laws of the State of California that on October 1, 2022 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:

<b>Name</b>	Robert Williams
<b>Address</b>	548-37th STREET
<b>City, State Zip</b>	Oakland, Cal 94609
<b>Name</b>	
<b>Address</b>	
<b>City, State Zip</b>	

	
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE



CITY OF OAKLAND

**CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM**

250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612-0243  
(510) 238-3721  
CA Relay Service 711  
[www.oaklandca.gov/RAP](http://www.oaklandca.gov/RAP)

For Rent Adjustment Program date stamp.

**PROOF OF SERVICE**

**NOTE: YOU ARE REQUIRED TO SERVE A COPY OF YOUR PETITION OR RESPONSE (PLUS ANY ADDITIONAL DOCUMENTS) ON THE OPPOSING PARTIES.**

- Use this PROOF OF SERVICE form to indicate the date and manner in which service took place, as well as the person(s) served.
- Provide a copy of this PROOF OF SERVICE form to the opposing parties together with the document(s) served.
- File the completed PROOF OF SERVICE form with the Rent Adjustment Program together with the document you are filing and any attachments you are serving.
- Please number sequentially all additional documents provided to the RAP.

**PETITIONS FILED WITHOUT A PROOF OF SERVICE WILL BE CONSIDERED INCOMPLETE AND MAY BE DISMISSED.**

I served a copy of:

RAP APPEAL

(insert name of document served)

And Additional Documents

and (write number of attached pages) 25 attached pages (not counting the Petition or Response served or the Proof of Service) to each opposing party, whose name(s) and address(es) are listed below, by one of the following means (check one):

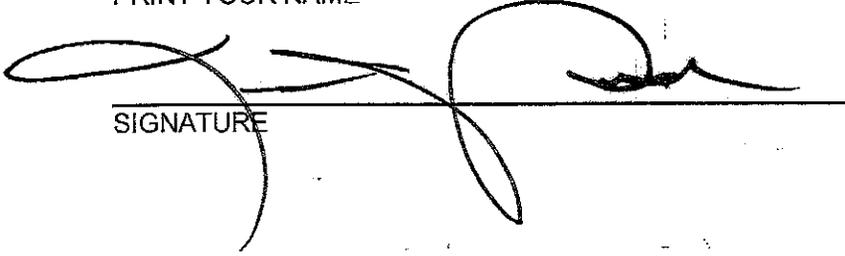
- a. United States mail. I enclosed the document(s) in a sealed envelope or package addressed to the person(s) listed below and at the address(es) below and deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- b. Deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as listed below.
- c. Personal Service. (1) By Hand Delivery: I personally delivered the document(s) to the person(s) at the address(es) listed below; or (2) I left the document(s) at the address(es) with some person not younger than 18 years of age.

**PERSON(S) SERVED:**

Name	<u>Robert Williams</u>
Address	<u>548 37th Street</u>
City, State, Zip	<u>Oakland, Cal 94609</u>

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and the documents were served on 10/01/2022 (insert date served).

KEVIN K. DAWSON  
PRINT YOUR NAME

  
SIGNATURE

10/01/2022  
DATE

# Private Investment Equity LLC

1939 Harrison Street, Suite 915, Oakland, Cal. 94612

P.O. Box 20599, Oakland, CA 94620

Email: pie@proadjuster.com

Telephone 510/845-0777

Fax 510/845-0777

Re: Case number: T22-0111 Robert Williams v. Dawson (548-37<sup>th</sup> Street, Oakland, CA)

Appeal based on the following grounds:

2.(a) A prior decision by the same hearing officer on June 24, 2021 (attached) set the rent at \$770.00 and recognized the monthly utility increase of \$96.00. The current September 12, 2022 decision attempts to reverse these same findings of fact; without notice or evidence this current fact finding is inconsistent with the prior decision, well outside the period to appeal that June 24, 2021 decision.

2.(d) The current September 12, 2022 decision violates the Waiver of California Civil Code section 1542, witnessed and agreed to by the tenant and by his legal counsel, Andrew Wolff, signed by the tenant and counsel on March 7, 2022.

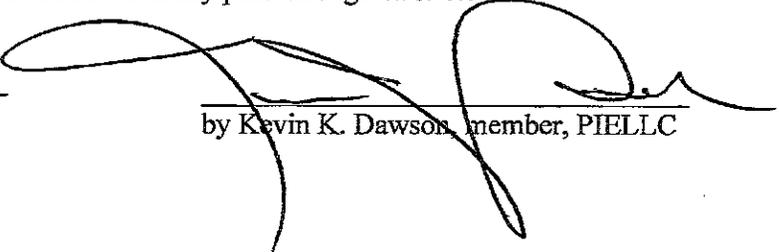
2.(f) I was unable to respond to the tenant petition mailed June 28, 2022 as I was recovering from Covid and housebound for over 30 days, not receiving the mail until the response period had passed.

2.(h) The Settlement Agreement and Release executed March 7, 2022 settled all tenant claims, including claims arising from the tenancy. The Alameda County Superior Court case RG21099238, including the rent increase claims complained of in the June 27, 2022 RAP Petition. These claims were adjudicated, the tenant having resolved the allegations and litigation for a payment of \$20,000.00 from the undersigned's insurer, copy attached.

The tenant's complaints were resolved and the RAP Petition cannot offer the tenant a *second and third bite at the apple* arising from the hearing decision of June 24, 2021 and resolved by litigation settlement March 7, 2022.

The 10% increase effective July 1, 2022 is based on Banking, worksheet attached, with a rent ceiling of \$951.27. The allowable limit, per the RAP worksheet, is \$77.00, setting the rent at \$847.00 plus the previously established utility pass through of \$96.00.

October 1, 2022  
Date

  
by Kevin K. Dawson, member, PIELLC

KKD 1

000045



Toll Free: (800) 435-7764  
 Fax: (877) 217-1389  
 Email: myclaim@foremost.com  
 Please include your claim # on any correspondence  
 National Document Center  
 P.O. Box 268994  
 Oklahoma City, OK 73126-8994

March 8, 2022

KEVIN DAWSON  
 PO BOX 20599  
 PIEDMONT CA 94620

RE: Claim Number: 7003389876-1-1  
 Insured: Private Investment Equity, LLC  
 Policy Number: 5003200456  
 Loss Date: 12/10/2019  
 Location of Loss: 548 37th St, Oakland, CA 94609-2424  
 Claimant: Robert Williams  
 Subject: Closure Notification

Dear Mr. Dawson:

Thank you for choosing us to provide for your insurance needs. We value you as a customer and appreciate the opportunity to be of service.

We investigated the claim made against you as a result of this incident. We've settled the claim for \$20,000.00. We feel this is an equitable settlement because this represents a compromised settlement.

We're committed to earning your satisfaction with the claims process. If you have any questions or concerns, call me at (616) 974-7912. My scheduled office hours are Monday through Friday from 8:00 a.m. to 4:30 p.m. Eastern Time.

We encourage you to visit [www.foremost.com](http://www.foremost.com) to learn more about our self-service options available to you; including the ability to view your claim status, upload documents and photos and find local service providers.

Thank you.

Thomas Vos  
 Senior General Claims Adjuster  
 (616) 974-7912  
 Foremost Insurance Company Grand Rapids, Michigan

At this time, I can be reached by telephone and e-mail; my phone number and email address have not changed. Email communications are preferred to avoid any potential delays caused by mailing. If you are unable to use email and hard copies of communications are required, they may be sent to our National Document Center at P.O. Box 268994, Oklahoma City, OK 73126-8994. We are unable to receive deliveries at any office location from FedEx, UPS or any other courier at this time.

CC: PAUL E HAMMACK

02 02 017859 J2VWTRBS3 080308P8 02 11 017859

*KKD 2*

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  
 Andrew Wolff, Esq. SBN 195092  
 Law Offices of Andrew Wolff, PC 1615 Broadway 4th FL, Oakland, CA 94612  
 TELEPHONE NO.: 510-834-3300 FAX NO. (Optional): 510-834-3377  
 E-MAIL ADDRESS (Optional): andrew@awolfflaw.com & info@awolfflaw.com  
 ATTORNEY FOR (Name): Plaintiff

FOR COURT USE ONLY

**ELECTRONICALLY FILED**  
 Superior Court of California  
 County of Alameda  
 04/07/2022  
 Chad Finkbe, Executive Officer / Clerk of the Court  
 By: A. Gospal Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda  
 STREET ADDRESS: 1225 Fallon Street  
 MAILING ADDRESS: 1225 Fallon Street  
 CITY AND ZIP CODE: Oakland, CA 94612  
 BRANCH NAME:

PLAINTIFF/PETITIONER: ROBERT WILLIAMS  
 DEFENDANT/RESPONDENT: SANDRA PORTER-PATTERSON, et al.

REQUEST FOR DISMISSAL

CASE NUMBER: RG21099238

A conformed copy will not be returned by the clerk unless a method of return is provided with the document.  
 This form may not be used for dismissal of a derivative action or a class action or of any party or cause of action in a class action. (Cal. Rules of Court, rules 3.760 and 3.770.)

1. TO THE CLERK: Please **dismiss** this action as follows:

a. (1)  With prejudice (2)  Without prejudice  
 b. (1)  Complaint (2)  Petition  
 (3)  Cross-complaint filed by (name): on (date):  
 (4)  Cross-complaint filed by (name): on (date):  
 (5)  Entire action of all parties and all causes of action  
 (6)  Other (specify):\* Each party to bear its own fees and costs.

2. (Complete in all cases except family law cases.)  
 The court  did  did not waive court fees and costs for a party in this case. (This information may be obtained from the clerk. If court fees and costs were waived, the declaration on the back of this form must be completed).  
 Date: April 07, 2022  
 Andrew Wolff, Esq. \_\_\_\_\_  
 (TYPE OR PRINT NAME OF  ATTORNEY  PARTY WITHOUT ATTORNEY) (SIGNATURE)  
 Attorney or party without attorney for:  
 Plaintiff/Petitioner  Defendant/Respondent  
 Cross-Complainant

3. TO THE CLERK: Consent to the above dismissal is hereby given.\*\*  
 Date: \_\_\_\_\_  
 (TYPE OR PRINT NAME OF  ATTORNEY  PARTY WITHOUT ATTORNEY) (SIGNATURE)  
 Attorney or party without attorney for:  
 Plaintiff/Petitioner  Defendant/Respondent  
 Cross-Complainant

(To be completed by clerk)

4.  Dismissal entered as requested on (date):  
 5.  Dismissal entered on (date): as to only (name):  
 6.  Dismissal **not entered** as requested for the following reasons (specify):  
 7. a.  Attorney or party without attorney notified on (date):  
 b.  Attorney or party without attorney not notified. Filing party failed to provide  
 a copy to be conformed  means to return conformed copy

Date: \_\_\_\_\_ Clerk, by \_\_\_\_\_, Deputy

KKD 3  
 000047

PLAINTIFF/PETITIONER: ROBERT WILLIAMS	CASE NUMBER: RG21099238
DEFENDANT/RESPONDENT: SANDRA PORTER-PATTERSON, et al.	

**COURT'S RECOVERY OF WAIVED COURT FEES AND COSTS**

If a party whose court fees and costs were initially waived has recovered or will recover \$10,000 or more in value by way of settlement, compromise, arbitration award, mediation settlement, or other means, the court has a statutory lien on that recovery. The court may refuse to dismiss the case until the lien is satisfied. (Gov. Code, § 68637.)

**Declaration Concerning Waived Court Fees**

1. The court waived court fees and costs in this action for (name): ROBERT WILLIAMS
2. The person named in item 1 is (check one below):
  - a.  not recovering anything of value by this action.
  - b.  recovering less than \$10,000 in value by this action.
  - c.  recovering \$10,000 or more in value by this action. (If item 2c is checked, item 3 must be completed.)
3.  All court fees and court costs that were waived in this action have been paid to the court (check one):  Yes  No

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

Date: April 07, 2022

Andrew Wolff, Esq.

(TYPE OR PRINT NAME OF  ATTORNEY  PARTY MAKING DECLARATION)

 \_\_\_\_\_  
 (SIGNATURE)

KKD 4

000048



## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is made and entered into by Plaintiff ROBERT WILLIAMS, his heirs, successors and assignees (the "Plaintiff") as to his claims against PRIVATE INVESTMENT EQUITY, LLC, their agents, employees, directors, officers, principals, representatives, successor owners, and predecessor owners, attorneys, insurers, (the "Defendants"), also referred to collectively as the "Parties."

### RECITALS

WHEREAS, Plaintiff filed suit against Defendants in the action entitled *Williams v. Porter-Patterson, et al.*, Alameda County Superior Court Case Number RG21099238 (the "Action") alleging that plaintiff was injured at the premises known as 548 37<sup>th</sup> Avenue, Oakland, California.

WHEREAS, Defendants have denied all of the allegations of Plaintiff's complaint and continue to deny any fault or liability for the accident.

WHEREAS, the plaintiff now desires to fully and forever resolve, settle and compromise all claims or disputes that Plaintiff has or may have against Defendants in connection with the Action. Said claims shall hereinafter be referred to collectively as the "Released Matters."

NOW, THEREFORE, in consideration of the conditions, covenants, agreements, representations and warranties contained in this Agreement and for other valuable consideration, Plaintiff agrees as follows:

#### 1. RELEASE

Plaintiff hereby releases, waives, holds harmless, and forever discharges Defendants from any and all claims, demands, damages, costs, expenses, liens, medical liens, actions and causes of action of any nature whatsoever, whether at law or at equity, whether based on tort, contract, indemnity or any other theory of recovery and whether for compensatory, non-compensatory, punitive or exemplary damages, in any way connected with, related to or arising out of any of the Released Matters, and as alleged in the Action, to include all claims arising out the tenancy at 548 37<sup>th</sup> Ave., Oakland, California, to include all storage, parking and common areas (the "subject premises").

Plaintiff understands and agrees that this is a full and final release of any and all claims arising out of or relating to the Released Matters, and as alleged in the Action, including, but not limited to, claims for bodily injury, personal injury, emotional distress, psychiatric injury, psychological injury, property damage, loss of consortium, wage loss, statutory penalties, injunctive relief, diminution of earning capacity, disability and unemployment benefits, interest and any other alleged injuries, tenancy and occupancy rights to the subject premises, damages or losses of any kind whatsoever however and whenever such injuries, damages, or losses were sustained or incurred.

2. WAIVER

Plaintiff has read, understands and agrees to waive the provisions of California Civil Code section 1542, which reads as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Plaintiff hereby expressly agrees that this settlement and release shall apply to all unknown, unforeseen, unanticipated and latent injuries, damages or losses resulting from the Released Matters, and as alleged in the Action, as well as those damages that are now known, foreseen, anticipated and patent, and expressly assumes full responsibility for any injuries, damages or losses that have been or may be incurred as the result of the Released Matters and as alleged in the Action.

3. CONSIDERATION

In consideration of the releases and agreements set forth above, Plaintiff shall receive the total sum of TWENTY THOUSAND DOLLARS AND NO CENTS (\$20,000.00) and no more (the "Settlement Amount") to be paid in the form of settlement drafts made payable to: LAW OFFICES OF ANDREW WOLF, PC Client Trust Account.

4. REPRESENTATIONS AND WARRANTIES

A. Plaintiff represents and warrants that he will be solely responsible for payment of all liens that have been or could be asserted by any health care provider, any lawyer, any expert or consultant, any of any medical or legal practitioner or other third party or agency, and any federal or state sponsored health coverage including but not limited to, including liens from Medi-Cal or Medicare, medical care providers, for any and all liens asserted or held by them in connection with the Action (referred to herein as the "Liens"). Plaintiff shall hold harmless, defend and indemnify Defendants and their liability insurance carriers against any and all liens, subrogation claims and other rights that may be asserted by any person, entity or agency against the amount paid in settlement or against any recovery by Plaintiff.

B. Plaintiff agrees to indemnify and save harmless the Defendants herein released from any loss, liability, claim, expense, demand or cause of action of any kind or character, including attorneys' fees and all court costs, arising from or occasioned by any lien rights or lien obligations of any character whatsoever, including, but not limited to, those created by or pursuant to § 708.410 of the Code of Civil Procedure of the State of California (relating to the liens of Judgment Creditors), § 14124.70, et seq. of the Welfare and Institutions Code of the State of California (relating to Medi-Cal liens and liabilities) and/or any other State or Federal statutory lien or liability rights relating to or arising from claims against, or benefits advanced to or for the benefit of Plaintiff, § 3045.1, et seq., of the Civil Code of the State of California.

(relating to hospital liens) and/or any other State or Federal Statutory lien or liability, or any contractual or common law lien or liability with particular but not exclusive reference to liens pertaining to or arising under Medicare or Social Security (including but not limited to Disability Insurance Benefits) laws or pertaining to physician, hospitals or other healing arts, persons or institutions, relating to, or arising from, claims against Defendants arising out of the Action and Released Matters.

C. Plaintiff represents and warrants that as of the date of this Agreement he is a Medicare beneficiary.

In further consideration for this Agreement relating to Medicare, Defendants, their attorneys and insurer(s) rely on the following Indemnification Agreement made by Plaintiff.

Indemnification

In addition to and without limiting any other language in this Agreement, Plaintiff agrees to indemnify and hold harmless Defendants, their attorneys and insurer(s) from any and all claims, demands, liens, subrogated interests and/or causes of action of any nature or character that have been or may in the future be asserted by Medicare and/or persons or entities acting on behalf of Medicare arising from or related to the matters made the basis of Plaintiff's claims and/or claim of non-compliance arising from or related to Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007 based on inaccurate or inadequate information provided to Defendants as to Plaintiff's status as a Medicare Beneficiary.

This indemnification obligation includes all damages incurred by Defendants, and/or their attorneys and/or Defendants' insurer(s), including but not limited to attorney's fees incurred by or on behalf of Defendants and/or its attorneys and/or Defendants' insurer, fines and penalties, costs, interest, expenses and judgments.

**5. NO ADMISSION OF LIABILITY**

This Agreement is the result of a compromise of disputed claims among the Parties hereto and shall never at any time or for any purpose be considered as an admission of liability and/or responsibility on the part of any party herein released, nor shall the payment of any money to Plaintiff constitute or be construed as an admission of any liability whatsoever by any party, each of which continues to deny liability and disclaim responsibility for any and all damages resulting from or attributed to the Released Matters, and as alleged in the Action.



KJD 7

6. **DISMISSAL WITH PREJUDICE OF ACTION**

Within five business days after the last of the following: (1) execution of this Agreement by Plaintiff, and (2) receipt by Plaintiff's counsel of the Settlement amounts consideration specified herein, Plaintiff shall file in Superior Court of California, County of Alameda a dismissal with prejudice of the entire action as against Defendants, each party hereto to bear their own attorneys' fees and costs.

7. **ATTORNEYS' FEES**

Plaintiff acknowledges and agrees that he will bear his own attorneys' fees and costs in connection with the matters referred to in this Agreement. In the event any action is brought for the enforcement of this Agreement or for a declaration of rights and duties hereunder, the prevailing party shall be entitled to recover all reasonable attorneys' fees and costs incurred in connection with that action, in addition to any other relief to which that party may be entitled.

8. **GOVERNING LAW**

This Agreement shall be interpreted in accordance with and governed in all respects by the laws of the State of California.

9. **BINDING EFFECT**

This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their past, present and future heirs, executors, administrators, trustees, beneficiaries, predecessors, successors, assigns, partners, partnerships, parent, sister, subsidiary, affiliated and related companies, officers, directors, principals, agents, servants, employees, representatives, and all persons, firms, associations, and/or corporations connected with them, including without limitation, their insurers, sureties and attorneys.

10. **SEVERABILITY**

If any provision or any part of any provision of this Agreement is for any reason held to be invalid, unenforceable or contrary to any public policy, law, statute, and/or ordinance, the remainder of this Agreement shall not be affected thereby and shall remain valid and fully enforceable.

11. **ADVICE OF COUNSEL**

Plaintiff represents and warrants that during the course of the negotiations leading to this Agreement, Plaintiff had the opportunity to, and has sought the advice of counsel. Plaintiff warrants and represents that she has read this Agreement in its entirety and has executed it voluntarily with full knowledge of its significance. Plaintiff represents and warrants that during the course of the negotiations leading to this Agreement, she has not relied on any representations made by defendants, their attorneys and insurers. Plaintiff represents and warrants that during the course of the negotiations leading to the execution of this Agreement, he

was legally competent to enter this agreement and that he has freely consented to and authorized this Agreement. Plaintiff further agrees that the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

**12. COUNTERPARTS**

This Agreement may be executed in one or more counterparts, and all so executed shall constitute an agreement which shall be binding on all parties hereto, notwithstanding that the signatures of the parties' designated representatives do not appear on the same page.

**13. ENTIRE AGREEMENT**

This Agreement contains the entire agreement between the parties hereto. The terms of this release are contractual and not a mere recital. This Agreement is executed without reliance upon any representation by any person concerning the nature or extent of injuries or legal liability therefore, and the undersigned carefully read and understands the contents of this Agreement and signs the same as her own free act.

IN WITNESS WHEREOF, Plaintiff has hereunder executed this Agreement.

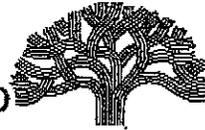
Dated: 3/7/2022 2022

  
Robert Williams

Approved as to form:

Dated: March 07, 2022

  
Andrew Wolff, Esq.  
Attorney for Plaintiff



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

Housing and Community Development Department  
Rent Adjustment Program

TEL (510) 238-3721  
FAX (510) 238-6181  
CA Relay Service 711

**HEARING DECISION**

**CASE NUMBER:** T20-0189, Williams v. Dawson  
**PROPERTY ADDRESS:** 548 37<sup>th</sup> Street, Oakland, CA  
**DATE OF HEARING:** May 5, 2021  
**DATE OF DECISION:** June 24, 2021  
**APPEARANCES:** Robert Williams, Tenant  
Brenna Wood Fitzpatrick, Tenant Representative  
Kevin Dawson, Current Owner  
Sandra Porter, Former Owner

**SUMMARY OF DECISION**

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

**CONTENTIONS OF THE PARTIES**

The tenant filed a petition on March 2, 2020, asserting that there is a current health, safety, fire or building code violation in his unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance. Additionally, the tenant asserted that the owner is providing him with fewer housing services than he received previously or is charging him for services originally paid by the owner.

The tenant submitted a list of six "Decreased Services & Code Violations" along with his petition. His list included the following:

- Damage from water leaks in many places;
- Kitchen counter and kitchen sink need to be replaced – mold around sink;
- Wall behind bathroom;
- Mold in bathroom;
- Part of basement is now used by owner; and
- Problem with furnace.

KKD 10

The owner filed a timely *Property Owner Response* asserting that "Claims made by tenant for conditions that predated my ownership and those conditions have been cured."

### THE ISSUES

1. When, if ever, was the *RAP Notice* first served on the tenant?
2. Have the tenant's housing services decreased and, if yes, in what amount?
3. What, if any, restitution is owed between the parties and how does it affect the rent?

### EVIDENCE

Rental History: The tenant testified that he moved into the unit in January 1997, at an initial rent of \$600 per month. His unit is the downstairs unit of a duplex. According to the tenant, he was first provided with the *RAP Notice* in December 2019.<sup>1</sup> The tenant started paying \$700 per month in rent beginning September 2006. Since January 2021, the tenant has been paying \$866 a month. This includes monthly rent of \$770 per month plus \$96 per month for water.

The current owner, Kevin Dawson, purchased the property from the former owner, Sandra Porter (whose name is listed as Sandra Porter Patterson on the Grant Deed), on December 10, 2019. (Owner Exhibit 1, p. 7.)

#### Decreased Housing Services

##### Damage from Water Leaks

The tenant testified that water leaked from the bathroom area of the upstairs unit into his unit and damaged a number of areas in his unit, including the walls in his bedroom, bathroom and hallways. He was uncertain about the dates the leak started and stopped. His best estimate was that the leak started in mid- to late-2018, and that he reported the leak in person to Sandra Porter, who owned the property at that time. He also testified that the active leaks stopped "pretty close to when" the City of Oakland Notice of Violation came out.

The tenant reported the problem to the City of Oakland (Tenant Exhibit 1), and the Owner was cited for a number of violations on January 28, 2019, based on an inspection conducted on January 22, 2019 (Tenant Exhibit 2). These violations included: Unsafe rear stairs; broken glass at entry; indication of active leaks; kitchen counter worn at sink and unsanitary; cracked toilet and moisture damaged baseboard. (Tenant Exhibit 2, p. 4.)

The tenant further testified that there were leaks in his laundry room area that began at the same time as the other leaks. Some of the wood in the laundry room was damaged, and not repaired until September 19, 2020. The tenant further testified that,

<sup>1</sup> The *Property Owner Response* listed the date the *RAP Notice* was first given to the tenant as December 12, 2019.

due to the leaks, he had to do his laundry offsite. He did not, however, report this last complaint to the owner.

Kevin Dawson, the current owner, testified that the water leak was due to vandalism that happened in the upstairs unit (550 37<sup>th</sup> Street) in December 2018, when pipes were stolen from within the walls, and water leaked into the tenant's unit and caused damage to the ceiling and walls. According to Mr. Dawson, the leaking took place from approximately December 2018 to January 2019. He took over ownership as of December 10, 2019, and repaired most of the water damage to the tenant's unit by May 2020. According to a letter from the owner to the tenant dated May 5, 2020, the repair work began on May 6, 2020. (Owner Exhibit 2, p. 23.)

Mr. Dawson testified that the tenant did not mention the laundry room leaks until after May 2020, and that he repaired the damage to that area by September 2020. A letter from Mr. Dawson to Mr. Williams stated that the latter work was done on September 19, 2020. (Owner Exhibit 2, p. 5.)

#### Kitchen Counter and Kitchen Sink

The tenant testified that the City of Oakland Code Violation Notice noted problems with the kitchen counter area (Tenant Exhibit 2, p. 4). The tenant first noticed mold in this area beginning in 2018, approximately one year before the City inspection was done. The tenant did not report this issue to the owner.

According to the current owner, he decided – rather than repairing the area – to put in a new kitchen sink and countertop. According to a letter from the owner to the tenant dated May 10, 2020, the work on the kitchen began on May 12, 2020. (Owner Exhibit 2, p. 22.)

#### Wall Behind Bathroom/Mold in Bathroom

This item is partially addressed in the first section dealing with the water leaks and the damage caused by the water.

The tenant also testified that the toilet was cracked and leaking, as mentioned in the City of Oakland Code Violation Notice (Tenant Exhibit 2, p. 4). The toilet was replaced on March 16, 2019, however the flooring around the toilet was not replaced until September 2020. According to the tenant, he hired a company to test everything in the bathroom in September 2020, and the company found mold in the bathroom. The tenant did not provide a copy of the company's findings. The tenant asserted that the toilet continues to leak, although he did not list this issue in his *Petition*.

The owner disputed that the toilet was an ongoing issue. He also disputed that there was mold in the bathroom in September 2020. He asserted that, in August 2020, he and his plumber both inspected the toilet and the bathroom and saw no evidence of mold or toilet leaks. He submitted a statement from his plumber dated September 24, 2020, stating that there was no apparent leaking of the bathroom toilet and that the "urine stains around perimeter of toilet" were due to "misguidance." (Owner Exhibit 2, p. 16.) The plumber sanitized and caulked, performed a general sterilization of the floor,



and replaced the wood board damaged from urine with sterile rubber. (Owner Exhibit 2, p. 17.) The work was completed on October 3, 2020.

#### Loss of Basement Storage

The tenant testified that he initially had sole use of the basement storage space for his unit (548 37<sup>th</sup> Street). It was his understanding that the upstairs unit (550 37<sup>th</sup> Street) had a separate basement storage space. At one point, the former owner started storing items in the basement storage space that the tenant used because she was working on the small house located at the back of the property. On April 12, 2017, the tenant signed a Tenant Estoppel Certificate that stated under the storage space category: "shared storage in basement only." (Owner Exhibit 2, p. 26.)

#### Furnace Problem

The tenant testified that he had two furnaces in his unit: the one in the front of the unit is new, the one in the back of the unit is old. At one point, in December 2018, the pilot was out in one of the furnaces, and the tenant had to have PG&E come out to re-light it. Before the pilot was re-lit, the former owner came by and wanted to install a new unit, but the tenant told her that it was working and just needed to be re-lit.

The tenant introduced a PG&E notice dated February 14, 2020, that stated as follows: "Floor furnace has hole in diverter, hazard disconnected." (Tenant Exhibit 3, p.3.) Because PG&E deemed the furnace a hazard, it disconnected it. (Tenant Exhibit 3, p. 4.) The tenant testified that a new furnace was put in by the current owner in September 2020.

Mr. Dawson testified that the tenant told him about problems with the furnace, and he inspected it in May 2020. He verified that the furnace in the front of the unit was working and that the one in the rear had corrosion. The tenant gave him copies of the PG&E notices. The owner hired Nahman Plumbing to fabricate new parts and repair the rear furnace. This work was completed on September 14, 2020. (Owner Exhibit 2, pp. 11-12.)

#### Small Claims Action

The owner submitted evidence of a small claims action between the tenant and the former owner where the tenant claimed damages based on the City of Oakland Notice of Violation and was awarded a payment of \$550 (\$380 principal and \$170 costs) in March 2020. (Owner Exhibit 3, pp. 5-17.)

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

The Rent Adjustment Ordinance requires an owner to serve the *RAP Notice* at the start of a tenancy<sup>2</sup> and together with any notice of rent increase or change in the terms of a

<sup>2</sup>O.M.C. §8.22.060(A)

4  
KKD 13

tenancy.<sup>3</sup> An owner can cure the failure to give notice at the start of the tenancy, but may not raise the rent until six (6) months after the first *RAP Notice* is given.<sup>4</sup>

The parties agreed that the tenant was first provided with the *RAP Notice* in December 2019.

**Have the tenant's housing services decreased and, if yes, in what amount?**

Under the Oakland Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent<sup>5</sup> and may be corrected by a rent adjustment.<sup>6</sup> 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, a tenant must establish that he has given the owner notice of the problems and the opportunity to fix the problems before he is entitled to relief.

Once the tenant is served with the *RAP Notice*, a tenant petition must be filed within 90 days after the tenant becomes aware of the decreased housing service or, if the decreased housing service is ongoing, the tenant may file a petition at any point but is limited in restitution for 90 days before the petition is filed and to the period of time when the owner knew or should have known about the decreased housing service. O.M.C. §8.22.090(A)(3)(b). In this case, the tenant filed his *Petition* on March 2, 2020, which is within 90 days after he was first served with the *RAP Notice* on December 12, 2019.

In this case, although Mr. Dawson did not purchase the property until December 10, 2019, it is well established that a new owner is liable for the obligations of the former owner under a Rent Control Ordinance.<sup>7</sup> Under the Oakland Rent Adjustment Ordinance, the term "owner" includes the successor in interest of the prior owner.<sup>8</sup> Therefore, Mr. Dawson can be held liable for any claims that are established against the prior owner.

Each of the tenant's claims will be evaluated individually.

Damage from Water Leaks

The tenant's unit suffered extensive damage from the leak in the upstairs unit. The testimony of both the tenant and the current owner, supported by the City of Oakland Notice of Violation, established that there was an active leak for at least the

<sup>3</sup>O.M.C. §8.22.070(H)(1)

<sup>4</sup>O.M.C. §8.22.060(C)

<sup>5</sup>O.M.C. §8.22.070(F)

<sup>6</sup>O.M.C. §8.22.110(E)

<sup>7</sup>*Baychester v. San Francisco*, 165 Cal.App.4<sup>th</sup> 1000 (2008).

<sup>8</sup>O.M.C. Section 8.22.020

5  
K&D 14

period of December 2018 through January 2019.<sup>9</sup> The tenant testified that he told the former owner about the leaks. The former owner should have been aware of the problem from at least the date of the Notice of Violation in January 2019.

The damage from the leaks was not repaired until May 2020 for the bedroom, bathroom and hallway area, and not until September 2020 for the laundry area. Although the current owner claimed that the tenant did not inform him about the laundry room leak until May 2020, it was the owner's responsibility to conduct a full inspection of the damage caused by the leak and of the other items listed in the Notice of Violation.

Because the tenant filed his petition within 90 days of receiving the *RAP Notice*, he is entitled to full restitution for the water leaks and the damage caused by the leaks. Therefore, he is entitled to two months of restitution for the period the leaks were ongoing.<sup>10</sup> He is also entitled to restitution for 21 months of damage from the water leaks, which lasted from December 2018 until May 2020 in bedroom/bathroom/hallway area and until September 2020 for laundry room area. Because the tenant did not list the loss of use of the laundry room on his petition, nor report this issue to the owner, he is not entitled to restitution for this as a separate category.

#### Kitchen Counter and Kitchen Sink

The City of Oakland Code Violation Notice noted problems with the kitchen counter area as follows: "kitchen counter worn at sink and unsanitary." (Tenant Exhibit 2, p. 4.) The tenant first noticed mold in this area beginning in 2018, approximately one year before the City inspection was done. Although the tenant did not report this issue to the owner, the owner was put on notice of the problem by at least January 28, 2019, the date of the City of Oakland Notice of Violation. The repairs to the sink were not completed until May 2020.

As mentioned above, because the tenant filed his petition within 90 days after first receiving the *RAP Notice*, he is entitled to full restitution for this issue between when the owner received notice of it (January 28, 2019), and when the issue was fixed (May 12, 2020). Therefore, the tenant is entitled to restitution for nearly 16 months for the problems with the kitchen counter and sink, the period from the date of the Notice of Violation until the kitchen counter and sink were repaired.

#### Wall Behind Bathroom/Mold in Bathroom

This item is partially addressed in the first section dealing with the water leaks and the damage caused by the water.

The tenant also testified that the toilet was cracked and leaking, as mentioned in the City of Oakland Code Violation Notice (Tenant Exhibit 2, p. 4). The toilet was

<sup>9</sup> Because no exact dates were provided, the Hearing Officer will assume that the leak began on December 1, 2018, and lasted through January 31, 2019, because the City of Oakland Inspector referenced active leaks based on the inspection conducted on January 22, 2019, and the tenant testified that the active leaks stopped pretty soon after the Notice of Violation, which was dated January 28, 2019.

<sup>10</sup> The precise date calculations (2.01 months and 21.63 months, respectively) are provided in the chart below.

6  
K+D 15

replaced on March 16, 2019. The tenant further claimed that there was mold in the bathroom as of September 2020, however the owner disputed this. The tenant did not provide a copy of the test that he had done in September 2020 that supposedly found mold in the bathroom.

The owner's testimony, as well as the statement from his plumber (Owner Exhibit 2, p. 16), was more credible, that there was damage to the floor from urine "misguidance" and that the plumber addressed this problem with repairs made on October 3, 2020. (Owner Exhibit 2, p. 17.) Therefore, the separate claim for mold in the bathroom is not granted. In addition, since the tenant failed to list a leaking toilet on his petition, the tenant is not entitled to separate restitution regarding the toilet for the period prior to the replacement of the toilet.

#### Loss of Basement Storage

The tenant testified that, when he first moved into his unit, he had sole use of the basement storage area. This changed at some point, when the former owner began storing some items in that area. On April 12, 2017, the tenant signed a Tenant Estoppel Certificate agreeing that the storage space provided to him was "shared storage" in the basement. (Owner Exhibit 2, p. 26.) Because the tenant agreed to the storage space being shared, he is not entitled to restitution for this claim.

#### Furnace Problem

The PG&E documents, as well as the testimony of both the tenant and the owner, established that the rear furnace was inoperable from February 14, 2020, the date it was disconnected by PG&E, until September 14, 2020, the date it was repaired. The tenant informed the owner about the furnace issue, and is entitled to restitution for the seven months it took the owner to repair the furnace.

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

The tenant's current base rent is \$770 a month, the amount he has been paying since January 2021.<sup>11</sup> Because there are no items listed in the tenant's petition that the current owner has failed to repair, the tenant is not entitled to a monthly rent decrease for ongoing conditions.

The tenant is, however, entitled to restitution for any rent overpayments for the time periods when the repairs were not yet made. As discussed above, the current owner "stands in the shoes" of the old owner, and can be held responsible for periods during which the former owner should have made repairs and failed to do so, as well as periods subsequent to assuming ownership when the repairs were not yet made. These periods are noted on the chart below, and the restitution the tenant is entitled to is calculated based on the rent that he was paying during the relevant periods, which was \$700 per month for each item. Therefore, he is owed a total of \$2,755.89 for lost services: \$210.58

<sup>11</sup> The tenant has also been paying \$96 a month for water, but this payment was not at issue in this case.

for the active water leaks; \$1,514.30 for the damage from the leaks; \$540.82 for the kitchen counter and sink; and \$490.19 for the inoperable furnace.

There is no way to tell which of the items in the Notice of Violation were covered by the award made against the former owner in the tenant's small claims action. For example, the award could have concerned the unsafe rear stairs, the first item on the City of Oakland Notice of Violation (Tenant Exhibit 2, p. 3), which was arguably the most dangerous condition listed on the Notice of Violation. In addition, small claims awards do not necessarily bar tenants from seeking restitution against owners in a Rent Adjustment Hearing. Therefore, the fact that the former owner paid the tenant \$380 on this claim does not affect the tenant's restitution award in this action.

The restitution amounts owed to the tenant are listed in the chart below:

Service Lost	From	To	VALUE OF LOST SERVICES		Decrease/ Month	No. of Months	Amount Overpaid
			Rent	% Rent Decrease			
Electricity	Dec 1981	Jan 1982	\$700.00	100%	\$105.00	2.01	\$210.58
Water	Dec 1981	Jan 1982	\$70.00	100%	\$70.00	21.63	\$1,514.30
Kitchen counter and sink	Dec 1981	May 1982	\$36.00	100%	\$36.00	15.45	\$540.82
Inoperable furnace	Dec 1981	Jan 1982	\$70.00	100%	\$70.00	7.00	\$490.19
<b>TOTAL LOST SERVICES</b>							<b>\$2,755.89</b>
<b>RESTITUTION</b>							
<b>MONTHLY RENT</b>							<b>\$7,000</b>
<b>TOTAL TO BE REPAYED TO TENANT</b>							<b>\$2,755.89</b>
<b>TOTAL AS PERCENT OF MONTHLY RENT</b>							<b>357.91%</b>
<b>AMORTIZED OVER</b>			<b>MONTHS BY REG. IS</b>				
<b>OR OVER</b>			<b>MONTHS BY HEARING OFFICER IS</b>				<b>\$114.83</b>

An overpayment of this amount, which totals 357.91% of the tenant's current monthly rent, is normally adjusted over a period of 24 months.<sup>12</sup> The restitution deduction is \$114.83 a month. The tenant is entitled to begin to deduct the restitution owed from his rent after this Hearing Decision becomes final. The decision is final if no party has filed an Appeal within 15 days of the date the Hearing Decision is mailed to the parties.

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

<sup>12</sup>Regulations §3.22.110(F)(4)

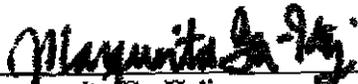
8  
KKD 17

**ORDER**

1. Petition T20-0189 is granted in part.
2. The tenant's base rent is \$770 a month.
3. Due to past decreased services, the tenant is owed restitution of \$2,755.89. Therefore, the tenant's rent is adjusted by a rent decrease for 24 months in the amount of \$114.83 a month.
4. The tenant is entitled to reduce the rent per the restitution order after the Hearing Decision becomes final.
5. If the owner wishes to, he can repay the restitution owed to the tenant at any time. If he does so, the monthly decrease for restitution ends at the time the tenant is provided restitution.

**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 fifteen (15) calendar days after service of the decision. The date of service is shown on the attached Proof of Service. If the Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.

Dated: June 24, 2021

  
\_\_\_\_\_  
Marguerita Fa-Kaji  
Hearing Officer  
Rent Adjustment Program

<sup>6</sup>  
K&D 18

**PROOF OF SERVICE**  
**Case Number T20-0189**

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

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

**Documents Included**  
Hearing Decision

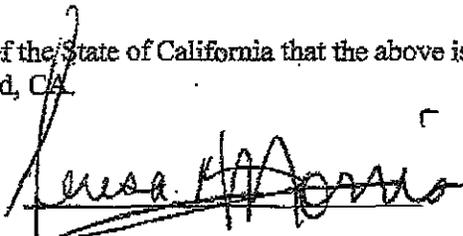
**Owner**  
Kevin K Dawson  
1939 Harrison Street Suite 915  
Oakland, CA 94612

**Owner**  
Sandra Patterson  
4994 Stacy Street  
Oakland, CA 94605-5103

**Tenant**  
Robert Williams  
548 37th Street  
Oakland, CA 94609

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on June 24, 2021 in Oakland, CA.

  
Teresa Brown-Morris  
Oakland Rent Adjustment Program

KKD 19

**Private Investment Equity  
LLC**

1939 Harrison Street, Suite 915, Oakland, Cal. 94612

P.O. Box 20599, Oakland, CA 94620

Email: [pie@proadjuster.com](mailto:pie@proadjuster.com)

Telephone 510/845-0777

Fax 510/845-0777

---

December 2, 2020

Robert Williams  
548 37<sup>th</sup> Street  
Oakland, California 94609

Re: Increased Eastbay Municipal Utility District Water Usage

Dear Robert:

It has come to my attention through the services of your counsel, Ms. Atkins, that in the Summer and early Autumn of 2020 your water service fees have increased.

As you recall, I have done significant upgrades to the property which included landscaping and hardscaping, as well as the installation of a landscaping irrigation system.

As such, the water piping servicing that irrigation system has been connected to the piping that services your unit, 548 37<sup>th</sup> Street. As a consequence, a significant increase in water usage occurred after that landscaping was done in August, September and October of 2020.

I have now reset the irrigation system to use significantly less water but, since the pipes are owned by the title holder, Private Investment Equity LLC, it is necessary that the service to your unit also be billed to that entity.

I have undertaken a review of your bill, dated the period ending November 3, 2020, and my review is as follows:

KKD 20

000064



**Fixed Costs:**

<b>EBMUD water charges</b>	
Water service charge	\$55.74
<b>EBMUD wastewater charges</b>	
Wastewater treatment charge	\$53.56
<b>SF Bay pollution prevention fee</b>	\$ 0.40
<b>Passthrough charges for the City of</b>	
Oakland sewer services	<u>\$82.74</u>
<b><u>Total:</u></b>	<b><u>\$192.44</u></b>

My review shows that your prior service fee of \$516.79 for the period ending September 3, 2020 was excess of your usual and customary charges. Considering that the fixed charges are \$192.44, the overage charged is \$324.35.

Similarly, the total current charges of \$597.35 has an overage, less the fixed charges of \$192.44, of \$404.91.

Adding the two period overcharges of \$324.35 plus \$404.91 yields a credit due you of \$729.26.

I will apply that credit to amounts outstanding, previously billed for the necessary charges for entry (as a result of your refusal to provide access and keys), as well as the necessary charge from your urine damage to the bathroom floor.

These accumulated charges are \$1,770.61; the net amount due, after application of this credit, is \$1,041.35. This net amount from those outstanding costs is now due and payable to Private Investment Equity LLC.

Considering the need of the property to be properly serviced by the irrigation system and the fact that the pipes serving that irrigation system are attached fixtures to the building, I have elected to terminate your utility service costs and to absorb and assume your water service costs as an additional part of your rent fee. Your fixed costs, on a bi-monthly basis, is \$192.44.

Your historical usage of water is minimal and as a consequence, I will not charge you for the incurred water services in the future, assuming that they are consistent with that amount shown on your billing. I have enclosed a copy of the billing used as my guide in making this required adjustment.

The monthly cost for this utility that I will provide you is \$96.22. As a consequence, effective January 1, 2021, your rent adjustment of \$96.00 will be added to your current rent of \$770.00 yielding a new monthly rent fee of \$866.00.

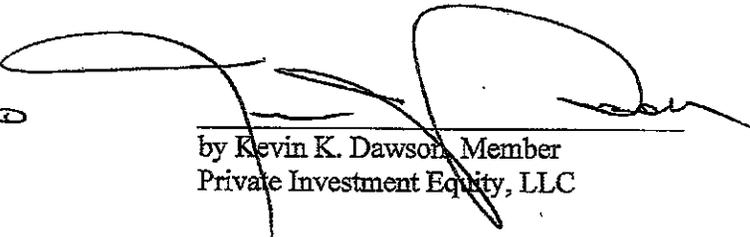
You will no longer be required to provide water service after January 1, 2021, and I will have the service billed in the name of Private Investment Equity, LLC at that time.

Please ensure that your monthly rent payment of \$866.00 is received timely at the address for which the previous rent payments have been mailed.

Regarding your mailing of rent and other communications, you endeavor to send these by Certified Mail. First Class Mail suffices, as due to the pandemic, it creates additional troublesome handling to seek out and receive a Certified Mail transmittal. There is no need for a Certified Mail mailing and it creates difficulty in obtaining your rent payments and other communications in a timely manner.

I will only accept rent and other communications via First Class Mail. Please use First Class mail services when sending future payments and other communications. Of course, telephone, email and text communications are welcome.

December 2, 2020  
Date

  
by Kevin K. Dawson, Member  
Private Investment Equity, LLC

KKD/22

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...
Starting on February 1, 2017, an owner must petition the RAP for any rent increase...
Contesting a Rent Increase: You can file a petition with the RAP to contest unlawful rent increases...
If you contest a rent increase, you must pay your rent with the contested increase until you file a petition...
Oakland has eviction controls (the Just Cause for Eviction Ordinance and Regulations, O.M.C. 8.22)...
Oakland charges owners a Rent Program Service Fee per unit per year...
Oakland has a Tenant Protection Ordinance ("TPO") to deter harassing behaviors by landlords...
The owner \_\_\_ is \_\_\_ is not permitted to set the initial rent on this unit without limitations...

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.
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.

KKD 23



# EAST BAY MUNICIPAL UTILITY DISTRICT

1-866-40-EBMUD

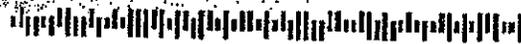
YOUR ACCOUNT NUMBER:

36145200001

Next Read Date is 01/08/2021

Your Payment is Due by 11/23/2020

EBMUD has been serving East Bay customers for nearly a century. Our current budget invests more than \$800 million into our aging water and wastewater systems. Visit ebmud.com to learn how we're completing infrastructure projects and building a budget to keep our system running for the next 100 years.



Robert Williams  
548 37TH ST  
OAKLAND, CA 94609-2424

Bill Date: 11/06/20

Billing Period (60 Days)	
From	To
9/4/20	11/3/20

For: 548 37th St  
Private Residence

### PREVIOUS CHARGES AND CREDITS

	AMOUNT	TOTAL
PREVIOUS AMOUNT DUE	516.79	
PAYMENT ON ACCOUNT - 09/30/20	-516.00	0.79
<b>EBMUD - WATER CHARGES</b>		
WATER SERVICE CHARGE	55.74	
WATER FLOW CHARGE 14 UNITS @4.25	59.50	
18 UNITS @5.85	105.30	
31 UNITS @7.72	239.32	459.86
<b>EBMUD - WASTEWATER CHARGES</b>		
WASTEWATER TREATMENT CHARGE	53.56	
SF BAY POLLUTION PREVENTION FEE	0.40	53.96

### PASS THROUGH CHARGES FOR THE CITY OF OAKLAND SEWER SERVICES

PLEASE SEE REVERSE SIDE FOR ADDITIONAL INFORMATION

### TOTAL CURRENT CHARGES

597.76

METER SIZE	ELEV. Band	METER READINGS		UNITS	CONSUMPTION INFORMATION		
		Current	Previous		Gallons	Days	Gal/Day
5/8 inch	1	96	33	63	47,124	60	785
		LAST YEAR		1	748	60	12

KKD 24

000068

CITY OF OAKLAND



Department of Housing and Community Development  
 Rent Adjustment Program  
<http://rapwp.oaklandnet.com/about/rap/>

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

HOVER OVER CELL FOR INSTRUCTIONS

INPUT IN YELLOW CELLS ONLY

CALCULATION OF DEFERRED CPI INCREASES (BANKING)

Initial move-in date	1 Jan 1997	MUST FILL IN D10, D11, D12 and D16. D13 should be filled in if it applies.	Case No.:	
Effective date of increase	1 Jul 2022		Unit:	
Current base rent (before increase and without any prior cap. improve pass-throughs)	\$770.00			
Is there a continuing cap. imp. pass-through?	\$0.00			
Date calculation begins	7/1/2011			
Base rent when calc. begins	\$700.00			

ANNUAL INCREASES TABLE

Year Ending	Debt Serv. or Fair Return Increase	Increased Housing Serv. Costs Increase	Base Rent Reduction	Annual CPI Percentage	Allowable CPI Increase	Rent Ceiling
7/1/2022				6.7%	\$59.73	\$951.27
7/1/2021				1.9%	\$16.62	\$891.53
7/1/2020				2.7%	\$23.00	\$874.91
7/1/2019				3.5%	\$28.81	\$851.91
7/1/2018				3.4%	\$27.07	\$823.10
7/1/2017				2.3%	\$17.90	\$796.03
7/1/2016				2.0%	\$15.26	\$778.14
7/1/2015				1.7%	\$12.75	\$762.88
7/1/2014				1.9%	\$13.99	\$750.13
7/1/2013				2.1%	\$15.14	\$736.14
7/1/2012				3.0%	\$21.00	\$721.00
7/1/2011				-	-	\$700

Calculation of Limit on Increase

Current base rent	\$770.00
Maximum percentage increase	10.0%
Ceiling on allowable increase - dollar amount	\$77.00
Allowable Percentage CPI increase this year	6.7%
Allowable Increase Based on CPI - Dollar Amount	\$51.59
Banked Amount	\$129.68
Sum of Banking amount and current CPI	\$181.27
Total Allowable increase- the smaller of "ceiling on allowable increase" and "sum of banking and current CPI"	\$77.00
Prior capital improvements recovery	\$0.00
Rent ceiling w/o other new increases	\$847.00

OWNER FILL IN:

Banking Dollar Amount	CPI Dollar Amount	Total Increase

Notes:

- You cannot use banked rent increases after 10 years.
- CPI increases are calculated on the base rent only excluding capital improvement pass-throughs.
- The banking limit is calculated on the last rent paid, excluding capital improvement pass-throughs.
- Debt service and fair return increases include all past annual CPI adjustments.
- An increased Housing Service Cost increase takes the place of the current year's rent adjustment.
- Past increases for unspecified responses are presumed to be for banking.
- Banked annual increases are compounded.
- The rent increase notice must specify what amount is being taken as the CPI and what is taken for banking and may not exceed the amount specified on the calculation.
- During the local health emergency due to Covid-19, no rent increases above the CPI can be given until the emergency is lifted.

**RECEIVED**

OCT 19 2022

OAKLAND RENT  
ADJUSTMENT PROGRAM

October 17, 2022

Robert Williams  
548 37<sup>th</sup> Street  
Oakland, CA 94609

City of Oakland  
RENT ADJUSTMENT PROGRAM  
250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612-0243

RESPOND TO APPEAL

---

Kevin Dawson dba  
Private Investment Equity, LLC  
P.O. Box 20599  
Oakland, CA 94620

Property Address  
548 37<sup>th</sup> Street, Oakland, CA 94609

The Property Owner increased the rent 10%-12.5%. Rent increase are limited to one increase in a twelve month period.

The Property Owner attempted to impose two (2) rent increases in a twelve month period, without filing an Owners Petition for approval of the rent increase with the Rent Adjustment Program .

000070

I received letter May 28,2022 from the Property Owner of a rent increase effective July 1,2022 increasing the rent \$77.00 from \$770.00 to \$847.00 effective July 1, 2022. Additionally, EBMUD water and sewer charge of \$96.00 raising the monthly rent to \$943.00. The cost of base rent plus utility reimbursement.

I notified the Property Owner, June 21, 2022 that I was contesting the July 1, 2022 rent increase.

### Hearing Decision

---

Case Number T20-0189

Williams v Dawson May 5,2021  
Hearing Decision June 24, 2021  
Restitution \$2755.89

The Property Owner sent restitution check for \$1,124.43 November 3, 2021 with a letter detailing that I owed the Property Owner the balance of the Restitution check of \$1631.40. The order has not been paid to date.

In November 2021 an Offer to Compromise was received from defendants in:

Case Number RG 21099238

Williams v Porter-Patterson and Private Investment Equity,  
LLC

Superior Court of the State of California  
County of Alameda-Unlimited Civil Jurisdiction

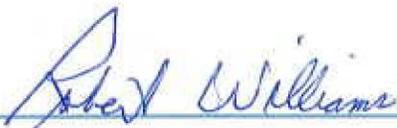
This case went into arbitration in March 2022 and was settled March 17, 2022.

Mold inspection September 24, 2020 found in bathroom water damage discoloration and potential mold growth on the exposed wood behind the baseboard. Moisture readings showing complete wetness of floor and wall around the toilet. (see attachment 1, 2)

The building material in the bathroom reported in September 2020 is the same material in the bathroom today.

Removal of all damage building materials from living areas of human being is the Law of the State of California .

October 18, 2022

  
Robert Williams



**Bathroom**

Moisture readings are showing complete wetness of the floor and wall around the toilet.



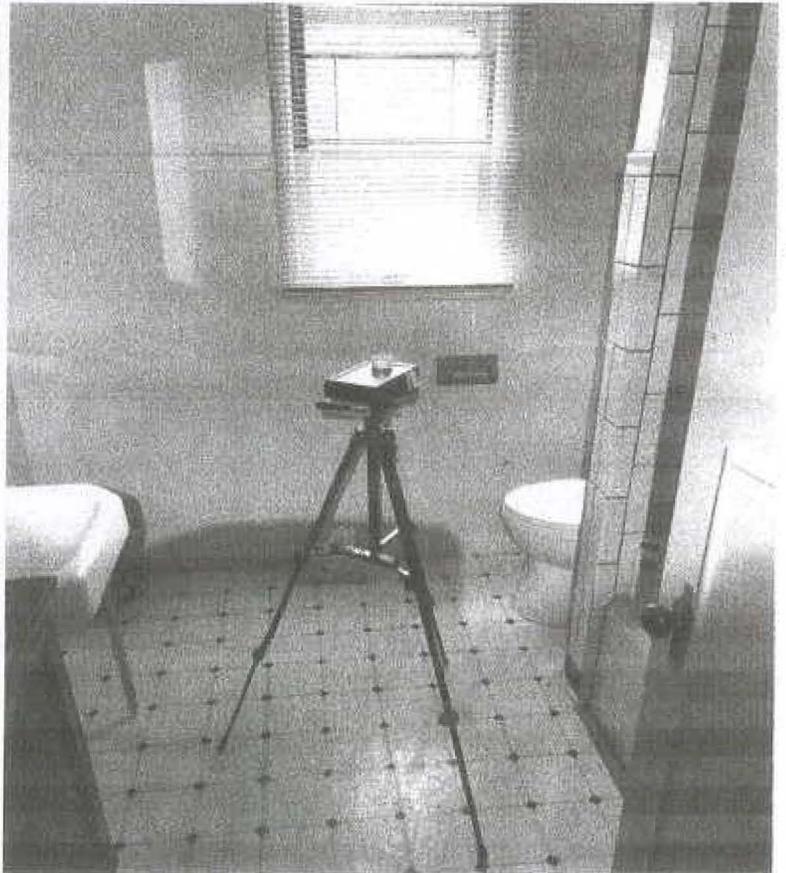
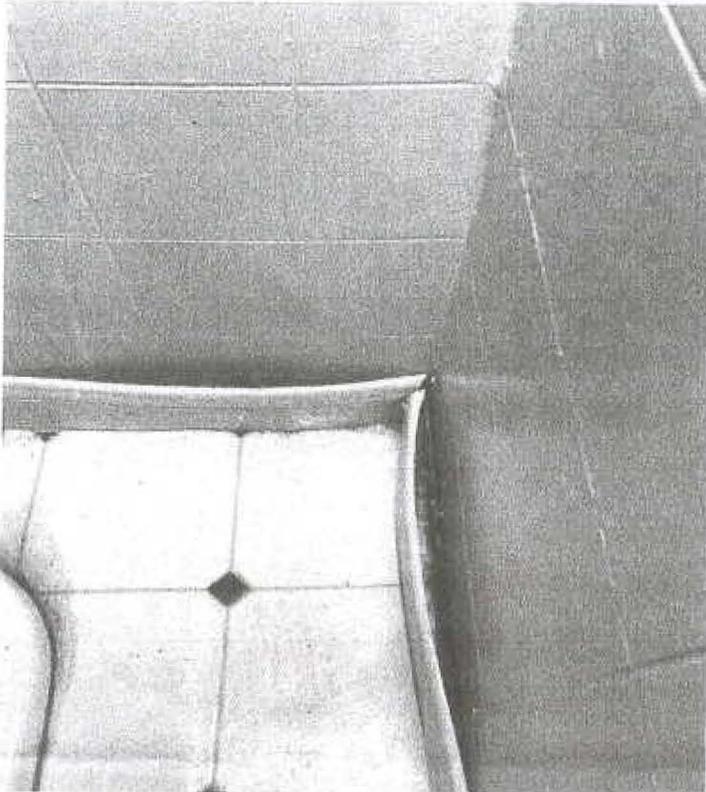
September 2020

000073

**Bathroom**

**Sample Type: Air (75 Liters)**

**Sample Result: Not Elevated Condition Of Mold Spores**  
water damage discoloration and potential mold growth on the exposed wood behind the baseboard line. Baseboards are delaminating due to wetness of materials.





# RENT ADJUSTMENT PROGRAM

250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612-0243  
(510) 238-3721  
CA Relay Service 711  
[www.oaklandca.gov/RAP](http://www.oaklandca.gov/RAP)

# RECEIVED

OCT 19 2022

OAKLAND RENT  
ADJUSTMENT PROGRAM

## PROOF OF SERVICE

**NOTE: YOU ARE REQUIRED TO SERVE A COPY OF YOUR PETITION (PLUS ANY ATTACHMENTS) ON THE PROPERTY OWNER PRIOR TO FILING YOUR PETITION WITH RAP. You must include a copy of the RAP form "NOTICE TO PROPERTY OWNER OF TENANT PETITION" (the preceding page of this petition packet) and a completed PROOF OF SERVICE form together with your Petition.**

- 1) Use this PROOF OF SERVICE form to indicate the date and manner of service and the person(s) served.
- 2) Provide a completed copy of this PROOF OF SERVICE form to the person(s) being served together with the documents being served.
- 3) File a completed copy of this PROOF OF SERVICE form with RAP together with your Petition. Your Petition will not be considered complete until this form has been filed indicating that service has occurred.

On the following date: 10/18/22 I served a copy of (check all that apply):

- TENANT PETITION plus 5 attached pages (number of pages attached to Petition not counting the Petition form, NOTICE TO PROPERTY OWNER OF TENANT PETITION, or PROOF OF SERVICE)
- NOTICE TO PROPERTY OWNER OF TENANT PETITION
- Other: RESPOND TO APPEAL

by the following means (check one):

- United States Mail.** I enclosed the document(s) in a sealed envelope or package addressed to the person(s) listed below and at the address(es) below and deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- Commercial Carrier.** I deposited the document(s) with a commercial carrier, using a service at least as expeditious as first-class mail, with all postage or charges fully prepaid, addressed to the person(s) listed below and at the address(es) below.
- Personal Service.** I personally delivered the document(s) to the person(s) at the address(es) listed below or I left the document(s) at the address(es) with some person not younger than 18 years of age.

### PERSON(S) SERVED:

Name	<u>KEVIN DAWSON</u>
Address	<u>P.O. BOX 20599</u>
City, State, Zip	<u>OAKLAND, CA 94620</u>

Name	ROBERT WILLIAMS
Address	548 37 <sup>TH</sup> STREET
City, State, Zip	OAKLAND, CA 94609

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

Robert Williams

PRINTED NAME

Robert William

SIGNATURE

10/18/2022

DATE SIGNED

## CHRONOLOGICAL CASE REPORT

Case No.: L14-0065

Case Name: 525-655 Hyde Street CNML Properties, LLC

Property Address: 3921 Harrison Street, Oakland, CA 94611

Parties: Ray McFadden (Owner)  
Angie Sandoval (Owner Representative)  
Clifford Fried (Owner Representative)  
Julie Amberg (Tenant)  
Mari Oda (Tenant)  
Todd McMahon (Tenant)  
Alexander Taylor (Tenant)  
Suzanne Miller (Tenant)  
Cooper Spinelli (Tenant)  
Stanley Amberg (Tenant Representative)

### TENANT APPEALS:

<u>Activity</u>	<u>Date</u>
Owner Petition filed	November 10, 2014
Tenant Response filed (Johnson)	December 17, 2014
Tenant Response filed (Oda)	December 19, 2014
Tenant Response filed (McMahon)	December 19, 2014
Tenant Response filed (Z. Butnaru)	December 22, 2014

000077

Tenant Response filed (A. Butnaru)	December 22, 2014
Tenant Response filed (Amberg)	December 22, 2014
Tenant Response filed (Simkin & Simkin)	December 22, 2014
Tenant Response filed (Miller)	December 22, 2014
Tenant Response filed (Garcia)	December 23, 2014
Tenant Response filed (Vasilescu & Bridges)	December 23, 2014
Tenant Response filed (L. Eglin)	January 13, 2015
Tenant Response filed (J. Eglin)	January 13, 2015
Hearing Date	April 27, 2015
Hearing Decision mailed	May 29, 2015
Owner Appeal filed	June 18, 2015
Tenant's Respond Brief	August 31, 2016
Tenant Amberg Response Brief on Appeal	November 17, 2016
Appeal Decision mailed	March 7, 2017
Order Granting Motion to Augment the Record and Granting Petition for Writ of Mandate	August 23, 2018
Request for Stay of Proceedings	November 13, 2018

Writ of Administrative Mandamus	December 12, 2018
Judgment Granting Writ of Administrative Mandamus	December 12, 2018
Notice of Entry of Judgment and Issuance of Writ	December 13, 2018
Request for Stay of Proceedings	May 13, 2019
Opposition to Request for Stay of Proceedings	May 22, 2019
Order Re Hearings mailed	June 4, 2019
Court of Appeals Decision	February 26, 2021
Hearing Decision mailed	October 4, 2021
Letter from Owner's Attorney	October 15, 2021
Tenant Appeal filed (Amberg)	October 22, 2021
Tenant Appeal filed (McMahon & Oda)	October 22, 2021
Respondent's Response to Appeal	November 23, 2021
Tenant Amberg's Reply to Owner's Response to Appeal	December 6, 2021
Tenant McMahon & Oda's Reply to Owner's Response to Appeal	December 6, 2021
Appeal Hearing Date	March 10, 2022
Appeal Decision mailed	May 9, 2022

Remand Hearing Date	June 29, 2022
Remand Decision Mailed	September 20, 2022
Tenant Appeal filed (Amberg)	October 7, 2022
Tenant Appeal filed (Oda)	October 7, 2022
Tenant Appeal filed (McMahon)	October 7, 2022
Good Cause Request to Exceed Page Limit	October 26, 2022
Tenants Objection to Exhibit C	October 28, 2022
Order Granting Request to Exceed Page Limit mailed	November 1, 2022
Tenants Renewed Objection to Exhibit C	November 7, 2022
Tenant Appeal and Explanation of Grounds	November 7, 2022
Addendum to Tenants Explanation of Appeal Grounds	November 9, 2022
Request for Judicial Notice	November 28, 2022
Request to Include Previously Filed Document	January 9, 2023



SK

L14-0065 kmi

<b>CITY OF OAKLAND</b> <b>RENT ADJUSTMENT PROGRAM</b> 250 Frank H. Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721	For date stamp. <div style="text-align: center;">           RECEIVED            CITY OF OAKLAND            RENT ADJUSTMENT PROGRAM              2014 NOV 10 AM 10:55    <b>LANDLORD PETITION</b>  <b>FOR CERTIFICATE OF EXEMPTION</b>            (OMC §8.22.030.B)         </div>
---	--

**Please Fill Out This Form Completely As You Can.** Failure to provide needed information may result in your petition being rejected or delayed. Attach to this petition copies of the documents that prove your claim. Before completing this petition, please read the Rent Adjustment Ordinance, section 8.22.030. A hearing is required in all cases even if uncontested or irrefutable.

**Section 1. Basic Information**

Your Name 525, 655 Hyde Street CNML Properties, LLC	Complete Address (with zip code) Tsegab Assefa c/o Lapham Company 4844 Telegraph Avenue Oakland, CA 94609	Telephone Day: <u>510-594-7600</u>	
Your Representative's Name Liz Hart c/o Fried & Williams LLP	Complete Address (with zip code) 480 Ninth Street Oakland, CA 94607	Telephone Day: <u>510-625-0100</u>	
Property Address 3921 Harrison Street		Total number of units in bldg or parcel. 16	
Type of units (circle one)	Single Family Residence (SFR)	Condominium	<input checked="" type="radio"/> Apartment or Room
If an SFR or condominium, can the unit be sold and deeded separately from all other units on the property?		Yes	No

**Section 2. Tenants.** You must attach a list of the names and addresses, with unit numbers, of all tenants residing in the unit/building you are claiming is exempt.

**Section 3. Claim(s) of Exemption:** A Certificate of Exemption may be granted **only** for dwelling units that are **permanently** exempt from the Rent Adjustment Ordinance.

**New Construction:** This may apply to individual units. The unit was newly constructed and a certification of occupancy was issued for it on or after January 1, 1983.

**Substantial Rehabilitation:** This applies only to entire buildings. An owner must have spent a minimum of fifty (50) percent of the average basic cost for new construction for a rehabilitation project. The average basic cost for new construction is determined using tables issued by the Chief Building Inspector applicable for the time period when the Substantial Rehabilitation was completed.

Single-Family or Condominium (Costa-Hawkins): Applies to Single Family Residences and condominiums only. If claiming exemption under the Costa-Hawkins Rental Housing Act (Civ. C. §1954.50, et seq.), please answer the following questions on a separate sheet:

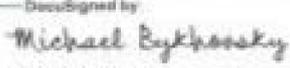
1. Did the prior tenant leave after being given a notice to quit (Civil Code Section 1946)?
2. Did the prior tenant leave after being a notice of rent increase under Civil Code Section 827?
3. Was the prior tenant evicted for cause?
4. Are there any outstanding violations of building, housing, fire, 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?
8. When did the tenant move into the unit?

I (We) petition for exemption on the following grounds (Check all that apply):

	New Construction
✓	Substantial Rehabilitation
	Single Family Residence or Condominium (Costa-Hawkins)

**Section 4. Verification** Each petitioner must sign this section.

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

DecoSigned by  
  
 \_\_\_\_\_  
 Owner's Signature

11/4/2014  
 \_\_\_\_\_  
 Date

\_\_\_\_\_  
 Owner's Signature

\_\_\_\_\_  
 Date

**Important Information**

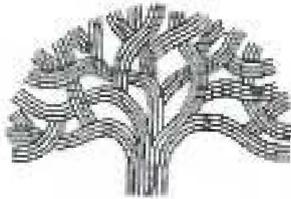
**Burden of Proof** The burden of proving and producing evidence for the exemption is on the Owner. A Certificate of Exemption is a final determination of exemption absent fraud or mistake.

**File Review** Your tenant(s) will be given the opportunity to file a response to this petition within 35 days of notification by the Rent Adjustment Program. You will be sent a copy of the tenant's Response. Copies of attachments to the Response form will not be sent to you. However, you may review any attachments in the Rent Program Office. Files are available for review by appointment only. For an appointment to review a file, call (510) 238-3721. Please allow six weeks from the date of filing for notification processing and expiration of the tenant's response time before scheduling a file review.

## 3921 Harrison Street, Oakland, CA 94611

### Tenant Contact Information

- 101: Jilleun Eglin & Lexie Eglin, 3921 Harrison St., #101, Oakland, CA 94611
- 102: Alexandru & Elena Butnaru & Tadeusz Butnaru, 3921 Harrison St., #102, Oakland, CA 94611
- 103: Angelique Johnson-Martinez, 3921 Harrison St., #103, Oakland, CA 94611
- 104: Zvetlana Butnaru, 3921 Harrison St., #104, Oakland, CA 94611
- 105: Alexander Michael Taylor & Ria Cruz, 3921 Harrison St., #105, Oakland, CA 94611
- 201: Suzanne Miller, 3921 Harrison St., #201, Oakland, CA 94611
- 202: Fernando Garcia & Kate Flick Garcia, 3921 Harrison St., #202, Oakland, CA 94611
- 203: Cooper Spinelli & Dana Sarvestani, 3921 Harrison St., #203, Oakland, CA 94611
- 204: Bianca Penaloza, 3921 Harrison St., #204, Oakland, CA 94611
- 205: Lisa Romero, 3921 Harrison St., #205, Oakland, CA 94611
- 301: Alexandru Vasilescu & Zoe Bridges, 3921 Harrison St., #301, Oakland, CA 94611
- 302: Julie Amberg, 3921 Harrison St., #302, Oakland, CA 94611
- 303: Tyler Ritter, 3921 Harrison St., #303, Oakland, CA 94611
- 304: Mari Oda & Todd McMahon, 3921 Harrison St., #304, Oakland, CA 94611
- 305: Andrew Simkin & Jessica Simkin, 3921 Harrison St., #305, Oakland, CA 94611
- Penthouse: Steven Miller & Elizabeth VanLanen 3921 Harrison St. PH, Oakland, CA 94611



**CITY OF OAKLAND  
RENT ADJUSTMENT  
PROGRAM**

P.O. Box 70243  
250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721tj

for Data Entry Only AND  
RENT ARBITRATION PROGRAM  
2014 DEC 17 PM 3:05

CASE NUMBER L14-0065

TENANT RESPONSE TO  
CLAIM OF PERMANENT EXEMPTION

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

Your Name <i>Angelique Johnson</i>	Complete Address (with Zip Code) <i>3921 Harrison St. #103, Oakland, CA 94611</i>	Telephone <i>510-658-8799</i>
Your Representative's Name	Complete Address (with Zip Code)	Telephone

Number of Units on the parcel:  The unit I rent is: a house  an apartment  a condo

**Rental History:**

Date you entered into the Rental Agreement for this unit:  Date you moved into this unit:

Are you current on your rent? Yes  No  Lawfully Withholding Rent

If you are lawfully withholding rent, attach a written explanation of the circumstances.

**Exemption Contested**

For the detailed text of the exemptions, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. 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.

**The property owner has the burden of proving the right to exemption for the unit. Explain below why your landlord's claim that your unit is exempt is incorrect.**

Please list the date you first received the Notice to Tenants \_\_\_\_\_

**List all increases your received. Begin with the most recent and work backwards. Attach most recent rent increase notice. If you need additional space please attach another sheet.**

<sup>1</sup> <http://www.oaklandnet.com/government/hcd/rentboard/ordinance.html>  
<sup>1</sup> <http://www.oaklandnet.com/government/hcd/rentboard/rules.html>

**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.

  
\_\_\_\_\_  
Tenant's Signature

17 December 2014  
Date

\_\_\_\_\_  
Tenant's Signature

\_\_\_\_\_  
Date

**Important Information**

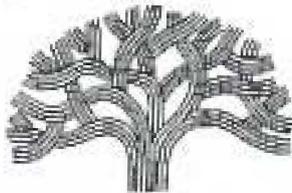
This form must be received at the Rent Adjustment Offices by the date and time limits prescribed by Oakland Municipal Code, Chapter 8.22. The offices are located at City of Oakland, Rent Adjustment Program, Dalziel Building, 250 Frank H. Ogawa Plaza Suite 5313, Oakland, CA 94612. The mailing address is PO Box 70243, Oakland, CA 94612-0243. For more information, please call: 510-238-

**You cannot get an extension of time to file your Response by telephone.**

**File Review**

You should have received with this letter a copy of the landlord petition.  
Copies of attachments to the petition will not be sent to you. However, you may review these in the Rent Program office. Files are available for review by appointment.

For an appointment to review a file call (510) 238-3721.



**CITY OF OAKLAND  
RENT ADJUSTMENT  
PROGRAM**

P.O. Box 70243  
250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721ti

for Date Stamp Only. RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM  
2014 DEC 19 AM 11:27

CASE NUMBER L14-0065

TENANT RESPONSE TO  
CLAIM OF PERMANENT EXEMPTION

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

Your Name <b>MARI ODA</b>	Complete Address (with Zip Code) <b>3921 HARRISON ST, # 304 OAKLAND, CA 94611</b>	Telephone <b>510-207-8263</b>
Your Representative's Name _____	Complete Address (with Zip Code) _____	Telephone _____

Number of Units on the parcel:  The unit I rent is:  
 a house  an apartment  a condo

**Rental History:**  
 Date you entered into the Rental Agreement for this unit:  Date you moved into this unit:

Are you current on your rent? Yes  No  Lawfully Withholding Rent   
 If you are lawfully withholding rent, attach a written explanation of the circumstances.

**Exemption Contested**  
 For the detailed text of the exemptions, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. 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.

**The property owner has the burden of proving the right to exemption for the unit. Explain below why your landlord's claim that your unit is exempt is incorrect.**

Please list the date you first received the Notice to Tenants 11-20-2014

List all increases your received. Begin with the most recent and work backward recent rent increase notice. If you need additional space please attach another sheet.

<sup>1</sup> <http://www.oaklandnet.com/government/hcd/rentboard/ordinance.html>  
<sup>2</sup> <http://www.oaklandnet.com/government/hcd/rentboard/rules.html>  
 Rev. 7/17/09 - 1 -

Tenant Response

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.

*Mani Oke*

*12-14-2014*

Tenant's Signature

Date

Tenant's Signature

Date

**Important Information**

This form must be received at the Rent Adjustment Offices by the date and time limits prescribed by Oakland Municipal Code, Chapter 8.22. The offices are located at City of Oakland, Rent Adjustment Program, Dalziel Building, 250 Frank H. Ogawa Plaza Suite 5313, Oakland, CA 94612. The mailing address is PO Box 70243, Oakland, CA 94612-0243. For more information, please call: 510-238-

**You cannot get an extension of time to file your Response by telephone.**

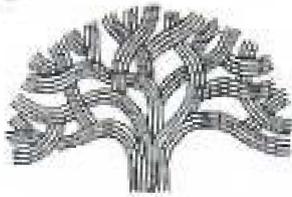
File Review

You should have received with this letter a copy of the landlord petition.

Copies of attachments to the petition will not be sent to you. However, you may review these in the Rent Program office. Files are available for review by appointment.

For an appointment to review a file call (510) 238-3721.

I AM DISPUTING THE OWNER'S REQUEST FOR EXEMPTION. WE HAVE RECEIVED ADJUSTMENTS TO OUR RENT ON A SCHEDULED BASIS, INCLUDING AN ADJUSTMENT FOR CAPITAL IMPROVEMENTS IN 2012. THE OWNER'S RECENT PROJECT WAS ORIGINALLY ANNOUNCED AS A ROOF REPLACEMENT SCHEDULED TO BEGIN DECEMBER 16, 2013 AND END JANUARY 7, 2014. SINCE WORK BEGAN, THE OWNER CONTINUED TO ADD MORE CONSTRUCTION WITH SIGNIFICANT INCONVENIENCE TO THE TENANTS. IN THE END, WHAT WAS ORIGINALLY A ROOF REPLACEMENT LASTING A FEW WEEKS HAD BEEN EXTENDED INTO A PROJECT LASTING OVER SIX MONTHS.



**CITY OF OAKLAND  
RENT ADJUSTMENT  
PROGRAM**

P.O. Box 70243  
250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721ii

RECEIVED  
for Date Stamp Only OAKLAND  
RENT ADJUSTMENT PROGRAM  
2014 DEC 19 AM 11:27

CASE NUMBER L14-0065

TENANT RESPONSE TO  
CLAIM OF PERMANENT EXEMPTION

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

Your Name <i>TODD McMAHON</i>	Complete Address (with Zip Code) <i>3921 HARRISON ST #304 OAKLAND CA 94611</i>	Telephone <i>(510) 306 4114</i>
Your Representative's Name	Complete Address (with Zip Code)	Telephone

Number of Units on the parcel:  The unit I rent is: a house  an apartment  a condo

**Rental History:**

Date you entered into the Rental Agreement for this unit:  Date you moved into this unit:

Are you current on your rent? Yes  No  Lawfully Withholding Rent

If you are lawfully withholding rent, attach a written explanation of the circumstances.

**Exemption Contested**

For the detailed text of the exemptions, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. 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.

**The property owner has the burden of proving the right to exemption for the unit. Explain below why your landlord's claim that your unit is exempt is incorrect.**

Please list the date you first received the Notice to Tenants NOV 20, 2014

**List all increases your received. Begin with the most recent and work backwards. Attach most recent rent increase notice. If you need additional space please attach another sheet.**

<sup>1</sup> <http://www.oaklandnet.com/government/hcd/rentboard/ordinance.html>

<sup>1</sup> <http://www.oaklandnet.com/government/hcd/rentboard/rules.html>



**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.

Tom McMan  
Tenant's Signature

12-14-2014  
Date

\_\_\_\_\_  
Tenant's Signature

\_\_\_\_\_  
Date

**Important Information**

This form must be received at the Rent Adjustment Offices by the date and time limits prescribed by Oakland Municipal Code, Chapter 8.22. The offices are located at City of Oakland, Rent Adjustment Program, Dalziel Building, 250 Frank H. Ogawa Plaza Suite 5313, Oakland, CA 94612. The mailing address is PO Box 70243, Oakland, CA 94612-0243. For more information, please call: 510-238-

**You cannot get an extension of time to file your Response by telephone.**

**File Review**

You should have received with this letter a copy of the landlord petition.

Copies of attachments to the petition will not be sent to you. However, you may review these in the Rent Program office. Files are available for review by appointment.

For an appointment to review a file call (510) 238-3721.

*I dispute the new owners claim of SUBSTANTIAL REHABILITATION. Only outside of the building was Re-stuccoed, along with very partial interior remodeling of 4 or 5 units. Owner may have opened a can of worms, and the project was continually expanded, as substantial structural defects were found. The cost of the Rehabilitation is less than 50% (FIFTY PERCENT) of new construction of 116 UNIT BUILDING, with 13 parking spots.*

**Mari Oda/Todd McMahon Rent Adjustment History**  
**3921 Harrison St, #304**  
**Oakland, CA 94611**

Effective Date	Rent Increase	Comment
1-May-2013	47.40	
1-May-2012	82.00	2% CPI plus capital improvements. Temporary for 60 months.
1-Aug-2011	18.59	
1-Aug-2010	24.43	
1-Aug-2009	6.29	
1-Aug-2008	27.87	
1-Aug-2007	24.00	
1-Aug-2006	27.05	
1-Jul-2005	15.25	
1-Jun-2004	23.00	
1-Jun-2003	27.00	
1-Jun-2002	21.50	Adjustment within 6 months of previous adjustment
1-Dec-2001	60.00	
1-Jun-2000	20.00	
1-Jun-1999	53.00	
1-Dec-1991	10.00	
1-Dec-1990	10.00	
1-Dec-1989	28.00	
1-Dec-1988	31.00	
1-Dec-1987	30.00	
1-Dec-1986	28.00	
1-Dec-1985	35.00	
1-Dec-1984	32.00	
1-Dec-1983	36.00	
1-Dec-1982	33.00	

March 22, 2013

Mari Oda Todd McMahon  
3921 Harrison Street 304  
Oakland, CA 94611

***RE: RENT ADJUSTMENT***

Dear Mari Oda Todd McMahon:

Enclosed you will find a notice of a modest rental rate adjustment which become effective as of May 1, 2013. As you know, Oakland has a rent control ordinance that limits how much an annual rent adjustment can be, and for the year July 1, 2012 – June 30, 2013, the allowable annual adjustment is 3%. Last year's, the allowable rate was 2%.

You will note that the noticed rent adjustment for this year is more than 3%. The reason for the additional amount above 3% is that the owner applied a prior year's rent increase that was not taken at the allowable time, and therefore, that unapplied allowable increase was "banked" to future year(s). This "Banked Rent" application is allowed under Oakland's rent ordinance provided that the total rent adjustment does not exceed the times the current allowable rent adjustment. For this year, that maximum limitation is 9% ( $3 \times 3\% = 9\%$ ), and the rent increase on the attached notice remains below that 9% maximum value.

If you have any questions, please don't hesitate to call our office at 510-594-7600.

Thank you.

***LAPHAM COMPANY – Accounting  
Agent of Property Owner***

**LAPHAM**

REAL PROPERTY ASSET MANAGEMENT

Email: [info@laphamcompany.com](mailto:info@laphamcompany.com)

[www.laphamcompany.com](http://www.laphamcompany.com)

**000091**

March 22, 2013

**\*\* NOTICE TO CHANGE TERMS OF TENANCY \*\***

To :

Mari Oda Todd McMahon  
3921 Harrison Street 304  
Oakland, CA 94611

Dear Mari Oda Todd McMahon,

You are hereby notified that that the terms of tenancy under which you occupy the above described premises is to be changed.

It has been twelve months or more since your rental rate was reviewed and or adjusted based on the cost of living and other economic factors. In order to keep up with the operating costs at the property and to offset city, county, and state taxes that have been charged to the property for services enjoyed by the tenants, your rental rate will be changed as follows:

Effective, 5/1/2013 your rent will be increased by \$47.40 per month, from \$947.98 per month, to \$995.38 per month, payable in advance.

As a reminder, the City of Oakland has a Residential Rent Arbitration Ordinance (RRAO) which sets forth certain guidelines for annual rent increases for rentals within the City.

Should you have any questions about the propriety of the subject rent increase, please don't hesitate to contact our office at (510) 594-7600 for information about the allowed increase under local Ordinance #9980 and addenda. While we have provided this information to your previously, we have attached a duplicate copy of the ordinance summary herewith for your reference. It is the express intention of the property owner that the balance of any allowed rent increases under the Ordinance are banked under provisions of the RRAO and can be added to any future increases and transferred to any future property owners.

  
\_\_\_\_\_  
Owner/Agent

This notice was served by the Owner/Manager in the following manner (check those which apply):

- by personal delivery to the tenant,  
 by leaving a copy with someone on the premises other than the tenant,  
 by mailing  
 by posting.

The Lapham Company  
4844 Telegraph Avenue  
Oakland, CA 94609  
(510) 594-7600

000092

CITY OF OAKLAND RENT ADJUSTMENT PROGRAM  
SUPPLEMENT REQUIRED WITH NOTICE INCREASING RENT OR CHANGING  
TERMS OF TENANCY

Oakland has a Rent Adjustment Program that limits rent increases.

A rental property owner may increase rent only once every 12 months. A tenant who receives a rent increase above an annual amount (CPI Rent Adjustment) may petition the Rent Adjustment Program to require the owner to justify the amount of the increase in excess of the CPI Rent Adjustment. A tenant must file the petition within 60 days of the owner's serving the rent increase notice or the tenant gives up the right to contest the increase.

When a rent increase exceeds the CPI amount allowed, a tenant may request a summary of the justifications for the rent increase from the owner. The request must be made in writing within 30 days of receipt of the notice of increase. The owner must provide a written response within 15 days of the tenant serving the request for the summary or the increase notice is invalid.

The tenant and the owner are encouraged to communicate with each other to resolve their differences without the need for filing a petition.

The current annual increase allowed is 3%

This notice provides limited information. For further information, contact the Rent Adjustment Program at 250 Frank H. Ogawa Plaza, 5th Floor, Oakland CA 94612 - (510) 238-3721.

Optional by owner: If you file a petition with the Rent Program on the petition is decided by the Rent Adjustment Program. This amount is \$ \_\_\_\_\_

PROOF OF SERVICE

I, the undersigned, being at least 18 years of age, declare under penalty of perjury that I served this rent increase, you must pay the amount of the increase equal to the CPI Rent Adjustment until the Change of Terms of Tenancy and Supplemental Notice, of which this is a true copy, on the above mentioned Tenant in Possession in the manner(s) indicated below:

On \_\_\_\_\_ I handed the Notice to the tenant .

I handed the Notice to a person of suitable age and discretion at the tenant's residence / business on \_\_\_\_\_ .

I posted the Notice in a conspicuous place at the tenant's residence on \_\_\_\_\_

I sent by 1<sup>st</sup> class mail a true copy of the Notice to the tenant at his place of residence on March 22, 2013

Executed March 22, 2013, at Oakland, CA

See Reverse



# CITY OF OAKLAND

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

Community and Economic Development Agency  
Rent Adjustment Program

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

## NOTICE TO TENANTS OF RESIDENTIAL RENT ADJUSTMENT PROGRAM

- The City of Oakland has a Residential Rent Adjustment Program ("RAP") (Chapter 8.22 of the Oakland Municipal Code) that covers most residential rental units built before 1983. It does not apply to units rented under section 8, most single family dwellings and condominiums and some other types of units. For more information on which units are covered, call the RAP office. This Program limits rent increases and some changes in terms of tenancy for covered residential rental property in Oakland.
- 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 (the CPI increase). A landlord can increase rent more than the CPI rate, but with some limits, for: capital improvements, operating expense increases, debt service, and deferred annual rent increases. You can also complain about other violations of the Rent Adjustment Ordinance. The landlord 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 there is a decrease in the housing services provided to you, this may be considered an increase in your rent. A decrease in housing service includes substantial problems with the condition of a unit.
- To contest a rent increase, you must file a petition with the RAP using the Rent Program's form, within sixty (60) days after first receiving written notice of the RAP or within sixty (60) days of receiving a notice of rent increase or change in terms of tenancy, whichever is later. You can obtain information and the petition forms from the Rent Adjustment Program office or online at <http://www.oaklandnet.com/government/hod/rentboard/tenant.html>
- If you contest a rent increase, you must pay your rent, with the contested increase, until you file a petition. After you file your petition, you may pay only the portion of the increase due to the CPI Rent Adjustment percentage if the CPI increase amount has been stated on the notice of rent increase. If it has **not** been stated separately, you may pay only the rent you were paying before the notice of rent increase. If the increase is approved and you did not pay the increase as noticed, you will owe the amount of the increase retroactive to the date it would have been effective under the notice.
- Eviction controls are in effect in the City of Oakland (the Just Cause for Eviction Ordinance, O.M.C. 8.22.200, et seq.). You cannot be arbitrarily evicted if your rental unit is covered by the Just Cause for Eviction Ordinance. For more information call the Rent Adjustment Office.

Oakland charges landlords a Rent Program Service Fee of \$30 per unit per year. If the landlord pays the fee on time, the landlord is entitled to get half of the fee (\$15) per unit from you. The \$15 you pay for the annual fee is not part of the rent.

The Nuisance Eviction Ordinance (O.M.C. Chapter 8.23) may require that a tenant who commits or permits certain illegal acts in the Rental Unit or on the land on which the unit is located or in the common areas of the rental complex **must** be evicted. If the owner does not evict, the City Attorney may do so.

### TENANTS' SMOKING POLICY DISCLOSURE

- Smoking (circle one)  IS or IS NOT permitted in Unit A <sup>all units in the building</sup>, the unit you plan 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 the tenant's building, attach a list of units in which smoking is permitted.)
- Smoking is **PROHIBITED** in all common areas, both indoors and outdoors.
- There (circle one) IS or  IS NOT a designated outdoor smoking area. It is located at \_\_\_\_\_.

I received a copy of this notice on \_\_\_\_\_

\_\_\_\_\_

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.

Bản Thông Báo quyền lợi của người thuê trong Oakland này cũng có bằng tiếng Việt. Để có một bản sao, xin gọi (510) 238-3721.

March 23, 2012

Mari Oda  
Todd McMahon  
3921 Harrison Street #304  
Oakland, California 94611

***RE: CAPITAL RENTAL ADJUSTMENT***

Dear Mari and Todd:

Enclosed you will find a NOTICE OF CHANGE OF TERMS OF TENANCY wherein your rent will be raised as of **May 1, 2012**. As you may know, Oakland has a rent ordinance placing limits on rent increases by property owners. Generally, increases are limited to the CPI raise that requires no justification. Currently, the CPI limit is 2.0%. There are several specific reasons wherein a property owner can exceed this limit as is the case here. The justification for the increase in your case is based on **capital improvements**. In this case, the specific justification is the recent structural and access upgrades to the building.

Below you will find the relevant portion of the rent ordinance that deals with increases beyond the CPI limit. If you would like to look at the original text on the City's website, the address is <https://www.oaklandnet.com/government/bcd/rents/ord/tenant.html#limits>. If you refer to the blue hyperlink entitled specific reasons, you see the City's explanation of other methods that are permissible. You can also contact the rent office by phone at 510.238.3501 and speak with a housing officer. If you do call, please make sure to mention that the justification for the increase beyond CPI is CAPITAL IMPROVEMENTS.

**Rent Increase Limits:**

Increases are limited to the CPI increase announced each year by the Residential Rent Adjustment Program unless the landlord can justify a higher amount. The law limits these to **specific reasons** for a higher rent increase.

- Only one increase is allowed in a twelve-month period.
- Generally, if tenants do not file a petition within 60 days of receiving a rent increase, they will lose their rights to challenge the increase.
- In most cases, there is no limit on increases when a tenant moves out and a new tenant moves in. Once the new tenant moves in, future increases are limited by the Rent Law.

March 23, 2012

**\*\* NOTICE TO CHANGE TERMS OF TENANCY \*\***

To :  
Mari Oda Todd McMahon  
3921 Harrison Street 304  
Oakland, CA 94611

Dear Mari Oda Todd McMahon,  
You are hereby notified that that the terms of tenancy under which you occupy the above described premises is to be changed.

It has been twelve months or more since your rental rate was reviewed and or adjusted based on the cost of living and other economic factors. In order to keep up with the operating costs at the property and to offset city, county, and state taxes that have been charged to the property for services enjoyed by the tenants, your rental rate will be changed as follows:

Effective, 05/01/2012 your rent will be increased by \$82.00 per month, from \$947.98 per month, to \$1029.98 per month, payable in advance. This \$82.00 rent adjustment is temporary for 60 months only.

As a reminder, the City of Oakland has a Residential Rent Arbitration Ordinance (RRAO) which sets forth certain guidelines for annual rent increases for rentals within the City.

Should you have any questions about the propriety of the subject rent increase, please don't hesitate to contact our office at (510) 594-7600 for information about the allowed increase under local Ordinance #9980 and addenda. While we have provided this information to your previously, we have attached a duplicate copy of the ordinance summary herewith for your reference. It is the express intention of the property owner that the balance of any allowed rent increases under the Ordinance are banked under provisions of the RRAO and can be added to any future increases and transferred to any future property owners.

  
\_\_\_\_\_  
Owner/Agent

This notice was served by the Owner/Manager in the following manner (check those which apply):

- by personal delivery to the tenant,  
 by leaving a copy with someone on the premises other than the tenant,  
 by mailing  
 by posting.

The Lapham Company  
4844 Telegraph Avenue  
Oakland, CA 94609  
(510) 594-7600

**MAILED**  
MAR 23 2011  
**MAILED**

000096



CITY OF OAKLAND RENT ADJUSTMENT PROGRAM  
SUPPLEMENT REQUIRED WITH NOTICE INCREASING RENT OR CHANGING  
TERMS OF TENANCY

Oakland has a Rent Adjustment Program that limits rent increases.

A rental property owner may increase rent only once every 12 months. A tenant who receives a rent increase above an annual amount (CPI Rent Adjustment) may petition the Rent Adjustment Program to require the owner to justify the amount of the increase in excess of the CPI Rent Adjustment. A tenant must file the petition within 60 days of the owner's serving the rent increase notice or the tenant gives up the right to contest the increase.

When a rent increase exceeds the CPI amount allowed, a tenant may request a summary of the justifications for the rent increase from the owner. The request must be made in writing within 30 days of receipt of the notice of increase. The owner must provide a written response within 15 days of the tenant serving the request for the summary or the increase notice is invalid.

The tenant and the owner are encouraged to communicate with each other to resolve their differences without the need for filing a petition.

The current annual increase allowed is 2%

This notice provides limited information. For further information, contact the Rent Adjustment Program at 250 Frank H. Ogawa Plaza, 5th Floor, Oakland CA 94612 - (510) 238-3721.

Optional by owner: If you file a petition with the Rent Program on the petition is decided by the Rent Adjustment Program. This amount is \$ \_\_\_\_\_

PROOF OF SERVICE

I, the undersigned, being at least 18 years of age, declare under penalty of perjury that I served this rent increase, you must pay the amount of the increase equal to the CPI Rent Adjustment until the Change of Terms of Tenancy and Supplemental Notice, of which this is a true copy, on the above mentioned Tenant in Possession in the manner(s) indicated below:

- On \_\_\_\_\_ I handed the Notice to the tenant .
- I handed the Notice to a person of suitable age and discretion at the tenant's residence / business on \_\_\_\_\_ .
- I posted the Notice in a conspicuous place at the tenant's residence on \_\_\_\_\_
- I sent by 1<sup>st</sup> class mail a true copy of the Notice to the tenant at his place of residence on March 23, 2012

Executed March 23, 2012, at Oakland, CA



See Reverse



# CITY OF OAKLAND

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

Community and Economic Development Agency  
Rent Adjustment Program

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

## NOTICE TO TENANTS OF RESIDENTIAL RENT ADJUSTMENT PROGRAM

- The City of Oakland has a Residential Rent Adjustment Program ("RAP") (Chapter 8.22 of the Oakland Municipal Code) that covers most residential rental units built before 1983. It does not apply to units rented under section 8, most single family dwellings and condominiums and some other types of units. For more information on which units are covered, call the RAP office. This Program limits rent increases and some changes in terms of tenancy for covered residential rental property in Oakland.
- 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 (the CPI increase). A landlord can increase rent more than the CPI rate, but with some limits, for: capital improvements, operating expense increases, debt service, and deferred annual rent increases. You can also complain about other violations of the Rent Adjustment Ordinance. The landlord 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 there is a decrease in the housing services provided to you, this may be considered an increase in your rent. A decrease in housing service includes substantial problems with the condition of a unit.
- To contest a rent increase, you must file a petition with the RAP using the Rent Program's form, within sixty (60) days after first receiving written notice of the RAP or within sixty (60) days of receiving a notice of rent increase or change in terms of tenancy, whichever is later. You can obtain information and the petition forms from the Rent Adjustment Program office or online at <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 you file your petition, you may pay only the portion of the increase due to the CPI Rent Adjustment percentage if the CPI increase amount has been stated on the notice of rent increase. If it has **not** been stated separately, you may pay only the rent you were paying before the notice of rent increase. If the increase is approved and you did not pay the increase as noticed, you will owe the amount of the increase retroactive to the date it would have been effective under the notice.
- Eviction controls are in effect in the City of Oakland (the Just Cause for Eviction Ordinance, O.M.C. 8.22.200, et seq.). You cannot be arbitrarily evicted if your rental unit is covered by the Just Cause for Eviction Ordinance. For more information call the Rent Adjustment Office.

Oakland charges landlords a Rent Program Service Fee of \$30 per unit per year. If the landlord pays the fee on time, the landlord is entitled to get half of the fee (\$15) per unit from you. The \$15 you pay for the annual fee is not part of the rent.

The Nuisance Eviction Ordinance (O.M.C. Chapter 8.23) may require that a tenant who commits or permits certain illegal acts in the Rental Unit or on the land on which the unit is located or in the common areas of the rental complex **must** be evicted. If the owner does not evict, the City Attorney may do so.

### TENANTS' SMOKING POLICY DISCLOSURE

- Smoking (circle one)  IS or IS NOT permitted in Unit A, <sup>all units in the building</sup> the unit you plan 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 the tenant's building, attach a list of units in which smoking is permitted.)
- Smoking is PROHIBITED in all common areas, both indoors and outdoors.
- There (circle one) IS or  IS NOT a designated outdoor smoking area. It is located at \_\_\_\_\_.

I received a copy of this notice on \_\_\_\_\_

此份屋僑(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.

Bản Thông Báo quyền lợi của người thuê trong Oakland này cũng có bằng tiếng Việt. Để có một bản sao, xin gọi (510) 238-3721.



**CITY OF OAKLAND  
RENT ADJUSTMENT  
PROGRAM**

P.O. Box 70243  
250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721ii

RECEIVED  
for Case 14-0065  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM  
2014 DEC 22 AM 10:54  
CASE NUMBER L14-0065

**TENANT RESPONSE TO  
CLAIM OF PERMANENT EXEMPTION**

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

Your Name <i>Zvetlana Butnaru</i>	Complete Address (with Zip Code) <i>3921 Harrison St. #104 Oakland, CA 94611</i>	Telephone <i>646-831-5049</i>
Your Representative's Name	Complete Address (with Zip Code)	Telephone

Number of Units on the parcel:

*16*

The unit I rent is:

a house  an apartment  a condo

**Rental History:**

Date you entered into the Rental Agreement for this unit:

*July 10<sup>th</sup>, 2012*

Date you moved into this unit:

*July 9<sup>th</sup>, 2012*

Are you current on your rent?

Yes  No  Lawfully Withholding Rent

If you are lawfully withholding rent, attach a written explanation of the circumstances.

**Exemption Contested**

For the detailed text of the exemptions, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. 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.

The property owner has the burden of proving the right to exemption for the unit. Explain below why your landlord's claim that your unit is exempt is incorrect.

Please list the date you first received the Notice to Tenants

*Nov. 19<sup>th</sup> 2014*

List all increases your received. Begin with the most recent and work backwa recent rent increase notice. If you need additional space please attach another

<sup>1</sup> <http://www.oaklandnet.com/government/hcd/rentboard/ordinance.html>

<sup>1</sup> <http://www.oaklandnet.com/government/hcd/rentboard/rules.html>

*Tenant Response*

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.

C. B. [Signature]  
Tenant's Signature

12/22/2014  
Date

\_\_\_\_\_  
Tenant's Signature

\_\_\_\_\_  
Date

**Important Information**

This form must be received at the Rent Adjustment Offices by the date and time limits prescribed by Oakland Municipal Code, Chapter 8.22. The offices are located at City of Oakland, Rent Adjustment Program, Dalziel Building, 250 Frank H. Ogawa Plaza Suite 5313, Oakland, CA 94612. The mailing address is PO Box 70243, Oakland, CA 94612-0243. For more information, please call: 510-238-

**You cannot get an extension of time to file your Response by telephone.**

**File Review**

You should have received with this letter a copy of the landlord petition.

Copies of attachments to the petition will not be sent to you. However, you may review these in the Rent Program office. Files are available for review by appointment.

For an appointment to review a file call (510) 238-3721.



**CITY OF OAKLAND  
RENT ADJUSTMENT  
PROGRAM**

P.O. Box 70243  
250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721ti

For Date Stamping Only  
RENT ADJUSTMENT PROGRAM  
2014 DEC 22 AM 10:54

CASE NUMBER L14-0065

TENANT RESPONSE TO  
CLAIM OF PERMANENT EXEMPTION

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

Your Name <i>Alexandry Butnary</i>	Complete Address (with Zip Code) <i>3921 Harrison St. #102, Oakland, CA 94611</i>	Telephone <i>(510) 595-7792</i>
Your Representative's Name	Complete Address (with Zip Code)	Telephone

Number of Units  
on the parcel:

*16*

The unit I rent is:

a house

an apartment

a condo

**Rental History:**

Date you entered into the Rental Agreement for this unit:

*May, 2009*

Date you moved into this unit:

*May, 2009*

Are you current on your rent?

Yes

No

Lawfully Withholding Rent

If you are lawfully withholding rent, attach a written explanation of the circumstances.

**Exemption Contested**

For the detailed text of the exemptions, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. 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.

The property owner has the burden of proving the right to exemption for the unit. Explain below why your landlord's claim that your unit is exempt is incorrect.

Please list the date you first received the Notice to Tenants

*Nov. 19<sup>th</sup>, 2014*

List all increases your received. Begin with the most recent and work backward to the most recent rent increase notice. If you need additional space please attach another:

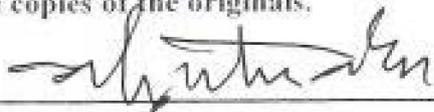
<sup>1</sup> <http://www.oaklandnet.com/government/hcd/rentboard/ordinance.html>

<sup>2</sup> <http://www.oaklandnet.com/government/hcd/rentboard/rules.html>

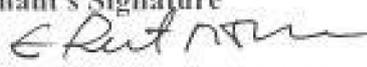
*Tenant Response*

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.



Tenant's Signature



12/22/2014

Date

12/22/2014

Tenant's Signature

T. Butmaru

Date

12/22/2014

**Important Information**

This form must be received at the Rent Adjustment Offices by the date and time limits prescribed by Oakland Municipal Code, Chapter 8.22. The offices are located at City of Oakland, Rent Adjustment Program, Dalziel Building, 250 Frank H. Ogawa Plaza Suite 5313, Oakland, CA 94612. The mailing address is PO Box 70243, Oakland, CA 94612-0243. For more information, please call: 510-238-

**You cannot get an extension of time to file your Response by telephone.**

**File Review**

You should have received with this letter a copy of the landlord petition.

Copies of attachments to the petition will not be sent to you. However, you may review these in the Rent Program office. Files are available for review by appointment.

For an appointment to review a file call (510) 238-3721.



**CITY OF OAKLAND  
RENT ADJUSTMENT  
PROGRAM**

P.O. Box 70241  
250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721

RECEIVED  
CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM  
2014 DEC 22 PM 3:44

CASE NUMBER L14-0065

TENANT RESPONSE TO  
CLAIM OF PERMANENT EXEMPTION

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

Your Name <i>Julie Amberg (and young child)</i>	Complete Address (with Zip Code) <i>3921 Harrison St. #302 Oakland, CA 94611</i>	Telephone (private/unlisted) <i>510-506-6006</i>
Your Representative's Name <i>(Reserve Right to (re)assign representative at later Date (by Court Order))</i>	Complete Address (with Zip Code)	Telephone

Number of Units on the parcel:  The unit I rent is:  a house  an apartment  a condo

**Rental History:**

Date you entered into the Rental Agreement for this unit:  Date you moved into this unit:

Are you current on your rent? Yes  No  Lawfully Withholding Rent   
If you are lawfully withholding rent, attach a written explanation of the circumstances. *(actually have a credit for over-payment)*

**Exemption Contested**

For the detailed text of the exemptions, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. 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.

The property owner has the burden of proving the right to exemption for the unit. Explain below why your landlord's claim that your unit is exempt is incorrect. *(see over)* →

Please list the date you first received the Notice to Tenants *November 25, 2014*

List all increases your received. Begin with the most recent and work backwards. Attach most recent rent increase notice. If you need additional space please attach another sheet.

- ① *15/8/2013 & 11/28/2013 → \$97.15/mo - \$67.26/mo (see RAP case T12-0151 in folder)*
- ② *03/23/2012 - \$82.00/month (will submit notice later if needed. or with mason)*
- ③ *08/01/2011 - \$23.81/mo (from \$1,192.15/mo to \$1215.99/mo) (mailed 6/23/2011)*

Julia Amberg  
3121 Harrison St  
#302  
Oakland  
(From RAP case T12-0151)

L14-0065  
④

payments is identical to the payment in question, and the last payment is for the last third of the progress payments. The cost estimate, the invoices and cancelled checks for the first two-thirds of the work, and the canceled check for the last payment are sufficient evidence to support the capital improvement cost under Keith Construction invoice 2132 for the last progress payment of \$17,793.60.

Pursuant to the Hearing Decision dated November 28, 2013, the allowed capital improvement allocation is itemized in the following table:

**CAPITAL IMPROVEMENTS**

Improvements and repairs benefitting all units 16

IMPROVEMENT OR REPAIR	DATE COMPLETED	COST ALLOWED	MONTHLY COST PER UNIT
Balconies/Railings	1-Jan-12	\$56,613 <sup>4</sup>	\$58.98
Painting	12-Mar-12	\$2,552	\$ 2.66
Garage Gate	14-Jun-11	\$5,394	\$5.62
	TOTAL	\$64,559	\$67.26

**ORDER**

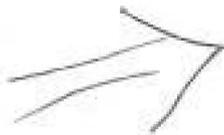
1. Tenant petition T12-0151 is granted in part.
2. The owner may increase the tenant's rent by \$67.26 monthly based on capital improvements. The capital improvements pass-through expires five years from May 1, 2012, the effective date of the pass-through.
3. The total rent payment for tenant Amberg is stated below as follows:

Base rent	\$1,215.99 per month
Plus capital improvement pass-through 5/1/12-4/30/17	\$ 67.26 per month
Plus tenant underpayment for May-2012-May 2013-\$67.26 x 13=\$874.38 divided by 9=\$97.15	\$ 97.15 per month
Rent payment for June 2013-February 2014	\$ 1,380.40 per month

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

<sup>4</sup> This total includes \$3,231, which consisted of engineering fees and field support, supported by cancelled check number 68845, affirmed by the Board at the Appeal Hearing, Ex. no. pp. 23,34

RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM  
2014 DEC 22 PM 3:44



? ASB

1215.99  
+ 67.26  
+ 97.15  
= 1380.40

Tenant Response



June 22, 2011

L14-0065  
①

RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM

\*\* NOTICE TO CHANGE TERMS OF TENANCY 2011 DEC 22 PM 3:44

To :  
Julie Amberg  
3921 Harrison Street 302  
Oakland, CA 94611

Dear Julie Amberg ,  
You are hereby notified that that the terms of tenancy under which you occupy the above described premises is to be changed.

It has been twelve months or more since your rental rate was reviewed and or adjusted based on the cost of living and other economic factors. In order to keep up with the operating costs at the property and to offset city, county, and state taxes that have been charged to the property for services enjoyed by the tenants, your rental rate will be changed as follows:

Effective, 08/01/2011 your rent will be increased by \$23.84 per month, from \$1,192.15 per month, to \$1,215.99 per month, payable in advance.



As a reminder, the City of Oakland has a Residential Rent Arbitration Ordinance (RRAO) which sets forth certain guidelines for annual rent increases for rentals within the City.

Should you have any questions about the propriety of the subject rent increase, please don't hesitate to contact our office at (510) 594-7600 for information about the allowed increase under local Ordinance #9980 and addenda. While we have provided this information to your previously, we have attached a duplicate copy of the ordinance summary herewith for your reference. It is the express intention of the property owner that the balance of any allowed rent increases under the Ordinance are banked under provisions of the RRAO and can be added to any future increases and transferred to any future property owners.

Owner/Agent

This notice was served by the Owner/Manager in the following manner (check those which apply):

- by personal delivery to the tenant,
- by leaving a copy with someone on the premises other than the tenant,
- by mailing
- by posting.

The Lapham Company  
4844 Telegraph Avenue  
Oakland, CA 94609  
(510) 594-7600

RECEIVED  
JUN 22 2011  
MAY 23

000105

114-0065 (2)  
CITY OF OAKLAND RENT ADJUSTMENT PROGRAM  
SUPPLEMENT REQUIRED WITH NOTICE INCREASING RENT OR CHANGING  
TERMS OF TENANCY

Oakland has a Rent Adjustment Program that limits rent increases.

A rental property owner may increase rent only once every 12 months. A tenant who receives a rent increase above an annual amount (CPI Rent Adjustment) may petition the Rent Adjustment Program to require the owner to justify the amount of the increase in excess of the CPI Rent Adjustment. A tenant must file the petition within 60 days of the owner's serving the rent increase notice or the tenant gives up the right to contest the increase.

When a rent increase exceeds the CPI amount allowed, a tenant may request a summary of the justifications for the rent increase from the owner. The request must be made in writing within 30 days of receipt of the notice of increase. The owner must provide a written response within 15 days of the tenant serving the request for the summary or the increase notice is invalid.

The tenant and the owner are encouraged to communicate with each other to resolve their differences without the need for filing a petition.

The current annual increase allowed is 2.7%

This notice provides limited information. For further information, contact the Rent Adjustment Program at 250 Frank H. Ogawa Plaza, 5th Floor, Oakland CA 94612 - (510) 238-3721.

Optional by owner: If you file a petition with the Rent Program on the petition is decided by the Rent Adjustment Program. This amount is \$ \_\_\_\_\_

PROOF OF SERVICE

I, the undersigned, being at least 18 years of age, declare under penalty of perjury that I served this rent increase, you must pay the amount of the increase equal to the CPI Rent Adjustment until the Change of Terms of Tenancy and Supplemental Notice, of which this is a true copy, on the above mentioned Tenant in Possession in the manner(s) indicated below:

On \_\_\_\_\_, 22 \_\_\_\_ I handed the Notice to the tenant .

I handed the Notice to a person of suitable age and discretion at the tenant's residence / business on \_\_\_\_\_, 22 \_\_\_\_ .

I posted the Notice in a conspicuous place at the tenant's residence on \_\_\_\_\_, 22 \_\_\_\_ .

I sent by 1<sup>st</sup> class mail a true copy of the Notice to the tenant at his place of residence on June 22, 2011

Executed June 22, 2011, at Oakland, CA

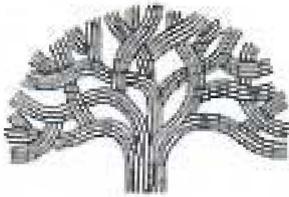


2014 DEC 22 PM 3:44

RECEIVED  
CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM

000106





**CITY OF OAKLAND  
RENT ADJUSTMENT  
PROGRAM**

P.O. Box 70243  
250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721ii

RECEIVED  
for Date Stamp Only  
CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM  
2014 DEC 22 PM 2:40

CASE NUMBER L14-0065

TENANT RESPONSE TO  
CLAIM OF PERMANENT EXEMPTION

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

Your Name <i>Jessica Simkin Andrew Simkin</i>	Complete Address (with Zip Code) <i>3721 Harrison St. #305 Oakland, CA 94611</i>	Telephone <i>818-469-0625</i>
Your Representative's Name <i>—</i>	Complete Address (with Zip Code) <i>—</i>	Telephone <i>—</i>

Number of Units on the parcel:

The unit I rent is:  
a house  an apartment  a condo

**Rental History:**

Date you entered into the Rental Agreement for this unit:  Date you moved into this unit:

Are you current on your rent? Yes  No  Lawfully Withholding Rent

If you are lawfully withholding rent, attach a written explanation of the circumstances.

**Exemption Contested**

For the detailed text of the exemptions, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. 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.

**The property owner has the burden of proving the right to exemption for the unit. Explain below why your landlord's claim that your unit is exempt is incorrect.**

Please list the date you first received the Notice to Tenants 11/24/14

**List all increases your received. Begin with the most recent and work backwards. Attach most recent rent increase notice. If you need additional space please attach another sheet.**

*May 2011 - 1,170/month; June 2012 - 1,200/month; June 2013 - 1,237.85/month*

<sup>1</sup> <http://www.oaklandnet.com/government/hcd/rentboard/ordinance.html>

<sup>1</sup> <http://www.oaklandnet.com/government/hcd/rentboard/rules.html>

Apr 23, 2013

**\*\* NOTICE TO CHANGE TERMS OF TENANCY \*\***

To :  
Andrew Simkin Jessica Simkin  
3921 Harrison Street 305  
Oakland, CA 94611

Dear Andrew Simkin Jessica Simkin,  
You are hereby notified that that the terms of tenancy under which you occupy the above described premises is to be changed.

It has been twelve months or more since your rental rate was reviewed and or adjusted based on the cost of living and other economic factors. In order to keep up with the operating costs at the property and to offset city, county, and state taxes that have been charged to the property for services enjoyed by the tenants, your rental rate will be changed as follows:

Effective, 6/1/2013 your rent will be increased by \$32.85 per month, from \$1,170.00 per month, to \$1,202.85 per month, payable in advance. Please note as there is a previous capital improvement increase of \$30.00 that needs to be calculated into your overall rent increase. You will also note that this year's increase was calculated only using your base rent and not the capital improvement amount. Therefore, your total rent obligation is \$41,232.85.

As a reminder, the City of Oakland has a Residential Rent Arbitration Ordinance (RRAO) which sets forth certain guidelines for annual rent increases for rentals within the City.

Should you have any questions about the propriety of the subject rent increase, please don't hesitate to contact our office at (510) 594-7600 for information about the allowed increase under local Ordinance #9980 and addenda. While we have provided this information to your previously, we have attached a duplicate copy of the ordinance summary herewith for your reference. It is the express intention of the property owner that the balance of any allowed rent increases under the Ordinance are banked under provisions of the RRAO and can be added to any future increases and transferred to any future property owners.

  
\_\_\_\_\_  
Owner/Agent

This notice was served by the Owner/Manager in the following manner (check those which apply):

- by personal delivery to the tenant,  
 by leaving a copy with someone on the premises other than the tenant,  
 by mailing  
 by posting.

The Lapham Company  
4844 Telegraph Avenue  
Oakland, CA 94609  
(510) 594-7600

MAILED  
APR 24 2013  
MAILED

000109

December 21, 2014

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

To Whom It May Concern:

We are writing to dispute the Certificate of Exemption our landlord is pursuing with the Rent Adjustment Program for the building at 3921 Harrison Street. There are several reasons why this petition should be denied.

We first received notice of this petition on November 24, 2014, and according to the notice our response is due by December 23, 2014 (35 days from the date the notice was mailed, which was November 19, 2014). It is unfair to hold the tenant review time period during the holiday season when many individuals, including ourselves, are busier now than during the rest of the year and do not have a reasonable amount of time to respond to this important petition. The Rent Adjustment Program should extend the comment period for tenants by 30 days (and therefore push back the March 18 hearing by a month as well) so that all tenants have sufficient time after the holidays to adequately review and respond to the notice instead of trying to unfairly push this review time through during the holidays. Many people are traveling or spending time with friends and family and are not around or available to respond. In addition, many legal aid representatives are also taking time off during the holidays, making it difficult to find the appropriate legal resources tenants need to make informed decisions. Especially since the review time included Thanksgiving, which is a federal holiday, the comment time for tenants should be extended to ensure a fair process moving forward and that all who would like to comment on the petition are afforded the ability to do so.

The work that was done on our apartment building this past year does not qualify as capital improvement work, but was rather delayed maintenance work that a landlord is required to provide in order to ensure the health and safety of their tenants. Many of the items completed were unnecessary and were either a result of poor coordinating with the contractor or a desire to spend a large amount of money in order to qualify for the exemption the landlord is now seeking. For example, when we moved into our apartment in May 2011, we already had plastic framed (energy efficient) windows. However during construction the contractor removed our existing windows and replaced them with the exact same windows we already had. This work was unnecessary as there was no change from existing conditions or net benefit. The landlord should not be able to seek reimbursement from tenants for this type of work that was unnecessary and provided no benefit to the tenant.

Several units in the building received remodeled kitchens/bathrooms/etc during construction. Our unit received no such improvements. The Rent Adjustment Program must ensure that the amount the landlord is claiming was spent on the building does not include any remodeling work that was completed in individual units by requesting itemized receipts listing what was spent where. Tenants that

did not receive remodeling work in their units should not have to pay higher rent to help the landlord pay for new fixtures and appliances we do not get to enjoy or use.

During the building construction and ever since, there are several cracks above the corners of the windows and doors within our unit. We have reported these cracks to the property management company (Lapham), but every time the construction contractor (Gallagher) comes out to fix the cracks they just paint over them and walk away. A few weeks later, the cracks begin to show again. They have attempted to fix the cracks so many times that the paint covering the cracks up is now textured and spotty and does not match the rest of the paint. We have not benefited from this work (the interior walls of our apartment look worse than when construction began) and so should not have to pay higher rent for this work.

Prior to the work on the apartment building, we had a metal awning over our balcony that provided shade in the summer and cover during rain. As part of the construction work on the building, this awning was removed and never replaced. Now all of our plants and patio furniture/amenities either receive direct sunlight or get pounded during rain events, making this space worse off than prior to the work on the building taking place. About two weeks ago during a rain event, we noticed a leak in our ceiling where the furnace is located. A roofer has had to come out twice to fix it. We were told that a brand new roof was put on the building around the end of 2013, but if that is the case how can it already be leaking? Work that has been done to the building has been of poor quality, and we are no better off than before this work was completed.

During construction, there were several inefficiencies in how the work was performed that the tenants should not have to pay for. Scaffolding first went up around the building in December 2013, but was then taken down a week later, just to be put back up again in January 2014. Often crews would show up at 8AM just to leave a couple hours later. Often in construction if you reserve a crew, you pay them for the entire day regardless of whether or not they worked a full day. The Rent Adjustment Program must ensure that what was spent by the landlord was for work that was done in as efficient a manner as possible and that the tenants are not forced to pay for the mistakes and poor planning of the contractor.

This construction project disrupted our lives month after month. We were not able to work at home due to the noise and the uncertainty of when the contractor would be entering our apartment (their notices to enter would cover days and weeks at a time, while other times they would enter without prior written notice). We did not have use of our balconies for several months, and had our outdoor patio furniture/plants/etc cluttered up around our dining area. We couldn't even look out of the windows for months because there was plastic sheeting up during the lead/asbestos removal process and also because there were contractors walking back and forth at all and odd hours of the day. The scaffolding that remained around our apartment also became an open invitation to thieves, who one night climbed the scaffolding to the third floor, broke into the apartment building, took the elevator down to the parking garage, and broke into at least one tenant's car. All the tenants had to endure with months and months of a never ending construction project, and we have not been fairly compensated for loss of usable square footage of our unit during the construction project during this time.

The purpose of rent stabilization regulations is to protect tenants from drastic increases in rent that would force them out of their home and potentially the area. We believe that the construction work that was done on our apartment building was not for the benefit of the tenants, but rather was used by the landlord as a means to circumvent the law and now file for a Certificate of Exemption so that our

rent can be drastically increased, allowing the landlord to either make a larger profit off of the higher rent or potentially sell the building for much more than when they purchased it in 2013. Please use your best judgment to ensure that the tenants of this building are not exploited and potentially forced out of the community.

Sincerely,

Andrew and Jessica Simkin  
3921 Harrison Street, Apt 305  
Oakland, CA 94611

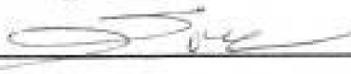


**Verification**

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.

  
\_\_\_\_\_  
Tenant's Signature

12/21/14  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Tenant's Signature

12/21/2014  
\_\_\_\_\_  
Date

**Important Information**

This form must be received at the Rent Adjustment Offices by the date and time limits prescribed by Oakland Municipal Code, Chapter 8.22. The offices are located at City of Oakland, Rent Adjustment Program, Dalziel Building, 250 Frank H. Ogawa Plaza Suite 5313, Oakland, CA 94612. The mailing address is PO Box 70243, Oakland, CA 94612-0243. For more information, please call: 510-238-

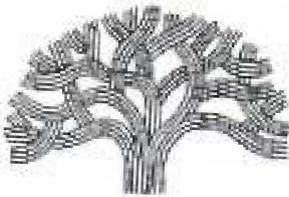
**You cannot get an extension of time to file your Response by telephone.**

**File Review**

You should have received with this letter a copy of the landlord petition.

Copies of attachments to the petition will not be sent to you. However, you may review these in the Rent Program office. Files are available for review by appointment.

For an appointment to review a file call (510) 238-3721.



**CITY OF OAKLAND  
RENT ADJUSTMENT  
PROGRAM**

P.O. Box 70243  
250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721ti

for Date Stamp Only  
CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM  
2014 DEC 22 AM 11:23

CASE NUMBER L14-0065

TENANT RESPONSE TO  
CLAIM OF PERMANENT EXEMPTION

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

Your Name <b>Suzanne Miller</b>	Complete Address (with Zip Code) <b>3921 Harrison St. #201 Oakland, CA 94611</b>	Telephone <b>510.332. 5108</b>
Your Representative's Name	Complete Address (with Zip Code)	Telephone

Number of Units on the parcel:

The unit I rent is:  
a house  an apartment  a condo

**Rental History:**

Date you entered into the Rental Agreement for this unit:  Date you moved into this unit:

Are you current on your rent? Yes  No  Lawfully Withholding Rent

If you are lawfully withholding rent, attach a written explanation of the circumstances.

**Exemption Contested**

For the detailed text of the exemptions, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. 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.

**The property owner has the burden of proving the right to exemption for the unit. Explain below why your landlord's claim that your unit is exempt is incorrect.**

Please list the date you first received the Notice to Tenants 11/21/14

**List all increases your received. Begin with the most recent and work backward recent rent increase notice. If you need additional space please attach another**

<http://www.oaklandnet.com/government/hcd/rentboard/ordinance.html>

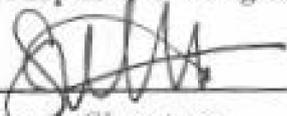
<http://www.oaklandnet.com/government/hcd/rentboard/rules.html>

Rev. 7/17/09

Tenant Response

**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.

  
\_\_\_\_\_  
Tenant's Signature

12/22/14  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Tenant's Signature

\_\_\_\_\_  
Date

**Important Information**

This form must be received at the Rent Adjustment Offices by the date and time limits prescribed by Oakland Municipal Code, Chapter 8.22. The offices are located at City of Oakland, Rent Adjustment Program, Dalziel Building, 250 Frank H. Ogawa Plaza Suite 5313, Oakland, CA 94612. The mailing address is PO Box 70243, Oakland, CA 94612-0243. For more information, please call: 510-238-

**You cannot get an extension of time to file your Response by telephone.**

**File Review**

You should have received with this letter a copy of the landlord petition.

Copies of attachments to the petition will not be sent to you. However, you may review these in the Rent Program office. Files are available for review by appointment.

For an appointment to review a file call (510) 238-3721.

December 20, 2014

To Whom it May Concern,

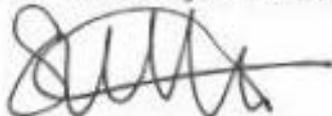
I am writing in contest of the proposed exemption of our building from rent control. I feel this would be an unfair situation to the tenants for numerous reason.

When the building was sold, we had already been slated to receive new windows, as they were very old and let cold air into the building. This project took much longer than anticipated to get started, as I believe this is when the sale of the building was beginning to take place. As the windows finally were to be installed, there was a first major setback in the discovery of lead in the paint and walls. This lead to the needs for a major lead-abatement process-- stripping the building of the stucco to remove all dangerous chemicals. As this process was underway, it was then discovered that the wood on our balconies had become rotten with water and other types of damage. They then had to be torn down and rebuilt. These things had to be done to bring the building up to safety code-- and were in NO WAY capital improvements. They had to be done for safety purposes. I then believe that because of the amount of work that had been done, more things were required to make sure the structure was sound and safe for tenants to be in. Again, not capital improvements that the tenant should be responsible to pay for, in my opinion.

It is my understanding that some units (mainly vacant ones where rent could indeed be increased for new tenants) received remodeling to the kitchens and bathrooms. However, this is **NOT** the case for all, if not most units, **mine being one to have received NO upgrades**. I have an old kitchen and bathroom. I do not feel as if these few renovations to other units should be a reason to raise my rent more than rent-control allows yearly. These expenses did not benefit the building as a whole, and therefore I do not believe should effect the tenants as a whole.

This building being rent-control exempt who be tragic for some tenants. Tenants who had lived here for years, consider this home, and would be left with few in no options for housing as they are elderly, disabled, or supporting families.

Thank you for your time and consideration,



Suzanne Miller  
3921 Harrison St. #201  
Oakland, Ca 94611  
510.332.5108

000116

March 22, 2013

**\*\* NOTICE TO CHANGE TERMS OF TENANCY \*\***

To :  
Suzanne Miller Nikolas Radey  
3921 Harrison Street 201  
Oakland, CA 94611

Dear Suzanne Miller Nikolas Radey,  
You are hereby notified that that the terms of tenancy under which you occupy the above described premises is to be changed.

It has been twelve months or more since your rental rate was reviewed and or adjusted based on the cost of living and other economic factors. In order to keep up with the operating costs at the property and to offset city, county, and state taxes that have been charged to the property for services enjoyed by the tenants, your rental rate will be changed as follows:

Effective, 5/1/2013 your rent will be increased by \$64.75 per month, from \$1295.00 per month, to \$1359.75 per month, payable in advance.

As a reminder, the City of Oakland has a Residential Rent Arbitration Ordinance (RRAO) which sets forth certain guidelines for annual rent increases for rentals within the City.

Should you have any questions about the propriety of the subject rent increase, please don't hesitate to contact our office at (510) 594-7600 for information about the allowed increase under local Ordinance #9980 and addenda. While we have provided this information to your previously, we have attached a duplicate copy of the ordinance summary herewith for your reference. It is the express intention of the property owner that the balance of any allowed rent increases under the Ordinance are banked under provisions of the RRAO and can be added to any future increases and transferred to any future property owners.

  
\_\_\_\_\_  
Owner/Agent

This notice was served by the Owner/Manager in the following manner (check those which apply):

- by personal delivery to the tenant,  
 by leaving a copy with someone on the premises other than the tenant,  
 by mailing  
 by posting.

The Lapham Company  
4844 Telegraph Avenue  
Oakland, CA 94609  
(510) 594-7600

MAILED

MAR 22 2013

MAILED

000117

12/22/14

In addition to the attached rental increase notice, I am also paying a temporary (60 months, I believe) \$50.00/mo. increase for capital improvements that were done to the front of our building.



Suzanne Miller



**CITY OF OAKLAND  
RENT ADJUSTMENT  
PROGRAM**

P.O. Box 70243  
250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721ti

For Date Stamp Only OAKLAND  
RENT ADJUSTMENT PROGRAM  
2014 DEC 23 PH 3:12

CASE NUMBER L14-0065

TENANT RESPONSE TO  
CLAIM OF PERMANENT EXEMPTION

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

Your Name <i>Fernando Garcia</i>	Complete Address (with Zip Code) <i>3921 Harrison Street Apt. 202 Oakland CA 94611</i>	Telephone <i>510-654-5897</i>
Your Representative's Name <i>N/A</i>	Complete Address (with Zip Code)	Telephone

Number of Units on the parcel:

*16*

The unit I rent is:

a house

an apartment

a condo

**Rental History:**

Date you entered into the Rental Agreement for this unit:

*ON or about  
JUNE 15 1995*

Date you moved into this unit:

*July 1 1995*

Are you current on your rent? Yes  No

Lawfully Withholding Rent

If you are lawfully withholding rent, attach a written explanation of the circumstances.

**Exemption Contested**

For the detailed text of the exemptions, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. 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.

**The property owner has the burden of proving the right to exemption for the unit. Explain below why your landlord's claim that your unit is exempt is incorrect.**

Please list the date you first received the Notice to Tenants *NOV. 20, 2014*

List all increases your received. Begin with the most recent and work backward to the most recent rent increase notice. If you need additional space please attach another sheet.

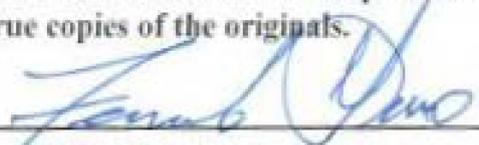
<sup>1</sup> <http://www.oaklandnet.com/government/hcd/rentboard/ordinance.html>

<sup>2</sup> <http://www.oaklandnet.com/government/hcd/rentboard/rules.html>

*Tenant Response*

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.

  
\_\_\_\_\_  
Tenant's Signature

12/22/2019  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Tenant's Signature

\_\_\_\_\_  
Date

**Important Information**

This form must be received at the Rent Adjustment Offices by the date and time limits prescribed by Oakland Municipal Code, Chapter 8.22. The offices are located at City of Oakland, Rent Adjustment Program, Dalziel Building, 250 Frank H. Ogawa Plaza Suite 5313, Oakland, CA 94612. The mailing address is PO Box 70243, Oakland, CA 94612-0243. For more information, please call: 510-238-

**You cannot get an extension of time to file your Response by telephone.**

File Review

You should have received with this letter a copy of the landlord petition.  
Copies of attachments to the petition will not be sent to you. However, you may review these in the Rent Program office. Files are available for review by appointment.

For an appointment to review a file call (510) 238-3721.

[ See Attached Statement ]



STATEMENT OF FERNANDO GARCIA IN SUPPORT OF PETITION TO CHALLENGE APPLICATION FOR EXEMPTION UNDER THE CITY OF OAKLAND RENT ADJUSTMENT ORDINANCE AND REGULATIONS THEREUNDER (Oakland Municipal Ordinance Sect. 7.22.030, and Regulation Section 10.0)

ARGUMENTS AGAINST GRANT EXEMPTION

Landlord has miscalculated the rehabilitation costs and expenses by lumping together (a) exterior building and building infrastructure improvements costs and (b) interior cosmetic construction costs and expenses.

The landlord/owner is claiming a "substantial rehabilitation" exemption in its Landlord Petition for Certification of Exemption (OMC Section 8.22.030.B) filed with the City of Oakland Rent Adjustment Board (the "Board") in connection with costs incurred for certain construction of the building, located at 3921 Harrison Street, Oakland, California (the "Building").

The Board has provided guidance to landlords requesting a certificate of exemption under the above referenced Ordinance in its publication *Landlord's Guide to Rent Adjustment*. Under the exemption for "capital improvements / uninsured repair costs" (pp 3 & 4), the *Guide* states, in relevant part:

"To justify a rent increase for capital improvements expenditures or uninsured repair expense the landlord must submit copies of receipts, invoices, bid contracts or other documentation showing the costs were incurred to improve the property **and benefit the tenants**, and evidence to show that the incurred costs were paid..." [Emphasis added]

The emphasis given in the above paragraph has direct bearing to the present circumstances. First, Building tenants can provide testimony that several apartment units within the building incurred interior improvements (the "apartment improvements") in the form of cosmetic, basic "wear and tear" repair work such as bathroom tiles replacement, new appliances to replace old ones, new carpeting, adding wood flooring (in one apartment), painting, replacing old cabinets in bathrooms or kitchens, and other miscellaneous items.

These apartment improvements should not be given the same effect as general infrastructure related rehabilitation improvements that do benefit all the tenants of the Building.

More importantly, the landlord/owner should not receive the benefit of increased market price rental for newly improved apartments units, at the expense of those long-termed tenants whose apartment units have not been improved in over ten years, in some cases, and are now

being asked to pay for these apartment improvements through the higher rents that will be available to landlord/owner should the Board grant the certificate of exemption.

The landlord/owner is already enjoying the benefits of the newly refurbished apartment units. For example, at or near the end of the major Building construction, at least three of the newly renovated apartments (#s 101, 203 & 204) were rented out at the expected higher market rent allowed when they became vacated. These apartment improvements fall outside the scope of "rehabilitation" incurred by the landlord/owner of the Building.

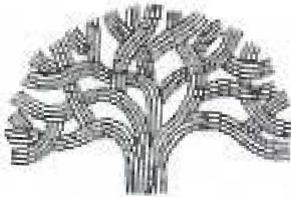
The policy underlying "Substantial Rehabilitation" is meant to improve and *to rehabilitate* old, housing stock within the City of Oakland. It should not be a policy designed to allow "hot money" to enter the old stock housing market to improve it for the dedicated purpose of obtaining an exemption to the City's policy of fair and affordable rental market pricing principle. Such a consulted application of the exemption principles would open the door to defacto discrimination against the City's current population diversity.

The Board should seek a detailed breakdown of the following expenses and costs, prior to making a decision:

A) Require a detailed breakdown between interior, non-infrastructure, building improvements and exterior, infrastructure related improvements;

B) After the submission of such additional proof to support the Petition, require a second hearing on the issue of whether the Landlord must implement a two-tier rental value approach to apportioning any future rent increases, if any are granted, under the Petition.

By: Fernando Garcia, Tenant at 3921 Harrison Street, Apt. 202



**CITY OF OAKLAND  
RENT ADJUSTMENT  
PROGRAM**

P.O. Box 70243  
250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721

for **RECEIVED**  
DEC 23 2014  
OAKLAND RENT ADJUSTMENT

CASE NUMBER L14-0065

TENANT RESPONSE TO  
CLAIM OF PERMANENT EXEMPTION

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

Your Name <i>Alex Vasilescu</i> <i>Zoe Bridges</i>	Complete Address (with Zip Code) <i>3921 Harrison St, Apt 201</i> <i>Oakland CA 94611</i>	Telephone <i>412-546-7943</i> <i>484-614-2637</i>
Your Representative's Name	Complete Address (with Zip Code)	Telephone

Number of Units on the parcel:  The unit I rent is: a house  an apartment  a condo

**Rental History:**

Date you entered into the Rental Agreement for this unit:  Date you moved into this unit:

Are you current on your rent? Yes  No  Lawfully Withholding Rent

If you are lawfully withholding rent, attach a written explanation of the circumstances.

**Exemption Contested**

For the detailed text of the exemptions, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. 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.

**The property owner has the burden of proving the right to exemption for the unit. Explain below why your landlord's claim that your unit is exempt is incorrect.**

Please list the date you first received the Notice to Tenants

List all increases your received. Begin with the most recent and work backward to the most recent rent increase notice. If you need additional space please attach another sheet.

*\$0 so far*

<sup>1</sup> <http://www.oaklandnet.com/government/hcd/rentboard/ordinance.html>

<sup>1</sup> <http://www.oaklandnet.com/government/hcd/rentboard/rules.html>

*Tenant Response*

**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.



Tenant's Signature

December 19, 2014

Date



Tenant's Signature

12/19/14

Date

**Important Information**

This form must be received at the Rent Adjustment Offices by the date and time limits prescribed by Oakland Municipal Code, Chapter 8.22. The offices are located at City of Oakland, Rent Adjustment Program, Dalziel Building, 250 Frank H. Ogawa Plaza Suite 5313, Oakland, CA 94612. The mailing address is PO Box 70243, Oakland, CA 94612-0243. For more information, please call: 510-238-

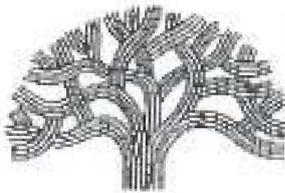
**You cannot get an extension of time to file your Response by telephone.**

**File Review**

You should have received with this letter a copy of the landlord petition.

Copies of attachments to the petition will not be sent to you. However, you may review these in the Rent Program office. Files are available for review by appointment.

For an appointment to review a file call (510) 238-3721.



**CITY OF OAKLAND  
RENT ADJUSTMENT  
PROGRAM**

P.O. Box 70243  
250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721ti

for Date Stamp Only

CASE NUMBER L14-0065

TENANT RESPONSE TO  
CLAIM OF PERMANENT EXEMPTION

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

Your Name <b>LEXIE EBLIN</b>	Complete Address (with Zip Code) <b>3921 Harrison St. Apt 101 Oakland CA 94611</b>	Telephone <b>707.236.0161</b>
Your Representative's Name	Complete Address (with Zip Code)	Telephone

Number of Units on the parcel:  The unit I rent is:  
a house  an apartment  a condo

**Rental History:**

Date you entered into the Rental Agreement for this unit:  Date you moved into this unit:

Are you current on your rent? Yes  No  Lawfully Withholding Rent

If you are lawfully withholding rent, attach a written explanation of the circumstances.

**Exemption Contested**

For the detailed text of the exemptions, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. 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.

The property owner has the burden of proving the right to exemption for the unit. Explain below why your landlord's claim that your unit is exempt is incorrect.

Please list the date you first received the Notice to Tenants 11/29/2014

List all increases your received. Begin with the most recent and work backwa recent rent increase notice. If you need additional space please attach another

N/A

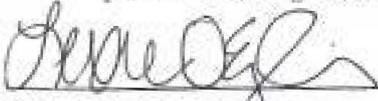
<sup>1</sup> <http://www.oaklandnet.com/government/hcd/rentboard/ordinance.html>

<sup>1</sup> <http://www.oaklandnet.com/government/hcd/rentboard/rules.html>

*Tenant Response*

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.

  
\_\_\_\_\_  
Tenant's Signature

12/31/2014  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Tenant's Signature

\_\_\_\_\_  
Date

**Important Information**

This form must be received at the Rent Adjustment Offices by the date and time limits prescribed by Oakland Municipal Code, Chapter 8.22. The offices are located at City of Oakland, Rent Adjustment Program, Dalziel Building, 250 Frank H. Ogawa Plaza Suite 5313, Oakland, CA 94612. The mailing address is PO Box 70243, Oakland, CA 94612-0243. For more information, please call: 510-238-

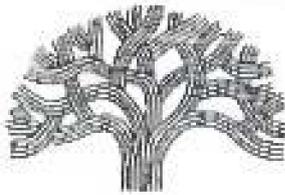
**You cannot get an extension of time to file your Response by telephone.**

**File Review**

You should have received with this letter a copy of the landlord petition.

Copies of attachments to the petition will not be sent to you. However, you may review these in the Rent Program office. Files are available for review by appointment.

For an appointment to review a file call (510) 238-3721.



**CITY OF OAKLAND  
RENT ADJUSTMENT  
PROGRAM**

P.O. Box 70243  
250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721

for Date Received  
**RECEIVED**  
JAN 13 2015  
OAKLAND RENT ADJUSTMENT

CASE NUMBER L14-0065

TENANT RESPONSE TO  
CLAIM OF PERMANENT EXEMPTION

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

Your Name <b>Jilleun Eghin</b>	Complete Address (with Zip Code) <b>3921 Hamson St. #101 Oakland CA 94611</b>	Telephone <b>7072360160</b>
Your Representative's Name	Complete Address (with Zip Code)	Telephone

Number of Units on the parcel: **16**

The unit I rent is:  
a house  an apartment  a condo

**Rental History:**

Date you entered into the Rental Agreement for this unit: **08/01/2014** Date you moved into this unit: **08/01/2014**

Are you current on your rent? Yes  No  Lawfully Withholding Rent

If you are lawfully withholding rent, attach a written explanation of the circumstances.

**Exemption Contested**

For the detailed text of the exemptions, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. 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.

**The property owner has the burden of proving the right to exemption for the unit. Explain below why your landlord's claim that your unit is exempt is incorrect.**

Please list the date you first received the Notice to Tenants **Nov. 29/2014**

List all increases your received. Begin with the most recent and work backwards. Attach most recent rent increase notice. If you need additional space please attach another sheet.

**N/A**

<sup>1</sup> <http://www.oaklandnet.com/government/hcd/rentboard/ordinance.html>  
<sup>1</sup> <http://www.oaklandnet.com/government/hcd/rentboard/rules.html>



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.

Allen Elin  
Tenant's Signature

12/31/2014  
Date

\_\_\_\_\_  
Tenant's Signature

\_\_\_\_\_  
Date

**Important Information**

This form must be received at the Rent Adjustment Offices by the date and time limits prescribed by Oakland Municipal Code, Chapter 8.22. The offices are located at City of Oakland, Rent Adjustment Program, Dalziel Building, 250 Frank H. Ogawa Plaza Suite 5313, Oakland, CA 94612. The mailing address is PO Box 70243, Oakland, CA 94612-0243. For more information, please call: 510-238-

**You cannot get an extension of time to file your Response by telephone.**

**File Review**

You should have received with this letter a copy of the landlord petition. Copies of attachments to the petition will not be sent to you. However, you may review these in the Rent Program office. Files are available for review by appointment.

For an appointment to review a file call (510) 238-3721.





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:** L14-0065, 525, 655 Hyde St. CNML Properties LLC v. Tenants

**PROPERTY ADDRESS:** 3921 Harrison St., Oakland, CA

**DATE OF HEARING:** April 27, 2015

**DATE OF DECISION:** May 29, 2015

**APPEARANCES:** Elizabeth Hart (Owner Representative)  
Clifford E. Fried (Attorney for Owner)  
Michael Bykhovshy (Witness for Owner)  
Tsegab Assefa (Witness for Owner)  
Martin Gallagher (Witness for Owner)  
Tyler Ritter (Tenant)  
Svetlana Butnaro (Tenant)  
Jessica Simkin (Tenant)  
Andrew Simkin (Tenant)  
Alex Vasilescu (Tenant)  
Suzanne Miller (Tenant)  
Zoe Bridges (Tenant)  
Mari Oda (Tenant)  
Angelique Johnson (Tenant)  
Alexandro Butnaro (Tenant)  
Elena Butnaro (Tenant)  
Fernando Garcia (Witness for Tenants)  
Kate Flick Garcia (Witness for Tenants)  
David Harlan (Witness for Tenants)  
Ana Baires Mira (Attorney for Tenants)  
Ruth Holtzman (Interpreter)

## SUMMARY OF DECISION

The owner's petition is denied.

## CONTENTIONS OF THE PARTIES

The owner filed a petition for a Certificate of Exemption for a residential building on the ground that it is a "substantially rehabilitated" building, pursuant to Oakland Municipal Code (O.M.C.) Section 8.22. Twelve tenants filed responses which contest the owner's claim of exemption.

## THE ISSUE

Is the subject building exempt from the Rent Adjustment Ordinance as being a "substantially rehabilitated" building?

## EVIDENCE

Building Services Evaluation Tables: The tenant requested the attendance of the City Building Services supervisor to testify with regard to how the City determines the present cost of new construction for the issuance of building permits. David Harlan, the Engineering Manager of the Bureau of Building appeared and testified at the Hearing. Mr. Harlan testified that his duties include oversight of all permit issuance, records management, and plan checking. He further testified that the City currently uses the table that was effective on August 1, 2009.<sup>1</sup> A copy of this document is attached as Table "A." Official Notice is taken of two other documents issued by the City Building Services agency: "Quarterly Cost Indexes (1926=100), a copy of which is attached as Table "B," and "Residential Building Minimum Evaluation Data," a copy of which is attached as Table "C."

Square Footage: The owners submitted a document on the letterhead of the Alameda County Assessor regarding the subject property, entitled "Property Characteristics Printed on 10/31/14."<sup>2</sup> This document states that the building area is 13,336 square feet. Martin Gallagher, a general contractor whose firm did most of the work on the construction project, testified that this figure does not include the 16 decks on the building, which were part of the construction expense. He further testified that 15 of the decks are 12 by 4 ½ feet, and the penthouse deck is approximately 16 by 12 feet.

Type of Construction: The owners also submitted a document entitled Certificate of Occupancy for the subject building, which was issued by the City Building Department on January 9, 1963.<sup>3</sup> This document states that the building type is "V-1." Martin Gallagher testified that the subject building is of wood frame construction.

<sup>1</sup> Exhibit No. 138. This Exhibit, and all others to which reference is made in this Decision, were admitted into evidence without objection.

<sup>2</sup> Exhibit No. 5.

<sup>3</sup> Exhibit No. 6.

Expenses: The owner submitted into evidence invoices and proof of payment for work on the subject building in the year 2014, as follows:

Martin Gallagher Construction, Inc.	\$831,597 <sup>4</sup>
Kelly-Moore Paint	740 <sup>5</sup>
Bay Area Carpets	1,620 <sup>6</sup>
Craig Bull Construction	2,964 <sup>7</sup>
Advocate Painting	2,032 <sup>8</sup>
Raynard's Appliance Repair	194 <sup>9</sup>
Just Plumbing	9,660 <sup>10</sup>
Globe Plumbing Supply	439 <sup>11</sup>
Oak Leaf Painting	1,195 <sup>12</sup>
TOTAL	\$850,441

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

O.M.C. 8.22.030(A)(6) states that dwelling units located in "substantially rehabilitated buildings" are not "covered units" under the Rent Ordinance.

- a. In order to obtain an exemption based on substantial rehabilitation, an owner must have spent a minimum of fifty (50) percent of the average basic cost for new construction for a rehabilitation project.
- b. The average basic cost for new construction shall be determined using tables issued by the chief building inspector applicable for the time period when the substantial rehabilitation was completed.<sup>13</sup>

Eligible Expenses: It is found that the owner's eligible expenses total \$846,847. The owner also provided evidence of expenses for routine maintenance of the building such as replacement of light bulbs and a shower curtain liner, tree trimming, and the purchase of a dishwasher, ranges and draperies. The cost of these items totals \$6,693.<sup>14</sup> These costs do not enhance the structure, and the costs are not allowed.

<sup>4</sup> Exhibit Nos. 18, 19, 28, 29, 43-54, 57-81, 96-98, 117-129, 132, & 133

<sup>5</sup> Exhibit Nos. 20, 23, 90-92, & 107-109

<sup>6</sup> Exhibit Nos. 24, 25, 84, & 85.

<sup>7</sup> Exhibit Nos. 37 & 38

<sup>8</sup> Exhibit Nos. 41 & 42

<sup>9</sup> Exhibit Nos. 86 & 87

<sup>10</sup> Exhibit Nos. 89, 99, 100, 112-114, 130, & 131

<sup>11</sup> Exhibit Nos. 101, 102, 110, & 111

<sup>12</sup> Exhibit Nos. 105 & 106

<sup>13</sup> O.M.C. Section 8.22.030(B)(2)

<sup>14</sup> Exhibit Nos. 26, 30-32, 35, 39-40, 55-56, 82-83, 93, 99-100, 103-104, 112-114, 115-116, 103-131, 134-135, & 136-137

Square Footage: The building proper contains 13,336 square feet. However, since the owner has included the cost of balcony work in its documentation, the area of the balconies must be included in the calculation. Mr. Gallagher testified that the building has 15 balconies which are 12 x 4 ½ feet (810 total) plus the penthouse balcony which is 16 x 12 feet (192). Therefore, the balconies contain a total of 1002 square feet, and the building contains 14,338 square feet.

The Calculation: "The average basic cost for new construction shall be determined using tables issued by the chief building inspector applicable for the time period when the substantial rehabilitation was completed."<sup>15</sup> The construction in this case took place in the year 2014. The Tables referenced in this Decision were all issued by the City Building Services agency.

Table "A" lists square foot construction costs, effective August 1, 2009. However, since the construction in this case occurred in the year 2014, and costs have risen since that time, it is proper to increase the cost shown on the 2009 Table. The Building Services agency has recognized this fact, and therefore issued a document entitled "Quarterly Cost Indexes (1926 = 100)" (Table "B").

These tables are used as follows: (1) On Table "B," determine the number for the year of construction, geographical district, and type of construction; (2) Divide this number by the number in the same category for the year 2009. The resulting fraction is then multiplied by the number derived when the square foot cost shown on Table "A" is multiplied by the number of square feet in the building.

The Certificate of Occupancy for the subject building states that the building is of "V-1" construction. The attached Table "C," being the prior valuation table issued by the City of Oakland, states that "Type V" is wood frame construction. This is consistent with the testimony of Martin Gallagher. If the work were done in the year 2009, the square foot cost would be \$127 (Apartment Building more than 2 units; new construction; Type V). This amount multiplied by 14,338 total square feet equals \$1,820,926. This figure is then increased, using Table "B," as follows:

October 2014	3004.3
	1.18%
October 2009	2550.2

One and 18/100 percent of \$1,820,926 is \$2,148,694; fifty per cent of \$2,148,694 is \$1,074,347. Therefore, if the owner spent at least \$1,074,347 on the construction project, the building is exempt from the Rent Ordinance.

Discussion: The owner spent \$850,441, which is far less than the required amount for the building to be declared "substantially rehabilitated." Furthermore, even if the square footage cost on the 2009 Table were used, the owner would not meet the required expense threshold.

---

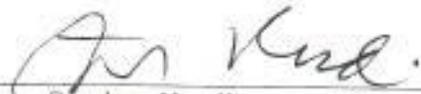
<sup>15</sup> O.M.C. Section 8.22.030(B)

The square footage of 14,338 multiplied by \$127 equals \$1,820,926; one-half of this amount is \$910,463. Therefore, the owner's petition is denied.

**ORDER**

1. Petition L14-0065 is denied.
2. The subject building has not been substantially rehabilitated.
3. Right to Appeal: **This decision is the final decision of the Rent Adjustment Program Staff.** Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within twenty (20) 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: May 29, 2015



Stephen Kasdin  
Hearing Officer  
Rent Adjustment Program

**City of Oakland**  
**Building Services**  
**Construction Valuation<sup>1</sup>**  
**For Building Permits<sup>4</sup>**  
**Effective Aug. 1, 2009**

Community Economic Development Agency  
 Daiziel Administration Building  
 250 Frank Ogawa Plaza - 2nd Floor  
 Oakland, CA 94612  
 510-238-3891

12-18-09

Occ.	Description <sup>2</sup>	Construction Type	Level Ground <sup>2</sup>		Hillside Construction		Marshall & Swift 3Q '09 Section pg (Class/Type)
			New	Remodel	New	Remodel	
R3	Custom Residence	V	\$207.53	\$107.92	\$269.79	\$140.29	Section 12 pg 25 (C/c)
	Single Family & Duplex	V	\$144.46	\$75.12	\$187.80	\$97.85	Section 12 pg 25 (C/c)
	Factory/Manufactured home	V	\$43.50	\$22.62	\$56.55	\$29.41	Section 12 pg 25 (CDS/c)
	Finished Habitable Basement Conversion	V	\$96.42	\$50.14	\$125.35	\$65.18	Section 12 pg 25 (S/c)
	Convert non-habitable to habitable	V	N/A	\$43.50	N/A	\$56.55	Section 12 pg 26 (CDS/c)
	Partition Walls	V	N/A	\$16.19	N/A	\$21.05	Section 52 pg 2 (S/wall)
	Foundation Upgrade (I.F.)	V	\$105.37	NA	\$136.98	NA	Section 51 pg 2 (R24x72.)
	Patio/Porch Roof	V	\$24.70	\$12.84	\$32.11	\$16.70	Section 66 pg 2 (Wood)
	Ground Level Decks	V	\$30.49	\$15.85	\$39.64	\$20.61	Section 66 pg 2 (100s/eng)
	Elevated Decks & Balconies	V	\$41.16	\$21.40	\$53.51	\$27.82	Section 66 pg 2 (100s/1 story)
U1	Garage	V	\$38.42	\$19.98	\$49.95	\$25.97	Section 12 pg 35 (C/c600)
	Carport	V	\$24.70	\$12.84	\$32.11	\$16.70	Section 12 pg 35 (D/c/car)
	Retaining wall (s.f.)	III	\$32.96	NA	\$42.85	NA	Section 55 pg 3 (12"rein./h)
R2	Apartment (>2 units)	I & II	\$174.89	\$90.84	\$227.10	\$118.09	Section 11 pg 18 (B/c)
		III	\$156.91	\$81.59	\$203.98	\$106.07	Section 11 pg 18 (D/c/m/g)
		V	\$127.00	\$66.04	\$165.10	\$85.85	Section 11 pg 18 (D/c)
<b>Non-Residential Occupancy</b>							
A	Church/Auditorium	I & II	\$247.07	\$126.48	\$321.19	\$167.02	Section 16 pg 9 (B/c)
		III	\$182.01	\$94.65	\$236.61	\$123.04	Section 16 pg 9 (B/c)
		V	\$175.93	\$91.48	\$228.71	\$118.93	Section 16 pg 9 (S/c)
A	Restaurant	I & II	\$221.82	\$115.35	\$288.37	\$149.95	Section 13 pg 14 (A-B/c)
		III	\$174.20	\$90.58	\$226.46	\$117.76	Section 13 pg 14 (C/c)
		V	\$186.80	\$96.74	\$216.84	\$112.79	Section 13 pg 14 (D/c)
B	Restaurant <50 occupancy	V	\$145.24	\$75.52	\$188.81	\$96.18	Section 13 pg 17 (C/c)
B	Bank	I & II	\$223.46	\$116.20	\$290.50	\$151.06	Section 15 pg 21 (B/c)
		III	\$182.01	\$94.65	\$236.61	\$123.04	Section 15 pg 21 (C/c)
		V	\$173.02	\$89.97	\$224.93	\$116.96	Section 15 pg 21 (D/c)
B	Medical Office	I & II	\$249.76	\$129.88	\$324.89	\$168.84	Section 15 pg 22 (A/c)
		III	\$243.19	\$126.46	\$316.15	\$164.40	Section 15 pg 22 (B/c)
		V	\$200.73	\$104.38	\$260.95	\$135.89	Section 15 pg 22 (C/c)
B	Office	I & II	\$165.41	\$86.01	\$215.03	\$111.82	Section 15 pg 17 (B/c)
		III	\$120.77	\$62.80	\$157.00	\$81.64	Section 15 pg 17 (C/c)
		V	\$115.34	\$59.98	\$149.94	\$77.97	Section 15 pg 17 (D/c)
E	School	I & II	\$239.11	\$124.34	\$310.84	\$161.84	Section 18 pg 14 (A-B/c)
		III	\$181.96	\$94.82	\$236.55	\$123.00	Section 18 pg 14 (C/c)
		V	\$171.94	\$89.41	\$223.52	\$118.23	Section 18 pg 14 (D/c)
H	Repair Garage	I & II	\$186.25	\$96.85	\$242.13	\$125.91	Section 14 pg 33 (MSG 527C/c)
		III	\$180.70	\$93.95	\$234.91	\$122.15	Section 14 pg 33 (MLG 423C/c)
		V	\$175.14	\$91.07	\$227.68	\$118.39	Section 14 pg 33 (MLG 423D/c)
I	Care Facilities / Institutional	I & II	\$186.04	\$96.74	\$241.85	\$125.76	Section 15 pg 22 (B/c)
		III	\$152.09	\$79.09	\$197.72	\$102.81	Section 15 pg 22 (C/c)
		V	\$146.52	\$76.19	\$190.48	\$99.05	Section 15 pg 22 (D/c)
M	Market (Retail sales)	I & II	\$143.82	\$74.79	\$186.97	\$97.22	Section 13 pg 26 (A/c)
		III	\$117.10	\$60.80	\$152.23	\$79.16	Section 13 pg 26 (C/c)
		V	\$113.19	\$58.86	\$147.15	\$76.52	Section 13 pg 26 (D/c)
S	Industrial plant	I & II	\$157.34	\$81.82	\$204.54	\$106.36	Section 14 pg 15 (B/c)
		III	\$134.38	\$69.88	\$174.69	\$90.84	Section 14 pg 15 (C/c)
		V	\$111.93	\$58.20	\$145.51	\$75.68	Section 14 pg 15 (D/c)
S	Warehouse	I & II	\$96.28	\$50.07	\$125.18	\$65.09	Section 14 pg 26 (A/c)
		III	\$91.77	\$47.72	\$119.30	\$62.04	Section 14 pg 26 (B/c)
		V	\$90.79	\$47.21	\$118.03	\$61.37	Section 14 pg 26 (C/c/m/g)
S	Parking Garage	I & II	\$76.31	\$39.68	\$99.20	\$51.59	Section 14 pg 34 (A/c)

<sup>1</sup> Cost per square foot, unless noted otherwise. (L.F. = linear foot; s.f. = square foot); includes 1.3 regional multiplier (see Sec. 99 pg 6 July 2009 Marshall & Swift)

<sup>2</sup> Hillside construction = slope >20%; multiply by additional 1.3 multiplier

<sup>3</sup> Remodel Function of New Construction is a 0.52 multiplier.

<sup>4</sup> Separate structures or occupancies valued separately.

<sup>5</sup> Separate fees assessed for EIPM permits, R.O.W. improvements, Fire Prevention Bureau, Grading Permits, technology enhancement, records management, Exec. & Shoring.

TABLE "A" 138

2014

# QUARTERLY COST INDEXES (1926 = 100)

SECTION 98 PAGE 7  
October 2014

## BUILDINGS - EASTERN DISTRICT

BUILDING CLASSES	10/2014	7/2014	4/2014	1/2014	10/2013	7/2013	4/2013	1/2013	10/2012	7/2012	4/2012	1/2012	10/2011	7/2011	4/2011	1/2011	10/2010	7/2010	4/2010	1/2010	10/2009	7/2009	4/2009	
A. Fireproofed steel frame	3069.4	3060.0	3051.0	3051.5	3050.2	2991.8	2963.8	2954.9	2940.3	2921.4	2999.0	2984.8	2972.1	2938.1	2798.4	2777.7	2766.3	2713.3	2703.6	2696.2	2689.6	2689.6	2775.6	2698.3
B. Reinforced concrete frame	3053.1	3041.4	3036.7	3011.9	2991.3	2971.3	2948.3	2936.6	2918.8	2897.2	2873.6	2854.8	2841.1	2818.0	2773.2	2750.9	2745.3	2703.3	2695.4	2674.7	2671.4	2671.4	2747.5	2633.2
C. Masonry bearing walls	3041.4	3027.5	3017.2	2990.7	2970.5	2948.4	2935.1	2920.6	2903.2	2883.1	2926.4	2907.8	2794.2	2768.6	2741.8	2729.6	2721.2	2675.4	2649.4	2636.1	2634.5	2671.2	2743.9	2633.2
D. Wood frame	3064.3	2968.5	2974.8	2968.0	2934.2	2905.7	2866.8	2850.7	2824.8	2789.5	2756.8	2738.4	2722.6	2708.8	2678.1	2672.6	2664.1	2612.9	2578.5	2565.3	2550.2	2550.2	2582.9	2633.2
S. Metal frame and walls	2788.7	2779.3	2773.5	2759.2	2746.4	2723.6	2713.9	2696.3	2683.8	2663.8	2653.1	2645.5	2619.1	2580.8	2567.5	2559.6	2522.8	2506.7	2496.7	2486.1	2486.1	2581.8	2708.4	2486.1

## BUILDINGS - CENTRAL DISTRICT

BUILDING CLASSES	10/2014	7/2014	4/2014	1/2014	10/2013	7/2013	4/2013	1/2013	10/2012	7/2012	4/2012	1/2012	10/2011	7/2011	4/2011	1/2011	10/2010	7/2010	4/2010	1/2010	10/2009	7/2009	4/2009	
A. Fireproofed steel frame	2760.6	2757.6	2753.8	2728.5	2726.6	2717.0	2695.1	2677.7	2668.0	2648.8	2630.6	2614.6	2601.6	2588.7	2551.9	2536.1	2527.9	2499.6	2461.2	2446.9	2442.9	2520.6	2670.0	2446.9
B. Reinforced concrete frame	2759.0	2752.5	2747.9	2723.9	2722.9	2718.9	2695.0	2682.3	2662.3	2652.2	2638.0	2626.2	2613.1	2591.7	2552.2	2537.5	2527.5	2509.6	2480.8	2445.6	2431.8	2428.1	2490.0	2567.8
C. Masonry bearing walls	2754.3	2750.2	2743.6	2720.8	2719.8	2716.4	2691.6	2678.9	2658.3	2648.1	2633.8	2621.1	2608.0	2586.8	2547.3	2532.6	2522.6	2504.7	2475.9	2440.8	2427.0	2423.3	2495.5	2573.9
D. Wood frame	2755.1	2744.3	2734.8	2720.9	2719.6	2698.0	2687.0	2668.1	2650.7	2632.6	2614.8	2597.8	2580.9	2563.1	2523.4	2508.9	2491.2	2472.9	2443.2	2407.5	2393.2	2393.2	2464.8	2543.8
S. Metal frame and walls	2477.0	2470.9	2466.2	2452.4	2455.1	2450.9	2439.3	2429.1	2425.8	2411.4	2389.5	2385.1	2374.7	2358.5	2331.9	2318.3	2311.8	2303.9	2287.7	2256.1	2256.1	2344.3	2446.0	2287.7

## BUILDINGS - WESTERN DISTRICT

BUILDING CLASSES	10/2014	7/2014	4/2014	1/2014	10/2013	7/2013	4/2013	1/2013	10/2012	7/2012	4/2012	1/2012	10/2011	7/2011	4/2011	1/2011	10/2010	7/2010	4/2010	1/2010	10/2009	7/2009	4/2009	
A. Fireproofed steel frame	3033.4	3022.5	2997.4	2976.7	2968.9	2954.7	2930.2	2915.2	2894.7	2879.8	2859.4	2843.2	2824.1	2805.5	2766.8	2747.0	2737.0	2698.1	2656.1	2656.4	2646.0	2646.0	2760.7	2890.7
B. Reinforced concrete frame	3030.5	3000.0	2973.8	2953.9	2946.5	2930.3	2903.3	2878.6	2866.8	2845.1	2827.2	2803.1	2785.7	2763.8	2723.1	2718.9	2711.9	2672.4	2632.5	2627.0	2624.0	2711.5	2804.1	2632.5
C. Masonry bearing walls	3028.3	3018.0	2988.8	2969.2	2961.8	2943.4	2917.6	2892.0	2881.7	2861.3	2838.0	2817.3	2798.4	2778.0	2734.0	2733.1	2717.8	2676.1	2633.6	2628.0	2624.0	2663.0	2723.4	2632.5
D. Wood frame	2980.3	2979.1	2948.8	2925.1	2925.6	2904.4	2878.2	2851.9	2834.2	2818.9	2798.0	2778.7	2758.9	2738.7	2696.7	2696.0	2684.5	2645.5	2603.8	2595.7	2595.7	2658.7	2744.8	2632.5
S. Metal frame and walls	2395.5	2393.4	2361.8	2369.5	2366.1	2353.4	2336.7	2325.1	2310.4	2304.9	2285.5	2271.6	2257.8	2238.4	2209.6	2191.5	2181.5	2169.1	2144.0	2133.7	2133.7	2259.8	2626.1	2133.7

## EQUIPMENT - NATIONAL AVERAGE

INDUSTRY	10/2014	7/2014	4/2014	1/2014	10/2013	7/2013	4/2013	1/2013	10/2012	7/2012	4/2012	1/2012	10/2011	7/2011	4/2011	1/2011	10/2010	7/2010	4/2010	1/2010	10/2009	7/2009	4/2009	
Average of all	1583.7	1585.7	1593.0	1586.9	1563.7	1561.6	1556.6	1552.6	1551.6	1553.4	1542.1	1536.3	1533.3	1512.5	1491.2	1476.7	1473.3	1461.3	1448.3	1448.5	1446.4	1462.9	1477.7	1462.9
Automotive	1883.2	1886.1	1868.5	1869.8	1862.3	1863.4	1860.5	1856.2	1859.1	1869.4	1856.2	1852.9	1847.9	1819.6	1787.2	1766.9	1761.3	1745.4	1730.2	1729.3	1736.0	1786.0	1785.7	1762.9
Bakery	1133.0	1126.8	1117.4	1118.0	1117.2	1112.3	1105.9	1103.2	1098.1	1093.3	1083.6	1076.8	1076.4	1065.9	1052.9	1046.4	1044.1	1036.3	1026.1	1024.9	1023.2	1028.0	1028.0	1028.0
Battery	1552.9	1545.5	1527.3	1533.8	1520.2	1510.5	1514.4	1509.7	1507.5	1512.6	1498.4	1493.5	1490.5	1471.4	1441.8	1416.2	1432.2	1420.2	1425.4	1424.1	1403.2	1422.0	1434.2	1434.2
Bank	1164.2	1156.5	1145.3	1144.0	1140.5	1138.3	1133.8	1133.5	1134.1	1133.0	1125.4	1121.4	1121.5	1108.8	1082.8	1085.0	1085.7	1076.4	1065.5	1065.3	1065.7	1073.1	1088.9	1088.9
Bottling	1639.6	1630.6	1610.8	1608.6	1605.1	1601.6	1599.3	1599.1	1599.1	1603.8	1590.8	1588.5	1584.8	1562.2	1539.2	1524.9	1520.5	1509.1	1493.8	1490.8	1491.2	1509.5	1527.8	1527.8
Brewery & distillery	2014.5	2003.7	1979.2	1976.6	1971.4	1970.2	1964.0	1961.4	1959.6	1970.3	1943.3	1930.3	1934.6	1901.1	1891.2	1870.8	1867.8	1856.0	1837.9	1833.4	1834.7	1851.0	1871.1	1871.1
Candy	2003.8	1993.9	1968.5	1964.3	1960.3	1958.0	1951.8	1945.5	1942.5	1948.0	1927.2	1923.8	1920.3	1895.1	1866.7	1846.8	1845.1	1830.3	1810.7	1808.0	1808.3	1829.6	1842.5	1842.5
Cannery (fish)	1952.9	1953.2	1928.7	1925.9	1920.5	1912.9	1912.0	1904.8	1903.3	1910.6	1890.0	1886.3	1882.7	1856.7	1827.9	1810.9	1807.5	1791.0	1779.1	1775.2	1773.5	1797.0	1810.2	1810.2
Cannery (fruit)	1933.0	1932.9	1908.9	1904.3	1901.2	1898.0	1893.6	1882.1	1877.8	1882.5	1861.2	1857.9	1854.8	1831.6	1804.1	1787.8	1784.8	1769.6	1749.6	1747.0	1745.0	1764.1	1776.2	1776.2
Cement/mfg	1880.9	1855.0	1842.2	1839.2	1833.5	1833.0	1827.5	1820.5	1822.3	1820.7	1810.3	1806.7	1799.3	1788.0	1768.6	1752.6	1750.2	1739.2	1728.1	1728.1	1728.1	1759.7	1851.1	1851.1
Chemical	969.9	961.9	958.3	951.0	957.6	957.4	957.2	957.4	957.6	957.4	956.8	956.9	956.9	957.4	953.8	950.3	949.5	948.5	948.1	948.1	948.1	954.8	954.8	954.8
Church	1337.1	1296.9	1283.0	1281.9	1278.0	1273.2	1264.7	1261.1	1256.7	1250.8	1240.8	1234.9	1234.0	1221.6	1199.5	1199.5	1201.3	1190.1	1176.7	1176.7	1179.1	1191.4	1191.4	1191.4
Clay products	1832.8	1844.6	1831.1	1828.9	1824.3	1821.2	1815.2	1808.5	1807.8	1808.9	1795.9	1793.6	1792.5	1779.5	1754.3	1752.4	1748.3	1735.6	1746.0	1748.3	1748.3	1761.9	1826.4	1826.4
Contractor's equip	1826.6	1822.0	1801.9	1799.4	1798.3	1793.7	1796.8	1793.0	1787.6	1792.4	1774.9	1773.6	1762.6	1752.6	1737.9	1730.4	1730.4	1716.1	1702.5	1702.5	1702.5	1724.8	1805.6	1805.6
Creamery & dairy	1721.0	1721.6	1699.1	1687.2	1684.3	1681.5	1677.4	1673.3	1669.7	1672.8	1659.8	1654.0	1648.9	1638.9	1626.2	1607.7	1598.3	1575.1	1558.7	1553.6	1552.7	1569.3	1582.7	1582.7
Dwelling	1995.8	1985.4	1976.9	1977.9	1972.1	1972.3	1966.6	1964.7	1958.8	1958.8	1946.8	1942.1	1938.5	1903.2	1871.6	1851.6	1851.6	1833.1	1818.1	1818.1	1818.1	1836.4	1904.6	1904.6
Elec. equip. mfg.	1686.2	1679.6	1660.1	1656.6	1653.2	1649.3	1647.8	1646.2	1646.2	1646.2	1630.8	1628.8	1628.8	1610.3	1590.7	1567.3	1567.3	1548.5	1544.2	1544.2	1544.9	1573.3	1609.7	1609.7
Elec. power equip.	1905.0	1897.0	1887.0	1887.0	1887.0	1887.0	1887.0	1887.0	1887.0	1887.0	1887.0	1887.0	1887.0	1887.0	1887.0	1887.0	1887.0	1887.0	1887.0	1887.0	1887.0	1887.0	1887.0	1887.0
Flour, cereal & feed	1612.0	1604.6	1585.7	1582.3	1579.5	1578.7	1575.2	1569.0	1568.0	1572.0	1557.7	1553.4	1549.6	1529.2	1506.2	1491.5	1487.2	1476.1	1462.4	1458.4	1458.4	1477.1	1491.8	1491.8
Garage	17																							

# City of Oakland

## Residential Building Minimum Valuation Data

Approved by Calvin N. Wong Building Official to be effective February 1, 2001  
JH 062

The following building valuation data are based on cost and value reported in "Marshal Valuation Services" published by Marshall and Swift dated December 2000 with cost multiplier of 1.07 and local multiplier of 1.32.

Calculated Method * (\$/sf)		Segregated Cost Method	
Level ground construction (caisson found'n @ \$11.50/sf not included in this column)		Hillside construction Based on 20% slope (retaining wall not included)	Deck (\$/sf of area)
			Ground level (< 6') \$ 22.44/sf
			Terrace level \$ 30.29/sf
2001 JH 062			Fence ((\$/sf surface)
Apartment		Apartment	-wood \$ 4.18/sf
Type I & II	1892.1 \$146.67	Type I & II	\$190.67 -chain link \$ 2.64/sf
Type III	1911.5 \$113.27	Type III	\$147.25 - masonry \$10.30/sf
Type V	1892.1 \$ 92.25	Type V	\$119.93 Fireplace \$6,270/ea
Basement	\$ 35.07	Basement	\$ 58.77 Fire sprinkler \$ 3.28/sf
Garage	\$ 31.24	Garage	\$ 50.14 Kitchen Appliance \$ 4983/set
Type I Garage	\$ 39.71	Type I Garage	\$ 63.82 Patio Enclosure \$ 22.18/sf
Custom Residences		Custom Residences	Solarium \$129.53/sf
Type III	\$184.23	Type III	\$239.50 Stair
Type V	\$178.35	Type V	\$231.86 - prefab \$149.16/Tread
Basement	\$ 69.63	Basement	\$ 74.02 - wood \$125.07/Tread
Garage	\$ 64.78	Garage	\$ 84.21 Wall - non-bearing
Semi-Custom Residences		Semi-Custom Residences	- wood (footing extra) \$15.00/lf
Type III	\$151.14	Type III	\$196.48 Wall - retaining (\$/sf surface)
Type V	\$142.67	Type V	\$185.47 - concrete
Basement	\$ 49.56	Basement	\$ 64.43 < 6' tall \$ 23.10/sf
Garage	\$ 51.43	Garage	\$ 66.86 < 10' tall \$ 27.05/sf
Single Family Residences		Single Family and Residences	< 20' tall \$ 36.30/sf
Type III	\$118.05	Type III	\$153.47 - masonry
Type V	\$106.99	Type V	\$139.09 < 6' tall \$23.17/sf
Basement	\$ 29.49	Basement	\$ 51.21 < 10' tall \$31.09/sf
Garage	\$ 38.07	Garage	\$ 52.12 - wood
Starter Home		Starter Home	
Type V	\$ 76.59	Type V	\$ 99.57 < 6' tall \$ 17.66/sf
Basement	\$ 24.74	Basement	\$32.17 < 10' tall \$22.44/sf
Garage	\$ 28.11	Garage	\$36.54

\* Calculator method includes typical built-in appliance and one fireplace only.

TABLE "C"



**PROOF OF SERVICE**

**Case Number L14-0065**

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

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

**Tenants**

Alexander Michael Taylor  
3921 Harrison St #104  
Oakland, CA 94611

Alexandru Butnaru  
3921 Harrison St #102  
Oakland, CA 94611

Alexandru Vasilescu  
3921 Harrison St #301  
Oakland, CA 94611

Andrew Simkin  
3921 Harrison St #305  
Oakland, CA 94611

Angelique Johnson-Martinez  
3921 Harrison St #103  
Oakland, CA 94611

Bianca Penaloza  
3921 Harrison St #204  
Oakland, CA 94611

Cooper Spinelli  
3921 Harrison St #203  
Oakland, CA 94611

Dana Sarvestani  
3921 Harrison St #203  
Oakland, CA 94611

Elena Butnaru  
3921 Harrison St #102  
Oakland, CA 94611

**Tenant Representative**

Ana Baires Mira  
3022 International Blvd #410  
Oakland, CA 94601

Elizabeth VanLanen  
3921 Harrison St Penhouse  
Oakland, CA 94611

Fernando Garcia  
3921 Harrison St #202  
Oakland, CA 94611

Jessica Simkin  
3921 Harrison St #305  
Oakland, CA 94611

Jilleun Eglin & Lexie Eglin  
3921 Harrison St #101  
Oakland, CA 94611

Julie Amberg  
3921 Harrison St #302  
Oakland, CA 94611

Kate Flick Garcia  
3921 Harrison St #202  
Oakland, CA 94611

Lisa Romero  
3921 Harrison St #205  
Oakland, CA 94611

Mari Oda  
3921 Harrison St #304  
Oakland, CA 94611

Ria Cruz  
3921 Harrison St #105  
Oakland, CA 94611

Steven Miller  
3921 Harrison St Penhouse  
Oakland, CA 94611

Suzanne Miller  
3921 Harrison St #201  
Oakland, CA 94611

Tadeusz Butnaru  
3921 Harrison St #102  
Oakland, CA 94611

Todd McMahon  
3921 Harrison St #304  
Oakland, CA 94611

Tyler Ritter  
3921 Harrison St #303  
Oakland, CA 94611

Zoe Bridges  
3921 Harrison St #301  
Oakland, CA 94611

Zvetlana Butnaru  
3921 Harrison St #104  
Oakland, CA 94611

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on May 29, 2015 in Oakland, CA.



Stephen Kasdin  
Oakland Rent Adjustment Program

**PROOF OF SERVICE**

**Case Number L14-0065**

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

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

**Owner Representative**

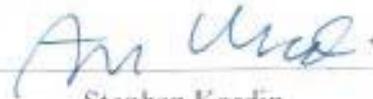
525-655 Hyde Street CNML Tsegab Asse  
4844 Telegraph Ave  
Oakland, CA 94609

Clifford E. Fried, Esq.  
480 9th St  
Oakland, CA 94607

Liz Hart  
480 9th St  
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 May 29, 2015 in Oakland, CA.



Stephen Kasdin

Oakland Rent Adjustment Program

<b>City of Oakland</b> <b>Residential Rent Adjustment Program</b> 250 Frank Ogawa Plaza, Suite 5313 Oakland, California 94612 (510) 238-3721		<b>APPEAL</b>	
<b>Appellant's Name</b> 525, 655 Hyde St. CNML Properties LLC		<input checked="" type="checkbox"/> <b>Landlord</b>	<input type="checkbox"/> <b>Tenant</b>
<b>Property Address (Include Unit Number)</b> 3921 Harrison Street Oakland, CA 94611			
<b>Appellant's Mailing Address (For receipt of notices)</b> 4844 Telegraph Avenue Oakland, CA 94609		<b>Case Number</b> L14-0065	<b>Date of Decision appealed</b> 5/29/15
<b>Name of Representative (if any)</b> Clifford E. Fried Esq. Elizabeth Hart		<b>Representative's Mailing Address (For notices)</b> Fried & Williams LLP 480 Ninth St. Oakland, CA 94607	

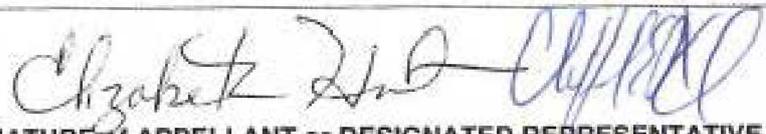
I appeal the decision issued in the case and on the date written above on the following grounds:  
*(Check the applicable ground(s). Additional explanation is required (see below). Please attach additional pages to this form.)*

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

7. Other. You must attach a detailed explanation of your grounds for appeal. Submissions to the Board are limited to 25 pages from each party. Number of pages attached [ 14 ]. Please number attached pages consecutively.

8. **You must serve a copy of your appeal on the opposing party(ies) or your appeal may be dismissed.** I declare under penalty of perjury under the laws of the State of California that on June 18, 2015, 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:

<b>Name</b>	See attached list of 25 opposing parties along with their representative.
<b>Address</b>	
<b>City, State Zip</b>	
<b>Name</b>	
<b>Address</b>	
<b>City, State Zip</b>	

 SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	June 18, 2015 DATE
---	-----------------------

**IMPORTANT INFORMATION:**

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

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

## 3921 Harrison Street, Oakland, CA 94611

## Opposing Parties

Ana Baires Mira, 3022 International Blvd. #410, Oakland, CA 94601

Jilleun Eglin & Lexie Eglin, 3921 Harrison St., #101, Oakland, CA 94611

Alexandru & Elena Butnaru & Tadeusz Butnaru, 3921 Harrison St., #102, Oakland, CA 94611

Angelique Johnson-Martinez, 3921 Harrison St., #103, Oakland, CA 94611

Zvetlana Butnaru, 3921 Harrison St., #104, Oakland, CA 94611

Alexander Michael Taylor & Ria Cruz, 3921 Harrison St., #105, Oakland, CA 94611

Suzanne Miller, 3921 Harrison St., #201, Oakland, CA 94611

Fernando Garcia & Kate Flick Garcia, 3921 Harrison St., #202, Oakland, CA 94611

Cooper Spinelli & Dana Sarvestani, 3921 Harrison St., #203, Oakland, CA 94611

Bianca Penalosa, 3921 Harrison St., #204, Oakland, CA 94611

Lisa Romero, 3921 Harrison St., #205, Oakland, CA 94611

Alexandru Vasilescu & Zoe Bridges, 3921 Harrison St., #301, Oakland, CA 94611

Julie Amberg, 3921 Harrison St., #302, Oakland, CA 94611

Tyler Ritter, 3921 Harrison St., #303, Oakland, CA 94611

Mari Oda & Todd McMahon, 3921 Harrison St., #304, Oakland, CA 94611

Andrew Simkin & Jessica Simkin, 3921 Harrison St., #305, Oakland, CA 94611

Steven Miller & Elizabeth VanLanen 3921 Harrison St. PH, Oakland, CA 94611

## The Detailed Grounds for Appeal

### INTRODUCTION

This is a Landlord Petition for a Certificate of Exemption based upon substantial rehabilitation to a building located at 3921 Harrison Street, Oakland. Prior to the hearing, Landlord submitted a relevant table issued by the Building Services agency of the City of Oakland. This table was marked as Landlord's Exhibit 76/203 and was admitted into evidence at the hearing. Landlord's Exhibit 76/203 is commonly referred to as "Table 'A'" by the Rent Board. A copy of Table A is attached to this Appeal.

After all testimony concluded at the hearing, and all evidence of the parties was admitted into evidence, closing arguments were made by the parties. During the closing argument of Ana Baires Mira, attorney for some of the Tenants, reference was made to a new piece of evidence which the hearing officer took notice of. This new piece of evidence is entitled "Quarterly Cost Indexes (1926 = 100)." This evidence was provided to the Hearing Officer but not the Landlord. Objection to the use and introduction of this new evidence was made at the hearing. A copy of Quarterly Cost Indexes (1926 = 100) is attached to this brief and called Table B.

#### 1. The Decision is inconsistent with the Ordinance, the Rules & Regulations or prior Board decisions

Per 8.22.030 (B) 2 a & b

- a. In order to obtain an exemption based on substantial rehabilitation, an owner must have spent a minimum of fifty (50) percent of the average basic cost for new construction for a rehabilitation project.
- b. The average basic cost for new construction shall be determined using tables issued by the chief building inspector applicable for the time period when the substantial rehabilitation was completed.

When calculating the average basic cost for new construction in the decision, Hearing Officer Kasdin used a table that was not allowed as evidence into the record nor issued from the Chief Building Inspector for the time period when the substantial rehabilitation was completed.

The Tenants called as a witness David Harlan, the Engineering Manager of the Bureau of Buildings, to testify specifically on how the City calculates the value of new construction. Mr. Harlan testified that the City currently uses a table from 2009 (hereafter referred to as Table A). This table was presented as evidence by the Landlord.

Prior to the 2009 table, the City Building Department had issued a 2007 table (hereafter called Table E) and a 2001 table (hereafter called Table C) to calculate construction values. In this decision, the Hearing Officer used the 2001 Table C to establish the property was constructed of wood frame. All of these tables are obviously issued from the City of Oakland. They are all on letterhead from the City of Oakland, they each have a date establishing when they are to take effect and the 2001 Table C is actually signed by Calvin Wong, the City of Oakland's Building Official.



Yet Mr. Kasdin used a third table called Quarterly Cost Indexes (1926 = 100) (hereafter referred to as Table B) to calculate the cost for new construction. The attorney for the tenants cited 3 cases (L13-0028, T13-0196 and T07-0287) to introduce the Table B and bring it to the Hearing Officer's attention. However the table used in those 3 cases is not the Table B introduced at the hearing. Those cases cited by the Tenant's Attorney used a completely different document – one labeled Cost Indexes (1926 = 100) hereafter referred to as Table D. Neither Table B introduced by the Tenant Attorney or Table D cited by the Tenant's Attorney are on City letterhead, have a date when it was to take effect or is signed by anyone. Furthermore these 'Cost Indexes' Tables B and D have never been authenticated as having come from the City of Oakland. Only tables formally issued by the City of Oakland should be used in the calculations for construction values. Only Tables A, C and E meet that standard.

## **2. The Decision is not consistent with other hearing officers.**

Other hearings have established square footage with owner testimony, data from the County of Alameda's Assessor's Office, general contractor testimony, architectural or engineering plans and property reports such as FastWeb Property Profile, DataQuik and RealQuest.com. Evidence of square footage entered into the record at the hearings included a FastWeb Property Profile, an architectural plan of the building, a property characteristics report from the Assessor's office and testimony from the General Contractor - all of which provided the same figure of 13,336 for square footage.

However in the decision, the Hearing Officer added in the area of the balconies which inflated the correct 13,336 sf figure by an additional 1000 square feet. The Hearing Officer's reasoning was that as the cost of the repairs to the balconies were included as expenses, so the square footage of the balconies should be as well. But by that logic, the new roof, which cost \$50,000, should also have been included in the square footage, since it was included as an expense. But the Hearing Officer did not include the roof's area, and prior decisions do not include roof area - see 09-0001, 11-0004, 11-0018 and 12-0196. Each of these cases add the costs of a new roof to expenses without adding the roof's area to the square footage. More importantly, neither Roofs nor Balconies are habitable living spaces. Each is exposed to the elements, have no running water and have no source of heat. Neither the balconies nor the roof should be added to the square footage.

## **3. The Decision is not supported by substantial evidence**

The Hearing Officer miscalculated the eligible expense amount for the General Contractor by \$25,999. The Hearing Officer only counted 3 of 4 separate \$26,000 invoices for kitchen and bathroom remodels.

On page 3 of the Decision, the Hearing Officer tallies the construction expenses provided as evidence by the landlord including \$831,597 in payments to Martin Gallagher Construction. However the Landlord provided evidence that this vendor, Martin Gallagher Construction was actually paid \$857,596. The difference between the two amounts is exactly \$25,999. Among the evidence provided by the Landlord were 4 invoices for kitchen and bathroom remodels to units 203, 204, 303 and 304; each for \$26,000. We believe the Hearing Officer failed to count one of the 4 \$26,000 invoices.

**4. The Petitioner was denied a sufficient opportunity to present his claims or respond to petitioner's claims.**

Per OMC 8.22.110 (E) 3 e which covers Conduct of Hearing before the Hearing Officer, Section 3 specifically states that "each party shall the right to rebut the evidence against him or her."

During closing arguments and after the period when evidence would be allowed and entered into the record, the tenant's attorney, Ana Baires Mira presented the document Table B. Hearing Officer Kasdin accepted and took formal notice of this document, Table B and then used it when calculating the cost of new construction in his decision. Table B was not made available to the Landlord representative before or even during the hearing, it was not allowed into the record as evidence and as it was presented during closing arguments, the Landlord representative had no opportunity to rebut or challenge it or its usage in the hearing or the decision.

A tenant is required to file a response to an owner's petition within 30 days of service of the notice by the Rent Adjustment Program that an owner petition was filed. OMC Sec. 8.22.090.A.4. The Landlord and Tenants in this case were ordered to produce all proposed tangible evidence "not less than seven (7) days prior to the Hearing." See Notice of Hearing in this case served on all Tenants on November 19, 2015. By not filing the Quarterly Index and serving a copy on the Landlord, the document should not have been considered by the Hearing Officer.

The Rent Board has a strict policy of not considering evidence and other documents that the parties will rely on unless those items were submitted to the Rent Board and served on the opposing party before the hearing. There is no reason to ignore past precedent in this case. It came as a total surprise to Landlord that evidence of construction costs, not contained in Table A, would be used and argued by the Tenant. Or that it could be noticed or used by the Hearing Officer. It is a violation of due process to allow the Quarterly Cost Indexes (1926 = 100) to be used in this case because Landlord was deprived of notice that it would be used.

Had Respondent Tenant and the Hearing Officer complied with the Rent Board rules and the law, Petitioner Landlord would have presented evidence on how Table B was not a table issued by the chief building inspector applicable for the time period for which Petitioner made repairs.

6

City of Oakland  
 Building Services  
 Construction Valuation<sup>1</sup>  
 For Building Permits<sup>4</sup>  
 Effective Aug. 1, 2009

Community Economic Development  
 Detail Administration Building  
 250 Frank Ogawa Plaza - 2nd Floor  
 Oakland, CA 94612  
 (510) 258-3891

18-07  
 7 AM 9:16

Occ.	Description <sup>2</sup>	Construct/Lever Ground <sup>3</sup>		Hillside Construction		Marshall & Swift 2009	
		Type	New	Remodel	New		Remodel
R3	Custom Residence	V	\$207.43	\$107.82	\$288.79	\$140.39	Section 12 pg 25 (Ck)
	Single Family & Duplex	V	\$144.48	\$75.12	\$187.20	\$97.65	Section 12 pg 25 (Ck)
	Factory/Manufactured home	V	\$43.93	\$22.82	\$86.95	\$29.41	Section 12 pg 25 (Ck)(y)
	Finished Habitable Basement Conversion	V	\$98.42	\$50.14	\$125.35	\$65.18	Section 12 pg 25 (Bk)
	Convert non-habitable to habitable	V	N/A	\$43.90	N/A	\$95.55	Section 12 pg 25 (Ck)(y)
	Partition Walls	V	N/A	\$18.19	N/A	\$21.08	Section 12 pg 2 (6" wall)
	Foundation Upgrade (LL)	V	\$109.37	N/A	\$136.88	N/A	Section 11 pg 2 (R24x72)
	Patio/Porch Roof	V	\$24.79	\$12.84	\$32.11	\$16.70	Section 66 pg 2 (Wood)
	Ground Level Decks	V	\$30.49	\$18.85	\$39.54	\$20.51	Section 66 pg 2 (Wood/Alu)
	Elevated Decks & Balconies	V	\$41.16	\$21.40	\$53.51	\$27.82	Section 66 pg 2 (1050x1 story)
U1	Garage	V	\$28.42	\$18.88	\$40.98	\$25.57	Section 13 pg 35 (Detached)
	Carport	V	\$24.70	\$12.84	\$32.11	\$16.70	Section 13 pg 35 (Detached)
	Retaining wall (6")	III	\$32.98	N/A	\$42.85	N/A	Section 11 pg 3 (2' wall, 6")
R2	Apartment (2-2 units)	I & II	\$174.69	\$90.54	\$227.10	\$118.29	Section 11 pg 18 (Bk)
		III	\$155.91	\$81.39	\$203.98	\$108.67	Section 11 pg 18 (Ck)(y)
		V	\$127.00	\$64.04	\$166.10	\$86.85	Section 11 pg 18 (Ck)
Non-Residential Occupancy							
A	Church/Auditorium	I & II	\$247.07	\$128.48	\$391.18	\$197.02	Section 16 pg 9 (Bk)
		III	\$182.01	\$94.85	\$236.61	\$123.04	Section 16 pg 9 (Bk)
		V	\$175.93	\$91.48	\$226.71	\$118.93	Section 16 pg 9 (Bk)
A	Restaurant	I & II	\$221.82	\$115.35	\$298.27	\$149.28	Section 13 pg 14 (A-Bk)
		III	\$174.20	\$88.88	\$226.48	\$117.78	Section 13 pg 14 (Ck)
		V	\$195.80	\$99.74	\$216.84	\$112.78	Section 13 pg 14 (Ck)
B	Restaurant <50 occupancy	V	\$145.24	\$75.52	\$188.81	\$96.18	Section 13 pg 17 (Ck)
B	Bank	I & II	\$223.48	\$116.20	\$290.50	\$151.28	Section 15 pg 21 (Bk)
		III	\$162.01	\$84.68	\$216.61	\$123.04	Section 15 pg 21 (Ck)
		V	\$173.02	\$89.57	\$224.98	\$116.26	Section 15 pg 21 (Ck)
B	Medical Office	I & II	\$248.78	\$125.88	\$331.86	\$169.84	Section 15 pg 22 (A)(y)
		III	\$243.19	\$126.46	\$316.15	\$164.40	Section 15 pg 22 (B)(y)
		V	\$200.73	\$104.38	\$260.85	\$135.88	Section 15 pg 22 (C)(y)
B	Office	I & II	\$195.41	\$98.81	\$215.03	\$111.82	Section 15 pg 17 (Bk)
		III	\$129.77	\$68.80	\$157.00	\$81.54	Section 15 pg 17 (Ck)
		V	\$115.34	\$59.98	\$149.94	\$77.97	Section 15 pg 17 (Ck)
E	School	I & II	\$238.11	\$124.34	\$310.84	\$161.84	Section 18 pg 14 (A-Bk)
		III	\$181.98	\$94.82	\$236.55	\$123.00	Section 18 pg 14 (Ck)
		V	\$171.94	\$88.41	\$223.52	\$116.23	Section 18 pg 14 (Ck)
H	Repair Garage	I & II	\$188.25	\$95.85	\$242.12	\$125.91	Section 14 pg 33 (MSG 527Ck)
		III	\$180.70	\$93.99	\$234.91	\$122.15	Section 14 pg 33 (MSG 423Ck)
		V	\$178.14	\$91.07	\$227.68	\$118.39	Section 14 pg 33 (MSG 423Dk)
I	Care Facilities / Institutional	I & II	\$188.04	\$96.74	\$241.85	\$125.78	Section 15 pg 22 (Bk)
		III	\$152.06	\$78.08	\$197.72	\$102.81	Section 15 pg 22 (Ck)
		V	\$146.52	\$75.19	\$190.48	\$99.05	Section 15 pg 22 (Ck)
M	Market (Retail sales)	I & II	\$143.82	\$74.79	\$186.97	\$97.22	Section 13 pg 26 (A)(y)
		III	\$117.10	\$60.80	\$152.33	\$78.16	Section 13 pg 26 (Ck)
		V	\$113.19	\$58.98	\$147.15	\$75.92	Section 13 pg 26 (Ck)
B	Industrial plant	I & II	\$187.34	\$91.82	\$204.54	\$106.38	Section 14 pg 15 (Bk)
		III	\$134.38	\$68.88	\$174.69	\$89.84	Section 14 pg 15 (Ck)
		V	\$111.90	\$58.20	\$145.91	\$75.65	Section 14 pg 15 (Ck)
S	Warehouse	I & II	\$96.28	\$50.07	\$125.16	\$65.09	Section 14 pg 25 (A)(y)
		III	\$91.77	\$47.72	\$119.30	\$62.04	Section 14 pg 25 (B)(y)
		V	\$80.79	\$47.21	\$118.00	\$61.37	Section 14 pg 25 (Ck)(y)
B	Parking Garage	I & II	\$76.31	\$39.88	\$99.20	\$51.59	Section 14 pg 34 (A)(y)

<sup>1</sup> Cost per square foot, unless noted otherwise. (LL = linear foot x LL = square foot) includes 1.3 regional multiplier (see Sec. 99 pg 6 July 2009 Marshall & Swift)  
<sup>2</sup> Hillside construction = slope > 10%; multiply by additional 1.3 multiplier  
<sup>3</sup> Remodel function of New Construction is a 0.52 multiplier.  
<sup>4</sup> Separate fees assessed for EPM permits, R.O.W. improvements, Fire Prevention Bureau, Grading Permits, technology enhancement, records management, Excav & Shoring

TABLE "A"



Residential Building Minimum Valuation Data

Approved by Christa N. Wong Building Official to be effective February 1, 2001.

2015 MAY  
 The following building valuation data are based on cost and value reporting by Marshall Valuation Services" published by Marshall and Swift dated December 2000 with cost multiplier of 1.07 and local multiplier of 1.33.

Calculated Method = (\$/sf)		Segregated Cost Method	
Level ground construction (includes foundation @ \$12.50/sf not included in this column)	Hillside construction Based on 20% slope (retaining wall not included)	Deck (\$/sf of area)	
Apartment	Apartment	Ground level (< 6')	\$ 22.44/sf
Type I & II	Type I & II	Terrace level	\$ 30.29/sf
Type III	Type III	Fence ((\$/sf surface)	
Type V	Type V	- wood	\$ 4.18/sf
Basement	Basement	- chain link	\$ 2.64/sf
Garage	Garage	- masonry	\$ 10.30/sf
Type I Garage	Type I Garage	Fireplace	\$ 6.77/0/ea
Custom Residences	Custom Residences	Fire sprinkler	\$ 3.28/sf
Type III	Type III	Kitchen Appliances	\$ 4082/year
Type V	Type V	Patio Enclosure	\$ 22.18/sf
Basement	Basement	Solarium	\$ 129.53/sf
Garage	Garage	Stair	
Semi-Custom Residences	Semi-Custom Residences	- prefab	\$ 149.16/Tread
Type III	Type III	- wood	\$ 125.07/Tread
Type V	Type V	Wall - non-bearing	
Basement	Basement	- wood (footing extra)	\$ 5.00/sf
Garage	Garage	Wall - retaining (3/4sf surface)	
Single Family Residences	Single Family and Residences	- concrete	
Type III	Type III	< 6' tall	\$ 23.10/sf
Type V	Type V	< 10' tall	\$ 17.05/sf
Basement	Basement	< 20' tall	\$ 36.30/sf
Garage	Garage	- masonry	
Starter Home	Starter Home	< 6' tall	\$ 22.17/sf
Type V	Type V	< 10' tall	\$ 31.89/sf
Basement	Basement	- wood	
Garage	Garage	< 6' tall	\$ 17.66/sf
Starter Home	Starter Home	< 10' tall	\$ 22.44/sf
Type V	Type V		
Basement	Basement		
Garage	Garage		

steel/cad frame -  
 masonry walls -  
 wood frame -  
 steel/cad frame -

\* Calculator method includes typical built-in appliances and one fireplaces only.

10/28/2015 - Sacramento Farm Valuation - 10/28/2015

~~TABLE "B"~~ **TABLE "C"**

# COST INDEXES (1926 = 100)

## BUILDINGS - EASTERN DISTRICT

A: Prepainted steel frame	2006	2001	2004	2003	2002	2001	2000	1999	1998	1997	1996	1995	1994	1993	1992	1991	1990	1989	1988	1987	1986	1985	1984
B: Reinforced concrete frame	2497.8	2361.1	2103.7	1964.3	1829.6	1675.3	1519.6	1365.7	1211.9	1058.1	904.3	750.5	596.7	442.9	289.1	135.3	-19.5	-145.7	-291.9	-438.1	-584.3	-730.5	-876.7
C: Masonry bearing walls	2457.8	2298.4	2104.1	1962.0	1823.3	1668.4	1512.7	1358.0	1204.3	1050.6	896.9	743.2	589.5	435.8	282.1	128.4	-16.8	-163.0	-309.2	-455.4	-601.6	-747.8	-894.0
D: Wood frame	2470.0	2284.3	2104.0	1964.0	1824.0	1669.0	1513.0	1358.0	1204.0	1050.0	896.0	742.0	588.0	434.0	280.0	126.0	-17.0	-164.0	-310.0	-456.0	-602.0	-748.0	-894.0
E: Metal frame and walls	2366.8	2176.2	1999.4	1844.9	1702.5	1542.4	1382.3	1222.2	1062.1	902.0	741.9	581.8	421.7	261.6	101.5	-58.6	-104.8	-151.0	-197.2	-243.4	-289.6	-335.8	-382.0

## BUILDINGS - CENTRAL DISTRICT

A: Prepainted steel frame	2334.9	2177.9	1999.8	1822.7	1709.8	1592.4	1475.7	1359.0	1242.3	1125.6	1008.9	892.2	775.5	658.8	542.1	425.4	308.7	192.0	75.3	-41.4	-128.1	-214.8	-301.5
B: Reinforced concrete frame	2328.8	2123.0	1974.9	1841.1	1800.3	1700.0	1599.7	1499.4	1399.1	1298.8	1198.5	1098.2	997.9	897.6	797.3	697.0	596.7	496.4	396.1	295.8	195.5	95.2	-105.1
C: Masonry bearing walls	2322.8	2124.2	1983.3	1841.1	1800.0	1700.0	1599.7	1499.4	1399.1	1298.8	1198.5	1098.2	997.9	897.6	797.3	697.0	596.7	496.4	396.1	295.8	195.5	95.2	-105.1
D: Wood frame	2374.1	2142.9	2014.8	1925.4	1825.8	1726.2	1626.6	1527.0	1427.4	1327.8	1228.2	1128.6	1029.0	929.4	829.8	730.2	630.6	531.0	431.4	331.8	232.2	132.6	32.0
E: Metal frame and walls	2291.9	1988.8	1844.5	1712.0	1622.5	1523.0	1423.5	1324.0	1224.5	1125.0	1025.5	926.0	826.5	727.0	627.5	528.0	428.5	329.0	229.5	129.0	28.5	-72.0	-167.5

## BUILDINGS - WESTERN DISTRICT

A: Prepainted steel frame	2470.0	2273.7	2091.3	1964.4	1828.2	1682.1	1536.0	1389.9	1243.8	1097.7	951.6	805.5	659.4	513.3	367.2	221.1	75.0	-71.1	-117.2	-163.3	-209.4	-255.5	-301.6
B: Reinforced concrete frame	2407.0	2214.4	2104.3	1971.3	1832.8	1684.2	1535.6	1387.0	1238.4	1090.8	943.2	795.6	648.0	500.4	352.8	205.2	57.6	-96.0	-142.1	-188.2	-234.3	-280.4	-326.5
C: Masonry bearing walls	2400.0	2208.0	2100.0	1968.0	1828.0	1678.0	1528.0	1378.0	1228.0	1078.0	928.0	778.0	628.0	478.0	328.0	178.0	28.0	-72.0	-118.1	-164.2	-210.3	-256.4	-302.5
D: Wood frame	2470.0	2273.7	2091.3	1964.4	1828.2	1682.1	1536.0	1389.9	1243.8	1097.7	951.6	805.5	659.4	513.3	367.2	221.1	75.0	-71.1	-117.2	-163.3	-209.4	-255.5	-301.6
E: Metal frame and walls	2291.9	2044.9	1904.4	1826.2	1770.9	1620.4	1469.9	1319.4	1168.9	1018.4	867.9	717.4	566.9	416.4	265.9	115.4	-34.1	-80.2	-126.3	-172.4	-218.5	-264.6	-310.7

## INDUSTRY

Average of all	1802.3	1744.3	1697.3	1649.8	1602.3	1554.8	1507.3	1459.8	1412.3	1364.8	1317.3	1269.8	1222.3	1174.8	1127.3	1079.8	1032.3	984.8	937.3	889.8	842.3	794.8	747.3
Chemical	1802.3	1744.3	1697.3	1649.8	1602.3	1554.8	1507.3	1459.8	1412.3	1364.8	1317.3	1269.8	1222.3	1174.8	1127.3	1079.8	1032.3	984.8	937.3	889.8	842.3	794.8	747.3
Food	1802.3	1744.3	1697.3	1649.8	1602.3	1554.8	1507.3	1459.8	1412.3	1364.8	1317.3	1269.8	1222.3	1174.8	1127.3	1079.8	1032.3	984.8	937.3	889.8	842.3	794.8	747.3
Textile	1802.3	1744.3	1697.3	1649.8	1602.3	1554.8	1507.3	1459.8	1412.3	1364.8	1317.3	1269.8	1222.3	1174.8	1127.3	1079.8	1032.3	984.8	937.3	889.8	842.3	794.8	747.3
Chemical	1802.3	1744.3	1697.3	1649.8	1602.3	1554.8	1507.3	1459.8	1412.3	1364.8	1317.3	1269.8	1222.3	1174.8	1127.3	1079.8	1032.3	984.8	937.3	889.8	842.3	794.8	747.3
Food	1802.3	1744.3	1697.3	1649.8	1602.3	1554.8	1507.3	1459.8	1412.3	1364.8	1317.3	1269.8	1222.3	1174.8	1127.3	1079.8	1032.3	984.8	937.3	889.8	842.3	794.8	747.3
Textile	1802.3	1744.3	1697.3	1649.8	1602.3	1554.8	1507.3	1459.8	1412.3	1364.8	1317.3	1269.8	1222.3	1174.8	1127.3	1079.8	1032.3	984.8	937.3	889.8	842.3	794.8	747.3
Chemical	1802.3	1744.3	1697.3	1649.8	1602.3	1554.8	1507.3	1459.8	1412.3	1364.8	1317.3	1269.8	1222.3	1174.8	1127.3	1079.8	1032.3	984.8	937.3	889.8	842.3	794.8	747.3
Food	1802.3	1744.3	1697.3	1649.8	1602.3	1554.8	1507.3	1459.8	1412.3	1364.8	1317.3	1269.8	1222.3	1174.8	1127.3	1079.8	1032.3	984.8	937.3	889.8	842.3	794.8	747.3
Textile	1802.3	1744.3	1697.3	1649.8	1602.3	1554.8	1507.3	1459.8	1412.3	1364.8	1317.3	1269.8	1222.3	1174.8	1127.3	1079.8	1032.3	984.8	937.3	889.8	842.3	794.8	747.3
Chemical	1802.3	1744.3	1697.3	1649.8	1602.3	1554.8	1507.3	1459.8	1412.3	1364.8	1317.3	1269.8	1222.3	1174.8	1127.3	1079.8	1032.3	984.8	937.3	889.8	842.3	794.8	747.3
Food	1802.3	1744.3	1697.3	1649.8	1602.3	1554.8	1507.3	1459.8	1412.3	1364.8	1317.3	1269.8	1222.3	1174.8	1127.3	1079.8	1032.3	984.8	937.3	889.8	842.3	794.8	747.3
Textile	1802.3	1744.3	1697.3	1649.8	1602.3	1554.8	1507.3	1459.8	1412.3	1364.8	1317.3	1269.8	1222.3	1174.8	1127.3	1079.8	1032.3	984.8	937.3	889.8	842.3	794.8	747.3
Chemical	1802.3	1744.3	1697.3	1649.8	1602.3	1554.8	1507.3	1459.8	1412.3	1364.8	1317.3	1269.8	1222.3	1174.8	1127.3	1079.8	1032.3	984.8	937.3	889.8	842.3	794.8	747.3
Food	1802.3	1744.3	1697.3	1649.8	1602.3	1554.8	1507.3	1459.8	1412.3	1364.8	1317.3	1269.8	1222.3	1174.8	1127.3	1079.8	1032.3	984.8	937.3	889.8	842.3	794.8	747.3
Textile	1802.3	1744.3	1697.3	1649.8	1602.3	1554.8	1507.3	1459.8	1412.3	1364.8	1317.3	1269.8	1222.3	1174.8	1127.3	1079.8	1032.3	984.8	937.3	889.8	842.3	794.8	747.3
Chemical	1802.3	1744.3	1697.3	1649.8	1602.3	1554.8	1507.3	1459.8	1412.3	1364.8	1317.3	1269.8	1222.3	1174.8	1127.3	1079.8	1032.3	984.8	937.3	889.8	842.3	794.8	747.3
Food	1802.3	1744.3	1697.3	1649.8	1602.3	1554.8	1507.3	1459.8	1412.3	1364.8	1317.3	1269.8	1222.3	1174.8	1127.3	1079.8	1032.3	984.8	937.3	889.8	842.3	794.8	747.3
Textile	1802.3	1744.3	1697.3	1649.8	1602.3	1554.8	1507.3	1459.8	1412.3	1364.8	1317.3	1269.8	1222.3	1174.8	1127.3	1079.8	1032.3	984.8	937.3	889.8	842.3	794.8	747.3
Chemical	1802.3	1744.3	1697.3	1649.8	1602.3	1554.8	1507.3	1459.8	1412.3	1364.8	1317.3	1269.8	1222.3	1174.8	1127.3	1079.8	1032.3	984.8	937.3	889.8	842.3	794.8	747.3
Food	1802.3	1744.3	1697.3	1649.8	1602.3	1554.8	1507.3	1459.8	1412.3	1364.8	1317.3	1269.8	1222.3	1174.8	1127.3	1079.8	1032.3	984.8	937.3	889.8	842.3	794.8	747.3
Textile	1802.3	1744.3	1697.3	1649.8	1602.3	1554.8	1507.3	1459.8	1412.3	1364.8	1317.3	1269.8	1222.3	1174.8	1127.3	1079.8	1032.3	984.8	937.3	889.8	842.3	794.8	747.3
Chemical	1802.3	1744.3	1697.3	1649.8	1602.3	1554.8	1507.3	1459.8	1412.3	1364.8	1317.3	1269.8	1222.3	1174.8	1127.3	1079.8	1032.3	984.8	937.3	889.8	842.3	794.8	747.3
Food	1802.3	1744.3	1697.3	1649.8	1602.3	1554.8	1507.3	1459.8	1412.3	1364.8	1317.3	1269.8	1222.3	1174.8	1127.3	1079.8	1032.3	984.8	937.3	889.8	842.3	794.8	747.3
Textile	1802.3	1744.3	1697.3	1649.8	1602.3	1554.8	1507.3	1459.8	1412.3	1364.8	1317.3	1269.8	1222.3	1174.8	1127.3	1079.8	1032.3	984.8	937.3	889.8	842.3	794.8	747.3
Chemical	1802.3	1744.3	1697.3	1649.8	1602.3	1554.8	1507.3	1459.8	1412.3	1364.8	1317.3	1269.8	1222.3	1174.8	1127.3	1079.8	1032.3	984.8	937.3	889.8	842.3	794.8	747.3
Food	1802.3	1744.3	1697.3	1649.8	1602.3	1554.8	1507.3	1459.8	1412.3	1364.8	1317.3	1269.8	1222.3	1174.8	1127.3	1079.8	1032.3	984.8	937.3	889.8	842.3	794.8	747.3
Textile	1802.3	1744.3	1697.3	1649.8	1602.3	1554.8	1507.3	1459.8	1412.3	1364.8	1317.3	1269.8	1222.3	1174.8	1127.3	1079.8	1032.3	984.8	937.3	889.8	842.3	794.8	747.3
Chemical	1802.3	1744.3	1697.3	1649.8	1602.3	1554.8	1507.3	1459.8	1412.3	1364.8	1317.3	1269.8	1222.3	1174.8	1127.3	1079.8	1032.3	984.8	937.3	889.8	842.3	794.8	747.3
Food	1802.3	1744.3	1697.3	1649.8	1602.3	1554.8	1507.3	1459.8	1412.3	1364.8	1317.3	1269.8	1222.3	1174.8	1127.3	1079.8	1032.3	984.8	937.3	889.8	842.3	794.8	747.3
Textile	1802.3	1744.3	1697.3	1649.8	1602.3	1554.8	1507.3	1459.8	1412.3	1364.8	1317.3	1269.8	1222.3	1174.8	1127.3	1079.8	1032.3	984.8	937.3	889.8	842.3	794.8	747.3
Chemical	1802.3	1744.3	1697.3	1649.8	1602.3	1554.8	1507.3	1459.8	1412.3														

# Martin Gallagher Construction Inc.

# INVOICE

1558 Mizzen Lane  
Half Moon Bay, CA 94019

(415) 246-8539

PROPERTY AT 3921 HARRISON ST

INVOICE NUMBER 18-452  
 INVOICE DATE April 3, 2014  
 OUR ORDER NO.  
 YOUR ORDER NO.  
 TERMS Net 30  
 SALES REP Martin Gallagher  
 SHIPPED VIA  
 F.O.B.  
 PREPAID or COLLECT

UNIT # 203

Date	DESCRIPTION	% Completed	Total Cost	AMOUNT DUE
4/3/14	Installation of new kitchen cabinets and appliances and tile on the floor	6747 → 5,900 6791 → <del>4,000</del>	6660 → 2,000	\$44,980.00
4/3/14	Installation of new vanity cabinet with sink & tile on shower walls.	6627	→	\$9,800.00
			SUBTOTAL	21,700.00
				\$21,700.00

PROJ # 1P-452  
 VENDOR:  
 G. CODE:  
 CITY: AD  
 STATE:

DIRECT ALL INQUIRIES TO:  
 Martin Gallagher  
 (415) 246-8539  
[martingallagher85@gmail.com](mailto:martingallagher85@gmail.com)

MAKE ALL CHECKS PAYABLE TO:  
 Martin Gallagher Construction Inc.  
 1558 Mizzen Lane  
 Half Moon Bay, CA 94019

PAID  
 APR 15 2014  
 CK# 120950

45

# Martin Gallagher Const. Inc.

# SUPPLEMENTAL INVOICE

1558 Mizzen Lane  
Half Moon Bay, CA 94019

(415) 246-8539

PROPERTY AT 3921 HARRISON ST

SUPPLEMENTAL INVOICE NUMBER 64-452  
 INVOICE DATE June 13, 2014  
 OUR ORDER NO.  
 YOUR ORDER NO.  
 TERMS Net 30  
 SALES REP Martin Gallagher  
 SHIPPED VIA  
 F.O.B.  
 PREPAID or COLLECT

UNIT # 203

Date	DESCRIPTION	% Complete	Total Cost	AMOUNT DUE
6/13/14	Installation of new kitchen cabinets and appliances and tile on the floor		6791 ~ \$2500	\$3,600.00
6/13/14	Installation of new vanity cabinet with sink & tile on shower walls.		6660 ~ \$300 6624 ~ \$800 6627 →	\$700.00
PLEASE REFER TO INVOICE NUMBER 18				
			FLOOR # 1P-452 VANITY # _____ GLASS # _____ APPL # _____ TILE # 6-17-14	
			SUBTOTAL	4,300.00
				\$4,300.00
DIRECT ALL INQUIRIES TO: Martin Gallagher (415) 246-8539 martingallagher25@gmail.com				FAY THIS AMOUNT
MAKE ALL CHECKS PAYABLE TO: Martin Gallagher Construction Inc. 1558 Mizzen Lane Half Moon Bay, CA 94019				

THANK YOU FOR YOUR BUSINESS!

PAID  
 JUN 20 2014  
 124652  
 CK# 122937

3921 Harrison 139 of 203

12

000152



8066

# Martin Gallagher Construction Inc.

# INVOICE

1558 Mizzen Lane  
Half Moon Bay, CA 94019

(415) 246-8539

PROPERTY AT 3921 HARRISON ST

INVOICE NUMBER	65
INVOICE DATE	June 13, 2014
OUR ORDER NO.	
YOUR ORDER NO.	
TERMS	Net 30
SALES REP	Martin Gallagher
SHIPPED VIA	
F.O.B.	
PREPAID or COLLECT	

UNIT # 204

Date	DESCRIPTION	% Complete	Total Cost	AMOUNT DUE
6/13/14	Installation of new kitchen cabinets and appliances and tile on the floor			\$15,500.00
6/13/14	Installation of new vanity cabinet with sink & tile on shower walls.			\$10,500.00
			SUBTOTAL	26,000.00
				\$26,000.00
				PAY THIS AMOUNT

PROJ # 1P-452  
 VENDOR # \_\_\_\_\_  
 G. ORDER # 6619  
 ACT # 12  
 DATE 6-17-14

**DIRECT ALL INQUIRIES TO:**  
 Martin Gallagher  
 (415) 246-8539  
[martingallagher55@gmail.com](mailto:martingallagher55@gmail.com)

**MAKE ALL CHECKS PAYABLE TO:**  
 Martin Gallagher Construction Inc.  
 1558 Mizzen Lane  
 Half Moon Bay, CA 94019

THANK YOU FOR YOUR BUSINESS!

**PAID**  
 JUN 17 2014  
 CK#123868

60 73

# Martin Gallagher Construction Inc.

# INVOICE

1558 Mizzen Lane  
Half Moon Bay, CA 94019

(415) 246-8539

PROPERTY AT 3921 HARRISON ST

INVOICE NUMBER	67-452
INVOICE DATE	June 13, 2014
OUR ORDER NO.	
YOUR ORDER NO.	
TERMS	Net 30
SALES REP	Martin Gallagher
SHIPPED VIA	
F.O.B.	
PREPAID or COLLECT	

UNIT # 304

Date	DESCRIPTION	% Complete	Total Cost	AMOUNT DUE
6/13/14	Installation of new kitchen cabinets and appliances and tile on the floor		6741 → 6,500 6747 → 3,500 6660 → 3,300 6624 → 7,200	\$16,500.00
6/13/14	Installation of new vanity cabinet with sink & tile on shower walls.		6627 →	\$10,500.00
			<b>SUBTOTAL</b>	<b>26,000.00</b>

FROM # 67-452  
 VENDOR # \_\_\_\_\_  
 GL CODE \_\_\_\_\_  
 AUTH # NA  
 DATE 6-17-14

DIRECT ALL INQUIRIES TO:  
 Martin Gallagher  
 (415) 246-8539  
 martingallagher85@gmail.com

MAKE ALL CHECKS PAYABLE TO:  
 Martin Gallagher Construction Inc.  
 1558 Mizzen Lane  
 Half Moon Bay, CA 94019

\$26,000.00  
 PAY THIS  
 AMOUNT

THANK YOU FOR YOUR BUSINESS!

PAID  
 JUN 20 2014  
 CK# ~~124052~~ 124052

74

# Martin Gallagher Construction Inc.

# INVOICE

1558 Mizzen Lane  
Half Moon Bay, CA 94019

(415) 246-8539

PROPERTY AT 3921 HARRISON ST

INVOICE NUMBER	66-452
INVOICE DATE	June 13, 2014
OUR ORDER NO.	
YOUR ORDER NO.	
TERMS	Net 30
SALES REP	Martin Gallagher
SHIPPED VIA	
F.O.B.	
PREPAID or COLLECT	

UNIT # 303

6791 → 6,500

Date	DESCRIPTION	% Complete	Total Cost	AMOUNT DUE
6/13/14	Installation of new kitchen cabinets and appliances and tile on the floor		6747 → 6660 → 6624 →	3,500 \$45,500.00 3,200
6/13/14	Installation of new vanity cabinet with sink & tile on shower walls.		6627 →	\$10,500.00
			SUBTOTAL	26,000.00
				\$26,000.00

PROP # 66-452  
 ADDRESS \_\_\_\_\_  
 PHONE \_\_\_\_\_  
 AUTH \_\_\_\_\_  
 DATE 6-17-14

**DIRECT ALL INQUIRIES TO:**  
 Martin Gallagher  
 (415) 246-8539  
 martin.gallagher85@gmail.com

**MAKE ALL CHECKS PAYABLE TO:**  
 Martin Gallagher Construction Inc.  
 1558 Mizzen Lane  
 Half Moon Bay, CA 94019

PAY THIS AMOUNT

THANK YOU FOR YOUR BUSINESS!

**PAID**  
 JUN 20 2014  
 CK# 124052  
 5/20/14

**City of Oakland**  
**Building Services**  
**Construction Valuation<sup>1</sup>**  
**For Building Permits<sup>2</sup>**  
**Effective February 5, 2007**

Community Economic Development Agency  
 District Administration Building  
 250 Frank Ogawa Plaza - 2nd Floor  
 Oakland, CA 94612  
 510-238-3441

Occ.	Description <sup>3</sup>	Construction Type	Level Ground <sup>2</sup>		Hillside Construction <sup>2</sup>	
			New	Remodel	New	Remodel
R3	Custom Residence	V	\$183.35	\$95.34	\$238.36	\$123.94
	Single Family Residence	V	\$137.19	\$71.34	\$178.35	\$92.74
	Manufactured home	V	\$35.00	\$18.20	\$45.50	\$23.68
	Convert non-hab to hab	V	\$101.11	NA	\$131.44	NA
	Foundation Upgrade (l.f.)	V	\$103.61	NA	\$134.69	NA
	Deck	V	\$26.93	NA	\$36.35	NA
U1	Garage	V	\$36.08	\$18.76	\$46.90	\$24.39
	Carport	V	\$24.65	\$12.82	\$32.05	\$16.66
	Retaining wall (s.f.)	III	\$27.80	NA	\$36.15	NA
R1	Apartment	I & II	\$162.14	\$84.31	\$210.78	\$109.61
		III	\$131.70	\$68.48	\$171.21	\$89.03
		V	\$121.75	\$63.31	\$158.28	\$82.30
S3	Garage	I & II	\$55.53	\$28.88	\$72.19	\$37.54
A	Church/Auditorium	I & II	\$221.65	\$115.26	\$288.15	\$149.84
		III	\$165.64	\$86.13	\$215.33	\$111.97
		V	\$158.36	\$82.35	\$205.87	\$107.05
A	Restaurant	I & II	\$193.43	\$100.58	\$251.46	\$130.76
		III	\$144.62	\$75.20	\$188.01	\$97.76
		V	\$132.44	\$68.87	\$172.17	\$89.53
B	Bank	I & II	\$219.90	\$114.35	\$285.87	\$148.65
		III	\$178.77	\$92.96	\$232.40	\$120.85
		V	\$161.99	\$84.23	\$210.59	\$109.51
B	Market (Retail sales)	I & II	\$122.35	\$63.62	\$159.06	\$82.71
		III	\$91.02	\$47.33	\$118.33	\$61.53
		V	\$87.25	\$45.37	\$113.43	\$58.98
B	Medical Office	I & II	\$249.42	\$129.70	\$324.25	\$168.61
		III	\$204.78	\$106.49	\$268.21	\$138.43
		V	\$200.23	\$104.12	\$260.30	\$135.36
B	Office	I & II	\$158.56	\$82.46	\$206.15	\$107.20
		III	\$114.63	\$59.61	\$149.02	\$77.49
		V	\$112.00	\$58.24	\$145.80	\$75.71
E	School	I & II	\$165.11	\$85.86	\$214.64	\$111.61
		III	\$146.52	\$76.19	\$190.48	\$99.05
		V	\$141.91	\$73.79	\$184.49	\$95.93
H	Repair garage	I & II	\$108.71	\$56.53	\$141.32	\$73.49
		III	\$89.23	\$46.40	\$116.00	\$60.32
		V	\$88.64	\$46.09	\$115.23	\$59.92
I	Care Facilities	I & II	\$153.97	\$80.06	\$200.16	\$104.08
		III	\$130.22	\$67.71	\$169.29	\$88.03
		V	\$125.76	\$65.40	\$163.48	\$85.01
S	Industrial plant	I & II	\$84.49	\$43.93	\$109.84	\$57.12
		III	\$61.00	\$42.12	\$105.30	\$54.76
		V	\$68.03	\$35.38	\$88.44	\$45.99
S	Warehouse	I & II	\$73.35	\$38.14	\$95.36	\$49.58
		III	\$69.30	\$36.04	\$90.09	\$46.85
		V	\$68.50	\$35.82	\$89.05	\$46.31

<sup>1</sup> Cost per square foot, unless noted otherwise. (l.f. = linear foot; s.f. = square foot)

<sup>2</sup> Hillside construction = slope > 20%

<sup>3</sup> Separate structures or occupancies valued separately.

<sup>4</sup> Separate fees assessed for E/P/M permits, R.O.W. improvements, Fire Prevention Bureau, Grading Permits, technology enhancement, records management, etc.

\\Coda-server\building\Permit Counter\Permit FY06\Building valuation

~~TABLE "A"~~

16

TABLE "E"

000156

RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM

RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM

2016 AUG 31 PM 2: 10

2016 AUG 31 PM 2: 09

<b>City of Oakland</b> <b>Residential Rent Adjustment Program</b> 250 Frank Ogawa Plaza, Suite 5313 Oakland, California 94612 (510) 238-3721		<b>TENANTS' RESPONSE BRIEF</b> <b>APPEAL</b>	
Appellant Name <b>Fernando &amp; Kate Garcia, Tenants</b>		Landlord <input type="checkbox"/>	Tenant <input checked="" type="checkbox"/>
Property Address (Include Unit Number) <b>3921 Harrison Street Oakland CA 94611</b>			
Appellant Mailing Address (For receipt of notices) <b>3921 Harrison Street Apt. 202 Oakland CA 94611</b>		Case Number <b>L14-0065</b>	Date of Decision appealed <b>5-29-2015</b>
Name of Representative (if any) <b>NONE ; Tenants representing self</b>	Representative's Mailing Address (For notices) Appellant's Representative: For CNML Properties, LLP <b>Fried &amp; Williams, LLP, 480 Ninth Street Oakland CA 94607</b>		

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

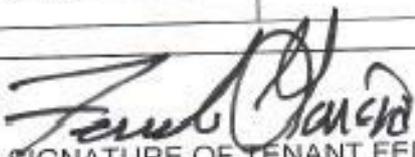
- The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board. You must identify the Ordinance section, regulation or prior Board decision(s) and specify the inconsistency.
- The decision is inconsistent with decisions issued by other hearing officers. You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

→ NOT APPLICABLE TO TENANTS' RESPONSE

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

**8. You must serve a copy of your appeal on the opposing party(ies) or your appeal may be dismissed.** I declare under penalty of perjury under the laws of the State of California that on AUG 31, 20016, 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:

<b>Name</b>	Clifford E. Fried Esq., Fried & Williams LLP
<b>Address</b>	480 Ninth Street
<b>City, State Zip</b>	OAKLAND CA 94607
<b>Name</b>	
<b>Address</b>	
<b>City, State Zip</b>	

 SIGNATURE OF TENANT FERNANDO GARCIA SIGNATURE OF APPELLANT or DESIGNATED REPRESENTATIVE	 AUG 31, 2016 DATE
--	---

**IMPORTANT INFORMATION:**

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

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

## **Tenants' Arguments to Affirm Hearing Officer's Decision in Case No. L14-0065**

### **Introduction**

Tenants Fernando and Kate Garcia submit this statement and arguments in support of Hearing Officer's Decision, dated May 29, 2015, (the "Decision") in Case No. L14-0065, and to respond to opposing arguments made by Appellant. Tenants reside in apartment unit 202 of the subject building which is located at 3921 Harrison Street, Oakland, CA 94611.

The main issue presented in L14-0065 was whether the subject building should be exempt from the City of Oakland Rent Adjustment Ordinance as being a "substantially rehabilitated building"?

In its appeal, Appellant now raises three issues: (1) whether the admission by the Hearing Officer of new evidence was properly admitted under the doctrine of "Judicial Notice"?; (2) whether the admission of the same new evidence violated the due process requirement and rights of Appellant?; and, (3) whether the Hearing Officer committed an calculation error with respect to four invoices thereby wrongly reducing the total amount of expenses incurred by Appellant in connection with rehabilitation expenditures.

### **Key Questions and Concepts in this Appeal**

This Appeal centers around three questions, which if each is answered in the affirmative would compel the members of the Appeal Board of the Rent Adjustment Program ("RAP") to affirm the Decision rendered by Hearing Officer Stephen Kasdin ("Kasdin") .

Essentially, the five points raised by Appellant's Appeals Brief, dated June 18, 2015 (referred to herein as the "Brief") can be crystallized down to three key questions, they are:

**Q1: Did the Hearing Officer select relevant data and applied it properly in determining the cost basis of new construction in the applicable time period?**

**Q2: Was the evidence used to support the Decision properly admitted into the record and without violation of Appellant's due process rights?**

**Q3: Was there substantial evidence to support the Decision, in spite of a possible error in calculating the total amount of Appellant's rehabilitation expenses?**

### Arguments in Support of the Decision

I. Did the Hearing Officer select relevant data and apply it properly in determining the cost basis of new construction in the applicable time period?

**Tenants' Argument:** The Hearing Officer's Decision in Case No. L14 - 0065 must be affirmed as it is based on common practices in the building industry to set standard construction costs *adjusted* for inflation and is consistent with Hearing Officer's discretion to apply industry best practices consistent with the rules and regulation of the City of Oakland's Rent Control Ordinances

A. Subsections a. and b. of the Oakland (the "City") Municipal Code 8.22.030 ("OMC") contains three (3) requirements that must be met in order for a building to meet the substantial rehabilitation under the Ordinance, these are:

- a. In order to obtain an exemption based on substantial rehabilitation, an owner must have spent a minimum of fifty percent (50%) of the average basic cost for new construction for a rehabilitation project.
- b. The average basic cost for new construction shall be determined using tables issued by the chief building inspector [*and*] applicable for the time period when the substantial rehabilitation was completed. (*Emphasis added*)

A reasonable interpretation of subsection (B) 2 b. requires the insertion of the conjunction "and" as the requirements in this section are two-fold.

- Average basic cost for new construction shall be set by tables issued by the chief building inspector, **AND**
- The tables must correspond to the applicable time period when the substantial rehabilitation was completed

It is noteworthy to point out that the above quoted subsection (B) 2 b. does not state either the tables must be the "current" nor the "last" table issued by the chief building inspector. Yet, the Appellant is arguing that only the *last* issued table must be used to set the standard of the average basic cost. However, by insisting that the last table issued by the chief building inspector was the only one that could be employed for determining the basic average cost, Appellant is reading only the first part of this section. And, by doing so, the Appellant is unreasonably ignoring and overlooking the second requirement of this section that *table must correspond to the applicable time period when the substantial rehabilitation was completed.*

Furthermore, subsection (B) 2 b. of the Ordinance refers to the "average basic cost of **new** construction" [*emphasis added*] which Tenants argue unambiguously means the current,



present average market costs, and not the average basic cost of construction in the years 2001, 2007, or 2009 presented in Appellant's Exhibits C, E, and A, respectively. [NOTE: All of Appellant's Brief exhibit copies are attached using the same label markings (i.e., A, B, C, etc.)]

**B. Why Appellant's Evidence is Inapplicable and Irrelevant to the Issue of Applicable Term Period of Completion of Rehabilitation**

First, the applicable time period for the substantial rehabilitation of a building is based upon the completion of the construction project. The evidence submitted by Appellant suggests that the construction was completed sometime in late August 2014. For example, one Appellant's Invoice Exhibit is dated June 20, 2014 (see Appellant's Appeal Brief, Page 16) made to Martin Gallagher Construction, the principal contractor in the rehabilitation construction project.

Second, not one of Appellant's Exhibits pertaining to tables issued by the chief building inspector corresponds to the applicable time period of the construction project, to wit:

**Table A: Table For Construction Valuation, effective August 1, 2009:** This table sets the applicable basic average cost of new construction for type "V" building at \$127.00 square foot. Both sides of stipulated that the building in question is a "wood frame" building as supported by Appellant's witness Martine Gallagher, and are calcified as "Type V" in this table.

Is Appellant's argument that this table square footage cost of \$127 must be used in determining the average basic cost of new construction that occurred FIVE YEARS after its issuance?

**Table E: Table for Construction Valuation, effective February 5, 2007:** This table sets the applicable basic average cost of new construction for type "V" building at \$121.75 square foot. This represents an *increased in the basic average cost of new construction from Exhibit C of 31.9%, equaled to an average annual increase rate of 5.32%.*

**Table C: Table for Construction Valuation, effective February 1, 2001:** This table sets the applicable basic average cost of new construction for type "V" building at \$92.25 square foot.

**Table D: Cost Index (1926 = 100):** Appellant admits that in the past RAP Appeals Board decisions have relied on Cost Index tables (the "Cost Index Tables"). [See Appellant's brief, page 5 where Appellant's attorneys write: "Those [Appeals Board] cases cited by the Tenant's Attorney used a completely different document – one labeled Cost Indexes (1926=100) hereinafter referred to as Table D."]

The Cost Index Table D cannot apply to the current case because it had an expiration date of March 2007, and was subsequently replaced by the issuance of Table E which was effective one month earlier on February 2007. [See Table D's unlabeled footnote which states: "The data included on this page becomes obsolete after March 2007."]

**C. Table B that was relied upon by the Hearing Officer is the proper source of the average basic cost for new construction during the applicable time period**

Appellant opposes the introduction of Table B into evidence.

Tenants argue for its admission and use on the following compelling grounds:

1) As Appellant points out in its Brief (at page 5) RAP hearing officers and their decisions have previously relied on Cost Index Table D, therefore these Cost Index tables have precedential value and should be used to determine the most accurate, average basic cost for new construction.

2) Each and every table exhibit, including the Cost Index tables, is published by one source: Marshall Valuation Service, an affiliate of Marshall & Swift a subsidiary of CoreLogic Inc. [See: <https://www.corelogic.com/solutions/marshall-swift.aspx> ].

One clear purpose behind these tables is the determination of applicable, municipal permit fees charged by the City's Building Services department to developers of new construction. However, this purpose is quite different than the use of these tables by RAP, its staff and hearing officers. For example, the Building Services may want to keep fees low and lock-in certain fee rates to encourage development; therefore, it is not surprising that such uses would rely on old, past construction costs in order to keep development fees low to attract further investment in the City.

In contrast, the City's RAP office and staff use these valuation tables for quite a different purpose: to determine whether a building owner / landlord has invested sufficient capital in a rehabilitation construction project to meet the requirement of "substantial capital improvement", in order to be exempt from the City's rent control adjustment Ordinance.

This last point is significant. The standard to grant an exemption to the rent control ordinance should be set high, because it is not comparable to setting a fee schedule for developers. Accordingly "substantial rehabilitation" of a building sought by its owners should not be based on the average basic cost for new construction from yesteryear! Doing so would undermine the very tenant protections that the law was adopted to protect.

3) As explained above the underlying purpose of the "tables" mentioned in subsection (B) 2 b. is to account and adjust for the ever upward movement of commodity prices such as wood, steel, and other construction materials used by the construction industry. Therefore, it is of almost important to obtain current and accurate construction costs (or "values") "applicable for the time period when the substantial rehabilitation was completed". Obviously, the most accurate and up to date construction costs should be determined weekly or monthly, ideally.

Rather than every two, three or six years as evidenced by Appellant's exhibits labeled as Table C (issued in 2001 by the City), Table E (issued in 2007 by the City), or Table A (issued in 2009 by the City). [All references herein to Appellant's Brief meant to refer to the Brief dated June 18, 2015].

4) Two previous RAP Case Decisions establish precedent for use of Cost Index Tables by the Hearing Officer to determine the average basic cost of new construction for the applicable time period. The two cases cited below addressed the issue of whether the building's owner had met the requirements of substantial rehabilitation under OMC section 8.22.030.

**Weinberg vs. Tenant**, L13-0028 (December 3, 2013): In pertinent part, the hearing officer wrote: "...since the construction in this case occurred in the years 1991-1992 and the costs of risen considerably ...For this reason, the Building Services agency [of the City] has also issued a document entitled "Cost Index (1926 = 100)" (Table B)..."

It appears that the Cost Index table referred to as "Table B" in the Weinberg case is not the same table that Appellant mistakenly believes is the same as the current Table D in this matter (L14-0065). Appellant states in its Brief that:

"...The attorney for the tenants cited 3 cases (L13-0028, T13-0196, and T07-0287) to introduce the Table B. However the table used in those 3 cases is not the Table introduced at the hearing [in this matter]...Those cases cited by the Tenant's Attorney used a completely different document – one labeled Cost Indexes (1926=100) hereinafter referred to as Table D..." [Weinberg Decision at pp. 2, 3]

However, Appellant is clearly mistaken because (i) the hearing officer in Weinberg used a cost index table that covered the period of time between 1991 to 2009 (ii) but Table D exhibit to Appellant's Brief expired on March 2007 (see Table D attached to Appellant's Brief). Therefore, Appellant assertion is not supported by the evidence and the facts.

Rather, as stated herein, the cost index tables issued or used by the City's Building Services department have in common a definitive start year (1926) where a baseline [in this case the baseline = 100] is established upon which future inflation growth will be measured from, accordingly all these tables issued from 1926 forward set base year and baseline at: 1926 = 100.

The difference between Table B and Table D in this matter is the breakdown into quarterly versus annual cost indexes; so Tenant's attorney introduced Table B which uses the same base year and baseline (1926=100) breaks down cost index growth by the more accurate quarterly time period as oppose to the annual cost index breakdown of Table D.

**Promes v Fehr**, T13-0196 (December 16, 2013): In relevant part, the hearing officer wrote that in calculating the average basic cost of new construction in 2007, when the actual construction occurred in 2003, "...it would be unfair ...to use the [then] current [valuation] costs...For this reason, the Building Services agency...has also issued ..Cost Indexes (1926 = 100)..." [Promes Decision at p. 6]

**D. Reference Table F, dated May 1, 2015, for guidance only to compare and determine the reasonableness of Hearing Officer's Decision concerning the applicable measure of average basic cost for new construction**

Attached hereto is the current Construction Valuation for Building Permits (herein after referred to as "Table F") dated May 1, 2015. Of course, Table F was not introduced as evidence during the RAP hearing in matter L14-0065 as it was issued 4 days after the end of the hearing. However, as it is instructive, and as it has been issued by the City as verified by an official stamp and signature of an employee in the Building Services Division, which also issued Tables A and C, we ask the Appeal Board members to take official notice and enter Table F into the record before the RAP Appeal Board.

For the sole purpose of illustration only and not for the purpose of submission of new evidence Table F sets the value of new construction for a "V" type (wood frame) apartment building at **\$145.07 per square foot.**

Next, taking the applicable rate for the same type of building from Table A (2009), and comparing it to the 2015 rate, the increased as a percentage of the old rate produced a cost index factor of:

a.  $\$127 - \$145 = \$18$

b.  $\$18 / \$127 = 14.17\%$  [versus the 18% rate produced by the Hearing Officer]

c. Applying the illustrated rate of \$145.00 (rounded) to the square footage of 13,336\*, we obtain the following average basic cost for new construction on May 1, 2015:

$$13,336 * \$145 = \$1,933,720, \text{ and } 50\% \text{ would equal: } \$966,860$$

Using the above number in this case would not result in a different outcome, even if we add-back the disputed invoice amount of \$25,999 to reach Appellant's claimed investment of capital in the amount of \$857,596. That would still leave Appellant short of the 50% requirement by the amount of \$109,264!

\* The square footage for the subject building submitted by Appellants

**E. Conclusion: The use of Table B to determine the average basic cost of new construction is proper and the Hearing Officer acted within his discretion**

The four tables mentioned in appellant's appeal brief concerned the issue of how we shall measure inflation over time for construction costs incurred in new construction within the City. All of these tables were introduced into evidence in the L14-0065 case hearing. These tables are not "issued" by the City, rather they are adopted and republished by the Building Services department to determine fees to be charged to developers. All the data contained in these tables, as well as new Table F (see below), were derived from data generated by Marshall Valuation Services, an affiliate of Marshall & Swift, a Core Logic subsidiary. [See: <https://www.corelogic.com/solutions/marshall-swift.aspx>].

Some of these tables have markings to indicate that it was released through the Building services department, and in fact, one of them was signed in 2001 by the chief building inspector; but the other tables were not.

But other than the data contained in these tables was generated by Marshall & Swift, the only other common variable of these tables is that all of them use the SAME BASE YEAR AND BASELINE: 1925 = 100

Therefore, all of these tables are connected, the data presented in them is consistent as it follows the thread of inflation in the construction industry over time in order to produce accurate and current data to determine average basic cost of new construction.

Therefore, the City's policy requiring that all rental building owners meet rigorous standards set out in the rent adjustment Ordinance. To dissent from and reject the Hearing Officer's Decision in this matter will undermine the protections afforded to renters within the City.

**The Hearing Officer was well within his discretion to use the Cost Index Table B to factor in the rising construction costs, and therefore his Decision must be affirmed in total.**

**II. Was Table B properly admitted into the record and without violation of Appellant's due process rights?**

Appellant's attorney was aware of the existence and use of Cost Index tables by RAP hearing officers in measuring and determining the average basic cost of new construction in the "substantial rehabilitation" cases. Indeed, Appellant's attorney is seasoned in this area of the law and practice.

As stated above, the Cost Index tables provide historical cost (inflation) index data used by the construction industry and municipal agencies such as the City's Building Services department. The data contained in these tables measure national inflation trends that are generally agreed to in the industry, and published by a national, highly respected Marshall Valuation Services.

More importantly, Appellant's attorney refers to the two cases cited above, and demonstrates an understanding of the difference between the two Cost Index tables used in those cases and the one introduced by Tenant's attorney in this case. The attempt by Appellant to distinguish these two tables on the basis that one was labeled "Quarterly" and the other is not, is insufficient ground to dismiss and reject the use of Table B "Quarterly Cost Index (1926=100)" in the Decision. Both of these tables, and all others used, republished, or "issued", whether or not authenticated, are born from and derived from the same national data on inflation as measured and disseminated by Marshall Valuation Services.

And, as the use of these cost index tables is not new in RAP hearing decisions in connection with answering the question of whether a landlord / building owner has meet the substantial rehabilitation of a building to obtain a rent control exemption, Appellant's attorney cannot reasonably claim that a "last minute" introduction of Table B was a surprise and unfair new piece of evidence.

Nor can Appellant's attorney argue reasonably that data of inflation, as captured in Cost Index tables or in the Tables A, C and E (the "Construction Valuation for Building Permits") that they introduced into evidence, cannot be judicially noticed. First, Appellant's attorney was aware of the prior use of Cost Index Tables by RAP hearing officers. Furthermore, it is also fair and reasonable to assume that Appellant's RAP-experienced attorneys were also aware that these tables were from time to time "expired" and had to be replaced with a new index cost table.

Finally, Appellant's attorney had sufficient time to protest the introduction into evidence of Table B, and did so by submitting a "Post Hearing Brief on Building Services Tables" on May 7, 2015. So any claim of procedural due process was invalidated when the Hearing Officer accepted their post-hearing arguments brief that were not countered by the Tenants. In others words, they had a "second bite of the apple" to argue against the admission of Table B. These arguments were, we are sure, carefully and fairly considered by the Hearing Officer, but were ultimately rejected.

**Conclusion: For the above reasons, Appellant's arguments for the rejection of the Hearing Officer's Decision on the ground of violation of due process procedural rights must be rejected and dismissed.**

**III. Was there substantial evidence to support the Decision, in spite of a possible error in calculating the total amount of Appellant's rehabilitation expenses?**

**A. Even accepting Appellant's Expenditure Amount as Correct, Appellant's Claim of Insufficient Evidence is Not Supported**

The RAP Appeals Board should find and accept the use of Table B for determining the average basic cost of new construction should be fair, reasonable, and supported by precedent. Such a finding will uphold the Hearing Officer's conclusion and holding that the average basic cost of new construction for the applicable time period when the rehabilitation was completed is the amount of:

**\$2,148,694, AND 50% of that amount is: \$1,074,347**

Even assuming that Appellant is correct in their rehabilitation expenditures of \$857,596 [See Appellant's Appeal Brief at p. 5], the Hearing Officer had substantial evidence to support his conclusion as Appellant's fell short by the amount of \$216,751.00.

**B. Furthermore, assuming Appellant Building's Square Footage as Correct, Appellant's Claim of Insufficient Evidence is Not Supported**

Appellant's attorney claims that balconies space of the subject building should not be counted as part of the building's square footage. Appellant's Brief argues that balconies square footage should not be added to the building's total square footage "...because they are not living spaces because there is 'no electricity or running water'..." . However, this is a specious argument. In fact, the balconies in the subject building do have electrical connections; many tenants in the building use their balconies as an extension of their living room and kitchen during the summer months where they spend long hours using their grills and eating "out".

But, for the sake of arguendo, let's assume that we accept the smaller square footage of 13,336 claimed by Appellants. And using the square footage costs derived by the Hearing Officer we have the following new amount:

**13,336 X \$149 = \$1,987,064, AND 50% = \$993,532**

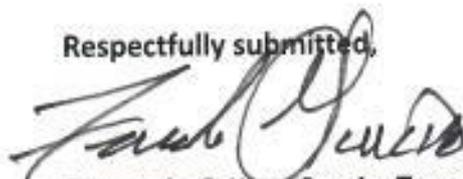
Again, Appellant's fall short of meeting the 50% requirement.

**Conclusion: For the reasons stated above, Appellant's argument of insubstantial evidence must be rejected.**

Conclusion

For all the reasons stated above, the Hearing Officer's Decision in case L14-0065 must be affirmed and Appellant's claims must be rejected in total.

Respectfully submitted,

   
Fernando & Kate Garcia, Tenants

RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM  
2016 AUG 31 PM 2:10



**LIST OF EXHIBITS TO TENANTS' RESPONSE TO APPELLANT'S APPEALS BRIEF**

1. **Table A: Construction Valuation for Building Permits (August 1, 2009) Page 14**
2. **Table B: Quarterly Cost Indexes (1926=100) (10/2014) Page 15**
3. **Table C: Residential Building Minimum Valuation Data (Feb. 1, 2001) Page 16**
4. **Table D: Cost Indexes (1926=100) (January 2007) Page 17**
5. **Table E: Construction Valuation for Building Permits (Feb. 5, 2007) Page 18**
6. **Table F: (NEW): Construction Valuation for Building Permits (May 1, 2015) Page 19**
7. **Gallagher Construction Invoice (April 4, 2014) Page 20**
8. **Gallagher Construction Invoice (June 13, 2014) Page 21**
9. **Gallagher Construction Invoice (June 13, 2014) Page 22**
10. **Gallagher Construction Invoice (June 13, 2014) Page 23**

RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM  
2016 AUG 31 PM 2:10

**City of Oakland**  
**Building Services**  
**Construction Valuation<sup>1</sup>**  
**For Building Permits<sup>4</sup>**  
**Effective Aug. 1, 2009**

Community Economic Development Agency  
 Dalziel Administration Building  
 250 Frank Ogawa Plaza - 2nd Floor  
 Oakland, CA 94612  
 510-238-3891

12-18-09

Occ.	Description <sup>2</sup>	Construction Type	Level Ground <sup>2</sup>		Hillside Construction		Marshall & Swift 3Q 7/09 Section pg (Class/type)
			New	Remodel	New	Remodel	
R3	Custom Residence	V	\$207.53	\$107.92	\$269.79	\$140.29	Section 12 pg 25 (C/c)
	Single Family & Duplex	V	\$144.46	\$75.12	\$187.80	\$97.65	Section 12 pg 25 (C/g)
	Factory/Manufactured home	V	\$43.50	\$22.62	\$56.55	\$29.41	Section 12 pg 26 (CDS/g)
	Finished Habitable Basement Conversion	V	\$95.42	\$50.14	\$125.35	\$65.18	Section 12 pg 25 (S/a)
	Convert non-habitable to habitable	V	N/A	\$43.50	N/A	\$56.55	Section 12 pg 26 (CDS/g)
	Partition Walls	V	N/A	\$16.19	N/A	\$21.05	Section 52 pg 2 (6"wall)
	Foundation Upgrade (l.f.)	V	\$105.37	NA	\$136.98	NA	Section 51 pg 2 (R/24x72.)
	Patio/Porch Roof	V	\$24.70	\$12.84	\$32.11	\$16.70	Section 66 pg 2 (Wood)
	Ground Level Decks	V	\$30.49	\$15.85	\$39.64	\$20.61	Section 66 pg 2 (100sf/avg)
	Elevated Decks & Balconies	V	\$41.16	\$21.40	\$53.51	\$27.82	Section 66 pg 2 (100sf+1 story)
U1	Garage	V	\$38.42	\$19.98	\$49.95	\$25.97	Section 12 pg 35 (C/a800)
	Carport	V	\$24.70	\$12.84	\$32.11	\$16.70	Section 12 pg 35 (D/a/car)
	Retaining wall (s.f.)	III	\$32.96	NA	\$42.85	NA	Section 55 pg 3 (12"rein./h)
R2	Apartment (>2 units)	I & II	\$174.69	\$90.84	\$227.10	\$118.09	Section 11 pg 18 (B/g)
		III	\$166.91	\$81.59	\$203.98	\$106.07	Section 11 pg 18 (D/a/B/g)
		V	\$127.00	\$66.04	\$165.10	\$85.85	Section 11 pg 18 (D/g)
<b>Non-Residential Occupancy</b>							
A	Church/Auditorium	I & II	\$247.07	\$128.48	\$321.19	\$167.02	Section 16 pg 9 (B/g)
		III	\$182.01	\$94.65	\$236.61	\$123.04	Section 16 pg 9 (B/a)
		V	\$175.93	\$91.48	\$228.71	\$118.93	Section 16 pg 9 (S/g)
A	Restaurant	I & II	\$221.82	\$115.35	\$288.37	\$149.96	Section 13 pg 14 (A-B/g)
		III	\$174.20	\$90.58	\$226.48	\$117.76	Section 13 pg 14 (C/g)
		V	\$166.80	\$86.74	\$216.84	\$112.76	Section 13 pg 14 (D/g)
B	Restaurant <50 occupancy	V	\$145.24	\$75.52	\$188.81	\$98.18	Section 13 pg 17 (C/a)
B	Bank	I & II	\$223.48	\$116.20	\$290.50	\$151.06	Section 15 pg 21 (B/a)
		III	\$182.01	\$94.65	\$236.61	\$123.04	Section 15 pg 21 (C/a)
		V	\$173.02	\$88.97	\$224.83	\$116.96	Section 15 pg 21 (D/a)
B	Medical Office	I & II	\$249.76	\$129.88	\$324.89	\$168.84	Section 15 pg 22 (A/g)
		III	\$243.19	\$126.46	\$316.15	\$164.40	Section 15 pg 22 (B/g)
		V	\$200.73	\$104.38	\$260.95	\$135.69	Section 15 pg 22 (C/g)
B	Office	I & II	\$165.41	\$86.01	\$215.03	\$111.82	Section 15 pg 17 (B/a)
		III	\$120.77	\$62.80	\$157.00	\$81.64	Section 15 pg 17 (C/a)
		V	\$115.34	\$59.98	\$149.94	\$77.97	Section 15 pg 17 (D/a)
E	School	I & II	\$239.11	\$124.34	\$310.84	\$161.64	Section 18 pg 14 (A-B/g)
		III	\$181.96	\$94.62	\$236.55	\$123.00	Section 18 pg 14 (C/g)
		V	\$171.94	\$89.41	\$223.52	\$116.23	Section 18 pg 14 (D/g)
H	Repair Garage	I & II	\$186.25	\$96.65	\$242.13	\$125.91	Section 14 pg 33 (MSG 527C/e)
		III	\$180.70	\$93.96	\$234.91	\$122.15	Section 14 pg 33 (MLG 423C/e)
		V	\$175.14	\$91.07	\$227.68	\$118.39	Section 14 pg 33 (MLG 423D/e)
I	Care Facilities / Institutional	I & II	\$186.04	\$96.74	\$241.85	\$125.76	Section 15 pg 22 (B/a)
		III	\$152.09	\$79.09	\$197.72	\$102.81	Section 15 pg 22 (C/a)
		V	\$146.52	\$76.19	\$190.48	\$99.05	Section 15 pg 22 (D/a)
M	Market (Retail sales)	I & II	\$143.82	\$74.79	\$186.97	\$97.22	Section 13 pg 26 (A/g)
		III	\$117.10	\$60.89	\$152.23	\$79.16	Section 13 pg 26 (C/g)
		V	\$113.19	\$58.86	\$147.15	\$76.52	Section 13 pg 26 (D/g)
S	Industrial plant	I & II	\$157.34	\$81.82	\$204.54	\$106.36	Section 14 pg 15 (B/a)
		III	\$134.38	\$69.88	\$174.80	\$90.84	Section 14 pg 15 (C/a)
		V	\$111.93	\$58.20	\$145.51	\$75.68	Section 14 pg 15 (D/a)
S	Warehouse	I & II	\$96.28	\$50.07	\$125.18	\$65.09	Section 14 pg 26 (A/g)
		III	\$91.77	\$47.72	\$119.30	\$62.04	Section 14 pg 26 (B/g)
		V	\$90.79	\$47.21	\$118.03	\$61.37	Section 14 pg 26 (C/m/g)
S	Parking Garage	I & II	\$76.31	\$39.68	\$99.20	\$51.59	Section 14 pg 34 (A/g)

<sup>1</sup> Cost per square foot, unless noted otherwise. (l.f. = linear foot; s.f. = square foot); Includes 1.3 regional multiplier (see Sec. 99 pg 6 July 2009 Marshall & Swift)

<sup>2</sup> Hillside construction = slope >20%; multiply by additional 1.3 multiplier

<sup>3</sup> Remodel Function of New Construction is a 0.52 multiplier.

<sup>4</sup> Separate structures or occupancies valued separately.

<sup>5</sup> Separate fees assessed for E/P/M permits, R.O.W. improvements, Fire Prevention Bureau, Grading Permits, technology enhancement, records management, Excav. & Shoring.

TABLE "A" 1/38

QUARTERLY COST INDEXES (1926 = 100)

Handwritten signature or initials.

BUILDINGS - EASTERN DISTRICT

Table with 13 columns and 5 rows of data for Eastern District buildings.

BUILDINGS - CENTRAL DISTRICT

Table with 13 columns and 5 rows of data for Central District buildings.

BUILDINGS - WESTERN DISTRICT

Table with 13 columns and 5 rows of data for Western District buildings.

EQUIPMENT - NATIONAL AVERAGE

Large table with 13 columns and 30 rows of data for various equipment categories.

MARSHALL VALUATION SERVICE

The data included on this page becomes obsolete after update delivery, scheduled for January 2015.

© 2014 CoreLogic, Inc. and its licensors. All rights reserved. Any reprinting, distribution, creation of derivative works, or other public display is strictly prohibited.

PAGE 00182

RENT ADJUSTMENT

15

TABLE "B"

04/25/2015 14:57 510-736-6181

Residential Building Minimum Valuation Data

Approved by Colin N. Wong to be effective February 1, 2001  
 Building Official

The following building valuation data are based on cost and value reported from "Marshall Valuation Services" published by Marshall and Swift dated December 2000 with cost multiplier of 1.07 and local multiplier of 1.32.

Calculated Method * (\$/sf)		Segregated Cost Method	
Level ground construction (caisson found'n @ \$11.50/sf not included in this column)		Hillside construction Based on 20% slope (retaining wall not included)	
		Deck (\$/sf of area)	
		Ground level (< 6')	
		Terrace level	
Apartment		Apartment	
Type I & II	\$146.67	Type I & II	\$190.57
Type III	\$113.27	Type III	\$147.25
Type V	\$92.25	Type V	\$119.93
Basement	\$35.07	Basement	\$58.77
Garage	\$31.24	Garage	\$50.14
Type I Garage	\$59.71	Type I Garage	\$63.82
Custom Residences		Custom Residences	
Type III	\$184.23	Type III	\$239.50
Type V	\$178.35	Type V	\$231.86
Basement	\$69.63	Basement	\$74.02
Garage	\$64.78	Garage	\$84.21
Semi-Custom Residences		Semi-Custom Residences	
Type III	\$151.14	Type III	\$196.48
Type V	\$142.67	Type V	\$183.47
Basement	\$49.56	Basement	\$64.43
Garage	\$51.43	Garage	\$66.86
Single Family Residences		Single Family and Residences	
Type III	\$118.05	Type III	\$153.47
Type V	\$106.99	Type V	\$139.09
Basement	\$29.49	Basement	\$51.21
Garage	\$38.07	Garage	\$52.12
Starter Home		Starter Home	
Type V	\$76.39	Type V	\$99.57
Basement	\$24.74	Basement	\$32.17
Garage	\$28.11	Garage	\$36.54
		Fence ((\$/sf surface)	
		-wood	
		-chain link	
		-masonry	
		Fireplace	
		Fire sprinkler	
		Kitchen Appliance	
		Patio Enclosure	
		Solarium	
		Stair	
		-prefab	
		-wood	
		Wall - non-bearing	
		- wood (footing extra)	
		Wall - retaining (\$/sf surface)	
		- concrete	
		< 6' tall	
		< 10' tall	
		< 20' tall	
		- masonry	
		< 6' tall	
		< 10' tall	
		- wood	
		< 6' tall	
		< 10' tall	

\* Calculator method includes typical built-in appliance and one fireplace only

~~TABLE "B"~~

TABLE "C"

COST INDEXES (1926 = 100)

BUILDINGS - EASTERN DISTRICT

Table with 17 columns (years 2006-2008) and 5 rows (A: Fireproofed steel frame, B: Reinforced concrete frame, C: Masonry bearing walls, D: Wood frame, E: Metal frame and walls).

BUILDINGS - CENTRAL DISTRICT

Table with 17 columns (years 2006-2008) and 5 rows (A: Fireproofed steel frame, B: Reinforced concrete frame, C: Masonry bearing walls, D: Wood frame, E: Metal frame and walls).

BUILDINGS - WESTERN DISTRICT

Table with 17 columns (years 2006-2008) and 5 rows (A: Fireproofed steel frame, B: Reinforced concrete frame, C: Masonry bearing walls, D: Wood frame, E: Metal frame and walls).

INDUSTRY

Large table with 17 columns (years 2006-2008) and multiple rows for various industrial categories including Storage of oil, Bakery, Dairies, Printing, etc.

RENT ADJUSTMENT

RENT ADJUSTMENT

10/14/2006 11:45 518-236-6181

TABLE "D"

A CARROLL KILMAYRAN SERVICE  
© 2007 AARSMALL & SHIFFRIN/BOEHRM, LLC and its licensors. All rights reserved.

The data included on this page becomes obsolete after March 2007.

www.costindex.com • Building cost reports online  
1/3/07

TABLE "D"

City of Oakland  
 Building Services  
 Construction Valuation<sup>1</sup>  
 For Building Permits<sup>4</sup>  
 Effective February 5, 2007

Community Economic Development Agency  
 Dalziel Administration Building  
 250 Frank Ogawa Plaza - 2nd Floor  
 Oakland, CA 94612  
 510-238-3441

Occ.	Description <sup>3</sup>	Construction Type	Level Ground <sup>2</sup>		Hillside Construction <sup>2</sup>	
			New	Remodel	New	Remodel
R3	Custom Residence	V	\$183.35	\$95.34	\$238.36	\$123.94
	Single Family Residence	V	\$137.19	\$71.34	\$178.35	\$92.74
	Manufactured home	V	\$35.00	\$18.20	\$45.50	\$23.65
	Convert non-hab to hab	V	\$101.11	NA	\$131.44	NA
	Foundation Upgrade (l.f.)	V	\$103.61	NA	\$134.69	NA
	Deck	V	\$26.93	NA	\$36.35	NA
U1	Garage	V	\$36.08	\$18.76	\$46.90	\$24.39
	Carport	V	\$24.65	\$12.82	\$32.05	\$16.66
	Retaining wall (s.f.)	III	\$27.80	NA	\$36.15	NA
R1	Apartment	I & II	\$162.14	\$84.31	\$210.78	\$109.61
		III	\$131.70	\$68.48	\$171.21	\$89.03
		V	\$121.75	\$63.31	\$158.28	\$82.30
S3	Garage	I & II	\$55.53	\$28.88	\$72.19	\$37.54
A	Church/Auditorium	I & II	\$221.65	\$115.26	\$288.15	\$149.84
		III	\$165.64	\$86.13	\$215.33	\$111.97
		V	\$158.36	\$82.35	\$205.87	\$107.05
A	Restaurant	I & II	\$193.43	\$100.58	\$251.46	\$130.76
		III	\$144.62	\$75.20	\$188.01	\$97.76
		V	\$132.44	\$68.87	\$172.17	\$89.53
B	Bank	I & II	\$219.90	\$114.35	\$285.87	\$148.65
		III	\$178.77	\$92.96	\$232.40	\$120.85
		V	\$161.99	\$84.23	\$210.59	\$109.51
B	Market (Retail sales)	I & II	\$122.35	\$63.62	\$159.06	\$82.71
		III	\$91.02	\$47.33	\$118.33	\$61.53
		V	\$87.25	\$45.37	\$113.43	\$58.98
B	Medical Office	I & II	\$249.42	\$129.70	\$324.25	\$168.61
		III	\$204.78	\$106.49	\$266.21	\$138.43
		V	\$200.23	\$104.12	\$260.30	\$135.36
B	Office	I & II	\$158.58	\$82.46	\$206.15	\$107.20
		III	\$114.63	\$59.61	\$149.02	\$77.49
		V	\$112.00	\$58.24	\$145.60	\$75.71
E	School	I & II	\$165.11	\$85.86	\$214.64	\$111.61
		III	\$146.52	\$76.19	\$190.48	\$99.05
		V	\$141.91	\$73.79	\$184.49	\$95.93
H	Repair garage	I & II	\$108.71	\$56.53	\$141.32	\$73.49
		III	\$89.23	\$46.40	\$116.00	\$60.32
		V	\$88.64	\$46.09	\$115.23	\$59.92
I	Care Facilities	I & II	\$153.97	\$80.06	\$200.16	\$104.06
		III	\$130.22	\$67.71	\$169.29	\$88.03
		V	\$125.76	\$65.40	\$163.49	\$85.01
S	Industrial plant	I & II	\$84.49	\$43.93	\$109.84	\$57.12
		III	\$81.00	\$42.12	\$105.30	\$54.76
		V	\$68.03	\$35.38	\$88.44	\$45.99
S	Warehouse	I & II	\$73.35	\$38.14	\$95.36	\$49.58
		III	\$69.30	\$36.04	\$90.09	\$46.85
		V	\$68.50	\$35.62	\$89.05	\$46.31

<sup>1</sup> Cost per square foot, unless noted otherwise. (l.f. = linear foot; s.f. = square foot)

<sup>2</sup> Hillside construction = slope > 20%

<sup>3</sup> Separate structures or occupancies valued separately.

<sup>4</sup> Separate fees assessed for E/P/M permits, R.O.W. improvements, Fire Prevention Bureau, Grading Permits, technology enhancement, records management, etc.

~~TABLE "A"~~

Page 18

TABLE "E"

**City of Oakland  
Bureau of Building  
Construction Valuation<sup>1</sup>  
For Building Permits<sup>4</sup>  
Effective May 1, 2015**

Planning and Building Department  
Datzel Administration Building  
250 Frank Ogawa Plaza - 2nd Floor  
Oakland, CA 94612  
510-238-3891

**Building Services Division  
CITY OF OAKLAND, CEQA**

Authorized Signature

*Handwritten signature: John R. Smith*  
copy of the original document on file  
I certify this is a true and correct

Occ.	Description <sup>2</sup>	Construction Type	Level Ground		Hillside Construction <sup>3</sup>		Section pg (Class/Type)
			New	Remodel	New	Remodel	
R3	Single Family Residence	V	\$234.17	\$121.77	\$304.42	\$159.30	Section 12 pg 25 (CH)
	Duplex/Townhouse	V	\$193.89	\$100.72	\$251.79	\$130.93	Section 12 pg 25 (Chg)
	Factory/Manufactured home	V	\$73.06	\$37.98	\$94.98	\$49.39	Section 83 pg 9 (Exc)
	Finished Habitable Basement Conversion	V	\$124.08	\$64.52	\$181.31	\$83.88	Section 12 pg 25 (CDS/g)
	Convert non-habitable to habitable	V	N/A	\$48.57	N/A	\$63.14	Section 12 pg 25 (CDS/g)
	Partition Walls	V	N/A	\$17.23	N/A	\$22.39	Section 52 pg 2 (B-wall)
	Foundation Upgrade (f.f.)	V	\$107.90	NA	\$140.27	NA	Section 51 pg 2 (R24x12)
	Patio/Porch Roof	V	\$27.76	\$14.43	\$36.08	\$18.76	Section 66 pg 2 (Wood)
	Ground Level Decks	V	\$33.80	\$17.58	\$43.94	\$22.85	Section 66 pg 2 (100sf/avg)
	Elevated Decks & Balconies	V	\$44.14	\$22.95	\$57.38	\$29.84	Section 66 pg 2 (10sf+1 story)
U1	Garage	V	\$43.30	\$22.52	\$56.29	\$29.27	Section 12 pg 36 (Class/00)
	Carport	V	\$26.74	\$14.95	\$37.37	\$19.43	Section 12 pg 36 (Ch/Hear)
	Retaining wall (s.f.)	III	\$35.75	NA	\$46.48	NA	Section 55 pg 3 (12'height)
R2	Apartment (>2 units)	I & II	\$181.10	\$99.37	\$248.43	\$128.18	Section 11 pg 18 (B/g)
		III	\$149.01	\$77.48	\$193.71	\$100.73	Section 11 pg 18 (Dm/g)
		V	\$146.07	\$75.43	\$188.59	\$96.07	Section 11 pg 18 (A/g)
<b>Non-Residential Occupancy</b>							
A	Church/Auditorium	I & II	\$301.54	\$196.80	\$392.00	\$203.84	Section 15 pg 9 (B/g)
		III	\$220.22	\$114.51	\$286.29	\$148.87	Section 15 pg 9 (B/g)
		V	\$203.15	\$105.84	\$264.10	\$137.33	Section 15 pg 9 (S/g)
A	Restaurant	I & II	\$260.56	\$138.49	\$338.73	\$176.14	Section 13 pg 14 (A-B/g)
		III	\$200.51	\$104.27	\$260.67	\$135.55	Section 13 pg 14 (C/g)
		V	\$188.49	\$98.01	\$245.03	\$127.42	Section 13 pg 14 (D/g)
B	Restaurant <50 occupancy	V	\$144.99	\$75.39	\$188.49	\$98.01	Section 13 pg 17 (C/g)
B	Bank	I & II	\$258.31	\$134.32	\$335.80	\$174.62	Section 15 pg 21 (B/g)
		III	\$206.81	\$107.44	\$268.59	\$139.67	Section 15 pg 21 (C/g)
		V	\$194.87	\$101.33	\$253.33	\$131.73	Section 15 pg 21 (D/g)
ii	Medical Office	I & II	\$289.61	\$150.60	\$376.50	\$195.78	Section 15 pg 22 (A/g)
		III	\$281.19	\$146.22	\$365.55	\$190.06	Section 15 pg 22 (B/g)
		V	\$227.88	\$118.50	\$295.24	\$154.04	Section 15 pg 22 (C/g)
B	Office	I & II	\$191.17	\$99.41	\$246.51	\$129.23	Section 15 pg 17 (B/g)
		III	\$137.10	\$71.29	\$178.23	\$92.68	Section 15 pg 17 (C/g)
		V	\$130.01	\$67.61	\$169.02	\$87.89	Section 15 pg 17 (D/g)
E	School	I & II	\$244.37	\$127.07	\$317.69	\$165.20	Section 18 pg 14 (A-B/g)
		III	\$188.05	\$98.20	\$245.51	\$127.66	Section 18 pg 14 (C/g)
		V	\$181.97	\$94.63	\$236.57	\$123.01	Section 18 pg 14 (D/g)
H	Repair Garage	I & II	\$212.03	\$110.28	\$275.84	\$143.33	Section 14 pg 33 (M.G. 423C/g)
		III	\$205.70	\$108.96	\$267.41	\$139.05	Section 14 pg 33 (M.G. 423C/g)
		V	\$197.04	\$102.83	\$257.38	\$133.81	Section 14 pg 33 (M.G. 423D/g)
I	Care Facilities / Institutional	I & II	\$215.02	\$111.81	\$279.53	\$145.35	Section 15 pg 22 (B/g)
		III	\$172.71	\$89.81	\$224.52	\$116.75	Section 15 pg 22 (C/g)
		V	\$165.20	\$85.91	\$214.77	\$111.88	Section 15 pg 22 (D/g)
M	Market (Retail sales)	I & II	\$168.88	\$87.71	\$219.28	\$114.02	Section 13 pg 26 (A/g)
		III	\$134.90	\$70.15	\$175.37	\$91.19	Section 13 pg 26 (C/g)
		V	\$127.88	\$66.50	\$169.25	\$86.45	Section 13 pg 26 (D/g)
S	Industrial plant	I & II	\$180.88	\$94.06	\$235.15	\$122.26	Section 14 pg 15 (B/g)
		III	\$141.69	\$73.68	\$184.19	\$95.78	Section 14 pg 15 (C/g)
		V	\$126.46	\$65.76	\$164.40	\$85.49	Section 14 pg 15 (D/g)
S	Warehouse	I & II	\$112.85	\$58.58	\$148.44	\$78.15	Section 14 pg 26 (A/g)
		III	\$105.50	\$54.06	\$137.14	\$71.31	Section 14 pg 26 (B/g)
		V	\$103.45	\$53.80	\$134.49	\$69.83	Section 14 pg 26 (C/g)
S	Parking Garage	I & II	\$89.44	\$46.51	\$116.27	\$60.46	Section 14 pg 34 (A/g)

<sup>1</sup> Cost per square foot, unless noted otherwise. (l.f. = linear foot; s.f. = square foot); includes 1.3 regional multiplier (see Sec. 99 pg 5 April 2015 Marshall & Swift)

<sup>2</sup> Hillside construction = slope >20%; multiply by additional 1.3 multiplier

<sup>3</sup> Remodel Function of New Construction is a 0.82 multiplier.

<sup>4</sup> Separate structures or occupancies valued separately

<sup>5</sup> Separate fees assessed by EPM permits, R.O.W. Improvements, Fire Prevention Bureau, Grading Permits, technology enhancement, records management, Excav. & Shoring.

**Martin Gallagher Construction Inc.**

**INVOICE**

1558 Mizzen Lane  
Half Moon Bay, CA 94019

(415) 246-8539

PROPERTY AT 3921 HARRISON ST

INVOICE NUMBER 18-452  
 INVOICE DATE April 3, 2014  
 OUR ORDER NO.  
 YOUR ORDER NO.  
 TERMS Net 30  
 SALES REP Martin Gallagher  
 SHIPPED VIA  
 F.O.B.  
 PREPAID or COLLECT

UNIT # 203

Date	DESCRIPTION	% Completed	Total Cost	AMOUNT DUE
4/3/14	Installation of new kitchen cabinets and appliances and tile on the floor	6747 → 51900 16791 → <del>44000</del>	6660 → 2000	\$44,980.00
4/3/14	Installation of new vanity cabinet with sink & tile on shower walls.	6627		\$9,800.00
			SUBTOTAL	21,700.00
				\$21,700.00
				PAY THIS AMOUNT

PO# 1P-452  
 VENDOR#  
 G. CODE  
 P. #  
 U. #

DIRECT ALL INQUIRIES TO:  
 Martin Gallagher  
 (415) 246-8539  
 martingallagher85@gmail.com

MAKE ALL CHECKS PAYABLE TO:  
 Martin Gallagher Construction Inc.  
 1558 Mizzen Lane  
 Half Moon Bay, CA 94019

THANK YOU FOR YOUR BUSINESS!

PAID  
 APR 15 2014  
 CK# 120986



45

# Martin Gallagher Const. Inc. SUPPLEMENTAL INVOICE

1558 Mizzen Lane  
Half Moon Bay, CA 94019

(415) 246-8539

PROPERTY AT 3921 HARRISON ST

SUPPLEMENTAL INVOICE NUMBER 64-452  
 INVOICE DATE June 13, 2014  
 OUR ORDER NO.  
 YOUR ORDER NO.  
 TERMS Net 30  
 SALES REP Martin Gallagher  
 SHIPPED VIA  
 F.O.B.  
 PREPAID or COLLECT

UNIT # 203

Date	DESCRIPTION	% Complete	Total Cost	AMOUNT DUE
6/13/14	Installation of new kitchen cabinets and appliances and tile on the floor		6791 → \$2500 6660 → \$300 6624 → \$800	\$3,000.00
6/13/14	Installation of new vanity cabinet with sink & tile on shower walls.		6627 →	\$700.00
PLEASE REFER TO INVOICE NUMBER 18				
			PROF \$ 1P-452 VENUE \$ _____ GLOVES _____ ALUM _____ DATE 6-17-14	
			SUBTOTAL	4,300.00
				\$4,300.00

DIRECT ALL INQUIRIES TO:  
 Martin Gallagher  
 (415) 246-8539  
[maringallagher35@gmail.com](mailto:maringallagher35@gmail.com)

MAKE ALL CHECKS PAYABLE TO:  
 Martin Gallagher Construction Inc.  
 1558 Mizzen Lane  
 Half Moon Bay, CA 94019

THANK YOU FOR YOUR BUSINESS!

PAID  
 JUN 20 2014  
 1241.52  
 CK# 123937

3921 Harrison 139 of 203

Page 21

000177

8366

# Martin Gallagher Construction Inc.

# INVOICE

1558 Mizzen Lane  
Half Moon Bay, CA 94019

(415) 246-8539

PROPERTY AT 3921 HARRISON ST

INVOICE NUMBER	65
INVOICE DATE	June 13, 2014
OUR ORDER NO.	
YOUR ORDER NO.	
TERMS	Net 30
SALES REP	Martin Gallagher
SHIPPED VIA	
F.O.B.	
PREPAID or COLLECT	

UNIT # 204

Date	DESCRIPTION	% Complete	Total Cost	AMOUNT DUE
6/13/14	Installation of new kitchen cabinets and appliances and tile on the floor			\$15,500.00
6/13/14	Installation of new vanity cabinet with sink & tile on shower walls.			\$10,500.00
			<b>SUBTOTAL</b>	<b>26,000.00</b>
				\$26,000.00
				PAY THIS AMOUNT

PROJECT # 1P-452  
 VENDOR # \_\_\_\_\_  
 GL CODE 6619  
 AUTH AD  
 DATE 6-17-14

DIRECT ALL INQUIRIES TO:  
 Martin Gallagher  
 (415) 246-8539  
[martingallagher65@gmail.com](mailto:martingallagher65@gmail.com)

MAKE ALL CHECKS PAYABLE TO:  
 Martin Gallagher Construction Inc.

1558 Mizzen Lane  
 Half Moon Bay, CA 94019

THANK YOU FOR YOUR BUSINESS!

PAID

JUN 17 2014

CK#123868

73

# Martin Gallagher Construction Inc.

# INVOICE

1558 Mizzen Lane  
Half Moon Bay, CA 94019

(415) 246-8539

PROPERTY AT 3921 HARRISON ST

INVOICE NUMBER 67-452  
 INVOICE DATE June 13, 2014  
 OUR ORDER NO.  
 YOUR ORDER NO.  
 TERMS Net 30  
 SALES REP Martin Gallagher  
 SHIPPED VIA  
 F.O.B.  
 PREPAID or COLLECT

UNIT # 304

Date	DESCRIPTION	% Complete	Total Cost	AMOUNT DUE
6/13/14	Installation of new kitchen cabinets and appliances and tile on the floor		6741 → 6,500 6747 → 3,500 6660 → 2,300 6624 → 7,200	\$15,500.00
6/13/14	Installation of new vanity cabinet with sink & tile on shower walls.		6627 →	\$10,500.00
			<b>SUBTOTAL</b>	26,000.00
				\$25,000.00 PAY THIS AMOUNT

PROJ # 18-452  
 VENDOR # \_\_\_\_\_  
 GL CODE \_\_\_\_\_  
 AUTH: NA  
 DATE 6-17-14

DIRECT ALL INQUIRIES TO:  
 Martin Gallagher  
 (415) 246-8539  
 martingallagher85@gmail.com

MAKE ALL CHECKS PAYABLE TO:  
 Martin Gallagher Construction Inc.  
 1558 Mizzen Lane  
 Half Moon Bay, CA 94019

THANK YOU FOR YOUR BUSINESS!

PAID  
 JUN 20 2014  
 CK# ~~124052~~ 124052

<b>City of Oakland Residential Rent Adjustment Program</b> 250 Frank Ogawa Plaza, Suite 5313 Oakland, California 94612 (510) 238-3721		2016 NOV 17 PM 4:21	
<b>Tenant's name:</b> Julie E. Amberg		Landlord <input type="checkbox"/>	Tenant <input checked="" type="checkbox"/>
<b>Property Address (Include Unit Number)</b> 3921 Harrison Street, Apt. 302 Oakland, CA 94611			
<b>Appellant's Mailing Address (For receipt of notices)</b> Julie E. Amberg 3921 Harrison Street, Apt. 302, Oakland, CA 94611		<b>Case Number</b> L14-0065	
		<b>Date of Decision appealed</b> May 29, 2015	
<b>Name of Representative (if any)</b> Stanley Amberg		<b>Representative's Mailing Address (For notices)</b> 11 Carolyn Lane, Chappaqua, NY 10514	

I appeal the decision issued in the case and on the date written above on the following grounds:

(Check the applicable ground(s).  
additional pages to this form.)

Please attach

1.  The decision is inconsistent with decisions of the Board. You must specify the inconsistency.

Not applicable to tenant's response brief.

ns or prior  
ard decision(s) and

2.  The decision is inconsistent with decisions issued by other hearing officers. You must identify the prior inconsistent decision and explain how the decision is inconsistent.

3.  The decision raises a new policy issue that has not been decided by the Board. You must provide a detailed statement of the issue and why the issue should be decided in your favor.

4.  The decision is not supported by substantial evidence. You must explain why the decision is not supported by substantial evidence found in the case record. The entire case record is available to the Board, but sections of audio recordings must be pre-designated to Rent Adjustment Staff.

5.  I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. You must explain how you were denied a sufficient opportunity and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue a decision without a hearing if sufficient facts to make the decision are not in dispute.

6.  The decision denies me a fair return on my investment. You must specifically state why you have been denied a fair return and attach the calculations supporting your claim.

7.  Other. You must attach a detailed explanation of your grounds for appeal. Submissions to the Board are limited to 25 pages from each party. Number of pages attached 21. Please number attached pages consecutively.

8. **You must serve a copy of your appeal on the opposing party(ies) or your appeal may be dismissed.** I declare under penalty of perjury under the laws of the State of California that on Nov. 17, 2016, 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:

<b><u>Name</u></b>	Clifford E. Fried Fried & Williams LLP 1901 Harrison Street, 14th Floor Oakland, CA 94612
<b><u>Address</u></b>	
<b><u>City, State Zip</u></b>	
<b><u>Name</u></b>	
<b><u>Address</u></b>	
<b><u>City, State Zip</u></b>	

	<u>Nov. 17, 2016</u>
SIGNATURE of TENANT JULIE E. AMBROSE	DATE

**IMPORTANT INFORMATION:**

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

Not applicable to tenant's response brief.

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

2016 NOV 17 PM 4:22

**RENT ADJUSTMENT PROGRAM CASE L-14-0065  
525, 655 HYDE ST. CNML, PROPERTIES LLC v. TENANTS**

**TENANT AMBERG RESPONSE BRIEF ON APPEAL**

**INTRODUCTION**

This brief is respectfully submitted by Julie E. Amberg who is the tenant, along with her young child, residing in unit 302, 3921 Harrison Street, Oakland, CA 94611. Ms. Amberg has been a tenant in unit 302 since 1996. The building at 3921 Harrison Street is the property that the owner 525, 655 Hyde St., CNML Properties LLC (“Landlord”) seeks to exempt from rent regulation. This brief responds to Landlord’s Appeal filed June 18, 2015 (“Landlord Appeal brief”).

Exempting the entire building at 3921 Harrison Street from rent regulation, and immediately charging all tenants full market-rate rent, will cause extreme hardship on tenants. For example, Tenant Amberg who is submitting this brief is a single parent. It is respectfully requested that the Board take great care before granting the exemption.

The Board may wish to take official notice, as has the Oakland City Council, of the harmful effects of high rent on tenant displacement. A recent Oakland City Council Ordinance warns that:

“WHEREAS, the City of Oakland is experiencing a severe housing supply and affordability crisis; and

“WHEREAS, the housing affordability crisis threatens the public health, safety and/or welfare of our residents; and

“WHEREAS, 60 percent of Oakland residents are renters, who would not be able to locate comparably priced housing within the city if displaced (U.S. Census Bureau, ACS 2014 Table S1101); ...”

Oakland City Council Ordinance No. 13391 (Sept. 20, 2016).

Turning to the Hearing Decision in the present case, the decision is both fair and reasonable. It denied the exemption from rent regulation because the Landlord’s purported rehabilitation expenses were less than fifty percent of the “average basic cost for new construction” *at the time – 2014 – when the rehab work was done.*

The methodology used in the Hearing Decision determined that the “average basic cost” of the property was \$2,148,694 in 2014. This is a fair and reasonable value.

We know this to be true because the current owner of the property bought it on November 14, 2013 for \$2,051,000. (Exhibit 4)<sup>1</sup> Thus, in the real world, the actual value of the property when the owner bought it in 2013 (\$2,051,000), was very close to the value calculated by the Hearing Decision for 2014 (\$2,148,694) when the rehab work was done.

Lest the Board be concerned that denying the owner an exemption from rent regulation in this proceeding would leave the owner empty-handed, we note that in RAP case L15-0073 the same owner has petitioned to recover, as capital improvements, the same expenses that the owner is asserting in this exemption proceeding. L15-0073 is scheduled for hearing on January 12, 2017.<sup>2</sup>

## ARGUMENT

### 1.

#### The Hearing Decision Complied With The Oakland Municipal Code Requirement That The Construction Cost Must Be For The Time Period When The Substantial Rehabilitation Was Completed

Oakland Municipal Code requires that in order for a building owner to remove the building from rent regulation, the owner must spend at least fifty percent of the building’s “average basic cost” and requires that such cost must be determined “*for the time period when the substantial rehabilitation was completed.*”

The Hearing Decision herein complied with that statutory command.

Oakland Municipal Code § 8.22.030(A)(6) exempts “substantially rehabilitated buildings” from rent regulation.

Oakland Municipal Code § 8.22.030(B) states the requirements to obtain a certificate of exemption. They are:

---

<sup>1</sup> All of the exhibits identified in this brief were introduced in evidence by Landlord. The numbering of the exhibits was by the Hearing Officer.

<sup>2</sup> For the avoidance of doubt, Tenant Amberg reserves and preserves all rights to assert, in L15-0073, that that case is improper and that Landlord’s purported expenses are not legally-cognizable capital improvements.

“2. Exemptions for Substantially Rehabilitated Buildings.

- a. In order to obtain an exemption based on substantial rehabilitation, an owner must have spent a minimum of fifty (50) percent of the average basic cost for new construction for a rehabilitation project.
- b. The average basic cost for new construction *shall be determined* using tables issued by the chief building inspector applicable *for the time period when the substantial rehabilitation was completed.*” (Emphasis added)

It is undisputed that the rehab work in the present case was completed in 2014. Thus, 2014 is the proper time period for determining the “average basic cost for new construction.”

A core issue in Landlord’s appeal is whether it was proper for the Hearing Decision to use data from a 2014 table of “Quarterly Cost Indexes (1926 = 100)” in determining the average basic cost. That table is “Table B” in the Hearing Decision. The table bears the printed date “October 2014” in the top right corner and “10/2014” in the bottom right corner.

The Hearing Decision used the 2014 data in the table in order to ensure that the determination of “average basic cost for new construction for a rehabilitation project” complied with the statutory requirement that the cost must be “for the time period when the substantial rehabilitation was completed.”

The methodology used by the Hearing Decision was this. The “average basic cost” was initially determined from data in a table of “Construction Valuation For Building Permits”. The data in that table, however, were for the year 2009.<sup>3</sup>

The Hearing Decision then used data from the table of “Quarterly Cost Indexes (1926 = 100)”, “Table B” in the Hearing Decision, to adjust the cost derived from the 2009 table. The purpose of the adjustment was to recognize that costs had risen from the time of the 2009 table to the 2014 time when the rehab work was completed.

The Hearing Decision specifically recognized that construction costs had risen between 2009 and 2014, saying, at page 4, emphasis added:

“The construction in this case took place in the year 2014. The Tables referenced in this Decision were all issued by the City Building Services agency.

“Table “A” lists square foot construction costs, effective August 1, 2009.

***However, since the construction in this case occurred in the year 2014, and costs have risen since that time, it is proper to increase the cost shown in the 2009 table.*** The Building Services agency has recognized this fact, and therefore issued a document entitled “Quarterly Cost Indexes (1926 = 100)” (Table “B”).”

---

<sup>3</sup> Landlord does not object to the Hearing Decision’s use of that table.



Using data from the Table B “Quarterly Cost Indexes” table, the Hearing Decision multiplied the initial 2009 construction cost from Table A by 1.18 in order to take into account that construction costs had risen from 2009 to 2014, the year when the rehab work was actually done. In the words of the Hearing Decision, quoted above, “However, since the construction in this case occurred in the year 2014, and costs have risen since that time, it is proper to increase the cost shown in the 2009 table [Table A].”

***The Hearing Decision thus complied with the statutory requirement that the construction cost must be “for the time period when the substantial rehabilitation was completed.”*** As stated above, it is undisputed that the rehab work was completed in 2014.

In its appeal, Landlord does not object to the way the Hearing Decision used the data in Table B to derive the 1.18 multiplier. Rather, Landlord objects to any use at all of the “Quarterly Cost Indexes” Table B. (Landlord Appeal brief, section 1, pages 2-3 of 4) Landlord bases its objection on its assertions that the table is not on City letterhead, does not have a date when it is to take effect, and was not authenticated as having come from the City of Oakland. Landlord stops just short of saying the table is a forgery and its use is a fraud.

The short, and sufficient, response is that those objections were raised in Landlord’s post-hearing brief to the Hearing Officer, who then specifically held that the “Quarterly Cost Indexes” Table B was “issued by the City Building Services agency.”

Here is the chronology:

On May 7, 2015 – twenty-two days *before* the May 29, 2015 date when *the Hearing Decision* was issued – Landlord filed a five-page brief titled “Post Hearing Brief On Building Services Tables”.<sup>4</sup> In that brief, Landlord challenged the bona fides of the Quarterly Cost Indexes table and argued, “We don’t know where it [the table] came from, or who issued it if anyone, how it is supposed to be used, or whether it was altered in any way before noticed by the Hearing Officer.” (Landlord’s Post Hearing Brief, at page 4)

In response to Landlord’s arguments, the Hearing Decision specifically said the table was issued by the City Building Services agency.

***“The Tables referenced in this Decision were all issued by the City Building Services agency.***

---

<sup>4</sup> A copy of that brief is Attachment 1 to this Tenant Amberg Response Brief On Appeal.

“Table “A” lists square foot construction costs, effective August 1, 2009. However, since the construction in this case occurred in the year 2014, and costs have risen since that time, it is proper to increase the cost shown in the 2009 table. The *Building Services agency* has recognized this fact, and therefore *issued a document entitled “Quarterly Cost Indexes (1926 = 100)” (Table “B”).*”

Hearing Decision, at page 4, emphasis added.

There is no mystery, no forgery, no fraud. All of that lies in Landlord’s imagination. The Quarterly Cost Indexes table is genuine and was issued by the City of Oakland Building Services agency.

The Hearing Decision in the present case is consistent with at least three prior RAP hearing decisions which used similar cost index tables to adjust the average basic cost of new construction so that the cost would be applicable for the time period when the rehab was completed.<sup>5</sup>

The Hearing Decision in the present case should be sustained.

---

<sup>5</sup> In *Young v. Beasley*, T07-0287 (Hearing Decision on remand, June 13, 2008), rehab construction work was completed in 1998. The average basic cost for new construction was initially determined from a 2007 table of construction costs, but the cost was then adjusted by using 1998 inflation data from a table of “Cost Indexes (1926 = 100)”.

In *Weinberg v. Tenant*, L13-0028 (Hearing Decision, Dec. 3, 2013), rehab construction work was in 1991-1992. The average basic cost for new construction was initially determined from a 2009 table of construction costs, but the cost was then adjusted by using 1991 inflation data from a table of “Cost Indexes (1926 = 100)”. When it adjusted the cost, the Hearing Decision said, at pages 2-3:

“Table “A” lists square foot construction costs, effective August 1, 2009. However, since the construction in this case occurred in the years 1991-1992 and costs have risen considerably since that time, it would be unfair to an owner if current costs were used. For this reason, the Building Services agency has also issued a document entitled “Cost Indexes (1926 = 100)” (Table B).”

In *Promes v. Fehr*, T13-0196 (Hearing Decision, Dec. 16, 2013), rehab construction work was done in 2003. The average basic cost for new construction was initially determined from a 2007 table of construction costs, but the cost was then adjusted by using data from a 2003 table of “Cost Indexes (1926 = 100)”.

Use of the Cost Indexes tables in those hearing decisions, as well as in the Hearing Decision in the present case, served the statutory purpose of insuring that the “average basic cost for new construction for a rehabilitation project” was the cost “for the time period when the substantial rehabilitation was completed.”

2.

The Hearing Decision Properly  
Included The Living Room Balconies In The Relevant Square Footage

Erroneously equating a building's roof to an apartment's living-room balcony, Landlord argues, "Neither the balconies nor the roof should be added to the square footage." (Appeal brief, section 2, at page 3 of 4).

The Hearing Decision properly excluded the building's roof from the calculation of the building's square footage. Landlord asserts, however, that because the Hearing Decision excluded the roof's square footage, the decision should likewise have excluded the balconies' area.

Landlord is not correct. A building roof is not an apartment balcony.

The Hearing Decision, consistent with prior RAP decisions, did not include the area of the roof in the calculation of the average basic cost of new construction. The roof of 3921 Harrison Street is not used by tenants. It is off limits to tenants.

Quite the opposite is true for the apartments' balconies. The balconies at 3921 Harrison Street are intended to be used by tenants, and they are used by tenants.<sup>6</sup> They are entered through a sliding glass door in the apartment's living room. They function as an extension of the living room. Tenants occupy the balconies. If the balconies were as useless and superfluous to tenants as Landlord implies, they would not have been replaced, and the sliding doors leading to them would have been omitted and replaced by wall with a window in it.

But, the balconies were replaced and so were the sliding glass doors. And, Landlord included the cost of both the balconies and the doors in Landlord's documentation of rehabilitation expenses. The total cost for the balconies and doors was \$224,200. By contrast, the cost of the roof was \$50,000. The cost of just the balconies (\$180,000) was over three times the cost of the roof (\$50,000)<sup>7</sup>

---

<sup>6</sup> The Board is invited to take notice of a recent Internet ad for an apartment at 3921 Harrison Street, which is the property in this appeal. The ad lists "Private balcony" as a feature of the apartment. <https://www.laphamcompany.com/node/6314> accessed on November 6, 2016. For the convenience of the Board, a screen capture of the ad is enclosed with this brief.

<sup>7</sup> The invoiced cost of the balconies was \$180,000 (Exhibits 96 and 121)  
The invoiced cost of the sliding glass doors was \$44,200 (Exhibits 60-72, 74, 75)  
The invoiced cost of the new roof was \$50,000 (Exhibit 132)

The Hearing Decision held that “since the owner has included the cost of the balcony work in its documentation, the area of the balconies must be included in the calculation.” (Hearing Decision, at page 4) That is a fair and reasonable conclusion. If the Landlord here wants to reap the benefit of including the large cost of the balcony work as part of Landlord’s rehabilitation expense, in order to remove the building from rent regulation, then Landlord ought to bear the burden of including the area of those same balconies in the building’s square footage.

3.

The Hearing Decision Did Not Miscalculate Expenses

Landlord speculates that the Hearing Decision failed to count one of the four \$26,000 invoices from Gallagher Construction for the remodeling of four units: 203, 204, 303 and 304. “We believe the Hearing Officer failed to count one of the 4 \$26,000 invoices.” (Landlord Appeal brief, section 3, at page 3 of 4)

Landlord is *not* correct, and speculation is no substitute for the proof required of an owner in a substantial rehabilitation proceeding. Oakland Municipal Code § 8.22.030(B)(1)(b) requires that, “For purposes of obtaining a certificate of exemption or responding to a tenant petition by claiming an exemption from Chapter 8.22, Article I, the burden of proving and producing evidence for the exemption is on the owner.” As will now be shown, Landlord fails to satisfy that burden.

The Gallagher invoices for remodeling those four units are Exhibits 77, 80, 118, 127, and 128.

The Hearing Decision specifically identified the Gallagher invoices that were considered as part of the expenses for work on the building. (Hearing Decision, at page 3) Footnote 4 of the Hearing Decision lists the Exhibit numbers of the Gallagher invoices. The Exhibits listed in footnote 4 are: 18, 19, 28, 29, 43-54, 57-81 (which includes Exhibits 77 and 80), 96-98, 117-129 (which includes Exhibits 118, 127 and 128), 132, 133.

Thus, the Gallagher invoices for remodeling the four units (Exhibits 77, 80, 118, 127, and 128) *are included* in the Exhibits identified in footnote 4, and therefore *were considered* in the Hearing Decision as part of the Landlord’s expenses for work on the building.

## L14-0065 Tenant Amberg Response Brief

By responding to Landlord's argument concerning the Gallagher invoices, Tenant Amberg does not agree or concede that any expense for remodeling in units 203, 204, 303, or 304 is a proper rehabilitation expense under the Oakland Municipal Code.<sup>8</sup>

### 4.

#### Landlord Was Not Denied Due Process

Landlord argues the Hearing Decision's use of the Quarterly Cost Indexes table "is a violation of due process" because Landlord was deprived of an opportunity to "rebut or challenge it [the table] or its usage in the hearing or the decision." (Appeal brief, section 4, at page 4 of 4)

Landlord is *not* correct. Landlord was *not* deprived of due process. Landlord was *not* deprived of an opportunity to rebut or challenge use of the Quarterly Cost Indexes table.

Landlord's appeal brief omits a critical fact that destroys Landlord's due process argument.

The critical fact (which Landlord chose not to reveal to the Board) is that on May 7, 2015, *twenty-two days before the Hearing Decision was issued*, Landlord filed a five-page brief

---

<sup>8</sup> For the avoidance of doubt, Tenant Amberg reserves and preserves all rights, including but not limited to contending, in this proceeding as well as in RAP Case No. L15-0073 and elsewhere, that:

- Oakland Municipal Code, sections 8.22.020, 8.22.030A.6., 8.22.030B.2. and Rent Adjustment Program Regulations 8.22.20, 8.22.30B.3. require that a rehabilitation capital improvement must primarily benefit all tenants rather than the building owner.
- The Gallagher invoices for remodeling in units 203, 204, 303 and 304 state that the work was: "Installation of new kitchen cabinets and appliances and tile on the floor; installation of new vanity cabinet with sink & tile on shower walls". Only units 203, 204, 303 and 304 received that remodeling.
- Gallagher Construction charged \$26,000 for that remodeling in each of those four units, for a total charge of \$104,000 for remodeling in just those four units.
- No tenants, other than those who would occupy units 203, 204, 303 and 304, benefitted from that \$104,000 remodeling expense.
- Tenant Amberg's unit 302 did not receive any of the remodeling that was given to units 203, 204, 303 and 304.
- Tenant Amberg did not and does not receive any benefit from the remodeling in units 203, 204, 303 and 304.

L14-0065 Tenant Amberg Response Brief

titled "Post Hearing Brief On Building Services Tables".<sup>9</sup> A copy of that brief is Attachment 1 to this Tenant Amberg Response Brief On Appeal.

In Landlord's May 7<sup>th</sup> brief, Landlord had a full opportunity to make, and did make, the same arguments against use of the Cost Indexes Table that Landlord now raises in section 1 of its Appeal brief.

Landlord's May 7<sup>th</sup> brief stated, at page 2:

"Landlord now submits this post hearing brief to address the Quarterly Cost Indexes (1926 = 100) and to further argue why the evidence should not be considered by the Hearing Officer in arriving at a Decision."

Landlord *was heard* in full on the cost-indexes-table issue well before the date of the Hearing Decision. Landlord was not deprived of due process.

**CONCLUSION**

The Hearing Decision complied with the Oakland Municipal Code requirement that construction cost must be for the time period when the substantial rehabilitation was completed.

The Hearing Decision properly included the living room balconies in the relevant square footage.

The Hearing Decision did not miscalculate expenses.

Landlord was not denied due process.

The Hearing Decision in this case should be affirmed.

RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM  
2016 NOV 17 PM 4:22

---

<sup>9</sup> The Hearing Decision was issued on May 29, 2015.

1 Clifford E. Fried, Esq. SBN 118288  
2 Fried & Williams LLP  
3 480 9<sup>th</sup> Street  
4 Oakland, CA 94607  
5 Telephone: 510-625-0100

6 Attorneys for Landlord  
7 525-655 Hyde St. CNML Props., LLP

ARBITRATION  
2015 MAY -7 AM 9:46

Attachment 1 to  
Tenant Amberg Response Brief in L14-0065  
(This Attachment has five pages.)

8 COMMUNITY AND HOUSING DEVELOPMENT AGENCY  
9 RENT ADJUSTMENT PROGRAM  
10 CITY OF OAKLAND

11 525-655 Hyde St. CNML Props., LLP,  
12 Landlord,  
13  
14 v.  
15 Tenants, et al.,  
16 Tenants.

CASE NO: L14-0065

**LANDLORD 525-655 HYDE ST.  
CNML PROPS., LLP's  
POST HEARING BRIEF ON  
BUILDING SERVICES  
TABLES.**

Hearing Date: April 27, 2015  
Time: 10:00 a.m.  
Suite: 5313  
Hearing Officer Stephen Kasdin

17  
18  
19 INTRODUCTION

20 This is a Landlord Petition for a Certificate of Exemption based upon substantial  
21 rehabilitation to a building located at 3921 Harrison Street, Oakland. Prior to the hearing,  
22 Landlord submitted a relevant table issued by the Building Services agency of the City of  
23 Oakland. This table was marked as Landlord's Exhibit 76/203 and was admitted into  
24 evidence at the hearing. Landlord's Exhibit 76/203 is commonly referred to as "Table  
25 'A'" by the the Rent Board. A copy of Table A is attached to this brief.

26 After all testimony concluded at the hearing, and all evidence of the parties was  
27 admitted into evidence, closing arguments were made by the parties. During the closing  
28

1 argument of Ana Baires Mira, attorney for some of the Tenants, reference was made to a  
2 new piece of evidence which the hearing officer took notice of. This new piece of  
3 evidence is entitled "Quarterly Cost Indexes (1926 = 100)." This evidence was provided  
4 to the Hearing Officer but not the Landlord. Objection to the use and introduction of this  
5 new evidence was made at the hearing. A copy of Quarterly Cost Indexes (1926 = 100) is  
6 attached to this brief.

7 Following the hearing, Landlord requested a copy of the Quarterly Cost Indexes  
8 (1926 = 100). Landlord now submits this post hearing brief to address the Quarterly Cost  
9 Indexes (1926 = 100) and to further argue why the evidence should not be considered by  
10 the Hearing Officer in arriving at a Decision.

### 11 ARGUMENTS

#### 12 **A. Table A Should Be Used In Calculating Construction Costs In This Case** 13 **and Not the Quarterly Cost Indexes (1926 = 100).**

14 OMC Section 8.22.030.B.2.b. states that "[t]he average basic cost for new construction  
15 *shall* be determined using *tables issued by the chief building inspector* applicable for the time  
16 period when the substantial rehabilitation was completed." [Emphasis added.]

17 The only table issued by the chief building inspector that is in evidence is Table A, which  
18 is Landlord's Exhibit 76/203. This is a Table which has been used by Hearing Officers in prior  
19 Rent Board Decisions involving Certificates of Exemption for Substantial Rehabilitation. Table  
20 A, on its face, is a table issued by the City of Oakland, Building Services, Community Economic  
21 Development Agency. This was the table used in Case Decisions T13-0196 and L13-0028, cited  
22 by Tenants in their closing argument.

23 Case Decisions T13-0196 and L13-0028 also cited Table B. A copy of Table B is  
24 attached to this brief. Table B, unlike the Quarterly Index noticed by the hearing officer in this  
25 case, is a table issued by Calvin N. Wong, Building Official. It would be improper to use the  
26 Quarterly Cost Indexes (1926 = 100) noticed by the hearing officer because that table was  
27 never issued by the City of Oakland.

28



1 When evaluating a construction project and a Petition such as the one filed by Landlord,  
2 everyone should be able to rely on data and calculation *published* by the Building Department of  
3 the City of Oakland. Using a vague index that is unclear as to the date of its application makes no  
4 sense and deprives the parties of their right to know the law regarding substantial rehabilitation.

5 Table A clearly states "Construction Valuation for Building Permits Effective August 1,  
6 2009." No other valuations have been published by the City of Oakland since that time and so it  
7 is the only table that can be relied upon. If the Building Department felt that these numbers and  
8 data weren't proper, it could have easily updated them. But it did replace Table A.

9 We simply don't know what the Quarterly Cost Indexes (1926 = 100) is because no  
10 evidence was submitted to authenticate the document or to lay a foundation showing that the  
11 document is what Tenants say it is. Tenants brought in a witness (David Harlan, Planning and  
12 Building Department of the City of Oakland) to the hearing who possibly could have  
13 authenticated the document and laid the proper foundation. However, Tenants' counsel chose  
14 not to question the witness about the document. Instead, Tenant's counsel chose a strategy which  
15 sprung the document on the Landlord and the Hearing Officer during closing argument, after the  
16 close of evidence and where no cross-examination was possible. For this reason, the Hearing  
17 Officer should consider this brief in arriving at its Decision.

18 **B. Quarterly Cost Indexes (1926 = 100) Should Not Be Considered Because It Was**  
19 **Not Submitted to the Rent Board or Served on Landlord Before the Hearing.**

20 A tenant is required to file a response to an owner's petition within 30 days of service of  
21 the notice by the Rent Adjustment Program that an owner petition was filed. OMC Sec.  
22 8.22.090.A.4. The Landlord and Tenants in this case were ordered to produce all proposed  
23 tangible evidence "not less than seven (7) days prior to the Hearing." See Notice of  
24 Hearing in this case served on all Tenants on November 19, 2015. By not filing the  
25 Quarterly Index and serving a copy on the Landlord, the document must not be considered by the  
26 Hearing Officer.

1 The Rent Board has a strict policy of not considering evidence and other  
2 documents that the parties will rely on unless those items were submitted to the Rent  
3 Board and served on the opposing party before the hearing. There is no reason to ignore  
4 past precedent in this case. It came as a total surprise to Landlord that evidence of  
5 construction costs, not contained in Table A, would be used and argued by the Tenant. Or  
6 that it could be noticed or used by the Hearing Officer. It is a violation of due process to  
7 allow the Quarterly Cost Indexes (1926 = 100) to be used in this case because Landlord  
8 was deprived of notice that it would be used. And it would be a violation of due process  
9 to not allow Landlord to submit this brief because it would be a denial of the Landlord's  
10 right to be heard on the  
11 matter.

12 **C. Notice Cannot Be Taken of The Quarterly Cost Indexes (1926 = 100).**

13 The Hearing Officer Cannot Take Judicial Notice of the Quarterly Cost Indexes  
14 (1926 = 100) because it is not a fact or matter that is commonly agreed upon basic  
15 information. While a Hearing Officer may have the power to take notice of certain  
16 matters, upon proper request, it cannot take judicial notice of documents for which no  
17 foundation has been laid and which no one has personal knowledge of except perhaps for  
18 Tenant's counsel.

19 Judicial notice can be taken of things like the fact that Oakland has a Rent  
20 Adjustment Ordinance, or that May 5, 2015 is a Tuesday, or that Landlord was  
21 represented by legal counsel at the Hearing, or that the Rent Board is located at 250 Frank  
22 Ogawa Plaza, or that Libby Shaff is the Mayor of Oakland. These are factual matters that  
23 are not subject to debate and is basic information that is commonly agreed upon by  
24 reasonable people.

25 The Quarterly Cost Indexes (1926 = 100) is a piece of paper that only Tenant's  
26 counsel is privy to. We don't know where it came from, or who issued it if anyone, how is it  
27 supposed to be used, or whether it was altered in any way before noticed by the Hearing Officer.  
28

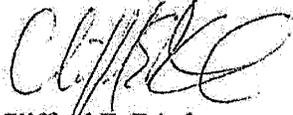
1 There was no witness at the hearing to authenticate the document. It is not the kind of basic  
2 information that reasonable people can agree to and should be disregarded in this case.

3 **CONCLUSION**

4 Table A from the Building Services Agency, and possibly Table B, are the only  
5 Tables that the Rent Board can rely on in issuing a Decision in this case. No one really  
6 knows what the Quarterly Cost Indexes (1926 = 100) is or whether it is in fact a Table  
7 issued by the Chief Building Inspector. Until the a new Table is issued by the Chief  
8 Building Inspector, there is a presumption that Table A is the Table to use for determining  
9 the average basic cost of new construction. The Hearing Officer is not at liberty to adopt a  
10 new Table to use. The Decision in this case must be based on the current rent laws.

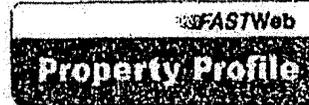
11  
12 Respectfully Submitted on May 7, 2015

13 by FRIED & WILLIAMS LLP

14   
15 Clifford E. Fried

16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

3921 Harrison St  
Oakland CA 94611



**Property Information**

<b>Owner(s) Property</b>	525 855 Hyde Street Cnml Props 3921 Harrison St Oakland, CA 94611	<b>Parcel #</b>	012-0929-011
<b>Mailing Addr</b>	2350 Broadway St San Francisco, CA 94115	<b>Map Coord</b>	9-D2; 849-J1
		<b>Census Tract</b>	4040.00
		<b>County</b>	Alameda
		<b>Owner Phone</b>	
<b>Legal Lot Number</b>	OFFICIAL RECS 15 PG 44 BLK B PART OF LOT 7.		
<b>Block</b>	B	<b>Tract Number</b>	
		<b>Subdivision</b>	Linda Vista Terrace Map 02

**Characteristics**

<b>Use</b>	Multi Family Dwelling	<b>Year Built</b>	1963	<b>Sq. Feet</b>	13336
<b>Zoning</b>		<b>Lot Size</b>	.2583 / 11250	<b># of units</b>	16
<b>Bedrooms</b>	23	<b>Bathrooms</b>	18	<b>Fireplace</b>	
<b>#Rooms</b>	71	<b>Quality</b>	Average	<b>Heating</b>	
<b>Pool/Spa</b>	N	<b>Air</b>		<b>Style</b>	
<b>Stories</b>	4	<b>Improvements</b>		<b>Parking</b>	Garage-20
<b>Flood</b>		<b>Gross Area</b>	13336	<b>Garage Area</b>	
<b>Basement Area</b>					

**Attributes**  
Other

**Property Sale Information**

<b>Sale Date</b>	11/14/2013	<b>\$/Sq. Ft.</b>	\$153.79	<b>2nd Mtg.</b>	
<b>Sale Price</b>	\$2,051,000.00	<b>1st Loan</b>		<b>Prior Sale Amt.</b>	
<b>Doc No.</b>	364187	<b>Loan Type</b>		<b>Prior Sale Dt.</b>	
<b>Doc Type</b>	Grant Deed	<b>Xfer Date</b>	11/19/2013	<b>Prior Doc No.</b>	229176
<b>Seller</b>	Elison Family Lp	<b>Lender</b>		<b>Prior Doc Type</b>	Quit Claim Deed

\*\$/Sq. Ft. is a calculation of Sales Price divided by Sq. Feet

**Tax Information**

<b>Imp Value</b>	\$285,832.00	<b>Exemption</b>	
<b>Land Value</b>	\$255,752.00	<b>Tax Year/Area</b>	2013/17001
<b>Total Value</b>	\$541,584.00	<b>Tax Value</b>	\$541,584.00
<b>Tax Amount</b>	\$12,522.68	<b>Improved</b>	53%

Information compiled from various sources and is deemed reliable but not guaranteed.

4

**Martin Gallagher Construction Inc.**

**INVOICE**

1558 Mizzen Lane  
Half Moon Bay, CA 94019

(415) 248-8539

PROPERTY AT 3921 HARRISON ST

INVOICE NUMBER 18-452  
 INVOICE DATE April 3, 2014  
 OUR ORDER NO.  
 YOUR ORDER NO.  
 TERMS Net 30  
 SALES REP Martin Gallagher  
 SHIPPED VIA  
 F.O.B.  
 PREPAID or COLLECT

**UNIT # 203**

Date	DESCRIPTION	% Completed	Total Cost	AMOUNT DUE
4/3/14	Installation of new kitchen cabinets and appliances and tile on the floor	67%	51900 <del>41000</del>	\$44,900.00
4/3/14	Installation of new vanity cabinet with sink & tile on shower walls.	66%	21000 27 →	\$9,800.00
			<b>SUBTOTAL</b>	<b>21,700.00</b>
				<b>\$21,700.00</b>
				<b>PAY THIS AMOUNT</b>

PROP # 1P-452  
 VENDOR # \_\_\_\_\_  
 GL CODE \_\_\_\_\_  
 AMT# AP  
 DATE \_\_\_\_\_

**DIRECT ALL INQUIRIES TO:**  
 Martin Gallagher  
 (415) 248-8539  
 martingallagher85@gmail.com

**MAKE ALL CHECKS PAYABLE TO:**  
 Martin Gallagher Construction Inc.  
 1558 Mizzen Lane  
 Half Moon Bay, CA 94019

THANK YOU FOR YOUR BUSINESS!

PAID

APR 15 2014

Hearing Officer Exhibit 77

CK# 120986

245

# Martin Gallagher Const. Inc. SUPPLEMENTAL INVOICE

1558 Mizzen Lane  
Half Moon Bay, CA 94019

(415) 246-8539

PROPERTY AT 3921 HARRISON ST

SUPPLEMENTAL INVOICE NUMBER 64-452  
 INVOICE DATE June 13, 2014  
 OUR ORDER NO.  
 YOUR ORDER NO.  
 TERMS Net 30  
 SALES REP Martin Gallagher  
 SHIPPED VIA  
 F.O.B.  
 PREPAID or COLLECT

UNIT # 203

Date	DESCRIPTION	% Complete	Total Cost	AMOUNT DUE
6/13/14	Installation of new kitchen cabinets and appliances and tile on the floor		6791 → \$2500	\$3,600.00
6/13/14	Installation of new vanity cabinet with sink & tile on shower walls.		6660 → \$300 6624 → \$800 6627 → \$700.00	\$700.00
PLEASE REFER TO INVOICE NUMBER 18				
			PROP # 1P-452 VENDOR # _____ GL CODE _____ AUTH _____ DATE 6-17-14	
			SUBTOTAL	4,300.00

DIRECT ALL INQUIRIES TO:  
 Martin Gallagher  
 (415) 246-8539  
[martingallagher85@gmail.com](mailto:martingallagher85@gmail.com)

MAKE ALL CHECKS PAYABLE TO:  
 Martin Gallagher Construction Inc.  
 1558 Mizzen Lane  
 Half Moon Bay, CA 94019

\$4,300.00  
 PAY THIS AMOUNT

THANK YOU FOR YOUR BUSINESS!

PAID  
 JUN 20 2014  
 124652  
 CK# 123437  
 811

266

# Martin Gallagher Construction Inc.

# INVOICE

1558 Mizzen Lane  
Half Moon Bay, CA 94019

(415) 246-8539

PROPERTY AT 3921 HARRISON ST

INVOICE NUMBER	65
INVOICE DATE	June 13, 2014
OUR ORDER NO.	
YOUR ORDER NO.	
TERMS	Net 30
SALES REP	Martin Gallagher
SHIPPED VIA	
F.O.B.	
PREPAID or COLLECT	

**UNIT # 204**

Date	DESCRIPTION	% Complete	Total Cost	AMOUNT DUE
6/13/14	Installation of new kitchen cabinets and appliances and tile on the floor			\$15,500.00
6/13/14	Installation of new vanity cabinet with sink & tile on shower walls.			\$10,500.00
			<b>SUBTOTAL</b>	<b>26,000.00</b>

PROP # 1P-452  
 VENDOR # \_\_\_\_\_  
 GL CODE 6619  
 AUTH AD  
 DATE 6-17-14

**DIRECT ALL INQUIRIES TO:**  
 Martin Gallagher  
 (415) 246-8539  
[martingallagher85@gmail.com](mailto:martingallagher85@gmail.com)

**MAKE ALL CHECKS PAYABLE TO:**  
 Martin Gallagher Construction Inc.  
 1558 Mizzen Lane  
 Half Moon Bay, CA 94019

\$26,000.00  
 PAY THIS AMOUNT

THANK YOU FOR YOUR BUSINESS!

PAID

JUN 17 2014

CK#123868

Hearing Officer Exhibit 118

118

# Martin Gallagher Construction Inc.

# INVOICE

1558 Mizzen Lane  
Half Moon Bay, CA 94019

(415) 246-8539

PROPERTY AT 3921 HARRISON ST

INVOICE NUMBER 67-452  
 INVOICE DATE June 13, 2014  
 OUR ORDER NO.  
 YOUR ORDER NO.  
 TERMS Net 30  
 SALES REP Martin Gallagher  
 SHIPPED VIA  
 F.O.B.  
 PREPAID or COLLECT

**UNIT # 304**

Date	DESCRIPTION	% Complete	Total Cost	AMOUNT DUE
6/13/14	Installation of new kitchen cabinets and appliances and tile on the floor.		6791 → 6,500 6747 → 3,500 6660 → 2,300 6624 → 7,200	\$45,500.00
6/13/14	Installation of new vanity cabinet with sink & tile on shower walls.		6627 →	\$10,500.00
			<b>SUBTOTAL</b>	<b>26,000.00</b>
				<b>\$26,000.00</b> PAY THIS AMOUNT

PROJ # 18-452  
 VENDOR # \_\_\_\_\_  
 GL CODE \_\_\_\_\_  
 AUTH. NA  
 DATE 6-17-14

DIRECT ALL INQUIRIES TO:  
 Martin Gallagher  
 (415) 246-8539  
 martingallagher85@gmail.com

MAKE ALL CHECKS PAYABLE TO:  
 Martin Gallagher Construction Inc.

1558 Mizzen Lane  
 Half Moon Bay, CA 94019

THANK YOU FOR YOUR BUSINESS!

PAID

JUN 20 2014

Hearing Officer Exhibit 127

CK# ~~194000~~ 127



**Martin Gallagher Construction Inc.**

**INVOICE**

1558 Mizzen Lane  
Half Moon Bay, CA 94019

(415) 246-8539

PROPERTY AT 3921 HARRISON ST

INVOICE NUMBER 66-452  
 INVOICE DATE June 13, 2014  
 OUR ORDER NO.  
 YOUR ORDER NO.  
 TERMS Net 30  
 SALES REP Martin Gallagher  
 SHIPPED VIA  
 F.O.B.  
 PREPAID or COLLECT

UNIT # 303

Date	DESCRIPTION	% Complete	Total Cost	AMOUNT DUE
6/13/14	Installation of new kitchen cabinets and appliances and tile on the floor		6747 → 3,500 6660 → 2,300 6624 → 3,200	\$15,500.00
6/13/14	Installation of new vanity cabinet with sink & tile on shower walls.		6627 →	\$10,500.00
			<b>SUBTOTAL</b>	<b>26,000.00</b>

PROP # 1P-452  
 VENDOR # \_\_\_\_\_  
 EL CODE \_\_\_\_\_  
 AUTH \_\_\_\_\_  
 DATE 6-17-14

DIRECT ALL INQUIRIES TO:  
 Martin Gallagher  
 (415) 246-8539  
[martingallagher85@gmail.com](mailto:martingallagher85@gmail.com)

MAKE ALL CHECKS PAYABLE TO:  
 Martin Gallagher Construction Inc.  
 1558 Mizzen Lane  
 Half Moon Bay, CA 94019

\$26,000.00  
 PAY THIS AMOUNT

PAID

JUN 20 2014

CK# 124052

THANK YOU FOR YOUR BUSINESS!

Hearing Officer Exhibit 128



apartment for rent  
 3921 Harrison St Unit 301, Oakland, CA 94611.

REQUEST MORE INFORMATION

SEND TO FRIEND

CONTACT TYLER OFFICE 510-878-4691

Brand new photos up! Available now!

3921 Harrison, Walk to Pied Ave, Grand Ave, + Rose Garden

For an Appointment to View, Contact:

Contact Tyler Office 510-878-4691

Unit Description:

Unit Description:

- 2bedroom/1bath near the city of Piedmont
- Granite counter tops in kitchen with dishwasher
- Brand new closed loop quality carpeting throughout
- Tons of closet space
- Forced air heat
- Very spacious living room
- Gets good light
- Private balcony
- An absolute must see!
- Modern Construction
- Coin operated laundry on-site
- 16 units in building
- On-site manager
- Well maintained landscaping
- Single intercom entry building



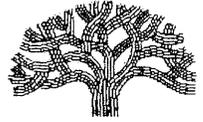
"Private balcony"

UNIT INFO	
Type	: Apartment
Bedrooms	: 2
Bathrooms	: 1
Rent	: \$2,625/month
Deposit	: \$600
Parking	: None
Pets	: Cats Allowed (Extra deposit may be required), No Dogs
Utilities	: Water and Garbage Included
Kitchen	: Electric stove, Dishwasher, Garbage disposal
Laundry	: In Building
Total Units	: 16
Lease Term	: Year

<https://www.laphamcompany.com/node/6314>  
 November 6, 2016  
 Annotation and arrow are added.

RECEIVED  
 CITY OF OAKLAND  
 RENT ARBITRATION PROGRAM  
 2016 NOV 17 PM 4: 21

City of Oakland  
Accela  
City of Oakland  
Oakland, CA 94612



# CITY OF OAKLAND

A, SUITE 5313, OAKLAND, CALIFORNIA 94612-2034

Development Agency

(510) 238-3721

FAX (510) 238-6181

TDD (510) 238-3254

61

ep 28 2016 02:59 pm Trans#101830

## TRANSACTION RECORD

Card Number : \*\*\*\*\*7935  
Card Entry : SWIPED  
Account : VISA  
Trans Type : PURCHASE  
Amount : \$14.60

Auth : 265027  
Seq # : 000044  
Terminal # : 001  
Date : 09/28  
Time : 02:59:50

\*\*\*\*\* TRANSACTION APPROVED \*\*\*\*\*

\*\*\* CUSTOMER COPY \*\*\*

Copies of documents are 10 cents each. Copies of CDs are \$11.00 each. Copies of recordings are provided only in the same format as the original. Payment must be submitted with this request. Copies are generally ready in two business days. You will be notified by telephone when the copies are ready to be picked up in our office.

## DESCRIPTION OF DOCUMENTS REQUESTED

entire copy of L.L. Documentation 114-0065

---

---

---

---

---

---

---

---

---

---

Reproduce 146 copies each of original document.  
Reproduce 0 copies of CD  
 Certify the reproduced documents.

$146 \times .10 = \$14.60$

Date 9.23.16 Signature \_\_\_\_\_



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

Housing and Community Development Agency  
Rent Adjustment Program

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

## **ORDER**

**CASE NUMBER: L14-0065, 525 - 625 Hyde St. CNML Properties v. Tenants**

**PROPERTY ADDRESS: 3921 Harrison St., Oakland, CA**

Background: On May 18, 2016, Notice of Hearing of the appeal in this case was mailed to the parties, stating that the hearing would be held on September 8, 2016, at 7:00 P. M. On September 6, 2016, tenant Julie E. Amberg submitted a Request for Postponement. The stated reason for her request is that she has been a victim of mail theft and, additionally, that she is the parent of a first grade student and that "Back to School Night" at her child's school will be held on the evening of the date of the Appeal Hearing. This statement is verified by a notice from her child's school.

Rent Adjustment Ordinance Regulation 8.22.120(C) states that an appeal hearing may only be postponed for "good cause and in the interests of justice," and additionally states that a request for postponement must be made on the earliest possible date, with supporting documentation attached. A party may be granted only one postponement for good cause, unless the party shows "extraordinary circumstances."

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

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

The required standard has been met in this case, and there is good cause for a continuance of the Appeal Hearing.

The request for a continuance of the Hearing is granted. The Hearing on this appeal will be held:

**DATE:** December 8, 2016

**TIME:** 7:00 p.m., or as soon thereafter as the matter may be heard.

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

**ALL PROVISIONS IN THE NOTICE OF APPEAL HEARING ISSUED APRIL 1, 2016  
REMAIN IN EFFECT.**

**Dated: September 7, 2016**



**Connie Taylor  
Program Manager  
Rent Adjustment Program**

**PROOF OF SERVICE**

**Case Number L14-0065**

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

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

**Tenants**

Alexander Michael Taylor  
3921 Harrison St #104  
Oakland, CA 94611

Alexandru Butnaru  
3921 Harrison St #102  
Oakland, CA 94611

Alexandru Vasilescu  
3921 Harrison St #301  
Oakland, CA 94611

Andrew Simkin  
3921 Harrison St #305  
Oakland, CA 94611

Angelique Johnson-Martinez  
3921 Harrison St #103  
Oakland, CA 94611

Bianca Penaloza  
3921 Harrison St #204  
Oakland, CA 94611

Cooper Spinelli  
3921 Harrison St #203  
Oakland, CA 94611

Dana Sarvestani  
3921 Harrison St #203  
Oakland, CA 94611

Elena Butnaru  
3921 Harrison St #102  
Oakland, CA 94611

Elizabeth VanLanen  
3921 Harrison St Penhouse  
Oakland, CA 94611

Fernando Garcia  
3921 Harrison St #202  
Oakland, CA 94611

Jessica Simkin  
3921 Harrison St #305  
Oakland, CA 94611

Jilleun Eglin & Lexie Eglin  
3921 Harrison St #101  
Oakland, CA 94611

Julie Amberg  
3921 Harrison St #302  
Oakland, CA 94611

Kate Flick Garcia  
3921 Harrison St #202  
Oakland, CA 94611

Lisa Romero  
3921 Harrison St #205  
Oakland, CA 94611

Mari Oda  
3921 Harrison St #304  
Oakland, CA 94611

Ria Cruz  
3921 Harrison St #105  
Oakland, CA 94611

Steven Miller  
3921 Harrison St Penhouse  
Oakland, CA 94611

Suzanne Miller  
3921 Harrison St #201  
Oakland, CA 94611

Tadeusz Butnaru  
3921 Harrison St #102  
Oakland, CA 94611

Todd McMahan  
3921 Harrison St #304  
Oakland, CA 94611

Tyler Ritter  
3921 Harrison St #303  
Oakland, CA 94611

Zoe Bridges  
3921 Harrison St #301  
Oakland, CA 94611

Zvetlana Butnaru  
3921 Harrison St #104  
Oakland, CA 94611

**Tenant Representative**

Ana Baires Mira  
3022 International Blvd #410  
Oakland, CA 94601

**Owner Representative**

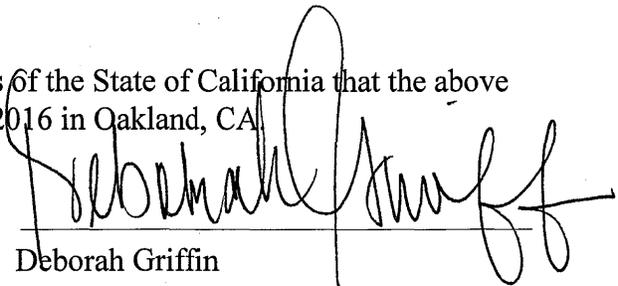
525-655 Hyde Street CNML Tsegab Assefa  
4844 Telegraph Ave  
Oakland, CA 94609

Clifford E. Fried, Esq.  
480 9th St.  
Oakland, CA 94607

Liz Hart  
480 9th St  
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 September 12, 2016 in Oakland, CA



Deborah Griffin

000208





- The decision is not supported by substantial evidence; and
- I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim.

Specifically, the owner claimed that the Hearing Officer calculated the average cost of new construction using a cost adjustment table that was not properly entered into evidence nor issued from the Chief Building Inspector. The owner also claimed that the building's area only equals 13,336 square feet, because the balconies' area should be excluded from the total. Finally, the owner claimed that the Hearing Decision miscalculated the contractor expenses by \$25,999.

#### Appellee's Response

Appellee argued that the Rent Ordinance requires that the new construction costs be for "the time period when the substantial rehabilitation was completed." O.M.C 8.22.030(B). Thus, the ordinance requires the Rent Program to apply an inflationary adjustment to the basic table of construction costs when the table is not updated to the year when the improvements were completed. Appellee pointed to other Rent Program cases where the table submitted in this case was used.

#### Appeal Decision

After Board discussion and questions to the parties, N. Frigault moved to affirm the Hearing Decision based on there being substantial evidence to support the decision, that any error in considering the document addressing inflation adjustments to be applied to the table used to determine new construction costs for the calculating the exemption submitted after the close of the hearing would not change the result, and that the matter was addressed in post-hearing briefing. T. Singleton seconded.

The Chair ruled that the Board's consideration of the issues pertaining to the use of the inflation table and the inclusion of the balcony area in the building square footage calculation would be divided.

After further discussion, J. Karchmer made a substitute motion to remand the case to the Hearing Officer to determine whether the Hearing Decision appropriately relied upon "Table B" as a method for calculating average construction costs on the grounds of authenticity and to provide the owner with an opportunity to present evidence regarding the propriety of the Table used to calculate the substantial rehabilitation amount. The substitute motion failed on a tie vote.

The Board voted as follows:

Aye: K. Friedman, J. Warner, J. Karchmer

Nay: N. Frigault, T. Singleton, B. Williams  
Abstain: 0

The substitute motion failed.

The main motion by N. Frigault to affirm the hearing officer's decision was not voted on. On that basis was deemed withdrawn and the portion of the decision relating to the use of "Table B", (the new construction inflation adjustment) is affirmed by virtue of there being no affirmative vote to overturn or modify the Hearing Officer's decision.

Motion on Inclusion of Balconies in Building Area

After further discussion, N. Frigault moved to affirm the portion of the Hearing Officer's inclusion of the balconies in the building' area when performing the substantial rehabilitation calculation, on the basis there was no abuse of discretion by the Hearing Officer in including the balconies' area where such space is usable space that expands the tenants' livable area within the building was consistent with past practices and policy of the Rent Board. T. Singleton seconded. The Board voted as follows:

Aye: N. Frigault, B. Williams, T. Singleton, J. Warner, J. Karchmer  
Nay: K. Friedman  
Abstain: 0

The motion carried.

There being The remainder of the petition was affirmed by consensus without further discussion.

**NOTICE TO PARTIES**

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

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

DATE





**FILED**  
ALAMEDA COUNTY

AUG 23 2018

By *[Signature]* SP3

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF ALAMEDA

525 HYDE STREET, CNML PROPS, LLP,

Petitioner,

v.

CITY OF OAKLAND,

Respondents.

No. RG17-862841

ORDER (1) GRANTING MOTION TO  
AUGMENT THE RECORD AND (2)  
GRANTING PETITION FOR WRIT OF  
MANDATE.

Date: 8/23/18  
Time: 9:00 a.m.  
Dept.: 511

The motion of 525-655 Hyde St Commercial Properties (the "Developer") to augment the administrative record and the petition of the Developer for writ of mandate directing the City of Oakland Rent Board to vacate the Appeal Decision in Case No. L14-0065 for came on for hearing on 8/23/18, in Department 511 of this Court, the Honorable Kimberly Colwell presiding. Counsel appeared on behalf of Petitioner and on behalf of Respondents. After consideration of the points and authorities and the evidence, as well as the oral argument of counsel, IT IS ORDERED: The motion of 525-655 Hyde St Commercial Properties (the "Developer") to augment the administrative record is GRANTED. The Petition of the Developer for writ of

1 mandate directing the City of Oakland Rent Board to vacate the Appeal Decision in Case No.  
2 L14-0065 is GRANTED.

3  
4 OPPORTUNITY FOR POST-HEARING BRIEFING

5 The court's tentative decision issued before the 7/26/18 hearing framed the issues  
6 differently than as presented by the parties and at the hearing the parties indicated that they might  
7 want supplemental briefing depending on the outcome of the motion to augment. The court's  
8 tentative decision issued before the 8/23/18 hearing stated that the court would permit the  
9 opportunity for post-hearing supplemental briefing if any party requested supplemental briefing.  
10 (*Monarch Healthcare v. Superior Court* (2000) 78 Cal.App.4th 1282, 1286.) No party requested  
11 supplemental briefing.  
12

13  
14 EVIDENCE

15  
16 The court GRANTS the Developer's request on 5/1/18 for judicial notice of ordinances  
17 (Exhs 1-3) and Hearing Decisions (Exhs 8-12.) The court GRANTS the Developer's request on  
18 5/1/18 for judicial notice of Tables A, B, C, and D (Exhs 4-7), but does augment the evidentiary  
19 record with those documents.

20 The court GRANTS the City's request on 6/1/18 for judicial notice of Hearing Decisions.

21 The court GRANTS the City's request on 6/1/18 to supplement the record with the  
22 transcript of the Rent Board hearing. This was part of the evidence and was apparently omitted  
23 in error.

24  
25 The court DENIES the City's implicit request on 6/1/18 to supplement the record with the  
26 Declaration of David Harlan. Harlan testified before the Hearing officer. (AR 146:17-157:9.)

1 The City has not demonstrated that Harlan's declaration testimony was either improperly  
2 excluded during the administrative process or it could not, in the exercise of reasonable  
3 diligence, have been presented before the administrative decision was made. (CCP 1094.5(e);  
4 *Evans v. City of San Jose* (2005) 128 Cal.App.4th 1123, 1144.)  
5

6 The court GRANTS the Developer's request on 6/25/18 for judicial notice of Hearing  
7 Decisions.  
8

#### 9 MOTION TO AUGMENT THE RECORD

10 The City argued that the Developer failed to exhaust administrative remedies because it  
11 failed to argue to the Board that the Hearing Officer failed to properly apply Table A when  
12 calculating the cost of new construction. (City Oppo at 9-10.) At the hearing on 7/26/18, the  
13 Developer handed the court a copy of a brief on appeal allegedly filed with the Rent Board on  
14 5/4/16 that raised the issue at page 4 (the "Appeal Brief"). The City did not concede that the  
15 Appeal Brief was in the administrative record.  
16

17 On 8/10/18, the Developer filed a post-hearing motion under CCP 1094.5(e) to augment  
18 the record with the Appeal Brief. "A court may exercise its discretion to augment an  
19 administrative record if the evidence is relevant and if it was either improperly excluded during  
20 the administrative process or it could not, in the exercise of reasonable diligence, have been  
21 presented before the administrative decision was made." (*Evans v. City of San Jose* (2005) 128  
22 Cal.App.4th 1123, 1144.) This motion to augment does not concern evidence going to the merits  
23 that was presented to the hearing officer, but rather concerns evidence going to the procedural  
24 issue of whether the Developer raised an issue with the Board.  
25  
26

1 The Developer's Notice of Appeal filed 6/18/15 raises the primary issue of whether the  
2 balcony area should be included but not the secondary issue of whether if the balcony is included  
3 it should be treated differently than apartment space. (AR 108.)

4 The Developer's Appeal Brief is file stamped "RECEIVED CITY OF OAKLAND RENT  
5 ARBITRATION PROGRAM 2016 MAY - 4 PM 2:52." The stamp is the same as other  
6 documents filed with the Rent Board. (AR 35, 46, 72, 104.) The City has presented declaration  
7 testimony from City employees Keith Mason and Kelly Rush that the City has no record of  
8 receiving the Appeal Brief. The real parties in interest also present evidence and argue that they  
9 have no record of the Appeal Brief.

10 The transcript of the Board hearing on 12/8/16 indicates that the Board discussed the  
11 primary issue of whether the balcony area should be included but that the Board did not reach the  
12 secondary issue of whether if the balcony is included it should be treated differently than  
13 apartment space.

14 The motion of the Developer to augment the administrative record with the Appeal Brief  
15 is GRANTED. The Appeal Brief is file stamped as received by the Board. This creates a  
16 presumption of filing. (*In re Marriage of Mosley* (2010) 190 Cal.App.4th 1096, 1103 ["a  
17 judgment or appealable order is presumptively filed, for purposes of the 180-day time limit, on  
18 the file-stamped date"].) The City has not presented evidence that on 5/4/16 the Developer used  
19 the City's self-file-stamp procedure to file-stamp the brief but then failed to leave a copy with the  
20 City or that the Developer falsified the file stamp on the Appeal Brief. The Court finds that the  
21 substantial evidence supports a finding that the Developer filed the brief and that the City  
22 inadvertently mis-filed or lost the brief. There is no indication that the City intentionally  
23 withheld the Appeal Brief from the administrative record.

1  
2 **FACTS AND PROCEDURE**

3 The Developer or its predecessor in interest rehabilitated the property located at 3921  
4 Harrison St, Oakland, CA. The Developer spent approximately \$850,000 on the project.  
5

6 The Developer then sought a Certificate of Exemption from the Rent Board so that it  
7 could raise rents at the property. OMC 8.22.030.B.2 states, "In order to obtain an exemption  
8 based on substantial rehabilitation, an owner must have spent a minimum of fifty (50) percent of  
9 the average basic cost for new construction for a rehabilitation project and performed substantial  
10 work on each of the units in the building.

11 The City notified the parties that the hearing would be on 3/20/15 and that they would be  
12 required to submit all evidence 7 days before the hearing date and that if they did not do so it  
13 "may" be excluded. (AR 414-415, 471-473.)

14 On 4/27/15, the Hearing Officer held a hearing. (AR 141-236.) During the presentation  
15 of evidence, Ms. Mira, attorney for tenants, showed Table B, which is Quarterly Cost Indexes to  
16 City Engineering Manager of the Bureau of Building David Harlan. The Hearing officer did not  
17 admit Table B into evidence at that time. (AR 152:13-27.) The submission of evidence  
18 concluded. (AR 225:16-22.)

19 At argument following the presentation of evidence, Ms. Mira argued that Table A, the  
20 City of Oakland Building Services Construction Valuation, effective 8/1/09, should be adjusted  
21 by the Table B, the Quarterly Cost Indexes. (AR 228:8-11; 229:7-13). Ms. Mira presented  
22 Table B and asserted that the Hearing Officer should use it in making calculations. (AR 230:20-  
23 21.) Developer's counsel objected.  
24  
25  
26



1 The Hearing Officer said that he could take official notice of Table B if he was supposed  
2 to use it in his calculations. (AR 230:23-231:27.) The Hearing Officer said that he was unaware  
3 of Table B until the day of the hearing. (AR 236:14-16.)

4 On 5/29/15, the Hearing Officer issued a decision denying Developer's petition for a  
5 Certificate of Exemption from the rent control ordinance. (AR 120-131.)

6 The Developer sought review by the Rent Board. On 12/8/16, the Rent Board held a  
7 hearing. (AR 777-798.) On 3/7/16, the Rent Board issued its written decision. (AR 2-4.)  
8

#### 9 10 ISSUE CLARIFICATION

11 Petitioner commingles three analytically distinct issues regarding the use of Table B  
12 during the administrative process. The first issue is whether the Board violated its own  
13 procedures when it considered Table B as evidence even though it was not disclosed seven days  
14 before the hearing. The second issue is whether the Board erred as a matter of law by  
15 incorporating Table B into the OMC 8.22.030.B.2.b substantive standard. The third issue is  
16 whether the Board violated due process by failing to adequately disclose the existence of Table B  
17 to Petitioner while Petitioner was planning and executing the rehabilitation project.  
18

#### 19 20 PROCEDURES - ADMISSION OF TABLE B AS EVIDENCE

21 The arguments on the admission of Table B as evidence presume that it is a document  
22 that is fact evidence. As discussed below, OMC 8.22.030.B.2.b incorporates tables "issued by  
23 the chief building inspector" as the substantive standard. Therefore, if the tables are the  
24 documents described in the OMC, then they are incorporated in, and extensions of, the ordinance  
25 itself. The court must take judicial notice of the law. (Evid Code 451.) Subject to the  
26

1 significant limitation that the court must provide parties the opportunity to present argument on  
2 material issues, the court (or a hearing officer) can consider law even if it is not formally  
3 presented by a party. (*Monarch Healthcare v. Superior Court* (2000) 78 Cal.App.4th 1282,  
4 1286.)

5  
6 The Board's letters required the parties to disclose evidence 7 days before the hearing and  
7 cautioned that evidence not disclosed "may" be excluded. As a matter of policy construction,  
8 "may" is discretionary and permitted the Hearing officer to admit evidence that was not disclosed  
9 7 days before the hearing.

10 Assuming that Table B is factual evidence, the court finds that the Board did not violate  
11 its own procedures and abuse its discretion when it considered Table B even though it was not  
12 disclosed seven days before the hearing.

13  
14 At the hearing the Hearing Officer stated that he would not admit Table B as evidence but  
15 would take official notice of Table B. Official notice appears to be equivalent to judicial notice  
16 and judicial notice is a basis for the admission of evidence. Therefore, there is no material  
17 difference between accepting Table B into evidence as submitted by a witness and taking judicial  
18 notice of Table B.

19  
20 **INCORPORATION OF TABLE B INTO ORDINANCE - STATUTORY INTERPRETATION.**

21 OMC 8.22.030.B.2 states:

22  
23 **Exemptions for Substantially Rehabilitated Buildings.**

- 24  
25 a. In order to obtain an exemption based on substantial rehabilitation, an owner  
26 must have spent a minimum of fifty (50) percent of the average basic cost for

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

*new construction for a rehabilitation project and performed substantial work on each of the units in the building.*

b. The average basic cost for new construction shall be determined using tables issued by the chief building inspector applicable for the time period when the substantial rehabilitation was completed.

The court exercises its independent judgment in considering statutory construction and other issues of law. (*Smith v. Santa Rosa Police Dept.* (2002) 97 Cal.App.4th 546, 553-554.)

As a matter of statutory construction, the court determines that OMC 8.22.030.B.2.b requires that the tables must be both (1) issued by the chief building inspector and (2) applicable for the time period when the substantial rehabilitation was completed.

As a matter of determining whether there was a fair hearing the court applies its independent judgment regarding whether the City complied with the law. The court does not apply the abuse of discretion standard usually applied to evidence decisions because the statute clearly defines the substantive standard with reference to the tables. Therefore, referring to an incorrect table is in the nature of using an incorrect jury instruction rather than making a discretionary decision on the admission of evidence.

Table A is identified as City of Oakland Building Services Construction Valuation, effective 8/1/09. Table A is issued by the chief building inspector. Table A states that it is "Effective Aug 1, 2009." This suggests that it is effective until replaced by a new table. When testifying, City Engineering Manager Harlan was asked if Table A was "the latest table put out by the City" and he answered "Yes, that's the table we currently use." (AR 146:20-23.) There is no objection to the use of Table A.

1 Table B is identified as Quarterly Cost Indexes. Table B has a footer that indicates it is  
2 from Marshall Valuation Services. There is no indication that Table B was "issued by the chief  
3 building inspector." When testifying, City Engineering Manager Harlan identified Table B and  
4 referred to it as "this source that we use." (AR 153:27.) The court finds that the Board erred as a  
5 matter of law by incorporating Table B into the ordinance as the substantive standard when it was  
6 not "issued by the chief building inspector."  
7

8 The Petition is GRANTED on the basis that applying its independent judgment the court  
9 finds that OMC 8.22.030.B.2.b requires that a table be "issued by the chief building inspector"  
10 and Table B was not "issued by the chief building inspector."  
11

#### 12 INCORPORATION OF TABLE B INTO ORDINANCE - DUE PROCESS.

13 The Developer made a discernable argument before the Hearing Officer (AR 235-236)  
14 and at the Rent Board (AR 784-785) and in this court (Reply at 5) that the Board violated due  
15 process by failing to adequately disclose the existence of Table B to Petitioner when Petitioner  
16 was planning and executing the rehabilitation project. The court exercises its independent  
17 judgment in considering issues of adequate notice or due process. (*Tafti v. County of Tulare*  
18 (2011) 198 Cal.App.4th 891, 896.)  
19

20 A statute, or ordinance, must be sufficiently clear to give a person fair warning of the  
21 conduct prohibited and they must provide a standard or guide against which conduct can be  
22 uniformly judged by courts and administrative agencies. (*Morrison v. State Board of Education*  
23 (1969) 1 Cal.3d 214, 230-231; *Zubarau v. City of Palmdale* (2011) 192 Cal.App.4th 289, 308-  
24 309.) Similarly, an ordinance must be sufficiently clear to give a person adequate notice of the  
25 requirements for obtaining a government benefit, or a Certificate of Exemption.  
26

1 A statute "will be upheld if its terms may be made reasonably certain by reference to other  
2 definable sources." (*Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1180; *Personal*  
3 *Watercraft Coalition v. Board of Supervisors* (2002) 100 Cal.App.4th 129, 138-139.)

4 Making an "on its face" analysis, the Ordinance could reasonably refer to and incorporate "tables  
5 issued by the Chief Building Inspector."  
6

7 Making an "as applied" analysis, it is much less clear whether Table B is an "other  
8 definable source." When testifying, City Engineering Manager Harlan was asked if Table A was  
9 "the latest table put out by the City" and he answered "Yes, that's the table we currently use."  
10 (AR 146:20-23.) City Engineering Manager Harlan also identified Table B and referred to it as  
11 "this source that we use." (AR 153:27.) The Hearing Officer stated that he was unaware of  
12 Table B until the day of the hearing. (AR 236:14-16.)  
13

14 The Developer did not present evidence, but argued that it was unaware of Table B until  
15 the hearing on 4/27/15. Before the Hearing Officer, the Developer's counsel argued that the  
16 Building Department did not make Table B available to the public. (AR 235:19-236:1.) Before  
17 the Board, the Developer's counsel argued that the Developer assumed that the relevant time  
18 period was "set forth in the most recent table that's issued by the Building Services Department.  
19 That's Exhibit A" and that the Developer "relied on this Table A and be believed that when his  
20 project was completed it would be exempt." (AR 784:17-23.)  
21

22 The City and the tenants presented no evidence that Table B was an "other definable  
23 source" that was disclosed to the public as relevant to the ordinance. The court has denied the  
24 City's request to supplement the record with the declaration of Harlan. That noted, the  
25 declaration states that the City distributes Table B to persons "who request the table" and "that  
26 the City distributes [the Table] upon request." (Harlan Dec., paras 6 and 7.)

1 The court finds that the Developer did not waive this argument even though it failed to  
2 clearly present this argument to the Hearing Officer and to the Board. The Tenant's  
3 Representative, Ms. Mira, did not disclose Table B as evidence seven days before the hearing or  
4 otherwise put the Developer on notice that she would rely on Table B. The Hearing officer was  
5 unaware of Table B. The record suggests that the Developer costed out the project and prepared  
6 for the Hearing Officer hearing on the reasonable assumption that Table A was the standard  
7 against which the evidence of expense would be measured.  
8

9 The Petition is GRANTED on the basis that applying its independent judgment the court  
10 finds that on the facts of this case that Table B was not an "other definable source" and that the  
11 Ordinance therefore did not give the Developer fair warning that Table A was not the standard  
12 against which the evidence of expense would be measured and that it would be modified by  
13 Table B.  
14

15  
16 **\$26,000 IN INVOICES.**

17 The Developer argues that the Hearing Officer and Board erred in excluding \$26,000 in  
18 invoices. The City acknowledges that the Hearing Officer and Board appear to have made a  
19 calculation error. (City Oppo at 9:8-15.) This error did not affect the Board's decision. The  
20 apparent \$26,000 calculation error does not affect the court's decision on the petition.  
21

22 **INCLUSION OF DECK SPACE.**

23  
24 There is substantial evidence to support the Board's fact finding that the property space  
25 included both the apartment space and the deck and balcony space.  
26

1  
2 SEPARATE TREATMENT OF APARTMENT SPACE AND DECK/BALCONY SPACE

3 County records state the property was 13,337 sqft. (AR 247.) The Developer  
4 rehabilitated the balconies, which are an additional 1,002 sqft.  
5

6 Table A differentiates among different "Descriptions" of construction. Table A included  
7 "Apartment space" at \$127 sqft, "Elevated Decks and Balconies" space at \$41.16 sqft, and many  
8 other descriptions of space. The Hearing Officer and the Board both decided to treat both the  
9 13,337 sqft interior space and the 1,002 sqft deck/balcony space as "Apartment space." (AR 004,  
10 123.)

11 Petitioner argues that the Board erred as a matter of law by treating the deck/balcony  
12 space as "Apartment space" and should have treated it as "Elevated Decks and Balconies" space.  
13 (Opening brief at 4:21-26; 6:26-27; 7:29-8:7.)

14  
15 Petitioner has not waived this argument. At the hearing before the Hearing Officer,  
16 Petitioner argued that the calculations should exclude the deck space. (AR 3.) In the briefing to  
17 the Board, Petitioner accepted that the Hearing Officer used the deck space, but argued that the  
18 Hearing Officer should have calculated "R3 Elevated Decks and Balconies" space at \$41.16 sqft.  
19 (Brief filed with Board on 5/4/16 at page 4.) At argument before the Board, petitioner raised the  
20 primary issue of whether the balcony area should be included but did not reach the secondary  
21 issue of whether if the balcony is included whether it should be treated differently than apartment  
22 space. (AR 004, 792:3-11; 795:3-11; 796:5-798:12.)

23  
24 This is an issue of statutory construction because OMC 8.22.030.B.2.b incorporates tables  
25 be "issued by the chief building inspector."  
26

1 As a matter of statutory construction, the City must apply Table A to projects or parts of  
2 projects based on whether the Description reasonably describes the physical structure to be  
3 constructed. The Descriptions in Table A are defined by the cost of construction rather than the  
4 potential use of the structure. The court takes judicial notice that the City of Oakland Planning  
5 and Building website states, "The cost of building permits is based upon the construction  
6 valuation of the project. Valuation includes all labor and structural materials, and all lighting,  
7 heating, ventilation, water supply, plumbing, electrical, fire sprinklers, elevator equipment."  
8 (<http://www2.oaklandnet.com/government/o/PBN/OurServices/permits/index.htm>) Consistent  
9 with this purpose, the Rent Board should apply schedule A to projects and parts of projects based  
10 on whether the Description reasonably describes the physical structure to be constructed.  
11

12 The Board misapplied OMC 8.22.030.B.2.b and the incorporated tables by focusing on  
13 the potential use of the balconies rather than the cost of building or rehabilitating the balconies.  
14 The Board's decision states "there was no abuse of discretion by the Hearing Officer in including  
15 the balconies' area where such space is useable space that expands the tenants' livable area."  
16 (AR 004.) (See also AR 797:10-11.)

17 This was legal error because the Table A analysis concerns the cost of constructing the  
18 project or part of the project, not the potential use of the constructed property. Although the Rent  
19 Board in other contexts might be focused on whether rental space is usable, liveable, and  
20 habitable, in the context of OMC 8.22.030.B.2.b and Table A, the Rent Board must focus on the  
21 cost of construction. Even if OMC 8.22.030.B.2.b and Table A did concern usable, liveable, or  
22 habitable space, the BMC elsewhere defines "habitable space" and "habitable rooms" in a way  
23 that suggests they do not include exterior balconies and decks. (OMC 15.20.030 [Building and  
24 Construction Code]; 17.09.040 [Planning Code].)  
25  
26



1  
2 As a matter of statutory construction, the City must give effect to all the "Description"  
3 categories in Table A. If a general "Description" and a specific "Description" both apply to a  
4 construction project or to a part of a construction project, then the City must give effect to the  
5 specific "Description." (*Collection Bureau of San Jose v. Rumsey* (2000) 24 Cal.4th 301, 310;  
6 *Garcia v. McCutchen* (1997) 16 Cal.4th 469, 477-0478.)

7 The Board misapplied OMC 8.22.030.B.2.b and the incorporated tables by treating both  
8 the 13,337 sqft and the 1,002 sqft as Apartment space. Although an apartment might have a  
9 balcony or deck, Table A has a separate specific line item for "Elevated Decks and Balconies."  
10 Where Table A sets out a specific Description that applies to a project or a part of a project, the  
11 Board must give effect to the specific Description.

12 The Board stated that the Hearing Officer did not abuse his discretion by including the  
13 balconies in the "Apartment" space. (AR 004.) (See also AR 797:1-9.) The Hearing Officer  
14 makes factual findings about whether a project or a part of a project fits within a certain  
15 Description. The Hearing Officer does not, however, have the discretion to characterize a project  
16 or a part of a project based on improper criteria. The Hearing Officer and the Board misapplied  
17 the law by focusing on the potential use of the balconies rather than their cost of construction and  
18 by not giving effect to the specific Description for "Elevated Decks and Balconies."  
19  
20

## 21 CONCLUSION

22 The Petition of 525-655 Hyde St Commercial Properties (the "Developer") for writ of  
23 mandate directing the City of Oakland Rent Board to vacate the Appeal Decision in Case No.  
24 L14-0065 is GRANTED.  
25  
26

1  
2 Consistent with CCP 1094.5(f), the court orders the City of Oakland Rent Board to  
3 reconsider the case in light of the court's opinion and judgment. The judgment shall not limit or  
4 control in any way the discretion legally vested in the respondent Board. If permitted by its  
5 procedures, the Rent Board may direct the Hearing Officer to conduct a further hearing. If  
6 permitted by its procedures, the Rent Board may reconsider either the entire matter or only the  
7 issues implicated by this order. The court expressly does not direct the Rent Board to grant the  
8 petition for a Certificate of Exemption.

9 At the hearing on 8/23/18, counsel for the Developer asked that the court order the Rent  
10 Board to expedite further proceedings given that the Developer filed the petition for certificate of  
11 exemption on 11/10/14 (AR 558-761) and the matter has been pending for almost four years.  
12 Counsel for the City did not object to that request. The court encourages the Rent Board to  
13 promptly reconsider this matter consistent with the procedures in OMC 8.22.120 and Rent  
14 Adjustment Program Regulations 8.22.110 and 8.22.120.

15  
16 The court directs the Developer to prepare and submit to the court both a proposed  
17 judgment and a proposed writ. (CRC 3.1312.)

18  
19 Dated: August 23, 2018

20   
21 Kimberly Colwell  
22 Judge of the Superior Court  
23  
24  
25  
26

EXHIBIT B

000227

2018 NOV 13 PM 4:30

**CITY OF OAKLAND  
HOUSING AND COMMUNITY DEVELOPMENT  
RENT ADJUSTMENT PROGRAM**

**HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD**

**RENT ADJUSTMENT PROGRAM CASE L-14-0065  
525, 655 HYDE ST. CNML, PROPERTIES LLC v. TENANTS**

**REQUEST FOR STAY OF PROCEEDINGS**

On March 7, 2017 this Board affirmed the Hearing Officer's May 29, 2015 decision in Case No. L14-0065. On June 5, 2017 the property owner 525, 655 Hyde St., CNML, Properties LLL filed a petition for a writ of administrative mandate in the Superior Court for the State of California, County of Alameda., in Case RG17-862841.

On August 23, 2018, the Court in that case issued an Order granting the petition for mandate. However, the Order expressly did **not** direct the HRRRB to grant the petition for a certificate of exemption. The Order remanded the case back to the HRRRB for reconsideration. The Order expressly did **not** limit or control the HRRRB's discretion (1) to direct the Hearing Officer to conduct a further hearing, or (2) to reconsider the entire matter.

The Order stated:

"Consistent with CCP 1094.5(f), the court orders the City of Oakland Rent Board to reconsider the case in light of the court's opinion and judgment. The judgment shall not limit or control in any way the discretion legally vested in the respondent Board. If permitted by its procedures, the Rent Board may direct the Hearing Officer to conduct a further hearing. If permitted by its procedures, the Rent Board may reconsider either the entire matter or only the issues implicated by this order. The court expressly does not direct the Rent Board to grant the petition for a Certificate of Exemption."

The court has not yet issued a judgment or writ.

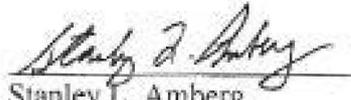
Tenants Julie Amberg, Kate Garcia, Fernando Garcia, Mari Oda and Todd McMahon are Tenant parties in RAP Case No. L14-0065 and are Real Parties In Interest in Case RG-17-862841. They respectfully request that the HRRRB **stay all proceedings in Rent Adjustment Program Case No L14-0065 until 60 days after the entry of a final judgment in Case No. RG-17-862841 from which no appeal or further review has been taken or can be taken.**

The request is in the interest of justice. It will provide those Tenants and Real Parties In Interest a reasonable time (1) to decide whether to appeal the judgment in Case RG-17-862841, and/or (2) to communicate with the HRRRB with respect to the nature and extent of further proceedings at the HRRRB and/or at a Hearing Officer.

2018 NOV 13 PM 4:30

Respectfully submitted,

Date: November 13, 2018



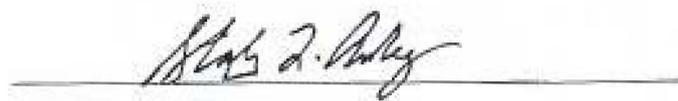
Stanley L. Amberg,  
Representative for  
Tenants-Real Parties In Interest

PROOF OF SERVICE

I, Stanley L. Amberg, declare that I am at least 18 years of age, and that on or before the date below, a copy of this Request For Stay Of Proceedings was served on the following, in the manner described:

By First Class Mail, United States Postal Service, postage prepaid, in envelopes addressed to: Fried & Williams LLP, Att'n Clifford E. Fried, Esq., 1901 Harrison Street, Oakland, CA 94612, Attorneys for 525, 655 HYDE ST. CNML, PROPERTIES LLC; and by First Class Mail, United States Postal Service to Jamilah Jefferson, Esq., Senior Deputy City Attorney, Litigation Division, Oakland City Attorney, City Hall, 6<sup>th</sup> Floor, 1 Frank H. Ogawa Plaza, Oakland, CA 94612; Attorney for City of Oakland's Department of Housing and Community Development Rent Adjustment Program.

I declare under penalty of perjury under the laws of the State of California that the foregoing Proof of Service is true and correct, and this declaration was executed on November 13, 2018 at Chappaqua, New York.



1 Clifford E. Fried, Esq., SBN 118288  
2 Fried & Williams LLP  
3 1901 Harrison Street  
4 Oakland, CA 94612  
5 Phone: (510) 625-0100  
6 Email: cfried@friedwilliams.com

7 Attorneys for Petitioners  
8 Rockridge Real Estate, LLC & Reinke, LLC

9  
10 IN THE SUPERIOR COURT OF STATE OF CALIFORNIA  
11 IN AND FOR THE COUNTY OF ALAMEDA

12 525-655 HYDE ST. CNML PROPS., LLP,

13 Petitioner,

14 vs.

15 CITY OF OAKLAND'S DEPARTMENT OF  
16 HOUSING AND COMMUNITY  
17 DEVELOPMENT RENT ADJUSTMENT  
18 PROGRAM, and DOES 1 THROUGH 25,

19 Respondents.

20 Jilleun Eglin,  
21 Lexie Eglin,  
22 Angelique Johnson-Martinez,  
23 Suzanne Miller,  
24 Fernando Garcia,  
25 Kate Flick Garcia,  
26 Bianca Penaloza,  
27 David Preciado,  
28 Julie Amberg,  
29 Tyler Ritter,  
30 Marie Oda,  
31 Todd McMahon,  
32 Andrew Simkin,  
33 Jessica Simkin,  
34 and DOES 26 THROUGH 40,

35 Real Parties in Interest.

36 Case No.: RG17-862841

37 ~~(PROPOSED)~~ WRIT OF  
38 ADMINISTRATIVE MANDAMUS

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

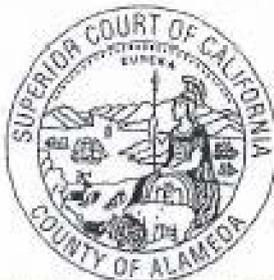
WRIT OF MANDAMUS

To: CITY OF OAKLAND'S DEPARTMENT OF HOUSING AND  
COMMUNITY DEVELOPMENT RENT ADJUSTMENT PROGRAM AND ITS  
ATTORNEY OF RECORD:

**YOU ARE HEREBY COMMANDED** immediately upon receipt of this writ to:

1. Set aside and vacate the Rent Adjustment Program Appeal Decision in Case No. L14-0065.
2. Reconsider the Appeal Decision in Case No: L14-0065 in light of the court's opinions, Order and Judgment.

The Court will retain jurisdiction over Respondent proceedings by way of a return to this peremptory writ of mandamus until the Court has determined that Respondent has complied with the following order:



Chad Fiske, Clerk

By [Signature], Deputy Clerk

ORDER

LET THE WRIT OF MANDAMUS ISSUE.

Date: 12/12/18

[Signature]  
JEFFREY S. BRAND,  
Judge of the Alameda Superior Court

### **PROOF OF SERVICE BY FIRST-CLASS MAIL**

I declare that I am a resident of or employed in the County of Alameda, State of California. I am over the age of eighteen years and am not a party this action. My residence or business address is 1901 Harrison Street, 14th Floor, Oakland, CA 94612.

On the date below, I served the attached, concerning the action known as *(525-655 HYDE ST. CNML v. CITY OF OAKLAND'S DEPARTMENT OF HOUSING*, Alameda County Superior Court case no. RG17862841:

### **NOTICE OF ENTRY OF JUDGMENT AND ISSUANCE OF WRIT**

on the parties herein in said action, by placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for mailing with the United States Postal Service. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

The envelope was addressed, sealed and placed for collection and mailing, following this business' ordinary business practices, from Oakland, California, as follows:

SEE ATTACHMENT

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and this declaration was executed on December 13, 2018, at Oakland, California.

\_\_\_\_\_  
Fabienne Lopez



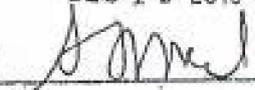
Name	Address	
Oakland City Attorney Deputy City Attorney Richard Illgen	City Hall, 6th Floor 1 Frank Ogawa Plaza Oakland, California 94612	
Suzanne Miller	3921 Harrison St., #201, Oakland, CA 94611	
Fernando Garcia	3921 Harrison Street, #202 Oakland, CA 94611	
Kate Flick Garcia	3921 Harrison Street, #202 Oakland, CA 94611	
Julie E. Amberg	3921 Harrison Street, #302 Oakland, CA 94611	
Todd McMahon	3921 Harrison Street, #304 Oakland, CA 94611	
Mari Oda	3921 Harrison Street, #304 Oakland, CA 94611	
Andrew Simkin	3921 Harrison St., #305, Oakland, CA 94611	
Jessica Simkin	3921 Harrison St., #305, Oakland, CA 94611	

1 Clifford E. Fried, Esq., SBN 118288  
2 Fried & Williams LLP  
3 1901 Harrison Street  
4 Oakland, CA 94612  
5 Phone: (510) 625-0100  
6 Email: cfried@friedwilliams.com

7 Attorneys for Petitioners  
8 Rockridge Real Estate, LLC & Reinke, LLC

**FILED**  
ALAMEDA COUNTY

DEC 12 2018

By 

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IN THE SUPERIOR COURT OF STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF ALAMEDA

525-655 HYDE ST. CNML PROPS., LLP,

Petitioner,

vs.

CITY OF OAKLAND'S DEPARTMENT OF  
HOUSING AND COMMUNITY  
DEVELOPMENT RENT ADJUSTMENT  
PROGRAM, and DOES 1 THROUGH 25,

Respondents.

Case No.: RG17-862841

**PROPOSED** JUDGMENT  
GRANTING WRIT OF  
ADMINISTRATIVE MANDAMUS

Jilleun Eglin,  
Lexie Eglin,  
Angelique Johnson-Martinez,  
Suzanne Miller,  
Fernando Garcia,  
Kate Flick Garcia,  
Bianca Penaloza,  
David Preciado,  
Julie Amberg,  
Tyler Ritter,  
Marie Oda,  
Todd McMahon,  
Andrew Simkin,  
Jessica Simkin,  
and DOES 26 THROUGH 40,

Real Parties in Interest.

JUDGMENT GRANTING MOTION FOR JUDGMENT ON THE WRIT OF ADMINISTRATIVE MANDAMUS

000234

1 The Motion for Judgment on the Writ of Administrative Mandamus of Petitioners  
2 Rockridge Real Estate, LLC & Reinke, LLC ("Petitioners") came on for hearing on July  
3 26, 2018 and August 23, 2018 in Department 511 before the Honorable Kimberly Colwell.  
4 Clifford E. Fried, of Fried & Williams LLP appeared on behalf of Petitioners. Jamilah A.  
5 Jefferson, of the City of Oakland's City Attorney's Office, appeared on behalf of  
6 Respondent City of Oakland's Department of Housing and Community Development  
7 Rent Adjustment Program. Real Parties in Interest were present in the courtroom. The  
8 matter was argued and taken under submission. After considering the pleadings,  
9 Administrative Record, all moving and opposition papers, arguments of counsel, and file  
10 in this matter, the court entered an Order granting Petitioners' motion to augment the  
11 record and then granted Petitioners' petition and motion for writ of mandate directing the  
12 City of Oakland's Department of Housing and Community Development Rent Adjustment  
13 Program to vacate the Appeal Decision in Case No. L14-0065 ("Order"). A copy of said  
14 Order is attached hereto as Exhibit A and incorporated herein by reference as though set  
15 forth in full. Accordingly,

16 IT IS ADJUDGED AND DECREED THAT,

17 1. Petitioners shall have judgment against Respondent City of Oakland's  
18 Department of Housing and Community Development Rent Adjustment Program, for a  
19 writ of administrative mandamus setting aside and vacating the Rent Adjustment Program  
20 Appeal Decision in Case No. L14-0065.

21 2. Respondent shall reconsider the Appeal Decision <sup>IN ITS ENTIRETY</sup> in Case No. L14-0065 in  
22 light of the court's opinions, Order and this Judgment.

23 3. A writ of administrative mandamus shall issue under seal of this Court in  
24 the form attached hereto as Exhibit B.

25 4. Petitioners shall recover costs of suit as the prevailing party in this action.



1 Clifford E. Fried, Esq., SBN 118288  
2 Jonathan Madison, Esq., SBN 311553  
3 Fried & Williams LLP  
4 1901 Harrison Street, 14<sup>th</sup> Floor  
5 Oakland, CA 94612  
6 (510) 625-0100

7 Attorneys for Petitioner,  
8 525-655 HYDE ST. CNML PROPS., LLC

9 IN THE SUPERIOR COURT OF STATE OF CALIFORNIA  
10 IN AND FOR THE COUNTY OF ALAMEDA  
11 UNLIMITED CIVIL JURISDICTION

12 525-655 HYDE ST. CNML PROPS., LLC,

13 Petitioner,

14 vs.

15 CITY OF OAKLAND'S DEPARTMENT OF  
16 HOUSING AND COMMUNITY  
17 DEVELOPMENT RENT ADJUSTMENT  
18 PROGRAM, and DOES 1 THROUGH 25,

19 Respondents.

20 Jilleun Eglin, Lexie Eglin, Angelique  
21 Johnson-Martinez, Suzanne Miller,  
22 Fernando Garcia, Kate Flick Garcia,  
23 Bianca Penaloza, David Preciado, Julie  
24 Amberg, Tyler Ritter, Marie Oda, Todd  
25 McMahon, Andrew Simkin, Jessica  
26 Simkin, ET. AL., and DOES 26 THROUGH  
27 40,

28 Real Parties in Interest.

Case No.: RG17862841

**NOTICE OF ENTRY OF JUDGMENT  
AND ISSUANCE OF WRIT**

TO RESPONDENT CITY OF OAKLAND'S DEPARTMENT OF HOUSING AND  
COMMUNITY DEVELOPMENT RENT ADJUSTMENT PROGRAM AND ITS  
ATTORNEYS OF RECORD:

1  
2 PLEASE TAKE NOTICE that on December 12, 2018 the Honorable Jeffrey S.  
3 Brand, Judge of the Superior Court, entered a Judgment Granting Writ of Administrative  
4 Mandamus in this action. The Court Clerk also issued the Writ of Administrative  
5 Mandamus. A copy of the court's judgment and the Writ of Administrative Mandamus,  
6 entered on December 12, 2018, are attached hereto and is fully incorporated herein.

7 Dated: December 13, 2018

Fried & Williams LLP

8  
9 

10 Jonathan Madison, Esq.  
11 Attorneys for Petitioner,  
12 525-655 HYDE ST. CNML PROPS., LLC  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

2019 MAY 13 AM 11:16

CITY OF OAKLAND  
HOUSING AND COMMUNITY DEVELOPMENT  
RENT ADJUSTMENT PROGRAM

HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD

RENT ADJUSTMENT PROGRAM

**CASE L-14-0065**

525, 655 HYDE ST. CNML, PROPERTIES LLC v. TENANTS

**REQUEST FOR STAY OF PROCEEDINGS**

On March 7, 2017 this Board affirmed the Hearing Officer's May 29, 2015 decision in Case No. L14-0065. On June 5, 2017 the property owner 525, 655 Hyde St., CNML, Properties L.L.L. filed a petition for a writ of administrative mandate in the Superior Court for the State of California, County of Alameda, in Case RG17-862841.

On August 23, 2018, the Court in that case issued an Order granting the petition for mandate. However, the Order expressly did **not** direct the HRRRB to grant the petition for a certificate of exemption. The Order remanded the case back to the HRRRB for reconsideration. The Order expressly did **not** limit or control the HRRRB's discretion (1) to direct the Hearing Officer to conduct a further hearing, or (2) to reconsider the entire matter.

The Order stated:

"Consistent with CCP 1094.5(f), the court orders the City of Oakland Rent Board to reconsider the case in light of the court's opinion and judgment. The judgment shall not limit or control in any way the discretion legally vested in the respondent Board. If permitted by its procedures, the Rent Board may direct the Hearing Officer to conduct a further hearing. If permitted by its procedures, the Rent Board may reconsider either the entire matter or only the issues implicated by this order. The court expressly does not direct the Rent Board to grant the petition for a Certificate of Exemption."

On December 12, 2018 the court issued a Judgment which incorporated by reference the August 23, 2018 Order, quoted above.

On February 7, 2019, tenants Julie Amberg, Fernando Garcia and Todd McMahon filed **notices of appeal of the Judgment**. Their appeals are docketed as **Case Number A156463** in the California Court of Appeal, 1<sup>st</sup> Appellate District. A copy of the Docket (Register of Actions) in that appeal is attached. Their appeals stay enforcement of the Judgment.

Tenants Julie Amberg, Kate Garcia, Fernando Garcia, Mari Oda and Todd McMahon are Tenant parties in RAP Case No. L14-0065 and are Real Parties In Interest in Case RG-17-862841. They respectfully **request** that the HRRRB and the Rent Adjustment Program **stay all**

proceedings in Rent Adjustment Program Case No L14-0065 until 60 days after the entry of a final judgment in Case No. RG-17-862841 and Appeal Case No. A156463 from which no further appeal or further review has been taken or can be taken.

The request is in the interest of justice. It will provide those Tenants and Real Parties In Interest a reasonable time to communicate with the HRRRB and/or the Rent Adjustment Program with respect to the nature and extent of further proceedings at the HRRRB and/or at a Hearing Officer.

Respectfully submitted,

Date: May 13, 2019



Stanley L. Amberg,  
Representative for  
Tenants-Real Parties In Interest

PROOF OF SERVICE

I, Stanley L. Amberg, declare that I am at least 18 years of age, and that on or before the date below, a copy of this Request For Stay Of Proceedings was served on the following, in the manner described:

By First Class Mail, United States Postal Service, postage prepaid, in envelopes addressed to:

Fried & Williams LLP, Att'n Clifford E. Fried, Esq., 1901 Harrison Street, Oakland, CA 94612, Attorneys for 525, 655 HYDE ST. CNML, PROPERTIES LLC; and

Ray McFadden, Mandana Properties, 4200 Park Blvd., #130, Oakland, CA 94602.

I declare under penalty of perjury under the laws of the State of California that the foregoing Proof of Service is true and correct, and this declaration was executed on May 13, 2019 at Oakland, CA.



RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM  
2019 MAY 13 AM 11:16



RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM

2019 MAY 13 AM 11:17

## Appellate Courts Case Information

1st Appellate District

Change court 

Court date last updated: 05/11/2019 10:27 AM

### Docket (Register of Actions)

525-655 Hyde Street CNML Props., LLP v. City of Oakland's Department of Housing and Community Development Rent Adjustment Program

Division 1

Case Number A156463

Date	Description	Notes
02/14/2019	Notice of appeal lodged/received.	Filed 02/07/19 by Real Party in Interests Julie Amberg, Todd McMahon, & Fernando Garcia appealing judgment from 12/12/18
02/14/2019	Notified parties of local rules and procedures.	
02/14/2019	Filing fee.	Check # 482, Julie E. Amberg
02/14/2019	Filing fee.	Check # 356, Todd McMahon
02/14/2019	Default notice sent-appellant notified per rule 8.100(c)	
02/21/2019	Appellant's notice designating record on appeal filed in trial court on:	Filed 02/14/19. **ALL APPELLANTS** Designating CT without RT Designating Administrative record.
02/22/2019	Civil case information statement filed	Real Party in Interest and Appellant: Julie Amberg Pro Per
02/22/2019	Civil case information statement filed	Real Party in Interest and Appellant: Todd McMahon Pro Per
02/25/2019	Civil case information statement filed	Real Party in Interest and Appellant: Fernando Garcia Pro Per
02/25/2019	Application for waiver of filing fee filed	
02/27/2019	Order waiving filing fee.	
03/04/2019	Filed.	Letter from appellant regarding fee waiver
03/06/2019	Order waiving filing fee	Modified
03/12/2019	Record on appeal filed	C-4 and 4 Vols of Administrative Record(Kept with CT)

[https://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=1&doc\\_id=2278666...](https://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=1&doc_id=2278666...) 5/11/2019

000241

04/19/2019 Requested - extension of time.	Appellant's opening brief. Requested for 07/22/2019 By 91 Day(s)
04/19/2019 Requested - extension of time.	Appellant's opening brief. Requested for 07/22/2019 By 91 Day(s)
04/19/2019 Requested - extension of time.	Appellant's opening brief. Requested for 07/22/2019 By 91 Day(s)
04/19/2019 Granted - extension of time.	Appellant's opening brief. Due on 06/21/2019 By 60 Day(s)
04/19/2019 Granted - extension of time.	***Partial grant of 60 days to 5/21/19. Further extensions are not contemplated.***
04/19/2019 Granted - extension of time.	Appellant's opening brief. Due on 06/21/2019 By 60 Day(s)
04/19/2019 Granted - extension of time.	***Partial grant of 60 days to 5/21/19. Further extensions are not contemplated.***
04/19/2019 Granted - extension of time.	Appellant's opening brief. Due on 06/21/2019 By 60 Day(s)
04/19/2019 Granted - extension of time.	***Partial grant of 60 days to 5/21/19. Further extensions are not contemplated.***
04/22/2019 Application for waiver of filing fee filed	(change in circumstance)
04/23/2019 Order waiving filing fee	Modified
04/26/2019 Mail returned and re-sent.	notice of 4/19/19 to J. Amberg bounced back; corrected email in docket and re-sent

[Click here](#) to request automatic e-mail notifications about this case.

[Careers](#) | [Contact Us](#) | [Accessibility](#) | [Public Access to Records](#) | [Terms of Use](#) | [Privacy](#)

© 2019 Judicial Council of California

RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM  
2019 MAY 13 AM 11:17

[https://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=1&doc\\_id=2278666...](https://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=1&doc_id=2278666...) 5/11/2019

000242

# Appellate Courts Case Information

1st Appellate District

Change court 

Court data last updated: 05/11/2019 10:27 AM

## Case Summary

Trial Court Case:	RG17862841
Court of Appeal Case:	A158463
Division:	1
Case Caption:	525-655 Hyde Street CNML Props., LLP v. City of Oakland's Department of Housing and Community Development Rent Adjustment Program
Case Type:	CV
Filing Date:	02/07/2019
Completion Date:	
Oral Argument Date/Time:	

### Cross Referenced Cases:

No Cross Referenced Cases Found

[Click here to request automatic e-mail notifications about this case](#)

[Careers](#) | [Contact Us](#) | [Accessibility](#) | [Public Access to Records](#) | [Terms of Use](#) | [Privacy](#)

© 2019 Judicial Council of California

RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM  
2019 MAY 13 AM 11:17

2019 MAY 22 PM 1:22

1 Clifford E. Fried, Esq., SBN 118288  
2 Jonathan Madison, Esq., SBN 311553  
3 Fried & Williams LLP  
4 1901 Harrison Street, 14<sup>th</sup> Floor  
5 Oakland, CA 94612  
6 Tel: (510) 625-0100  
7 Fax: (510) 550-3621  
8 jmadison@friedwilliams.com

9 Attorneys for Petitioner.  
10 Rockridge Real Estate, LLC & Reinke, LLC

11 COMMUNITY AND HOUSING DEVELOPMENT AGENCY  
12 RENT ADJUSTMENT PROGRAM  
13 CITY OF OAKLAND

14 525-655 Hyde St. CNML Props., LLP,

15 Petitioner,

16 vs.

17 City of Oakland's Department of Housing and  
18 Community Development, et al.,

19 Respondents.

20 AND REAL PARTIES IN INTEREST

Case No.: RG17-862841  
RAP Case No.: L14-0065

**OPPOSITION TO REQUEST FOR  
STAY OF PROCEEDINGS**

**INTRODUCTION AND STATEMENT OF FACTS**

21 On December 18, 2018, the Hon. Judge Jeffrey Brand entered a judgment granting  
22 Petitioner's Motion for Judgment on the Writ of Administrative Mandamus. Attached as  
23 Exhibit "A" is a copy of the Court's judgment and the writ issued by the Court clerk. The  
24 Judgment sets aside and vacates the Rent Adjustment Program's ("RAP") appeal decision  
25 in case no. L14-0065. The Judgment further orders the RAP to reconsider the appeal  
26 decision in its entirety. The Court has reserved and retained jurisdiction over this action  
27 until the RAP files a return showing it has complied with the Writ of Mandamus.  
28

1 On May 13, 2019, Real Parties in Interest Julie Amberg, Kalle Garcia, Mari Oda and  
2 Garcia, Mari Oda and Todd McMahon, filed a request for the RAP to stay all proceedings  
3 in this matter. Attached hereto as Exhibit "B" is a true and correct copy of the Request for  
4 Stay of Proceedings. The RAP cannot and should not stay any proceedings in this matter  
5 because the RAP does not have the procedure nor the power to stay proceedings in this  
6 matter, particularly when a Court order requires the RAP to reconsider the appeal decision  
7 in its entirety. Secondly, if the RAP grants the request and stays proceedings in this matter,  
8 the City of Oakland would be held in contempt of court for violating a Court's Judgment  
9 and Writ of Mandamus. As such, granting the request filed by the Real Parties in Interest  
10 would place the City of Oakland at great risk.

11  
12 **ARGUMENT**

13 **A. THE RAP HAS NO PROCEDURE OR AUTHORITY TO STAY**  
14 **PROCEEDINGS, PARTICULARLY WHEN A COURT'S**  
15 **JUDGMENT REQUIRES THE RAP TO RECONSIDER THE CASE.**

16 The RAP has no procedures in place by which to stay proceedings, especially when  
17 a Court's judgment requires the RAP to reconsider those proceedings. More importantly,  
18 a superior court's judgment preempts the RAP's authority. The RAP does not have the  
19 power to directly contradict a Court Judgment and Writ of Administrative Mandamus.  
20 Regardless of whether the Real Parties in Interest have filed notices of appeal, the RAP has  
21 been ordered by the Court to hear and reconsider this matter without delay. The Alameda  
22 County Superior Court has also retained jurisdiction over this matter, which should make  
23 it clear that the RAP does not have authority to stay proceedings. As such, the RAP should  
24 not grant the request for stay of proceedings filed by the Real Parties in Interest.

25 //  
26 //  
27 //  
28 //

RECEIVED  
CITY OF OAKLAND  
RENT ADJUDICATION PROGRAM

2019 MAY 22 PM 1:22

**B. THE CITY OF OAKLAND IS AT RISK OF BEING IN CONTEMPT OF COURT IF THE RAP GRANTS THE REQUEST FOR STAY OF PROCEEDINGS FILED BY THE REAL PARTIES IN INTEREST.**

If the RAP were to grant the request for stay of proceedings filed by the Real Parties in Interest, this would place the City of Oakland at risk of being in contempt of court for violating the Judgment and Writ of Administrative Mandamus dated December 18, 2018. Since the RAP's authority is preempted by the superior court, it cannot and should not stay proceedings in this matter. The Court's Judgment and Writ of Administrative Mandamus clearly direct the RAP to proceed in reconsidering this case. The RAP is required to act pursuant to the Judgment and Writ of Administrative Mandamus. As such, the RAP should not grant the request for stay of proceedings.

**CONCLUSION**

The RAP does not have the procedures in place nor the power to stay proceedings in this matter. Further, if the RAP grants the request and stays proceedings in this matter, the City of Oakland would be in contempt of court for violating a Court's Judgment and Writ of Mandamus. As such, the RAP cannot and should not stay any proceedings in this matter.

Date: May 22, 2019

Fried & Williams LLP



Jonathan Madison  
Attorneys for Petitioner  
Rockridge Real Estate, LLC & Reinke, LLC

RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM  
2019 MAY 22 PM 1:22

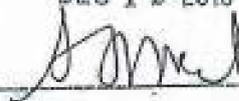
EXHIBIT A

000247

RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM  
2019 MAY 22 PM 1:22

1 Clifford E. Fried, Esq., SBN 118288  
2 Fried & Williams LLP  
3 1901 Harrison Street  
4 Oakland, CA 94612  
5 Phone: (510) 625-0100  
6 Email: cfried@friedwilliams.com

**FILED**  
ALAMEDA COUNTY  
DEC 12 2018

By 

7 Attorneys for Petitioners  
8 Rockridge Real Estate, LLC & Reinke, LLC

9  
10 IN THE SUPERIOR COURT OF STATE OF CALIFORNIA  
11 IN AND FOR THE COUNTY OF ALAMEDA

12 525-655 HYDE ST. CNML PROPS., LLP,  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
Petitioner,

Case No.: RG17-862841

**[PROPOSED] JUDGMENT  
GRANTING WRIT OF  
ADMINISTRATIVE MANDAMUS**

vs.

CITY OF OAKLAND'S DEPARTMENT OF  
HOUSING AND COMMUNITY  
DEVELOPMENT RENT ADJUSTMENT  
PROGRAM, and DOES 1 THROUGH 25,

Respondents.

Jilleun Eglin,  
Lexie Eglin,  
Angelique Johnson-Martinez,  
Suzanne Miller,  
Fernando Garcia,  
Kate Flick Garcia,  
Bianca Penaloza,  
David Preciado,  
Julie Amberg,  
Tyler Ritter,  
Marie Oda,  
Todd McMahan,  
Andrew Simkin,  
Jessica Simkin,  
and DOES 26 THROUGH 40,

Real Parties in Interest.

JUDGMENT GRANTING MOTION FOR JUDGMENT ON THE WRIT OF ADMINISTRATIVE MANDAMUS



2019 MAY 22 PM 1:22

1 The Motion for Judgment on the Writ of Administrative Mandamus of Petitioners  
2 Rockridge Real Estate, LLC & Reinke, LLC ("Petitioners") came on for hearing on July  
3 26, 2018 and August 23, 2018 in Department 511 before the Honorable Kimberly Colwell.  
4 Clifford E. Fried, of Fried & Williams LLP appeared on behalf of Petitioners. Jamilah A.  
5 Jefferson, of the City of Oakland's City Attorney's Office, appeared on behalf of  
6 Respondent City of Oakland's Department of Housing and Community Development  
7 Rent Adjustment Program. Real Parties in Interest were present in the courtroom. The  
8 matter was argued and taken under submission. After considering the pleadings,  
9 Administrative Record, all moving and opposition papers, arguments of counsel, and file  
10 in this matter, the court entered an Order granting Petitioners' motion to augment the  
11 record and then granted Petitioners' petition and motion for writ of mandate directing the  
12 City of Oakland's Department of Housing and Community Development Rent Adjustment  
13 Program to vacate the Appeal Decision in Case No. L14-0065 ("Order"). A copy of said  
14 Order is attached hereto as **Exhibit A** and incorporated herein by reference as though set  
15 forth in full. Accordingly,

16 IT IS ADJUDGED AND DECREED THAT,

17 1. Petitioners shall have judgment against Respondent City of Oakland's  
18 Department of Housing and Community Development Rent Adjustment Program, for a  
19 writ of administrative mandamus setting aside and vacating the Rent Adjustment Program  
20 Appeal Decision in Case No. L14-0065.

21 2. Respondent shall reconsider the Appeal Decision <sup>IN ITS ENTIRETY</sup> in Case No. L14-0065 in  
22 light of the court's opinions, Order and this Judgment.

23 3. A writ of administrative mandamus shall issue under seal of this Court in  
24 the form attached hereto as **Exhibit B**.

25 4. Petitioners shall recover costs of suit as the prevailing party in this action.

26  
27  
28



RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM  
2019 MAY 22 PM 1:22



**FILED**  
ALAMEDA COUNTY

AUG 23 2018

By *[Signature]*

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF ALAMEDA

525 HYDE STREET, CNML PROPS, LLP,

Petitioner,

v.

CITY OF OAKLAND,

Respondents.

No. RG17-862841

ORDER (1) GRANTING MOTION TO  
AUGMENT THE RECORD AND (2)  
GRANTING PETITION FOR WRIT OF  
MANDATE.

Date: 8/23/18  
Time: 9:00 a.m.  
Dept.: 511

The motion of 525-655 Hyde St Commercial Properties (the "Developer") to augment the administrative record and the petition of the Developer for writ of mandate directing the City of Oakland Rent Board to vacate the Appeal Decision in Case No. L14-0065 for came on for hearing on 8/23/18, in Department 511 of this Court, the Honorable Kimberly Colwell presiding. Counsel appeared on behalf of Petitioner and on behalf of Respondents. After consideration of the points and authorities and the evidence, as well as the oral argument of counsel, IT IS ORDERED: The motion of 525-655 Hyde St Commercial Properties (the "Developer") to augment the administrative record is GRANTED. The Petition of the Developer for writ of

2019 MAY 22 PM 1:22

1 mandate directing the City of Oakland Rent Board to vacate the Appeal Decision in Case No.

2 L14-0065 is GRANTED.

3  
4 **OPPORTUNITY FOR POST-HEARING BRIEFING**

5 The court's tentative decision issued before the 7/26/18 hearing framed the issues  
6 differently than as presented by the parties and at the hearing the parties indicated that they might  
7 want supplemental briefing depending on the outcome of the motion to augment. The court's  
8 tentative decision issued before the 8/23/18 hearing stated that the court would permit the  
9 opportunity for post-hearing supplemental briefing if any party requested supplemental briefing.  
10 (*Monarch Healthcare v. Superior Court* (2000) 78 Cal.App.4th 1282, 1286.) No party requested  
11 supplemental briefing.  
12  
13

14 **EVIDENCE**

15 The court GRANTS the Developer's request on 5/1/18 for judicial notice of ordinances  
16 (Exhs 1-3) and Hearing Decisions (Exhs 8-12.) The court GRANTS the Developer's request on  
17 5/1/18 for judicial notice of Tables A, B, C, and D (Exhs 4-7), but does augment the evidentiary  
18 record with those documents.  
19

20 The court GRANTS the City's request on 6/1/18 for judicial notice of Hearing Decisions.

21 The court GRANTS the City's request on 6/1/18 to supplement the record with the  
22 transcript of the Rent Board hearing. This was part of the evidence and was apparently omitted  
23 in error.  
24

25 The court DENIES the City's implicit request on 6/1/18 to supplement the record with the  
26 Declaration of David Harlan. Harlan testified before the Hearing officer. (AR 146:17-157:9.)

RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM  
2019 MAY 22 PM 1:23

1 The City has not demonstrated that Harlan's declaration testimony was either improperly  
2 excluded during the administrative process or it could not, in the exercise of reasonable  
3 diligence, have been presented before the administrative decision was made. (CCP 1094.5(e);  
4 *Evans v. City of San Jose* (2005) 128 Cal.App.4th 1123, 1144.)  
5

6 The court GRANTS the Developer's request on 6/25/18 for judicial notice of Hearing  
7 Decisions.  
8

9 MOTION TO AUGMENT THE RECORD

10 The City argued that the Developer failed to exhaust administrative remedies because it  
11 failed to argue to the Board that the Hearing Officer failed to properly apply Table A when  
12 calculating the cost of new construction. (City Oppo at 9-10.) At the hearing on 7/26/18, the  
13 Developer handed the court a copy of a brief on appeal allegedly filed with the Rent Board on  
14 5/4/16 that raised the issue at page 4 (the "Appeal Brief"). The City did not concede that the  
15 Appeal Brief was in the administrative record.  
16

17 On 8/10/18, the Developer filed a post-hearing motion under CCP 1094.5(e) to augment  
18 the record with the Appeal Brief. "A court may exercise its discretion to augment an  
19 administrative record if the evidence is relevant and if it was either improperly excluded during  
20 the administrative process or it could not, in the exercise of reasonable diligence, have been  
21 presented before the administrative decision was made." (*Evans v. City of San Jose* (2005) 128  
22 Cal.App.4th 1123, 1144.) This motion to augment does not concern evidence going to the merits  
23 that was presented to the hearing officer, but rather concerns evidence going to the procedural  
24 issue of whether the Developer raised an issue with the Board.  
25  
26

2019 MAY 22 PM 1:23

1 The Developer's Notice of Appeal filed 6/18/15 raises the primary issue of whether the  
2 balcony area should be included but not the secondary issue of whether if the balcony is included  
3 it should be treated differently than apartment space. (AR 108.)

4 The Developer's Appeal Brief is file stamped "RECEIVED CITY OF OAKLAND RENT  
5 ARBITRATION PROGRAM 2016 MAY - 4 PM 2:52." The stamp is the same as other  
6 documents filed with the Rent Board. (AR 35, 46, 72, 104.) The City has presented declaration  
7 testimony from City employees Keith Mason and Kelly Rush that the City has no record of  
8 receiving the Appeal Brief. The real parties in interest also present evidence and argue that they  
9 have no record of the Appeal Brief.  
10

11 The transcript of the Board hearing on 12/8/16 indicates that the Board discussed the  
12 primary issue of whether the balcony area should be included but that the Board did not reach the  
13 secondary issue of whether if the balcony is included it should be treated differently than  
14 apartment space.  
15

16 The motion of the Developer to augment the administrative record with the Appeal Brief  
17 is GRANTED. The Appeal Brief is file stamped as received by the Board. This creates a  
18 presumption of filing. (*In re Marriage of Mosley* (2010) 190 Cal.App.4th 1096, 1103 ["a  
19 judgment or appealable order is presumptively filed, for purposes of the 180-day time limit, on  
20 the file-stamped date"].) The City has not presented evidence that on 5/4/16 the Developer used  
21 the City's self-file-stamp procedure to file-stamp the brief but then failed to leave a copy with the  
22 City or that the Developer falsified the file stamp on the Appeal Brief. The Court finds that the  
23 substantial evidence supports a finding that the Developer filed the brief and that the City  
24 inadvertently mis-filed or lost the brief. There is no indication that the City intentionally  
25 withheld the Appeal Brief from the administrative record.  
26

1  
2 **FACTS AND PROCEDURE**

3       The Developer or its predecessor in interest rehabilitated the property located at 3921  
4 Harrison St, Oakland, CA. The Developer spent approximately \$850,000 on the project.

5       The Developer then sought a Certificate of Exemption from the Rent Board so that it  
6 could raise rents at the property. OMC 8.22.030.B.2 states, "In order to obtain an exemption  
7 based on substantial rehabilitation, an owner must have spent a minimum of fifty (50) percent of  
8 the average basic cost for new construction for a rehabilitation project and performed substantial  
9 work on each of the units in the building.  
10

11       The City notified the parties that the hearing would be on 3/20/15 and that they would be  
12 required to submit all evidence 7 days before the hearing date and that if they did not do so it  
13 "may" be excluded. (AR 414-415, 471-473.)

14       On 4/27/15, the Hearing Officer held a hearing. (AR 141-236.) During the presentation  
15 of evidence, Ms. Mira, attorney for tenants, showed Table B, which is Quarterly Cost Indexes to  
16 City Engineering Manager of the Bureau of Building David Harlan. The Hearing officer did not  
17 admit Table B into evidence at that time. (AR 152:13-27.) The submission of evidence  
18 concluded. (AR 225:16-22.)  
19

20       At argument following the presentation of evidence, Ms. Mira argued that Table A, the  
21 City of Oakland Building Services Construction Valuation, effective 8/1/09, should be adjusted  
22 by the Table B, the Quarterly Cost Indexes. (AR 228:8-11; 229:7-13). Ms. Mira presented  
23 Table B and asserted that the Hearing Officer should use it in making calculations. (AR 230:20-  
24 21.) Developer's counsel objected.  
25  
26

2019 MAY 22 PM 1:23

1 The Hearing Officer said that he could take official notice of Table B if he was supposed  
2 to use it in his calculations. (AR 230:23-231:27.) The Hearing Officer said that he was unaware  
3 of Table B until the day of the hearing. (AR 236:14-16.)

4 On 5/29/15, the Hearing Officer issued a decision denying Developer's petition for a  
5 Certificate of Exemption from the rent control ordinance. (AR 120-131.)

6 The Developer sought review by the Rent Board. On 12/8/16, the Rent Board held a  
7 hearing. (AR 777-798.) On 3/7/16, the Rent Board issued its written decision. (AR 2-4.)  
8

9  
10 **ISSUE CLARIFICATION**

11 Petitioner commingles three analytically distinct issues regarding the use of Table B  
12 during the administrative process. The first issue is whether the Board violated its own  
13 procedures when it considered Table B as evidence even though it was not disclosed seven days  
14 before the hearing. The second issue is whether the Board erred as a matter of law by  
15 incorporating Table B into the OMC 8.22.030.B.2.b substantive standard. The third issue is  
16 whether the Board violated due process by failing to adequately disclose the existence of Table B  
17 to Petitioner while Petitioner was planning and executing the rehabilitation project.  
18

19  
20 **PROCEDURES – ADMISSION OF TABLE B AS EVIDENCE**

21 The arguments on the admission of Table B as evidence presume that it is a document  
22 that is fact evidence. As discussed below, OMC 8.22.030.B.2.b incorporates tables "issued by  
23 the chief building inspector" as the substantive standard. Therefore, if the tables are the  
24 documents described in the OMC, then they are incorporated in, and extensions of, the ordinance  
25 itself. The court must take judicial notice of the law. (Evid Code 451.) Subject to the  
26



2019 MAY 22 PM 1:23

1 significant limitation that the court must provide parties the opportunity to present argument on  
2 material issues, the court (or a hearing officer) can consider law even if it is not formally  
3 presented by a party. (*Monarch Healthcare v. Superior Court* (2000) 78 Cal.App.4th 1282,  
4 1286.)

5 The Board's letters required the parties to disclose evidence 7 days before the hearing and  
6 cautioned that evidence not disclosed "may" be excluded. As a matter of policy construction,  
7 "may" is discretionary and permitted the Hearing officer to admit evidence that was not disclosed  
8 7 days before the hearing.

9 Assuming that Table B is factual evidence, the court finds that the Board did not violate  
10 its own procedures and abuse its discretion when it considered Table B even though it was not  
11 disclosed seven days before the hearing.

12 At the hearing the Hearing Officer stated that he would not admit Table B as evidence but  
13 would take official notice of Table B. Official notice appears to be equivalent to judicial notice  
14 and judicial notice is a basis for the admission of evidence. Therefore, there is no material  
15 difference between accepting Table B into evidence as submitted by a witness and taking judicial  
16 notice of Table B.

17  
18  
19  
20 **INCORPORATION OF TABLE B INTO ORDINANCE - STATUTORY INTERPRETATION.**

21 OMC 8.22.030.B.2 states:

22  
23 **Exemptions for Substantially Rehabilitated Buildings.**

- 24  
25 a. In order to obtain an exemption based on substantial rehabilitation, an owner  
26 must have spent a minimum of fifty (50) percent of the average basic cost for

2019 MAY 22 PM 1:23

1 new construction for a rehabilitation project and performed substantial work on  
2 each of the units in the building.

- 3  
4 b. The average basic cost for new construction shall be determined using tables  
5 issued by the chief building inspector applicable for the time period when the  
6 substantial rehabilitation was completed.

7 The court exercises its independent judgment in considering statutory construction and other  
8 issues of law. (*Smith v. Santa Rosa Police Dept.* (2002) 97 Cal.App.4th 546, 553-554.)

9  
10 As a matter of statutory construction, the court determines that OMC 8.22.030.B.2.b  
11 requires that the tables must be both (1) issued by the chief building inspector and (2) applicable  
12 for the time period when the substantial rehabilitation was completed.

13 As a matter of determining whether there was a fair hearing the court applies its  
14 independent judgment regarding whether the City complied with the law. The court does not  
15 apply the abuse of discretion standard usually applied to evidence decisions because the statute  
16 clearly defines the substantive standard with reference to the tables. Therefore, referring to an  
17 incorrect table is in the nature of using an incorrect jury instruction rather than making a  
18 discretionary decision on the admission of evidence.

19  
20 Table A is identified as City of Oakland Building Services Construction Valuation,  
21 effective 8/1/09. Table A is issued by the chief building inspector. Table A states that it is  
22 "Effective Aug 1, 2009." This suggests that it is effective until replaced by a new table. When  
23 testifying, City Engineering Manager Harlan was asked if Table A was "the latest table put out by  
24 the City" and he answered "Yes, that's the table we currently use." (AR 146:20-23.) There is no  
25 objection to the use of Table A.  
26

2019 MAY 22 PM 1:23

1 Table B is identified as Quarterly Cost Indexes. Table B has a footer that indicates it is  
2 from Marshall Valuation Services. There is no indication that Table B was "issued by the chief  
3 building inspector." When testifying, City Engineering Manager Harlan identified Table B and  
4 referred to it as "this source that we use." (AR 153:27.) The court finds that the Board erred as a  
5 matter of law by incorporating Table B into the ordinance as the substantive standard when it was  
6 not "issued by the chief building inspector."  
7

8 The Petition is GRANTED on the basis that applying its independent judgment the court  
9 finds that OMC 8.22.030.B.2.b requires that a table be "issued by the chief building inspector"  
10 and Table B was not "issued by the chief building inspector."  
11

#### 12 INCORPORATION OF TABLE B INTO ORDINANCE - DUE PROCESS.

13 The Developer made a discernable argument before the Hearing Officer (AR 235-236)  
14 and at the Rent Board (AR 784-785) and in this court (Reply at 5) that the Board violated due  
15 process by failing to adequately disclose the existence of Table B to Petitioner when Petitioner  
16 was planning and executing the rehabilitation project. The court exercises its independent  
17 judgment in considering issues of adequate notice or due process. (*Tafti v. County of Tulare*  
18 (2011) 198 Cal.App.4th 891, 896.)  
19

20 A statute, or ordinance, must be sufficiently clear to give a person fair warning of the  
21 conduct prohibited and they must provide a standard or guide against which conduct can be  
22 uniformly judged by courts and administrative agencies. (*Morrison v. State Board of Education*  
23 (1969) 1 Cal.3d 214, 230-231; *Zubarau v. City of Palmdale* (2011) 192 Cal.App.4th 289, 308-  
24 309.) Similarly, an ordinance must be sufficiently clear to give a person adequate notice of the  
25 requirements for obtaining a government benefit, or a Certificate of Exemption.  
26

2019 MAY 22 PM 1:23

1 A statute "will be upheld if its terms may be made reasonably certain by reference to other  
2 definable sources." (*Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1180; *Personal*  
3 *Watercraft Coalition v. Board of Supervisors* (2002) 100 Cal.App.4th 129, 138-139.)  
4 Making an "on its face" analysis, the Ordinance could reasonably refer to and incorporate "tables  
5 issued by the Chief Building Inspector."

6  
7 Making an "as applied" analysis, it is much less clear whether Table B is an "other  
8 definable source." When testifying, City Engineering Manager Harlan was asked if Table A was  
9 "the latest table put out by the City" and he answered "Yes, that's the table we currently use."  
10 (AR 146:20-23.) City Engineering Manager Harlan also identified Table B and referred to it as  
11 "this source that we use." (AR 153:27.) The Hearing Officer stated that he was unaware of  
12 Table B until the day of the hearing. (AR 236:14-16.)

13  
14 The Developer did not present evidence, but argued that it was unaware of Table B until  
15 the hearing on 4/27/15. Before the Hearing Officer, the Developer's counsel argued that the  
16 Building Department did not make Table B available to the public. (AR 235:19-236:1.) Before  
17 the Board, the Developer's counsel argued that the Developer assumed that the relevant time  
18 period was "set forth in the most recent table that's issued by the Building Services Department.  
19 That's Exhibit A" and that the Developer "relied on this Table A and be believed that when his  
20 project was completed it would be exempt." (AR 784:17-23.)

21  
22 The City and the tenants presented no evidence that Table B was an "other definable  
23 source" that was disclosed to the public as relevant to the ordinance. The court has denied the  
24 City's request to supplement the record with the declaration of Harlan. That noted, the  
25 declaration states that the City distributes Table B to persons "who request the table" and "that  
26 the City distributes [the Table] upon request." (Harlan Dec., paras 6 and 7.)

2019 MAY 22 PM 1:23

1 The court finds that the Developer did not waive this argument even though it failed to  
2 clearly present this argument to the Hearing Officer and to the Board. The Tenant's  
3 Representative, Ms. Mira, did not disclose Table B as evidence seven days before the hearing or  
4 otherwise put the Developer on notice that she would rely on Table B. The Hearing officer was  
5 unaware of Table B. The record suggests that the Developer costed out the project and prepared  
6 for the Hearing Officer hearing on the reasonable assumption that Table A was the standard  
7 against which the evidence of expense would be measured.  
8

9 The Petition is GRANTED on the basis that applying its independent judgment the court  
10 finds that on the facts of this case that Table B was not an "other definable source" and that the  
11 Ordinance therefore did not give the Developer fair warning that Table A was not the standard  
12 against which the evidence of expense would be measured and that it would be modified by  
13 Table B.  
14

15  
16 \$26,000 IN INVOICES.

17 The Developer argues that the Hearing Officer and Board erred in excluding \$26,000 in  
18 invoices. The City acknowledges that the Hearing Officer and Board appear to have made a  
19 calculation error. (City Oppo at 9:8-15.) This error did not affect the Board's decision. The  
20 apparent \$26,000 calculation error does not affect the court's decision on the petition.  
21

22 INCLUSION OF DECK SPACE.

23  
24 There is substantial evidence to support the Board's fact finding that the property space  
25 included both the apartment space and the deck and balcony space.  
26

2019 MAY 22. PM 1:23

1  
2 SEPARATE TREATMENT OF APARTMENT SPACE AND DECK/BALCONY SPACE

3 County records state the property was 13,337 sqft. (AR 247.) The Developer  
4 rehabilitated the balconies, which are an additional 1,002 sqft.

5 Table A differentiates among different "Descriptions" of construction. Table A included  
6 "Apartment space" at \$127 sqft, "Elevated Decks and Balconies" space at \$41.16 sqft, and many  
7 other descriptions of space. The Hearing Officer and the Board both decided to treat both the  
8 13,337 sqft interior space and the 1,002 sqft deck/balcony space as "Apartment space." (AR 004,  
9 123.)  
10

11 Petitioner argues that the Board erred as a matter of law by treating the deck/balcony  
12 space as "Apartment space" and should have treated it as "Elevated Decks and Balconies" space.  
13 (Opening brief at 4:21-26; 6:26-27; 7:29-8:7.)  
14

15 Petitioner has not waived this argument. At the hearing before the Hearing Officer,  
16 Petitioner argued that the calculations should exclude the deck space. (AR 3.) In the briefing to  
17 the Board, Petitioner accepted that the Hearing Officer used the deck space, but argued that the  
18 Hearing Officer should have calculated "R3 Elevated Decks and Balconies" space at \$41.16 sqft.  
19 (Brief filed with Board on 5/4/16 at page 4.) At argument before the Board, petitioner raised the  
20 primary issue of whether the balcony area should be included but did not reach the secondary  
21 issue of whether if the balcony is included whether it should be treated differently than apartment  
22 space. (AR 004, 792:3-11; 795:3-11; 796:5-798:12.)  
23

24 This is an issue of statutory construction because OMC 8.22.030.B.2.b incorporates tables  
25 to be "issued by the chief building inspector."  
26

2019 MAY 22 PM 1:23

1 As a matter of statutory construction, the City must apply Table A to projects or parts of  
2 projects based on whether the Description reasonably describes the physical structure to be  
3 constructed. The Descriptions in Table A are defined by the cost of construction rather than the  
4 potential use of the structure. The court takes judicial notice that the City of Oakland Planning  
5 and Building website states, "The cost of building permits is based upon the construction  
6 valuation of the project. Valuation includes all labor and structural materials, and all lighting,  
7 heating, ventilation, water supply, plumbing, electrical, fire sprinklers, elevator equipment."  
8 (<http://www2.oaklandnet.com/government/o/PBN/OurServices/permits/index.htm>) Consistent  
9 with this purpose, the Rent Board should apply schedule A to projects and parts of projects based  
10 on whether the Description reasonably describes the physical structure to be constructed.  
11

12 The Board misapplied OMC 8.22.030.B.2.b and the incorporated tables by focusing on  
13 the potential use of the balconies rather than the cost of building or rehabilitating the balconies.  
14 The Board's decision states "there was no abuse of discretion by the Hearing Officer in including  
15 the balconies' area where such space is useable space that expands the tenants' livable area."  
16 (AR 004.) (See also AR 797:10-11.)  
17

18 This was legal error because the Table A analysis concerns the cost of constructing the  
19 project or part of the project, not the potential use of the constructed property. Although the Rent  
20 Board in other contexts might be focused on whether rental space is usable, liveable, and  
21 habitable, in the context of OMC 8.22.030.B.2.b and Table A, the Rent Board must focus on the  
22 cost of construction. Even if OMC 8.22.030.B.2.b and Table A did concern usable, liveable, or  
23 habitable space, the BMC elsewhere defines "habitable space" and "habitable rooms" in a way  
24 that suggests they do not include exterior balconies and decks. (OMC 15.20.030 [Building and  
25 Construction Code]; 17.09.040 [Planning Code].)  
26

2019 MAY 22 PM 1:23

1 As a matter of statutory construction, the City must give effect to all the "Description"  
2 categories in Table A. If a general "Description" and a specific "Description" both apply to a  
3 construction project or to a part of a construction project, then the City must give effect to the  
4 specific "Description." (*Collection Bureau of San Jose v. Rumsey* (2000) 24 Cal.4th 301, 310;  
5 *Garcia v. McCutchen* (1997) 16 Cal.4th 469, 477-0478.)  
6

7 The Board misapplied OMC 8.22.030.B.2.b and the incorporated tables by treating both  
8 the 13,337 sqft and the 1,002 sqft as Apartment space. Although an apartment might have a  
9 balcony or deck, Table A has a separate specific line item for "Elevated Decks and Balconies."  
10 Where Table A sets out a specific Description that applies to a project or a part of a project, the  
11 Board must give effect to the specific Description.

12 The Board stated that the Hearing Officer did not abuse his discretion by including the  
13 balconies in the "Apartment" space. (AR 004.) (See also AR 797:1-9.) The Hearing Officer  
14 makes factual findings about whether a project or a part of a project fits within a certain  
15 Description. The Hearing Officer does not, however, have the discretion to characterize a project  
16 or a part of a project based on improper criteria. The Hearing Officer and the Board misapplied  
17 the law by focusing on the potential use of the balconies rather than their cost of construction and  
18 by not giving effect to the specific Description for "Elevated Decks and Balconies."  
19  
20

## 21 CONCLUSION

22 The Petition of 525-655 Hyde St Commercial Properties (the "Developer") for writ of  
23 mandate directing the City of Oakland Rent Board to vacate the Appeal Decision in Case No.  
24 L14-0065 is GRANTED.  
25  
26



2019 MAY 22 PM 1:23

1 Consistent with CCP 1094.5(f), the court orders the City of Oakland Rent Board to  
2 reconsider the case in light of the court's opinion and judgment. The judgment shall not limit or  
3 control in any way the discretion legally vested in the respondent Board. If permitted by its  
4 procedures, the Rent Board may direct the Hearing Officer to conduct a further hearing. If  
5 permitted by its procedures, the Rent Board may reconsider either the entire matter or only the  
6 issues implicated by this order. The court expressly does not direct the Rent Board to grant the  
7 petition for a Certificate of Exemption.  
8

9 At the hearing on 8/23/18, counsel for the Developer asked that the court order the Rent  
10 Board to expedite further proceedings given that the Developer filed the petition for certificate of  
11 exemption on 11/10/14 (AR 558-761) and the matter has been pending for almost four years.  
12 Counsel for the City did not object to that request. The court encourages the Rent Board to  
13 promptly reconsider this matter consistent with the procedures in OMC 8.22.120 and Rent  
14 Adjustment Program Regulations 8.22.110 and 8.22.120.  
15

16 The court directs the Developer to prepare and submit to the court both a proposed  
17 judgment and a proposed writ. (CRC 3.1312.)  
18

19 Dated: August 23, 2018  
20

  
21 Kimberly Colwell  
22 Judge of the Superior Court  
23  
24  
25  
26

2019 MAY 22 PM 1:23

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ALAMEDA

Case Number: RG17862841

Case Name: 525 Hyde Street, CNML Props, LLP vs. City of Oakland

- 1) Order 1) Granting Motion to Augment the Record and 2) Granting Petition for Writ of Mandate

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing Order 1) Granting Motion to Augment the Record and 2) Granting Petition for Writ of Mandate was mailed first class, postage prepaid, in a sealed envelope, addressed as shown below by placing it for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

I declare under penalty of perjury that the foregoing is true and correct. Executed on

8/24/2018

Executive Officer/Clerk of the Superior Court  
By M. Scott Sanchez, Deputy Clerk

Fernando & Kate F. Garcia, *Pro Se*  
3921 Harrison Street, Unit #202  
Oakland, CA 94611

Todd McMahon and Mari Oda, *Pro Se*  
3921 Harrison Street, Unit #304  
Oakland, CA 94611

Julie E. Amberg, *Pro Se*  
3921 Harrison Street, Unit #302  
Oakland, CA 94611

JAMILAH A. JEFFERSON,  
One Frank H. Ogawa Plaza, 6th Floor  
Oakland, California 94612

Clifford E. Fried, Esq., SBN 118288  
Fried & Williams LLP  
1901 Harrison Street, 14<sup>th</sup> Floor  
Oakland, CA 94612

2019 MAY 22 PM 1:23

(5)

1 Clifford E. Fried, Esq., SBN 118288  
2 Fried & Williams LLP  
3 1901 Harrison Street  
4 Oakland, CA 94612  
5 Phone: (510) 625-0100  
6 Email: cfried@friedwilliams.com

7 Attorneys for Petitioners  
8 Rockridge Real Estate, LLC & Reinke, LLC

9  
10 IN THE SUPERIOR COURT OF STATE OF CALIFORNIA  
11 IN AND FOR THE COUNTY OF ALAMEDA

Case No.: RG17-862841

12 525-655 HYDE ST. CNML PROPS., LLP,

13 Petitioner,

**[PROPOSED] WRIT OF  
ADMINISTRATIVE MANDAMUS**

14 vs.

15 CITY OF OAKLAND'S DEPARTMENT OF  
16 HOUSING AND COMMUNITY  
17 DEVELOPMENT RENT ADJUSTMENT  
18 PROGRAM, and DOES 1 THROUGH 25,

19 Respondents.

20 Jilleun Eglin,  
21 Lexie Eglin,  
22 Angelique Johnson-Martinez,  
23 Suzanne Miller,  
24 Fernando Garcia,  
25 Kate Flick Garcia,  
26 Bianca Penaloza,  
27 David Preciado,  
28 Julie Amberg,  
Tyler Ritter,  
Marie Oda,  
Todd McMahon,  
Andrew Simkin,  
Jessica Simkin,  
and DOES 26 THROUGH 40,

Real Parties in Interest.

WRIT OF ADMINISTRATIVE MANDAMUS

000267

2019 MAY 22 PM 1:23

WRIT OF MANDAMUS

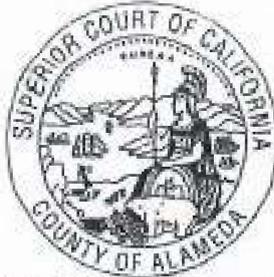
To: CITY OF OAKLAND'S DEPARTMENT OF HOUSING AND  
COMMUNITY DEVELOPMENT RENT ADJUSTMENT PROGRAM AND ITS  
ATTORNEY OF RECORD:

**YOU ARE HEREBY COMMANDED** immediately upon receipt of this writ to:

1. Set aside and vacate the Rent Adjustment Program Appeal Decision in  
Case No. L14-0065.

2. Reconsider the Appeal Decision in Case No: L14-0065 in light of the court's  
opinions, Order and Judgment.

The Court will retain jurisdiction over Respondent proceedings by way of a return to this  
peremptory writ of mandamus until the Court has determined that Respondent has  
complied with the following order:



Chad Fiske, Clerk

By [Signature], Deputy Clerk

ORDER

LET THE WRIT OF MANDAMUS ISSUE.

Date: 12/12/18

[Signature]  
JEFFREY S. BRAND,  
Judge of the Alameda Superior Court

RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM

2019 MAY 22 PM 1:23

EXHIBIT B

000269

RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM

RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM

2019 MAY 22 PM 1:23

CITY OF OAKLAND  
HOUSING AND COMMUNITY DEVELOPMENT  
RENT ADJUSTMENT PROGRAM

2019 MAY 13 AM 11:15

**HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD**

**RENT ADJUSTMENT PROGRAM**

**CASE L-14-0065**

**525, 655 HYDE ST. CNML, PROPERTIES LLC v. TENANTS**

**REQUEST FOR STAY OF PROCEEDINGS**

On March 7, 2017 this Board affirmed the Hearing Officer's May 29, 2015 decision in Case No. L14-0065. On June 5, 2017 the property owner 525, 655 Hyde St., CNML, Properties LLL filed a petition for a writ of administrative mandate in the Superior Court for the State of California, County of Alameda,, in Case RG17-862841.

On August 23, 2018, the Court in that case issued an Order granting the petition for mandate. However, the Order expressly did **not** direct the HRRRB to grant the petition for a certificate of exemption. The Order remanded the case back to the HRRRB for reconsideration. The Order expressly did **not** limit or control the HRRRB's discretion (1) to direct the Hearing Officer to conduct a further hearing, or (2) to reconsider the entire matter.

The Order stated:

"Consistent with CCP 1094.5(f), the court orders the City of Oakland Rent Board to reconsider the case in light of the court's opinion and judgment. The judgment shall not limit or control in any way the discretion legally vested in the respondent Board. If permitted by its procedures, the Rent Board may direct the Hearing Officer to conduct a further hearing. If permitted by its procedures, the Rent Board may reconsider either the entire matter or only the issues implicated by this order. The court expressly does not direct the Rent Board to grant the petition for a Certificate of Exemption."

On December 12, 2018 the court issued a Judgment which incorporated by reference the August 23, 2018 Order, quoted above.

On February 7, 2019, tenants Julie Amberg, Fernando Garcia and Todd McMahon filed **notices of appeal of the Judgment**. Their appeals are docketed as **Case Number A156463** in the California Court of Appeal, 1<sup>st</sup> Appellate District. A copy of the Docket (Register of Actions) in that appeal is attached. Their appeals stay enforcement of the Judgment.

Tenants Julie Amberg, Kate Garcia, Fernando Garcia, Mari Oda and Todd McMahon are Tenant parties in RAP Case No. L14-0065 and are Real Parties In Interest in Case RG-17-862841. They respectfully **request** that the HRRRB and the Rent Adjustment Program **stay all**

RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM

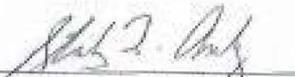
proceedings in Rent Adjustment Program Case No L14-0065 until 60 days of a final judgment in Case No. RG-17-862841 and Appeal Case No. A156463 from which no further appeal or further review has been taken or can be taken.

2019 MAY 22 PM 1:23

The request is in the interest of justice. It will provide those Tenants and Real Parties In Interest a reasonable time to communicate with the HRRRB and/or the Rent Adjustment Program with respect to the nature and extent of further proceedings at the HRRRB and/or at a Hearing Officer.

Respectfully submitted,

Date: May 13, 2019



Stanley L. Amberg,  
Representative for  
Tenants-Real Parties In Interest

#### PROOF OF SERVICE

I, Stanley L. Amberg, declare that I am at least 18 years of age, and that on or before the date below, a copy of this Request For Stay Of Proceedings was served on the following, in the manner described:

By First Class Mail, United States Postal Service, postage prepaid, in envelopes addressed to:

Fried & Williams LLP, Att'n Clifford E. Fried, Esq., 1901 Harrison Street, Oakland, CA 94612, Attorneys for 525, 655 HYDE ST. CNML, PROPERTIES LLC; and

Ray McFadden, Mandana Properties, 4200 Park Blvd., #130, Oakland, CA 94602.

I declare under penalty of perjury under the laws of the State of California that the foregoing Proof of Service is true and correct, and this declaration was executed on May 13, 2019 at Oakland, CA.



RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM  
2019 MAY 13 AM 11:15

RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM

2019 MAY 22 PM 1:23

RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM

2019 MAY 13 AM 11:15

## Appellate Courts Case Information

1st Appellate District

Change court 

Court data last updated: 05/11/2019 10:27 AM

## Docket (Register of Actions)

525-655 Hyde Street CNML Props., LLP v. City of Oakland's Department of Housing and Community  
Development Rent Adjustment Program

Division 1

Case Number A156463

Date	Description	Notes
02/14/2019	Notice of appeal lodged/received.	Filed 02/07/19 by Real Party in Interests Julie Amberg, Todd McMahon, & Fernando Garcia appealing judgment from 12/12/18.
02/14/2019	Notified parties of local rules and procedures.	
02/14/2019	Filing fee.	Check # 482, Julie E. Amberg
02/14/2019	Filing fee.	Check # 356, Todd McMahon
02/14/2019	Default notice sent-appellant notified per rule 8.100(c).	
02/21/2019	Appellant's notice designating record on appeal filed in trial court on:	Filed 02/14/19. **ALL APPELLANTS** Designating CT without RT. Designating Administrative record.
02/22/2019	Civil case information statement filed.	Real Party in Interest and Appellant: Julie Amberg Pro Per
02/22/2019	Civil case information statement filed.	Real Party in Interest and Appellant: Todd McMahon Pro Per
02/25/2019	Civil case information statement filed.	Real Party in Interest and Appellant: Fernando Garcia Pro Per
02/25/2019	Application for waiver of filing fee filed.	
02/27/2019	Order waiving filing fee.	
03/04/2019	Filed:	Letter from appellant regarding fee waiver
03/06/2019	Order waiving filing fee.	Modified
03/12/2019	Record on appeal filed.	C-4 and 4 Vols of Administrative Record(Kept with CT)



RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM

2019 MAY 22 PM 1:24

04/19/2019	Requested - extension of time.	Appellant's opening brief. Requested for 07/22/2019 By 91 Day(s)
04/19/2019	Requested - extension of time.	Appellant's opening brief. Requested for 07/22/2019 By 91 Day(s)
04/19/2019	Requested - extension of time.	Appellant's opening brief. Requested for 07/22/2019 By 91 Day(s)
04/19/2019	Granted - extension of time.	Appellant's opening brief. Due on 06/21/2019 By 60 Day(s)  ***Partial grant of 60 days to 6/21/19. Further extensions are not contemplated.***
04/19/2019	Granted - extension of time.	Appellant's opening brief. Due on 06/21/2019 By 60 Day(s)  ***Partial grant of 60 days to 6/21/19. Further extensions are not contemplated.***
04/19/2019	Granted - extension of time.	Appellant's opening brief. Due on 06/21/2019 By 60 Day(s)  ***Partial grant of 60 days to 6/21/19. Further extensions are not contemplated.***
04/22/2019	Application for waiver of filing fee filed.	(change in circumstance)
04/23/2019	Order waiving filing fee.	Modified
04/26/2019	Mail returned and re-sent.	enotice of 4/19/19 to J. Amberg bounced back; corrected email in docket and re-sent

[Click here to request automatic e-mail notifications about this case.](#)

[Careers](#) | [Contact Us](#) | [Accessibility](#) | [Public Access to Records](#) | [Terms of Use](#) | [Privacy](#)

© 2019 Judicial Council of California

RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM  
2019 MAY 13 AM 11:15

RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM

2019 MAY 22 PM 1:24

## Appellate Courts Case Information

1st Appellate District

Change court

*Court data last updated: 05/11/2019 10:27 AM*

### Case Summary

Trial Court Case:	RG17882841
Court of Appeal Case:	<b>A156463</b>
Division:	1
Case Caption:	525-655 Hyde Street CNML Props., LLP v. City of Oakland's Department of Housing and Community Development Rent Adjustment Program

Case Type:	CV
Filing Date:	02/07/2019
Completion Date:	
Oral Argument Date/Time:	

**Cross Referenced Cases:**

No Cross Referenced Cases Found

[Click here to request automatic e-mail notifications about this case.](#)

[Careers](#) | [Contact Us](#) | [Accessibility](#) | [Public Access to Records](#) | [Terms of Use](#) | [Privacy](#)

© 2019 Judicial Council of California

RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM  
2019 MAY 13 AM 11:16



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

Housing and Community Development Department  
Rent Adjustment Program

TEL (510) 238-3721  
FAX (510) 238-6181  
CA Relay Service 711

### ORDER RE HEARINGS

Case No./Name: L14-0065, 525,655 Hyde St, CNML Properties LLC. v. Tenants T18-0328, Amberg v. Rockridge Real Estate  
T19-0081, 0082, 0083, 0107, 0110, 0119, Garcia et al. v. Rockridge Real Estate

Property Address: 3921 Harrison Street, Oakland, CA

Background: The Rent Adjustment Program received a request for a postponement of hearings on June 25, 2019, regarding T19-0081 et al., and case number T18-0328 on the grounds that the issues are substantially similar in these cases. There also is a pending case L14-0065, remanded to the hearing officer by the Rent Board.

The Board affirmed the Hearing Decision in L14-0065. On June 5, 2017, the owner filed a petition for writ of administrative mandate in the Superior Court, Alameda County in RG17-862841. The Court remanded the case back to the Rent Board for reconsideration of the issue of an owner exemption from the Rent Ordinance.

The tenants have appealed the Superior Court judgment in case RG17-862841 to the California Court of Appeal, A156463 and request a stay of the remand hearing in L14-0065 pending a final decision by the Court of appeals.

The Rent Ordinance Regulation 8.22.10(A) sets forth the "Good Cause" requirement for postponement of a hearing. Section 8.22.110(A) states that a postponement request shall be made at the earliest date possible after receipt of the notice of hearing with supporting documentation attached.

**GOOD CAUSE APPEARING**, the Hearing scheduled for June 25, 2019, is cancelled, and the remand hearing in L14-0065 is stayed pending a final decision by the Court of Appeals in A156463.

DATE: May 29, 2019

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

**PROOF OF SERVICE**

**Case Numbers L14-0065, T18-0328, and  
T19 -0081, -0082, -0083, -0107, -0110, -0119**

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

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

**Documents Included**

Order Re Hearings

**Owners**

Nathaniel Reinke, Rockridge Real Estate, LLC  
1373 Clay St #11  
San Francisco, CA 94109

Ray McFadden, Mandana Properties  
4200 Park Blvd #130  
Oakland, CA 94602

**Owner Representatives**

525-655 Hyde Street CNML Tsegab Assefa  
4844 Telegraph Ave  
Oakland, CA 94609

Clifford E. Fried, Esq., Fried & Williams LLP  
1901 Harrison St, 14<sup>th</sup> Floor  
Oakland, CA 94612

**Tenant Representatives**

Ana Mira  
3022 International Blvd #410  
Oakland, CA 94601

Liz Hart  
480 9th St  
Oakland, CA 94607

Stanley Amberg  
11 Carolyn Lane  
Chappaqua, NY 10514

**Tenants**

Alexander Taylor  
3921 Harrison St #104  
Oakland, CA 94611

Alexandru Butnaru  
3921 Harrison St #102  
Oakland, CA 94611

Alexandru Vasilescu  
3921 Harrison St #301  
Oakland, CA 94611

Andrew Simkin  
3921 Harrison St #305  
Oakland, CA 94611

Angelique Johnson-Martinez  
3921 Harrison St #103  
Oakland, CA 94611

Bianca Penaloza  
3921 Harrison St #204  
Oakland, CA 94611

Cooper Spinelli  
3921 Harrison St #203  
Oakland, CA 94611

Dana Sarvestani  
3921 Harrison St #203  
Oakland, CA 94611

Elena Butnaru  
3921 Harrison St #102  
Oakland, CA 94611

Elizabeth VanLanen  
3921 Harrison St Penhouse  
Oakland, CA 94611

Fernando Garcia  
3921 Harrison St #202  
Oakland, CA 94611

Jessica Simkin  
3921 Harrison St #305  
Oakland, CA 94611

Jilleun Eglin & Lexie Eglin  
3921 Harrison St #101  
Oakland, CA 94611

Julie Amberg  
3921 Harrison St #302  
Oakland, CA 94611

Kate Garcia  
3921 Harrison St #202  
Oakland, CA 94611

Lisa Romero  
3921 Harrison St #205  
Oakland, CA 94611

Mari Oda  
3921 Harrison St #304  
Oakland, CA 94611

Ria Cruz  
3921 Harrison St #105  
Oakland, CA 94611

Steven Miller  
3921 Harrison St Penhouse  
Oakland, CA 94611

Suzanne Miller  
3921 Harrison St #201  
Oakland, CA 94611

Tadeusz Butnaru  
3921 Harrison St #102  
Oakland, CA 94611

Todd McMahon  
3921 Harrison St #304  
Oakland, CA 94611

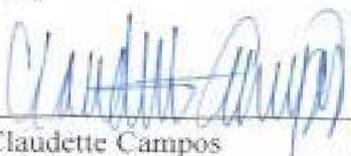
Tyler Ritter  
3921 Harrison St #303  
Oakland, CA 94611

Zoe Bridges  
3921 Harrison St #301  
Oakland, CA 94611

Zvetlana Butnaru  
3921 Harrison St #104  
Oakland, CA 94611

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **June 04, 2019** in Oakland, CA.

  
\_\_\_\_\_  
Claudette Campos  
Oakland Rent Adjustment Program

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

525-655 HYDE STREET CNML  
PROPS., LLP et al.,

Petitioners and Respondents,

v.

CITY OF OAKLAND  
DEPARTMENT OF HOUSING AND  
COMMUNITY DEVELOPMENT  
RENT ADJUSTMENT PROGRAM,

Respondent.

JULIE AMBERG et al.,

Real Parties in Interest and  
Appellants.

A156463

(Alameda County  
Super. Ct. No.  
RG17862841)

Real parties in interest, three residents of an Oakland apartment building (Tenants), appeal from an adverse judgment in this administrative mandamus proceeding filed by the owner of the building (Owner). Owner, after making substantial repairs and improvements to the building, filed a “Petition for Exemption” from Oakland’s Rent Adjustment Ordinance, pursuant to its “substantial rehabilitation” provisions. Following a hearing, at which Owner and numerous tenants represented by counsel submitted evidence, the hearing officer found the dollar amount of qualifying repairs

and improvements insufficient to meet the exemption requirement. Owner appealed to the Oakland Housing, Residential, Rent and Relocation Board (Board), which upheld the decision.

Owner then filed a writ petition, which the trial court granted, concluding the hearing officer and Board had made several legal errors. The court remanded the matter for reconsideration in accordance with its rulings.<sup>1</sup>

Tenants challenge one of these rulings, as well as an order augmenting the administrative record.<sup>2</sup> We affirm.

### **DISCUSSION<sup>3</sup>**

#### ***Mootness***

We first address Tenants' claim that the case has been rendered moot by Oakland's elimination of the substantial rehabilitation exemption.

The pertinent circumstances are as follows:

---

<sup>1</sup> The remand order states:

“Consistent with Code of Civil Procedure [section] 1094.5(f), the court orders the City of Oakland Rent Board to reconsider the case in light of the court's opinion and judgment. The judgment shall not limit or control in any way the discretion legally vested in the respondent Board. If permitted by its procedures, the Rent Board may direct the Hearing Officer to conduct a further hearing. If permitted by its procedures, the Rent Board may reconsider the entire matter or only the issues implicated by this order. The court expressly does not direct the Rent Board to grant the petition for a Certificate of Exemption.”

<sup>2</sup> Although the City of Oakland appeared in the trial court and urged that the Board's decision be upheld, the city did not appeal from the trial court's judgment and has not appeared, as amicus or otherwise, in this appeal.

<sup>3</sup> We discuss the relevant facts and procedural background in connection with our discussion of the issues on appeal.



Owner filed for a substantial rehabilitation exemption on November 10, 2014.

Three years later, on November 28, 2017, the city enacted a 180-day moratorium on such exemptions, which it extended for another 180 days so staff could complete a report with options and recommendations. (Oak. Ord. No. 13523.<sup>4</sup>)

The staff report, dated August 14, 2018, discussed three options—a three-year moratorium allowing further study and analysis, restricting the exemption to vacant and uninhabitable units, and eliminating the exemption. The report observed that most rent control jurisdictions no longer have such exemptions and provide other means for owners to recoup capital improvement costs, which Oakland also allows.

Following a public hearing on September 17, the city council extended the moratorium an additional 180 days and voted to eliminate the exemption.

On March 21, 2019, the city council adopted ordinance No. 13523, eliminating the exemption. (Oak. Ord. No. 13523.) The ordinance amended Municipal Code section 8.22.030 to read in pertinent part:

“A. Types of Dwelling Units Exempt. The following dwelling units are not covered units for purposes of this chapter. . . : [¶] . . . [¶]

“6. Substantially rehabilitated buildings. This exemption shall apply only to buildings where the rental property owner submitted an application for a certification of exemption to the Rent Adjustment Program prior to October 20, 2017, and which have been issued a certificate of exemption from the Rent Adjustment Program.” (Oak. Ord. No. 13523, § 1, A(6), underscoring omitted.)

---

<sup>4</sup> We take judicial notice of the city’s legislative actions and the staff reports prepared in connection therewith. (Evid. Code, § 452.)

There is no dispute Owner filed its application long before October 20, 2017. Tenants assert that not only must an application have been filed by that date, but such application also must have been granted by that date.

The plain language of the ordinance does not support Tenants' reading. (See *L.G. v. M.B.* (2018) 25 Cal.App.5th 211, 227 [it is a "general principle that the plain language of a statute is controlling"].) As a grammatical matter, the October 20, 2017 date pertains only to the application for a substantial rehabilitation exemption. Moreover, the ordinance easily could have stated that both an application for such an exemption must have been filed *and* a certificate of exemption must have been obtained, by October 20, 2017. It does not, however, so state. (See *The Internat. Brotherhood of Boilermakers, etc. v. NASSCO Holdings Inc.* (2017) 17 Cal.App.5th 1105, 1117 [although legislature could have defined key term of statute to include certain employment action, it did not do so, and court would not read statute as though it included such definition].)

The most plausible reading of the plain language, then, is that the city council established a cut-off date for exemption applications, thus allowing timely filed applications to be processed, but barring any further applications and ensuing exemptions.

Tenants also point out Owner's application was denied by the hearing officer and the Board. But there is no suggestion in either the ordinance or staff reports that a timely applicant receiving an adverse ruling from a hearing officer would be barred from pursuing either the administrative appeal expressly provided for by the Rent Adjustment Ordinance or foreclosed from seeking judicial review of a Board decision.

We therefore conclude, since Owner filed an application for a substantial rehabilitation exemption well before the October 2017 deadline, the instant proceeding is not moot.

### ***Order Augmenting Administrative Record***

We next address Tenants’ challenge to the trial court’s order augmenting the administrative record to include Owner’s “Brief on Appeal” submitted to the Board in support of its administrative appeal. We review the court’s order for substantial evidence.<sup>5</sup> (See *Consolidated Irrigation Dist. v. City of Selma* (2012) 204 Cal.App.4th 187, 197–201 (*Consolidated Irrigation*) [affirming order augmenting record, as substantial evidence supported trial court’s finding that memoranda not included in record had, in fact, been submitted to local governing agency].)

The motion to augment was made in response to assertions by the City and the Tenants in their opposition to the writ petition, that Owner had forfeited an issue—specifically, that the hearing officer had erred in using one construction cost figure (\$127) for both interior living space and balcony

---

<sup>5</sup> “A substantial evidence inquiry examines the record in the light most favorable to the judgment and upholds it if the record contains reasonable, credible evidence of solid value upon which a reasonable trier of fact *could* have relied in reaching the conclusion in question. Once such evidence is found, the substantial evidence test is satisfied. (See *People v. Johnson* (1980) 26 Cal.3d 557, 578. . . .) Even when there is a significant amount of countervailing evidence, the testimony of a single witness that satisfies the standard is sufficient to uphold the finding.” (*People v. Barnwell* (2007) 41 Cal.4th 1038, 1052.) A trial court’s “conclusions of law” in connection with a motion to augment “are subject to independent review on appeal.” (*Madera Oversight Coalition, Inc. v. County of Madera* (2011) 199 Cal.App.4th 48, 65 (*Madera*), disapproved on another ground in *Neighbors for Smart Rail v. Exposition Metro Line Authority* (2013) 57 Cal.4th 439, 457.) However, as we explain, we are not dealing here with an issue of law, but with a challenged finding of fact.

space, rather than a lower figure for balcony space (\$41.16)—because it had not raised the issue before the Board. At the hearing on the writ petition, Owner provided the trial court with a file endorsed copy of its “Brief on Appeal,” wherein Owner had raised the exact issue the City and the Tenants claimed was forfeited. The City declined to concede the brief was in the record.

Owner therefore filed a post-hearing motion to augment the record. This was supported by a detailed declaration of the attorney who had prepared the administrative appeal brief and had extensive experience with Board filing requirements. He explained that he had instructed his staff to file the brief, on staff’s return to his office he/she confirmed the brief had been filed, and counsel was handed and retained in his possession a “blue ink” file-endorsed copy of the brief. Counsel acknowledged he had reviewed the administrative record after it was prepared. But he had not noticed the omission of the brief then, or later when he prepared the memoranda in support of the writ petition as he had had no occasion to refer to it. He also recounted this was not the first time he had experienced a situation where a filed document had been misplaced by the Board. He further stated that, at the time, Board rules did not require service of such briefs on real parties.

The City opposed the motion to augment, submitting declarations of two city employees that the city had no record of receiving the brief. Real parties also maintained they had no copy of the brief.

After considering all the evidence before it, the trial court granted the motion, pointing out the copy of the brief provided with the motion was “file stamped ‘RECEIVED CITY OF OAKLAND RENT ARBITRATION PROGRAM 2016 MA- 4 PM 2:52.’” The court also observed neither the City, nor real parties, had provided any evidence that Owner had “used the City’s

self-file-stamp procedure” but then failed to leave a copy for the Board or had deliberately falsified the file stamp. The court ruled “substantial evidence” supported “a finding that the [Owner] filed the brief and that the City inadvertently mis-filed or lost the brief.” It further found there was “no indication that the City intentionally withheld the Appeal Brief from the administrative record.”

On this record, the trial court’s augmentation order is amply supported.

Citing to *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, Tenants claim the trial court erred “as a matter of law” in granting the motion. Tenants misperceive the distinction between augmenting a record with *evidence not presented* during the administrative proceedings and augmenting a record to ensure it is complete and includes all materials that were presented *during* the administrative proceedings. (See *Consolidated Irrigation, supra*, 204 Cal.App.4th at p. 198 [pointing out the “importance of distinguishing between documents that belong in the record of proceedings versus documents that might be admissible as extra-record evidence”]; see generally California Practice Guide-Administrative Law, “Pretrial and Trial of Mandamus Cases, § 20:195 (The Rutter Group 2020) [“If petitioner contends the record certified by the agency is incomplete, the appropriate remedy is a motion to augment the record.”].)

*Western States* does, indeed, place constraints on extra-record evidence pertaining to the merits of the matters before the administrative tribunal that is proffered after-the-fact during judicial review. But the case has no bearing on a motion to augment of the sort made here—to correct the administrative record to include a document that the trial court found, on substantial evidence, was submitted to the Board but was inadvertently not

included in the administrative record. (See *Consolidated Irrigation, supra*, 204 Cal.App.4th at pp. 198–199.)

As for Tenants’ assertion that Owner did not show reasonable diligence in seeking to augment the record, we must presume the trial court found otherwise as there is substantial evidence to support such a finding. (See *Madera, supra*, 199 Cal.App.4th at pp. 65–66 [in connection with rulings on motions to augment, appellate court applies traditional presumptions on appeal, including that trial court made all requisite findings where substantial evidence supports such implied findings].) Moreover, “it is within the province of the trial court, sitting as the trier of fact, to decide factual questions such as reasonable diligence and the persuasiveness of the evidence presented,” and we “will not not second-guess the implied finding[] made by the trial court.” (*Id.* at pp. 71–72.)

Tenants further maintain their “due process” rights were impinged by the augmentation order. But they provide no specifics. As the trial court pointed out, augmentation was not sought to bolster any merits argument. Rather, it was sought solely to rebut a claim of forfeiture. We fail to see how the trial court’s proceeding to the merits of the issue, otherwise fully briefed by the parties and based on evidence indisputably in the record, prejudiced Tenants in any respect.

Finally, Tenants spend considerable time rearguing the evidence, urging that the declarations of city staff should have been given controlling weight and the declaration of Owner’s counsel should have been viewed with skepticism and discounted. However, even where a factual matter is tried on declarations and affidavits, credibility and weight are matters for the trial court, not the Court of Appeal. (See *Consolidated Irrigation Dist., supra*, 204 Cal.App.4th at p. 198 [“Appellate courts routinely apply the substantial

evidence standard to findings of fact made by a trial court based on affidavits and declarations without any oral testimony.”]; *Escamilla v. Department of Corrections & Rehabilitation* (2006) 141 Cal.App.4th 498, 514–515 [“we do not evaluate the credibility of the witnesses or otherwise reweigh the evidence”; rather, “ ‘we defer to the trier of fact on issues of credibility’ ”].)

We therefore conclude there is no merit to Tenants’ challenge to the augmentation order.

Tenants have not challenged the merits of the trial court’s ruling on the issue found not to have been forfeited—namely, its ruling that the hearing officer, and in turn the Board, erred in using a single construction cost number, \$127, for the entirety of the square footage. Accordingly, we do not consider this issue further, and the trial court’s ruling on this issue is controlling on remand.

### ***The Hearing Officer’s Use of “Table B”***

The requirements for a substantial rehabilitation exemption were set forth in former Oakland Municipal Code section 8.22.030, which read in pertinent part:

“Exemptions for Substantially Rehabilitated Buildings.

“a. In order to obtain an exemption based on substantial rehabilitation, an owner must have spent a minimum of fifty (50) percent of the average basic cost for new construction for a rehabilitation project and performed substantial work on each of the units in the building.

“b. The average basic cost for new construction shall be determined using tables issued by the chief building inspector applicable for the time period when the substantial rehabilitation was completed. . . .”

(Former Oak. Mun. Code, ch. 8.22, § 8.22.030, subd. (B)(2)(a)–(b).)

These requirements gave rise to the principle issue before us—whether a document the parties and the hearing officer referred to as “Table B” was a “table[] issued by the chief building inspector applicable for the time period when the substantial rehabilitation was completed.”<sup>6</sup> (Former Oak. Mun. Code, ch. 8.22, § 8.22.030, subd. (B)(2)(b).)

This document is entitled “‘Quarterly Cost Indexes (1926=100).’” We discuss its specific attributes in subsequent paragraphs. At this point, we recount the record of its appearance in the administrative proceedings:

The parties were notified that they were required to disclose evidence seven days prior to the administrative hearing and cautioned that any evidence not disclosed could be excluded. Neither party disclosed Table B.

At the hearing, the Tenants called as their witness, David Harlan, an Engineering Manager with the city. Before counsel asked any questions, the hearing officer inquired about another document, which the parties and hearing officer referred to as “Table A” and is entitled “City of Oakland Building Services Construction Valuation For Building Permits Effective Aug. 1, 2009.” (Boldface & fns. omitted.)

The hearing officer (HO) began:

“[HO]: . . . [L]et me ask you first, and then Ms. Mira [(the Tenants’ counsel)] will be able to ask you questions, is the latest table put out by the City of Oakland [the] Construction Valuation dated August 1, 2009 [Table A]?”

“Harlan: Yes, that’s the table that we currently use.

“[HO]: Okay. Let me turn it over to Ms. Mira. . . .”

---

<sup>6</sup> Solely for ease of reference, we continue to refer to this document, and others, by the labels given them by the parties, the hearing officer, and the trial court.



Counsel proceeded to ask Harlan a number of questions about applying for a building permit, including describing the scope of work and the value of the job, and the calculation of permit fees. The hearing officer finally asked counsel not to belabor points that had “nothing to do with the essential question that we’re looking to have answered,” namely whether Owner had made sufficient expenditures to qualify for the substantial rehabilitation exemption.

Counsel then asked Harlan how someone would figure out how much it would cost to build a residential structure, such as the small apartment building in question. This engendered the following colloquy:

“Mira: . . . How would I figure how much that would cost me?

“Harlan: For permit fees?

“Mira: Just the whole job, complete job, how much would it cost me for a 16-unit building with a square footage of 13,336? . . .

“Harlan: So the City doesn’t play a role in that. I mean I can hazard a guess but—

“Mira: Mm-hmm.

“Harlan: —it’s not our—it’s not the City’s role to help people identify how to pay for something or how much it’s going to cost to build something. [¶] . . . [¶]

“[HO]: . . . [S]o you said it’s not the City’s role to determine—

“Harlan: Yeah.

“[HO]: —how much it would cost to build the building.

“Harlan: Yeah, that’s right. Yeah, that’s a relationship between the owner and the contractor. . . .”

Counsel then asked Harlan to “describe” Table A (the document entitled “City of Oakland Building Services Construction Valuation For

Building Permits Effective Aug. 1, 2009,” boldface & fns. omitted). Harlan replied, “It’s a valuation table used by staff to help assign permit valuations for the purpose of calculating the permit fee.” He agreed with counsel that was “just for the permit fee” and “not for how much actual construction would cost.”

Counsel again asked Harlan how “would you figure out what the actual construction costs are.” Harlan again replied that was “between the property owner and their licensed contractor.” Counsel then asked if there were “industry standards.” Harlan said, “[y]es,” and added “that’s where these numbers [on Table A<sup>7</sup>] c[o]me from.”

At this point, counsel, for the first time, mentioned Table B (the document entitled “Quarterly Cost Indexes (1926=100)”), stating she was not presenting it as evidence but “to help the expert get to [the] point.” She asked Harlan what the document was. He responded: “This is an index that just shows the variation in pricing for certain regions over a period of time. Generally, the trend is upward, but maybe it goes down sometimes.”

Owner’s counsel objected on grounds the document had not been disclosed. Mira repeated she was not asking to put it into evidence but was “just asking him if he knows what it is and if he can describe it.” Counsel again objected, and the hearing officer ruled it could be used only to refresh Harlan’s recollection.

Harlan proceeded to answer: “I’ve seen these indexes before and I don’t know if I’ve calculated anything off of them. . . . I’ve looked at this before and

---

<sup>7</sup> It is clear Harlan was referring to Table A, as he was referring to “exhibit 138,” which was a copy of Table A. In addition, tenants’ counsel had not yet mentioned Table B.

you can pick out the indices for different years for the same region and come up with a differential.” This led to the following colloquy:

“Mira: So I guess what I’m trying to get to is, if I were to have built a building in . . . 2009, is it fair to say that that same cost in 2009 wouldn’t be the same cost in 2014?”

“[Counsel for Owner]: Objection. I don’t think this witness has been qualified to talk about costs. . . . [¶] . . . [¶]”

“[HO]: Well, let me ask you this: Are you generally familiar with the trends of construction costs either up or down in the past six years in the City of Oakland?”

“Harlan: No. I really can’t say—it’s fluctuated is my understanding. So I’m sure it held flat for awhile and then it went down, maybe it went up.”

“[HO]: Do you know—this is really the ultimate question: Do you know whether it would cost more to build the building [in question] today than it would in 2009?”

“Harlan: I couldn’t speak to that.”

Tenants’ counsel then asked Harlan, “does inflation play a role in construction costs.” Another objection by Owner was overruled, and Harlan answered: “Well, I can speak to how it affects the cost indices in this source that we use, Marshall Swift. So it plays a role in—there’s materials and labor are the big components of these indices and so inflation plays a role in both of those to varying levels of degrees depending on what the description of work is, whether steel costs more. Everything is down to like bags of concrete and how many pounds of steel and how many hours it takes to do something and this thing [referring to Exhibit 138, which is Table A] is a summary of a binder that’s about this thick.”

Counsel then asked, as a “hypothetical,” whether it would cost more to remove stucco with asbestos underlying it, than without. Harlan replied: “I would think so.” When the hearing officer asked, “how much more,” Harlan could not provide a percentage “because there’s probably different concentrations . . . that might trigger a certain type of abatement . . . I’m not sure.” Counsel then asked a hypothetical about the cost of re-tiling a bathroom. Harlan answered: “I’d have to check with one of the counter staff people.” Counsel then asked about a “range” of costs for installing windows. Harlan again testified: “I’d have to check with one of our inspectors.” The hearing officer eventually interjected: “Look, I mean he has no control over the inspectors and let me tell you, I mean re-tiling a bathroom, I mean there are very expensive tiles; there are cheap tiles. I don’t see how this would be at all helpful.” Harlan then volunteered: “Well, I can say that generally, we would ask the applicant to tell us what their cost is for those types of small projects. Those are small projects and we would usually rely on that—on what they’ve presented to us.

With that, counsel stated she had no further questions for Harlan. Owner’s counsel asked no questions.

Table B (the document entitled “Quarterly Cost Indexes (1926=100)”) was not mentioned again until closing summation, when tenants’ counsel argued: “So the second reason why the exemption should be denied is because the City of Oakland, the Rent Adjustment Program, actually uses the cost indexes to adjust the cost for when the actual construction happened,” and cited to three hearing decisions.<sup>8</sup> She continued, “I believe that in this case it would be unfair to use a 2009 building cost [(Table A)] when the

---

<sup>8</sup> These were *Weinberg v. Tenant*, *Promes v. Fehr*, and *Young v. Beasley*, which we discuss in subsequent paragraphs.

[rehabilitation] construction happened in 2014 and 2013.” Counsel acknowledged “Mr. Harlan couldn’t testify to that,” but asserted “it’s common knowledge that inflation affects things.” “So,” counsel went on, “based on how calculations have been done in these previous cases, new construction based on the cost indexes for 2009 and for 2014, new construction has increased by 1.1.%.”

The hearing officer expressed some difficulty in following counsel. Counsel then referred the hearing officer to Table B, stating “you don’t use . . . [the] valuation chart [(Table A),] but I’m sure you’re familiar with these, the quarterly indexes [(Table B)].” Counsel proceeded with a detailed, step by step argument as to how the hearing officer should use Table B to calculate a 2014 comparative cost number.

When Owner objected that Table B was not in evidence, the hearing officer now stated he would take “official notice of the documents that I’m supposed to use to do the computation.” When Owner again objected, the hearing officer stated, “I think I could always use the Building Department tables.” He then told Owner’s representative, “So if you would like, I won’t allow this into evidence, if you object because it wasn’t submitted seven days before but I will take judicial notice of it.” At this point, Owner’s representative said “Sure,” and the hearing officer said he would give her an opportunity to look at the document.

Counsel for the tenants then turned to the receipts, invoices, and other documents evidencing expenditures and argued they did not add up to 50 percent of the comparative 2014 construction cost determined, according to counsel, by adjusting the Table A numbers with a ratio derived from Table B.

At the outset of Owner's summation, the hearing officer asked Owner's representative (Hart) to address the "new quarterly cost indexes" and the "propriety of using [them]." She responded:

"Hart: Well, I think that there is a standard that's been adopted by the Rent Board and used, not only for the convenience but also so that you're not going to have people running to the Building Department who don't actually know what they're looking for and asking the Building Department to tell them these calculations. In fact, I have another case where they went directly to the building department and there's an email trail and they weren't given that, they were given the Table A.

"[HO]: Well, what does that have to do with the propriety of my using this in my decision?

"Hart: I'm saying that there's a standard of evidence that the Board has adopted historically and that I could appreciate that this would seem more current[,] but at the same time I think it's not necessarily information that's generally available or that the Building Department, who is the source of this department [*sic*], provides in terms of these calculations."

Hart then asked for leave to file a post-hearing brief on the issue, since "it wasn't brought up earlier" and "was only brought up here in summary and now you're going to be using it as a—to bolster her evidence." The hearing officer responded, "I'm using it because this is what I'm supposed—one of the documents I'm supposed to be using," adding "I hadn't known about it before

today but anyway I'm going to use it.”<sup>9</sup> Without a definitive response on the briefing request, the hearing officer closed “the record.”

A week later, Owner filed a post-hearing brief. Owner first pointed out that then operative Oakland Municipal Code section 8.22.030 specified, “The average basic cost for new construction *shall* be determined using tables *issued by the chief building inspector* applicable for the time period when the substantial rehabilitation was completed” (Oak. Mun. Code, ch. 8.22, § 8.22.030, subd. (B)(2)(b), italics added), and maintained that while Table A was such a table, Table B was not. To illustrate and reinforce this point, Owner attached copies of not only what the parties had referred to as Tables A and B, but also a document Owner referred to as “Table C,” entitled “Residential Building Minimum Valuation Data,” effective February 1, 2001, and bearing the official signature of a city building official. Owner went on to assert “no evidence” had been presented to either authenticate or lay a foundation that the document being referred to as Table B (entitled “Quarterly Cost Indexes (1926=100)”) was a table “issued by the chief building inspector.” Further, because Tenants had not provided this document prior to the hearing, and because the tenants’ counsel, while examining Harlan, stated several times she was not seeking to introduce the document into evidence, Owner had been deprived of the opportunity both to cross-examine Harlan and present additional evidence on the issue. Finally, Owner asserted taking “notice” of the document during closing summation

---

<sup>9</sup> The hearing officer did not explain why he concluded Table B was a document he was “supposed to be using.” But presumably it was in light of the three hearing decisions to which the tenants’ counsel had referred. There is no indication in the record that the hearing officer read these decisions, or that the Owner’s representative or attorney had been able to review them.

had been improper, as the document was being used for its evidentiary value and it did not constitute a “fact or matter that is commonly agreed upon.”

A little more than two weeks later, the hearing officer issued his decision. Under a sub-heading entitled “Building Services Evaluation Tables,” (underscoring omitted) the decision stated:

“The tenant requested the attendance of the City Building Services supervisor to testify with regard to how the City determines the present cost of new construction for the issuance of building permits. David Harlan, the Engineering Manager of the Bureau of Building appeared and testified at the Hearing. Mr. Harlan testified that his duties include oversight of all permit issuance, records management, and plan checking. He further testified that the City currently uses the table that was effective on August 1, 2009. A copy of this document is attached as Table ‘A.’ Official Notice is taken of two other documents issued by the City Building Services agency: ‘Quarterly Cost Indexes (1926=100),’ a copy of which is attached as Table ‘B,’ and ‘Residential Building Minimum Evaluation Data,’ a copy of which is attached as Table ‘C.’” (Fn. Omitted.)

Under a sub-heading entitled, “The Calculation,” (underscoring omitted) the decision stated in pertinent part:

“. . . The Tables referenced in this Decision were all issued by the City Building Services agency.

“Table ‘A’ lists square foot construction costs, effective August 1, 2009. However, since the construction in this case occurred in the year 2014, and costs have risen since that time, it is proper to increase the cost shown on the 2009 Table. The Building Services agency has recognized this fact, and therefore issued a document entitled ‘Quarterly Cost Indexes (1926=100)’ (Table ‘B’).

“These tables are used as follows: (1) On Table ‘B,’ determine the number for the year of construction, geographical district, and type of construction; (2) Divide this number by the number in the same category for the year 2009. The resulting fraction is then multiplied by the number derived when the square foot cost shown on Table ‘A’ is multiplied by the number of square feet in the building.”



The hearing officer alternatively ruled that even if the “square footage cost on the 2009 Table were used,” the expenditures still did not meet the 50 percent requirement. He arrived at this conclusion based on a total square footage of 14,338, a number that included the square footage of the balconies. He then used a single construction cost number for the entire square footage, thus equating the cost of reconstructing the balconies with that of reconstructing interior living spaces.

Owner timely filed an administrative appeal raising, among other issues, the hearing officer’s evidentiary use of Table B, and his total square footage number and use of a single per square foot construction cost number. In support, Owner attached several documents to its appeal notice, including an additional document Owner referred to as “Table E,” entitled “City of Oakland Building Services Construction Valuation For Building Permits Effective February 5, 2007.” (Fn. omitted.)

The Board affirmed on the ground “any error in considering the document addressing inflation adjustments to be applied to the table . . . would not change the result.”

Owner timely filed an administrative writ proceeding. The trial court granted the petition.

The court (Judge Kimberly Colwell) first ruled the document the parties and the hearing officer referred to as Table B was not a table “issued by the chief building inspector applicable for the time period when the substantial rehabilitation was completed.” It further ruled that even if the language of the ordinance allowed its use, the city had not made the document readily accessible to the public and thus the document could not be used to essentially sandbag owners who had made substantial property

improvements. The court (Judge Jeffery Brand) reaffirmed these rulings in the course of denying a motion for reconsideration.

We agree that the document referred to as Table B is not a table “issued by the chief building inspector applicable for the time period when the substantial rehabilitation was completed.” This is illustrated by a comparison of the documents Owner attached to its post-administrative hearing brief and referred to as Tables A, B and C, and which the hearing officer, in turn, attached to his decision, as well as the document referred to as Table E, which Owner attached to its administrative appeal notice.

Table A bears the following heading:

“City of Oakland	Community Economic Development Agency
“Building Services	Dalziel Administration Building
“Construction Valuation	250 Frank Ogawa Plaza–2nd Floor
“For Building Permits	Oakland, CA 94612
“Effective Aug. 1, 2009	510-238-3891.” (Fns. omitted.)

At the bottom of the document there is a website address for direct access to the document: \\Ceda=servers\ Building Permit Counter\COUNTER FORMS\Forms 2009\_2010(Building valuation) Aug 1 2009. Thus, this document bears all the indicia of a city document and, specifically, of a table “issued by the chief building inspector.” And Harlan confirmed, “Yes, that’s the table that we currently use.”

Notably, Table A also includes a footnote, footnote 1, in its heading, following “Construction Valuation.” This footnote states: “Cost per square foot, unless noted otherwise. (l.f.=linear foot; s.f.=square foot); includes 1.3 regional multiplier (see Secc. 99 pg 6 July 2009 Marshall & Swift).” Other footnotes to column headings also provide for specific adjustments. For example, footnote 2 states: “Hillside construction=slope >20%; multiply by

additional 1.3 multiplier.” Footnote 3 states: “Remodel Function of New Construction is a 0.52 multiplier.” In addition, Table A includes a column on its far right side entitled “Marshall & Swift 3Q 7’09 [¶] Section pg (Class/Type).” Below that is a column of several dozen references, such as “Section 12 pg 25 (C/e).” It is therefore apparent the building services department, indeed, makes use of data from private sources, such as Marshall & Swift. But, as Table A also reflects, the department goes on to determine and specify exactly what multipliers are to be used for city purposes.

Table E bears a heading nearly the identical to that of Table A, but specifying an earlier effective date:

“City of Oakland	Community Economic Development Agency
“Building Services	Dalziel Administration Building
“Construction Valuation	250 Frank Ogawa Plaza–2nd Floor
“For Building Permits	Oakland, CA 94612
“Effective February 5, 2007	510-238-3891.” (Fns. omitted.)

It also bears, at the foot of the document, a website address for direct access to the document: \\Ceda-server3\building\Permit Counter\Permit FY06\ (Building valuation). Thus, like Table A, Table E bears all the indicia of a table “issued by the chief building inspector.”

Although Table E also has footnotes, none make reference to any multiplier. Nor does Table E contain an additional column of references to Marshall & Swift.

Table C is similarly entitled “City of Oakland Residential Building Minimum Valuation Data.” Immediately below the heading, the document is expressly “Approved by” a signature by Calvin N. Wong, “Building Official,” and specifically states it was “effective February 1, 2001.” It also bears, at

the foot of the document, a web address for direct access to the document: “CARR\My documents\Forms\valuation-residential.” Thus, Table C again bears all the indicia of a table “issued by the chief building inspector.”

Table C also includes a prefatory paragraph similar to footnote one in Table A, stating: “The following building valuation data are based on cost and value reported in ‘Marshal Valuation Services’ published by Marshall and Swift and dated December 2000 with cost multiplier of 1.07 and local multiplier of 1.32.” This again reflects that the building services department does use data from private sources, such as Marshall & Swift, but also determines and specifies exactly what multiplier is appropriate and is to be used for city purposes.

In contrast to Tables A (effective 2009), E (effective 2007) and C (effective 2001), Table B bears the caption “Quarterly Cost Indexes (1926=100)” and states in the upper right hand corner it is “Section 98 Page 7,” followed by the date “October 2014.” The footer states: “Marshall Valuation Service,” (capitalization omitted) followed by a disclaimer that the “the data included on this page becomes obsolete after update delivery, scheduled for January 2015.” (Italics omitted.) Below that is a copyright symbol, identifying “2014 CoreLogic,® Inc. and its licensors, all rights reserved.” Plainly, this is not a city document.

Tenants maintain the language of the rent adjustment ordinance—“tables issued by the chief building inspector”—should be read to mean any document that can be characterized as a “table” and is “used” by the building department. Not only would such a construction be a departure from the plain language of the ordinance (see *MacIsaac v. Waste Management Collection & Recycling, Inc.* (2005) 134 Cal.App.4th 1076, 1083 [words of a statute are generally to be given “ ‘a plain and commonsense meaning’ ”]),

such a construction would embrace any number of outside resources, an untenable reading given the specific language of the ordinance. (*Ibid.* [courts are to “ “interpret legislation reasonably and . . . attempt to give effect to the apparent purpose of the statute” ’ ”].)

It is also understandable why the City specified that the comparative construction cost number was to be “determined using tables issued by the chief building inspector applicable for the time period when the substantial rehabilitation was completed.” This provided a standard measure for construction costs that was easily applied. It also avoided the problem to which Harlan testified, that the exact cost of construction is ultimately a matter between the owner/developer and the contractor(s)/supplier(s), and not something in which the building services department gets involved. Rather, for its purposes, the department uses its own construction valuation table, which it periodically updates and which often, but not always, reflects the use of data from privately published sources.

Tenants claim it makes no sense and would be unfair to use Table A, effective August 1, 2009, to determine a 2014 comparative building cost number. As we have discussed, the record reflects that the building services department regularly updated its construction valuation table—in 2001, 2007, and 2009. It is not our role to effectively rewrite a local rent control ordinance because the department assertedly failed to update its 2009 table sooner than it did.<sup>10</sup> (See *In re I.A.* (2019) 40 Cal.App.5th 19, 23 [appellate court may not “ “rewrite the clear language of [a] statute to broaden the

---

<sup>10</sup> We note that attached to a declaration by Harlan—submitted by the City in opposition to the writ petition but excluded by the trial court under section 1094.5, subdivision (e)—is another table identical in format to Table A, but with an effective date of May 1, 2015. Tenants have not challenged the trial court’s evidentiary ruling excluding the declaration.

statute’s application” ’ ’]; *L.G. v. M.B.*, *supra*, 25 Cal.App.5th at p. 227 [“court may not disregard the plain language of a statute just because the consequences of a literal interpretation are ‘troubling’ or because the court believes that a different approach would be better”].)

Further, Tenants have simply assumed, without any *evidentiary* basis, that using Table A would yield an unfairly skewed comparative construction cost number. Their witness, Harlan, refused to offer any such opinion, and no other *evidence* was presented on the issue. We also observe that since the department’s construction valuation table is a revenue generating publication, as it determines building permit fees, it is equally reasonable to assume the department had, and continues to have, every incentive to ensure the version of the table in use is reasonably current and, at the time, had concluded no update was warranted.

Finally, Tenants refer to five administrative hearing decisions, copies of which were provided to the trial court by the City, in which varying versions of the Marshall & Swift quarterly indices were used. As we have recounted, during summation in the administrative hearing, the tenants’ attorney referred to three of these decisions.

On appeal, Tenants characterize these hearing decisions as an administrative interpretation of what constitutes a “table[] issued by the chief building inspector” that should be given deference.

Four of these hearing decisions were issued by a single hearing officer. In each, the hearing officer used a city construction valuation table (e.g., Tables A, E, C) that was *not* in effect for the period during which the rehabilitation work was done, but was in effect during a *later* period of time.<sup>11</sup>

---

<sup>11</sup> In *Young v. Beasley* (a decision dated June 13, 2008), the construction work was done between 1998 and 2000, but the hearing officer

Stating this was “unfair” to the owner because costs had increased, the hearing officer then used varying versions of the Marshall & Swift quarterly cost indices to adjust the construction costs set forth in the more recent tables downward. What is immediately clear is that the hearing officer used the incorrect construction valuation table to begin with—as the ordinance required use of the table “issued by the chief building inspector *applicable for the time period when the substantial rehabilitation was completed,*” not a version of the table applicable during a later time period. The record before us does not reflect why this occurred. Nor does it indicate whether, given the use of plainly inapplicable valuation tables, the parties agreed to using indices to adjust the cost number derived from these inapplicable tables downward.

The remaining decision is one by the hearing officer who decided the instant administrative matter, issued a little over two weeks after he issued his decision in this matter. In short, the hearing officer reemployed, almost verbatim, the approach he had used only weeks earlier here.

Accordingly, these hearing decisions carry little weight as an interpretative matter. “‘How much weight to accord an agency’s construction is “situational,” and greater weight may be appropriate when an agency has a “‘comparative interpretive advantage over the courts,’ ” as when “‘the legal

---

used the version of the department’s valuation table dated February 5, 2007. In *Weinberg v. Tenant* (a decision dated December 3, 2013), the construction work was done in 1991-1992, but the hearing officer used the version of the department’s valuation table dated August 1, 2009. In *Promes v. Fehr* (a decision dated December 16, 2013), the construction work was done between 2003-2004, but the hearing officer used the version of the department’s valuation table dated February 1, 2007. In *Cordaro v. Tenants* (a decision dated July 18, 2017), the construction work was done in 2010, but the hearing officer used a version of the department’s valuation table dated February 1, 2017.

text to be interpreted is technical, obscure, complex, open-ended, or entwined with issues of fact, policy, and discretion.’ ” ’ ” ( *Boling v. Public Employment Relations Bd.* (2018) 5 Cal.5th 898, 911 (*Boling*.) The ordinance language at issue here is not technical, obscure, or complex. Furthermore, the four decisions by the one hearing officer all involved a set of circumstances unlike that here, and in the absence of the records in those matters, we are at a loss as to why the hearing officer used versions of the City’s construction valuation table that were *not in effect* at the time of the reconstruction work but were in effect for a later time period. We likewise have no way of knowing what the hearing officer and the parties may have discussed in terms of adjusting the cost numbers using Marshall & Swift indices. The fifth decision, by the same hearing officer who presided here, barely two weeks after his decision in this case, likewise is of scant interpretative significance.

In any case, the interpretation of a local ordinance is a question of law, ultimately committed to the courts. (*Boling, supra*, 5 Cal.5th at p. 911.) And for the reasons we have discussed, we agree with the trial court that the privately published Marshall & Swift quarterly cost indices are not “tables issued by the chief building inspector,” and that the hearing officer erred in using what has been referred to as Table B for evidentiary purposes to determine the comparative building cost.<sup>12</sup>

---

<sup>12</sup> We therefore need not, and do not, consider the trial court’s additional ruling that even if the ordinance did permit utilization of such document, its use, on this record, impinged on the Owner’s due process rights. That said, the manner in which tenants’ counsel deployed and then argued the evidentiary value of Table B was improper. Likewise, the hearing officer’s about-face from its prior ruling, allowing use of Table B only to refresh Harlan’s recollection, and belated acceptance of Table B for



In their appellant’s opening brief, Tenants made no follow-up argument that even if the trial court’s ruling as to Table B was correct, reversal is nevertheless required because even if Table A were used to determine the comparative construction cost (and even if different square footage costs were used for the interior and balcony spaces), Owner’s rehabilitation costs did not meet the 50 percent requirement. However, in their reply brief, Tenants devoted four pages to advancing this argument. It is well-established that an appellate court generally will not consider arguments raised for the first time in a reply brief, and we decline to do so here. (See *WorldMark, The Club v. Wyndham Resort Development Corp.* (2010) 187 Cal.App.4th 1017, 1030, fn. 7 [“Arguments raised for the first time in the reply brief are untimely and may be disregarded.”])

Indeed, Tenants have not, in advancing this new argument in support of reversal, been candid about the record. This new argument turns on the total amount Owner spent on rehabilitation costs. As the following procedural recitation reflects, it is apparent to us that the trial court viewed the cost issue that had been raised by Owner as having been resolved by a concession by the City.

In its administrative appeal, Owner asserted the hearing officer had made a “calculation error”—specifically, that the total amount paid to the principal contractor (Martin Gallagher Construction, Inc.) set forth in the hearing officer’s decision was off by \$26,000, and that the correct amount paid to the contractor, as shown by invoices and proofs of payment, was \$857,596, rather than \$831,597 as stated in the decision. The Board did not address the issue, since it upheld the decision on another ground.

---

evidentiary use during summation after evidence was concluded, is also of significant concern.

Owner continued to raise the asserted \$26,000 calculation error in the trial court.

In their opposition to the writ petition, Tenants included a half-page argument that the hearing officer had “considered” the invoices pertaining to that contractor’s work, pointing out the hearing officer’s decision “listed” the pertinent exhibits. Tenants did not respond, however, to the Owner’s point—that the amounts set forth in those exhibits did not add up to the number in the hearing officer’s decision, and that that number was short by \$26,000.<sup>13</sup>

The City, however, did address the Owner’s claim of a computational error and conceded “the invoices that the hearing officer used to reach this amount actually total \$857,597—as Hyde Street argues. (Tab 26 AR 122 (footnote 4).)”

The trial court, under a separate heading entitled “\$26,000 IN INVOICES,” then stated in its decision: “The City acknowledges that the Hearing Officer and Board appear to have made a calculation error.” It observed “[t]his error did not affect the Board’s decision.” Likewise, “[t]he apparent \$26,000 calculation error does not affect the court’s decision on the petition.”

It would have made no sense for the trial court to have spent many pages addressing the merits of the principle issues—the use of Table B and

---

<sup>13</sup> This is basically the same argument they have belatedly advanced in their reply brief—that the hearing officer identified the pertinent invoices and thus “considered” them. They then baldly assert he “found (correctly)” total expenditures of \$850,441 and point out half of this amount is less than 50 percent of the Table A comparative cost number. They never, however, address the real issue—that the hearing officer made a mistake in adding up these invoices. Rather, they quibble over the Owner’s use of the word “disallowed,” claiming the contractor’s work was not “disallowed,” pointing out, again, that the hearing officer identified and thus “considered” the pertinent invoices.

the use of a single construction cost number for the entire square footage—and to have issued a remand order, if this was all simply an academic exercise, as Tenants now belatedly claim, because the total rehabilitation costs do not meet the statutory requirement even assuming use of Table A and use of different cost numbers for the interior and balcony square footages.

Appellant Garcia then moved for “reconsideration.” In his 20-page, supporting memorandum, he addressed the following: the trial court’s ruling that the hearing officer had improperly used Table B, the court’s grant of the motion to augment the administrative record with the missing “Brief on Appeal” , and the ruling that the hearing officer, and Board, had improperly applied a single construction cost number to the entire square footage (i.e., both interior spaces and balconies). The memorandum concluded with an assertion that if the trial court persisted in its rulings, it would “cause the court to be disqualified” under Code of Civil Procedure section 170.1. Notably, the motion for reconsideration also did not advance the claim that even if the challenged rulings were all accepted as correct, no writ should issue because Owner’s total rehabilitation costs still did not meet the exemption requirement.

As Owner pointed out in opposition, the motion for reconsideration did not comply with statutory requirements, as Garcia was merely taking issue with the merits of the trial court’s decision and rearguing the case. (Code Civ. Proc., § 1008; *Shiffer v. CBS Corp.* (2015) 240 Cal.App.4th 246, 255 [motion for reconsideration must be “ ‘based upon new or different facts, circumstances, or law” ’ ”].)

The trial court denied the motion for reconsideration as procedurally improper (no “new law or fact”), and further ruled that even if the court reconsidered the issues, it would reach the same conclusions.

In sum, in light of the above, and in light of the trial court’s broad remand order, it seems apparent to us that the trial court viewed the computational error issue as having been resolved by the City’s concession and thus of no consequence to its order remanding the matter for reconsideration in light of its rulings.<sup>14</sup>

### **DISPOSITION**

The trial court’s judgment is **AFFIRMED**.

---

<sup>14</sup> We note that in the “Statement of the Facts” (some capitalization omitted) in its respondent’s brief, Owner discussed the evidence supporting its exemption petition and stated the hearing officer “understated the amount spent by the owner,” specifically the amount paid to Martin Gallagher Construction Inc., by \$26,000. (Italics & boldface omitted.) Given our recitation above, this statement is understandable. Owner made no further mention of the point and devoted the “Argument” section of its respondent’s brief to addressing the Table B ruling and augmentation order challenged by Tenants.

---

Banke, J.

We concur:

---

Margulies, Acting P.J.

---

Sanchez, J.

A156463, Hyde Street CNML Props., LLP et al. v. City of Oakland's  
Department of Housing and Community Development Rent Adjustment  
Program



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

Department of Housing and Community Development  
Rent Adjustment Program

TEL (510) 238-3721  
FAX (510) 238-6181  
CA Relay Service 711

## HEARING DECISION

### RECONSIDERATION OF BOARD APPEAL DECISION AFTER COURT JUDGMENT

**CASE NUMBER:** L14-0065  
**CASE NAME:** 525, 655 Hyde Street CNML Properties, LLC v. Tenants  
**PROPERTY ADDRESS:** 3921 Harrison St., Oakland, CA

## PROCEDURAL BACKGROUND

A Hearing Decision in this case was issued on May 29, 2015, denying the owner's petition for a Certificate of Exemption based on substantial rehabilitation. The owner appealed.

An Appeal Hearing was held on December 8, 2016. The Housing, Residential, Rent and Relocation Board (the Board) affirmed the Hearing Decision, and separately affirmed the portion of the Hearing Decision that included the decks and balconies in the "building area" when performing the substantial rehabilitation calculation. The Appeal Decision in L14-0065 was issued on March 7, 2017. The owner filed a Petition for Writ of Administrative Mandamus in the Alameda County Superior Court (Case No. RG17-862841) challenging the Board's Appeal Decision.

On December 12, 2018, the Superior Court entered a Judgment Granting the Writ of Administrative Mandamus, setting aside and vacating the Appeal Decision and the Hearing Decision in L14-0065. The Superior Court ordered the City of Oakland Rent Adjustment Program to **"reconsider the Appeal Decision L14-0065 in its entirety in light of the Court's Opinions, Order and this Judgment."** (Emphasis added.)

The tenants filed a motion for reconsideration. The motion was denied. The tenants appealed the Superior Court's Judgment and, on February 26, 2021, the Court of Appeals issued an Opinion affirming the Superior Court's Judgment of December 12, 2018.

The original Hearing Officer retired and this case was re-assigned to a different Hearing Officer. This Hearing Decision is issued based on the case record and in

conformity with the Superior Court's Opinions, Order, and Judgment of December 12, 2018.

### **SUMMARY OF DECISION**

The Owner's Petition is granted. The subject property is exempt from the Rent Adjustment Ordinance as substantially rehabilitated.

### **EVIDENCE**

#### **Background**

On November 14, 2014, the owner filed a Petition for Certificate of Exemption on the ground of substantial rehabilitation. The subject property is a residential building consisting of a total of sixteen (16) residential units and the current owner acquired the property in November of 2013.<sup>1</sup> The rehabilitation project occurred in 2014.

#### **Square Footage**

The public property profile and the Alameda County Assessor's Office Property Characteristics for the subject property and APN 12-929-11 shows that the square footage is 13,336 square feet.<sup>2</sup>

Martin Gallagher, a general contractor whose firm did most of the work on the construction project, testified that the total square footage of the building (13,336) does not include the 16 decks on the building, which were part of the construction project and expense. He testified that 15 of the decks are 12 x 4.5 square feet (totaling 810 square feet) and the penthouse deck is about 16 x 12 square feet (192). The total square footage of the decks and balconies is 1,002 square feet.

#### **Type of Construction**

Gallagher testified that the subject building is of wood frame construction, which corresponds to Type V-1 identified on the City of Oakland Certificate of Occupancy issued for the subject building.<sup>3</sup>

#### **Construction Expenses**

The original Hearing Officer calculated a total of \$850,441.00 as the cost of the rehabilitation project. The Court stated, and the City of Oakland admitted, that the Hearing Officer made a calculation error by about \$26,000 when he added up the eligible expenses. Accordingly, the submitted invoices and proofs of payments are recalculated in this Hearing Decision to correct the calculation error.

---

<sup>1</sup> Exhibits 1-3 (Grant Deed)

<sup>2</sup> Exhibits 4 and 5

<sup>3</sup> Exhibit 6

The amounts the owner spent on the rehabilitation project, as stated by the prior Hearing Officer, based on the submitted invoices and proofs of payments, broken down by each contractor, are as follows:

Martin Gallagher Construction, Inc.	\$857,956.66 <sup>4</sup>
Kelly-Moore Paint	738.87 <sup>5</sup>
Bay Area Carpets	1,623.31 <sup>6</sup>
Craig Bull Construction	2,964.25 <sup>7</sup>
Advocate Painting	2,030.00 <sup>8</sup>
Raynard's Appliance Repair	194.32 <sup>9</sup>
Just Plumbing	9,660.00 <sup>10</sup>
Globe Plumbing Supply Co.	438.58 <sup>11</sup>
Oak Leaf Painting	1,195.00 <sup>12</sup>
<b>TOTAL:</b>	<b>\$876,800.99</b>

The total amount of \$876,800.99 is a recalculation of the sums of the amounts listed above, which leads to the correct figure of \$876,800.99.

In addition, the record also included invoices and proofs of payments for certain expenses that the owner submitted, but are not considered part of the rehabilitation project. As stated by the prior Hearing Officer, those expenses include routine cleaning and maintenance of the common areas, replacement of light bulbs in the common areas, repairs or replacement of broken appliances, snaking out clogged drains, vandalized copper pipes, and tree cutting. These expenses total \$9,541.89<sup>13</sup> and are not included in the total amount above.

The total amount of eligible expenses the owner spent on the rehabilitation project is \$876,800.99.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

#### **Substantial Rehabilitation**

O.M.C. 8.22.030(A)(6) states that dwelling units located in "substantially rehabilitated buildings" are not "covered units" under the Rent Adjustment Ordinance.

<sup>4</sup> Exhibits 18, 19, 28, 29, 43-54, 57-81, 96-98, 117-129, 132, 133

<sup>5</sup> Exhibits 20-23, 90-92, 107-109

<sup>6</sup> Exhibits 24, 25, 84, 85

<sup>7</sup> Exhibits 37 and 38

<sup>8</sup> Exhibits 41 and 42

<sup>9</sup> Exhibits 86 and 87

<sup>10</sup> Exhibits 35, 36, 88, 89, 99, 100, 112-114, 130, 131

<sup>11</sup> Exhibits 101, 102, 110, 111

<sup>12</sup> Exhibits 105 and 106

<sup>13</sup> Exhibits 26, 27, 30-36, 39, 40, 55, 56, 82, 83, 93, 95, 103, 104, 115, 116, 134-137



a. In order to obtain an exemption based on substantial rehabilitation, an owner must have spent a minimum of fifty (50) percent of the average basic cost for new construction for a rehabilitation project.

b. The average basic cost for new construction shall be determined using tables issued by the chief building inspector applicable for the time period when the substantial rehabilitation was completed.<sup>14</sup>

At the original hearing the Hearing Officer and the Board incorporated Table B - Quarterly Cost Indexes (Table "B") from Marshall Valuation Services - in the calculation of the cost of the rehabilitation project. This is not a table issued by the Chief Building Inspector as mandated by the Ordinance.

The Court found that the Board erred as a matter of law by incorporating Table B into the Ordinance as the substantive standard when Table B was not "issued by the chief building inspector." Additionally, the Court held that Table B was not an "other definable source" the public used and that the Ordinance did not give the owner a fair warning that Table A was not the standard against which the evidence of expense would be measured and that Table A would be modified by Table B.

The Court held that the record showed that Table A, issued August 1, 2009, was issued by the chief building inspector. City Engineering Manager Harlan testified that Table A was the latest table issued by the City of Oakland and was then the most recent and currently used Table. Accordingly, only Table A should have been used in the calculation and is used in the calculation in this Hearing Decision.

#### Square Footage

The Court held that the Board made a legal error when it treated both the building space (13,336) and the deck/balcony space (1,002) the same as Apartment space and applied the same cost of construction per square foot. The Court found that the original Hearing Officer and the Board both misapplied the law by focusing on potential use of the balconies rather than their cost of construction and by not giving effect to the specific description for "Elevated Decks & Balconies."

Therefore, this Hearing Decision corrects this error and calculates the Apartment building space and the deck/balcony space separately and for the cost of construction amount specified for each category.

#### Calculation

The attached Table A states that effective August 1, 2009, the cost of new construction of Apartment buildings of more than 2 units, Type V – wood frame

---

<sup>14</sup> O.M.C. Section 8.22.030(B)(2)

construction, is \$127.00 per square foot. Table A also states that the cost of newly constructed "Elevated Decks and Balconies" is \$41.16 per square foot.

To determine if the owner is entitled to the exemption, the following calculation is necessary: multiply the building square footage (13,336) by \$127.00, then multiply the square footage of the decks/balconies (1,002) by \$41.16. Add these amounts together, and divide that result by two (2). The calculation is as follows:

$$\begin{array}{r} 13,336 \times \$127.00 = \$1,693,672.00 \\ 1,002 \times \$ 41.16 = \$ \quad 41,242.32 \\ \hline \text{Total: } \$1,734,914.32 \text{ divided by } 2 = \$867,457.16 \end{array}$$

If the owner spent at least \$867,457.16 on the construction rehabilitation project, the building is exempt from the Rent Ordinance.

The owner provided invoices and proof of payments of eligible expenses showing that he spent \$876,800.99 on the rehabilitation project. Therefore, the subject property has been "substantially rehabilitated" and the rental units in the building are exempt from the Rent Ordinance.

#### ORDER

1. Petition L14-0065 is granted.
2. The subject property is exempt from the Rent Adjustment Program as a "substantially rehabilitated" building.
3. The subject property is not exempt from the Rent Adjustment Program Service Fee because it is still subject to the Just Cause for Eviction Ordinance.
4. The Certification of Exemption will be issued after expiration of the appeal period.

Right to Appeal: This decision is the final decision of the Rent Adjustment Program (RAP). Either party may appeal by filing a properly completed RAP appeal form that must be filed within 15 days after service of the decision.<sup>15</sup> The date of service is shown on the attached Proof of Service.

Dated: September 30, 2021



\_\_\_\_\_  
Linda M. Moroz, Hearing Officer  
Rent Adjustment Program

<sup>15</sup> O.M.C. §8.22.120(A)(1)

**City of Oakland  
Building Services  
Construction Valuation<sup>1</sup>  
For Building Permits<sup>4</sup>  
Effective Aug. 1, 2009**

Community Economic Development Agency  
Daly Administration Building  
250 Frank Ogawa Plaza - 2nd Floor  
Oakland, CA 94612  
510-238-3891

TABLE A

Occ	Description <sup>2</sup>	Construction Type	Level Ground <sup>3</sup>		Hillside Construction		Marshall & Swift SQ 700 Section pg (Class/Type)
			New	Remodel	New	Remodel	
R3	Custom Residence	V	\$207.53	\$107.53	\$269.79	\$140.29	Section 12 pg 25 (Cre)
	Single Family & Duplex	V	\$144.48	\$75.12	\$187.80	\$97.88	Section 12 pg 25 (Crg)
	Factory/Manufactured home	V	\$43.50	\$22.62	\$56.55	\$29.41	Section 12 pg 26 (CDSg)
	Finished Habitable Basement Conversion	V	\$96.42	\$50.14	\$125.35	\$65.18	Section 12 pg 25 (Bas)
	Convert non-habitable to habitable	V	N/A	\$43.50	N/A	\$56.55	Section 12 pg 26 (CDSg)
	Partition Walls	V	N/A	\$16.19	N/A	\$21.05	Section 92 pg 2 (R/wall)
	Foundation Upgrade (I.F.)	V	\$105.37	NA	\$136.98	NA	Section 51 pg 2 (R/24x72)
	Patio/Porch Roof	V	\$24.70	\$12.84	\$32.11	\$16.70	Section 66 pg 2 (Wood)
Ground Level Decks	V	\$30.49	\$15.85	\$39.54	\$20.81	Section 66 pg 2 (100sf/avg)	
Elevated Decks & Balconies	V	\$41.16	\$21.40	\$53.51	\$27.82	Section 66 pg 2 (100sf/1 story)	
U1	Garage	V	\$38.42	\$19.98	\$49.95	\$25.97	Section 12 pg 35 (D/Gar)
	Carport	V	\$24.70	\$12.84	\$32.11	\$16.70	Section 12 pg 35 (D/Car)
	Retaining wall (s.f.)	III	\$32.98	NA	\$42.85	NA	Section 55 pg 3 (112'height)
R2	Apartment (>2 units)	I & II	\$174.59	\$90.84	\$227.10	\$118.09	Section 11 pg 18 (B/g)
		III	\$155.91	\$81.59	\$203.98	\$106.07	Section 11 pg 18 (D/mkg)
		V	\$127.00	\$66.04	\$165.10	\$85.85	Section 11 pg 18 (D/g)
Non-Residential Occupancy							
A	Church/Auditorium	I & II	\$247.07	\$126.48	\$321.19	\$167.02	Section 15 pg 9 (B/g)
		III	\$182.01	\$94.65	\$236.61	\$123.04	Section 15 pg 9 (B/a)
		V	\$175.93	\$91.48	\$228.71	\$118.93	Section 15 pg 9 (S/g)
A	Restaurant	I & II	\$221.82	\$115.35	\$288.37	\$149.95	Section 13 pg 14 (A-B/g)
		III	\$174.20	\$90.58	\$226.48	\$117.76	Section 13 pg 14 (C/g)
		V	\$166.80	\$86.74	\$216.64	\$112.76	Section 13 pg 14 (D/g)
B	Restaurant <50 occupancy	V	\$145.24	\$75.52	\$188.81	\$96.18	Section 13 pg 17 (C/a)
D	Bank	I & II	\$223.46	\$116.20	\$290.50	\$151.08	Section 15 pg 21 (B/a)
		III	\$182.01	\$94.65	\$236.61	\$123.04	Section 15 pg 21 (C/a)
		V	\$173.02	\$89.97	\$224.93	\$116.96	Section 15 pg 21 (D/a)
B	Medical Office	I & II	\$249.78	\$129.88	\$324.89	\$168.84	Section 15 pg 22 (A/g)
		III	\$243.19	\$126.48	\$316.15	\$164.40	Section 15 pg 22 (B/g)
		V	\$200.73	\$104.38	\$260.95	\$135.69	Section 15 pg 22 (D/g)
B	Office	I & II	\$165.41	\$86.01	\$215.03	\$111.82	Section 15 pg 17 (B/a)
		III	\$120.77	\$62.80	\$167.00	\$81.64	Section 15 pg 17 (C/a)
		V	\$115.34	\$59.98	\$148.84	\$77.97	Section 15 pg 17 (D/a)
E	School	I & II	\$239.11	\$124.34	\$310.84	\$161.64	Section 19 pg 14 (A-B/g)
		III	\$181.96	\$94.82	\$236.56	\$123.00	Section 19 pg 14 (C/g)
		V	\$171.94	\$89.41	\$223.52	\$116.23	Section 19 pg 14 (D/g)
H	Repair Garage	I & II	\$186.20	\$96.85	\$242.13	\$125.91	Section 14 pg 33 (MSG 527Cre)
		III	\$180.70	\$93.96	\$234.91	\$122.15	Section 14 pg 33 (MLG 423Cre)
		V	\$175.14	\$91.07	\$227.68	\$118.39	Section 14 pg 33 (MLG 423De)
I	Care Facilities / Institutional	I & II	\$186.04	\$96.74	\$241.85	\$125.76	Section 15 pg 22 (B/a)
		III	\$152.09	\$79.09	\$197.72	\$102.81	Section 15 pg 22 (C/a)
		V	\$146.52	\$76.19	\$190.48	\$99.05	Section 15 pg 22 (D/a)
M	Market (Retail sales)	I & II	\$143.82	\$74.79	\$186.97	\$97.22	Section 13 pg 28 (A/g)
		III	\$117.10	\$60.89	\$152.23	\$79.18	Section 13 pg 28 (D/g)
		V	\$113.19	\$58.98	\$147.15	\$76.52	Section 13 pg 28 (D/g)
S	Industrial plant	I & II	\$157.34	\$81.82	\$204.84	\$106.36	Section 14 pg 15 (B/a)
		III	\$134.38	\$69.88	\$174.69	\$90.84	Section 14 pg 15 (C/a)
		V	\$111.93	\$58.20	\$148.51	\$75.86	Section 14 pg 15 (D/a)
S	Warehouse	I & II	\$96.28	\$50.07	\$125.16	\$65.09	Section 14 pg 28 (A/g)
		III	\$91.77	\$47.72	\$119.30	\$62.04	Section 14 pg 28 (B/g)
		V	\$80.79	\$42.21	\$118.03	\$61.37	Section 14 pg 28 (C/mkg)
S	Parking Garage	I & II	\$76.31	\$39.68	\$99.20	\$51.59	Section 14 pg 34 (A/g)

<sup>1</sup> Cost per square foot, unless noted otherwise. (I, II = linear foot; s.f. = square foot); includes 1.3 regional multiplier (see Sec. 99 pg 6 July 2009 Marshall & Swift)  
<sup>2</sup> Hillside construction = slope >20%, multiply by additional 1.3 multiplier  
<sup>3</sup> Remodel/Fund of New Construction is a 0.52 multiplier  
<sup>4</sup> Separate structures or occupancies valued separately  
<sup>5</sup> Separate fees assessed for EIR/M permits, R.O.W. improvements, Fire Prevention Bureau, Grading Permits, technology enhancement, records management, Exits, & Shoring.

**PROOF OF SERVICE**  
**Case Number L14-0065**

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

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

**Documents Included**  
Hearing Decision

**Representative**

The Honorable Frank Roesch, Alameda County Superior Court  
1221 Oak Street Department 17  
Oakland, CA 94612

**Owner Representative**

525-655 Hyde Street CNML Tsegab Assefa  
4844 Telegraph Ave  
Oakland, CA 94609

**Owner Representative**

Angie Sandoval, Fried & Williams LLP  
1901 Harrison St. 13th Floor  
Oakland, CA 94612

**Owner Representative**

Clifford E. Fried, Fried & Williams LLP  
1901 Harrison St. 13th Floor  
Oakland, CA 94612

**Owner Representative**

Liz Hart, c/o Fried & Williams LLPP  
1901 Harrison St. 13th Floor  
Oakland, CA 94612

**Tenant**

Alexander Taylor  
3921 Harrison St #104  
Oakland, CA 94611

**Tenant**

Alexandru Butnaru  
3921 Harrison St #102  
Oakland, CA 94611

**Tenant**

Alexandru Vasilescu  
3921 Harrison St #301  
Oakland, CA 94611

**Tenant**

Andrew Simkin  
3921 Harrison St #305  
Oakland, CA 94611

**Tenant**

Angelique Johnson-Martinez  
3921 Harrison St #103  
Oakland, CA 94611

**Tenant**

Bianca Penaloza  
3921 Harrison St #204  
Oakland, CA 94611

**Tenant**

Cooper Spinelli  
3921 Harrison St #203  
Oakland, CA 94611

**Tenant**

Dana Sarvestani  
3921 Harrison St #203  
Oakland, CA 94611

**Tenant**

Elena Butnaru  
3921 Harrison St #102  
Oakland, CA 94611

**Tenant**

Elizabeth VanLanen  
3921 Harrison St Penthouse  
Oakland, CA 94611

**Tenant**

Fernando Garcia  
3921 Harrison St #201

Oakland, CA 94611

**Tenant**

Jessica Simkin  
3921 Harrison St #305  
Oakland, CA 94611

**Tenant**

Jilleun Eglin & Lexie Eglin  
3921 Harrison St #101  
Oakland, CA 94611

**Tenant**

Julie Amberg  
3921 Harrison St #302  
Oakland, CA 94611

**Tenant**

Kate Garcia  
3921 Harrison St #202  
Oakland, CA 94611

**Tenant**

Lisa Romero  
3921 Harrison St #205  
Oakland, CA 94611

**Tenant**

Mari Oda  
3921 Harrison St #304  
Oakland, CA 94611

**Tenant**

Ria Cruz  
3921 Harrison St #105  
Oakland, CA 94611

**Tenant**

Steven Miller  
3921 Harrison St Penthouse  
Oakland, CA 94611

**Tenant**

Suzanne Miller  
3921 Harrison St #201  
Oakland, CA 94611

**Tenant**

Tadeusz Butnaru  
3921 Harrison St #102  
Oakland, CA 94611

**Tenant**

Todd McMahon  
3921 Harrison St #304  
Oakland, CA 94611

**Tenant**

Tyler Ritter  
3921 Harrison St #303  
Oakland, CA 94611

**Tenant**

Zoe Bridges  
3921 Harrison St #301  
Oakland, CA 94611

**Tenant**

Zvetlana Butnaru  
3921 Harrison St #104  
Oakland, CA 94611

**Tenant Representative**

Ana Mira  
3022 International Blvd #410  
Oakland, CA 94601

**Tenant Representative**

Stanley Amberg  
11 Carolyn Lane  
Chappaqua, NY 10514

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 **October 04, 2021** in Oakland, CA.

A handwritten signature in blue ink, appearing to read "Teresa Brown-Morris". The signature is written in a cursive style with a horizontal line drawn through the middle of the letters.

Teresa Brown-Morris

Oakland Rent Adjustment Program



OCT 15 2021

RENT ADJUSTMENT PROGRAM  
OAKLAND

Angelica A. Sandoval  
asandoval@friedwilliams.com

October 7, 2021

**Via First-Class Mail and Email to:RCosta@oaklandca.gov**

City of Oakland Rent Adjustment Program  
c/o Robert Costa  
250 Frank Ogawa Plaza, Suite 5313  
Oakland, CA 94612

Re: RAP Case No. L14-0065; 525, 655 Hyde Street CNML Properties, LLC v. Tenants

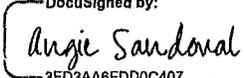
To Whom it May Concern:

The rent adjustment program's records and the reconsideration of board appeal decision after court judgment incorrectly names 525, 655 Hyde Street CNML Properties, LLC as the property owner in the above referenced decision.

While this matter was on appeal, Fried & Williams LLP, filed a request that Mandana Properties, LLC be substituted as the current and proper owner. A true and correct copy of the Motion to Substitute Mandana Properties LLC is attached for reference.

Notices related to this matter should be directed to the undersigned and to the attention of Ray McFadden at email: [ray@mandanaproperties.com](mailto:ray@mandanaproperties.com). Thank you.

Sincerely,  
FRIED & WILLIAMS LLP

DocuSigned by:  
  
3F03AA6FDD0CA07...  
Angelica A. Sandoval

cc: Ray McFadden  
Enclosures [as stated]

1901 Harrison Street, 13<sup>th</sup> Floor, Oakland, CA 94612  
Tel 510-625-0100 Fax 510-550-3621

625 Market Street, 4<sup>th</sup> Floor, San Francisco, CA 94105  
Tel 415-421-0100 Fax 415-762-5435

[www.friedwilliams.com](http://www.friedwilliams.com)

000321

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT, DIVISION ONE

525-655 HYDE ST. CNML PROPS., LLC

Petitioner and Respondent on  
Appeal;

v.

CITY OF OAKLAND'S DEPT. OF  
HOUSING AND COMMUNITY  
DEVELOPMENT RENT ADJUSTMENT  
PROGRAM

Respondent;

FERNANDO GARCIA, JULIE  
AMBERG, TODD MCMAHON, ET AL.,

Real Parties in Interest and  
Appellants.

Court of Appeal No. A156463

Appeal from Judgment Entered  
on December 12, 2018 Granting  
Writ of Administrative  
Mandamus of the Superior Court  
of California, Alameda County,  
Case No. RG17-862841, Hon.  
Jeffrey S. Brand and Hon.  
Kimberly Colwell

**RECEIVED**

OCT 15 2021

RENT ADJUSTMENT PROGRAM  
OAKLAND

**MOTION TO SUBSTITUTE MANDANA PROPERTIES, LLC IN PLACE  
OF RESPONDENT ROCKRIDGE REAL ESTATE, LLC AND REINKE,  
LLC; MEMORANDUM OF POINTS AND AUTHORITIES;  
DECLARATION OF CLIFFORD E. FRIED; EXHIBITS**

Clifford E. Fried (SBN # 118288)  
Fried & Williams LLP  
1901 Harrison Street  
Oakland, CA 94612  
Phone: (510) 625-0100  
Fax: (510) 550-3621  
cfried@friedwilliams.com

Attorney for Respondent ROCKRIDGE  
REAL ESTATE, LLC, REINKE, LLC  
and MANDANA PROPERTIES, LLC

**MOTION TO SUBSTITUTE MANDANA PROPERTIES, LLC IN PLACE  
OF RESPONDENT ROCKRIDGE REAL ESTATE, LLC AND REINKE,  
LLC**

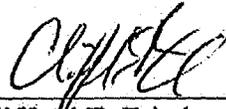
Pursuant to Rule 8.36, subdivision (a), of the California Rules of Court, Respondents ROCKRIDGE REAL ESTATE, LLC and REINKE, LLC request that MANDANA PROPERTIES, LLC be substituted in place of Respondents for all purposes including this appeal.

This motion is based on the attached Memorandum, Declaration of Clifford E. Fried and Exhibits.

Dated: January 9, 2020

Respectfully submitted,

Fried & Williams LLP



---

Clifford E. Fried  
Attorney for Respondent ROCKRIDGE  
REAL ESTATE, LLC, REINKE, LLC  
and MANDANA PROPERTIES, LLC

MEMORANDUM OF POINTS AND AUTHORITIES

Rule 8.36, subdivision (a), of the California Rules of Court provides in pertinent part that the substitution of parties in an appeal must be made by serving and filing a motion in the reviewing court, and the clerk of the court must notify the lower court of any ruling on the motion.

Here, substitution of Mandana Properties, LLC (“Assignee”) as Petitioner in the original proceeding and as Respondent on appeal is appropriate. Assignee purchased the subject property commonly known as 3921 Harrison Street, Oakland, CA (“Property”) from Respondents Rockridge Real Estate, LLC and Reinke, LLC, including but not limited to the Judgment Granting Writ of Administrative Mandamus, Writ of Administrative Mandamus, Order Granting Motion to Augment Record, Order granting Petition for Writ of Administrative Mandate, and any rights or remedies in connection with any appeal of the foregoing matters. [See Declaration of Clifford E. Fried, Assignment of Judgment filed with the Alameda County Superior Court on December 23, 2019 as Exhibit “A” hereto, and Acknowledgement of Assignment of Judgment as Exhibit “B” hereto.

///

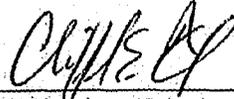
///

For the foregoing reasons, Mandana Properties, LLC should be substituted in as party in place of Rockridge Real Estate, LLC and Reinke, LLC, and the Superior Court of the County of Alameda should be notified of this substitution pursuant to Rule of Court 8.36(a).

Dated: January 9, 2020

Respectfully submitted,

Fried & Williams LLP



---

Clifford E. Fried  
Attorney for Respondent ROCKRIDGE  
REAL ESTATE, LLC, REINKE, LLC  
and MANDANA PROPERTIES, LLC

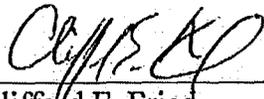
**DECLARATION OF CLIFFORD E. FRIED**

I, CLIFFORD E. FRIED, declare:

1. I am an attorney duly licensed to practice law in the State of California and am an attorney of record for Respondents Rockridge Real Estate, LLC and Reinke, LLC.
2. By this motion, Respondents Rockridge Real Estate, LLC and Reinke, LLC seek to substitute Mandana Properties, LLC as the Petitioner in the original proceeding and as Respondent on appeal.
3. This landlord-tenant dispute has been pending since November 2014. During the pendency of the dispute, there have been three different sets of owners. The first owner was 525-655 Hyde St. CNML PROPS., LLC whose name appears on the caption of this appeal. The second owner was Rockridge Real Estate, LLC. The current owner is Mandana Properties, LLC. My firm and I have been representing all of these owners while the dispute has been pending.
4. On December 6, 2019, Nathaniel Reinke as Managing Member of Rockridge Real Estate, LLC and Alan Reinke as Managing Member of Reinke, LLC executed an Assignment of Judgment. I caused the Assignment of Judgment to be filed with the Superior Court of California, County of Alameda on December 23, 2019. A true and correct copy of the notarized and filed endorsed copy of the Assignment of Judgment is attached hereto as Exhibit "A".

5. On December 16, 2019, Nathaniel Reinke as Managing Member of Rockridge Real Estate, LLC and Alan Reinke as Managing Member of Reinke, LLC further executed an Acknowledgment of Assignment of Judgment. A true and correct copy of the notarized copy of the Acknowledgment Assignment of Judgment is attached hereto as Exhibit "B".

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on January 9, 2020, in Oakland, California.

  
\_\_\_\_\_  
Clifford E. Fried

**EXHIBIT A**

**ASSIGNMENT OF JUDGMENT**



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Clifford E. Fried, Esq., SBN 118288  
Fried & Williams LLP  
1901 Harrison Street, 14<sup>th</sup> Floor  
Oakland, CA 94612  
(510) 625-0100

Attorneys for Petitioner,  
Rockridge Real Estate, LLC & Reinke,  
LLC

**ENDORSED  
FILED  
ALAMEDA COUNTY**

**DEC 28 2019**

CLERK OF THE SUPERIOR COURT  
By JAMIE THOMAS, Deputy

IN THE SUPERIOR COURT OF STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF ALAMEDA  
UNLIMITED CIVIL JURISDICTION

525-655 Hyde St. Cmnl Props., LLC,

Case No.: RG17862841

Petitioner,

**ASSIGNMENT OF JUDGMENT**

vs.

City of Oakland's Department of Housing and  
Community Development Rent Adjustment  
Program, and Does 1 through 25,

Respondents.

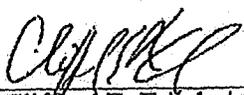
**AND REAL PARTIES IN INTEREST.**

TO THE COURT AND ALL INTERESTED PARTIES:

Attached hereto an ASSIGNMENT OF JUDGEMNT dated December 6,  
2019.

Dated: December 20, 2019

Fried & Williams LLP

  
by Clifford E. Fried, Attorneys for Petitioner  
Rockridge Real Estate, LLC & Reinke, LLC

**RECORDING REQUESTED BY:**

MANDANA PROPERTIES, LLC

**AND WHEN RECORDED MAIL TO:**

Clifford E. Fried, Esq.  
Fried & Williams LLP  
1901 Harrison Street  
Oakland, CA 94612

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN: 012-0929-011

**ASSIGNMENT OF JUDGMENT**

**THE UNDERSIGNED ASSIGNORS DECLARE:**

There is no fee or documentary transfer tax due as this instrument is unrelated to the transfer of real property under Government Code § 27388.1(a)(1) and a documentary transfer tax was previously paid upon the transfer of title to the real property described herein.

The property is located in the city of Oakland, California.

This assignment is made as of 6<sup>th</sup> day of <sup>December</sup> ~~November~~, 2019, by ROCKRIDGE REAL ESTATE LLC, a California limited liability company and REINKE LLC, a California limited liability company (collectively, "Assignor") and MANDANA PROPERTIES, LLC, a California limited liability company ("Assignee"), with reference to the following facts: *4260 PARK BLVD. #130, OAKLAND, CA 94602* *CM*

A. WHEREAS, Assignor was the owner of real property, commonly known as 3921 Harrison Street, Oakland, California, and more particularly described in Exhibit "A" attached hereto which is fully incorporated herein by reference ("Property").

B. WHEREAS, Assignor sold all of its right, title and interest in and to the Property to Assignee, including but not limited to all of Assignor's right, title and interest in and to: (i) The Judgment Granting Writ of Administrative Mandamus entered in Alameda Superior Court, Case No. RG17862841, on December 12, 2018. (ii) The Writ of Administrative Mandamus issued by the Alameda Superior Court, Case No. RG17862841, on December 12, 2018. (iii) The Order (1) Granting Motion to Augment Record and (2) Granting Petition for Writ of Administrative Mandate, entered in Alameda Superior Court, Case No. RG17862841, on August 23, 2018 against Defendant and Judgment Debtor, CITY OF OAKLAND'S DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT RENT ADJUSTMENT PROGRAM. (iv) Any rights or remedies in connection with any appeal of the forgoing matters.

C. WHEREAS, Assignor and Assignee desire to enter into this Assignment to confirm the assignment by Assignor to Assignee of all of Assignee's right, title and interest in and to the aforementioned intangible property.

NOW THEREFORE, in consideration of the mutual covenants of the parties herein, and for good and valuable consideration, the sufficiency of which is hereby acknowledged already received, the parties agree as follows:

1. *Assignment by Assignor.* Assignor hereby sells, transfers and assigns to Assignee all of Assignor's right, title and interest in and to each and all of the following: (i) The Judgment Granting Writ of Administrative Mandamus entered in Alameda Superior Court, Case No. RG17862841, on December 12, 2018. (ii) The Writ of Administrative Mandamus issued by the Alameda Superior Court, Case No. RG17862841, on December 12, 2018. (iii) The Order (1) Granting Motion to Augment Record and (2) Granting Petition for Writ of Administrative Mandate, entered in Alameda Superior Court, Case No. RG17862841, on August 23, 2018 against Defendant and Judgment Debtor, CITY OF OAKLAND'S DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT RENT ADJUSTMENT PROGRAM. (iv) Any rights or remedies in connection with any appeal of the forgoing matters.

2. *Governing Law.* This Assignment is made and entered into in the State of California and shall be interpreted, construed and enforced in accordance with the laws of the State of California.

3. *Binding Effect.* This Assignment shall apply to, bind, and inure to benefit of Assignor and Assignee, and their respective heirs, legal representatives, successors and assigns.

4. *Counterparts.* This Assignment may be executed in one or more counterparts, each of which shall be an original, but all of which shall together constitute one instrument.

IN WITNESS WHEREOF, this Assignment has been executed as of the date first above written.

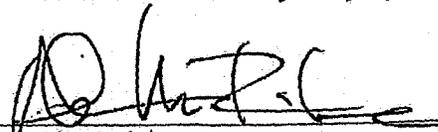
**ASSIGNOR:**

ROCKRIDGE REAL ESTATE LLC,  
a California limited liability company



By: Nathaniel Reinke  
Managing Member

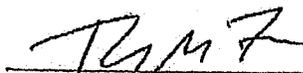
REINKE LLC,  
a California limited liability company



By: Alan Reinke  
Managing Member

**ASSIGNEE:**

MANDANA PROPERTIES, LLC, a Limited Liability Company

  
By: Raymond McFadden  
Managing Member

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
COUNTY OF Alameda )

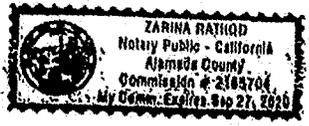
On 12-06-2019 before me, Zarina Rathod Notary Public (here insert name and title of the officer), personally appeared Raymond McFadden who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Zarina Rathod  
(Signature)

(SEAL)



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

Civil Code § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Alameda

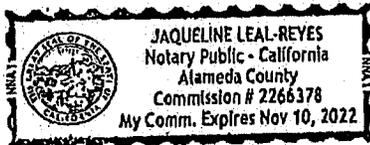
On December 16, 2019, before me, Jaqueline Leal-Reyes Notary Public,

personally appeared Nathaniel Reinke & Alan Reinke

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



*Jaqueline Leal-Reyes*  
Signature of Notary Public

**OPTIONAL**

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_ Document Date: \_\_\_\_\_

Number of Pages: \_\_\_\_\_ Signer(s) Other Than Named Above: \_\_\_\_\_

Capacity(ies) Claimed by Signer(s) \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Corporate Officer - Title(s): \_\_\_\_\_
- Partner -  Limited  General
- Individual  Attorney in Fact
- Trustee  Guardian or Conservator
- Other: \_\_\_\_\_
- Signer is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Corporate Officer - Title(s): \_\_\_\_\_
- Partner -  Limited  General
- Individual  Attorney in Fact
- Trustee  Guardian or Conservator
- Other: \_\_\_\_\_
- Signer is Representing: \_\_\_\_\_

**EXHIBIT B**

**ACKNOWLEDGMENT OF ASSIGNMENT OF JUDGMENT**

ENDORSED  
FILED  
ALAMEDA COUNTY

DEC 19 2019  
CLERK OF THE SUPERIOR COURT  
By *Jessica F. [Signature]* *As Deputy*

1 Clifford E. Fried, Esq., SBN 118288  
Fried & Williams LLP  
2 1901 Harrison Street, 14<sup>th</sup> Floor  
Oakland, CA 94612  
3 Tel: (510) 625-0100  
Fax: (510) 550-3621  
4 cfried@friedwilliams.com

5 Attorneys for Petitioners  
Rockridge Real Estate, LLC, and  
6 Reinke, LLC

7  
8 IN THE SUPERIOR COURT OF STATE OF CALIFORNIA  
9 IN AND FOR THE COUNTY OF ALAMEDA

10  
11 525-655 Hyde St. Cmnl Props., LLC,

Case No.: RG17862841

12 Petitioner,

ACKNOWLEDGMENT OF  
ASSIGNMENT OF JUDGMENT

13  
14 vs.

15 City of Oakland's Department of Housing and  
Community Development Rent Adjustment  
16 Program, and Does 1 through 25,

17 Respondents.

18  
19 And Real Parties in Interest.

20  
21 TO THE COURT AND ALL INTERESTED PARTIES:

22 PLEASE TAKE NOTICE that the Petitioners and Judgment Creditors  
23 ROCKRIDGE REAL ESTATE, LLC and REINKE LLC do hereby acknowledge  
24 assignment to MANDANA PROPERTIES, LLC, a California Limited Liability  
25 Company, of all interest, right and title to each and all of the following:  
26

27 (i) The Judgment Granting Writ of Administrative Mandamus entered in  
28 Alameda Superior Court, Case No. RG17862841, on December 12, 2018.

ACKNOWLEDGMENT OF ASSIGNMENT OF JUDGMENT

1 (ii) The Writ of Administrative Mandamus issued by the Alameda Superior  
2 Court, Case No. RG17862841, on December 12, 2018.

3  
4 (iii) The Order (1) Granting Motion to Augment Record and (2) Granting  
5 Petition for Writ of Administrative Mandate, entered in Alameda Superior Court,  
6 Case No. RG17862841, on August 23, 2018 against Defendant and Judgment  
7 Debtor, CITY OF OAKLAND'S DEPARTMENT OF HOUSING AND  
8 COMMUNITY DEVELOPMENT RENT ADJUSTMENT PROGRAM.  
9

10 (iv) Any rights or remedies in connection with any appeal of the foregoing  
11 matters.  
12

13 The following information is provided under Code of Civ. Proc. Sec. 473(b):

- 14 1. Judgment was entered in action number RG17862841 of the Alameda  
15 County Superior Court.  
16  
17 2. The Judgment was entered on December 12, 2018 in the Alameda County  
18 Register of Actions.  
19  
20 3. The name and address of the assignee and new Judgment Creditor are:

21 MANDANA PROPERTIES, LLC  
22 4200 Park Blvd #130  
23 Oakland, CA 94602

24 The Judgment Debtor's name and last known address is:

25 CITY OF OAKLAND'S DEPARTMENT OF HOUSING AND COMMUNITY  
26 DEVELOPMENT RENT ADJUSTMENT PROGRAM  
27 City Hall, 6th Floor  
28 1 Frank H. Ogawa Plaza  
Oakland, California 94612



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

4. The rights represented by the judgment assigned to the assignee are described above.

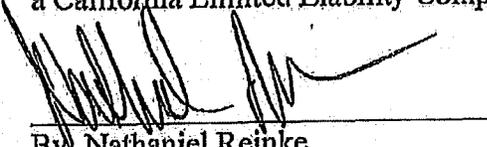
5. The names and address of the assignor and original Judgment Creditor are:

Rockridge Real Estate, LLC, and Reinke, LLC  
c/o Clifford E. Fried  
Fried & Williams LLP  
1901 Harrison Street, 14<sup>th</sup> Floor  
Oakland, CA 94612

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

Dated:

ROCKRIDGE REAL ESTATE, LLC,  
a California Limited Liability Company

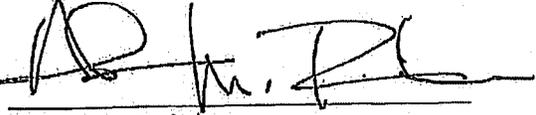


By: Nathaniel Reinke  
Managing Member

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

Dated:

REINKE, LLC, a California Limited Liability Company



By: Alan Reinke  
Managing Member

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT** Civil Code § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

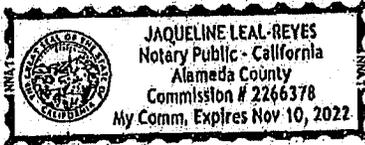
State of California  
County of Alameda

On December 16, 2019 before me, Jaqueline Leal-Reyes Notary Public,  
personally appeared Nathaniel Reinke & Alan Reinke

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~he/she~~ subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



*[Handwritten Signature]*  
Signature of Notary Public

**OPTIONAL**

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_ Document Date: \_\_\_\_\_

Number of Pages: \_\_\_\_\_ Signer(s) Other Than Named Above: \_\_\_\_\_

Capacity(ies) Claimed by Signer(s) \_\_\_\_\_

Signer's Name: \_\_\_\_\_

Corporate Officer - Title(s): \_\_\_\_\_

Partner -  Limited  General

Individual  Attorney In Fact

Trustee  Guardian or Conservator

Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

Corporate Officer - Title(s): \_\_\_\_\_

Partner -  Limited  General

Individual  Attorney In Fact

Trustee  Guardian or Conservator

Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

<b>PROOF OF SERVICE (Court of Appeal)</b> <input checked="" type="checkbox"/> Mail <input type="checkbox"/> Personal Service	
<b>Notice: This form may be used to provide proof that a document has been served in a proceeding in the Court of Appeal. Please read <i>Information Sheet for Proof of Service (Court of Appeal)</i> (form APP-009-INFO) before completing this form. Do not use this form for proof of electronic service. See form APP-009E.</b>	
Case Name: 525-655 Hyde St. Cnml Props., LLC v. City of Oakland Court of Appeal Case Number: A156463 Superior Court Case Number: RG17-862841	

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My  residence  business address is (*specify*):  
1901 Harrison Street, 14th Floor, Oakland, CA 94612
3. I mailed or personally delivered a copy of the following document as indicated below (*fill in the name of the document you mailed or delivered and complete either a or b*):  
Motion to Substitute Mandana Properties, LLC in Place of Respondent Rockridge Real Estate, LLC and Reinke, LLC; Memorandum of Points and Authorities; Declaration of Clifford E. Fried; Exhibits
  - a.  **Mall.** I mailed a copy of the document identified above as follows:
    - (1) I enclosed a copy of the document identified above in an envelope or envelopes and
      - (a)  deposited the sealed envelope(s) with the U.S. Postal Service, with the postage fully prepaid.
      - (b)  placed the envelope(s) for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service, in a sealed envelope(s) with postage fully prepaid.
    - (2) Date mailed: January 10, 2020
    - (3) The envelope was or envelopes were addressed as follows:
      - (a) Person served:
        - (i) Name: Trial Court - Alameda Superior Court
        - (ii) Address:  
Judge Jeffrey Brand - Hayward Hall of Justice,  
24405 Amador Street,  
Hayward, CA 94544
      - (b) Person served:
        - (i) Name: Fernando Garcia
        - (ii) Address:  
3921 Harrison Street, #202  
Oakland, CA 94611
      - (c) Person served:
        - (i) Name: Todd McMahon
        - (ii) Address:  
3921 Harrison Street, #304  
Oakland, CA 94611
- Additional persons served are listed on the attached page (*write "APP-009, Item 3a" at the top of the page*).
- (4) I am a resident of or employed in the county where the mailing occurred. The document was mailed from (city and state): Oakland, CA

Case Name: 525-655 Hyde St. Crml Props., LLC v. City of Oakland	Court of Appeal Case Number: A156463
	Superior Court Case Number: RG17-862841

3. b.  Personal delivery. I personally delivered a copy of the document identified above as follows:

(1) Person served:

(a) Name:

(b) Address where delivered:

(c) Date delivered:

(d) Time delivered:

(2) Person served:

(a) Name:

(b) Address where delivered:

(c) Date delivered:

(d) Time delivered:

(3) Person served:

(a) Name:

(b) Address where delivered:

(c) Date delivered:

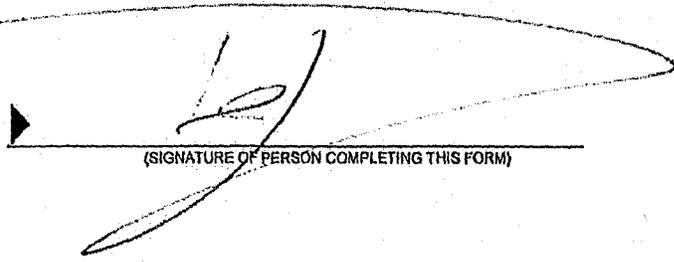
(d) Time delivered:

Names and addresses of additional persons served and delivery dates and times are listed on the attached page (write "APP-009, Item 3b" at the top of the page).

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

Date: January 10, 2020

Fablenne Lopez  
(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)



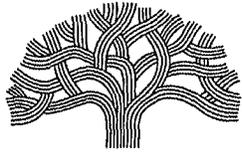
(SIGNATURE OF PERSON COMPLETING THIS FORM)

525-655 Hyde St. Cnml Props., LLC v. City of Oakland,  
Alameda County Superior Court case no. RG17-862841

Name  
Julie E. Amberg

Address  
3921 Harrison Street, #302  
Oakland, CA 94611

000341



CITY OF OAKLAND

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

**RECEIVED**  
Fol...  
**OCT 22 2021**  
**RENT ADJUSTMENT PROGRAM**  
**OAKLAND**  
**APPEAL**

<b>Appellant's Name</b> Julie E. Amberg		<input type="checkbox"/> Owner <input checked="" type="checkbox"/> Tenant	
<b>Property Address (Include Unit Number)</b> 3921 Harrison Street, Unit 302, Oakland, CA 94611			
<b>Appellant's Mailing Address (For receipt of notices)</b> 3921 Harrison Street, Unit 302, Oakland, CA 94611		<b>Case Number</b> L14-0065	<b>Date of Decision appealed</b> September 30, 2021
<b>Name of Representative (if any)</b> Stanley L. Amberg		<b>Representative's Mailing Address (For notices)</b> 4115 Kendal Way, Sleepy Hollow, NY 10591	

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.)*

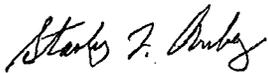
For more information phone (510) 238-3721.

- 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 must not exceed 25 pages from each party, and they must be received by the Rent Adjustment Program with a proof of service on opposing party within 15 days of filing the appeal.** Only the first 25 pages of submissions from each party will be considered by the Board, subject to Regulations 8.22.010(A)(5). Please number attached pages consecutively. Number of pages attached: 5

- You must serve a copy of your appeal on the opposing parties or your appeal may be dismissed.**
- I declare under penalty of perjury under the laws of the State of California that on October 19, 2021, 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:

<b>Name</b>	Clifford E. Fried, Fried & Williams LLP
<b>Address</b>	1901 Harrison Street, 13th Floor
<b>City, State Zip</b>	Oakland, CA 94612
<b>Name</b>	Ray McFadden, Mandana Properties
<b>Address</b>	4200 Park Boulevard, #130
<b>City, State Zip</b>	Oakland, CA 94602

	10/19/2021
---	------------

SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE

DATE

For more information phone (510) 238-3721.

**CITY OF OAKLAND**  
**Department of Housing and Community Development**

**RENT ADJUSTMENT PROGRAM**

**525, 655 Hyde Street CNML Properties, LLC v. Tenants**  
**Case No. L14-0065**

**TENANT AMBERG'S EXPLANATION OF GROUNDS FOR APPEAL**

**INTRODUCTION**  
**and**  
**SUMMARY OF GROUNDS FOR APPEAL**

This is an appeal by tenant Julie E. Amberg from a Hearing Decision in Case No. L14-0065, in the Department of Housing and Community Development Rent Adjustment Program ("RAP"). The Hearing Decision is dated September 30, 2021 and it was served by United States mail on October 4, 2021.

The Hearing Decision granted an owner's petition to exempt the property at 3921 Harrison Street, Oakland, CA, from the RAP as a "substantially rehabilitated" building. OMC 8.22.030(A)(6)

This case comes before the RAP on remand from an August 23, 2018 Order ("Order") and a December 12, 2018 Judgment of the Alameda County Superior Court (Case No. RG17-862841).

The Superior Court Order expressly stated that the "Rent Board may direct the Hearing Officer to conduct a further hearing." The Order said at page 15:

Consistent with CCP 1094.5(f), the court orders the City of Oakland Rent Board to reconsider the case in light of the court's opinion and judgment. The judgment shall not limit or control in any way the discretion legally vested in the respondent Board. If permitted by its procedures, the Rent Board may direct the Hearing Officer to conduct a further hearing. If permitted by its procedures, the Rent Board may reconsider either the entire matter or only the issues implicated by this order. The court expressly does not direct the Rent Board to grant the petition for a Certificate of Exemption.

Tenant Amberg was not given an opportunity, on remand, to request a further hearing by a Hearing Officer.



Tenant Amberg does request a further hearing, but, at this stage of the case, Tenant Amberg does not know of any procedure to request a further hearing except by filing this Appeal.

Tenant Amberg asks the Rent Board to at least temporarily stay the RAP's September 30, 2021 Hearing Decision, to order a further hearing, and to allow Tenant Amberg to introduce evidence and argument, principally on the issue of whether \$127.00/sq.ft. or \$41.16/sq.ft. is the factually and legally correct multiplier for determining the "average basic cost for new construction for a rehabilitation project" (OMC 8.22.030) for the 15 balconies that are structurally integral to 15 apartments in the property.

The burden of a further hearing on the RAP and the parties will be minimal. The time length of the requested hearing would not exceed two hours. The Hearing Officer (Linda M. Moroz) who authored the September 30, 2021 Hearing Decision now on Appeal is familiar with the property and the work done on it, which are the same as in case L15-0073 in which Officer Moroz was the Hearing Officer.

The Superior Court's August 23, 2018 Order contemplates a hearing on remand which focuses on the "cost of building or rehabilitating the balconies." The Order states, at page 13:

The Board misapplied OMC 8.22.030.B.2.b and the incorporated tables by focusing on the potential use of the balconies rather than the cost of building or rehabilitating the balconies. The Board's decision states 'there was no abuse of discretion by the Hearing Officer in including the balconies' area where such space is useable space that expands the tenants' livable area.'

This was legal error because the Table A analysis concerns the cost of constructing the project or part of the project, not the potential use of the constructed property. Although the Rent Board in other contexts might be focused on whether rental space is usable, livable, and habitable, in the context of OMC 8.22.B.2.b and Table A, the Rent Board must focus on the cost of construction.

At the hearing requested by Tenant Amberg, a focus will be on the significant cost of building and rehabilitating the 15 balconies. For example, Martin Gallagher Construction's invoices show the cost of rehabilitating the 15 balconies was \$180,000, which is a full 20.98% of Gallagher's construction costs. (Gallagher invoices 58 and 63) This evidence complies with the Superior Court's Order, quoted above, that a focus must be on the cost of building or rehabilitating the balconies.

A further focus at the hearing requested by Tenant Amberg will be on the physical structure of the balconies as being an integral part of the building itself. For example, the

evidence will show that each balcony, when constructed, was supported by, and attached to, horizontal wood beams. The beams were, at one end, embedded into and structurally attached to the interior framing of the building, and, at the other end, were embedded into and structurally attached to the floor of the balcony. This evidence complies with the Superior Court's Order, at page 13, which states:

As a matter of statutory construction, the City must apply Table A to projects or parts of projects based on whether the Description reasonably describes the physical structure to be constructed.

The evidence will show the balconies were intimately physically a part of the building's wood framing and, per Table A, the appropriate construction cost for the 15 balconies should be \$127/sq.ft.

The evidence will show that the correct calculation is:

$$\begin{aligned} 13,336 \times \$127 &= \$1,693,672.00 \\ 810 \times \$127 &= \$102,870.00 \text{ [construction cost of 15 balconies]} \\ 192 \times \$41.16 &= \$7,902.72 \text{ [construction cost of penthouse deck]} \\ \text{Total} &= \$1,804,444.72 \text{ divided by } 2 = \$902,222.36 \end{aligned}$$

If the owner spent at least \$902,222.36 on the construction rehabilitation project, the building is exempt from the Rent Ordinance. The September 30, 2021 Hearing Decision, at pages 2-3, recalculated the construction expenses as being \$876,800.99. Because the owner failed to expend the required \$902,222.36, the Rent Board should hold that the subject property has not been substantially rehabilitated and the rental units in the building remain under the Rent Ordinance.

#### Further Statement of Grounds for Appeal

Appeal ground #1. The September 30, 2021 Hearing Decision contains math errors. As explained above, the correct "Calculation" is \$902,222.36

Appeal grounds #2(a), #2(b), and #2(d). Under OMC 8.22.030, prior decisions of the Board, and decisions by other hearing officers, it is permissible, depending on the facts of each case, to take into account the actual use of the 15 balconies. Under OMC 15.20.030, the 15 balconies are "occupiable space" as opposed to unoccupiable spaces such as crawl spaces. The 15 balconies are not crawl spaces. They are entered through a sliding door in the living room, and tenants sit on the balconies, barbeque food on the balconies, and eat and enjoy beverages on the balconies.

Appeal grounds #2(c) and #2(e). The September 30, 2021 Hearing Decision raises a new policy issue that has not been decided by the Board: what are the rights of tenants to a new hearing, to present new evidence and legal arguments, after their original case has been returned to RAP, following the granting of a *Writ of Mandamus* by the Alameda County Superior Court? The Hearing Decision entitled “Reconsideration of Board Appeal Decision After Court Judgment” was issued by a RAP hearing officer without notice to tenants and without hearing further relevant testimony or evidence. The Hearing Decision is not supported by substantial evidence because, as explained above, the 15 balconies were actually an integral, structural part of the wood frame of the building.

Appeal grounds #2(f) and 2(h). Tenant Amberg was denied a sufficient opportunity to respond to the owner’s claim. She was denied the opportunity to present testimony and evidence upon remand of the case to the RAP. The Superior Court’s August 23, 2018 Order expressly said that its judgment “shall not limit or control in any way the discretion legally vested in the respondent Board ... to conduct a further hearing.” The Order said, at page 15:

The judgment shall not limit or control in any way the discretion legally vested in the respondent Board. If permitted by its procedures, the Rent Board may direct the Hearing Officer to conduct a further hearing. If permitted by its procedures, the Rent Board may reconsider the entire matter or only the issues implicated by this order. The court expressly does not direct the Rent Board to grant the petition for a Certificate of Exemption.

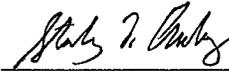
OMC 8.22.110 E.3 gives a party, Tenant Amberg, the rights to call and examine witnesses and to introduce exhibits. The Superior Court’s Order expressly said its judgement “shall not” limit the Board’s discretion to “conduct a further hearing.” However, it appears that the Board, *without notice to Tenant Amberg*, exercised its discretion to deny the tenant her rights under OMC 8.22.110 E.3. Respectfully, that was an abuse of discretion. Respectfully, the denial of a new hearing – without notice – has denied tenant due process of law. At the original hearing of this case, there was no need or reason for tenant to introduce testimony or evidence that the 15 balconies were an integral structural part of the building because RAP decisions had accepted use of the balconies as sufficient to justify a \$127/sq.ft. cost of construction. The Superior Court’s Order called into question the propriety of balcony “use” and placed the focus on balcony structure. The court implicitly recognized that a mandamus proceeding in the Superior Court did not allow introduction of tenant evidence, and therefore expressly allowed the

Board to direct a hearing officer to conduct a further hearing. Respectfully, the Board should grant tenant's appeal and direct the Hearing Officer to conduct a further hearing.

**CONCLUSION**

For the above-stated reasons, the Board should reverse the September 30, 2021 Hearing Decision and remand the case to a hearing officer for a further hearing.

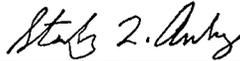
Respectfully submitted,



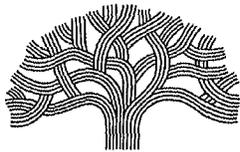
Stanley L. Amberg,  
4115 Kendal Way, Sleepy Hollow, NY 10591  
T: 914-238-4921, M: 914-263-7341  
Representative for Tenant Amberg

October 19, 2021

I, Stanley L. Amberg, declare under penalty of perjury under the laws of the State of California that on October 19, 2021, I placed a copy of tenant Amberg's Appeal and a copy of this TENANT AMBERG'S EXPLANATION OF GROUNDS FOR APPEAL 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: Clifford E. Fried, Fried & Williams LLP, 1901 Harrison Street, 13<sup>th</sup> Floor, Oakland, CA 94612; and to the current owner of the property Ray McFadden, Mandana Properties, 4200 Park Boulevard, #130, Oakland, CA 94602.



Stanley L. Amberg



CITY OF OAKLAND

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

**RECEIVED**

**OCT 22 2021**

**RENT ADJUSTMENT PROGRAM**  
**OAKLAND**  
**APPEAL**

<b>Appellant's Name</b> Todd McMahon and Mari Oda		<input type="checkbox"/> Owner <input checked="" type="checkbox"/> Tenant	
<b>Property Address (Include Unit Number)</b> 3921 Harrison Street, #304, Oakland, CA 94611			
<b>Appellant's Mailing Address (For receipt of notices)</b> 3921 Harrison Street, #304, Oakland, CA 94611		<b>Case Number</b> L14-0065	<b>Date of Decision appealed</b> September 30, 2021
<b>Name of Representative (if any)</b> Stanley L. Amberg		<b>Representative's Mailing Address (For notices)</b> 4115 Kendal Way Sleepy Hollow, NY 10591	

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.)*

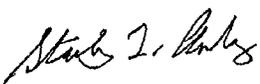
For more information phone (510) 238-3721.

- 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 must *not* exceed 25 pages from each party, and they must be received by the Rent Adjustment Program with a proof of service on opposing party within 15 days of filing the appeal. Only the first 25 pages of submissions from each party will be considered by the Board, subject to Regulations 8.22.010(A)(5). Please number attached pages consecutively. Number of pages attached: 5

• You must serve a copy of your appeal on the opposing parties or your appeal may be dismissed. •  
 I declare under penalty of perjury under the laws of the State of California that on October 19, 2021, 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:

<b>Name</b>	Clifford E. Fried, Fried & Williams LLP
<b>Address</b>	1901 Harrison St, 14th Floor
<b>City, State Zip</b>	Oakland, CA 94612
<b>Name</b>	Ray McFadden, Mandana Properties
<b>Address</b>	4200 Park Boulevard, #130
<b>City, State Zip</b>	Oakland, CA 94602

	<u>10/19/2021</u>
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

For more information phone (510) 238-3721.

**CITY OF OAKLAND**  
**Department of Housing and Community Development**

**RENT ADJUSTMENT PROGRAM**

**525, 655 Hyde Street CNML Properties, LLC v. Tenants**  
**Case No. L14-0065**

**TENANTS MCMAHON AND ODA'S EXPLANATION OF GROUNDS FOR APPEAL**

**INTRODUCTION**  
**and**  
**SUMMARY OF GROUNDS FOR APPEAL**

This is an appeal by tenants Todd McMahon and Mari Oda from a Hearing Decision in Case No. L14-0065, in the Department of Housing and Community Development Rent Adjustment Program ("RAP"). The Hearing Decision is dated September 30, 2021 and it was served by United States mail on October 4, 2021.

The Hearing Decision granted an owner's petition to exempt the property at 3921 Harrison Street, Oakland, CA, from the RAP as a "substantially rehabilitated" building. OMC 8.22.030(A)(6)

This case comes before the RAP on remand from an August 23, 2018 Order ("Order") and a December 12, 2018 Judgment of the Alameda County Superior Court (Case No. RG17-862841).

The Superior Court Order expressly stated that the "Rent Board may direct the Hearing Officer to conduct a further hearing." The Order said:

Consistent with CCP 1094.5(f), the court orders the City of Oakland Rent Board to reconsider the case in light of the court's opinion and judgment. The judgment shall not limit or control in any way the discretion legally vested in the respondent Board. If permitted by its procedures, the Rent Board may direct the Hearing Officer to conduct a further hearing. If permitted by its procedures, the Rent Board may reconsider either the entire matter or only the issues implicated by this order. The court expressly does not direct the Rent Board to grant the petition for a Certificate of Exemption.

Tenants McMahon and Oda were not given an opportunity, on remand, to request a further hearing by a Hearing Officer.

Tenants McMahon and Oda do request a further hearing, but, at this stage of the case, Tenants McMahon and Oda do not know of any procedure to request a further hearing except by filing this Appeal.

Tenants McMahon and Oda ask the Rent Board to at least temporarily stay the RAP's September 30, 2021 Hearing Decision, to order a further hearing, and to allow Tenants McMahon and Oda to introduce evidence and argument, principally on the issue of whether \$127.00/sq.ft. or \$41.16/sq.ft. is the factually and legally correct multiplier for determining the "average basic cost for new construction for a rehabilitation project" (OMC 8.22.030) for the 15 balconies that are structurally integral to 15 apartments in the property.

The burden of a further hearing on the RAP and the parties will be minimal. The time length of the requested hearing would not exceed two hours. The Hearing Officer (Linda M. Moroz) who authored the September 30, 2021 Hearing Decision now on Appeal is familiar with the property and the work done on it, which are the same as in case L15-0073 in which Officer Moroz was the Hearing Officer.

The Superior Court's August 23, 2018 Order contemplates a hearing on remand which focuses on the "cost of building or rehabilitating the balconies." The Order states, at page 13:

The Board misapplied OMC 8.22.030.B.2.b and the incorporated tables by focusing on the potential use of the balconies rather than the cost of building or rehabilitating the balconies. The Board's decision states 'there was no abuse of discretion by the Hearing Officer in including the balconies' area where such space is useable space that expands the tenants' livable area.'

This was legal error because the Table A analysis concerns the cost of constructing the project or part of the project, not the potential use of the constructed property. Although the Rent Board in other contexts might be focused on whether rental space is usable, livable, and habitable, in the context of OMC 8.22.B.2.b and Table A, the Rent Board must focus on the cost of construction.

At the hearing requested by Tenants McMahon and Oda, a focus will be on the significant cost of building and rehabilitating the 15 balconies. For example, Martin Gallagher Construction's invoices show the cost of rehabilitating the 15 balconies was \$180,000, which is a full 20.98% of Gallagher's construction costs. (Gallagher invoices 58 and 63) This evidence complies with the Superior Court's Order, quoted above, that a focus must be on the cost of building or rehabilitating the balconies.

A further focus at the hearing requested by Tenants McMahon and Oda will be on the physical structure of the balconies as being an integral part of the building itself. For example,



the evidence will show that each balcony, when constructed, was supported by, and attached to, horizontal wood beams. The beams were, at one end, embedded into and structurally attached to the interior framing of the building, and, at the other end, were embedded into and structurally attached to the floor of the balcony. This evidence complies with the Superior Court's Order, at page 13, which states:

As a matter of statutory construction, the City must apply Table A to projects or parts of projects based on whether the Description reasonably describes the physical structure to be constructed.

The evidence will show the balconies were intimately physically a part of the building's wood framing and, per Table A, the appropriate construction cost for the 15 balconies should be \$127/sq.ft.

The evidence will show that the correct calculation is:

$13,336 \times \$127 = \$1,693,672.00$   
 $810 \times \$127 = \$102,870.00$  [construction cost of 15 balconies]  
 $192 \times \$41.16 = \$7,902.72$  [construction cost of penthouse deck]  
 Total = \$1,804,444.72 divided by 2 = \$902,222.36

If the owner spent at least \$902,222.36 on the construction rehabilitation project, the building is exempt from the Rent Ordinance. The September 30, 2021 Hearing Decision, at pages 2-3, recalculated the construction expenses as being \$876,800.99. Because the owner failed to expend the required \$902,222.36, the Rent Board should hold that the subject property has not been substantially rehabilitated and the rental units in the building remain under the Rent Ordinance.

#### Further Statement of Grounds for Appeal

Appeal ground #1. The September 30, 2021 Hearing Decision contains math errors. As explained above, the correct "Calculation" is \$902,222.36

Appeal grounds #2(a), #2(b), and #2(d). Under OMC 8.22.030, prior decisions of the Board, and decisions by other hearing officers, it is permissible, depending on the facts of each case, to take into account the actual use of the 15 balconies. Under OMC 15.20.030, the 15 balconies are "occupiable space" as opposed to unoccupiable spaces such as crawl spaces. The 15 balconies are not crawl spaces. They are entered through a sliding door in the living room, and tenants sit on the balconies, barbeque food on the balconies, and eat and enjoy beverages on the balconies.

Appeal grounds #2(c) and #2(e). The September 30, 2021 Hearing Decision raises a new policy issue that has not been decided by the Board: what are the rights of tenants to a new hearing, to present new evidence and legal arguments, after their original case has been returned to RAP, following the granting of a *Writ of Mandamus* by the Alameda County Superior Court? The Hearing Decision entitled “Reconsideration of Board Appeal Decision After Court Judgment” was issued by a RAP hearing officer without notice to tenants and without hearing further relevant testimony or evidence. The Hearing Decision is not supported by substantial evidence because, as explained above, the 15 balconies were actually an integral, structural part of the wood frame of the building.

Appeal ground #2(f) and #2(h). Tenants McMahon and Oda were denied a sufficient opportunity to respond to the owner’s claim. They were denied the opportunity to present testimony and evidence upon remand of the case to the RAP. The Superior Court’s August 23, 2018 Order expressly said that its judgment “shall not limit or control in any way the discretion legally vested in the respondent Board ... to conduct a further hearing.” The Order said, at page 15:

The judgment shall not limit or control in any way the discretion legally vested in the respondent Board. If permitted by its procedures, the Rent Board may direct the Hearing Officer to conduct a further hearing. If permitted by its procedures, the Rent Board may reconsider the entire matter or only the issues implicated by this order. The court expressly does not direct the Rent Board to grant the petition for a Certificate of Exemption.

OMC 8.22.110 E.3 gives a party, Tenants McMahon and Oda, the rights to call and examine witnesses and to introduce exhibits. The Superior Court’s Order expressly said its judgement “shall not” limit the Board’s discretion to “conduct a further hearing.” However, it appears that the Board, *without notice to Tenants McMahon and Oda*, exercised its discretion to deny the tenants their rights under OMC 8.22.110 E.3. Respectfully, that was an abuse of discretion. Respectfully, the denial of a new hearing – without notice – has denied tenants due process of law. At the original hearing of this case, there was no need or reason for tenants to introduce testimony or evidence that the 15 balconies were an integral structural part of the building because RAP decisions had accepted use of the balconies as sufficient to justify a \$127/sq.ft. cost of construction. The Superior Court’s Order called into question the propriety of balcony “use” and placed the focus on balcony structure. The court implicitly recognized that a

mandamus proceeding in the Superior Court did not allow introduction of tenant evidence, and therefore expressly allowed the Board to direct a hearing officer to conduct a further hearing. Respectfully, the Board should grant tenants' appeal and direct the Hearing Officer to conduct a further hearing.

**CONCLUSION**

For the above-stated reasons, the Board should reverse the September 30, 2021 Hearing Decision and remand the case to a hearing officer for a further hearing.

Respectfully submitted,



Stanley L. Amberg,  
4115 Kendal Way, Sleepy Hollow, NY 10591  
T: 914-238-4921, M: 914-263-7341  
Representative for Tenants McMahon and Oda

October 19, 2021

I, Stanley L. Amberg, declare under penalty of perjury under the laws of the State of California that on October 19, 2021, I placed a copy of Tenants McMahon and Oda's Appeal and a copy of this TENANTS MCMAHON AND ODA'S EXPLANATION OF GROUNDS FOR APPEAL 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: Clifford E. Fried, Fried & Williams LLP, 1901 Harrison Street, 14<sup>th</sup> Floor, Oakland, CA 94612; and to the current owner of the property Ray McFadden, Mandana Properties, 4200 Park Boulevard, #130, Oakland, CA 94602.



Stanley L. Amberg

1 Clifford E. Fried SBN 118288  
2 Angelica A. Sandoval SBN 318093  
3 Fried & Williams LLP  
4 1901 Harrison Street, 13<sup>th</sup> Floor  
5 Oakland, California 94612  
6 Telephone: (510) 625-0100  
7 Facsimile: (510) 550-3621  
8 Email: asandoval@friedwilliams.com

9 Attorneys for Respondent /Owner  
10 Mandana Properties, LLC

11 **DEPARTMENT OF HOUSING & COMMUNITY DEVELOPMENT AGENCY**  
12 **RENT ADJUSTMENT PROGRAM**  
13 **CITY OF OAKLAND**

14 Julie E. Amberg;  
15 Todd MacMahon;  
16 Mari Oda;  
17 Fernando Garcia;  
18 Kate Garcia;

19 Appellants/Tenant,

20 vs.

21 525, 655 Hyde Street CNML Properties, LLC

22 Respondent/Owner.

**CASE NO.: L14-00650 \_\_\_\_\_**

**RESPONDENT’S RESPONSE TO APPEAL**

23 This is Respondent Mandana Properties, LLC response to appeals submitted by Julie E.  
24 Amberg, Rodd McMahon, Mari Oda, Fernando, and Kate Garcia, (collectively, “Appellants”).  
25 Appellants filed their appeals after receiving the September 30, 2021, Reconsideration of Board  
26 Appeal Decision After Court Judgment Decision (the “Decision”). The Decision follows the order  
27 issued by the Alameda Superior Court which ordered the City of Oakland Rent Adjustment  
28 Program to “**reconsider the Appeal Decision L14-0065 in its entirety in light of the Court’s  
Opinions, Order, and this Judgment.**”

1                   **I. INTRODUCTION**

2                   On March 7, 2017, Respondent, Mandana Properties LLC (as the current owner and  
3 taking over the rights and actions of its predecessors in interest) challenged a decision issued by the  
4 Oakland's Rent Adjustment Program (the "RAP") and Appeals Board Decision in RAP Case  
5 Number L14-0065 ("Original Decision") denying a petition for substantial rehabilitation for an  
6 apartment building located at 3921 Harrison Street, Oakland, California ("Property"). Respondent  
7 claimed that the RAP erred in its calculation of the minimum construction costs required for the  
8 building to be declared "substantially rehabilitated" pursuant to Oakland Municipal Code ("OMC")  
9 Section 8.22.030(A)(6) by inflating the minimum construction costs requirement using incorrect  
10 figures, based its decision on a schedule improperly introduced by one of the tenants, and  
11 improperly excluding certain invoices in favor of the Appellants without any basis.  
12

13                   In support of its petition for substantial rehabilitation, the owner submitted into evidence  
14 invoices and proofs of payment for work on the Property. The RAP overlooked \$26,000 in legitimate  
15 allowable expenses from those invoices when it calculated invoices by Martin Gallagher  
16 Construction, Inc. Due to the RAP's error, the RAP understated the total amount spent by  
17 Respondent and denied the owner \$26,000 in legitimate allowable expenses.

18                   The RAP miscalculated the average basic cost for new construction, which is used for  
19 determining the minimum amount that Respondent needed to spend on the Property to qualify for a  
20 Certificate of Exemption.

21                   The RAP admitted into evidence a document on the letterhead of the Alameda County  
22 Assessor which states that the total building area of the Property is 13,336 square feet. Because the  
23 13,336 square feet did not include the 16 decks on the Property, which were also renovated and  
24 considered in the total construction cost, the RAP added 1,002 square feet to the total square  
25 footage, instead of keeping it separate, for a total square footage of 14,338.

26                   The RAP then multiplied 14,338 square feet by \$127, which is the average basic costs of  
27 construction for an **apartment** with two or more units made of wood frame construction, to  
28 calculate the average basic costs of construction as \$1,820,926. This figure is incorrect, as it fails to

1 account for the average basic costs of construction for **decks and balconies**, which is substantially  
2 lower than the average basic cost of construction for apartments in general. Instead, the RAP should  
3 have multiplied 13,336 square feet by \$127, and 1,002 square feet by \$41.16 to derive a sum of  
4 \$1,734,914 for the average basic costs of construction for the Property.

5 The RAP improperly admitted “Quarterly Cost Indexes (1926 = 100)” (“Table B”) into  
6 evidence over Respondent’s objections, even though it was not properly submitted at least seven  
7 days before the hearing in violation of the rules set by the RAP in its notice of hearing, and the table  
8 did not come from the City of Oakland’s chief building inspected as required by Section  
9 8.22.030.B.2.b. The RAP then calculated a multiplier of 1.18% based on figures in Table B to  
10 adjust the average basic cost of construction for inflation. Then 1.18% was multiplied by the  
11 incorrect average basic cost of construction of \$1,820,926 which was further multiplied by 50% to  
12 derive the amount of \$1,074,347, as the minimum amount required by the owner to spend to have  
13 its Property deemed substantially rehabilitated.  
14

15 Because the RAP determined the total cost spent by Respondent in the amount of  
16 \$850,441 did not exceed \$1,074,347, the RAP denied the Exemption Petition. Respondent then  
17 appealed the Original Decision. The Original Decision was affirmed on appeal.

18 On June 5, 2017, Respondent filed a Petition for Writ of Administrative Mandamus  
19 (“Petition”) in the Superior Court of California, County of Alameda.

20 On December 12, 2018, the Alameda County Superior Court entered a Judgment  
21 **Granting** the Writ of Administrative Mandamus, setting aside and vacating the Original Decision.  
22 The Superior Court ordered the City of Oakland Rent Adjustment Program to “**reconsider the**  
23 **Appeal Decision L14-0065 in its entirety in light of the Court’s Opinions, Order and this**  
24 **Judgment.**” A copy true and correct copy of the Judgment and Writ from the trial court is attached  
25 hereto as **Exhibit A**.

26 On February 26, 2021, the Court of Appeal affirmed and trial court’s judgment and  
27 remanded the matter for consideration in accordance this its rulings. The remand order states:  
28 “Consistent with Code of Civil Procedure [section] 1094.5(f), the court orders the City of Oakland

1 Rent Board to reconsider the case in light of the **court’s opinions and judgment.**” The order  
2 further allows the RAP to use its discretion to follow any appropriate procedures. A true and correct  
3 copy Court of Appeals Decision is attached hereto as **Exhibit B.**

4 On September 30, 2021, Hearing Officer Linda Moroz issued the new Decision. The  
5 Decision was served by mailing a copy on the parties on October 4, 2021. A true and correct copy  
6 of the Decision is attached hereto as **Exhibit C.** Appellant Julie E. Amberg served her appeal on  
7 October 19, 2021. Appellant Rodd McMahon and Mari Oda served their appeal on October 19,  
8 2021. And Appellant Fernando and Kate Garcia served their appeal on October 19, 2021.

9 **II. APPEAL GROUNDS:**

- 10  
11 1. The decision is inconsistent with OMC Chapter 8.22;  
12 2. The decision is inconsistent with decisions issued by other Hearing Officers;  
13 3. The decision raises a new policy issue that has not been decided by the Board;  
14 4. The decision violates federal, state, or local law;  
15 5. The decision is not supported by substantial evidence;  
16 6. Appellant was denied a sufficient opportunity to present claims;

17 **III. ARGUMENTS**

18 **A. Appellants fail to demonstrate how this decision is inconsistent with Oakland’s  
19 law, regulation, or prior decisions.**

20 When alleging a decision is inconsistent with the law, regulations, or prior decisions, an  
21 appellant is required to identify the Ordinance section, regulations, or prior Board decision, and  
22 describe how the decision is inconsistent. Appellant has not provided this information and thus fails  
23 to meet his burden of proof.

24 It is very difficult for Respondent to prepare a response since Appellants do not identify the  
25 law, regulation, or prior decision that is different. Thus, this claim should be disregarded.

26 **B. Appellants fail to demonstrate how this decision is inconsistent with decisions  
27 issued by other Hearing Officer.**

28 When alleging that a decision is inconsistent with prior decisions, appellant is required to  
identify the prior inconsistent decision and explain how the decision is inconsistent.

1 It is very difficult Respondent to prepare a response since Appellants failed to identify any  
2 prior decision. Thus, this claim should be disregarded.

3  
4 **C. CCP § 1094.5 outlines the procedure after the issuance of a Writ of Mandamus,  
thus this is not a new policy issue.**

5 Appellants allege that after a Writ of Mandamus has been issued, tenants should be entitled  
6 to a new hearing and should be permitted to present new/same evidence and argument.

7 Pursuant to OMC 8.22.120.E, a party can seek judicial relief after a final decision has been  
8 issued by the Appeal Board. After exhausting all other remedies, Respondent filed a petition for  
9 writ of administrative mandate under CCP § 1085(a) and CCP § 1094.5 to seek such relief. CCP §  
10 1094.5 (f) states:

11 “[C]ourt shall enter judgement either commanding respondent to set aside the order  
12 or decision, or denying the writ. Where the judgment commands that the order or  
13 decision be set aside, it may order the reconsideration of the case in light of the  
14 court’s opinion and judgment and may order respondent to take such action as is  
15 specially upon it by law, but the judgment shall not limit or control in any way the  
discretion legally vested in the respondent.”

16 CCP § 1094.5 provides the framework by which an aggrieved party to an administrative  
17 proceeding may seek judicial review of a final order or decision. Respondent followed the  
18 appropriate procedures to seek relief. As a result, the Alameda Superior Court, affirmed by the  
19 Court of Appeals, granted Respondent’s Writ for Mandate with clear directions to the RAP. The  
20 RAP properly followed the trial court’s order. Thus, this is not a new issue, and the RAP exercised  
21 its discretion in not scheduling a new hearing.

22 **D. Appellants fail to demonstrate how the Decision is not supported by substantial  
evidence.**

23  
24 The RAP Board on appeal applies the substantial standard when reviewing the hearing  
25 officer’s decision. The Board’s function is not to decide whether it would have reached the same  
26 factual conclusions as the hearing officer. Instead, the Board’s task is to decide whether a  
27 reasonable factfinder could have come to the same conclusion based on the facts in the record.

28 The work for the RAP Board has been done. The trial court and the Court of Appeals  
closely reviewed supporting and opposing pleadings, arguments, evidence, and ordered that the



1 Original Decision be vacated and set aside, and the RAP reconsidered the case in light of the  
2 Court's opinion and judgment. The court's opinion and judgment detail the facts and specifically  
3 point out the errors in the Original Decision. The RAP considered the court's opinion and judgment  
4 when drafting the new Decision and properly followed the court's orders.

5 Appellants fail to demonstrate how, by following the Court's opinion and judgment, a  
6 different outcome would be reached. Instead, Appellants wish to present the same arguments that  
7 led to the errors in the Original Decision. Thus, this argument should be disregarded.

8  
9 **E. Appellant fails to demonstrate how the Decision violates federal, state, or local law.**

10 Appellants fails to state the law that is being violated, making it difficult for Respondent to  
11 prepare a response. Respondent followed the procedure outlined by OMC 8.22.120.E and CCP §  
12 1085(a) and CCP § 1094.5 as paraphrased under Section C above. Respondent is not violating any  
13 laws. It appears that Appellants are requesting the RAP to disobey the Court's orders and violate  
14 the law. Thus, this argument should be disregarded.

15 **F. Appellants had a fair opportunity to present their claims.**

16 The RAP properly exercised its discretion in issuing the Decision and not holding another  
17 hearing. Appellants are confused and misinterpret the Court of Appeal's decision. The remand  
18 order states:

19 "Consistent with Code of Civil Procedure [section] 1094.5(f), the court orders the  
20 **City of Oakland Rent Board** to reconsider the case in **light of the court's opinion**  
21 **and judgment**. The judgment shall not limit or control in any way the discretion  
22 legally vested in the response Board. If permitted by its procedures, the Rent Board  
23 may direct the Hearing Officer to conduct a further hearing. If permitted by its  
24 procedures, the Rent Board may reconsider the entire matter or only the issues  
25 implicated by this order. The court expressly does not direct the Rent Board to grant  
26 the petition for Certificate of Exemption." Emphasis added.

24 Appellants erroneously interpreted the Court of Appeal's Order to mean Appellants  
25 should be given the opportunity to appear at a hearing to introduce new/same evidence and  
26 argument related to the multiplier for determining the average costs of construction.

27 The Alameda Superior Court held and Court of Appeals found that the RAP erred by  
28 incorporating Table B as the substantive standard, using Table B since it was not issued by

1 the chief building inspector, excluding \$26,000 in invoices by Martin Gallagher  
2 Construction Inc., misapplying and miscalculating the construction costs by focusing on the  
3 potential use of the balconies rather than the costs of construction, using the wrong  
4 multiplier from the wrong table; and the Court found that there was substantial evidence to  
5 support the claim that the property space included both apartment space and deck and  
6 balcony space. See Exhibits A and B.

7 Any arguments and evidence Appellants wish to now introduce has already been  
8 considered by the trial court and the RAP. Thus, Appellants have not been denied their due  
9 process rights.

10 Lastly, Appellant Julie Amberg did not file a response to Respondent’s Exemption  
11 Petition within the 30 days of service of the notice by the RAP pursuant to OMC  
12 8.22.090.A.5. Thus, Appellant Julie Amberg lacks standing to present evidence, argue or  
13 object to the Respondent’s Exemption Petition and the Decision. See T-06-0059-0060,  
14 Martinez v. Wu and T10-0073, Hunter-Nicholson v. Hogan/Vest.

15  
16 **III. CONCLUSION**

17 Appellants have failed to provide valid arguments as to why the RAP’s Decision  
18 should be overturned or why a new hearing should be scheduled. The Alameda County  
19 Superior Court and the Court of Appeals considered the pleadings, Administrative Record,  
20 all moving opposition papers, arguments of counsel, and filed papers, the court entered an  
21 Order granting Respondent’s granting writ of mandate directing the City of Oakland’s RAP  
22 to set aside and vacate the Appeal Decision in Case No. L14-0065 and for the RAP to  
23 reconsider the Appeal Decision in Case No. L14-0065 in light of the court’s opinions,  
24 Order, and Judgment. The RAP properly followed the trial court’s and Court of Appeal’s  
25 orders. The appeal should be denied in entirety.

26 Date: November 23, 2021

27 ~~FRIPD~~ ~~Signature~~ WILLIAMS, LLP

28 

3FB3AA6FDB0C407...  
Angelica A. Sandoval  
Attorneys for Respondent/Owner, Mandana Properties, LLC

1 Clifford E. Fried, Esq., SBN 118288  
2 Fried & Williams LLP  
3 1901 Harrison Street  
4 Oakland, CA 94612  
5 Phone: (510) 625-0100  
6 Email: cfried@friedwilliams.com

**FILED**  
ALAMEDA COUNTY

DEC 12 2018

By *[Signature]*

7 Attorneys for Petitioners  
8 Rockridge Real Estate, LLC & Reinke, LLC

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IN THE SUPERIOR COURT OF STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF ALAMEDA

525-655 HYDE ST. CNML PROPS., LLP,

Case No.: RG17-862841

Petitioner,

**[PROPOSED] JUDGMENT  
GRANTING WRIT OF  
ADMINISTRATIVE MANDAMUS**

vs.

CITY OF OAKLAND'S DEPARTMENT OF  
HOUSING AND COMMUNITY  
DEVELOPMENT RENT ADJUSTMENT  
PROGRAM, and DOES 1 THROUGH 25,

Respondents.

Jilleun Eglin,  
Lexie Eglin,  
Angelique Johnson-Martinez,  
Suzanne Miller,  
Fernando Garcia,  
Kate Flick Garcia,  
Bianca Penaloza,  
David Preciado,  
Julie Amberg,  
Tyler Ritter,  
Marie Oda,  
Todd McMahan,  
Andrew Simkin,  
Jessica Simkin,  
and DOES 26 THROUGH 40,

Real Parties in Interest.

1           The Motion for Judgment on the Writ of Administrative Mandamus of Petitioners  
2 Rockridge Real Estate, LLC & Reinke, LLC ("Petitioners") came on for hearing on July  
3 26, 2018 and August 23, 2018 in Department 511 before the Honorable Kimberly Colwell.  
4 Clifford E. Fried, of Fried & Williams LLP appeared on behalf of Petitioners. Jamilah A.  
5 Jefferson, of the City of Oakland's City Attorney's Office, appeared on behalf of  
6 Respondent City of Oakland's Department of Housing and Community Development  
7 Rent Adjustment Program. Real Parties in Interest were present in the courtroom. The  
8 matter was argued and taken under submission. After considering the pleadings,  
9 Administrative Record, all moving and opposition papers, arguments of counsel, and file  
10 in this matter, the court entered an Order granting Petitioners' motion to augment the  
11 record and then granted Petitioners' petition and motion for writ of mandate directing the  
12 City of Oakland's Department of Housing and Community Development Rent Adjustment  
13 Program to vacate the Appeal Decision in Case No. L14-0065 ("Order"). A copy of said  
14 Order is attached hereto as **Exhibit A** and incorporated herein by reference as though set  
15 forth in full. Accordingly,

16           IT IS ADJUDGED AND DECREED THAT,

17           1.     Petitioners shall have judgment against Respondent City of Oakland's  
18 Department of Housing and Community Development Rent Adjustment Program, for a  
19 writ of administrative mandamus setting aside and vacating the Rent Adjustment Program  
20 Appeal Decision in Case No. L14-0065.

21           2.     Respondent shall reconsider the Appeal Decision <sup>IN ITS ENTIRETY</sup> in Case No. L14-0065 in  
22 light of the court's opinions, Order and this Judgment.

23           3.     A writ of administrative mandamus shall issue under seal of this Court in  
24 the form attached hereto as **Exhibit B**.

25           4.     Petitioners shall recover costs of suit as the prevailing party in this action.  
26  
27

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

5. Petitioner may seek, pursuant to an appropriate noticed motion, an award of its attorneys' fees, and this Court reserves and retains jurisdiction to determine the amount of such fees, if any.

This Court shall reserve and retain Jurisdiction over this action until such time as Respondent City of Oakland's Department of Housing and Community Development Rent Adjustment Program files a return evidencing that it has complied with the attached Writ of Mandamus.

Date: 12/12/18

  
JEFFREY S. BRAND,  
Judge of the Alameda Superior Court



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**FILED**  
ALAMEDA COUNTY

AUG 23 2018

By

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF ALAMEDA

525 HYDE STREET, CNML PROPS, LLP,

Petitioner,

v.

CITY OF OAKLAND,

Respondents.

No. RG17-862841

ORDER (1) GRANTING MOTION TO  
AUGMENT THE RECORD AND (2)  
GRANTING PETITION FOR WRIT OF  
MANDATE.

Date: 8/23/18  
Time: 9:00 a.m.  
Dept.: 511

The motion of 525-655 Hyde St Commercial Properties (the "Developer") to augment the administrative record and the petition of the Developer for writ of mandate directing the City of Oakland Rent Board to vacate the Appeal Decision in Case No. L14-0065 for came on for hearing on 8/23/18, in Department 511 of this Court, the Honorable Kimberly Colwell presiding. Counsel appeared on behalf of Petitioner and on behalf of Respondents. After consideration of the points and authorities and the evidence, as well as the oral argument of counsel, IT IS ORDERED: The motion of 525-655 Hyde St Commercial Properties (the "Developer") to augment the administrative record is GRANTED. The Petition of the Developer for writ of

1 mandate directing the City of Oakland Rent Board to vacate the Appeal Decision in Case No.  
2 L14-0065 is GRANTED.

3  
4 OPPORTUNITY FOR POST-HEARING BRIEFING

5 The court's tentative decision issued before the 7/26/18 hearing framed the issues  
6 differently than as presented by the parties and at the hearing the parties indicated that they might  
7 want supplemental briefing depending on the outcome of the motion to augment. The court's  
8 tentative decision issued before the 8/23/18 hearing stated that the court would permit the  
9 opportunity for post-hearing supplemental briefing if any party requested supplemental briefing.  
10 (*Monarch Healthcare v. Superior Court* (2000) 78 Cal.App.4th 1282, 1286.) No party requested  
11 supplemental briefing.  
12  
13

14 EVIDENCE

15 The court GRANTS the Developer's request on 5/1/18 for judicial notice of ordinances  
16 (Exhs 1-3) and Hearing Decisions (Exhs 8-12.) The court GRANTS the Developer's request on  
17 5/1/18 for judicial notice of Tables A, B, C, and D (Exhs 4-7), but does augment the evidentiary  
18 record with those documents.  
19

20 The court GRANTS the City's request on 6/1/18 for judicial notice of Hearing Decisions.

21 The court GRANTS the City's request on 6/1/18 to supplement the record with the  
22 transcript of the Rent Board hearing. This was part of the evidence and was apparently omitted  
23 in error.

24 The court DENIES the City's implicit request on 6/1/18 to supplement the record with the  
25 Declaration of David Harlan. Harlan testified before the Hearing officer. (AR 146:17-157:9.)  
26

1 The City has not demonstrated that Harlan's declaration testimony was either improperly  
2 excluded during the administrative process or it could not, in the exercise of reasonable  
3 diligence, have been presented before the administrative decision was made. (CCP 1094.5(e);  
4 *Evans v. City of San Jose* (2005) 128 Cal.App.4th 1123, 1144.)

5 The court GRANTS the Developer's request on 6/25/18 for judicial notice of Hearing  
6 Decisions.

7  
8  
9 MOTION TO AUGMENT THE RECORD

10 The City argued that the Developer failed to exhaust administrative remedies because it  
11 failed to argue to the Board that the Hearing Officer failed to properly apply Table A when  
12 calculating the cost of new construction. (City Oppo at 9-10.) At the hearing on 7/26/18, the  
13 Developer handed the court a copy of a brief on appeal allegedly filed with the Rent Board on  
14 5/4/16 that raised the issue at page 4 (the "Appeal Brief"). The City did not concede that the  
15 Appeal Brief was in the administrative record.  
16

17 On 8/10/18, the Developer filed a post-hearing motion under CCP 1094.5(e) to augment  
18 the record with the Appeal Brief. "A court may exercise its discretion to augment an  
19 administrative record if the evidence is relevant and if it was either improperly excluded during  
20 the administrative process or it could not, in the exercise of reasonable diligence, have been  
21 presented before the administrative decision was made." (*Evans v. City of San Jose* (2005) 128  
22 Cal.App.4th 1123, 1144.) This motion to augment does not concern evidence going to the merits  
23 that was presented to the hearing officer, but rather concerns evidence going to the procedural  
24 issue of whether the Developer raised an issue with the Board.  
25  
26



1           The Developer's Notice of Appeal filed 6/18/15 raises the primary issue of whether the  
2 balcony area should be included but not the secondary issue of whether if the balcony is included  
3 it should be treated differently than apartment space. (AR 108.)

4           The Developer's Appeal Brief is file stamped "RECEIVED CITY OF OAKLAND RENT  
5 ARBITRATION PROGRAM 2016 MAY - 4 PM 2:52." The stamp is the same as other  
6 documents filed with the Rent Board. (AR 35, 46, 72, 104.) The City has presented declaration  
7 testimony from City employees Keith Mason and Kelly Rush that the City has no record of  
8 receiving the Appeal Brief. The real parties in interest also present evidence and argue that they  
9 have no record of the Appeal Brief.  
10

11           The transcript of the Board hearing on 12/8/16 indicates that the Board discussed the  
12 primary issue of whether the balcony area should be included but that the Board did not reach the  
13 secondary issue of whether if the balcony is included it should be treated differently than  
14 apartment space.  
15

16           The motion of the Developer to augment the administrative record with the Appeal Brief  
17 is GRANTED. The Appeal Brief is file stamped as received by the Board. This creates a  
18 presumption of filing. (*In re Marriage of Mosley* (2010) 190 Cal.App.4th 1096, 1103 ["a  
19 judgment or appealable order is presumptively filed, for purposes of the 180-day time limit, on  
20 the file-stamped date"].) The City has not presented evidence that on 5/4/16 the Developer used  
21 the City's self-file-stamp procedure to file-stamp the brief but then failed to leave a copy with the  
22 City or that the Developer falsified the file stamp on the Appeal Brief. The Court finds that the  
23 substantial evidence supports a finding that the Developer filed the brief and that the City  
24 inadvertently mis-filed or lost the brief. There is no indication that the City intentionally  
25 withheld the Appeal Brief from the administrative record.  
26

1  
2 FACTS AND PROCEDURE

3 The Developer or its predecessor in interest rehabilitated the property located at 3921  
4 Harrison St, Oakland, CA. The Developer spent approximately \$850,000 on the project.

5 The Developer then sought a Certificate of Exemption from the Rent Board so that it  
6 could raise rents at the property. OMC 8.22.030.B.2 states, "In order to obtain an exemption  
7 based on substantial rehabilitation, an owner must have spent a minimum of fifty (50) percent of  
8 the average basic cost for new construction for a rehabilitation project and performed substantial  
9 work on each of the units in the building.  
10

11 The City notified the parties that the hearing would be on 3/20/15 and that they would be  
12 required to submit all evidence 7 days before the hearing date and that if they did not do so it  
13 "may" be excluded. (AR 414-415, 471-473.)

14 On 4/27/15, the Hearing Officer held a hearing. (AR 141-236.) During the presentation  
15 of evidence, Ms. Mira, attorney for tenants, showed Table B, which is Quarterly Cost Indexes to  
16 City Engineering Manager of the Bureau of Building David Harlan. The Hearing officer did not  
17 admit Table B into evidence at that time. (AR 152:13-27.) The submission of evidence  
18 concluded. (AR 225:16-22.)

19 At argument following the presentation of evidence, Ms. Mira argued that Table A, the  
20 City of Oakland Building Services Construction Valuation, effective 8/1/09, should be adjusted  
21 by the Table B, the Quarterly Cost Indexes. (AR 228:8-11; 229:7-13). Ms. Mira presented  
22 Table B and asserted that the Hearing Officer should use it in making calculations. (AR 230:20-  
23 21.) Developer's counsel objected.  
24  
25  
26

1 The Hearing Officer said that he could take official notice of Table B if he was supposed  
2 to use it in his calculations. (AR 230:23-231:27.) The Hearing Officer said that he was unaware  
3 of Table B until the day of the hearing. (AR 236:14-16.)

4 On 5/29/15, the Hearing Officer issued a decision denying Developer's petition for a  
5 Certificate of Exemption from the rent control ordinance. (AR 120-131.)

6 The Developer sought review by the Rent Board. On 12/8/16, the Rent Board held a  
7 hearing. (AR 777-798.) On 3/7/16, the Rent Board issued its written decision. (AR 2-4.)  
8

9  
10 ISSUE CLARIFICATION

11 Petitioner commingles three analytically distinct issues regarding the use of Table B  
12 during the administrative process. The first issue is whether the Board violated its own  
13 procedures when it considered Table B as evidence even though it was not disclosed seven days  
14 before the hearing. The second issue is whether the Board erred as a matter of law by  
15 incorporating Table B into the OMC 8.22.030.B.2.b substantive standard. The third issue is  
16 whether the Board violated due process by failing to adequately disclose the existence of Table B  
17 to Petitioner while Petitioner was planning and executing the rehabilitation project.  
18

19  
20 PROCEDURES – ADMISSION OF TABLE B AS EVIDENCE

21 The arguments on the admission of Table B as evidence presume that it is a document  
22 that is fact evidence. As discussed below, OMC 8.22.030.B.2.b incorporates tables “issued by  
23 the chief building inspector” as the substantive standard. Therefore, if the tables are the  
24 documents described in the OMC, then they are incorporated in, and extensions of, the ordinance  
25 itself. The court must take judicial notice of the law. (Evid Code 451.) Subject to the  
26

1 significant limitation that the court must provide parties the opportunity to present argument on  
2 material issues, the court (or a hearing officer) can consider law even if it is not formally  
3 presented by a party. (*Monarch Healthcare v. Superior Court* (2000) 78 Cal.App.4th 1282,  
4 1286.)

5 The Board's letters required the parties to disclose evidence 7 days before the hearing and  
6 cautioned that evidence not disclosed "may" be excluded. As a matter of policy construction,  
7 "may" is discretionary and permitted the Hearing officer to admit evidence that was not disclosed  
8 7 days before the hearing.

9 Assuming that Table B is factual evidence, the court finds that the Board did not violate  
10 its own procedures and abuse its discretion when it considered Table B even though it was not  
11 disclosed seven days before the hearing.

12 At the hearing the Hearing Officer stated that he would not admit Table B as evidence but  
13 would take official notice of Table B. Official notice appears to be equivalent to judicial notice  
14 and judicial notice is a basis for the admission of evidence. Therefore, there is no material  
15 difference between accepting Table B into evidence as submitted by a witness and taking judicial  
16 notice of Table B.

17  
18  
19  
20 **INCORPORATION OF TABLE B INTO ORDINANCE - STATUTORY INTERPRETATION.**

21 OMC 8.22.030.B.2 states:

22  
23 **Exemptions for Substantially Rehabilitated Buildings.**

- 24  
25 a. In order to obtain an exemption based on substantial rehabilitation, an owner  
26 must have spent a minimum of fifty (50) percent of the average basic cost for

1 new construction for a rehabilitation project and performed substantial work on  
2 each of the units in the building.

- 3  
4 b. The average basic cost for new construction shall be determined using tables  
5 issued by the chief building inspector applicable for the time period when the  
6 substantial rehabilitation was completed.

7 The court exercises its independent judgment in considering statutory construction and other  
8 issues of law. (*Smith v. Santa Rosa Police Dept.* (2002) 97 Cal.App.4th 546, 553-554.)  
9

10 As a matter of statutory construction, the court determines that OMC 8.22.030.B.2.b  
11 requires that the tables must be both (1) issued by the chief building inspector and (2) applicable  
12 for the time period when the substantial rehabilitation was completed.

13 As a matter of determining whether there was a fair hearing the court applies its  
14 independent judgment regarding whether the City complied with the law. The court does not  
15 apply the abuse of discretion standard usually applied to evidence decisions because the statute  
16 clearly defines the substantive standard with reference to the tables. Therefore, referring to an  
17 incorrect table is in the nature of using an incorrect jury instruction rather than making a  
18 discretionary decision on the admission of evidence.  
19

20 Table A is identified as City of Oakland Building Services Construction Valuation,  
21 effective 8/1/09. Table A is issued by the chief building inspector. Table A states that it is  
22 "Effective Aug 1, 2009." This suggests that it is effective until replaced by a new table. When  
23 testifying, City Engineering Manager Harlan was asked if Table A was "the latest table put out by  
24 the City" and he answered "Yes, that's the table we currently use." (AR 146:20-23.) There is no  
25 objection to the use of Table A.  
26

1 Table B is identified as Quarterly Cost Indexes. Table B has a footer that indicates it is  
2 from Marshall Valuation Services. There is no indication that Table B was “issued by the chief  
3 building inspector.” When testifying, City Engineering Manager Harlan identified Table B and  
4 referred to it as “this source that we use.” (AR 153:27.) The court finds that the Board erred as a  
5 matter of law by incorporating Table B into the ordinance as the substantive standard when it was  
6 not “issued by the chief building inspector.”  
7

8 The Petition is GRANTED on the basis that applying its independent judgment the court  
9 finds that OMC 8.22.030.B.2.b requires that a table be “issued by the chief building inspector”  
10 and Table B was not “issued by the chief building inspector.”  
11

#### 12 INCORPORATION OF TABLE B INTO ORDINANCE - DUE PROCESS.

13 The Developer made a discernable argument before the Hearing Officer (AR 235-236)  
14 and at the Rent Board (AR 784-785) and in this court (Reply at 5) that the Board violated due  
15 process by failing to adequately disclose the existence of Table B to Petitioner when Petitioner  
16 was planning and executing the rehabilitation project. The court exercises its independent  
17 judgment in considering issues of adequate notice or due process. (*Tafti v. County of Tulare*  
18 (2011) 198 Cal.App.4th 891, 896.)  
19

20 A statute, or ordinance, must be sufficiently clear to give a person fair warning of the  
21 conduct prohibited and they must provide a standard or guide against which conduct can be  
22 uniformly judged by courts and administrative agencies. (*Morrison v. State Board of Education*  
23 (1969) 1 Cal.3d 214, 230-231; *Zubarau v. City of Palmdale* (2011) 192 Cal.App.4th 289, 308-  
24 309.) Similarly, an ordinance must be sufficiently clear to give a person adequate notice of the  
25 requirements for obtaining a government benefit, or a Certificate of Exemption.  
26

1 A statute “will be upheld if its terms may be made reasonably certain by reference to other  
2 definable sources.” (*Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1180; *Personal*  
3 *Watercraft Coalition v. Board of Supervisors* (2002) 100 Cal.App.4th 129, 138-139.)

4 Making an “on its face” analysis, the Ordinance could reasonably refer to and incorporate “tables  
5 issued by the Chief Building Inspector.”

6  
7 Making an “as applied” analysis, it is much less clear whether Table B is an “other  
8 definable source.” When testifying, City Engineering Manager Harlan was asked if Table A was  
9 “the latest table put out by the City” and he answered “Yes, that’s the table we currently use.”  
10 (AR 146:20-23.) City Engineering Manager Harlan also identified Table B and referred to it as  
11 “this source that we use.” (AR 153:27.) The Hearing Officer stated that he was unaware of  
12 Table B until the day of the hearing. (AR 236:14-16.)

13  
14 The Developer did not present evidence, but argued that it was unaware of Table B until  
15 the hearing on 4/27/15. Before the Hearing Officer, the Developer’s counsel argued that the  
16 Building Department did not make Table B available to the public. (AR 235:19-236:1.) Before  
17 the Board, the Developer’s counsel argued that the Developer assumed that the relevant time  
18 period was “set forth in the most recent table that’s issued by the Building Services Department.  
19 That’s Exhibit A” and that the Developer “relied on this Table A and be believed that when his  
20 project was competed it would be exempt.” (AR 784:17-23.)

21  
22 The City and the tenants presented no evidence that Table B was an “other definable  
23 source” that was disclosed to the public as relevant to the ordinance. The court has denied the  
24 City’s request to supplement the record with the declaration of Harlan. That noted, the  
25 declaration states that the City distributes Table B to persons “who request the table” and “that  
26 the City distributes [the Table] upon request.” (Harlan Dec., paras 6 and 7.)

1           The court finds that the Developer did not waive this argument even though it failed to  
2 clearly present this argument to the Hearing Officer and to the Board. The Tenant's  
3 Representative, Ms. Mira, did not disclose Table B as evidence seven days before the hearing or  
4 otherwise put the Developer on notice that she would rely on Table B. The Hearing officer was  
5 unaware of Table B. The record suggests that the Developer costed out the project and prepared  
6 for the Hearing Officer hearing on the reasonable assumption that Table A was the standard  
7 against which the evidence of expense would be measured.  
8

9           The Petition is GRANTED on the basis that applying its independent judgment the court  
10 finds that on the facts of this case that Table B was not an "other definable source" and that the  
11 Ordinance therefore did not give the Developer fair warning that Table A was not the standard  
12 against which the evidence of expense would be measured and that it would be modified by  
13 Table B.  
14

15  
16 \$26,000 IN INVOICES.

17           The Developer argues that the Hearing Officer and Board erred in excluding \$26,000 in  
18 invoices. The City acknowledges that the Hearing Officer and Board appear to have made a  
19 calculation error. (City Oppo at 9:8-15.) This error did not affect the Board's decision. The  
20 apparent \$26,000 calculation error does not affect the court's decision on the petition.  
21

22 INCLUSION OF DECK SPACE.

23  
24           There is substantial evidence to support the Board's fact finding that the property space  
25 included both the apartment space and the deck and balcony space.  
26



1  
2 SEPARATE TREATMENT OF APARTMENT SPACE AND DECK/BALCONY SPACE

3 County records state the property was 13,337 sqft. (AR 247.) The Developer  
4 rehabilitated the balconies, which are an additional 1,002 sqft.

5 Table A differentiates among different "Descriptions" of construction. Table A included  
6 "Apartment space" at \$127 sqft, "Elevated Decks and Balconies" space at \$41.16 sqft, and many  
7 other descriptions of space. The Hearing Officer and the Board both decided to treat both the  
8 13,337 sqft interior space and the 1,002 sqft deck/balcony space as "Apartment space." (AR 004,  
9 123.)  
10

11 Petitioner argues that the Board erred as a matter of law by treating the deck/balcony  
12 space as "Apartment space" and should have treated it as "Elevated Decks and Balconies" space.  
13 (Opening brief at 4:21-26; 6:26-27; 7:29-8:7.)  
14

15 Petitioner has not waived this argument. At the hearing before the Hearing Officer,  
16 Petitioner argued that the calculations should exclude the deck space. (AR 3.) In the briefing to  
17 the Board, Petitioner accepted that the Hearing Officer used the deck space, but argued that the  
18 Hearing Officer should have calculated "R3 Elevated Decks and Balconies" space at \$41.16 sqft.  
19 (Brief filed with Board on 5/4/16 at page 4.) At argument before the Board, petitioner raised the  
20 primary issue of whether the balcony area should be included but did not reach the secondary  
21 issue of whether if the balcony is included whether it should be treated differently than apartment  
22 space. (AR 004, 792:3-11; 795:3-11; 796:5-798:12.)  
23

24 This is an issue of statutory construction because OMC 8.22.030.B.2.b incorporates tables  
25 be "issued by the chief building inspector."  
26

1           As a matter of statutory construction, the City must apply Table A to projects or parts of  
2 projects based on whether the Description reasonably describes the physical structure to be  
3 constructed. The Descriptions in Table A are defined by the cost of construction rather than the  
4 potential use of the structure. The court takes judicial notice that the City of Oakland Planning  
5 and Building website states, "The cost of building permits is based upon the construction  
6 valuation of the project. Valuation includes all labor and structural materials, and all lighting,  
7 heating, ventilation, water supply, plumbing, electrical, fire sprinklers, elevator equipment."  
8 (<http://www2.oaklandnet.com/government/o/PBN/OurServices/permits/index.htm>) Consistent  
9 with this purpose, the Rent Board should apply schedule A to projects and parts of projects based  
10 on whether the Description reasonably describes the physical structure to be constructed.  
11

12           The Board misapplied OMC 8.22.030.B.2.b and the incorporated tables by focusing on  
13 the potential use of the balconies rather than the cost of building or rehabilitating the balconies.  
14 The Board's decision states "there was no abuse of discretion by the Hearing Officer in including  
15 the balconies' area where such space is useable space that expands the tenants' livable area."  
16 (AR 004.) (See also AR 797:10-11.)  
17

18           This was legal error because the Table A analysis concerns the cost of constructing the  
19 project or part of the project, not the potential use of the constructed property. Although the Rent  
20 Board in other contexts might be focused on whether rental space is usable, liveable, and  
21 habitable, in the context of OMC 8.22.030.B.2.b and Table A, the Rent Board must focus on the  
22 cost of construction. Even if OMC 8.22.030.B.2.b and Table A did concern usable, liveable, or  
23 habitable space, the BMC elsewhere defines "habitable space" and "habitable rooms" in a way  
24 that suggests they do not include exterior balconies and decks. (OMC 15.20.030 [Building and  
25 Construction Code]; 17.09.040 [Planning Code].)  
26

1 As a matter of statutory construction, the City must give effect to all the "Description"  
2 categories in Table A. If a general "Description" and a specific "Description" both apply to a  
3 construction project or to a part of a construction project, then the City must give effect to the  
4 specific "Description." (*Collection Bureau of San Jose v. Rumsey* (2000) 24 Cal.4th 301, 310;  
5 *Garcia v. McCutchen* (1997) 16 Cal.4th 469, 477-0478.)  
6

7 The Board misapplied OMC 8.22.030.B.2.b and the incorporated tables by treating both  
8 the 13,337 sqft and the 1,002 sqft as Apartment space. Although an apartment might have a  
9 balcony or deck, Table A has a separate specific line item for "Elevated Decks and Balconies."  
10 Where Table A sets out a specific Description that applies to a project or a part of a project, the  
11 Board must give effect to the specific Description.

12 The Board stated that the Hearing Officer did not abuse his discretion by including the  
13 balconies in the "Apartment" space. (AR 004.) (See also AR 797:1-9.) The Hearing Officer  
14 makes factual findings about whether a project or a part of a project fits within a certain  
15 Description. The Hearing Officer does not, however, have the discretion to characterize a project  
16 or a part of a project based on improper criteria. The Hearing Officer and the Board misapplied  
17 the law by focusing on the potential use of the balconies rather than their cost of construction and  
18 by not giving effect to the specific Description for "Elevated Decks and Balconies."  
19  
20

## 21 CONCLUSION

22 The Petition of 525-655 Hyde St Commercial Properties (the "Developer") for writ of  
23 mandate directing the City of Oakland Rent Board to vacate the Appeal Decision in Case No.  
24 L14-0065 is GRANTED.  
25  
26

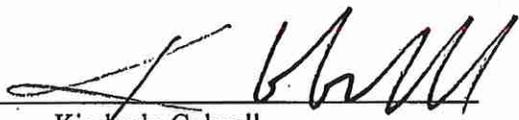
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

Consistent with CCP 1094.5(f), the court orders the City of Oakland Rent Board to reconsider the case in light of the court's opinion and judgment. The judgment shall not limit or control in any way the discretion legally vested in the respondent Board. If permitted by its procedures, the Rent Board may direct the Hearing Officer to conduct a further hearing. If permitted by its procedures, the Rent Board may reconsider either the entire matter or only the issues implicated by this order. The court expressly does not direct the Rent Board to grant the petition for a Certificate of Exemption.

At the hearing on 8/23/18, counsel for the Developer asked that the court order the Rent Board to expedite further proceedings given that the Developer filed the petition for certificate of exemption on 11/10/14 (AR 558-761) and the matter has been pending for almost four years. Counsel for the City did not object to that request. The court encourages the Rent Board to promptly reconsider this matter consistent with the procedures in OMC 8.22.120 and Rent Adjustment Program Regulations 8.22.110 and 8.22.120.

The court directs the Developer to prepare and submit to the court both a proposed judgment and a proposed writ. (CRC 3.1312.)

Dated: August 23, 2018

  
Kimberly Colwell  
Judge of the Superior Court

55

1 Clifford E. Fried, Esq., SBN 118288  
2 Fried & Williams LLP  
3 1901 Harrison Street  
4 Oakland, CA 94612  
5 Phone: (510) 625-0100  
6 Email: cfried@friedwilliams.com

7 Attorneys for Petitioners  
8 Rockridge Real Estate, LLC & Reinke, LLC

9  
10 IN THE SUPERIOR COURT OF STATE OF CALIFORNIA  
11 IN AND FOR THE COUNTY OF ALAMEDA

12 Case No.: RG17-862841

13 525-655 HYDE ST. CNML PROPS., LLP,

14 **[PROPOSED] WRIT OF**  
15 **ADMINISTRATIVE MANDAMUS**

16 Petitioner,

17 vs.

18 CITY OF OAKLAND'S DEPARTMENT OF  
19 HOUSING AND COMMUNITY  
20 DEVELOPMENT RENT ADJUSTMENT  
21 PROGRAM, and DOES 1 THROUGH 25,

22 Respondents.

23 Jilleun Eglin,  
24 Lexie Eglin,  
25 Angelique Johnson-Martinez,  
26 Suzanne Miller,  
27 Fernando Garcia,  
28 Kate Flick Garcia,  
Bianca Penaloza,  
David Preciado,  
Julie Amberg,  
Tyler Ritter,  
Marie Oda,  
Todd McMahon,  
Andrew Simkin,  
Jessica Simkin,  
and DOES 26 THROUGH 40,

Real Parties in Interest.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

WRIT OF MANDAMUS

To: CITY OF OAKLAND'S DEPARTMENT OF HOUSING AND  
COMMUNITY DEVELOPMENT RENT ADJUSTMENT PROGRAM AND ITS  
ATTORNEY OF RECORD:

**YOU ARE HEREBY COMMANDED** immediately upon receipt of this writ to:

1. Set aside and vacate the Rent Adjustment Program Appeal Decision in  
Case No. L14-0065.

2. Reconsider the Appeal Decision in Case No: L14-0065 in light of the court's  
opinions, Order and Judgment.

The Court will retain jurisdiction over Respondent proceedings by way of a return to this  
peremptory writ of mandamus until the Court has determined that Respondent has  
complied with the following order:



Chad Fiske, Clerk

By [Signature], Deputy Clerk

ORDER

LET THE WRIT OF MANDAMUS ISSUE.

Date: 12/2/18

[Signature]  
JEFFREY S. BRAND,  
Judge of the Alameda Superior Court



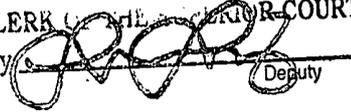
COURT OF APPEAL, FIRST APPELLATE DISTRICT  
350 MCALLISTER STREET  
SAN FRANCISCO, CA 94102  
DIVISION 1

Office of the County Clerk  
Alameda County Superior Court - Main  
1225 Fallon Street, Room G4  
Oakland, CA 94612

**FILED**  
**ALAMEDA COUNTY**

MAY - 3 2021

525-655 HYDE STREET CNML PROPS., LLP et al.,  
Petitioners and Respondents,

CLERK OF THE SUPERIOR COURT  
By:  Deputy

v.  
CITY OF OAKLAND'S DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT RENT  
ADJUSTMENT PROGRAM,  
Respondent;  
JULIE AMBERG et al.,  
Real Parties in Interest and Appellants.

A156463  
Alameda County Super. Ct. No. RG17862841

**\*\* REMITTITUR \*\***

I, Charles D. Johnson, Clerk of the Court of Appeal of the State of California, for the First Appellate District, do hereby certify that the attached is a true and correct copy of the original opinion or decision entered in the above-entitled cause on February 26, 2021 and that this opinion has now become final.

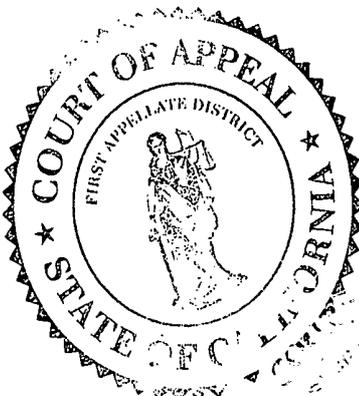
Appellant  Respondent to recover costs  
 Each party to bear own costs  
 Costs are not awarded in this proceeding  
 See decision for costs determination

Witness my hand and the Seal of the Court affixed at my office this **APR 30 2021**

Very truly yours,  
Charles D. Johnson  
Clerk of the Court

 T. Nevils  
Deputy Clerk

P.O. Report: \_\_\_\_\_  
Marsden Transcript: \_\_\_\_\_  
Boxed Transcripts: \_\_\_\_\_  
Exhibits: \_\_\_\_\_  
None of the above: \_\_\_\_\_



Filed 2/26/21

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

525-655 HYDE STREET CNML  
PROPS., LLP et al.,  
Petitioners and Respondents,

v.

CITY OF OAKLAND  
DEPARTMENT OF HOUSING AND  
COMMUNITY DEVELOPMENT  
RENT ADJUSTMENT PROGRAM,  
Respondent.

JULIE AMBERG et al.,  
Real Parties in Interest and  
Appellants.

A156463

(Alameda County  
Super. Ct. No.  
RG17862841)

Real parties in interest, three residents of an Oakland apartment building (Tenants), appeal from an adverse judgment in this administrative mandamus proceeding filed by the owner of the building (Owner). Owner, after making substantial repairs and improvements to the building, filed a "Petition for Exemption" from Oakland's Rent Adjustment Ordinance, pursuant to its "substantial rehabilitation" provisions. Following a hearing, at which Owner and numerous tenants represented by counsel submitted evidence, the hearing officer found the dollar amount of qualifying repairs



and improvements insufficient to meet the exemption requirement. Owner appealed to the Oakland Housing, Residential, Rent and Relocation Board (Board), which upheld the decision.

Owner then filed a writ petition, which the trial court granted, concluding the hearing officer and Board had made several legal errors. The court remanded the matter for reconsideration in accordance with its rulings.<sup>1</sup>

Tenants challenge one of these rulings, as well as an order augmenting the administrative record.<sup>2</sup> We affirm.

### DISCUSSION<sup>3</sup>

#### *Mootness*

We first address Tenants' claim that the case has been rendered moot by Oakland's elimination of the substantial rehabilitation exemption.

The pertinent circumstances are as follows:

---

<sup>1</sup> The remand order states:

"Consistent with Code of Civil Procedure [section] 1094.5(f), the court orders the City of Oakland Rent Board to reconsider the case in light of the court's opinion and judgment. The judgment shall not limit or control in any way the discretion legally vested in the respondent Board. If permitted by its procedures, the Rent Board may direct the Hearing Officer to conduct a further hearing. If permitted by its procedures, the Rent Board may reconsider the entire matter or only the issues implicated by this order. The court expressly does not direct the Rent Board to grant the petition for a Certificate of Exemption."

<sup>2</sup> Although the City of Oakland appeared in the trial court and urged that the Board's decision be upheld, the city did not appeal from the trial court's judgment and has not appeared, as amicus or otherwise, in this appeal.

<sup>3</sup> We discuss the relevant facts and procedural background in connection with our discussion of the issues on appeal.

Owner filed for a substantial rehabilitation exemption on November 10, 2014.

Three years later, on November 28, 2017, the city enacted a 180-day moratorium on such exemptions, which it extended for another 180 days so staff could complete a report with options and recommendations. (Oak. Ord. No. 13523.<sup>4</sup>)

The staff report, dated August 14, 2018, discussed three options—a three-year moratorium allowing further study and analysis, restricting the exemption to vacant and uninhabitable units, and eliminating the exemption. The report observed that most rent control jurisdictions no longer have such exemptions and provide other means for owners to recoup capital improvement costs, which Oakland also allows.

Following a public hearing on September 17, the city council extended the moratorium an additional 180 days and voted to eliminate the exemption.

On March 21, 2019, the city council adopted ordinance No. 13523, eliminating the exemption. (Oak. Ord. No. 13523.) The ordinance amended Municipal Code section 8.22.030 to read in pertinent part:

“A. Types of Dwelling Units Exempt. The following dwelling units are not covered units for purposes of this chapter. . . : [¶] . . . [¶]

“6. Substantially rehabilitated buildings. This exemption shall apply only to buildings where the rental property owner submitted an application for a certification of exemption to the Rent Adjustment Program prior to October 20, 2017, and which have been issued a certificate of exemption from the Rent Adjustment Program.” (Oak. Ord. No. 13523, § 1, A(6), underscoring omitted.)

---

<sup>4</sup> We take judicial notice of the city’s legislative actions and the staff reports prepared in connection therewith. (Evid. Code, § 452.)

There is no dispute Owner filed its application long before October 20, 2017. Tenants assert that not only must an application have been filed by that date, but such application also must have been granted by that date.

The plain language of the ordinance does not support Tenants' reading. (See *L.G. v. M.B.* (2018) 25 Cal.App.5th 211, 227 [it is a "general principle that the plain language of a statute is controlling"].) As a grammatical matter, the October 20, 2017 date pertains only to the application for a substantial rehabilitation exemption. Moreover, the ordinance easily could have stated that both an application for such an exemption must have been filed *and* a certificate of exemption must have been obtained, by October 20, 2017. It does not, however, so state. (See *The Internat. Brotherhood of Boilermakers, etc. v. NASSCO Holdings Inc.* (2017) 17 Cal.App.5th 1105, 1117 [although legislature could have defined key term of statute to include certain employment action, it did not do so, and court would not read statute as though it included such definition].)

The most plausible reading of the plain language, then, is that the city council established a cut-off date for exemption applications, thus allowing timely filed applications to be processed, but barring any further applications and ensuing exemptions.

Tenants also point out Owner's application was denied by the hearing officer and the Board. But there is no suggestion in either the ordinance or staff reports that a timely applicant receiving an adverse ruling from a hearing officer would be barred from pursuing either the administrative appeal expressly provided for by the Rent Adjustment Ordinance or foreclosed from seeking judicial review of a Board decision.

We therefore conclude, since Owner filed an application for a substantial rehabilitation exemption well before the October 2017 deadline, the instant proceeding is not moot.

### ***Order Augmenting Administrative Record***

We next address Tenants' challenge to the trial court's order augmenting the administrative record to include Owner's "Brief on Appeal" submitted to the Board in support of its administrative appeal. We review the court's order for substantial evidence.<sup>5</sup> (See *Consolidated Irrigation Dist. v. City of Selma* (2012) 204 Cal.App.4th 187, 197–201 (*Consolidated Irrigation*) [affirming order augmenting record, as substantial evidence supported trial court's finding that memoranda not included in record had, in fact, been submitted to local governing agency].)

The motion to augment was made in response to assertions by the City and the Tenants in their opposition to the writ petition, that Owner had forfeited an issue—specifically, that the hearing officer had erred in using one construction cost figure (\$127) for both interior living space and balcony

---

<sup>5</sup> "A substantial evidence inquiry examines the record in the light most favorable to the judgment and upholds it if the record contains reasonable, credible evidence of solid value upon which a reasonable trier of fact *could* have relied in reaching the conclusion in question. Once such evidence is found, the substantial evidence test is satisfied. (See *People v. Johnson* (1980) 26 Cal.3d 557, 578. . . .) Even when there is a significant amount of countervailing evidence, the testimony of a single witness that satisfies the standard is sufficient to uphold the finding." (*People v. Barnwell* (2007) 41 Cal.4th 1038, 1052.) A trial court's "conclusions of law" in connection with a motion to augment "are subject to independent review on appeal." (*Madera Oversight Coalition, Inc. v. County of Madera* (2011) 199 Cal.App.4th 48, 65 (*Madera*), disapproved on another ground in *Neighbors for Smart Rail v. Exposition Metro Line Authority* (2013) 57 Cal.4th 439, 457.) However, as we explain, we are not dealing here with an issue of law, but with a challenged finding of fact.

space, rather than a lower figure for balcony space (\$41.16)—because it had not raised the issue before the Board. At the hearing on the writ petition, Owner provided the trial court with a file endorsed copy of its “Brief on Appeal,” wherein Owner had raised the exact issue the City and the Tenants claimed was forfeited. The City declined to concede the brief was in the record.

Owner therefore filed a post-hearing motion to augment the record. This was supported by a detailed declaration of the attorney who had prepared the administrative appeal brief and had extensive experience with Board filing requirements. He explained that he had instructed his staff to file the brief, on staff's return to his office he/she confirmed the brief had been filed, and counsel was handed and retained in his possession a “blue ink” file-endorsed copy of the brief. Counsel acknowledged he had reviewed the administrative record after it was prepared. But he had not noticed the omission of the brief then, or later when he prepared the memoranda in support of the writ petition as he had had no occasion to refer to it. He also recounted this was not the first time he had experienced a situation where a filed document had been misplaced by the Board. He further stated that, at the time, Board rules did not require service of such briefs on real parties.

The City opposed the motion to augment, submitting declarations of two city employees that the city had no record of receiving the brief. Real parties also maintained they had no copy of the brief.

After considering all the evidence before it, the trial court granted the motion, pointing out the copy of the brief provided with the motion was “file stamped ‘RECEIVED CITY OF OAKLAND RENT ARBITRATION PROGRAM 2016 MA- 4 PM 2:52.’” The court also observed neither the City, nor real parties, had provided any evidence that Owner had “used the City’s

self-file-stamp procedure” but then failed to leave a copy for the Board or had deliberately falsified the file stamp. The court ruled “substantial evidence” supported “a finding that the [Owner] filed the brief and that the City inadvertently mis-filed or lost the brief.” It further found there was “no indication that the City intentionally withheld the Appeal Brief from the administrative record.”

On this record, the trial court’s augmentation order is amply supported.

Citing to *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, Tenants claim the trial court erred “as a matter of law” in granting the motion. Tenants misperceive the distinction between augmenting a record with *evidence not presented* during the administrative proceedings and augmenting a record to ensure it is complete and includes all materials that were presented *during* the administrative proceedings. (See *Consolidated Irrigation, supra*, 204 Cal.App.4th at p. 198 [pointing out the “importance of distinguishing between documents that belong in the record of proceedings versus documents that might be admissible as extra-record evidence”]; see generally California Practice Guide-Administrative Law, “Pretrial and Trial of Mandamus Cases, § 20:195 (The Rutter Group 2020) [“If petitioner contends the record certified by the agency is incomplete, the appropriate remedy is a motion to augment the record.”].)

*Western States* does, indeed, place constraints on extra-record evidence pertaining to the merits of the matters before the administrative tribunal that is proffered after-the-fact during judicial review. But the case has no bearing on a motion to augment of the sort made here—to correct the administrative record to include a document that the trial court found, on substantial evidence, was submitted to the Board but was inadvertently not

included in the administrative record. (See *Consolidated Irrigation, supra*, 204 Cal.App.4th at pp. 198–199.)

As for Tenants' assertion that Owner did not show reasonable diligence in seeking to augment the record, we must presume the trial court found otherwise as there is substantial evidence to support such a finding. (See *Madera, supra*, 199 Cal.App.4th at pp. 65–66 [in connection with rulings on motions to augment, appellate court applies traditional presumptions on appeal, including that trial court made all requisite findings where substantial evidence supports such implied findings].) Moreover, "it is within the province of the trial court, sitting as the trier of fact, to decide factual questions such as reasonable diligence and the persuasiveness of the evidence presented," and we "will not not second-guess the implied finding[] made by the trial court." (*Id.* at pp. 71–72.)

Tenants further maintain their "due process" rights were impinged by the augmentation order. But they provide no specifics. As the trial court pointed out, augmentation was not sought to bolster any merits argument. Rather, it was sought solely to rebut a claim of forfeiture. We fail to see how the trial court's proceeding to the merits of the issue, otherwise fully briefed by the parties and based on evidence indisputably in the record, prejudiced Tenants in any respect.

Finally, Tenants spend considerable time rearguing the evidence, urging that the declarations of city staff should have been given controlling weight and the declaration of Owner's counsel should have been viewed with skepticism and discounted. However, even where a factual matter is tried on declarations and affidavits, credibility and weight are matters for the trial court, not the Court of Appeal. (See *Consolidated Irrigation Dist., supra*, 204 Cal.App.4th at p. 198 ["Appellate courts routinely apply the substantial

evidence standard to findings of fact made by a trial court based on affidavits and declarations without any oral testimony.”]; *Escamilla v. Department of Corrections & Rehabilitation* (2006) 141 Cal.App.4th 498, 514–515 [“we do not evaluate the credibility of the witnesses or otherwise reweigh the evidence”; rather, “ ‘we defer to the trier of fact on issues of credibility’ ”].)

We therefore conclude there is no merit to Tenants’ challenge to the augmentation order.

Tenants have not challenged the merits of the trial court’s ruling on the issue found not to have been forfeited—namely, its ruling that the hearing officer, and in turn the Board, erred in using a single construction cost number, \$127, for the entirety of the square footage. Accordingly, we do not consider this issue further, and the trial court’s ruling on this issue is controlling on remand.

### ***The Hearing Officer’s Use of “Table B”***

The requirements for a substantial rehabilitation exemption were set forth in former Oakland Municipal Code section 8.22.030, which read in pertinent part:

“Exemptions for Substantially Rehabilitated Buildings.

“a. In order to obtain an exemption based on substantial rehabilitation, an owner must have spent a minimum of fifty (50) percent of the average basic cost for new construction for a rehabilitation project and performed substantial work on each of the units in the building.

“b. The average basic cost for new construction shall be determined using tables issued by the chief building inspector applicable for the time period when the substantial rehabilitation was completed. . . .”

(Former Oak. Mun. Code, ch. 8.22, § 8.22.030, subd. (B)(2)(a)–(b).)



These requirements gave rise to the principle issue before us—whether a document the parties and the hearing officer referred to as “Table B” was a “table[] issued by the chief building inspector applicable for the time period when the substantial rehabilitation was completed.”<sup>6</sup> (Former Oak. Mun. Code, ch. 8.22, § 8.22.030, subd. (B)(2)(b).)

This document is entitled “‘Quarterly Cost Indexes (1926=100).’” We discuss its specific attributes in subsequent paragraphs. At this point, we recount the record of its appearance in the administrative proceedings:

The parties were notified that they were required to disclose evidence seven days prior to the administrative hearing and cautioned that any evidence not disclosed could be excluded. Neither party disclosed Table B.

At the hearing, the Tenants called as their witness, David Harlan, an Engineering Manager with the city. Before counsel asked any questions, the hearing officer inquired about another document, which the parties and hearing officer referred to as “Table A” and is entitled “City of Oakland Building Services Construction Valuation For Building Permits Effective Aug. 1, 2009.” (Boldface & fns. omitted.)

The hearing officer (HO) began:

“[HO]: . . . [L]et me ask you first, and then Ms. Mira [(the Tenants’ counsel)] will be able to ask you questions, is the latest table put out by the City of Oakland [the] Construction Valuation dated August 1, 2009 [Table A]?”

“Harlan: Yes, that’s the table that we currently use.”

“[HO]: Okay. Let me turn it over to Ms. Mira. . . .”

---

<sup>6</sup> Solely for ease of reference, we continue to refer to this document, and others, by the labels given them by the parties, the hearing officer, and the trial court.

Counsel proceeded to ask Harlan a number of questions about applying for a building permit, including describing the scope of work and the value of the job, and the calculation of permit fees. The hearing officer finally asked counsel not to belabor points that had “nothing to do with the essential question that we’re looking to have answered,” namely whether Owner had made sufficient expenditures to qualify for the substantial rehabilitation exemption.

Counsel then asked Harlan how someone would figure out how much it would cost to build a residential structure, such as the small apartment building in question. This engendered the following colloquy:

“Mira: . . . How would I figure how much that would cost me?”

“Harlan: For permit fees?”

“Mira: Just the whole job, complete job, how much would it cost me for a 16-unit building with a square footage of 13,336? . . .”

“Harlan: So the City doesn’t play a role in that. I mean I can hazard a guess but—

“Mira: Mm-hmm.

“Harlan: —it’s not our—it’s not the City’s role to help people identify how to pay for something or how much it’s going to cost to build something. [¶] . . . [¶]

“[HO]: . . . [S]o you said it’s not the City’s role to determine—

“Harlan: Yeah.

“[HO]: —how much it would cost to build the building.

“Harlan: Yeah, that’s right. Yeah, that’s a relationship between the owner and the contractor. . . .”

Counsel then asked Harlan to “describe” Table A (the document entitled “City of Oakland Building Services Construction Valuation For

Building Permits Effective Aug. 1, 2009,” boldface & fns. omitted). Harlan replied, “It’s a valuation table used by staff to help assign permit valuations for the purpose of calculating the permit fee.” He agreed with counsel that was “just for the permit fee” and “not for how much actual construction would cost.”

Counsel again asked Harlan how “would you figure out what the actual construction costs are.” Harlan again replied that was “between the property owner and their licensed contractor.” Counsel then asked if there were “industry standards.” Harlan said, “[y]es,” and added “that’s where these numbers [on Table A<sup>7</sup>] c[o]me from.”

At this point, counsel, for the first time, mentioned Table B (the document entitled “Quarterly Cost Indexes (1926=100)”), stating she was not presenting it as evidence but “to help the expert get to [the] point.” She asked Harlan what the document was. He responded: “This is an index that just shows the variation in pricing for certain regions over a period of time. Generally, the trend is upward, but maybe it goes down sometimes.”

Owner’s counsel objected on grounds the document had not been disclosed. Mira repeated she was not asking to put it into evidence but was “just asking him if he knows what it is and if he can describe it.” Counsel again objected, and the hearing officer ruled it could be used only to refresh Harlan’s recollection.

Harlan proceeded to answer: “I’ve seen these indexes before and I don’t know if I’ve calculated anything off of them. . . . I’ve looked at this before and

---

<sup>7</sup> It is clear Harlan was referring to Table A, as he was referring to “exhibit 138,” which was a copy of Table A. In addition, tenants’ counsel had not yet mentioned Table B.

you can pick out the indices for different years for the same region and come up with a differential.” This led to the following colloquy:

“Mira: So I guess what I’m trying to get to is, if I were to have built a building in . . . 2009, is it fair to say that that same cost in 2009 wouldn’t be the same cost in 2014?

“[Counsel for Owner]: Objection. I don’t think this witness has been qualified to talk about costs. . . . [¶] . . . [¶]

“[HO]: Well, let me ask you this: Are you generally familiar with the trends of construction costs either up or down in the past six years in the City of Oakland?

“Harlan: No. I really can’t say—it’s fluctuated is my understanding. So I’m sure it held flat for awhile and then it went down, maybe it went up.

“[HO]: Do you know—this is really the ultimate question: Do you know whether it would cost more to build the building [in question] today than it would in 2009?

“Harlan: I couldn’t speak to that.”

Tenants’ counsel then asked Harlan, “does inflation play a role in construction costs.” Another objection by Owner was overruled, and Harlan answered: “Well, I can speak to how it affects the cost indices in this source that we use, Marshall Swift. So it plays a role in—there’s materials and labor are the big components of these indices and so inflation plays a role in both of those to varying levels of degrees depending on what the description of work is, whether steel costs more. Everything is down to like bags of concrete and how many pounds of steel and how many hours it takes to do something and this thing [referring to Exhibit 138, which is Table A] is a summary of a binder that’s about this thick.”

Counsel then asked, as a “hypothetical,” whether it would cost more to remove stucco with asbestos underlying it, than without. Harlan replied: “I would think so.” When the hearing officer asked, “how much more,” Harlan could not provide a percentage “because there’s probably different concentrations . . . that might trigger a certain type of abatement . . . I’m not sure.” Counsel then asked a hypothetical about the cost of re-tiling a bathroom. Harlan answered: “I’d have to check with one of the counter staff people.” Counsel then asked about a “range” of costs for installing windows. Harlan again testified: “I’d have to check with one of our inspectors.” The hearing officer eventually interjected: “Look, I mean he has no control over the inspectors and let me tell you, I mean re-tiling a bathroom, I mean there are very expensive tiles; there are cheap tiles. I don’t see how this would be at all helpful.” Harlan then volunteered: “Well, I can say that generally, we would ask the applicant to tell us what their cost is for those types of small projects. Those are small projects and we would usually rely on that—on what they’ve presented to us.

With that, counsel stated she had no further questions for Harlan. Owner’s counsel asked no questions.

Table B (the document entitled “Quarterly Cost Indexes (1926=100)”) was not mentioned again until closing summation, when tenants’ counsel argued: “So the second reason why the exemption should be denied is because the City of Oakland, the Rent Adjustment Program, actually uses the cost indexes to adjust the cost for when the actual construction happened,” and cited to three hearing decisions.<sup>8</sup> She continued, “I believe that in this case it would be unfair to use a 2009 building cost [(Table A)] when the

---

<sup>8</sup> These were *Weinberg v. Tenant*, *Promes v. Fehr*, and *Young v. Beasley*, which we discuss in subsequent paragraphs.

[rehabilitation] construction happened in 2014 and 2013.” Counsel acknowledged “Mr. Harlan couldn’t testify to that,” but asserted “it’s common knowledge that inflation affects things.” “So,” counsel went on, “based on how calculations have been done in these previous cases, new construction based on the cost indexes for 2009 and for 2014, new construction has increased by 1.1%.”

The hearing officer expressed some difficulty in following counsel. Counsel then referred the hearing officer to Table B, stating “you don’t use . . . [the] valuation chart [(Table A),] but I’m sure you’re familiar with these, the quarterly indexes [(Table B)].” Counsel proceeded with a detailed, step by step argument as to how the hearing officer should use Table B to calculate a 2014 comparative cost number.

When Owner objected that Table B was not in evidence, the hearing officer now stated he would take “official notice of the documents that I’m supposed to use to do the computation.” When Owner again objected, the hearing officer stated, “I think I could always use the Building Department tables.” He then told Owner’s representative, “So if you would like, I won’t allow this into evidence, if you object because it wasn’t submitted seven days before but I will take judicial notice of it.” At this point, Owner’s representative said “Sure,” and the hearing officer said he would give her an opportunity to look at the document.

Counsel for the tenants then turned to the receipts, invoices, and other documents evidencing expenditures and argued they did not add up to 50 percent of the comparative 2014 construction cost determined, according to counsel, by adjusting the Table A numbers with a ratio derived from Table B.

At the outset of Owner's summation, the hearing officer asked Owner's representative (Hart) to address the "new quarterly cost indexes" and the "propriety of using [them]." She responded:

"Hart: Well, I think that there is a standard that's been adopted by the Rent Board and used, not only for the convenience but also so that you're not going to have people running to the Building Department who don't actually know what they're looking for and asking the Building Department to tell them these calculations. In fact, I have another case where they went directly to the building department and there's an email trail and they weren't given that, they were given the Table A.

"[HO]: Well, what does that have to do with the propriety of my using this in my decision?

"Hart: I'm saying that there's a standard of evidence that the Board has adopted historically and that I could appreciate that this would seem more current[,] but at the same time I think it's not necessarily information that's generally available or that the Building Department, who is the source of this department [*sic*], provides in terms of these calculations."

Hart then asked for leave to file a post-hearing brief on the issue, since "it wasn't brought up earlier" and "was only brought up here in summary and now you're going to be using it as a—to bolster her evidence." The hearing officer responded, "I'm using it because this is what I'm supposed—one of the documents I'm supposed to be using," adding "I hadn't known about it before

today but anyway I'm going to use it." <sup>9</sup> Without a definitive response on the briefing request, the hearing officer closed "the record."

A week later, Owner filed a post-hearing brief. Owner first pointed out that then operative Oakland Municipal Code section 8.22.030 specified, "The average basic cost for new construction *shall* be determined using tables *issued by the chief building inspector* applicable for the time period when the substantial rehabilitation was completed" (Oak. Mun. Code, ch. 8.22, § 8.22.030, subd. (B)(2)(b), italics added), and maintained that while Table A was such a table, Table B was not. To illustrate and reinforce this point, Owner attached copies of not only what the parties had referred to as Tables A and B, but also a document Owner referred to as "Table C," entitled "Residential Building Minimum Valuation Data," effective February 1, 2001, and bearing the official signature of a city building official. Owner went on to assert "no evidence" had been presented to either authenticate or lay a foundation that the document being referred to as Table B (entitled "Quarterly Cost Indexes (1926=100)") was a table "issued by the chief building inspector." Further, because Tenants had not provided this document prior to the hearing, and because the tenants' counsel, while examining Harlan, stated several times she was not seeking to introduce the document into evidence, Owner had been deprived of the opportunity both to cross-examine Harlan and present additional evidence on the issue. Finally, Owner asserted taking "notice" of the document during closing summation

---

<sup>9</sup> The hearing officer did not explain why he concluded Table B was a document he was "supposed to be using." But presumably it was in light of the three hearing decisions to which the tenants' counsel had referred. There is no indication in the record that the hearing officer read these decisions, or that the Owner's representative or attorney had been able to review them.



had been improper, as the document was being used for its evidentiary value and it did not constitute a “fact or matter that is commonly agreed upon.”

A little more than two weeks later, the hearing officer issued his decision. Under a sub-heading entitled “Building Services Evaluation Tables,” (underscoring omitted) the decision stated:

“The tenant requested the attendance of the City Building Services supervisor to testify with regard to how the City determines the present cost of new construction for the issuance of building permits. David Harlan, the Engineering Manager of the Bureau of Building appeared and testified at the Hearing. Mr. Harlan testified that his duties include oversight of all permit issuance, records management, and plan checking. He further testified that the City currently uses the table that was effective on August 1, 2009. A copy of this document is attached as Table ‘A.’ Official Notice is taken of two other documents issued by the City Building Services agency: ‘Quarterly Cost Indexes (1926=100),’ a copy of which is attached as Table ‘B,’ and ‘Residential Building Minimum Evaluation Data,’ a copy of which is attached as Table ‘C.’” (Fn. Omitted.)

Under a sub-heading entitled, “The Calculation,” (underscoring omitted) the decision stated in pertinent part:

“... The Tables referenced in this Decision were all issued by the City Building Services agency.

“Table ‘A’ lists square foot construction costs, effective August 1, 2009. However, since the construction in this case occurred in the year 2014, and costs have risen since that time, it is proper to increase the cost shown on the 2009 Table. The Building Services agency has recognized this fact, and therefore issued a document entitled ‘Quarterly Cost Indexes (1926=100)’ (Table ‘B’).

“These tables are used as follows: (1) On Table ‘B,’ determine the number for the year of construction, geographical district, and type of construction; (2) Divide this number by the number in the same category for the year 2009. The resulting fraction is then multiplied by the number derived when the square foot cost shown on Table ‘A’ is multiplied by the number of square feet in the building.”

The hearing officer alternatively ruled that even if the “square footage cost on the 2009 Table were used,” the expenditures still did not meet the 50 percent requirement. He arrived at this conclusion based on a total square footage of 14,338, a number that included the square footage of the balconies. He then used a single construction cost number for the entire square footage, thus equating the cost of reconstructing the balconies with that of reconstructing interior living spaces.

Owner timely filed an administrative appeal raising, among other issues, the hearing officer’s evidentiary use of Table B, and his total square footage number and use of a single per square foot construction cost number. In support, Owner attached several documents to its appeal notice, including an additional document Owner referred to as “Table E,” entitled “City of Oakland Building Services Construction Valuation For Building Permits Effective February 5, 2007.” (Fn. omitted.)

The Board affirmed on the ground “any error in considering the document addressing inflation adjustments to be applied to the table . . . would not change the result.”

Owner timely filed an administrative writ proceeding. The trial court granted the petition.

The court (Judge Kimberly Colwell) first ruled the document the parties and the hearing officer referred to as Table B was not a table “issued by the chief building inspector applicable for the time period when the substantial rehabilitation was completed.” It further ruled that even if the language of the ordinance allowed its use, the city had not made the document readily accessible to the public and thus the document could not be used to essentially sandbag owners who had made substantial property

improvements. The court (Judge Jeffery Brand) reaffirmed these rulings in the course of denying a motion for reconsideration.

We agree that the document referred to as Table B is not a table “issued by the chief building inspector applicable for the time period when the substantial rehabilitation was completed.” This is illustrated by a comparison of the documents Owner attached to its post-administrative hearing brief and referred to as Tables A, B and C, and which the hearing officer, in turn, attached to his decision, as well as the document referred to as Table E, which Owner attached to its administrative appeal notice.

Table A bears the following heading:

“City of Oakland	Community Economic Development Agency
“Building Services	Dalziel Administration Building
“Construction Valuation	250 Frank Ogawa Plaza–2nd Floor
“For Building Permits	Oakland, CA 94612
“Effective Aug. 1, 2009	510-238-3891.” (Fns. omitted.)

At the bottom of the document there is a website address for direct access to the document: \\Ceda=servers\ Building Permit Counter\COUNTER FORMS\Forms 2009\_2010(Building valuation) Aug 1 2009. Thus, this document bears all the indicia of a city document and, specifically, of a table “issued by the chief building inspector.” And Harlan confirmed, “Yes, that’s the table that we currently use.”

Notably, Table A also includes a footnote, footnote 1, in its heading, following “Construction Valuation.” This footnote states: “Cost per square foot, unless noted otherwise. (l.f.=linear foot; s.f.=square foot); includes 1.3 regional multiplier (see Secc. 99 pg 6 July 2009 Marshall & Swift).” Other footnotes to column headings also provide for specific adjustments. For example, footnote 2 states: “Hillside construction=slope >20%; multiply by

additional 1.3 multiplier.” Footnote 3 states: “Remodel Function of New Construction is a 0.52 multiplier.” In addition, Table A includes a column on its far right side entitled “Marshall & Swift 3Q 7’09 [¶] Section pg (Class/Type).” Below that is a column of several dozen references, such as “Section 12 pg 25 (C/e).” It is therefore apparent the building services department, indeed, makes use of data from private sources, such as Marshall & Swift. But, as Table A also reflects, the department goes on to determine and specify exactly what multipliers are to be used for city purposes.

Table E bears a heading nearly the identical to that of Table A, but specifying an earlier effective date:

“City of Oakland	Community Economic Development Agency
“Building Services	Dalziel Administration Building
“Construction Valuation	250 Frank Ogawa Plaza–2nd Floor
“For Building Permits	Oakland, CA 94612
“Effective February 5, 2007	510-238-3891.” (Fns. omitted.)

It also bears, at the foot of the document, a website address for direct access to the document: \\Ceda-server3\building\Permit Counter\Permit FY06\Building valuation. Thus, like Table A, Table E bears all the indicia of a table “issued by the chief building inspector.”

Although Table E also has footnotes, none make reference to any multiplier. Nor does Table E contain an additional column of references to Marshall & Swift.

Table C is similarly entitled “City of Oakland Residential Building Minimum Valuation Data.” Immediately below the heading, the document is expressly “Approved by” a signature by Calvin N. Wong, “Building Official,” and specifically states it was “effective February 1, 2001.” It also bears, at

the foot of the document, a web address for direct access to the document: “CARR\My documents\Forms\valuation-residential.” Thus, Table C again bears all the indicia of a table “issued by the chief building inspector.”

Table C also includes a prefatory paragraph similar to footnote one in Table A, stating: “The following building valuation data are based on cost and value reported in ‘Marshal Valuation Services’ published by Marshall and Swift and dated December 2000 with cost multiplier of 1.07 and local multiplier of 1.32.” This again reflects that the building services department does use data from private sources, such as Marshall & Swift, but also determines and specifies exactly what multiplier is appropriate and is to be used for city purposes.

In contrast to Tables A (effective 2009), E (effective 2007) and C (effective 2001), Table B bears the caption “Quarterly Cost Indexes (1926=100)” and states in the upper right hand corner it is “Section 98 Page 7,” followed by the date “October 2014.” The footer states: “Marshall Valuation Service,” (capitalization omitted) followed by a disclaimer that the “the data included on this page becomes obsolete after update delivery, scheduled for January 2015.” (Italics omitted.) Below that is a copyright symbol, identifying “2014 CoreLogic,® Inc. and its licensors, all rights reserved.” Plainly, this is not a city document.

Tenants maintain the language of the rent adjustment ordinance—“tables issued by the chief building inspector”—should be read to mean any document that can be characterized as a “table” and is “used” by the building department. Not only would such a construction be a departure from the plain language of the ordinance (see *MacIsaac v. Waste Management Collection & Recycling, Inc.* (2005) 134 Cal.App.4th 1076, 1083 [words of a statute are generally to be given “‘a plain and commonsense meaning’”]),

such a construction would embrace any number of outside resources, an untenable reading given the specific language of the ordinance. (*Ibid.* [courts are to “ “interpret legislation reasonably and . . . attempt to give effect to the apparent purpose of the statute” ’”].)

It is also understandable why the City specified that the comparative construction cost number was to be “determined using tables issued by the chief building inspector applicable for the time period when the substantial rehabilitation was completed.” This provided a standard measure for construction costs that was easily applied. It also avoided the problem to which Harlan testified, that the exact cost of construction is ultimately a matter between the owner/developer and the contractor(s)/supplier(s), and not something in which the building services department gets involved. Rather, for its purposes, the department uses its own construction valuation table, which it periodically updates and which often, but not always, reflects the use of data from privately published sources.

Tenants claim it makes no sense and would be unfair to use Table A, effective August 1, 2009, to determine a 2014 comparative building cost number. As we have discussed, the record reflects that the building services department regularly updated its construction valuation table—in 2001, 2007, and 2009. It is not our role to effectively rewrite a local rent control ordinance because the department assertedly failed to update its 2009 table sooner than it did.<sup>10</sup> (See *In re I.A.* (2019) 40 Cal.App.5th 19, 23 [appellate court may not “ “rewrite the clear language of [a] statute to broaden the

---

<sup>10</sup> We note that attached to a declaration by Harlan—submitted by the City in opposition to the writ petition but excluded by the trial court under section 1094.5, subdivision (e)—is another table identical in format to Table A, but with an effective date of May 1, 2015. Tenants have not challenged the trial court’s evidentiary ruling excluding the declaration.

statute's application" ' '"]; *L.G. v. M.B.*, *supra*, 25 Cal.App.5th at p. 227 ["court may not disregard the plain language of a statute just because the consequences of a literal interpretation are 'troubling' or because the court believes that a different approach would be better"].)

Further, Tenants have simply assumed, without any *evidentiary* basis, that using Table A would yield an unfairly skewed comparative construction cost number. Their witness, Harlan, refused to offer any such opinion, and no other *evidence* was presented on the issue. We also observe that since the department's construction valuation table is a revenue generating publication, as it determines building permit fees, it is equally reasonable to assume the department had, and continues to have, every incentive to ensure the version of the table in use is reasonably current and, at the time, had concluded no update was warranted.

Finally, Tenants refer to five administrative hearing decisions, copies of which were provided to the trial court by the City, in which varying versions of the Marshall & Swift quarterly indices were used. As we have recounted, during summation in the administrative hearing, the tenants' attorney referred to three of these decisions.

On appeal, Tenants characterize these hearing decisions as an administrative interpretation of what constitutes a "table[] issued by the chief building inspector" that should be given deference.

Four of these hearing decisions were issued by a single hearing officer. In each, the hearing officer used a city construction valuation table (e.g., Tables A, E, C) that was *not* in effect for the period during which the rehabilitation work was done, but was in effect during a *later* period of time.<sup>11</sup>

---

<sup>11</sup> In *Young v. Beasley* (a decision dated June 13, 2008), the construction work was done between 1998 and 2000, but the hearing officer

Stating this was “unfair” to the owner because costs had increased, the hearing officer then used varying versions of the Marshall & Swift quarterly cost indices to adjust the construction costs set forth in the more recent tables downward. What is immediately clear is that the hearing officer used the incorrect construction valuation table to begin with—as the ordinance required use of the table “issued by the chief building inspector *applicable for the time period when the substantial rehabilitation was completed,*” not a version of the table applicable during a later time period. The record before us does not reflect why this occurred. Nor does it indicate whether, given the use of plainly inapplicable valuation tables, the parties agreed to using indices to adjust the cost number derived from these inapplicable tables downward.

The remaining decision is one by the hearing officer who decided the instant administrative matter, issued a little over two weeks after he issued his decision in this matter. In short, the hearing officer reemployed, almost verbatim, the approach he had used only weeks earlier here.

Accordingly, these hearing decisions carry little weight as an interpretative matter. “How much weight to accord an agency’s construction is “situational,” and greater weight may be appropriate when an agency has a “comparative interpretive advantage over the courts,” as when “the legal

---

used the version of the department’s valuation table dated February 5, 2007. In *Weinberg v. Tenant* (a decision dated December 3, 2013), the construction work was done in 1991-1992, but the hearing officer used the version of the department’s valuation table dated August 1, 2009. In *Promes v. Fehr* (a decision dated December 16, 2013), the construction work was done between 2003-2004, but the hearing officer used the version of the department’s valuation table dated February 1, 2007. In *Cordaro v. Tenants* (a decision dated July 18, 2017), the construction work was done in 2010, but the hearing officer used a version of the department’s valuation table dated February 1, 2017.



text to be interpreted is technical, obscure, complex, open-ended, or entwined with issues of fact, policy, and discretion.’ ” ’ ” ( *Boling v. Public Employment Relations Bd.* (2018) 5 Cal.5th 898, 911 (*Boling*.) The ordinance language at issue here is not technical, obscure, or complex. Furthermore, the four decisions by the one hearing officer all involved a set of circumstances unlike that here, and in the absence of the records in those matters, we are at a loss as to why the hearing officer used versions of the City’s construction valuation table that were *not in effect* at the time of the reconstruction work but were in effect for a later time period. We likewise have no way of knowing what the hearing officer and the parties may have discussed in terms of adjusting the cost numbers using Marshall & Swift indices. The fifth decision, by the same hearing officer who presided here, barely two weeks after his decision in this case, likewise is of scant interpretative significance.

In any case, the interpretation of a local ordinance is a question of law, ultimately committed to the courts. (*Boling, supra*, 5 Cal.5th at p. 911.) And for the reasons we have discussed, we agree with the trial court that the privately published Marshall & Swift quarterly cost indices are not “tables issued by the chief building inspector,” and that the hearing officer erred in using what has been referred to as Table B for evidentiary purposes to determine the comparative building cost.<sup>12</sup>

---

<sup>12</sup> We therefore need not, and do not, consider the trial court’s additional ruling that even if the ordinance did permit utilization of such document, its use, on this record, impinged on the Owner’s due process rights. That said, the manner in which tenants’ counsel deployed and then argued the evidentiary value of Table B was improper. Likewise, the hearing officer’s about-face from its prior ruling, allowing use of Table B only to refresh Harlan’s recollection, and belated acceptance of Table B for

In their appellant's opening brief, Tenants made no follow-up argument that even if the trial court's ruling as to Table B was correct, reversal is nevertheless required because even if Table A were used to determine the comparative construction cost (and even if different square footage costs were used for the interior and balcony spaces), Owner's rehabilitation costs did not meet the 50 percent requirement. However, in their reply brief, Tenants devoted four pages to advancing this argument. It is well-established that an appellate court generally will not consider arguments raised for the first time in a reply brief, and we decline to do so here. (See *WorldMark, The Club v. Wyndham Resort Development Corp.* (2010) 187 Cal.App.4th 1017, 1030, fn. 7 ["Arguments raised for the first time in the reply brief are untimely and may be disregarded."])

Indeed, Tenants have not, in advancing this new argument in support of reversal, been candid about the record. This new argument turns on the total amount Owner spent on rehabilitation costs. As the following procedural recitation reflects, it is apparent to us that the trial court viewed the cost issue that had been raised by Owner as having been resolved by a concession by the City.

In its administrative appeal, Owner asserted the hearing officer had made a "calculation error"—specifically, that the total amount paid to the principal contractor (Martin Gallagher Construction, Inc.) set forth in the hearing officer's decision was off by \$26,000, and that the correct amount paid to the contractor, as shown by invoices and proofs of payment, was \$857,596, rather than \$831,597 as stated in the decision. The Board did not address the issue, since it upheld the decision on another ground.

---

evidentiary use during summation after evidence was concluded, is also of significant concern.

Owner continued to raise the asserted \$26,000 calculation error in the trial court.

In their opposition to the writ petition, Tenants included a half-page argument that the hearing officer had “considered” the invoices pertaining to that contractor’s work, pointing out the hearing officer’s decision “listed” the pertinent exhibits. Tenants did not respond, however, to the Owner’s point—that the amounts set forth in those exhibits did not add up to the number in the hearing officer’s decision, and that that number was short by \$26,000.<sup>13</sup>

The City, however, did address the Owner’s claim of a computational error and conceded “the invoices that the hearing officer used to reach this amount actually total \$857,597—as Hyde Street argues. (Tab 26 AR 122 (footnote 4).)”

The trial court, under a separate heading entitled “\$26,000 IN INVOICES,” then stated in its decision: “The City acknowledges that the Hearing Officer and Board appear to have made a calculation error.” It observed “[t]his error did not affect the Board’s decision.” Likewise, “[t]he apparent \$26,000 calculation error does not affect the court’s decision on the petition.”

It would have made no sense for the trial court to have spent many pages addressing the merits of the principle issues—the use of Table B and

---

<sup>13</sup> This is basically the same argument they have belatedly advanced in their reply brief—that the hearing officer identified the pertinent invoices and thus “considered” them. They then baldly assert he “found (correctly)” total expenditures of \$850,441 and point out half of this amount is less than 50 percent of the Table A comparative cost number. They never, however, address the real issue—that the hearing officer made a mistake in adding up these invoices. Rather, they quibble over the Owner’s use of the word “disallowed,” claiming the contractor’s work was not “disallowed,” pointing out, again, that the hearing officer identified and thus “considered” the pertinent invoices.

the use of a single construction cost number for the entire square footage—and to have issued a remand order, if this was all simply an academic exercise, as Tenants now belatedly claim, because the total rehabilitation costs do not meet the statutory requirement even assuming use of Table A and use of different cost numbers for the interior and balcony square footages.

Appellant Garcia then moved for “reconsideration.” In his 20-page, supporting memorandum, he addressed the following: the trial court’s ruling that the hearing officer had improperly used Table B, the court’s grant of the motion to augment the administrative record with the missing “Brief on Appeal” , and the ruling that the hearing officer, and Board, had improperly applied a single construction cost number to the entire square footage (i.e., both interior spaces and balconies). The memorandum concluded with an assertion that if the trial court persisted in its rulings, it would “cause the court to be disqualified” under Code of Civil Procedure section 170.1. Notably, the motion for reconsideration also did not advance the claim that even if the challenged rulings were all accepted as correct, no writ should issue because Owner’s total rehabilitation costs still did not meet the exemption requirement.

As Owner pointed out in opposition, the motion for reconsideration did not comply with statutory requirements, as Garcia was merely taking issue with the merits of the trial court’s decision and rearguing the case. (Code Civ. Proc., § 1008; *Shiffer v. CBS Corp.* (2015) 240 Cal.App.4th 246, 255 [motion for reconsideration must be “ ‘ ‘based upon new or different facts, circumstances, or law” ’ ’].).

The trial court denied the motion for reconsideration as procedurally improper (no “new law or fact”), and further ruled that even if the court reconsidered the issues, it would reach the same conclusions.

In sum, in light of the above, and in light of the trial court’s broad remand order, it seems apparent to us that the trial court viewed the computational error issue as having been resolved by the City’s concession and thus of no consequence to its order remanding the matter for reconsideration in light of its rulings.<sup>14</sup>

### DISPOSITION

The trial court’s judgment is AFFIRMED.

---

<sup>14</sup> We note that in the “Statement of the Facts” (some capitalization omitted) in its respondent’s brief, Owner discussed the evidence supporting its exemption petition and stated the hearing officer “understated the amount spent by the owner,” specifically the amount paid to Martin Gallagher Construction Inc., by \$26,000. (Italics & boldface omitted.) Given our recitation above, this statement is understandable. Owner made no further mention of the point and devoted the “Argument” section of its respondent’s brief to addressing the Table B ruling and augmentation order challenged by Tenants.

---

Banke, J.

We concur:

---

Margulies, Acting P.J.

---

Sanchez, J.

A156463, Hyde Street CNML Props., LLP et al. v. City of Oakland's  
Department of Housing and Community Development Rent Adjustment  
Program

CITY OF OAKLAND



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

Department of Housing and Community Development  
Rent Adjustment Program

TEL (510) 238-3721  
FAX (510) 238-6181  
CA Relay Service 711

**HEARING DECISION**

**RECONSIDERATION OF BOARD APPEAL DECISION  
AFTER COURT JUDGMENT**

**CASE NUMBER:** L14-0065  
**CASE NAME:** 525, 655 Hyde Street CNML Properties, LLC v. Tenants  
**PROPERTY ADDRESS:** 3921 Harrison St., Oakland, CA

**PROCEDURAL BACKGROUND**

A Hearing Decision in this case was issued on May 29, 2015, denying the owner's petition for a Certificate of Exemption based on substantial rehabilitation. The owner appealed.

An Appeal Hearing was held on December 8, 2016. The Housing, Residential, Rent and Relocation Board (the Board) affirmed the Hearing Decision, and separately affirmed the portion of the Hearing Decision that included the decks and balconies in the "building area" when performing the substantial rehabilitation calculation. The Appeal Decision in L14-0065 was issued on March 7, 2017. The owner filed a Petition for Writ of Administrative Mandamus in the Alameda County Superior Court (Case No. RG17-862841) challenging the Board's Appeal Decision.

On December 12, 2018, the Superior Court entered a Judgment Granting the Writ of Administrative Mandamus, setting aside and vacating the Appeal Decision and the Hearing Decision in L14-0065. The Superior Court ordered the City of Oakland Rent Adjustment Program to "**reconsider the Appeal Decision L14-0065 in its entirety in light of the Court's Opinions, Order and this Judgment.**" (Emphasis added.)

The tenants filed a motion for reconsideration. The motion was denied. The tenants appealed the Superior Court's Judgment and, on February 26, 2021, the Court of Appeals issued an Opinion affirming the Superior Court's Judgment of December 12, 2018.

The original Hearing Officer retired and this case was re-assigned to a different Hearing Officer. This Hearing Decision is issued based on the case record and in

conformity with the Superior Court's Opinions, Order, and Judgment of December 12, 2018.

### **SUMMARY OF DECISION**

The Owner's Petition is granted. The subject property is exempt from the Rent Adjustment Ordinance as substantially rehabilitated.

### **EVIDENCE**

#### **Background**

On November 14, 2014, the owner filed a Petition for Certificate of Exemption on the ground of substantial rehabilitation. The subject property is a residential building consisting of a total of sixteen (16) residential units and the current owner acquired the property in November of 2013.<sup>1</sup> The rehabilitation project occurred in 2014.

#### **Square Footage**

The public property profile and the Alameda County Assessor's Office Property Characteristics for the subject property and APN 12-929-11 shows that the square footage is 13,336 square feet.<sup>2</sup>

Martin Gallagher, a general contractor whose firm did most of the work on the construction project, testified that the total square footage of the building (13,336) does not include the 16 decks on the building, which were part of the construction project and expense. He testified that 15 of the decks are 12 x 4.5 square feet (totaling 810 square feet) and the penthouse deck is about 16 x 12 square feet (192). The total square footage of the decks and balconies is 1,002 square feet.

#### **Type of Construction**

Gallagher testified that the subject building is of wood frame construction, which corresponds to Type V-1 identified on the City of Oakland Certificate of Occupancy issued for the subject building.<sup>3</sup>

#### **Construction Expenses**

The original Hearing Officer calculated a total of \$850,441.00 as the cost of the rehabilitation project. The Court stated, and the City of Oakland admitted, that the Hearing Officer made a calculation error by about \$26,000 when he added up the eligible expenses. Accordingly, the submitted invoices and proofs of payments are re-calculated in this Hearing Decision to correct the calculation error.

---

<sup>1</sup> Exhibits 1-3 (Grant Deed)

<sup>2</sup> Exhibits 4 and 5

<sup>3</sup> Exhibit 6



The amounts the owner spent on the rehabilitation project, as stated by the prior Hearing Officer, based on the submitted invoices and proofs of payments, broken down by each contractor, are as follows:

Martin Gallagher Construction, Inc.	\$857,956.66 <sup>4</sup>
Kelly-Moore Paint	738.87 <sup>5</sup>
Bay Area Carpets	1,623.31 <sup>6</sup>
Craig Bull Construction	2,964.25 <sup>7</sup>
Advocate Painting	2,030.00 <sup>8</sup>
Raynard's Appliance Repair	194.32 <sup>9</sup>
Just Plumbing	9,660.00 <sup>10</sup>
Globe Plumbing Supply Co.	438.58 <sup>11</sup>
Oak Leaf Painting	1,195.00 <sup>12</sup>
TOTAL:	<u>\$876,800.99</u>

The total amount of \$876,800.99 is a recalculation of the sums of the amounts listed above, which leads to the correct figure of \$876,800.99.

In addition, the record also included invoices and proofs of payments for certain expenses that the owner submitted, but are not considered part of the rehabilitation project. As stated by the prior Hearing Officer, those expenses include routine cleaning and maintenance of the common areas, replacement of light bulbs in the common areas, repairs or replacement of broken appliances, snaking out clogged drains, vandalized copper pipes, and tree cutting. These expenses total \$9,541.89<sup>13</sup> and are not included in the total amount above.

The total amount of eligible expenses the owner spent on the rehabilitation project is \$876,800.99.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### Substantial Rehabilitation

O.M.C. 8.22.030(A)(6) states that dwelling units located in "substantially rehabilitated buildings" are not "covered units" under the Rent Adjustment Ordinance.

<sup>4</sup> Exhibits 18, 19, 28, 29, 43-54, 57-81, 96-98, 117-129, 132, 133

<sup>5</sup> Exhibits 20-23, 90-92, 107-109

<sup>6</sup> Exhibits 24, 25, 84, 85

<sup>7</sup> Exhibits 37 and 38

<sup>8</sup> Exhibits 41 and 42

<sup>9</sup> Exhibits 86 and 87

<sup>10</sup> Exhibits 35, 36, 88, 89, 99, 100, 112-114, 130, 131

<sup>11</sup> Exhibits 101, 102, 110, 111

<sup>12</sup> Exhibits 105 and 106

<sup>13</sup> Exhibits 26, 27, 30-36, 39, 40, 55, 56, 82, 83, 93, 95, 103, 104, 115, 116, 134-137

- a. In order to obtain an exemption based on substantial rehabilitation, an owner must have spent a minimum of fifty (50) percent of the average basic cost for new construction for a rehabilitation project.
- b. The average basic cost for new construction shall be determined using tables issued by the chief building inspector applicable for the time period when the substantial rehabilitation was completed.<sup>14</sup>

At the original hearing the Hearing Officer and the Board incorporated Table B - Quarterly Cost Indexes (Table "B") from Marshall Valuation Services - in the calculation of the cost of the rehabilitation project. This is not a table issued by the Chief Building Inspector as mandated by the Ordinance.

The Court found that the Board erred as a matter of law by incorporating Table B into the Ordinance as the substantive standard when Table B was not "issued by the chief building inspector." Additionally, the Court held that Table B was not an "other definable source" the public used and that the Ordinance did not give the owner a fair warning that Table A was not the standard against which the evidence of expense would be measured and that Table A would be modified by Table B.

The Court held that the record showed that Table A, issued August 1, 2009, was issued by the chief building inspector. City Engineering Manager Harlan testified that Table A was the latest table issued by the City of Oakland and was then the most recent and currently used Table. Accordingly, only Table A should have been used in the calculation and is used in the calculation in this Hearing Decision.

#### Square Footage

The Court held that the Board made a legal error when it treated both the building space (13,336) and the deck/balcony space (1,002) the same as Apartment space and applied the same cost of construction per square foot. The Court found that the original Hearing Officer and the Board both misapplied the law by focusing on potential use of the balconies rather than their cost of construction and by not giving effect to the specific description for "Elevated Decks & Balconies."

Therefore, this Hearing Decision corrects this error and calculates the Apartment building space and the deck/balcony space separately and for the cost of construction amount specified for each category.

#### Calculation

The attached Table A states that effective August 1, 2009, the cost of new construction of Apartment buildings of more than 2 units, Type V – wood frame

---

<sup>14</sup> O.M.C. Section 8.22.030(B)(2)

construction, is \$127.00 per square foot. Table A also states that the cost of newly constructed "Elevated Decks and Balconies" is \$41.16 per square foot.

To determine if the owner is entitled to the exemption, the following calculation is necessary: multiply the building square footage (13,336) by \$127.00, then multiply the square footage of the decks/balconies (1,002) by \$41.16. Add these amounts together, and divide that result by two (2). The calculation is as follows:

$$\begin{aligned}
 13,336 \times \$127.00 &= \$1,693,672.00 \\
 1,002 \times \$ 41.16 &= \$ \underline{41,242.32} \\
 \text{Total: } & \$1,734,914.32 \text{ divided by } 2 = \$867,457.16
 \end{aligned}$$

If the owner spent at least \$867,457.16 on the construction rehabilitation project, the building is exempt from the Rent Ordinance.

The owner provided invoices and proof of payments of eligible expenses showing that he spent \$876,800.99 on the rehabilitation project. Therefore, the subject property has been "substantially rehabilitated" and the rental units in the building are exempt from the Rent Ordinance.

**ORDER**

1. Petition L14-0065 is granted.
2. The subject property is exempt from the Rent Adjustment Program as a "substantially rehabilitated" building.
3. The subject property is not exempt from the Rent Adjustment Program Service Fee because it is still subject to the Just Cause for Eviction Ordinance.
4. The Certification of Exemption will be issued after expiration of the appeal period.

Right to Appeal: This decision is the final decision of the Rent Adjustment Program (RAP). Either party may appeal by filing a properly completed RAP appeal form that must be filed within 15 days after service of the decision.<sup>15</sup> The date of service is shown on the attached Proof of Service.

Dated: September 30, 2021



\_\_\_\_\_  
Linda M. Moroz, Hearing Officer  
Rent Adjustment Program

<sup>15</sup> O.M.C. §8.22.120(A)(1)

## Building Services

Construction Valuation<sup>1</sup>For Building Permits<sup>4</sup>

Effective Aug. 1, 2009

Community Economic Development Agency

Dalziel Administration Building

250 Frank Ogawa Plaza - 2nd Floor

Oakland, CA 94612

510-238-3891

TABLE A

Occ.	Description <sup>3</sup>	Construction Type	Level Ground <sup>2</sup>		Hillside Construction		Marshall & Swilt 3Q 7'09 Section pg (Class/type)
			New	Remodel	New	Remodel	
R3	Custom Residence	V	\$207.53	\$107.92	\$269.79	\$140.29	Section 12 pg 25 (C/e)
	Single Family & Duplex	V	\$144.46	\$75.12	\$187.80	\$97.65	Section 12 pg 25 (C/g)
	Factory/Manufactured home	V	\$43.50	\$22.62	\$56.55	\$29.41	Section 12 pg 26 (CDS/g)
	Finished Habitable Basement Conversion	V	\$96.42	\$50.14	\$125.35	\$65.18	Section 12 pg 25 (S/a)
	Convert non-habitable to habitable	V	N/A	\$43.50	N/A	\$56.55	Section 12 pg 26 (CDS/g)
	Partition Walls	V	N/A	\$16.19	N/A	\$21.05	Section 52 pg 2 (6"wall)
	Foundation Upgrade (l.f.)	V	\$105.37	NA	\$136.98	NA	Section 51 pg 2 (R/24x72.)
	Patio/Porch Roof	V	\$24.70	\$12.84	\$32.11	\$16.70	Section 66 pg 2 (Wood)
	Ground Level Decks	V	\$30.49	\$15.85	\$39.64	\$20.61	Section 66 pg 2 (100s/avg)
	Elevated Decks & Balconies	V	\$41.16	\$21.40	\$53.51	\$27.82	Section 66 pg 2 (100s/+1 story)
U1	Garage	V	\$38.42	\$19.98	\$49.95	\$25.97	Section 12 pg 35 (C/a600)
	Carport	V	\$24.70	\$12.84	\$32.11	\$16.70	Section 12 pg 35 (D/a4car)
	Retaining wall (s.f.)	III	\$32.96	NA	\$42.85	NA	Section 55 pg 3 (12"reinf./h)
R2	Apartment (>2 units)	I & II	\$174.69	\$90.84	\$227.10	\$118.09	Section 11 pg 18 (B/g)
		III	\$156.91	\$81.59	\$203.98	\$106.07	Section 11 pg 18 (Dmill/g)
		V	\$127.00	\$66.04	\$165.10	\$85.85	Section 11 pg 18 (D/g)
Non-Residential Occupancy							
A	Church/Auditorium	I & II	\$247.07	\$128.48	\$321.19	\$167.02	Section 16 pg 9 (B/g)
		III	\$182.01	\$94.65	\$236.61	\$123.04	Section 16 pg 9 (B/a)
		V	\$175.93	\$91.48	\$228.71	\$118.93	Section 16 pg 9 (S/g)
A	Restaurant	I & II	\$221.82	\$115.35	\$288.37	\$149.95	Section 13 pg 14 (A-B/g)
		III	\$174.20	\$90.58	\$226.46	\$117.76	Section 13 pg 14 (C/g)
		V	\$166.80	\$86.74	\$216.84	\$112.76	Section 13 pg 14 (D/g)
B	Restaurant <50 occupancy	V	\$145.24	\$75.52	\$188.81	\$98.18	Section 13 pg 17 (C/a)
B	Bank	I & II	\$223.46	\$116.20	\$290.50	\$151.06	Section 15 pg 21 (B/a)
		III	\$182.01	\$94.65	\$236.61	\$123.04	Section 15 pg 21 (C/a)
		V	\$173.02	\$89.97	\$224.93	\$116.96	Section 15 pg 21 (D/a)
B	Medical Office	I & II	\$249.76	\$129.88	\$324.69	\$168.84	Section 15 pg 22 (A/g)
		III	\$243.19	\$126.46	\$316.15	\$164.40	Section 15 pg 22 (B/g)
		V	\$200.73	\$104.38	\$260.95	\$135.69	Section 15 pg 22 (C/g)
B	Office	I & II	\$165.41	\$86.01	\$215.03	\$111.82	Section 15 pg 17 (B/a)
		III	\$120.77	\$62.80	\$157.00	\$81.64	Section 15 pg 17 (C/a)
		V	\$115.34	\$59.98	\$149.94	\$77.97	Section 15 pg 17 (D/a)
E	School	I & II	\$239.11	\$124.34	\$310.84	\$161.64	Section 18 pg 14 (A-B/g)
		III	\$181.96	\$94.62	\$236.55	\$123.00	Section 18 pg 14 (C/g)
		V	\$171.94	\$89.41	\$223.52	\$116.23	Section 18 pg 14 (D/g)
H	Repair Garage	I & II	\$186.25	\$96.85	\$242.13	\$125.91	Section 14 pg 33 (MSG 527C/e)
		III	\$180.70	\$93.96	\$234.91	\$122.15	Section 14 pg 33 (MLG 423C/e)
		V	\$175.14	\$91.07	\$227.68	\$118.39	Section 14 pg 33 (MLG 423D/e)
I	Care Facilities / Institutional	I & II	\$186.04	\$96.74	\$241.85	\$125.76	Section 15 pg 22 (B/a)
		III	\$152.09	\$79.09	\$197.72	\$102.81	Section 15 pg 22 (C/a)
		V	\$146.52	\$76.19	\$190.48	\$99.05	Section 15 pg 22 (D/a)
M	Market (Retail sales)	I & II	\$143.82	\$74.79	\$186.97	\$97.22	Section 13 pg 26 (A/g)
		III	\$117.10	\$60.89	\$152.23	\$79.16	Section 13 pg 26 (C/g)
		V	\$113.19	\$58.86	\$147.15	\$76.52	Section 13 pg 26 (D/g)
S	Industrial plant	I & II	\$157.34	\$81.82	\$204.54	\$106.36	Section 14 pg 15 (B/a)
		III	\$134.38	\$69.88	\$174.69	\$90.84	Section 14 pg 15 (C/a)
		V	\$111.93	\$58.20	\$145.51	\$75.66	Section 14 pg 15 (D/a)
S	Warehouse	I & II	\$96.28	\$50.07	\$125.16	\$65.09	Section 14 pg 26 (A/g)
		III	\$91.77	\$47.72	\$119.30	\$62.04	Section 14 pg 26 (B/g)
		V	\$90.79	\$47.21	\$118.03	\$61.37	Section 14 pg 26 (Cmill/g)
S	Parking Garage	I & II	\$76.31	\$39.68	\$99.20	\$51.59	Section 14 pg 34 (A/g)

<sup>1</sup> Cost per square foot, unless noted otherwise. (l.f. = linear foot; s.f. = square foot); includes 1.3 regional multiplier (see Secc. 99 pg 6 July 2009 Marshall & Swilt)<sup>2</sup> Hillside construction = slope >20%; multiply by additional 1.3 multiplier<sup>3</sup> Remodel Function of New Construction is a 0.52 multiplier.<sup>4</sup> Separate structures or occupancies valued separately.<sup>5</sup> Separate fees assessed for E/P/M permits, R.O.W. improvements, Fire Prevention Bureau, Grading Permits, technology enhancement, records management, Excav. & Shoring.



**CITY OF OAKLAND**  
**RENT ADJUSTMENT PROGRAM**

250 Frank H. Ogawa Plaza, Suite 5313  
 Oakland, CA 94612-0243  
 (510) 238-3721  
 CA Relay Service 711  
[www.oaklandca.gov/RAP](http://www.oaklandca.gov/RAP)

For Rent Adjustment Program date stamp.

**PROOF OF SERVICE**

**NOTE: YOU ARE REQUIRED TO SERVE A COPY OF YOUR PETITION OR RESPONSE (PLUS ANY ADDITIONAL DOCUMENTS) ON THE OPPOSING PARTIES.**

- Use this PROOF OF SERVICE form to indicate the date and manner in which service took place, as well as the person(s) served.
- Provide a copy of this PROOF OF SERVICE form to the opposing parties together with the document(s) served.
- File the completed PROOF OF SERVICE form with the Rent Adjustment Program together with the document you are filing and any attachments you are serving.
- Please number sequentially all additional documents provided to the RAP.

**PETITIONS FILED WITHOUT A PROOF OF SERVICE WILL BE CONSIDERED INCOMPLETE AND MAY BE DISMISSED.**

I served a copy of: RESPONDENT'S RESPONSE TO APPEAL  
 (insert name of document served)  
 And Additional Documents

and (write number of attached pages) 58 attached pages (not counting the Petition or Response served or the Proof of Service) to each opposing party, whose name(s) and address(es) are listed below, by one of the following means (check one):

- a. United States mail. I enclosed the document(s) in a sealed envelope or package addressed to the person(s) listed below and at the address(es) below and deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- b. 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 listed below.
- c. Personal Service. (1) By Hand Delivery: I personally delivered the document(s) to the person(s) at the address(es) listed below; or (2) I left the document(s) at the address(es) with some person not younger than 18 years of age.

**PERSON(S) SERVED:**

Name	Julie E. Amberg
Address	3921 Harrison Street, Unit 302,
City, State, Zip	Oakland, CA 94611

Name	Todd McMahon
Address	3921 Harrison Street, Unit 304
City, State, Zip	Oakland, CA 94611

Name	Mari Oda
Address	3921 Harrison Street, Unit 304
City, State, Zip	Oakland, CA 94611

Name	Fernando Garcia
Address	3921 Harrison Street, Unit 202
City, State, Zip	Oakland, CA 94611

Name	Kate Garcia
Address	3921 Harrison Street, Unit 202
City, State, Zip	Oakland, CA 94611

Name	Stanley L. Amberg
Address	4115 Kendal Way
City, State, Zip	Sleepy Hollow, NY 10591

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

To serve more than 8 people, copy this page as many times as necessary and insert in your proof of service document. If you are only serving one person, you can use just the first and last page.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and the documents were served on 11/23/21 (insert date served).

**Fabienne Lopez**

PRINT YOUR NAME

DocuSigned by:  
*Fabienne Lopez*

SIGNATURE

11/23/21

DATE

**CITY OF OAKLAND**  
**Department of Housing and Community Development**

**RENT ADJUSTMENT PROGRAM**

**525, 655 Hyde Street CNML Properties, LLC v. Tenants**  
**Case No. L14-0065**

**TENANT AMBERG REPLY TO OWNER’S RESPONSE TO APPEAL**

This is tenant/appellant Julie E. Amberg (“Tenant”) Reply to Mandana Properties (“Owner”) Response To Appeal.

A principal issue in Tenant’s appeal is whether the September 30, 2021 Hearing Decision deprives Tenant of due process of law. A principal fact question underlying the due process issue is whether the proper construction cost for 15 balconies is \$127 per square foot or \$41.16 per square foot. If the proper cost is \$127, the property was not substantially rehabilitated. The supporting calculation is set forth in Tenant’s Explanation of Grounds For Appeal, at page 3. Owner’s Response To Appeal (“Response”) does not challenge that calculation and conclusion.

Instead, Owner’s Response asserts, at page 7, that Tenants have not been deprived of due process because their “arguments and evidence” have “already been considered” by the trial court and the RAP.

“Any arguments and evidence Appellants wish to now introduce has already been considered by the trial court and the RAP. Thus, Appellants have not been denied their due process rights.”

Owner’s statement that Tenant’s arguments and evidence have already been considered is not correct. Owner’s statement is contradicted by the following undisputed facts of record.

- In the original hearing of this case, the owner never challenged \$127 per square foot as being the proper construction cost for the balconies. The owner did not assert that \$41.16 was the correct cost.
- In the owner’s appeal of the original Hearing Decision, the owner never served Tenant with a brief or any other document that asserted \$41.16 as the correct cost.
- In the RAP’s files of the owner’s appeal of the original Hearing Decision, there is no brief or other document filed by the owner that asserted \$41.16 as the correct cost.



- At the oral argument of the owner's appeal, owner did not argue that \$41.16 was the correct cost.

Thus, throughout the RAP's proceedings, Tenant had no knowledge that \$41.16 was an issue in the case. Tenant had a justifiable belief that owner was *not* asserting \$41.16 as the balconies construction cost. Tenant therefore had no need or reason to offer arguments or evidence in the RAP in support of \$127 as being the correct construction cost.

Having lost in the RAP, the owner filed a petition in the Superior Court of California for a writ of mandamus against the City of Oakland. The petition asserted, for the first time, that \$41.16 per square foot was the proper construction cost for the balconies.

The City of Oakland, and Tenant, argued to the Superior Court that the owner was precluded, in court, from asserting \$41.16 because the owner had not made such assertion in the RAP.

The Superior Court agreed with the City and Tenant, and the court issued a tentative opinion on July 25, 2018 which stated:

“The [RAP] Decision treated all the building space as unit space. Table A differentiated among different types of space. Table A included "R2 Apartment space" at \$127 sqft and "R3 Elevated Decks and Balconies" space at \$41.16 sqft. Petitioner argues that the Board erred as a matter of law by treating the deck space as "R2 Apartment space." **Petitioner has waived this argument.** At the hearings before the Hearing Officer and the Board, Petitioner took an all or nothing approach and argued that the calculations should exclude the deck space. **Petitioner has not identified where it argued that the deck space should have the lower \$41.16 per sqft rate.** A party cannot take an all or nothing approach in an initial factual hearing and then on review argue that the initial decision-maker failed or neglected to consider an alternative that was never proposed or argued.” (Emphasis added)

In response to the tentative opinion, the owner “found”, and offered to the court, a brief which owner alleged it had filed in the RAP on May 4, 2016 in owner's appeal of the original hearing decision. The brief purported to bear the date stamp of the RAP. The brief purported to argue that \$41.16 was the proper construction cost for the balconies.

However, and significantly, **Owner admitted to the court that Owner had not served the brief on Tenants.** This substantially prejudiced Tenant. Owner's June 18, 2015 “Appeal” document (on RAP form dated 5/29/09 and attached hereto) in L14-0065 expressly commanded, “You must serve a copy of your appeal on the opposing party(ies) or your appeal may be

dismissed.” Owner ignored that command. Owner did not serve Tenant with Owner’s May 4, 2016 appeal brief.

Moreover, **the brief was not in the RAP’s files. Nor was it logged into RAP’s activity log.** At the request of the City of Oakland, officials at the RAP conducted a search of the RAP’s files of case L14-0065 to determine whether or not the newly-found brief was in those files or had been logged into those files. After conducting the search, the RAP officials filed Declarations with the court, stating the results of the search. (Declaration of Ester Kelly Rush, August 16, 2018, attached hereto; Declaration of Keith Mason, August 16, 2018, attached hereto)

The May 4, 2016 brief was **not** in the RAP files of case L14-0065. (Rush Decl., paras. 5, 15). The May 4, 2016 brief was **not** listed in the activity log for case L14-0065. (Rush Decl., paras. 8, 11, 12, 15; Mason Decl., para. 6). Owner did not in 2018, and does not now, contest the authenticity or accuracy of those Declarations.

In short, the May 4 brief (which asserted \$41.16) was not served on Tenant and the brief was not in the RAP’s files. Those uncontroverted facts fully substantiate Tenant’s justifiable contemporaneous belief that \$41.16 was **not** an issue in the RAP proceedings in L14-0065.

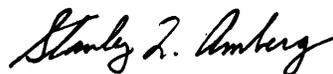
Unaware of the May 4 brief, and its assertion of \$41.16, Tenant had no need or reason to present argument or evidence in the RAP against \$41.16 and in support of \$127. Therefore, Owner is wrong when it asserts that Tenant’s argument and evidence “has already been considered” by the RAP.

Respectfully, Tenant now requests the opportunity to present such argument and evidence in the RAP. Tenant will be substantially prejudiced if it is not permitted to do so.

**CONCLUSION**

For the above-stated reasons, the Board should stay or reverse the September 30, 2021 Hearing Decision and remand the case to a hearing officer for a further hearing.

Respectfully submitted,

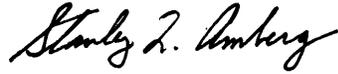


Stanley L. Amberg,  
4115 Kendal Way, Sleepy Hollow, NY 10591  
T: 914-238-4921, M: 914-263-7341  
Representative for Tenant Amberg

December 6, 2021

L14-0065 Tenant Amberg Reply

I, Stanley L. Amberg, declare under penalty of perjury under the laws of the State of California that on December 6, 2021, I placed a copy of Tenant Amberg Reply To Owner's Response To Appeal, and attachments thereto, 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: Clifford E. Fried, Fried & Williams LLP, 1901 Harrison Street, 13<sup>th</sup> Floor, Oakland, CA 94612; and to the current owner of the property Ray McFadden, Mandana Properties, 4200 Park Boulevard, #130, Oakland, CA 94602.

A handwritten signature in black ink that reads "Stanley L. Amberg". The signature is written in a cursive, flowing style.

Stanley L. Amberg

**City of Oakland**  
**Residential Rent Adjustment Program**  
250 Frank Ogawa Plaza, Suite 5313  
Oakland, California 94612  
(510) 238-3721

2015 JUN 18 PM 4:52  
**APPEAL**

**Appellant's Name**  
525, 655 Hyde St. CNML Properties LLC

**Landlord**       **Tenant**

**Property Address (Include Unit Number)**  
3921 Harrison Street  
Oakland, CA 94611

**Appellant's Mailing Address (For receipt of notices)**  
4844 Telegraph Avenue  
Oakland, CA 94609

**Case Number** L14-0065  
**Date of Decision appealed** 5/29/15

**Name of Representative (if any)**  
Clifford E. Fried Esq.  
Elizabeth Hart

**Representative's Mailing Address (For notices)**  
Fried & Williams LLP  
480 Ninth St.  
Oakland, CA 94607

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

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

7. Other. You must attach a detailed explanation of your grounds for appeal. Submissions to the Board are limited to 25 pages from each party. Number of pages attached [ 14 ]. Please number attached pages consecutively.

**8. You must serve a copy of your appeal on the opposing party(les) or your appeal may be dismissed.** I declare under penalty of perjury under the laws of the State of California that on June 18, 2015, 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:

<b>Name</b>	See attached list of 25 opposing parties along with their representative.
<b>Address</b>	
<b>City, State Zip</b>	
<b>Name</b>	
<b>Address</b>	
<b>City, State Zip</b>	

	June 18, 2015
<b>SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE</b>	<b>DATE</b>

**IMPORTANT INFORMATION:**

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

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

1 BARBARA J. PARKER, City Attorney, SBN 069722  
OTIS McGEE, JR., Chief Assistant City Attorney, SBN 071885  
2 JAMILAH A. JEFFERSON, Senior Deputy City Attorney, SBN 219027  
One Frank H. Ogawa Plaza, 6th Floor  
3 Oakland, California 94612  
Telephone: (510) 238-7686  
4 Facsimile: (510) 238-6500  
Email: jjefferson@oaklandcityattorney.org  
5 X04443: 2521188

6 Attorneys for Defendant  
CITY OF OAKLAND  
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF ALAMEDA**  
10

11 525-655 HYDE STREET CNML PROPS., LLP,

12 Petitioner,

13 vs.

14 CITY OF OAKLAND'S DEPARTMENT OF  
HOUSING AND COMMUNITY  
15 DEVELOPMENT RENT ADJUSTMENT  
PROGRAM, and DOES 1 through 25,

16 Respondents.  
17

Case No. RG17862841

ASSIGNED FOR ALL PURPOSES TO  
JUDGE KIMBERLY COLWELL  
DEPARTMENT 511

**DECLARATION OF ESTHER KELLY**  
**RUSH IN SUPPORT OF**  
**RESPONDENT CITY OF OAKLAND'S**  
**OPPOSITION TO PETITIONER'S**  
**MOTION TO AUGMENT**  
**ADMINISTRATIVE RECORD**

Date: August 23, 2018  
Time: 9:00 a.m.  
Place: Dept 511

18  
19  
20 Jileun Eglin, Lexie Eglin, Angelique Johnson-  
Martinez, Suzanne Miller, Fernando Garcia,  
21 Kate Flick Garcia, Bianca Penaloza, David  
Preciado, Julie Amberg, Tyler Ritter, Marie Oda,  
22 Todd McMahon, Andrew Simkin, Jessica  
Simkin, and DOES 26 through 40,

23 Real Parties in Interest.  
24  
25  
26  
27  
28

1 I, Esther Kelly Rush, hereby declare:

2 1. I am an employee for the City of Oakland. I am currently an Administrative Assistant  
3 I for the City's Rent Adjustment Program. I have been in this position for 2.5 years. The matters  
4 set forth herein are personally known to me to be true, and if called upon, I would competently  
5 testify thereto.

6 2. My duties as an Administrative Assistant for the Rent Adjustment Program include  
7 managing incoming eviction notices, sending out copies of owner/tenant responses, managing  
8 appeal hearing scheduling before the Rent Board, receiving and completing subpoenas, and  
9 completing public record requests.

10 3. When the City Attorney's Office requested a copy of the Rent Adjustment Program  
11 file for this case, L14-0065, a staff member from our office copied the entire case file for the City  
12 Attorney's Office.

13 4. On July 26, 2018, a paralegal from the City Attorney's Office contacted me about a  
14 missing brief in the Rent Adjustment Program case L14-0065. The paralegal, Melinda Ochoa,  
15 emailed a copy of the missing brief for my review.

16 5. I immediately searched through the case file to determine if the missing brief had been  
17 submitted. I checked the file by looking at the date of the documents in the file. I did not locate the  
18 missing brief in the case file for L14-0065.

19 6. Documents from parties arrive in the Rent Adjustment Program in one of two ways. A  
20 party can bring a document directly into the housing resource center. If a party comes in person with  
21 a document, he or she date stamps the document and submits it in a drop box that the office uses to  
22 collect submissions to the record.

23 7. A staff member from the Rent Adjustment Program retrieves the drop box and distributes  
24 the submitted documents to the analyst assigned to the particular case identified on the documents.

25 8. Once the analyst receives the document, he or she reviews the document, enters it in an  
26 activity log for the case, and inserts the document into the appropriate case file. If applicable, a  
27 copy of the document is mailed to the opposing party. Typically, owner or tenant responses are  
28 mailed to the opposing party.

1           9. A party can also mail a document directly to the Rent Adjustment Program for  
2 submission. Documents that arrive through the mail are date stamped by the administrative  
3 assistant designated to receive incoming mail on a particular day.

4           10. The mailed documents are then distributed to the analyst assigned to the particular  
5 case in the same manner that documents deposited in the drop box are distributed.

6           11. Once an analyst receives a document from the mail distribution, he or she logs it in the  
7 activity log and inserts it into the appropriate case file in the same manner that he or she logs in  
8 documents that are deposited in the drop box. If applicable, a copy of the document is then  
9 mailed to the opposing party. Typically, owner or tenant responses are mailed to the opposing  
10 party.

11           12. The activity log is used by the Rent Adjustment Program staff members who work on  
12 a particular case file. For example, an administrative assistant logs when the case file is opened  
13 and when mailings have been sent (such as notices of hearings/mediations, orders, hearing  
14 decisions, etc.) in the activity log. An analyst records any activity that they have with the case  
15 file (such as receipt of owner or tenant responses and additional documentation, etc.) in the  
16 activity log.

17           13. In 2015, at the time of the appeal in L14-0065, the Rent Adjustment Program only  
18 required appeals to be served on opposing parties. Other documentation, such as the missing  
19 brief, had to be filed in the Rent Adjustment no later than seven (7) days prior to a hearing but did  
20 not have to be served on the opposing party.

21           14. The administrative hearing for L14-0065 was on April 27, 2015. The Rent Board  
22 appeal hearing was on December 8, 2016. Between the administrative hearing and the appeal  
23 hearing, the owner (or his representative) in L14-0065 filed four documents including:

- 24           • Post Hearing Brief on Building Services Tables – May 7, 2015
- 25           • Appeal – June 18, 2015
- 26           • Owner Request to Change the Date of Appeal Hearing – May 10, 2016
- 27           • Clifford Fried Request to Change the Date of Appeal Hearing – May 10, 2016.

28





1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PROOF OF SERVICE**  
**525-655 Hyde St., CNML Props., v. City of Oakland Department of Housing & Community**  
**Development Rent Adjustment Program**  
**Alameda County Superior Court Case No. RG17862841**

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is City Hall, One Frank H. Ogawa Plaza, 6th Floor, Oakland, California 94612. On the date set forth below, I served the within documents:

**DECLARATION OF ESTHER KELLY RUSH IN SUPPORT OF RESPONDENT CITY OF OAKLAND'S OPPOSITION TO PETITIONER'S MOTION TO AUGMENT ADMINISTRATIVE RECORD**

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below, or as stated on the attached service list, on this date before 5:00 p.m.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Oakland, California, addressed as set forth below.
- by causing personal delivery by messenger of the document(s) listed above to the person(s) at the address(es) set forth below.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- by causing such envelope to be sent via overnight delivery by **Federal Express/ Express Mail**.

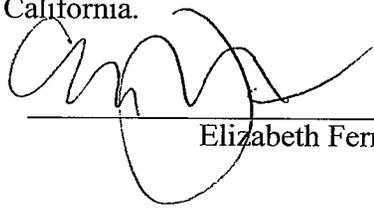
Clifford E. Fried, Esq.  
Fried & Williams, LLP  
480 9<sup>th</sup> Street  
Oakland, CA 94607  
Telephone: (510) 625-0100

**Attorney for Petitioner, 525-655 Hyde Street.**  
**CNML PROPS., LLP**

I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with 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 foregoing is true and correct.

Executed on August 16, 2018, at Oakland, California.

  
\_\_\_\_\_  
Elizabeth Ferrel

1 BARBARA J. PARKER, City Attorney, SBN 069722  
OTIS McGEE, JR., Chief Assistant City Attorney, SBN 071885  
2 JAMILAH A. JEFFERSON, Senior Deputy City Attorney, SBN 219027  
One Frank H. Ogawa Plaza, 6th Floor  
3 Oakland, California 94612  
Telephone: (510) 238-7686  
4 Facsimile: (510) 238-6500  
Email: jjefferson@oaklandcityattorney.org  
5 X04443: 2521243

6 Attorneys for Defendant  
CITY OF OAKLAND

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF ALAMEDA**

11 525-655 HYDE STREET CNML PROPS., LLP,

12 Petitioner,

13 vs.

14 CITY OF OAKLAND'S DEPARTMENT OF  
HOUSING AND COMMUNITY  
15 DEVELOPMENT RENT ADJUSTMENT  
PROGRAM, and DOES 1 through 25,

16 Respondents.

Case No. RG17862841

ASSIGNED FOR ALL PURPOSES TO  
JUDGE KIMBERLY COLWELL  
DEPARTMENT 511

**DECLARATION OF KEITH MASON**  
**IN SUPPORT OF RESPONDENT CITY**  
**OF OAKLAND'S OPPOSITION TO**  
**PETITIONER'S MOTION TO**  
**AUGMENT ADMINISTRATIVE**  
**RECORD**

Date: August 23, 2018  
Time: 9:00 a.m.  
Place: Dept 511

17  
18  
19  
20 Jileun Eglin, Lexie Eglin, Angelique Johnson-  
Martinez, Suzanne Miller, Fernando Garcia,  
21 Kate Flick Garcia, Bianca Penaloza, David  
Preciado, Julie Amberg, Tyler Ritter, Marie Oda,  
22 Todd McMahon, Andrew Simkin, Jessica  
Simkin, and DOES 26 through 40,

23 Real Parties in Interest.  
24  
25  
26  
27  
28

1 I, Keith Mason, hereby declare:

2 1. I am an employee for the City of Oakland. I am currently a Program Analyst II for the  
3 City's Rent Adjustment Program. I have been in this position for 21 years. The matters set forth  
4 herein are personally known to me to be true, and if called upon, I would competently testify  
5 thereto.

6 2. My duties as Program Analyst for the Rent Adjustment Program include receiving  
7 incoming documents and telephone calls regarding assigned cases, logging in submissions to case  
8 files, and answering questions from the public during drop in hours or telephone hours.

9 3. Recently, I spoke to Esther Kelly Rush, an administrative assistant in our office, about  
10 a missing brief in the L14-0065 Rent Adjustment Program case file. I reviewed a copy of the  
11 missing brief.

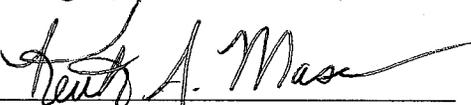
12 4. I immediately searched the activity log for this case file. The activity log is used by the  
13 Rent Adjustment Program staff members who work on a particular case file. For example, an  
14 administrative assistant logs when the case file is opened and when mailings have been sent (such  
15 as notices of hearings/mediations, orders, hearing decisions, etc.) in the activity log.

16 5. I record any activity that I may have with the case file (such as receipt of owner or  
17 tenant responses and additional documentation, etc.) in the activity log. For example, once I  
18 receive a document, I review it, enter it in the activity log for the case, and insert the document into  
19 the appropriate case file.

20 6. I did not see a notation for the missing brief in the activity log for L14-0065.

21  
22 I declare under penalty of perjury under the laws of the State of California and the United  
23 States of America that the foregoing is true and correct.

24 Executed this 16th day of August, 2018 in Oakland, California.

25   
26 \_\_\_\_\_  
27 KEITH MASON  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PROOF OF SERVICE**  
**525-655 Hyde St., CNML Props., v. City of Oakland Department of Housing & Community**  
**Development Rent Adjustment Program**  
**Alameda County Superior Court Case No. RG17862841**

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is City Hall, One Frank H. Ogawa Plaza, 6th Floor, Oakland, California 94612. On the date set forth below, I served the within documents:

**DECLARATION OF KEITH MASON IN SUPPORT OF RESPONDENT CITY OF OAKLAND'S OPPOSITION TO PETITIONER'S MOTION TO AUGMENT ADMINISTRATIVE RECORD**

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below, or as stated on the attached service list, on this date before 5:00 p.m.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Oakland, California, addressed as set forth below.
- by causing personal delivery by messenger of the document(s) listed above to the person(s) at the address(es) set forth below.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- by causing such envelope to be sent via overnight delivery by **Federal Express/Express Mail**.

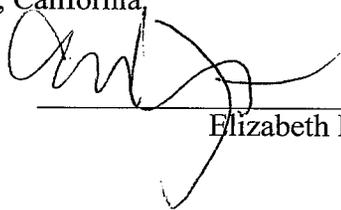
Clifford E. Fried, Esq.  
Fried & Williams, LLP  
480 9<sup>th</sup> Street  
Oakland, CA 94607  
Telephone: (510) 625-0100

***Attorney for Petitioner, 525-655 Hyde Street.***  
***CNML PROPS., LLP***

I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with 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 foregoing is true and correct.

Executed on August 16, 2018, at Oakland, California,

  
\_\_\_\_\_  
Elizabeth Ferrel

**CITY OF OAKLAND**  
**Department of Housing and Community Development**

**RENT ADJUSTMENT PROGRAM**

**525, 655 Hyde Street CNML Properties, LLC v. Tenants**  
**Case No. L14-0065**

**TENANT McMAHON-ODA REPLY TO OWNER'S RESPONSE TO APPEAL**

This is tenant/appellant Todd McMahon and Mari Oda ("Tenant") Reply to Mandana Properties ("Owner") Response To Appeal.

A principal issue in Tenant's appeal is whether the September 30, 2021 Hearing Decision deprives Tenant of due process of law. A principal fact question underlying the due process issue is whether the proper construction cost for 15 balconies is \$127 per square foot or \$41.16 per square foot. If the proper cost is \$127, the property was not substantially rehabilitated. The supporting calculation is set forth in Tenant's Explanation of Grounds For Appeal, at page 3. Owner's Response To Appeal ("Response") does not challenge that calculation and conclusion.

Instead, Owner's Response asserts, at page 7, that Tenants have not been deprived of due process because their "arguments and evidence" have "already been considered" by the trial court and the RAP.

"Any arguments and evidence Appellants wish to now introduce has already been considered by the trial court and the RAP. Thus, Appellants have not been denied their due process rights."

Owner's statement that Tenant's arguments and evidence have already been considered is not correct. Owner's statement is contradicted by the following undisputed facts of record.

- In the original hearing of this case, the owner never challenged \$127 per square foot as being the proper construction cost for the balconies. The owner did not assert that \$41.16 was the correct cost.
- In the owner's appeal of the original Hearing Decision, the owner never served Tenant with a brief or any other document that asserted \$41.16 as the correct cost.
- In the RAP's files of the owner's appeal of the original Hearing Decision, there is no brief or other document filed by the owner that asserted \$41.16 as the correct cost.

- At the oral argument of the owner's appeal, the owner did not argue that \$41.16 was the correct cost.

Thus, throughout the RAP's proceedings, Tenant had no knowledge that \$41.16 was an issue in the case. Tenant had a justifiable belief that owner was *not* asserting \$41.16 as the balconies construction cost. Tenant therefore had no need or reason to offer arguments or evidence in the RAP in support of \$127 as being the correct construction cost.

Having lost in the RAP, the owner filed a petition in the Superior Court of California for a writ of mandamus against the City of Oakland. The petition asserted, for the first time, that \$41.16 per square foot was the proper construction cost for the balconies.

The City of Oakland, and Tenant, argued to the Superior Court that the owner was precluded, in court, from asserting \$41.16 because the owner had not made such assertion in the RAP.

The Superior Court agreed with the City and Tenant, and the court issued a tentative opinion on July 25, 2018 which stated:

“The [RAP] Decision treated all the building space as unit space. Table A differentiated among different types of space. Table A included "R2 Apartment space" at \$127 sqft and "R3 Elevated Decks and Balconies" space at \$41.16 sqft. Petitioner argues that the Board erred as a matter of law by treating the deck space as "R2 Apartment space." **Petitioner has waived this argument.** At the hearings before the Hearing Officer and the Board, Petitioner took an all or nothing approach and argued that the calculations should exclude the deck space. **Petitioner has not identified where it argued that the deck space should have the lower \$41.16 per sqft rate.** A party cannot take an all or nothing approach in an initial factual hearing and then on review argue that the initial decision-maker failed or neglected to consider an alternative that was never proposed or argued.” (Emphasis added)

In response to the tentative opinion, the owner “found”, and offered to the court, a brief which owner alleged it had filed in the RAP on May 4, 2016 in owner's appeal of the original hearing decision. The brief purported to bear the date stamp of the RAP. The brief purported to argue that \$41.16 was the proper construction cost for the balconies.

However, and significantly, **Owner admitted to the court that the owner had not served the brief on Tenants.** This substantially prejudiced Tenant. Owner's June 18, 2015 “Appeal” document (on RAP form dated 5/29/09 and attached hereto) in L14-0065 expressly commanded, “You must serve a copy of your appeal on the opposing party(ies) or your appeal

may be dismissed.” Owner ignored that command. Owner did not serve Tenant with Owner’s May 4, 2016 appeal brief.

Moreover, **the brief was not in the RAP’s files. Nor was it logged into RAP’s activity log.** At the request of the City of Oakland, officials at the RAP conducted a search of the RAP’s files of case L14-0065 to determine whether or not the newly-found brief was in those files or had been logged into those files. After conducting the search, the RAP officials filed Declarations with the court, stating the results of the search. (Declaration of Ester Kelly Rush, August 16, 2018, attached hereto; Declaration of Keith Mason, August 16, 2018, attached hereto)

The May 4, 2016 brief was **not** in the RAP files of case L14-0065. (Rush Decl., paras. 5. 15). The May 4, 2016 brief was **not** listed in the activity log for case L14-0065. (Rush Decl., paras. 8, 11, 12, 15; Mason Decl., para. 6). Owner did not in 2018, and does not now, contest the authenticity or accuracy of those Declarations.

In short, the May 4 brief (which asserted \$41.16) was not served on Tenant and the brief was not in the RAP’s files. Those uncontroverted facts fully substantiate Tenant’s justifiable contemporaneous belief that \$41.16 was **not** an issue in the RAP proceedings in L14-0065.

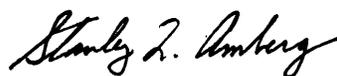
Unaware of the May 4 brief, and its assertion of \$41.16, Tenant had no need or reason to present argument or evidence in the RAP against \$41.16 and in support of \$127. Therefore, Owner is wrong when it asserts that Tenant’s argument and evidence “has already been considered” by the RAP.

Respectfully, Tenant now requests the opportunity to present such argument and evidence in the RAP. Tenant will be substantially prejudiced if it is not permitted to do so.

### CONCLUSION

For the above-stated reasons, the Board should stay or reverse the September 30, 2021 Hearing Decision and remand the case to a hearing officer for a further hearing.

Respectfully submitted,



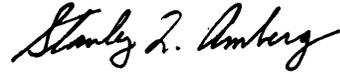
Stanley L. Amberg,  
4115 Kendal Way, Sleepy Hollow, NY 10591  
T: 914-238-4921, M: 914-263-7341  
Representative for Tenant McMahon-Oda

December 6, 2021



L14-0065 Tenant McMahon-Oda Reply

I, Stanley L. Amberg, declare under penalty of perjury under the laws of the State of California that on December 6, 2021, I placed a copy of Tenant McMahon-Oda Reply To Owner's Response To Appeal, and attachments thereto, 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: Clifford E. Fried, Fried & Williams LLP, 1901 Harrison Street, 13<sup>th</sup> Floor, Oakland, CA 94612; and to the current owner of the property Ray McFadden, Mandana Properties, 4200 Park Boulevard, #130, Oakland, CA 94602.

A handwritten signature in black ink that reads "Stanley L. Amberg". The signature is written in a cursive style with a large initial 'S'.

Stanley L. Amberg

<b>City of Oakland</b> <b>Residential Rent Adjustment Program</b> 250 Frank Ogawa Plaza, Suite 5313 Oakland, California 94612 (510) 238-3721		2015 JUN 18 PM 4:52  <b>APPEAL</b>	
<b>Appellant's Name</b> 525, 655 Hyde St. CNML Properties LLC		<input checked="" type="checkbox"/> <b>Landlord</b> <input type="checkbox"/> <b>Tenant</b>	
<b>Property Address (Include Unit Number)</b> 3921 Harrison Street Oakland, CA 94611			
<b>Appellant's Mailing Address (For receipt of notices)</b> 4844 Telegraph Avenue Oakland, CA 94609		<b>Case Number</b> L14-0065  <b>Date of Decision appealed</b> 5/29/15	
<b>Name of Representative (if any)</b> Clifford E. Fried Esq. Elizabeth Hart		<b>Representative's Mailing Address (For notices)</b> Fried & Williams LLP 480 Ninth St. Oakland, CA 94607	

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

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

7. Other. You must attach a detailed explanation of your grounds for appeal. Submissions to the Board are limited to 25 pages from each party. Number of pages attached [ 14 ]. Please number attached pages consecutively.

**8. You must serve a copy of your appeal on the opposing party(ies) or your appeal may be dismissed.** I declare under penalty of perjury under the laws of the State of California that on June 18, 2015, 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:

<b>Name</b>	See attached list of 25 opposing parties along with their representative.
<b>Address</b>	
<b>City, State Zip</b>	
<b>Name</b>	
<b>Address</b>	
<b>City, State Zip</b>	

	June 18, 2015
<b>SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE</b>	<b>DATE</b>

**IMPORTANT INFORMATION:**

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

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

1 BARBARA J. PARKER, City Attorney, SBN 069722  
OTIS McGEE, JR., Chief Assistant City Attorney, SBN 071885  
2 JAMILAH A. JEFFERSON, Senior Deputy City Attorney, SBN 219027  
One Frank H. Ogawa Plaza, 6th Floor  
3 Oakland, California 94612  
Telephone: (510) 238-7686  
4 Facsimile: (510) 238-6500  
Email: jjefferson@oaklandcityattorney.org  
5 X04443: 2521188

6 Attorneys for Defendant  
CITY OF OAKLAND

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF ALAMEDA**

11 525-655 HYDE STREET CNML PROPS., LLP,

12 Petitioner,

13 vs.

14 CITY OF OAKLAND'S DEPARTMENT OF  
HOUSING AND COMMUNITY  
15 DEVELOPMENT RENT ADJUSTMENT  
PROGRAM, and DOES 1 through 25,

16 Respondents.  
17

Case No. RG17862841

ASSIGNED FOR ALL PURPOSES TO  
JUDGE KIMBERLY COLWELL  
DEPARTMENT 511

**DECLARATION OF ESTHER KELLY  
RUSH IN SUPPORT OF  
RESPONDENT CITY OF OAKLAND'S  
OPPOSITION TO PETITIONER'S  
MOTION TO AUGMENT  
ADMINISTRATIVE RECORD**

Date: August 23, 2018  
Time: 9:00 a.m.  
Place: Dept 511

18  
19  
20 Jileun Eglin, Lexie Eglin, Angelique Johnson-  
Martinez, Suzanne Miller, Fernando Garcia,  
21 Kate Flick Garcia, Bianca Penaloza, David  
Preciado, Julie Amberg, Tyler Ritter, Marie Oda,  
22 Todd McMahon, Andrew Simkin, Jessica  
Simkin, and DOES 26 through 40,

23 Real Parties in Interest.  
24  
25  
26  
27  
28

1 I, Esther Kelly Rush, hereby declare:

2 1. I am an employee for the City of Oakland. I am currently an Administrative Assistant  
3 I for the City's Rent Adjustment Program. I have been in this position for 2.5 years. The matters  
4 set forth herein are personally known to me to be true, and if called upon, I would competently  
5 testify thereto.

6 2. My duties as an Administrative Assistant for the Rent Adjustment Program include  
7 managing incoming eviction notices, sending out copies of owner/tenant responses, managing  
8 appeal hearing scheduling before the Rent Board, receiving and completing subpoenas, and  
9 completing public record requests.

10 3. When the City Attorney's Office requested a copy of the Rent Adjustment Program  
11 file for this case, L14-0065, a staff member from our office copied the entire case file for the City  
12 Attorney's Office.

13 4. On July 26, 2018, a paralegal from the City Attorney's Office contacted me about a  
14 missing brief in the Rent Adjustment Program case L14-0065. The paralegal, Melinda Ochoa,  
15 emailed a copy of the missing brief for my review.

16 5. I immediately searched through the case file to determine if the missing brief had been  
17 submitted. I checked the file by looking at the date of the documents in the file. I did not locate the  
18 missing brief in the case file for L14-0065.

19 6. Documents from parties arrive in the Rent Adjustment Program in one of two ways. A  
20 party can bring a document directly into the housing resource center. If a party comes in person with  
21 a document, he or she date stamps the document and submits it in a drop box that the office uses to  
22 collect submissions to the record.

23 7. A staff member from the Rent Adjustment Program retrieves the drop box and distributes  
24 the submitted documents to the analyst assigned to the particular case identified on the documents.

25 8. Once the analyst receives the document, he or she reviews the document, enters it in an  
26 activity log for the case, and inserts the document into the appropriate case file. If applicable, a  
27 copy of the document is mailed to the opposing party. Typically, owner or tenant responses are  
28 mailed to the opposing party.

1           9. A party can also mail a document directly to the Rent Adjustment Program for  
2 submission. Documents that arrive through the mail are date stamped by the administrative  
3 assistant designated to receive incoming mail on a particular day.

4           10. The mailed documents are then distributed to the analyst assigned to the particular  
5 case in the same manner that documents deposited in the drop box are distributed.

6           11. Once an analyst receives a document from the mail distribution, he or she logs it in the  
7 activity log and inserts it into the appropriate case file in the same manner that he or she logs in  
8 documents that are deposited in the drop box. If applicable, a copy of the document is then  
9 mailed to the opposing party. Typically, owner or tenant responses are mailed to the opposing  
10 party.

11           12. The activity log is used by the Rent Adjustment Program staff members who work on  
12 a particular case file. For example, an administrative assistant logs when the case file is opened  
13 and when mailings have been sent (such as notices of hearings/mediations, orders, hearing  
14 decisions, etc.) in the activity log. An analyst records any activity that they have with the case  
15 file (such as receipt of owner or tenant responses and additional documentation, etc.) in the  
16 activity log.

17           13. In 2015, at the time of the appeal in L14-0065, the Rent Adjustment Program only  
18 required appeals to be served on opposing parties. Other documentation, such as the missing  
19 brief, had to be filed in the Rent Adjustment no later than seven (7) days prior to a hearing but did  
20 not have to be served on the opposing party.

21           14. The administrative hearing for L14-0065 was on April 27, 2015. The Rent Board  
22 appeal hearing was on December 8, 2016. Between the administrative hearing and the appeal  
23 hearing, the owner (or his representative) in L14-0065 filed four documents including:

- 24           • Post Hearing Brief on Building Services Tables – May 7, 2015
- 25           • Appeal – June 18, 2015
- 26           • Owner Request to Change the Date of Appeal Hearing – May 10, 2016
- 27           • Clifford Fried Request to Change the Date of Appeal Hearing – May 10, 2016.

28



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PROOF OF SERVICE**  
**525-655 Hyde St., CNML Props., v. City of Oakland Department of Housing & Community**  
**Development Rent Adjustment Program**  
**Alameda County Superior Court Case No. RG17862841**

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is City Hall, One Frank H. Ogawa Plaza, 6th Floor, Oakland, California 94612. On the date set forth below, I served the within documents:

**DECLARATION OF ESTHER KELLY RUSH IN SUPPORT OF RESPONDENT CITY OF OAKLAND'S OPPOSITION TO PETITIONER'S MOTION TO AUGMENT ADMINISTRATIVE RECORD**

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below, or as stated on the attached service list, on this date before 5:00 p.m.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Oakland, California, addressed as set forth below.
- by causing personal delivery by messenger of the document(s) listed above to the person(s) at the address(es) set forth below.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- by causing such envelope to be sent via overnight delivery by **Federal Express/ Express Mail**.

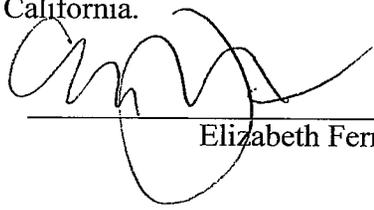
Clifford E. Fried, Esq.  
Fried & Williams, LLP  
480 9<sup>th</sup> Street  
Oakland, CA 94607  
Telephone: (510) 625-0100

*Attorney for Petitioner, 525-655 Hyde Street.*  
**CNML PROPS., LLP**

I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with 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 foregoing is true and correct.

Executed on August 16, 2018, at Oakland, California.

  
\_\_\_\_\_  
Elizabeth Ferrel



1 BARBARA J. PARKER, City Attorney, SBN 069722  
OTIS McGEE, JR., Chief Assistant City Attorney, SBN 071885  
2 JAMILAH A. JEFFERSON, Senior Deputy City Attorney, SBN 219027  
One Frank H. Ogawa Plaza, 6th Floor  
3 Oakland, California 94612  
Telephone: (510) 238-7686  
4 Facsimile: (510) 238-6500  
Email: jjefferson@oaklandcityattorney.org  
5 X04443: 2521243

6 Attorneys for Defendant  
CITY OF OAKLAND

7  
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF ALAMEDA**  
10

<p>11 525-655 HYDE STREET CNML PROPS., LLP, 12 13 Petitioner, 14 15 vs. 16 17 CITY OF OAKLAND'S DEPARTMENT OF HOUSING AND COMMUNITY 18 DEVELOPMENT RENT ADJUSTMENT PROGRAM, and DOES 1 through 25, 19 20 Respondents.</p>	<p>Case No. RG17862841  ASSIGNED FOR ALL PURPOSES TO JUDGE KIMBERLY COLWELL DEPARTMENT 511  <b><u>DECLARATION OF KEITH MASON</u></b> <b>IN SUPPORT OF RESPONDENT CITY</b> <b>OF OAKLAND'S OPPOSITION TO</b> <b>PETITIONER'S MOTION TO</b> <b>AUGMENT ADMINISTRATIVE</b> <b>RECORD</b>  Date: August 23, 2018 Time: 9:00 a.m. Place: Dept 511</p>
<p>21 Jileun Eglin, Lexie Eglin, Angelique Johnson- Martinez, Suzanne Miller, Fernando Garcia, Kate Flick Garcia, Bianca Penaloza, David Preciado, Julie Amberg, Tyler Ritter, Marie Oda, 22 Todd McMahon, Andrew Simkin, Jessica Simkin, and DOES 26 through 40, 23 24 Real Parties in Interest.</p>	

1 I, Keith Mason, hereby declare:

2 1. I am an employee for the City of Oakland. I am currently a Program Analyst II for the  
3 City's Rent Adjustment Program. I have been in this position for 21 years. The matters set forth  
4 herein are personally known to me to be true, and if called upon, I would competently testify  
5 thereto.

6 2. My duties as Program Analyst for the Rent Adjustment Program include receiving  
7 incoming documents and telephone calls regarding assigned cases, logging in submissions to case  
8 files, and answering questions from the public during drop in hours or telephone hours.

9 3. Recently, I spoke to Esther Kelly Rush, an administrative assistant in our office, about  
10 a missing brief in the L14-0065 Rent Adjustment Program case file. I reviewed a copy of the  
11 missing brief.

12 4. I immediately searched the activity log for this case file. The activity log is used by the  
13 Rent Adjustment Program staff members who work on a particular case file. For example, an  
14 administrative assistant logs when the case file is opened and when mailings have been sent (such  
15 as notices of hearings/mediations, orders, hearing decisions, etc.) in the activity log.

16 5. I record any activity that I may have with the case file (such as receipt of owner or  
17 tenant responses and additional documentation, etc.) in the activity log. For example, once I  
18 receive a document, I review it, enter it in the activity log for the case, and insert the document into  
19 the appropriate case file.

20 6. I did not see a notation for the missing brief in the activity log for L14-0065.

21  
22 I declare under penalty of perjury under the laws of the State of California and the United  
23 States of America that the foregoing is true and correct.

24 Executed this 16th day of August, 2018 in Oakland, California.

25   
26 \_\_\_\_\_  
27 KEITH MASON  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PROOF OF SERVICE**  
**525-655 Hyde St., CNML Props., v. City of Oakland Department of Housing & Community**  
**Development Rent Adjustment Program**  
**Alameda County Superior Court Case No. RG17862841**

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is City Hall, One Frank H. Ogawa Plaza, 6th Floor, Oakland, California 94612. On the date set forth below, I served the within documents:

**DECLARATION OF KEITH MASON IN SUPPORT OF RESPONDENT CITY OF OAKLAND'S OPPOSITION TO PETITIONER'S MOTION TO AUGMENT ADMINISTRATIVE RECORD**

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below, or as stated on the attached service list, on this date before 5:00 p.m.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Oakland, California, addressed as set forth below.
- by causing personal delivery by messenger of the document(s) listed above to the person(s) at the address(es) set forth below.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- by causing such envelope to be sent via overnight delivery by **Federal Express/** Express Mail.

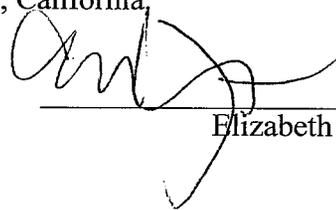
Clifford E. Fried, Esq.  
Fried & Williams, LLP  
480 9<sup>th</sup> Street  
Oakland, CA 94607  
Telephone: (510) 625-0100

***Attorney for Petitioner, 525-655 Hyde Street.***  
***CNML PROPS., LLP***

I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business.

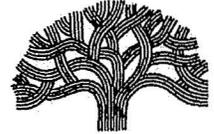
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 16, 2018, at Oakland, California,



Elizabeth Ferrel

# CITY OF OAKLAND



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

Housing and Community Development Department  
Rent Adjustment Program

TEL (510) 238-3721  
FAX (510) 238-6181  
CA Relay Service 711

## Housing Residential Rent and Relocation Board (HRRRB)

### APPEAL DECISION

**CASE NUMBER:** L14-0065, 525, 655 Hyde Street CNML Properties, LLC v. Tenants

**APPEAL HEARING:** March 10, 2022

**PROPERTY ADDRESS:** 3921 Harrison St., Oakland, CA

**APPEARANCES:**

Appellant/Tenant:	Mari Oda, Julie Amberg
Tenant Representative:	Stan Amberg
Respondent/Owner:	Mandana Properties LLC
Owner Representative:	Angie Sandoval

### PROCEDURAL BACKGROUND

On November 14, 2014, the property owner filed a Petition for Certificate of Exemption on the basis of substantial rehabilitation. The subject property is a building containing sixteen units. The owner acquired the property in November of 2013. The rehabilitation project took place in 2014.

Several tenants filed responses to the owner Petition. A hearing on the Petition took place on April 27, 2015.

#### **I. ORIGINAL HEARING (2015)**

On May 29, 2015, the Hearing Officer issued a Hearing Decision denying the owner's Petition. In order to qualify for exemption based on substantial rehabilitation, an owner must demonstrate that a certain threshold of money was spent "rehabilitating" the building. The amount must be more than 50% of what it would have cost to build new construction of an equal square footage. The cost of new construction is determined "using tables issued by the chief building inspector applicable for the time period when the substantial rehabilitation was completed."<sup>1</sup>

---

<sup>1</sup> Formerly O.M.C. 8.22.030(B)(2)(b). The exemption for substantial rehabilitation has since been removed from the Rent Adjustment Ordinance.

In this case, the Hearing Officer found that the dollar amount of the qualifying repairs and improvements did not meet the minimum threshold for the exemption. To determine the average cost of new construction, the Hearing Officer considered three tables: Table A, Table B, and Table C. Table A was a City-issued schedule published in 2009. Table A listed the average cost of new construction for an apartment building in 2009 as \$127 per square foot. Since this schedule was published in 2009 and the project took place in 2014, the Hearing Officer took judicial notice of a Table B ("Quarterly Cost Indexes (1926=100)"), which was used to adjust the amounts in Table A for inflation. The \$127 listed in Table A was adjusted by 1.18%, to arrive at an average cost of \$149.86 per square foot.

The total square footage of the apartment building was determined to be 14,338, which included deck/balcony areas. This number was then multiplied by the average cost of new construction per square foot, to arrive at a total of \$2,148,694.00 for new construction of a similarly-sized building. Since the threshold amount for the substantial rehabilitation exemption is 50% of the cost of new construction, the owner would have had to spend at least \$1,074,347.00 to qualify for the exemption.

The Hearing Officer found that the owner spent \$850,441.00 in qualifying costs. Since this was less than the required amount, the Petition was denied. The Hearing Decision stated that even if the amount in Table A was used (\$127) without using Table B to adjust for inflation, the amount still would not meet the required expense threshold.

## **II. BOARD APPEAL (2016)**

The owner appealed the Hearing Decision on several grounds. First, the owner claimed that it was improper for the Hearing Officer to consider Table B in determining the average cost of new construction, since Table B had not been properly entered into evidence and was not issued by the chief building inspector. Therefore, the cost for new construction had been calculated incorrectly. Second, the owner argued that the square footage was calculated incorrectly, and the balcony areas should not have been included.

An Appeal Hearing was held on December 8, 2016. The Board issued an Appeal Decision on March 7, 2017, affirming the Hearing Decision. While deliberating, the Board decided to address the two issues separately. Regarding the balconies, the Board voted to affirm their inclusion in the total square footage calculation on the basis that there was no abuse of discretion by the Hearing Officer and the balcony area was useable space that extended the tenants' living area, and this interpretation was consistent with past practices and policy of the Board.

Regarding the use of Table B and whether the amount in Table A should have been adjusted for inflation, the Board discussed the issue, and although motions were made, the motions either did not pass or were inadvertently not voted on. Therefore, the portion of the Hearing Decision relating to the use of Table B was affirmed by default.

### III. APPEAL TO SUPERIOR COURT (2018)

The owner filed a Petition for Writ of Administrative Mandamus in the Alameda County Superior Court (Case No. RG17-862841), contesting the Board's Appeal Decision. On December 12, 2018, the Superior Court entered a Judgment Granting the Writ of Administrative Mandamus, setting aside and vacating the Appeal Decision. The Superior Court ordered the Rent Adjustment Program to "[r]econsider the Appeal Decision in its entirety in Case No. L14-0065 in light of the Court's opinions, Order and Judgment."<sup>2</sup>

Among other things, the Court found that the Hearing Officer, and in turn the Board, erred in using a single construction cost amount for the entirety of the square footage, by not treating the balcony area as separate from the indoor apartment area. The Court found that the Board misapplied O.M.C. 8.22.030(B)(2)(b) by "focusing on the *potential* use of the balconies rather than the cost of building or rehabilitating the balconies" [emphasis added].<sup>3</sup> The Court reasoned that Table A differentiates among different "Descriptions" of construction, and includes different categories for "Apartment space" and "Elevated Decks and Balconies." Therefore, the Board should apply Table A "based on whether the Description reasonably describes the physical structure to be constructed."<sup>4</sup> The Court stated that the focus should be on the cost of construction, rather than the potential use of the space.<sup>5</sup>

The Court also found that it was improper to incorporate Table B because there is no indication that it was "issued by the chief building inspector" as required by the Ordinance.<sup>6</sup> As a matter of due process, Table B was not a document that was readily accessible to the public and therefore the developer was not given fair warning that Table A was not the standard against which the evidence of expenses would be measured.<sup>7</sup>

In ordering the Board to reconsider the case in light of the Court's opinion, the Court noted that the judgment "shall not limit or control in any way the discretion legally vested" in the Board, and that if permitted, the Board "may direct the Hearing Officer to

---

<sup>2</sup> Judgment Granting Writ of Administrative Mandamus (December 12, 2018).

<sup>3</sup> Order Granting Motion to Augment the Record and Granting Petition for Writ of Mandate (August 23, 2018), 13:12-13.

<sup>4</sup> *Id.* at 13:10.

<sup>5</sup> *Id.* at 13:18-25.

<sup>6</sup> *Id.* at 9:4-10.

<sup>7</sup> *Id.* at 11:4-13.

conduct a further hearing.”<sup>8</sup> The Order further provided that the Board “may reconsider either the entire matter or only the issues implicated by this order.”<sup>9</sup> The Court stated that it “expressly does not direct the Rent Board to grant the petition for a Certificate of Exemption.”<sup>10</sup>

The tenants filed a motion for reconsideration. The motion was denied. The tenants then filed an appeal. On February 26, 2021, the Court of Appeals issued an opinion affirming the Superior Court’s Judgment. The Court of Appeals also agreed with the owner that the Hearing Officer had made a computational error in adding up the total costs submitted by the owner, and found that that number should have been \$857,597, rather than the amount stated in the Hearing Decision.

Pursuant to the Court’s order, the case was then remanded back to the Hearing Officer<sup>11</sup> for reconsideration in light of the Court’s judgment.

### **RULING ON THE CASE**

On September 30, 2021, a new Hearing Decision was issued (“Reconsideration of Board Appeal Decision After Court Judgment”), granting the owner’s Petition. The Decision was issued without a hearing. The new Decision found that the owner had made qualifying expenditures in an amount totaling \$876,800.99 (as opposed to \$850,441 as was stated in the 2015 Decision).

In determining the average cost of new construction, the Hearing Officer declined to consider Table B, which had previously been used to account for inflation. The Hearing Officer relied solely on Table A, since Table B was not issued by the chief building inspector. Table A lists \$127 as the cost per square foot for new construction of apartment buildings. The Decision found that the square footage of the deck/balcony areas should be calculated separately, as noted by the Court. Table A lists \$41.16 as the cost per square foot for “Elevated Decks and Balconies.” The Decision therefore made the following calculation:

#### **Cost of New Construction**

Building area: 13,336 sq. ft. x \$127=	\$1,693,672
Balcony area: 1,002 sq. ft. x \$41.16=	<u>\$41,242.32</u>
Total:	\$1,734,914.32

---

<sup>8</sup> *Id.* at 15:3-4.

<sup>9</sup> *Id.* at 15:4-7.

<sup>10</sup> *Id.* at 15:6-8.

<sup>11</sup> The original Hearing Officer who heard the case in 2015 retired, so the case was re-assigned to a different Hearing Officer.

Since the substantial rehabilitation exemption requires expenditure of at least 50% of this cost (\$867,457.16), and the owner's expenditures were found to total \$876,800.99, the owner qualified for the exemption and the Petition was granted.

**GROUND FOR APPEAL**

The tenants filed an appeal requesting that the matter be scheduled for a hearing to allow the tenants to introduce evidence regarding whether \$127 or \$41.16 is the "factually and legally correct multiplier" for determining the average basic cost for new construction for the balconies, which are "structurally integral" to the apartments, as opposed to falling under the category of new "elevated" decks and balconies. The tenants argued that allowing a hearing on the limited issue of costs related to the balconies is consistent with the Court's order, which stated that the "Rent Board may direct the Hearing Officer to conduct a further hearing," and the burden on the City of allowing another hearing is minimal. The tenants argued that it was improper to issue a new decision without notice to the tenants and without providing the tenants an opportunity to call witnesses or present evidence.

**BOARD DECISION**

At issue before the Board was whether the parties should be given an opportunity to present additional evidence and arguments on the issue of the balcony calculations. After parties' arguments, questions to the parties, and Board discussion, Vice Chair Oshinuga moved to remand the case back for a hearing for the introduction of evidence specifically on the issue of whether the 1002 sq. ft. piece of property properly falls under the "Elevated Decks and Balconies" description as indicated by Table A. Chair D. Ingram seconded the motion.

The Board voted as follows:

**Aye:** D. Ingram, C. Oshinuga, E. Torres, N. Hudson, T. Williams, H. Flanery  
**Nay:** None  
**Abstain:** None

The motion was approved.

*Chanée Franklin Minor*  
CHANÉE FRANKLIN MINOR  
BOARD DESIGNEE  
CITY OF OAKLAND  
HOUSING, RESIDENTIAL RENT AND  
RELOCATION BOARD

5/4/2022  
\_\_\_\_\_  
DATE



**PROOF OF SERVICE**  
**Case Number L14-0065**

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

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

**Documents Included**  
Appeal Decision

**Representative**  
The Honorable Frank Roesch  
Alameda County Superior Court  
1221 Oak Street, Department 17  
Oakland, CA 94612

**Owner Representative**  
525-655 Hyde Street  
CNML Tsegab Assefa  
4844 Telegraph Ave  
Oakland, CA 94609

**Owner Representative**  
Angie Sandoval  
Fried & Williams LLP  
1901 Harrison St. 13th Floor  
Oakland, CA 94612

**Owner Representative**  
Clifford E. Fried  
Fried & Williams LLP  
1901 Harrison St. 13th Floor  
Oakland, CA 94612

**Owner Representative**  
Liz Hart  
c/o Fried & Williams LLPP  
1901 Harrison St. 13th Floor  
Oakland, CA 94612

**Tenant**

Alexander Taylor  
3921 Harrison Street, Apt #104  
Oakland, CA 94611

**Tenant**

Alexandru Butnaru  
3921 Harrison Street, Apt #102  
Oakland, CA 94611

**Tenant**

Alexandru Vasilescu  
3921 Harrison Street, Apt #301  
Oakland, CA 94611

**Tenant**

Andrew Simkin  
3921 Harrison Street, Apt #305  
Oakland, CA 94611

**Tenant**

Angelique Johnson-Martinez 3921  
Harrison Street, Apt #103  
Oakland, CA 94611

**Tenant**

Bianca Penaloza  
3921 Harrison Street, Apt #204  
Oakland, CA 94611

**Tenant**

Cooper Spinelli  
3921 Harrison Street, Apt #203  
Oakland, CA 94611

**Tenant**

Dana Sarvestani  
3921 Harrison Street, Apt #203  
Oakland, CA 94611

**Tenant**

Elena Butnaru  
3921 Harrison Street, Apt #102  
Oakland, CA 94611

**Tenant**

Elizabeth VanLanen  
3921 Harrison Street, Penhouse  
Oakland, CA 94611

**Tenant**

Fernando Garcia  
3921 Harrison Street, Apt #202  
Oakland, CA 94611

**Tenant**

Jessica Simkin  
3921 Harrison Street, Apt #305  
Oakland, CA 94611

**Tenant**

Jilleun Eglin & Lexie Eglin 3921  
Harrison Street, Apt #101  
Oakland, CA 94611

**Tenant**

Julie Amberg  
3921 Harrison Street, Apt #302  
Oakland, CA 94611

**Tenant**

Kate Garcia  
3921 Harrison Street, Apt #202  
Oakland, CA 94611

**Tenant**

Lisa Romero  
3921 Harrison Street, Apt #205  
Oakland, CA 94611

**Tenant**

Mari Oda  
3921 Harrison Street, Apt #304  
Oakland, CA 94611

**Tenant**

Ria Cruz  
3921 Harrison Street, Apt #105  
Oakland, CA 94611

**Tenant**

Steven Miller  
3921 Harrison Street, Penhouse  
Oakland, CA 94611

**Tenant**

Suzanne Miller  
3921 Harrison Street Apt #201  
Oakland, CA 94611

**Tenant**

Tadeusz But' naru  
3921 Harrison Street, Apt #102  
Oakland, CA 94611

**Tenant**

Todd McMahon  
3921 Harrison Street, Apt #304  
Oakland, CA 94611

**Tenant**

Tyler Ritter  
3921 Harrison Street, Apt #303  
Oakland, CA 94611

**Tenant**

Zoe Bridges  
3921 Harrison Street, Apt #301  
Oakland, CA 94611

**Tenant**

Zvetlana Butnaru  
3921 Harrison Street, Apt #104  
Oakland, CA 94611

**Tenant Representative**

Ana Mira  
3022 International Blvd, Apt #410  
Oakland, CA 94601

**Tenant Representative**

Stanley Amberg  
4115 Kendal Way  
Sleepy Hollow, NY 10591

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on MAY 9, 2022, in Oakland, CA.



---

Merna Attalla

Oakland Rent Adjustment Program

# CITY OF OAKLAND



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

Department of Housing and Community Development  
Rent Adjustment Program

TEL (510) 238-3721  
FAX (510) 238-6181  
CA Relay Service 711

## REMAND HEARING DECISION

**CASE NUMBER AND NAME:** L14-0065, Mandana Properties, LLC v. Tenants  
(formerly 525, 655 Hyde Street CNML Properties,  
LLC v. Tenants)

**PROPERTY ADDRESS:** 3921 Harrison St., Oakland, CA

**REMAND HEARING DATE:** June 29, 2022

**APPEARANCES:** Ray McFadden, Owner  
Susan Elizabeth Spott, Witness for Owner  
Angie Sandoval, Attorney for Owner  
Mari Oda, Tenant  
Julie Amberg, Tenant  
Stanley Amberg, Attorney for Tenants

**TENANTS' CLOSING BRIEF  
SUBMISSION DEADLINE:** July 22, 2022

**RESPONSE DEADLINE:** July 29, 2022

**DATE OF REMAND DECISION:** September 14, 2022

## PROCEDURAL BACKGROUND

A Hearing Decision in this case was issued on May 29, 2015, denying the owner's petition for a Certificate of Exemption based on substantial rehabilitation. The owner appealed.

An Appeal Hearing was held on December 8, 2016. The Housing, Residential, Rent and Relocation Board (the Board) affirmed the Hearing Decision, and separately affirmed the portion of the Hearing Decision that included the decks and balconies in the "building area" when performing the substantial rehabilitation calculation. The Appeal Decision in L14-0065 was issued on March 7, 2017. The owner filed a Petition for Writ

000461

of Administrative Mandamus in the Alameda County Superior Court (Case No. RG17-862841) challenging the Board's Appeal Decision.

On December 12, 2018, the Superior Court entered a Judgment Granting the Writ of Administrative Mandamus, setting aside and vacating the Appeal Decision and the Hearing Decision in L14-0065. The Superior Court ordered the City of Oakland Rent Adjustment Program to **"reconsider the Appeal Decision L14-0065 in its entirety in light of the Court's Opinions, Order and this Judgment."** (Emphasis added.)

The tenants filed a motion for reconsideration. The motion was denied. The tenants appealed the Superior Court's Judgment and, on February 26, 2021, the Court of Appeals issued an Opinion affirming the Superior Court's Judgment of December 12, 2018.

The original Hearing Officer retired and this case was re-assigned to a different Hearing Officer who issued a Hearing Decision After Court Judgment on September 30, 2021, which granted the owner's Petition. The tenants appealed.

On May 4, 2022, the Board remanded the case for a hearing for one limited issue of **whether the 1002 sq. ft. piece of property properly falls under the "elevated Decks and Balconies" description as indicated by Table A.**<sup>1</sup>

A remote Hearing on this issue was held on June 29, 2022, and, after the hearing, the tenants' attorney requested to submit the closing brief in writing. The Hearing Officer set deadlines to submit the brief no later than July 22, 2022, and any response no later than July 29, 2022. The record was closed on July 29, 2022, at 5:00 p.m., close of business hours.

This Remand Hearing Decision is limited in scope and will only address the issue of whether the 1002 sq. ft. piece of property properly falls under the "elevated Decks and Balconies" description as indicated by Table A per the Board' instruction.

### **SUMMARY OF DECISION**

The Owner Petition is granted. Pursuant to Alameda County Superior Court Order of August 23, 2018, the 1002 sq. ft. property properly falls under "Elevated Decks and Balconies" to be valued at \$41.16 per sq. ft. per Table A.

### **BACKGROUND**

On November 14, 2014, the prior owner filed a Petition for Certificate of Exemption on the ground of substantial rehabilitation. The subject property is a residential building consisting of a total of sixteen (16) residential units and the prior

---

<sup>1</sup> Appeal Decision in L14-0065, dated May 4, 2022, p. 5

owner acquired the property in November of 2013.<sup>2</sup> The rehabilitation project occurred in 2014 and the cost of the project totaled \$876,800.99.

The general contractor, Martin Gallagher, testified in the original hearing that the subject building is of wood frame construction, which corresponds to Type V-1 identified on the City of Oakland Certificate of Occupancy issued for the subject building.<sup>3</sup>

#### Square Footage of the Building and Balconies

The public property profile and the Alameda County Assessor's Office Property Characteristics for the subject property and APN 12-929-11 shows that the square footage is 13,336 square feet.<sup>4</sup>

Gallagher also testified that the total square footage of the building (13,336) does not include the 16 decks on the building, which were part of the construction project and expense. He testified that 15 of the decks are 12 x 4.5 square feet (totaling 810 square feet) and that the penthouse deck is about 16 x 12 square feet (192). The total square footage of the decks and balconies is 1,002 square feet.

### **NEW EVIDENCE AT REMAND HEARING**

#### Testimony of Susan Elizabeth Spott

Ms. Spott has worked as a building inspector for twenty (20) years. She testified that a balcony/deck space is not considered a habitable space. An apartment is an indoor, residential/habitable space with enclosed walls, with heat, insulation, plumbing and electrical wiring. Balcony/deck space is an outdoor space that is not fully closed and is exposed to elements; it has no heat, no insulation or plumbing, except a drain to prevent water collection. It is not considered a residential space. The building plans distinguish habitable spaces from unhabitable spaces, such as garages, including decks and balconies. The building code is different for residential spaces and non-habitable spaces.

#### Testimony of Julie Amberg

Ms. Amberg testified that her balcony space is not fully enclosed. She did point out that the balcony has walls on all 4 sides but one side, the side facing out, has only a partial waist-high wall. In her opinion, when she is standing outside on the balcony, she feels the outside elements, such as wind, to the same degree that she feels the wind inside her apartment when the window is open.

---

<sup>2</sup> Exhibits 1-3 (Grant Deed)

<sup>3</sup> Exhibit 6

<sup>4</sup> Exhibits 4 and 5

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### Substantial Rehabilitation

O.M.C. 8.22.030(A)(6) states that dwelling units located in “substantially rehabilitated buildings” are not “covered units” under the Rent Adjustment Ordinance. To obtain an exemption based on substantial rehabilitation, an owner must have spent a minimum of fifty (50) percent of the average basic cost for new construction for a rehabilitation project. The average basic cost for new construction shall be determined using tables issued by the chief building inspector applicable for the time period when the substantial rehabilitation was completed.<sup>5</sup>

As the Alameda County Superior Court already determined in its Order entered on 8/23/2018, Table A (attached), issued on August 1, 2009, by the chief building inspector, is the correct Table to use in the calculation.

### Square Footage for Building and Balconies

The Superior Court held that, as a matter of statutory construction, the City must give effect to all the “Description” categories in Table A. If a general “Description” and a specific “Description” both apply to a construction project or to a part of a construction project, then the City must give effect to the specific “Description.”<sup>6</sup>

The Court further held that the Board made a legal error when it treated both the building space (13,336) and the deck/balcony space (1,002) the same as Apartment space and applied the same cost of construction per square foot. The Court found that the original Hearing Officer and the Board both misapplied the law by focusing on potential use of the balconies rather than their cost of construction and by not giving effect to the specific description for “Elevated Decks & Balconies.” The Board or the Hearing Officer does not have the discretion to characterize a project or a part of a project based on improper criteria.

The testimony of the witnesses established that the deck/balcony space is an outdoor space and different from an apartment space. The apartment space can be entirely closed to outside elements if windows and doors are closed; it has heating, plumbing, and electricity. The deck/balcony space is open to the outside, cannot be closed, there is no heat; it is not a residential space but an outdoor space exposed to outside elements.

Although Ms. Amberg testified that there is a waist-high wall on one side of the balcony, the existence of the wall does not mean that balcony can be closed – it remains open to the outside. The fact that Ms. Amberg can feel the wind in her apartment when the windows are open does not change the nature of the apartment itself from being a residential space, capable of being entirely closed to the outside

---

<sup>5</sup> O.M.C. Section 8.22.030(B)(2)

<sup>6</sup> Superior Court Judgment and Order of December 12, 2018, Exhibit A, Order of 8/23/18 (Case No. RG17-862841)



elements, as opposed to the balcony being an outdoor space which cannot be entirely closed to the elements.

There is no dispute about the building space square footage (13,336) and the deck/balcony space square footage (1,002). There is no dispute that the 1,002 square feet consists of deck/balcony space. Table A has a specific category called "Elevated Decks & Balconies." The Court clearly and specifically stated that the Board or the Hearing Officer do not have discretion over how to treat each space but must apply the specific category listed on Table A, which determines the cost of new construction per square foot to the corresponding project or part of the project. Table A clearly distinguishes Apartment (habitable) space at \$127.00 per square foot and Deck/Balcony (outdoor/unhabitable) space at \$41.16 per square foot. This cost per square foot must be used in the calculation.

Therefore, pursuant to the Alameda County Superior Court Order, the 1002 sq. ft. property properly falls under "Elevated Decks and Balconies" to be valued at \$41.16 per sq. ft. as shown in Table A.

#### Calculation

The attached Table A states that, effective August 1, 2009, the cost of new construction of Apartment buildings of more than 2 units, Type V – wood frame construction, is \$127.00 per square foot. Table A also states that the cost of newly constructed "Elevated Decks and Balconies" is \$41.16 per square foot.

To determine if the owner is entitled to the exemption, the following calculation is necessary: multiply the building square footage (13,336) by \$127.00, then multiply the square footage of the decks/balconies (1,002) by \$41.16. Add these amounts together, and divide that result by two (2). The calculation is as follows:

$$\begin{aligned} 13,336 \times \$127.00 &= \$1,693,672.00 \\ 1,002 \times \$ 41.16 &= \$ \underline{41,242.32} \\ \text{Total: } & \$1,734,914.32 \text{ divided by } 2 = \$867,457.16 \end{aligned}$$

The owner spent \$876,800.99 on the rehabilitation project, which is more than \$867,457.16. Therefore, the subject property has been "substantially rehabilitated" and the rental units in the building are exempt from the Rent Adjustment Ordinance.

#### ORDER

1. Petition L14-0065 is granted.
2. The subject property is exempt from the Rent Adjustment Program as a "substantially rehabilitated" building.

3. The subject property is not exempt from the Rent Adjustment Program Service Fee because it is subject to the Just Cause for Eviction Ordinance.

4. The Certification of Exemption will be issued after expiration of the appeal period.

Right to Appeal: This is the final decision of the Rent Adjustment Program (RAP). Either party may appeal by filing a properly completed RAP appeal form that must be received within 20 days after service of the decision, shown on the attached Proof of Service.

Dated: September 14, 2022



---

Linda M. Moroz  
Hearing Officer  
Rent Adjustment Program

**City of Oakland  
Building Services  
Construction Valuation<sup>1</sup>  
For Building Permits<sup>4</sup>  
Effective Aug. 1, 2009**

Community Economic Development Agency  
Dalziel Administration Building  
250 Frank Ogawa Plaza - 2nd Floor  
Oakland, CA 94612  
510-238-3891

TABLE A

Occ.	Description <sup>3</sup>	Construction Type	Level Ground <sup>2</sup>		Hillside Construction		Marshall & Swift 3Q 7'09 Section pg (Class/type)
			New	Remodel	New	Remodel	
R3	Custom Residence	V	\$207.53	\$107.92	\$269.79	\$140.29	Section 12 pg 25 (C/e)
	Single Family & Duplex	V	\$144.46	\$75.12	\$187.80	\$97.65	Section 12 pg 25 (C/g)
	Factory/Manufactured home	V	\$43.50	\$22.62	\$56.55	\$29.41	Section 12 pg 26 (CDS/g)
	Finished Habitable Basement Conversion	V	\$96.42	\$50.14	\$125.35	\$65.18	Section 12 pg 25 (S/a)
	Convert non-habitable to habitable	V	N/A	\$43.50	N/A	\$56.55	Section 12 pg 26 (CDS/g)
	Partition Walls	V	N/A	\$16.19	N/A	\$21.05	Section 52 pg 2 (6"wall)
	Foundation Upgrade (l.f.)	V	\$105.37	NA	\$136.98	NA	Section 51 pg 2 (R/24x72.)
	Patio/Porch Roof	V	\$24.70	\$12.84	\$32.11	\$16.70	Section 66 pg 2 (Wood)
	Ground Level Decks	V	\$30.49	\$15.85	\$39.64	\$20.61	Section 66 pg 2 (100sf/avg)
	Elevated Decks & Balconies	V	\$41.16	\$21.40	\$53.51	\$27.82	Section 66 pg 2 (100sf/+1 story)
U1	Garage	V	\$38.42	\$19.98	\$49.95	\$25.97	Section 12 pg 35 (C/a600)
	Carport	V	\$24.70	\$12.84	\$32.11	\$16.70	Section 12 pg 35 (D/a4car)
	Retaining wall (s.f.)	III	\$32.96	NA	\$42.85	NA	Section 55 pg 3 (12'reinf./h)
R2	Apartment (>2 units)	I & II	\$174.69	\$90.84	\$227.10	\$118.09	Section 11 pg 18 (B/g)
		III	\$156.91	\$81.59	\$203.98	\$106.07	Section 11 pg 18 (Dmill/g)
		V	\$127.00	\$66.04	\$165.10	\$85.85	Section 11 pg 18 (D/g)
Non-Residential Occupancy							
A	Church/Auditorium	I & II	\$247.07	\$128.48	\$321.19	\$167.02	Section 16 pg 9 (B/g)
		III	\$182.01	\$94.65	\$236.61	\$123.04	Section 16 pg 9 (B/a)
		V	\$175.93	\$91.48	\$228.71	\$118.93	Section 16 pg 9 (S/g)
A	Restaurant	I & II	\$221.82	\$115.35	\$288.37	\$149.95	Section 13 pg 14 (A-B/g)
		III	\$174.20	\$90.58	\$226.46	\$117.76	Section 13 pg 14 (C/g)
		V	\$166.80	\$86.74	\$216.84	\$112.76	Section 13 pg 14 (D/g)
B	Restaurant <50 occupancy	V	\$145.24	\$75.52	\$188.81	\$98.18	Section 13 pg 17 (C/a)
B	Bank	I & II	\$223.46	\$116.20	\$290.50	\$151.06	Section 15 pg 21 (B/a)
		III	\$182.01	\$94.65	\$236.61	\$123.04	Section 15 pg 21 (C/a)
		V	\$173.02	\$89.97	\$224.93	\$116.96	Section 15 pg 21 (D/a)
B	Medical Office	I & II	\$249.76	\$129.88	\$324.69	\$168.84	Section 15 pg 22 (A/g)
		III	\$243.19	\$126.46	\$316.15	\$164.40	Section 15 pg 22 (B/g)
		V	\$200.73	\$104.38	\$260.95	\$135.69	Section 15 pg 22 (C/g)
B	Office	I & II	\$165.41	\$86.01	\$215.03	\$111.82	Section 15 pg 17 (B/a)
		III	\$120.77	\$62.80	\$157.00	\$81.64	Section 15 pg 17 (C/a)
		V	\$115.34	\$59.98	\$149.94	\$77.97	Section 15 pg 17 (D/a)
E	School	I & II	\$239.11	\$124.34	\$310.84	\$161.64	Section 18 pg 14 (A-B/g)
		III	\$181.96	\$94.62	\$236.55	\$123.00	Section 18 pg 14 (C/g)
		V	\$171.94	\$89.41	\$223.52	\$116.23	Section 18 pg 14 (D/g)
H	Repair Garage	I & II	\$186.25	\$96.85	\$242.13	\$125.91	Section 14 pg 33 (MSG 527C/e)
		III	\$180.70	\$93.96	\$234.91	\$122.15	Section 14 pg 33 (MLG 423C/e)
		V	\$175.14	\$91.07	\$227.68	\$118.39	Section 14 pg 33 (MLG 423D/e)
I	Care Facilities / Institutional	I & II	\$186.04	\$96.74	\$241.85	\$125.76	Section 15 pg 22 (B/a)
		III	\$152.09	\$79.09	\$197.72	\$102.81	Section 15 pg 22 (C/a)
		V	\$146.52	\$76.19	\$190.48	\$99.05	Section 15 pg 22 (D/a)
M	Market (Retail sales)	I & II	\$143.82	\$74.79	\$186.97	\$97.22	Section 13 pg 26 (A/g)
		III	\$117.10	\$60.89	\$152.23	\$79.16	Section 13 pg 26 (C/g)
		V	\$113.19	\$58.86	\$147.15	\$76.52	Section 13 pg 26 (D/g)
S	Industrial plant	I & II	\$157.34	\$81.82	\$204.54	\$106.36	Section 14 pg 15 (B/a)
		III	\$134.38	\$69.88	\$174.69	\$90.84	Section 14 pg 15 (C/a)
		V	\$111.93	\$58.20	\$145.51	\$75.66	Section 14 pg 15 (D/a)
S	Warehouse	I & II	\$96.28	\$50.07	\$125.16	\$65.09	Section 14 pg 26 (A/g)
		III	\$91.77	\$47.72	\$119.30	\$62.04	Section 14 pg 26 (B/g)
		V	\$90.79	\$47.21	\$118.03	\$61.37	Section 14 pg 26 (Cmill/g)
S	Parking Garage	I & II	\$76.31	\$39.68	\$99.20	\$51.59	Section 14 pg 34 (A/g)

<sup>1</sup> Cost per square foot, unless noted otherwise. (l.f. = linear foot; s.f. = square foot); includes 1.3 regional multiplier (see Secc. 99 pg 6 July 2009 Marshall & Swift)

<sup>2</sup> Hillside construction = slope >20%; multiply by additional 1.3 multiplier

<sup>3</sup> Remodel Function of New Construction is a 0.52 multiplier.

<sup>4</sup> Separate structures or occupancies valued separately.

<sup>5</sup> Separate fees assessed for E/P/M permits, R.O.W. improvements, Fire Prevention Bureau, Grading Permits, technology enhancement, records management, Excav. & Shoring.

**PROOF OF SERVICE**

**Case Number: L14-0065**

**Case Name: 525-655 Hyde Street CNML Properties, LLC**

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

**Today, I served the attached documents listed below by placing a true copy in a City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Oakland, California, addressed to:**

**Documents Included**

Remand Hearing Decision

**Resident**

3921 Harrison St Penthouse  
Oakland, CA 94611

**Resident**

3921 Harrison St #102  
Oakland, CA 94611

**Resident**

3921 Harrison St #101  
Oakland, CA 94611

**Representative**

The Honorable Frank Roesch, Alameda County Superior Court  
1221 Oak Street Department 17  
Oakland, CA 94612

**Owner**

Ray McFadden, Mandana Properties, LLC  
1087 Ashmount Avenue  
Oakland, CA 94610

**Owner Representative**

Angie Sandoval, Fried, Williams & Grice Conner LLP  
1939 Harrison Street Suite 460  
Oakland, CA 94612

**Owner Representative**

Clifford E. Fried, Fried, Williams & Grice Conner LLP  
1939 Harrison St. Suite 460  
Oakland, CA 94612

**000468**

**Tenant**

Alexander Taylor  
3921 Harrison St #104  
Oakland, CA 94611

**Tenant**

Cooper Spinelli  
3921 Harrison St #203  
Oakland, CA 94611

**Tenant**

Julie Amberg  
3921 Harrison St #302  
Oakland, CA 94611

**Tenant**

Mari Oda  
3921 Harrison St #304  
Oakland, CA 94611

**Tenant**

Resident  
3921 Harrison St #305  
Oakland, CA 94611

**Tenant**

Resident  
3921 Harrison St #303  
Oakland, CA 94611

**Tenant**

Resident  
3921 Harrison St #301  
Oakland, CA 94611

**Tenant**

Resident  
3921 Harrison St #205  
Oakland, CA 94611

**Tenant**

Resident  
3921 Harrison St #204  
Oakland, CA 94611

**Tenant**

Resident  
3921 Harrison St #202  
Oakland, CA 94611

**Tenant**

Resident  
3921 Harrison St #105

Oakland, CA 94611

**Tenant**

Resident  
3921 Harrison St #104  
Oakland, CA 94611

**Tenant**

Resident  
3921 Harrison St #103  
Oakland, CA 94611

**Tenant**

Suzanne Miller  
3921 Harrison St #201  
Oakland, CA 94611

**Tenant**

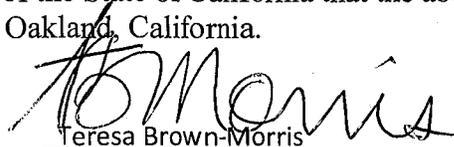
Todd McMahon  
3921 Harrison St #304  
Oakland, CA 94611

**Tenant Representative**

Stanley Amberg  
4115 Kendal Way  
Sleepy Hollow, NY 10591

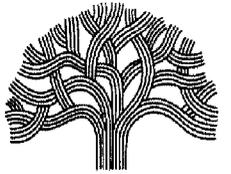
I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **September 20, 2022** in Oakland, California.

  
Teresa Brown-Morris

Oakland Rent Adjustment Program

000470



CITY OF OAKLAND

**CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM**

250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612-0243  
(510) 238-3721  
CA Relay Service 711  
[www.oaklandca.gov/RAP](http://www.oaklandca.gov/RAP)

For Rent Adjustment Program date stamp.

As served Oct 6, 2022

**APPEAL**

<b>Appellant's Name</b> Julie E. Amberg		<input type="checkbox"/> Owner <input checked="" type="checkbox"/> Tenant	
<b>Property Address (Include Unit Number)</b> 3921 Harrison Street, Unit 302, Oakland, CA 94611			
<b>Appellant's Mailing Address (For receipt of notices)</b> 3921 Harrison Street, Unit 302, Oakland, CA 94611		<b>Case Number</b> L14-0065	<b>Date of Decision appealed</b> September 14, 2022
<b>Name of Representative (if any)</b> Stanley L. Amberg		<b>Representative's Mailing Address (For notices)</b> 4115 Kendal Way, Sleepy Hollow, NY 10591	

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):

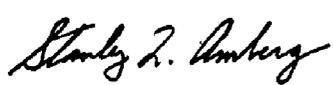
- a)  The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations, or prior decisions of the Board. *(In your explanation, you must identify the Ordinance section, Regulation or prior Board decision(s) and describe how the description is inconsistent.)*
- b)  The decision is inconsistent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

- 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 the Owner's 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.)

Supporting documents (in addition to this form) must **not exceed 25 pages**, and must be received by the Rent Adjustment Program, along with a proof of service on the opposing party, within 15 days of the filing of this document. Only the first 25 pages of submissions from each party will be considered by the Board, subject to Regulations 8.22.010(A)(4). Please number attached pages consecutively. Number of pages attached: 13

- You must serve a copy of your appeal on the opposing parties, or your appeal may be dismissed. • I declare under penalty of perjury under the laws of the State of California that on October 6, 2022 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:

<b>Name</b>	Angelica A. Sandoval, Fried Williams & Grice Connor, LLP
<b>Address</b>	1939 Harrison Street, Suite 460
<b>City, State Zip</b>	Oakland, CA 94612
<b>Name</b>	Ray McFadden, Mandana Properties, LLC
<b>Address</b>	1087 Ashmount Avenue
<b>City, State Zip</b>	Oakland, CA 94610

	October 6, 2022
---	-----------------

SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE

DATE



**CITY OF OAKLAND**  
**Department of Housing and Community Development**

**RENT ADJUSTMENT PROGRAM**

**Mandana Properties, LLC v. Tenants<sup>1</sup>**

**Case No. L14-0065**

**TENANTS EXPLANATION OF GROUNDS FOR APPEAL**

Introduction

This is an appeal by tenants from the Remand Hearing Decision in Case No. L14-0065, dated September 14, 2022 and served by United States mail on September 20, 2022.

Explanation of Grounds for Appeal

The Owner Has the Burden of Proof.

Former OMC section 8.22.030 B.1.b. expressly places on the *owner* the burden of proof and producing evidence.<sup>2</sup> Section 8.22.030 B.1.b. states:

“For purposes of obtaining a certificate of exemption or responding to a tenant petition by claiming an exemption from Chapter 8.22, Article I, the burden of proving and producing evidence for the exemption is on the owner.”

*See Fukuda v. City of Angels*, (1999) 20 Cal. 4<sup>th</sup> 805; *Drummey v. State Bd. of Funeral Directors*, (1939) 13 Cal. 2d 75.

This is significant because, as will be shown, the owner has failed to produce and prove by any legally-cognizable standard or evidence that 810 square feet of the property falls under the Elevated Decks and Balconies description indicated by Table A.

---

<sup>1</sup> Formerly 525, 655 Hyde Street CNML, Properties, LLC v. Tenants.

<sup>2</sup> That section was effective in 2014 when the owner filed its petition for substantial rehabilitation. It remains in effect for this case.

The Superior Court's August 23, 2018 Order  
Is the Governing Law of the Case.

The judicial authority governing this case is the August 23, 2018 Order of the California Superior Court, Alameda County, in case No. RG17-862841 ("Superior Court Order").<sup>3</sup> The order and judgment are the controlling law of the case.

The Superior Court held that, in prior proceedings in L14-0065, the Rent Board should have focused on the "cost of building or rehabilitating the balconies" rather than the "potential use of the balconies". The Superior Court Order said:

The Board misapplied OMC 8.22.030.B.2.b and the incorporated tables by focusing on the potential use of the balconies rather than the cost of building or rehabilitating the balconies. ...

This was legal error because the Table A analysis concerns the cost of constructing the project or part of the project, not the potential use of the constructed property. (Superior Court Order, page 13)

Critically, the Superior Court Order expressly did *not* direct the Rent Board to grant the petition for a Certificate of Exemption. The order did *not* direct the Rent Board to cost the balconies at \$41.16/sq.ft.

To the contrary, the court ordered the Rent Board to reconsider the case in light of the Superior Court Order and the judgment. The Superior Court Order specifically held that the court's judgment "*shall not limit or control* in any way the *discretion* legally vested" in the Rent Board. The Superior Court Order said:

Consistent with CCP 1094.5(f), the court orders the City of Oakland Rent Board to reconsider the case in light of the court's opinion and judgment. *The judgment shall not limit or control in any way the discretion legally vested in the respondent Board.* If permitted by its procedures, the *Rent Board may direct the Hearing Officer to conduct a further hearing.* If permitted by its procedures, the *Rent Board may reconsider either the entire matter or only the issues implicated by this order.* The court expressly does not direct the Rent Board to grant the petition for a Certificate of Exemption. (Superior Court Order, page 15)

Proceedings in the RAP After the Superior Court Order

Without waiting for instructions from the Rent Board on whether to reconsider the entire matter or only issues implicated by the Superior Court Order, and without any notice to tenants, the Hearing Officer issued a Hearing Decision on September 30, 2021. The decision granted the

---

<sup>3</sup> The Order is in the record of the remand evidentiary hearing.

petition to exempt the property from the Rent Adjustment Program as a substantially rehabilitated building.

Tenants appealed, and in an Appeal Decision dated May 4, 2022 the Rent Board vacated the September 30, 2021 Hearing Decision. The Appeal Decision referenced the Superior Court Order's ruling that the court's judgment "shall not limit or control in any way the discretion legally vested" in the Board, and that if permitted, the Board "may direct the Hearing Officer to conduct a further hearing". (Appeal Decision, at pages 3-4) Accordingly, the Appeal Decision remanded the case back "for a hearing for the introduction of evidence specifically on the issue of whether the 1002 sq. ft. piece of property properly falls under the 'Elevated Decks and Balconies' description as indicated by Table A." (Appeal Decision, page 5)

The Remand Evidentiary Hearing

The remand hearing was held on June 29, 2022. The parties (owner and tenants) introduced written evidence and live (via Zoom) testimony.

The property at issue in the hearing comprises 15 apartment balconies and one penthouse deck. The total area of the balconies and the deck is 1002 square feet.

Without prejudice, tenants accepted, at the hearing, that the penthouse deck may be costed at \$41.16/sq. ft. The dispute was thus narrowed to determining the Table A cost status of the 15 balconies whose total area is 810 square feet.<sup>4</sup>

Both parties introduced sworn transcript testimony by Martin Gallagher. He was the contractor who, in 2014, did the rehabilitation construction work on the property. He testified that the actual 2014 cost of rehabilitating the balconies was \$180,000.

Q: Am I correct that the total that was charged by you for the construction of the balconies in the 15 apartments, including engineers and architects, was \$180,000?

A: That is correct.<sup>5</sup>

That \$180,000 cost of rehabilitating the balconies was a full 20% of the entire \$876,800.99 spent on the rehabilitation project. \$180,000 divided by the 810 sq. ft. of total balcony space yields an actual balcony rehabilitation cost of \$222.22 per sq. ft.

---

<sup>4</sup> May 29, 2015 Hearing Decision in Case L14-0065, page 5 "Square Footage".

<sup>5</sup> Gallagher testimony to the present Hearing Officer on January 13, 2017 in Case L15-0073. Hereinafter "Gallagher January 13, 2017", at 22:18-22.

This is relevant evidence that the proper Table A cost for the 810 square feet of balcony area is \$127 per square foot rather than \$41.16. It is relevant evidence because the Superior Court Order specifically said it is proper to focus on the “cost of building or rehabilitating the balconies.” The Superior Court Order said:

The Board misapplied OMC 8.22.030.B.2.b and the incorporated tables by focusing on the potential use of the balconies rather than the cost of building or rehabilitating the balconies. (Order, at 13:12-13; emphasis added)

Mr. Gallagher testified to the reason why the cost to rehabilitate the balconies was high. The solid walls and floors of the balconies had become rotted, weak and had to be replaced.

[E]ach balcony had to get new joists plus new posts to support the balcony above because of the design of the old balconies run into the house. And instead of disturbing the tenants, we had the engineer come up with a new solution by adding to it and then only adding structural supports to the foundation below that would support the balconies without having to go in and open up all the ceilings inside the apartments. ... Everyone would have to move out. We would have to take off all of the ceilings, take out the walls, take out the blocks, and redo everything in order to get the cantilever correctly. (Gallagher testimony at original hearing of L14-0065, April 27, 2015, 39:27 – 40:11 (MCF 20:27 – 21:11))

Q: What work did you do on the construction of the balconies?

A: They were almost completely rebuilt, reengineered with new structural foundations, structural seepings, and pretty much 15 new balconies.

Q: Why were the balconies rebuilt?

A: They were rebuilt because when we removed the stucco around the windows and doors we noticed that there was dry rot in some of the balconies, so with that, we had to do an investigation to trace the rot. And once we traced the rot, then we realized that the entire balconies they needed to be replaced. (Gallagher, January 13, 2017 at 22:23 – 24:9.)

The Remand Hearing Decision’s Failure  
To Consider the Cost To Rehabilitate the Balconies Is An Error of Law.

The September 14, 2022 Remand Hearing Decision (from which this appeal is taken) did not mention or discuss, and therefore gave no weight to, this evidence of the actual 2014 rehabilitation cost and the reason for it. Respectfully, that omission was an error of law. It was

an error of law because the Superior Court Order specifically said it is necessary to focus on the “cost of building or rehabilitating the balconies.” The Superior Court Order said:

The Board misapplied OMC 8.22.030.B.2.b and the incorporated tables by focusing on the potential use of the balconies rather than the cost of building or rehabilitating the balconies. (Order, at 13:12-13; emphasis added)

Evidence At the Remand Hearing  
About the Physical Structure of the Balconies in 2014

Turning next to the live testimony at the June 29, 2022 remand hearing, Ms. Susan Spott testified for the owner. She admitted she did not see any of the balconies of the property in 2014 when the rehabilitation of the property was carried out. (Hearing recording, at 1:07:53 – 1:07:56) Ms. Julie Amberg testified for the tenants. She now lives at the property. She lived at the property in 2014 and knows the structure of the balconies when they were rehabilitated in 2014.

Ms. Spott testified to her understanding of what constituted apartment space. (Hearing recording, at 53:28 – 53:50) But, she admitted that was her own personal understanding.

“So when I think of an apartment, that’s what I think of.” (Hearing recording, at 53:54)

Notably, Ms. Spott did not rely on or refer to any definition of “apartment” in the Oakland, CA Planning Code or in the Oakland, CA Buildings Maintenance Code. Nor could she. ***Neither “apartment” nor “balcony” is defined in Oakland’s Buildings Maintenance Code or Oakland’s Planning Code.***

Next, Ms. Spott referred to and relied on the definition of “Floor area” in section 17.09.040 of the Planning Code. (Hearing recording, at 56:27 – 57:04) That definition states:

2. "Floor area," for all projects with one or two dwelling units on a lot, means the total square footage of all levels of all buildings on the lot. Levels shall be measured horizontally from the outside surface of exterior walls and supporting columns. The amount of floor area in each building shall be determined by the following criteria:
  - a. Floor area shall include all enclosed shafts, including stairwells, ventilation shafts and similar vertical shafts; the floor area of such shafts shall consist of the horizontal projection into the shaft of surrounding floor area; and
  - b. Floor area shall not include:
    - i. Unenclosed living areas such as balconies, decks and porches;
    - ii. Carports that are unenclosed on two (2) or more sides;
    - iii. Up to four hundred forty (440) square feet within an attached or detached garage or carport that is enclosed on three (3) or more sides;
    - iv. Nonhabitable accessory structures of less than one hundred twenty (120) square feet;

- v. Attics and basements, as defined in the Oakland Planning Code, that do not qualify as a story; and
- vi. Finished and unfinished understories and basements if the height from finished grade at the exterior perimeter of the building to the finish floor elevation above is six (6) feet or less for at least fifty percent (50%) of the perimeter and does not exceed twelve (12) feet above grade at any point.

Under that definition, the total square footage of the floor area of the property would include the 810 square feet of balconies unless they were “unenclosed” and thus excluded by sub-section b.i.

Significantly, Ms. Spott did not (and could not) testify whether the balconies at the property were or were not “unenclosed” in 2014 when the balcony rehabilitation work was performed. She had not seen the balconies in 2014.

Q Ms. Spott, it’s certainly true, is it not, that in 2014 you did not see any of the so-called balconies on this property, correct?

A That is true. (Hearing recording, at 1:07:54 -- 1:07:56)

Ms. Amberg, however, lived in the property in 2014 and knew the structure of the balconies. She testified to the physical structure of the balconies, live (via Zoom), under oath at the June 29, 2022 remand hearing. She testified that the balconies were *not* “unenclosed”. The balconies had a ceiling and four solid walls. The rear wall was the wall of the building itself. Left and right side walls extended from floor to ceiling. Standing on the balcony, facing out, there was a partial wall. It was not a railing with slats. It was a full wall, constructed of beams and covered with the same materials as the other walls.

Being enclosed, the balconies satisfied the definition of “Floor area” in section 17.09.040 of the Planning Code.

Ms. Amberg’s testimony about the physical structure of the balconies is relevant. It is specifically authorized by the Superior Court Order. The Order specifically permitted focus on the “physical structure” of the balconies.

As a matter of statutory construction, the City must apply Table A to projects or parts of projects based on whether the Description reasonably describes the physical structure to be constructed. (Order, at 13:1-3; emphasis added)

Lest the Rent Board doubt Ms. Amberg's testimony "reasonably describes the physical structure" of the balcony space, the full testimony of Ms. Amberg at the June 29, 2022 hearing is presented below.

Direct Examination Questions by Tenant Representative:

- Q I want to ask you a question or two about the balcony on your apartment. [1:37:45]  
Did that balcony have walls such that as you were walking into the balcony there was a wall to the left, the right and straight ahead of you, with the wall extending about up to your waist or thereabout? [1:38:16]
- A Yes. And the side walls are from floor to ceiling, the left and right, and there is a full ceiling over there. [1:38:32]
- Q One other question, just to clarify, did the balcony have an electric outlet? [1:38:47]
- A It did and it does on one of those side walls. [1:39:04]

Cross Examination Questions by Owner Representative Angelica Sandoval, and Questions by the Hearing Officer

- Q When you are outside on the balcony, do you feel the elements? [1:39:32]
- A The same way I would if I am in the rest of my apartment with the window open. [1:39:40]
- Q So when you are outside on the balcony do you feel air? [1:39:46]
- A Yes and I feel air throughout the building. [1:39:51]
- Q And if it is raining and if it is windy, you will feel the rain and wind, correct? [1:39:56]
- A No. I will not feel the rain on parts of the balcony because there is a ceiling and walls. [1:40:04]
- Q But, you will feel the wind? [1:40:06]
- A You know, the same as I would if my window is open, or something like that. [1:40:11]
- Q But, when you ... in particular my question is when you are out on the balcony, do you feel the wind? [1:40:16]
- A I might. [1:40:19]
- Q If it is windy, would you feel the wind? [1:40:24]
- A Probably, depending on where I am standing. [1:40:29]
- Q When you are inside your unit, you will feel the wind if the window is open, correct? [1:40:38]
- A Well the whole thing is part of my unit, so I don't know what you mean. [1:40:46]
- Q When you are inside your unit ...
- A I'm inside partly when I'm on the balcony because it has walls and a ceiling. [1:40:53]
- Q But you will feel the wind? [1:41:00]
- A Yes, if I am standing in a certain place, perhaps. Just as I would if I am standing near a window or even farther in from a window, it can get pretty windy. [1:41:14]
- Q How do you exit from the inside of your space into the balcony? Is there a door? [1:41:20]
- A There is a sliding door just as there is a sliding door into my bathroom. [1:41:25]
- Q Is the balcony fully enclosed with walls? [1:41:35]
- A What do you mean by fully enclosed? [1:41:39]

- Q Is it enclosed in a way that you would not feel the elements? [1:41:45]
- A Well, yes, the same way as if I'm in a part of my apartment that has windows, I would feel or not feel the elements. [1:42:00]
- Q by Hearing Officer: So do you have window on the balcony? [1:42:03]
- A The sliding door that I referred to, which I also have a sliding door to my bathroom and closets, is a window also. [1:42:18]
- Q by Hearing Officer: I don't understand. When you are standing outside on the balcony, there is no wall in front of you if you are facing out, right? [1:42:31]
- A There is a partial wall. [1:42:31]
- Q by Hearing Officer: Like a pony wall like the railing, right? [1:42:35]
- A No. It is a wall. It is a full wall, not like slat railing or balustrade or anything. [1:42:51]
- Q by Ms. Sandoval: Are you familiar with the planning code? [1:42:53]
- A What planning code? [1:42:55]
- Q Oakland planning code. [1:42:57]
- A Only from this hearing. [1:43:03]
- Q What do you do as a profession? [1:43:06]
- A I am a social worker. [1:43:10]
- Q Are you familiar with the definition of a wall as would be stated in Oakland Building and Planning Code? [1:43:17]
- A I don't know the specific definition, but I also observed part of the construction and it seems to me that what I call that, this wall on the other side, it has gotten beams and whatever else makes up a wall, and it is covered by the same stuff that all the other walls are covered with. [1:43:51]
- Q Are you familiar with the definition of a railing as stated in Oakland Building and Planning Code? [
- A No.
- Ms Sandoval: No further questions. [1:44:01] No further witnesses. [1:44:25]

Assuming (as did Ms. Spott) that the definition of "Floor area" in the Planning Code is a determinant of whether the 810 sq. ft. of balcony space properly falls under the 'Elevated Decks and Balconies' description indicated by Table A, the testimony of Ms. Amberg establishes that the balconies were *not* "unenclosed". They had walls and a ceiling. They are *not* excluded from "Floor area". Her testimony is the only evidence of the actual structure of the balconies in 2014. Her testimony establishes that the actual physical structure of 810 sq. ft. of balcony area falls within the definition of a dwelling's "Floor area" and thus falls within the "Apartment" category of Table A.

Owner's witness, Ms. Spott did not, and could not, testify to the structure of the balconies in 2014. Thus, the owner failed to satisfy its burden to prove that the balcony space falls under the 'Elevated Decks and Balconies' description indicated by Table A.



The Remand Hearing Decision Erred As A Matter of Law  
By Engrafting Onto the Definition of “Floor area”  
A Requirement That The Balconies Must Be “Entirely Closed”.

The September 14, 2022 Remand Hearing Decision (“RHD” from which this appeal is taken) committed an error of law with respect to the definition of “Floor area” in section 17.09.040 of the Planning Code. The RHD engrafted, onto the definition, a requirement that the balconies must be “entirely closed to the elements.” The RHD said, at 4-5:

Although Ms. Amberg testified that there is a waist-high wall on one side of the balcony, the existence of the wall does not mean that balcony can be closed – it remains open to the outside. The fact that Ms. Amberg can feel the wind in her apartment when the windows are open does not change the nature of the apartment itself from being a residential space, capable of being entirely closed to the outside elements, as opposed to the balcony being an outside space which cannot be entirely closed to the elements.

A hearing officer is not authorized to amend definitions for the relevant codes. Formulating definitions is the legislative authority and responsibility of the Oakland City Council. The City Council exercises that authority and responsibility by enacting Ordinances. The Ordinances are enacted after allowing hearings and public comment.

For example, on January 10, 2022 the City Council passed Ordinance No. 13677 which amended the definitions in section 17.09.040 of the Planning Code to redefine “Secondary Accessory Dwelling Unit”. The legislative process and history for Ordinance No. 13677 is at [City of Oakland - File #: 21-0829 \(legistar.com\)](https://legistar.com/View/00000000-0000-0000-0000-000000000000/21-0829)

In this appeal, the Rent Board should therefore disregard the “entirely closed” requirement that was impermissibly added by the RHD. When the “entirely closed” requirement is not imposed, the exclusion of sub-section b.i. is not applicable, and the 810 square feet of balcony area falls within the definition of section 17.09.040 of the Planning Code, and is included in the “Floor area” of the dwelling. Thus included, the 810 square feet of balcony area are properly costed as “Apartment” in Table A at the rate of \$127 per square foot.

The Remand Hearing Decision Erred As a Matter of Law  
By Adopting Ms. Spott’s Personal Definitions of Apartment and Balcony.

Ms. Spott testified to her understanding of what constituted apartment space. (Hearing recording, at 53:28 – 53:50) But, she admitted that was her own personal understanding.

“So when I think of an apartment, that’s what I think of.” (Hearing recording, at 53:54)

The RHD referred to Ms. Spott's own, personal definitions of balcony space and apartment space. (RHD, at 3) However, the RHD failed to acknowledge there is *no* definition of either "balcony" or "apartment" in the building code or in the planning code.

The RHD seized on Ms. Spott's personal definitions to formulate definitions of deck/balcony space and apartment space. The RHD said:

The testimony of the witnesses established that the deck/balcony space is an outdoor space and different from an apartment space. The apartment space can be entirely closed to outside elements if windows and doors are closed; it has heating, plumbing, and electricity. The deck/balcony space is open to the outside, cannot be closed, there is no heat; it is not a residential space but an outdoor space exposed to outside elements. (RHD, at 4)

Respectfully, that is an error of law, and is against public policy.

It is an error of law because, as with an amendment to a code definition, neither witnesses nor hearing officers are authorized to formulate entire definitions for the relevant codes. Formulating definitions is the legislative authority and responsibility of the Oakland City Council. The City Council exercises that authority and responsibility by enacting Ordinances. The Ordinances are enacted after allowing hearings and public comment.

Sound public policy supports the prohibition against individuals and hearing officers, on their own, defining what constitutes an apartment or a balcony. Neither one – witness nor hearing officer – can create precedent binding on other hearing officers. Different hearing officers may formulate differing definitions. This can lead to chaos – different outcomes, depending on who is the hearing officer assigned to a case. This harms the parties to a case. In addition, the public is harmed because it is excluded from the definition-forming process. For these reasons, the code-defining process is the exclusive legislative prerogative of the Oakland City Council, which enacts ordinances after public hearings. The ordinances give predictable guidance to parties and the public. They are binding on the courts and on all departments of the RAP.

The Remand Hearing Decision Committed Legal Error  
By Restricting Its Own Definition of Balcony To  
Structures That Are "Entirely" Closed To The Elements.

Returning to the RHD and its legally-impermissible definitions quoted above, the RHD compounded its error when it engrafted yet another restriction onto its definitions of "balcony".

The RHD added a requirement that the balcony must be “entirely closed to the elements.” The RHD said, at 4-5:

Although Ms. Amberg testified that there is a waist-high wall on one side of the balcony, the existence of the wall does not mean that balcony can be closed – it remains open to the outside. The fact that Ms. Amberg can feel the wind in her apartment when the windows are open does not change the nature of the apartment itself from being a residential space, capable of being entirely closed to the outside elements, as opposed to the balcony being an outside space which cannot be entirely closed to the elements.

The RHD’s “entirely closed” definition of balcony rewrites the RHD’s own definition of balcony. That rewriting is legal error for the reasons stated above.

#### Additional Material Errors In the Remand Hearing Decision

Returning to the RHD itself, the first full paragraph on page 5 of the RHD is replete with error, legal and factual. It warrants heightened scrutiny. The first two sentences read:

There is no dispute about the building space square footage (13,336) and the deck/balcony space square footage (1,002). There is no dispute that the 1,002 square feet consists of deck/balcony space.

The underscored sentence is legally and factually wrong. The status of the 1,002 square feet of the property is very much in dispute. Indeed, it is the heart of the issue for which the Rent Board’s Appeal Decision ordered a remand to take testimony. The Appeal Decision clearly remanded the case back “for a hearing for the introduction of evidence specifically on the issue of whether the 1002 sq. ft. piece of the property properly falls under the ‘Elevated Decks and Balconies’ description as indicated by Table A.” (Appeal Decision, at 5)

The paragraph on page 5 of the RHD continues:

Table A has a specific category called “Elevated Decks and Balconies.” The Court clearly and specifically stated that the Board or the Hearing Officer do not have discretion over how to treat each space but must apply the specific category listed on Table A, which determines the cost of new construction per square foot to the corresponding project or part of the project.

The underscored sentence is legally and factually wrong. It accuses this Board of committing error when it exercised discretion to remand the case for an evidentiary hearing.

The Board did not commit error or abuse its discretion. The Superior Court Order specifically and unequivocally held that its judgment “*shall not limit or control* in any way the *discretion* legally vested” in the Rent Board. The Superior Court Order said:

Consistent with CCP 1094.5(f), the court orders the City of Oakland Rent Board to reconsider the case in light of the court’s opinion and judgment. ***The judgment shall not limit or control in any way the discretion legally vested in the respondent Board.*** If permitted by its procedures, ***the Rent Board may direct the Hearing Officer to conduct a further hearing.*** If permitted by its procedures, the Rent Board may reconsider either the entire matter or only the issues implicated by this order. The court expressly does not direct the Rent Board to grant the petition for a Certificate of Exemption. (Superior Court Order, page 15)

Consistent with the Superior Court Order, the Rent Board’s May 4, 2022 Appeal Decision exercised discretion and remanded “the case back for a hearing for the introduction of evidence specifically on the issue of whether the 1002 sq. ft. piece of property properly falls under the ‘Elevated Decks and Balconies’ description as indicated by Table A.” (Appeal Decision, page 5) The hearing evidence is stated above.

At that hearing, and in this appeal of the RHD, the burden of proof remains on the owner to establish that the 810 sq. ft. of balcony space “properly falls under the ‘Elevated Decks and Balconies’ description as indicated by Table A.” For the reasons stated above, the owner failed to satisfy that burden.

Though not required to do so, tenants themselves affirmatively established, at the evidentiary hearing, that the balcony space at the property in 2014 is ***not*** “unenclosed” and satisfies the definition of “Floor area” in section 17.09.040 of the Planning Code, wherefore the 810 sq. ft. of balcony space should be costed at the \$127/sq. ft. rate in Table A for Apartment.

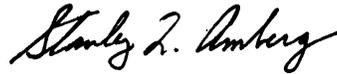
Therefore, the rehabilitation calculation is:

$$\begin{aligned} 13,336 \times \$127 &= \$1,693,672.00 \\ 810 \times \$127 &= \$102,870.00 \\ 192 \times \$41.16 &= \$7,902.72 \text{ [construction cost of penthouse deck]} \\ \text{Total} &= \$1,804,444.72 \text{ divided by } 2 = \$902,222.36 \end{aligned}$$

If the owner spent at least \$902,222.36 on the construction rehabilitation project, the building is exempt from the Rent Ordinance. The September 30, 2021 Hearing Decision, at pages 2-3, recalculated the construction expenses as being \$876,800.99. Because the owner failed to expend the required \$902,222.36, tenants respectfully submit that the Rent Board should hold that the subject property has not been substantially rehabilitated.

Date: October 6, 2022

Stanley L. Amberg

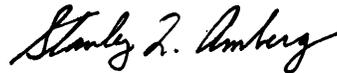


---

4115 Kendal Way, Sleepy Hollow, NY 10591  
T: 914-238-4921, M: 914-263-7341  
[stan.amberg@amberglaw.com](mailto:stan.amberg@amberglaw.com)  
Representative for Tenants

**PROOF OF SERVICE**

I declare under penalty of perjury under the laws of the State of California that on October 6, 2022 I served the aforementioned APPEAL and TENANTS EXPLANATION OF GROUNDS FOR APPEAL as follows: electronically on Angelica A. Sandoval, Fried Williams & Grice Connor, LLP, attorneys for Respondent/Owner Mandana Properties, LLC.; and by placing a copy in the United States mail with all postage or charges fully prepaid, addressed as follows: Angelica A. Sandoval, Fried Williams & Grice Connor, LLP, 1939 Harrison Street, Suite 460, Oakland, CA 94612; and Ray McFadden, Mandana Properties, LLC, 1087 Ashmount Avenue, Oakland, CA 94610.





CITY OF OAKLAND

**CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM**

250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612-0243  
(510) 238-3721  
CA Relay Service 711  
[www.oaklandca.gov/RAP](http://www.oaklandca.gov/RAP)

For Rent Adjustment Program date stamp.

## APPEAL

<b>Appellant's Name</b> Mari Oda	<input type="checkbox"/> Owner <input checked="" type="checkbox"/> Tenant	
<b>Property Address (Include Unit Number)</b> 3921 Harrison Street, Apt. 304, Oakland, CA 94611		
<b>Appellant's Mailing Address (For receipt of notices)</b> 3921 Harrison Street, Apt. 304, Oakland, CA 94611	<b>Case Number</b> L14-0065	<b>Date of Decision appealed</b> September 14, 2022
<b>Name of Representative (if any)</b> Stanley L. Amberg	<b>Representative's Mailing Address (For notices)</b> 4115 Kendal Way, Sleepy Hollow, NY 10591	

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.

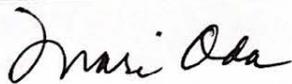
- 1) There are math/clerical errors that require the Hearing Decision to be updated. *(Please clearly explain the math/clerical errors.)*
- 2) Appealing the decision for one of the grounds below (required):
  - a)  The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations, or prior decisions 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.)*

- 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 the Owner's 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.)

Supporting documents (in addition to this form) must *not* exceed 25 pages, and must be received by the Rent Adjustment Program, along with a proof of service on the opposing party, within 15 days of the filing of this document. Only the first 25 pages of submissions from each party will be considered by the Board, subject to Regulations 8.22.010(A)(4). Please number attached pages consecutively. Number of pages attached: 13.

• You must serve a copy of your appeal on the opposing parties, or your appeal may be dismissed. •  
 I declare under penalty of perjury under the laws of the State of California that on October 6, 2022, 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:

<b>Name</b>	Angelica A. Sandoval, Fried Williams & Grice Connor, LLP
<b>Address</b>	1939 Harrison Street, Suite 460
<b>City, State Zip</b>	Oakland, CA 94612
<b>Name</b>	Ray McFadden, McFadden Properties, LLC
<b>Address</b>	1087 Ashmount Avenue
<b>City, State Zip</b>	Oakland, CA 94610

	October 6, 2022
---	-----------------

SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE

DATE

## IMPORTANT INFORMATION:

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

- Appeals filed late without good cause will be dismissed.
- You must provide all the information required, or your appeal cannot be processed and may be dismissed.
- **Any response to the appeal by the responding party must be received by the Rent Adjustment Program, along with a proof of service on appealing party, within 15 days of service of the service of the appeal if the party was personally served. If the responding party was served the appeal by mail, the party must file the response within 20 days of the date the appeal was mailed to them.**
- There is no form for the response, but the entire response is limited to 25 pages or less.
- The Board will not consider new claims. All claims, except jurisdictional issues, must have been made in the petition, response, or at the hearing.
- The Board will not consider new evidence at the appeal hearing without specific approval.
- You must sign and date this form or your appeal will not be processed.
- The entire case record is available to the Board, but sections of audio recordings that you want the Board to review must be pre-designated to Rent Adjustment Staff.



**CITY OF OAKLAND**  
**Department of Housing and Community Development**

**RENT ADJUSTMENT PROGRAM**

**Mandana Properties, LLC v. Tenants<sup>1</sup>**

**Case No. L14-0065**

**TENANTS EXPLANATION OF GROUNDS FOR APPEAL**

**Introduction**

This is an appeal by tenants from the Remand Hearing Decision in Case No. L14-0065, dated September 14, 2022 and served by United States mail on September 20, 2022.

**Explanation of Grounds for Appeal**

**The Owner Has the Burden of Proof.**

Former OMC section 8.22.030 B.1.b. expressly places on the *owner* the burden of proof and producing evidence.<sup>2</sup> Section 8.22.030 B.1.b. states:

“For purposes of obtaining a certificate of exemption or responding to a tenant petition by claiming an exemption from Chapter 8.22, Article I, the burden of proving and producing evidence for the exemption is on the owner.”

*See Fukuda v. City of Angels*, (1999) 20 Cal. 4<sup>th</sup> 805; *Drummey v. State Bd. of Funeral Directors*, (1939) 13 Cal. 2d 75.

This is significant because, as will be shown, the owner has failed to produce and prove by any legally-cognizable standard or evidence that 810 square feet of the property falls under the Elevated Decks and Balconies description indicated by Table A.

---

<sup>1</sup> Formerly 525, 655 Hyde Street CNML, Properties, LLC v. Tenants.

<sup>2</sup> That section was effective in 2014 when the owner filed its petition for substantial rehabilitation. It remains in effect for this case.

Case No. L14-0065 Tenants Explanation of Grounds for Appeal

The Superior Court's August 23, 2018 Order  
Is the Governing Law of the Case.

The judicial authority governing this case is the August 23, 2018 Order of the California Superior Court, Alameda County, in case No. RG17-862841 ("Superior Court Order").<sup>3</sup> The order and judgment are the controlling law of the case.

The Superior Court held that, in prior proceedings in L14-0065, the Rent Board should have focused on the "cost of building or rehabilitating the balconies" rather than the "potential use of the balconies". The Superior Court Order said:

The Board misapplied OMC 8.22.030.B.2.b and the incorporated tables by focusing on the potential use of the balconies rather than the cost of building or rehabilitating the balconies. ...

This was legal error because the Table A analysis concerns the cost of constructing the project or part of the project, not the potential use of the constructed property. (Superior Court Order, page 13)

Critically, the Superior Court Order expressly did *not* direct the Rent Board to grant the petition for a Certificate of Exemption. The order did *not* direct the Rent Board to cost the balconies at \$41.16/sq.ft.

To the contrary, the court ordered the Rent Board to reconsider the case in light of the Superior Court Order and the judgment. The Superior Court Order specifically held that the court's judgment "*shall not limit or control* in any way the *discretion* legally vested" in the Rent Board. The Superior Court Order said:

Consistent with CCP 1094.5(f), the court orders the City of Oakland Rent Board to reconsider the case in light of the court's opinion and judgment. The *judgment shall not limit or control in any way the discretion legally vested in the respondent Board*. If permitted by its procedures, the *Rent Board may direct the Hearing Officer to conduct a further hearing*. If permitted by its procedures, the *Rent Board may reconsider either the entire matter or only the issues implicated by this order*. The court expressly does not direct the Rent Board to grant the petition for a Certificate of Exemption. (Superior Court Order, page 15)

Proceedings in the RAP After the Superior Court Order

Without waiting for instructions from the Rent Board on whether to reconsider the entire matter or only issues implicated by the Superior Court Order, and without any notice to tenants, the Hearing Officer issued a Hearing Decision on September 30, 2021. The decision granted the

---

<sup>3</sup> The Order is in the record of the remand evidentiary hearing.

Case No. L14-0065 Tenants Explanation of Grounds for Appeal

petition to exempt the property from the Rent Adjustment Program as a substantially rehabilitated building.

Tenants appealed, and in an Appeal Decision dated May 4, 2022 the Rent Board vacated the September 30, 2021 Hearing Decision. The Appeal Decision referenced the Superior Court Order's ruling that the court's judgment "shall not limit or control in any way the discretion legally vested" in the Board, and that if permitted, the Board "may direct the Hearing Officer to conduct a further hearing". (Appeal Decision, at pages 3-4) Accordingly, the Appeal Decision remanded the case back "for a hearing for the introduction of evidence specifically on the issue of whether the 1002 sq. ft. piece of property properly falls under the 'Elevated Decks and Balconies' description as indicated by Table A." (Appeal Decision, page 5)

The Remand Evidentiary Hearing

The remand hearing was held on June 29, 2022. The parties (owner and tenants) introduced written evidence and live (via Zoom) testimony.

The property at issue in the hearing comprises 15 apartment balconies and one penthouse deck. The total area of the balconies and the deck is 1002 square feet.

Without prejudice, tenants accepted, at the hearing, that the penthouse deck may be costed at \$41.16/sq. ft. The dispute was thus narrowed to determining the Table A cost status of the 15 balconies whose total area is 810 square feet.<sup>4</sup>

Both parties introduced sworn transcript testimony by Martin Gallagher. He was the contractor who, in 2014, did the rehabilitation construction work on the property. He testified that the actual 2014 cost of rehabilitating the balconies was \$180,000.

Q: Am I correct that the total that was charged by you for the construction of the balconies in the 15 apartments, including engineers and architects, was \$180,000?

A: That is correct.<sup>5</sup>

That \$180,000 cost of rehabilitating the balconies was a full 20% of the entire \$876,800.99 spent on the rehabilitation project. \$180,000 divided by the 810 sq. ft. of total balcony space yields an actual balcony rehabilitation cost of \$222.22 per sq. ft.

---

<sup>4</sup> May 29, 2015 Hearing Decision in Case L14-0065, page 5 "Square Footage".

<sup>5</sup> Gallagher testimony to the present Hearing Officer on January 13, 2017 in Case L15-0073. Hereinafter "Gallagher January 13, 2017", at 22:18-22.

Case No. L14-0065 Tenants Explanation of Grounds for Appeal

This is relevant evidence that the proper Table A cost for the 810 square feet of balcony area is \$127 per square foot rather than \$41.16. It is relevant evidence because the Superior Court Order specifically said it is proper to focus on the “cost of building or rehabilitating the balconies.” The Superior Court Order said:

The Board misapplied OMC 8.22.030.B.2.b and the incorporated tables by focusing on the potential use of the balconies rather than the cost of building or rehabilitating the balconies. (Order, at 13:12-13; emphasis added)

Mr. Gallagher testified to the reason why the cost to rehabilitate the balconies was high. The solid walls and floors of the balconies had become rotted, weak and had to be replaced.

[E]ach balcony had to get new joists plus new posts to support the balcony above because of the design of the old balconies run into the house. And instead of disturbing the tenants, we had the engineer come up with a new solution by adding to it and then only adding structural supports to the foundation below that would support the balconies without having to go in and open up all the ceilings inside the apartments. ... Everyone would have to move out. We would have to take off all of the ceilings, take out the walls, take out the blocks, and redo everything in order to get the cantilever correctly. (Gallagher testimony at original hearing of L14-0065, April 27, 2015, 39:27 – 40:11 (MCF 20:27 – 21:11))

Q: What work did you do on the construction of the balconies?

A: They were almost completely rebuilt, reengineered with new structural foundations, structural seepings, and pretty much 15 new balconies.

Q: Why were the balconies rebuilt?

A: They were rebuilt because when we removed the stucco around the windows and doors we noticed that there was dry rot in some of the balconies, so with that, we had to do an investigation to trace the rot. And once we traced the rot, then we realized that the entire balconies they needed to be replaced. (Gallagher, January 13, 2017 at 22:23 – 24:9.)

The Remand Hearing Decision’s Failure  
To Consider the Cost To Rehabilitate the Balconies Is An Error of Law.

The September 14, 2022 Remand Hearing Decision (from which this appeal is taken) did not mention or discuss, and therefore gave no weight to, this evidence of the actual 2014 rehabilitation cost and the reason for it. Respectfully, that omission was an error of law. It was

an error of law because the Superior Court Order specifically said it is necessary to focus on the “cost of building or rehabilitating the balconies.” The Superior Court Order said:

The Board misapplied OMC 8.22.030.B.2.b and the incorporated tables by focusing on the potential use of the balconies rather than the cost of building or rehabilitating the balconies. (Order, at 13:12-13; emphasis added)

Evidence At the Remand Hearing  
About the Physical Structure of the Balconies in 2014

Turning next to the live testimony at the June 29, 2022 remand hearing, Ms. Susan Spott testified for the owner. She admitted she did not see any of the balconies of the property in 2014 when the rehabilitation of the property was carried out. (Hearing recording, at 1:07:53 – 1:07:56) Ms. Julie Amberg testified for the tenants. She now lives at the property. She lived at the property in 2014 and knows the structure of the balconies when they were rehabilitated in 2014.

Ms. Spott testified to her understanding of what constituted apartment space. (Hearing recording, at 53:28 – 53:50) But, she admitted that was her own personal understanding.

“So when I think of an apartment, that’s what I think of.” (Hearing recording, at 53:54)

Notably, Ms. Spott did not rely on or refer to any definition of “apartment” in the Oakland, CA Planning Code or in the Oakland, CA Buildings Maintenance Code. Nor could she. *Neither “apartment” nor “balcony” is defined in Oakland’s Buildings Maintenance Code or Oakland’s Planning Code.*

Next, Ms. Spott referred to and relied on the definition of “Floor area” in section 17.09.040 of the Planning Code. (Hearing recording, at 56:27 – 57:04) That definition states:

2. "Floor area," for all projects with one or two dwelling units on a lot, means the total square footage of all levels of all buildings on the lot. Levels shall be measured horizontally from the outside surface of exterior walls and supporting columns. The amount of floor area in each building shall be determined by the following criteria:
  - a. Floor area shall include all enclosed shafts, including stairwells, ventilation shafts and similar vertical shafts; the floor area of such shafts shall consist of the horizontal projection into the shaft of surrounding floor area; and
  - b. Floor area shall not include:
    - i. Unenclosed living areas such as balconies, decks and porches;
    - ii. Carports that are unenclosed on two (2) or more sides;
    - iii. Up to four hundred forty (440) square feet within an attached or detached garage or carport that is enclosed on three (3) or more sides;
    - iv. Nonhabitable accessory structures of less than one hundred twenty (120) square feet;

Case No. L14-0065 Tenants Explanation of Grounds for Appeal

- v. Attics and basements, as defined in the Oakland Planning Code, that do not qualify as a story; and
- vi. Finished and unfinished understories and basements if the height from finished grade at the exterior perimeter of the building to the finish floor elevation above is six (6) feet or less for at least fifty percent (50%) of the perimeter and does not exceed twelve (12) feet above grade at any point.

Under that definition, the total square footage of the floor area of the property would include the 810 square feet of balconies unless they were “unenclosed” and thus excluded by sub-section b.i.

Significantly, Ms. Spott did not (and could not) testify whether the balconies at the property were or were not “unenclosed” in 2014 when the balcony rehabilitation work was performed. She had not seen the balconies in 2014.

Q Ms. Spott, it’s certainly true, is it not, that in 2014 you did not see any of the so-called balconies on this property, correct?

A That is true. (Hearing recording, at 1:07:54 -- 1:07:56)

Ms. Amberg, however, lived in the property in 2014 and knew the structure of the balconies. She testified to the physical structure of the balconies, live (via Zoom), under oath at the June 29, 2022 remand hearing. She testified that the balconies were *not* “unenclosed”. The balconies had a ceiling and four solid walls. The rear wall was the wall of the building itself. Left and right side walls extended from floor to ceiling. Standing on the balcony, facing out, there was a partial wall. It was not a railing with slats. It was a full wall, constructed of beams and covered with the same materials as the other walls.

Being enclosed, the balconies satisfied the definition of “Floor area” in section 17.09.040 of the Planning Code.

Ms. Amberg’s testimony about the physical structure of the balconies is relevant. It is specifically authorized by the Superior Court Order. The Order specifically permitted focus on the “physical structure” of the balconies.

As a matter of statutory construction, the City must apply Table A to projects or parts of projects based on whether the Description reasonably describes the physical structure to be constructed. (Order, at 13:1-3; emphasis added)

Case No. L14-0065 Tenants Explanation of Grounds for Appeal

Lest the Rent Board doubt Ms. Amberg's testimony "reasonably describes the physical structure" of the balcony space, the full testimony of Ms. Amberg at the June 29, 2022 hearing is presented below.

Direct Examination Questions by Tenant Representative:

- Q I want to ask you a question or two about the balcony on your apartment. [1:37:45]  
Did that balcony have walls such that as you were walking into the balcony there was a wall to the left, the right and straight ahead of you, with the wall extending about up to your waist or thereabout? [1:38:16]
- A Yes. And the side walls are from floor to ceiling, the left and right, and there is a full ceiling over there. [1:38:32]
- Q One other question, just to clarify, did the balcony have an electric outlet? [1:38:47]
- A It did and it does on one of those side walls. [1:39:04]

Cross Examination Questions by Owner Representative Angelica Sandoval, and Questions by the Hearing Officer

- Q When you are outside on the balcony, do you feel the elements? [1:39:32]
- A The same way I would if I am in the rest of my apartment with the window open. [1:39:40]
- Q So when you are outside on the balcony do you feel air? [1:39:46]
- A Yes and I feel air throughout the building. [1:39:51]
- Q And if it is raining and if it is windy, you will feel the rain and wind, correct? [1:39:56]
- A No. I will not feel the rain on parts of the balcony because there is a ceiling and walls. [1:40:04]
- Q But, you will feel the wind? [1:40:06]
- A You know, the same as I would if my window is open, or something like that. [1:40:11]
- Q But, when you ... in particular my question is when you are out on the balcony, do you feel the wind? [1:40:16]
- A I might. [1:40:19]
- Q If it is windy, would you feel the wind? [1:40:24]
- A Probably, depending on where I am standing. [1:40:29]
- Q When you are inside your unit, you will feel the wind if the window is open, correct? [1:40:38]
- A Well the whole thing is part of my unit, so I don't know what you mean. [1:40:46]
- Q When you are inside your unit ...
- A I'm inside partly when I'm on the balcony because it has walls and a ceiling. [1:40:53]
- Q But you will feel the wind? [1:41:00]
- A Yes, if I am standing in a certain place, perhaps. Just as I would if I am standing near a window or even farther in from a window, it can get pretty windy. [1:41:14]
- Q How do you exit from the inside of your space into the balcony? Is there a door? [1:41:20]
- A There is a sliding door just as there is a sliding door into my bathroom. [1:41:25]
- Q Is the balcony fully enclosed with walls? [1:41:35]
- A What do you mean by fully enclosed? [1:41:39]

Case No. L14-0065 Tenants Explanation of Grounds for Appeal

- Q Is it enclosed in a way that you would not feel the elements? [1:41:45]
- A Well, yes, the same way as if I'm in a part of my apartment that has windows, I would feel or not feel the elements. [1:42:00]
- Q by Hearing Officer: So do you have window on the balcony? [1:42:03]
- A The sliding door that I referred to, which I also have a sliding door to my bathroom and closets, is a window also. [1:42:18]
- Q by Hearing Officer: I don't understand. When you are standing outside on the balcony, there is no wall in front of you if you are facing out, right? [1:42:31]
- A There is a partial wall. [1:42:31]
- Q by Hearing Officer: Like a pony wall like the railing, right? [1:42:35]
- A No. It is a wall. It is a full wall, not like slat railing or balustrade or anything. [1:42:51]
- Q by Ms. Sandoval: Are you familiar with the planning code? [1:42:53]
- A What planning code? [1:42:55]
- Q Oakland planning code. [1:42:57]
- A Only from this hearing. [1:43:03]
- Q What do you do as a profession? [1:43:06]
- A I am a social worker. [1:43:10]
- Q Are you familiar with the definition of a wall as would be stated in Oakland Building and Planning Code? [1:43:17]
- A I don't know the specific definition, but I also observed part of the construction and it seems to me that what I call that, this wall on the other side, it has gotten beams and whatever else makes up a wall, and it is covered by the same stuff that all the other walls are covered with. [1:43:51]
- Q Are you familiar with the definition of a railing as stated in Oakland Building and Planning Code? [1:43:51]
- A No.
- Ms Sandoval: No further questions. [1:44:01] No further witnesses. [1:44:25]

Assuming (as did Ms. Spott) that the definition of "Floor area" in the Planning Code is a determinant of whether the 810 sq. ft. of balcony space properly falls under the 'Elevated Decks and Balconies' description indicated by Table A, the testimony of Ms. Amberg establishes that the balconies were *not* "unenclosed". They had walls and a ceiling. They are *not* excluded from "Floor area". Her testimony is the only evidence of the actual structure of the balconies in 2014. Her testimony establishes that the actual physical structure of 810 sq. ft. of balcony area falls within the definition of a dwelling's "Floor area" and thus falls within the "Apartment" category of Table A.

Owner's witness, Ms. Spott did not, and could not, testify to the structure of the balconies in 2014. Thus, the owner failed to satisfy its burden to prove that the balcony space falls under the 'Elevated Decks and Balconies' description indicated by Table A.



The Remand Hearing Decision Erred As A Matter of Law  
By Engrafting Onto the Definition of “Floor area”  
A Requirement That The Balconies Must Be “Entirely Closed”.

The September 14, 2022 Remand Hearing Decision (“RHD” from which this appeal is taken) committed an error of law with respect to the definition of “Floor area” in section 17.09.040 of the Planning Code. The RHD engrafted, onto the definition, a requirement that the balconies must be “entirely closed to the elements.” The RHD said, at 4-5:

Although Ms. Amberg testified that there is a waist-high wall on one side of the balcony, the existence of the wall does not mean that balcony can be closed – it remains open to the outside. The fact that Ms. Amberg can feel the wind in her apartment when the windows are open does not change the nature of the apartment itself from being a residential space, capable of being entirely closed to the outside elements, as opposed to the balcony being an outside space which cannot be entirely closed to the elements.

A hearing officer is not authorized to amend definitions for the relevant codes. Formulating definitions is the legislative authority and responsibility of the Oakland City Council. The City Council exercises that authority and responsibility by enacting Ordinances. The Ordinances are enacted after allowing hearings and public comment.

For example, on January 10, 2022 the City Council passed Ordinance No. 13677 which amended the definitions in section 17.09.040 of the Planning Code to redefine “Secondary Accessory Dwelling Unit”. The legislative process and history for Ordinance No. 13677 is at [City of Oakland - File #: 21-0829 \(legistar.com\)](#)

In this appeal, the Rent Board should therefore disregard the “entirely closed” requirement that was impermissibly added by the RHD. When the “entirely closed” requirement is not imposed, the exclusion of sub-section b.i. is not applicable, and the 810 square feet of balcony area falls within the definition of section 17.09.040 of the Planning Code, and is included in the “Floor area” of the dwelling. Thus included, the 810 square feet of balcony area are properly costed as “Apartment” in Table A at the rate of \$127 per square foot.

The Remand Hearing Decision Erred As a Matter of Law  
By Adopting Ms. Spott’s Personal Definitions of Apartment and Balcony.

Ms. Spott testified to her understanding of what constituted apartment space. (Hearing recording, at 53:28 – 53:50) But, she admitted that was her own personal understanding.

“So when I think of an apartment, that’s what I think of.” (Hearing recording, at 53:54)

The RHD referred to Ms. Spott's own, personal definitions of balcony space and apartment space. (RHD, at 3) However, the RHD failed to acknowledge there is *no* definition of either "balcony" or "apartment" in the building code or in the planning code.

The RHD seized on Ms. Spott's personal definitions to formulate definitions of deck/balcony space and apartment space. The RHD said:

The testimony of the witnesses established that the deck/balcony space is an outdoor space and different from an apartment space. The apartment space can be entirely closed to outside elements if windows and doors are closed; it has heating, plumbing, and electricity. The deck/balcony space is open to the outside, cannot be closed, there is no heat; it is not a residential space but an outdoor space exposed to outside elements. (RHD, at 4)

Respectfully, that is an error of law, and is against public policy.

It is an error of law because, as with an amendment to a code definition, neither witnesses nor hearing officers are authorized to formulate entire definitions for the relevant codes. Formulating definitions is the legislative authority and responsibility of the Oakland City Council. The City Council exercises that authority and responsibility by enacting Ordinances. The Ordinances are enacted after allowing hearings and public comment.

Sound public policy supports the prohibition against individuals and hearing officers, on their own, defining what constitutes an apartment or a balcony. Neither one – witness nor hearing officer – can create precedent binding on other hearing officers. Different hearing officers may formulate differing definitions. This can lead to chaos – different outcomes, depending on who is the hearing officer assigned to a case. This harms the parties to a case. In addition, the public is harmed because it is excluded from the definition-forming process. For these reasons, the code-defining process is the exclusive legislative prerogative of the Oakland City Council, which enacts ordinances after public hearings. The ordinances give predictable guidance to parties and the public. They are binding on the courts and on all departments of the RAP.

The Remand Hearing Decision Committed Legal Error  
By Restricting Its Own Definition of Balcony To  
Structures That Are "Entirely" Closed To The Elements.

Returning to the RHD and its legally-impermissible definitions quoted above, the RHD compounded its error when it engrafted yet another restriction onto its definitions of "balcony".

The RHD added a requirement that the balcony must be “entirely closed to the elements.” The RHD said, at 4-5:

Although Ms. Amberg testified that there is a waist-high wall on one side of the balcony, the existence of the wall does not mean that balcony can be closed – it remains open to the outside. The fact that Ms. Amberg can feel the wind in her apartment when the windows are open does not change the nature of the apartment itself from being a residential space, capable of being entirely closed to the outside elements, as opposed to the balcony being an outside space which cannot be entirely closed to the elements.

The RHD’s “entirely closed” definition of balcony rewrites the RHD’s own definition of balcony. That rewriting is legal error for the reasons stated above.

#### Additional Material Errors In the Remand Hearing Decision

Returning to the RHD itself, the first full paragraph on page 5 of the RHD is replete with error, legal and factual. It warrants heightened scrutiny. The first two sentences read:

There is no dispute about the building space square footage (13,336) and the deck/balcony space square footage (1,002). There is no dispute that the 1,002 square feet consists of deck/balcony space.

The underscored sentence is legally and factually wrong. The status of the 1,002 square feet of the property is very much in dispute. Indeed, it is the heart of the issue for which the Rent Board’s Appeal Decision ordered a remand to take testimony. The Appeal Decision clearly remanded the case back “for a hearing for the introduction of evidence specifically on the issue of whether the 1002 sq. ft. piece of the property properly falls under the ‘Elevated Decks and Balconies’ description as indicated by Table A.” (Appeal Decision, at 5)

The paragraph on page 5 of the RHD continues:

Table A has a specific category called “Elevated Decks and Balconies.” The Court clearly and specifically stated that the Board or the Hearing Officer do not have discretion over how to treat each space but must apply the specific category listed on Table A, which determines the cost of new construction per square foot to the corresponding project or part of the project.

The underscored sentence is legally and factually wrong. It accuses this Board of committing error when it exercised discretion to remand the case for an evidentiary hearing.

The Board did not commit error or abuse its discretion. The Superior Court Order specifically and unequivocally held that its judgment “*shall not limit or control* in any way the *discretion* legally vested” in the Rent Board. The Superior Court Order said:

Case No. L14-0065 Tenants Explanation of Grounds for Appeal

Consistent with CCP 1094.5(f), the court orders the City of Oakland Rent Board to reconsider the case in light of the court’s opinion and judgment. ***The judgment shall not limit or control in any way the discretion legally vested in the respondent Board.*** If permitted by its procedures, ***the Rent Board may direct the Hearing Officer to conduct a further hearing.*** If permitted by its procedures, the Rent Board may reconsider either the entire matter or only the issues implicated by this order. The court expressly does not direct the Rent Board to grant the petition for a Certificate of Exemption. (Superior Court Order, page 15)

Consistent with the Superior Court Order, the Rent Board’s May 4, 2022 Appeal Decision exercised discretion and remanded “the case back for a hearing for the introduction of evidence specifically on the issue of whether the 1002 sq. ft. piece of property properly falls under the ‘Elevated Decks and Balconies’ description as indicated by Table A.” (Appeal Decision, page 5) The hearing evidence is stated above.

At that hearing, and in this appeal of the RHD, the burden of proof remains on the owner to establish that the 810 sq. ft. of balcony space “properly falls under the ‘Elevated Decks and Balconies’ description as indicated by Table A.” For the reasons stated above, the owner failed to satisfy that burden.

Though not required to do so, tenants themselves affirmatively established, at the evidentiary hearing, that the balcony space at the property in 2014 is ***not*** “unenclosed” and satisfies the definition of “Floor area” in section 17.09.040 of the Planning Code, wherefore the 810 sq. ft. of balcony space should be costed at the \$127/sq. ft. rate in Table A for Apartment.

Therefore, the rehabilitation calculation is:

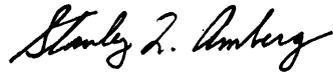
$$\begin{aligned} 13,336 \times \$127 &= \$1,693,672.00 \\ 810 \times \$127 &= \$102,870.00 \\ 192 \times \$41.16 &= \$7,902.72 \text{ [construction cost of penthouse deck]} \\ \text{Total} &= \$1,804,444.72 \text{ divided by } 2 = \$902,222.36 \end{aligned}$$

If the owner spent at least \$902,222.36 on the construction rehabilitation project, the building is exempt from the Rent Ordinance. The September 30, 2021 Hearing Decision, at pages 2-3, recalculated the construction expenses as being \$876,800.99. Because the owner failed to expend the required \$902,222.36, tenants respectfully submit that the Rent Board should hold that the subject property has not been substantially rehabilitated.

Case No. L14-0065 Tenants Explanation of Grounds for Appeal

Date: October 6, 2022

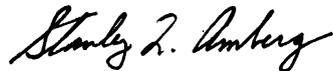
Stanley L. Amberg



4115 Kendal Way, Sleepy Hollow, NY 10591  
T: 914-238-4921, M: 914-263-7341  
[stan.amberg@amberglaw.com](mailto:stan.amberg@amberglaw.com)  
Representative for Tenants

PROOF OF SERVICE

I declare under penalty of perjury under the laws of the State of California that on October 6, 2022 I served the aforementioned APPEAL and TENANTS EXPLANATION OF GROUNDS FOR APPEAL as follows: electronically on Angelica A. Sandoval, Fried Williams & Grice Connor, LLP, attorneys for Respondent/Owner Mandana Properties, LLC.; and by placing a copy in the United States mail with all postage or charges fully prepaid, addressed as follows: Angelica A. Sandoval, Fried Williams & Grice Connor, LLP, 1939 Harrison Street, Suite 460, Oakland, CA 94612; and Ray McFadden, Mandana Properties, LLC, 1087 Ashmount Avenue, Oakland, CA 94610.





**CITY OF OAKLAND**  
**RENT ADJUSTMENT PROGRAM**  
250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612-0243  
(510) 238-3721  
CA Relay Service 711  
[www.oaklandca.gov/RAP](http://www.oaklandca.gov/RAP)

For Rent Adjustment Program date stamp.

## APPEAL

<b>Appellant's Name</b> Todd McMahon	<input type="checkbox"/> Owner <input checked="" type="checkbox"/> Tenant
<b>Property Address (Include Unit Number)</b> 3921 Harrison Street, Apt. 304, Oakland, CA 94611	
<b>Appellant's Mailing Address (For receipt of notices)</b> 3921 Harrison Street, Apt. 304, Oakland, CA 94611	<b>Case Number</b> L14-0065
	<b>Date of Decision appealed</b> September 14, 2022
<b>Name of Representative (if any)</b> Stanley L. Amberg	<b>Representative's Mailing Address (For notices)</b> 4115 Kendal Way, Sleepy Hollow, NY 10591

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.

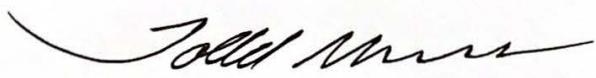
- 1) There are math/clerical errors that require the Hearing Decision to be updated. *(Please clearly explain the math/clerical errors.)*
- 2) Appealing the decision for one of the grounds below (required):
  - a)  **The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations, or prior 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.)*

- 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 the Owner's 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.)

Supporting documents (in addition to this form) must **not** exceed 25 pages, and must be received by the Rent Adjustment Program, along with a proof of service on the opposing party, within 15 days of the filing of this document. Only the first 25 pages of submissions from each party will be considered by the Board, subject to Regulations 8.22.010(A)(4). Please number attached pages consecutively. Number of pages attached: 13.

- You must serve a copy of your appeal on the opposing parties, or your appeal may be dismissed. •  
 I declare under penalty of perjury under the laws of the State of California that on October 6, 2022, 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:

<b>Name</b>	Angelica A. Sandoval, Fried Williams & Grice Connor, LLP
<b>Address</b>	1939 Harrison Street, Suite 460
<b>City, State Zip</b>	Oakland, CA 94612
<b>Name</b>	Ray McFadden, McFadden Properties, LLC
<b>Address</b>	1087 Ashmount Avenue
<b>City, State Zip</b>	Oakland, CA 94610

	October 6, 2022
---	-----------------

SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE

DATE

## IMPORTANT INFORMATION:

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

- Appeals filed late without good cause will be dismissed.
- You must provide all the information required, or your appeal cannot be processed and may be dismissed.
- **Any response to the appeal by the responding party must be received by the Rent Adjustment Program, along with a proof of service on appealing party, within 15 days of service of the service of the appeal if the party was personally served. If the responding party was served the appeal by mail, the party must file the response within 20 days of the date the appeal was mailed to them.**
- There is no form for the response, but the entire response is limited to 25 pages or less.
- The Board will not consider new claims. All claims, except jurisdictional issues, must have been made in the petition, response, or at the hearing.
- The Board will not consider new evidence at the appeal hearing without specific approval.
- You must sign and date this form or your appeal will not be processed.
- The entire case record is available to the Board, but sections of audio recordings that you want the Board to review must be pre-designated to Rent Adjustment Staff.



**CITY OF OAKLAND**  
**Department of Housing and Community Development**

**RENT ADJUSTMENT PROGRAM**

**Mandana Properties, LLC v. Tenants<sup>1</sup>**

**Case No. L14-0065**

**TENANTS EXPLANATION OF GROUNDS FOR APPEAL**

**Introduction**

This is an appeal by tenants from the Remand Hearing Decision in Case No. L14-0065, dated September 14, 2022 and served by United States mail on September 20, 2022.

**Explanation of Grounds for Appeal**

**The Owner Has the Burden of Proof.**

Former OMC section 8.22.030 B.1.b. expressly places on the *owner* the burden of proof and producing evidence.<sup>2</sup> Section 8.22.030 B.1.b. states:

“For purposes of obtaining a certificate of exemption or responding to a tenant petition by claiming an exemption from Chapter 8.22, Article I, the burden of proving and producing evidence for the exemption is on the owner.”

*See Fukuda v. City of Angels*, (1999) 20 Cal. 4<sup>th</sup> 805; *Drummey v. State Bd. of Funeral Directors*, (1939) 13 Cal. 2d 75.

This is significant because, as will be shown, the owner has failed to produce and prove by any legally-cognizable standard or evidence that 810 square feet of the property falls under the Elevated Decks and Balconies description indicated by Table A.

---

<sup>1</sup> Formerly 525, 655 Hyde Street CNML, Properties, LLC v. Tenants.

<sup>2</sup> That section was effective in 2014 when the owner filed its petition for substantial rehabilitation. It remains in effect for this case.

Case No. L14-0065 Tenants Explanation of Grounds for Appeal

The Superior Court's August 23, 2018 Order  
Is the Governing Law of the Case.

The judicial authority governing this case is the August 23, 2018 Order of the California Superior Court, Alameda County, in case No. RG17-862841 ("Superior Court Order").<sup>3</sup> The order and judgment are the controlling law of the case.

The Superior Court held that, in prior proceedings in L14-0065, the Rent Board should have focused on the "cost of building or rehabilitating the balconies" rather than the "potential use of the balconies". The Superior Court Order said:

The Board misapplied OMC 8.22.030.B.2.b and the incorporated tables by focusing on the potential use of the balconies rather than the cost of building or rehabilitating the balconies. ...

This was legal error because the Table A analysis concerns the cost of constructing the project or part of the project, not the potential use of the constructed property. (Superior Court Order, page 13)

Critically, the Superior Court Order expressly did *not* direct the Rent Board to grant the petition for a Certificate of Exemption. The order did *not* direct the Rent Board to cost the balconies at \$41.16/sq.ft.

To the contrary, the court ordered the Rent Board to reconsider the case in light of the Superior Court Order and the judgment. The Superior Court Order specifically held that the court's judgment "*shall not limit or control* in any way the *discretion* legally vested" in the Rent Board. The Superior Court Order said:

Consistent with CCP 1094.5(f), the court orders the City of Oakland Rent Board to reconsider the case in light of the court's opinion and judgment. The *judgment shall not limit or control in any way the discretion legally vested in the respondent Board*. If permitted by its procedures, the *Rent Board may direct the Hearing Officer to conduct a further hearing*. If permitted by its procedures, the *Rent Board may reconsider either the entire matter or only the issues implicated by this order*. The court expressly does not direct the Rent Board to grant the petition for a Certificate of Exemption. (Superior Court Order, page 15)

Proceedings in the RAP After the Superior Court Order

Without waiting for instructions from the Rent Board on whether to reconsider the entire matter or only issues implicated by the Superior Court Order, and without any notice to tenants, the Hearing Officer issued a Hearing Decision on September 30, 2021. The decision granted the

---

<sup>3</sup> The Order is in the record of the remand evidentiary hearing.

Case No. L14-0065 Tenants Explanation of Grounds for Appeal

petition to exempt the property from the Rent Adjustment Program as a substantially rehabilitated building.

Tenants appealed, and in an Appeal Decision dated May 4, 2022 the Rent Board vacated the September 30, 2021 Hearing Decision. The Appeal Decision referenced the Superior Court Order's ruling that the court's judgment "shall not limit or control in any way the discretion legally vested" in the Board, and that if permitted, the Board "may direct the Hearing Officer to conduct a further hearing". (Appeal Decision, at pages 3-4) Accordingly, the Appeal Decision remanded the case back "for a hearing for the introduction of evidence specifically on the issue of whether the 1002 sq. ft. piece of property properly falls under the 'Elevated Decks and Balconies' description as indicated by Table A." (Appeal Decision, page 5)

The Remand Evidentiary Hearing

The remand hearing was held on June 29, 2022. The parties (owner and tenants) introduced written evidence and live (via Zoom) testimony.

The property at issue in the hearing comprises 15 apartment balconies and one penthouse deck. The total area of the balconies and the deck is 1002 square feet.

Without prejudice, tenants accepted, at the hearing, that the penthouse deck may be costed at \$41.16/sq. ft. The dispute was thus narrowed to determining the Table A cost status of the 15 balconies whose total area is 810 square feet.<sup>4</sup>

Both parties introduced sworn transcript testimony by Martin Gallagher. He was the contractor who, in 2014, did the rehabilitation construction work on the property. He testified that the actual 2014 cost of rehabilitating the balconies was \$180,000.

Q: Am I correct that the total that was charged by you for the construction of the balconies in the 15 apartments, including engineers and architects, was \$180,000?

A: That is correct.<sup>5</sup>

That \$180,000 cost of rehabilitating the balconies was a full 20% of the entire \$876,800.99 spent on the rehabilitation project. \$180,000 divided by the 810 sq. ft. of total balcony space yields an actual balcony rehabilitation cost of \$222.22 per sq. ft.

---

<sup>4</sup> May 29, 2015 Hearing Decision in Case L14-0065, page 5 "Square Footage".

<sup>5</sup> Gallagher testimony to the present Hearing Officer on January 13, 2017 in Case L15-0073. Hereinafter "Gallagher January 13, 2017", at 22:18-22.

Case No. L14-0065 Tenants Explanation of Grounds for Appeal

This is relevant evidence that the proper Table A cost for the 810 square feet of balcony area is \$127 per square foot rather than \$41.16. It is relevant evidence because the Superior Court Order specifically said it is proper to focus on the “cost of building or rehabilitating the balconies.” The Superior Court Order said:

The Board misapplied OMC 8.22.030.B.2.b and the incorporated tables by focusing on the potential use of the balconies rather than the cost of building or rehabilitating the balconies. (Order, at 13:12-13; emphasis added)

Mr. Gallagher testified to the reason why the cost to rehabilitate the balconies was high. The solid walls and floors of the balconies had become rotted, weak and had to be replaced.

[E]ach balcony had to get new joists plus new posts to support the balcony above because of the design of the old balconies run into the house. And instead of disturbing the tenants, we had the engineer come up with a new solution by adding to it and then only adding structural supports to the foundation below that would support the balconies without having to go in and open up all the ceilings inside the apartments. ... Everyone would have to move out. We would have to take off all of the ceilings, take out the walls, take out the blocks, and redo everything in order to get the cantilever correctly. (Gallagher testimony at original hearing of L14-0065, April 27, 2015, 39:27 – 40:11 (MCF 20:27 – 21:11))

Q: What work did you do on the construction of the balconies?

A: They were almost completely rebuilt, reengineered with new structural foundations, structural seepings, and pretty much 15 new balconies.

Q: Why were the balconies rebuilt?

A: They were rebuilt because when we removed the stucco around the windows and doors we noticed that there was dry rot in some of the balconies, so with that, we had to do an investigation to trace the rot. And once we traced the rot, then we realized that the entire balconies they needed to be replaced. (Gallagher, January 13, 2017 at 22:23 – 24:9.)

The Remand Hearing Decision’s Failure  
To Consider the Cost To Rehabilitate the Balconies Is An Error of Law.

The September 14, 2022 Remand Hearing Decision (from which this appeal is taken) did not mention or discuss, and therefore gave no weight to, this evidence of the actual 2014 rehabilitation cost and the reason for it. Respectfully, that omission was an error of law. It was

an error of law because the Superior Court Order specifically said it is necessary to focus on the “cost of building or rehabilitating the balconies.” The Superior Court Order said:

The Board misapplied OMC 8.22.030.B.2.b and the incorporated tables by focusing on the potential use of the balconies rather than the cost of building or rehabilitating the balconies. (Order, at 13:12-13; emphasis added)

Evidence At the Remand Hearing  
About the Physical Structure of the Balconies in 2014

Turning next to the live testimony at the June 29, 2022 remand hearing, Ms. Susan Spott testified for the owner. She admitted she did not see any of the balconies of the property in 2014 when the rehabilitation of the property was carried out. (Hearing recording, at 1:07:53 – 1:07:56) Ms. Julie Amberg testified for the tenants. She now lives at the property. She lived at the property in 2014 and knows the structure of the balconies when they were rehabilitated in 2014.

Ms. Spott testified to her understanding of what constituted apartment space. (Hearing recording, at 53:28 – 53:50) But, she admitted that was her own personal understanding.

“So when I think of an apartment, that’s what I think of.” (Hearing recording, at 53:54)

Notably, Ms. Spott did not rely on or refer to any definition of “apartment” in the Oakland, CA Planning Code or in the Oakland, CA Buildings Maintenance Code. Nor could she. *Neither “apartment” nor “balcony” is defined in Oakland’s Buildings Maintenance Code or Oakland’s Planning Code.*

Next, Ms. Spott referred to and relied on the definition of “Floor area” in section 17.09.040 of the Planning Code. (Hearing recording, at 56:27 – 57:04) That definition states:

2. "Floor area," for all projects with one or two dwelling units on a lot, means the total square footage of all levels of all buildings on the lot. Levels shall be measured horizontally from the outside surface of exterior walls and supporting columns. The amount of floor area in each building shall be determined by the following criteria:
  - a. Floor area shall include all enclosed shafts, including stairwells, ventilation shafts and similar vertical shafts; the floor area of such shafts shall consist of the horizontal projection into the shaft of surrounding floor area; and
  - b. Floor area shall not include:
    - i. Unenclosed living areas such as balconies, decks and porches;
    - ii. Carports that are unenclosed on two (2) or more sides;
    - iii. Up to four hundred forty (440) square feet within an attached or detached garage or carport that is enclosed on three (3) or more sides;
    - iv. Nonhabitable accessory structures of less than one hundred twenty (120) square feet;

Case No. L14-0065 Tenants Explanation of Grounds for Appeal

- v. Attics and basements, as defined in the Oakland Planning Code, that do not qualify as a story; and
- vi. Finished and unfinished understories and basements if the height from finished grade at the exterior perimeter of the building to the finish floor elevation above is six (6) feet or less for at least fifty percent (50%) of the perimeter and does not exceed twelve (12) feet above grade at any point.

Under that definition, the total square footage of the floor area of the property would include the 810 square feet of balconies unless they were “unenclosed” and thus excluded by sub-section b.i.

Significantly, Ms. Spott did not (and could not) testify whether the balconies at the property were or were not “unenclosed” in 2014 when the balcony rehabilitation work was performed. She had not seen the balconies in 2014.

Q Ms. Spott, it’s certainly true, is it not, that in 2014 you did not see any of the so-called balconies on this property, correct?

A That is true. (Hearing recording, at 1:07:54 -- 1:07:56)

Ms. Amberg, however, lived in the property in 2014 and knew the structure of the balconies. She testified to the physical structure of the balconies, live (via Zoom), under oath at the June 29, 2022 remand hearing. She testified that the balconies were *not* “unenclosed”. The balconies had a ceiling and four solid walls. The rear wall was the wall of the building itself. Left and right side walls extended from floor to ceiling. Standing on the balcony, facing out, there was a partial wall. It was not a railing with slats. It was a full wall, constructed of beams and covered with the same materials as the other walls.

Being enclosed, the balconies satisfied the definition of “Floor area” in section 17.09.040 of the Planning Code.

Ms. Amberg’s testimony about the physical structure of the balconies is relevant. It is specifically authorized by the Superior Court Order. The Order specifically permitted focus on the “physical structure” of the balconies.

As a matter of statutory construction, the City must apply Table A to projects or parts of projects based on whether the Description reasonably describes the physical structure to be constructed. (Order, at 13:1-3; emphasis added)

Case No. L14-0065 Tenants Explanation of Grounds for Appeal

Lest the Rent Board doubt Ms. Amberg's testimony "reasonably describes the physical structure" of the balcony space, the full testimony of Ms. Amberg at the June 29, 2022 hearing is presented below.

Direct Examination Questions by Tenant Representative:

- Q I want to ask you a question or two about the balcony on your apartment. [1:37:45]  
Did that balcony have walls such that as you were walking into the balcony there was a wall to the left, the right and straight ahead of you, with the wall extending about up to your waist or thereabout? [1:38:16]
- A Yes. And the side walls are from floor to ceiling, the left and right, and there is a full ceiling over there. [1:38:32]
- Q One other question, just to clarify, did the balcony have an electric outlet? [1:38:47]
- A It did and it does on one of those side walls. [1:39:04]

Cross Examination Questions by Owner Representative Angelica Sandoval, and Questions by the Hearing Officer

- Q When you are outside on the balcony, do you feel the elements? [1:39:32]
- A The same way I would if I am in the rest of my apartment with the window open. [1:39:40]
- Q So when you are outside on the balcony do you feel air? [1:39:46]
- A Yes and I feel air throughout the building. [1:39:51]
- Q And if it is raining and if it is windy, you will feel the rain and wind, correct? [1:39:56]
- A No. I will not feel the rain on parts of the balcony because there is a ceiling and walls. [1:40:04]
- Q But, you will feel the wind? [1:40:06]
- A You know, the same as I would if my window is open, or something like that. [1:40:11]
- Q But, when you ... in particular my question is when you are out on the balcony, do you feel the wind? [1:40:16]
- A I might. [1:40:19]
- Q If it is windy, would you feel the wind? [1:40:24]
- A Probably, depending on where I am standing. [1:40:29]
- Q When you are inside your unit, you will feel the wind if the window is open, correct? [1:40:38]
- A Well the whole thing is part of my unit, so I don't know what you mean. [1:40:46]
- Q When you are inside your unit ...
- A I'm inside partly when I'm on the balcony because it has walls and a ceiling. [1:40:53]
- Q But you will feel the wind? [1:41:00]
- A Yes, if I am standing in a certain place, perhaps. Just as I would if I am standing near a window or even farther in from a window, it can get pretty windy. [1:41:14]
- Q How do you exit from the inside of your space into the balcony? Is there a door? [1:41:20]
- A There is a sliding door just as there is a sliding door into my bathroom. [1:41:25]
- Q Is the balcony fully enclosed with walls? [1:41:35]
- A What do you mean by fully enclosed? [1:41:39]

Case No. L14-0065 Tenants Explanation of Grounds for Appeal

- Q Is it enclosed in a way that you would not feel the elements? [1:41:45]
- A Well, yes, the same way as if I'm in a part of my apartment that has windows, I would feel or not feel the elements. [1:42:00]
- Q by Hearing Officer: So do you have window on the balcony? [1:42:03]
- A The sliding door that I referred to, which I also have a sliding door to my bathroom and closets, is a window also. [1:42:18]
- Q by Hearing Officer: I don't understand. When you are standing outside on the balcony, there is no wall in front of you if you are facing out, right? [1:42:31]
- A There is a partial wall. [1:42:31]
- Q by Hearing Officer: Like a pony wall like the railing, right? [1:42:35]
- A No. It is a wall. It is a full wall, not like slat railing or balustrade or anything. [1:42:51]
- Q by Ms. Sandoval: Are you familiar with the planning code? [1:42:53]
- A What planning code? [1:42:55]
- Q Oakland planning code. [1:42:57]
- A Only from this hearing. [1:43:03]
- Q What do you do as a profession? [1:43:06]
- A I am a social worker. [1:43:10]
- Q Are you familiar with the definition of a wall as would be stated in Oakland Building and Planning Code? [1:43:17]
- A I don't know the specific definition, but I also observed part of the construction and it seems to me that what I call that, this wall on the other side, it has gotten beams and whatever else makes up a wall, and it is covered by the same stuff that all the other walls are covered with. [1:43:51]
- Q Are you familiar with the definition of a railing as stated in Oakland Building and Planning Code? [
- A No.
- Ms Sandoval: No further questions. [1:44:01] No further witnesses. [1:44:25]

Assuming (as did Ms. Spott) that the definition of "Floor area" in the Planning Code is a determinant of whether the 810 sq. ft. of balcony space properly falls under the 'Elevated Decks and Balconies' description indicated by Table A, the testimony of Ms. Amberg establishes that the balconies were *not* "unenclosed". They had walls and a ceiling. They are *not* excluded from "Floor area". Her testimony is the only evidence of the actual structure of the balconies in 2014. Her testimony establishes that the actual physical structure of 810 sq. ft. of balcony area falls within the definition of a dwelling's "Floor area" and thus falls within the "Apartment" category of Table A.

Owner's witness, Ms. Spott did not, and could not, testify to the structure of the balconies in 2014. Thus, the owner failed to satisfy its burden to prove that the balcony space falls under the 'Elevated Decks and Balconies' description indicated by Table A.



Case No. L14-0065 Tenants Explanation of Grounds for Appeal

The Remand Hearing Decision Erred As A Matter of Law  
By Engrafting Onto the Definition of “Floor area”  
A Requirement That The Balconies Must Be “Entirely Closed”.

The September 14, 2022 Remand Hearing Decision (“RHD” from which this appeal is taken) committed an error of law with respect to the definition of “Floor area” in section 17.09.040 of the Planning Code. The RHD engrafted, onto the definition, a requirement that the balconies must be “entirely closed to the elements.” The RHD said, at 4-5:

Although Ms. Amberg testified that there is a waist-high wall on one side of the balcony, the existence of the wall does not mean that balcony can be closed – it remains open to the outside. The fact that Ms. Amberg can feel the wind in her apartment when the windows are open does not change the nature of the apartment itself from being a residential space, capable of being entirely closed to the outside elements, as opposed to the balcony being an outside space which cannot be entirely closed to the elements.

A hearing officer is not authorized to amend definitions for the relevant codes. Formulating definitions is the legislative authority and responsibility of the Oakland City Council. The City Council exercises that authority and responsibility by enacting Ordinances. The Ordinances are enacted after allowing hearings and public comment.

For example, on January 10, 2022 the City Council passed Ordinance No. 13677 which amended the definitions in section 17.09.040 of the Planning Code to redefine “Secondary Accessory Dwelling Unit”. The legislative process and history for Ordinance No. 13677 is at [City of Oakland - File #: 21-0829 \(legistar.com\)](#)

In this appeal, the Rent Board should therefore disregard the “entirely closed” requirement that was impermissibly added by the RHD. When the “entirely closed” requirement is not imposed, the exclusion of sub-section b.i. is not applicable, and the 810 square feet of balcony area falls within the definition of section 17.09.040 of the Planning Code, and is included in the “Floor area” of the dwelling. Thus included, the 810 square feet of balcony area are properly costed as “Apartment” in Table A at the rate of \$127 per square foot.

The Remand Hearing Decision Erred As a Matter of Law  
By Adopting Ms. Spott’s Personal Definitions of Apartment and Balcony.

Ms. Spott testified to her understanding of what constituted apartment space. (Hearing recording, at 53:28 – 53:50) But, she admitted that was her own personal understanding.

“So when I think of an apartment, that’s what I think of.” (Hearing recording, at 53:54)

The RHD referred to Ms. Spott's own, personal definitions of balcony space and apartment space. (RHD, at 3) However, the RHD failed to acknowledge there is *no* definition of either "balcony" or "apartment" in the building code or in the planning code.

The RHD seized on Ms. Spott's personal definitions to formulate definitions of deck/balcony space and apartment space. The RHD said:

The testimony of the witnesses established that the deck/balcony space is an outdoor space and different from an apartment space. The apartment space can be entirely closed to outside elements if windows and doors are closed; it has heating, plumbing, and electricity. The deck/balcony space is open to the outside, cannot be closed, there is no heat; it is not a residential space but an outdoor space exposed to outside elements. (RHD, at 4)

Respectfully, that is an error of law, and is against public policy.

It is an error of law because, as with an amendment to a code definition, neither witnesses nor hearing officers are authorized to formulate entire definitions for the relevant codes. Formulating definitions is the legislative authority and responsibility of the Oakland City Council. The City Council exercises that authority and responsibility by enacting Ordinances. The Ordinances are enacted after allowing hearings and public comment.

Sound public policy supports the prohibition against individuals and hearing officers, on their own, defining what constitutes an apartment or a balcony. Neither one – witness nor hearing officer – can create precedent binding on other hearing officers. Different hearing officers may formulate differing definitions. This can lead to chaos – different outcomes, depending on who is the hearing officer assigned to a case. This harms the parties to a case. In addition, the public is harmed because it is excluded from the definition-forming process. For these reasons, the code-defining process is the exclusive legislative prerogative of the Oakland City Council, which enacts ordinances after public hearings. The ordinances give predictable guidance to parties and the public. They are binding on the courts and on all departments of the RAP.

The Remand Hearing Decision Committed Legal Error  
By Restricting Its Own Definition of Balcony To  
Structures That Are "Entirely" Closed To The Elements.

Returning to the RHD and its legally-impermissible definitions quoted above, the RHD compounded its error when it engrafted yet another restriction onto its definitions of "balcony".

The RHD added a requirement that the balcony must be “entirely closed to the elements.” The RHD said, at 4-5:

Although Ms. Amberg testified that there is a waist-high wall on one side of the balcony, the existence of the wall does not mean that balcony can be closed – it remains open to the outside. The fact that Ms. Amberg can feel the wind in her apartment when the windows are open does not change the nature of the apartment itself from being a residential space, capable of being entirely closed to the outside elements, as opposed to the balcony being an outside space which cannot be entirely closed to the elements.

The RHD’s “entirely closed” definition of balcony rewrites the RHD’s own definition of balcony. That rewriting is legal error for the reasons stated above.

#### Additional Material Errors In the Remand Hearing Decision

Returning to the RHD itself, the first full paragraph on page 5 of the RHD is replete with error, legal and factual. It warrants heightened scrutiny. The first two sentences read:

There is no dispute about the building space square footage (13,336) and the deck/balcony space square footage (1,002). There is no dispute that the 1,002 square feet consists of deck/balcony space.

The underscored sentence is legally and factually wrong. The status of the 1,002 square feet of the property is very much in dispute. Indeed, it is the heart of the issue for which the Rent Board’s Appeal Decision ordered a remand to take testimony. The Appeal Decision clearly remanded the case back “for a hearing for the introduction of evidence specifically on the issue of whether the 1002 sq. ft. piece of the property properly falls under the ‘Elevated Decks and Balconies’ description as indicated by Table A.” (Appeal Decision, at 5)

The paragraph on page 5 of the RHD continues:

Table A has a specific category called “Elevated Decks and Balconies.” The Court clearly and specifically stated that the Board or the Hearing Officer do not have discretion over how to treat each space but must apply the specific category listed on Table A, which determines the cost of new construction per square foot to the corresponding project or part of the project.

The underscored sentence is legally and factually wrong. It accuses this Board of committing error when it exercised discretion to remand the case for an evidentiary hearing.

The Board did not commit error or abuse its discretion. The Superior Court Order specifically and unequivocally held that its judgment “*shall not limit or control* in any way the *discretion* legally vested” in the Rent Board. The Superior Court Order said:

Case No. L14-0065 Tenants Explanation of Grounds for Appeal

Consistent with CCP 1094.5(f), the court orders the City of Oakland Rent Board to reconsider the case in light of the court’s opinion and judgment. ***The judgment shall not limit or control in any way the discretion legally vested in the respondent Board.*** If permitted by its procedures, ***the Rent Board may direct the Hearing Officer to conduct a further hearing.*** If permitted by its procedures, the Rent Board may reconsider either the entire matter or only the issues implicated by this order. The court expressly does not direct the Rent Board to grant the petition for a Certificate of Exemption. (Superior Court Order, page 15)

Consistent with the Superior Court Order, the Rent Board’s May 4, 2022 Appeal Decision exercised discretion and remanded “the case back for a hearing for the introduction of evidence specifically on the issue of whether the 1002 sq. ft. piece of property properly falls under the ‘Elevated Decks and Balconies’ description as indicated by Table A.” (Appeal Decision, page 5) The hearing evidence is stated above.

At that hearing, and in this appeal of the RHD, the burden of proof remains on the owner to establish that the 810 sq. ft. of balcony space “properly falls under the ‘Elevated Decks and Balconies’ description as indicated by Table A.” For the reasons stated above, the owner failed to satisfy that burden.

Though not required to do so, tenants themselves affirmatively established, at the evidentiary hearing, that the balcony space at the property in 2014 is ***not*** “unenclosed” and satisfies the definition of “Floor area” in section 17.09.040 of the Planning Code, wherefore the 810 sq. ft. of balcony space should be costed at the \$127/sq. ft. rate in Table A for Apartment.

Therefore, the rehabilitation calculation is:

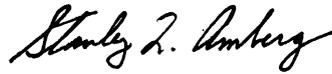
$$\begin{aligned} 13,336 \times \$127 &= \$1,693,672.00 \\ 810 \times \$127 &= \$102,870.00 \\ 192 \times \$41.16 &= \$7,902.72 \text{ [construction cost of penthouse deck]} \\ \text{Total} &= \$1,804,444.72 \text{ divided by } 2 = \$902,222.36 \end{aligned}$$

If the owner spent at least \$902,222.36 on the construction rehabilitation project, the building is exempt from the Rent Ordinance. The September 30, 2021 Hearing Decision, at pages 2-3, recalculated the construction expenses as being \$876,800.99. Because the owner failed to expend the required \$902,222.36, tenants respectfully submit that the Rent Board should hold that the subject property has not been substantially rehabilitated.

Case No. L14-0065 Tenants Explanation of Grounds for Appeal

Date: October 6, 2022

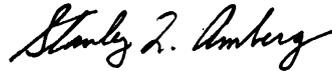
Stanley L. Amberg



4115 Kendal Way, Sleepy Hollow, NY 10591  
T: 914-238-4921, M: 914-263-7341  
[stan.amberg@amberglaw.com](mailto:stan.amberg@amberglaw.com)  
Representative for Tenants

PROOF OF SERVICE

I declare under penalty of perjury under the laws of the State of California that on October 6, 2022 I served the aforementioned APPEAL and TENANTS EXPLANATION OF GROUNDS FOR APPEAL as follows: electronically on Angelica A. Sandoval, Fried Williams & Grice Connor, LLP, attorneys for Respondent/Owner Mandana Properties, LLC.; and by placing a copy in the United States mail with all postage or charges fully prepaid, addressed as follows: Angelica A. Sandoval, Fried Williams & Grice Connor, LLP, 1939 Harrison Street, Suite 460, Oakland, CA 94612; and Ray McFadden, Mandana Properties, LLC, 1087 Ashmount Avenue, Oakland, CA 94610.





Fried,  
Williams &  
Grice Conner

1939 Harrison Street, Suite 460, Oakland, CA 94612  
Tel 510-625-0100  
625 Market Street, 4<sup>th</sup> Floor, San Francisco, CA 94105  
Tel 415-421-0100  
www.friedwilliams.com

Angelica Sandoval Montenegro  
asandoval@friedwilliams.com

October 26, 2022

Via Email to: [hearingsunit@oaklandca.gov](mailto:hearingsunit@oaklandca.gov)  
City of Oakland Rent Adjustment Program  
ATTN: Hearings unit  
250 Frank Ogawa Plaza, Suite 5313  
Oakland, CA 94612

Re: Good cause request to exceed page limit under Regulation 8.22.120(A)(5)  
Response to appeal re: RAP Case No. L14-0065

To Whom it May Concern:

The Rent Adjustment Program Regulation 8.22.120(A)(5) provides that staff may “modify or waive” the maximum page limit of 25 pages for “good cause”. Respondent in the above referenced matter submitted a response to appeals which exceeded the maximum allowable page limit. Respondent exceeded this page limit because Respondent included exhibits that are important for the Appeal Board or Panel to consider. Those exhibits include rulings from the RAP and Alameda Superior Court and a picture. To provide complete transparency to the Board of Appeal or Panel, Respondent requests that it should be permitted to exceed the page limit. Thank you.

Sincerely,  
Fried, Williams & Grice Conner

DocuSigned by:

*Angie Sandoval*

3FD3AA6FDD0C407...

Angelica Sandoval Montenegro

000518

1 Clifford E. Fried SBN 118288  
2 Angelica Sandoval Montenegro SBN 318093  
3 Fried, Williams & Grice Conner LLP  
4 1939 Harrison Street, Suite 460  
5 Oakland, California 94612  
6 Telephone: (510) 625-0100  
7 Facsimile: (510) 550-3621  
8 Email: asandoval@friedwilliams.com

9 Attorneys for Respondent /Owner  
10 Mandana Properties, LLC

11 **DEPARTMENT OF HOUSING & COMMUNITY DEVELOPMENT AGENCY**  
12 **RENT ADJUSTMENT PROGRAM**  
13 **CITY OF OAKLAND**

14 Julie E. Amberg;  
15 Todd MacMahon;  
16 Mari Oda;

17 Petitioners/Tenant,

18 vs.

19 525, 655 Hyde Street CNML Properties, LLC

20 Respondent/Owner.

**CASE NO.: L14-0065 \_\_\_\_\_**

**RESPONDENT’S RESPONSE TO APPEAL**

21 Respondent Mandana Properties, LLC hereby responds in opposition to Petitioners Julie E.  
22 Amberg, Todd McMahon, and Mari Oda (collectively, “Petitioners”) appeal of the September 14,  
23 2022 Remand Hearing Decision (the “Remand Decision”). A true and correct copy of said 2022  
24 Remand Decision without the proof of service is attached hereto as **Exhibit A**. Petitioners, through  
25 their attorney, submitted their respective appeals on October 6, 2022. Petitioners appeal is without  
26 merit. We urge the Board to uphold the Remand Decision.

27 **I. INTRODUCTION**

28 On May 4, 2022, the Appeal Board remanded the case for a hearing on one limited issue –  
whether the 1002 sq. feet piece of property properly falls under the “elevated Decks and Balconies”  
description as indicated by Table A.” A copy of the Court’s Order is attached hereto as **Exhibit B**.

1 Linda Moroz, the hearing officer, conducted a hearing and found that the 1002 sq. ft  
2 property properly falls under “Elevated Decks and Balconies” to be valued at \$41.16 per sq. ft. as  
3 shown in Table A. *See* page 5 of Remand Decision.

4 Petitioners dislike the outcome of the Remand Decision and filed appeal briefs that include  
5 diatribe complaining about irrelevant facts. Petitioners fail to provide any cogent argument based on  
6 law or fact.

7 **APPEAL GROUNDS:**

- 8 A. The decision is inconsistent with OMC Chapter 8.22 and decisions issued by other  
9 Hearing Officers;  
10 B. The decision raises a new policy issue that has not been decided by the Board;  
11 C. The decision violates federal, state, or local law;  
D. The decision is not supported by substantial evidence;

12 **II. ARGUMENTS**

13 **A. Petitioners fail to demonstrate how this decision is inconsistent with Oakland’s**  
14 **law, regulation, or prior decisions.**

15 When alleging a decision is inconsistent with the law, regulations, or prior decisions, an  
16 appellant is required to identify the Ordinance section, regulations, or prior Board decision, and  
17 describe how the decision is inconsistent. Petitioners have not provided this information and thus fail  
18 to meet their burden of proof.

19 In the alternative, Petitioners may be claiming that under OMC Section 8.22.030 B.1.b,  
20 Respondent failed to meet their burden of proof and did not provide sufficient evidence that the  
21 property qualifies for an exemption. Petitioners allege “[t]he Board misapplied OMC 8.22.030.B.2.b  
22 and incorporated on tables by focusing on the potential use of the balconies rather than the cost of  
building or rehabilitating the balconies.”

23 Petitioners’ argument is confusing and is made to mislead the Board. The limited issue in front  
24 of the Board is whether the hearing officer properly held that the 1002 sq. feet piece of property  
25 properly falls under the “elevated Decks and Balconies” description as indicated by Table A. The  
26 hearing officer determined that it did.  
27  
28



1           Petitioners’ argument fails because it leaves out essential sections of the Court’s order. The  
2 Court held, “There is substantial evidence to support the Board’s fact finding that the property space  
3 included both the apartment space and the deck and balcony space.” Table A provides a matrix of  
4 variables that are required for the hearing officer to determine the correct dollar value the owner must  
5 have spent to be able to claim the certificate of exemption. Table A differentiates amount different  
6 descriptions of construction. Table A included “apartment space” at \$127 sqft, and “elevated decks  
7 and balconies” space at \$41.16 sqft, as well as many other descriptions of space.

8           The Court held, “The Board misapplied OMC 8.22.030.B.2.b and the incorporated tables by  
9 treating both the 13,337 sqft and the 1,002 sqft as Apartment space.” The Court held that “[w]here  
10 Table A sets out a specific Description that applies to a project or a part of the project, the Board must  
11 give effect to that specific Description.”

12           After considering all the evidence, The RAP found that the 1002 sqft should be calculated  
13 using the description in Table A for elevated decks and balconies at \$41.16 sqft. Thus, Petitioners  
14 argument lacks merit.

15           **B.     Petitioners fail to demonstrate how this is a new policy issue that has not been**  
16 **decided by the Board.**

17           It is unclear what Petitioners are alleging are new policy issues. When alleging a decision  
18 raises a new policy issue, a petitioner is required to provide a detailed statement of the issue and why  
19 the issue should be decided in his/her/their favor.

20           The rent board and hearing officers are experienced with balancing the evidence and issuing  
21 decisions accordingly. No novice issues were presented. Thus, Petitioners appeal should be denied on  
22 that basis.

23           **C.     Petitioners fails to demonstrate how the Decision violates federal, state, or local**  
24 **law.**

25           Petitioners fails to state the law that is being violated. Respondent is not violating any laws. It  
26 appears that Petitioners are requesting the RAP to disobey the Court’s orders and violate the law.  
27 Thus, this argument should be disregarded.

1           **D.       Petitioners fail to demonstrate how the Decision is not supported by substantial**  
2 **evidence.**

3           The Board or Appeal Panel applies the substantial standard when reviewing a hearing decision.  
4 The Board or Panel does not decide whether it would have reached the same conclusion. Instead, the  
5 Board or Panel is tasked to decide whether a reasonable factfinder could have reached the same  
6 conclusion based on the evidence in the record.

7           The hearing officer heard testimony of the witnesses and heard what they said, the hearing  
8 officer had the opportunity to question the witnesses, and to review all evidence submitted in this case.  
9 The hearing officer is in the best position to weigh all the evidence.

10           One of the witnesses that presented testimony is Susan Spott. Ms. Spott has worked as a  
11 building inspector for twenty years. Petitioners attempt to undermine Ms. Spott’s testimony by saying  
12 that did not physically to the property to inspect it. However, Petitioners intentionally leave out that  
13 Ms. Spott reviewed documents, photographs, and the RAP’s record before giving her expert opinion.  
14 The RAP found Ms. Spott’s opinion credible.

15           Petitioner’s Amberg’s also testified at the Remand Hearing. Ms. Amberg said that when  
16 standing on the balcony and facing outside, there is a partial wall, side walls, and a floor and ceiling.  
17 Petitioner’s Amberg’s testimony is not clear on whether the balcony is open or enclosed. Although, the  
18 Board or Appeal Panel generally does not consider evidence, when the “evidence is limited in scope  
19 and resolution of the matter is more efficient than having it remanded to a Hearing Officer”, the Board  
20 or Appeal may consider such evidence. OMC Regulation 8.22.120.F.2. To assist the Board or Appeal  
21 Panel address this concern, Respondent would like the Board or Appeal Panel to consider a picture of  
22 the balcony. Attached hereto as **Exhibit C** is a picture taken by Respondent on July 14, 2022. This  
23 reflects the condition of the balconies as they are currently and as they were when they were built in  
24 2014. The top balcony is that of Ms. Amberg. Respondent requests the Board or Appeal Panel accept  
25 this picture without remanding the decision back to the hearing officer.

26           It is obvious, that Petitioners are dissatisfied with the Remand Decision. It seems that  
27 Petitioners are asking the Appeal’s Board or Panel to undermine the hearing officer, her work in  
28

1 preparing the Remand decision, and her judgment. Petitioners fails to show that there was a lack of  
2 substantial evidence. Thus, this argument should be disregarded.

3  
4 **III. CONCLUSION**

5 The limited issue on Appeal is whether the 1002 sq. ft. piece of property properly falls under  
6 the “elevated Decks and Balconies” description as indicated by Table A. After weighing all the  
7 evidence and hearing testimony, the hearing officer decided that the 1002 sq. ft piece of property does  
8 fall under this description.

9 Petitioners have failed to provide valid arguments as to why the Remand Decision should be  
10 dismissed. Petitioners have made these same arguments to the Superior Court, Appeals Court, Rent  
11 Board on multiple occasions including the Remand Hearing and now to the Appeals Board again.  
12 Petitioners are dissatisfied with Remand Decision and are making transparent attempts to delay  
13 justice for Respondent. Petitioners continue to abuse the RAP process and have delayed this matter  
14 since 2014.

15 For the forgoing reasons, the Remand Decision is correct as a matter of law and should be  
16 affirmed on appeal.

17 Date: October 26, 2022

FRIED, WILLIAMS, & GRICE CONNER, LLP

18 *Angelica Sandoval*

19 \_\_\_\_\_  
20 Angelica Sandoval Montenegro  
21 Attorneys for Respondent/Owner  
22 Mandana Properties, LLC  
23  
24  
25  
26  
27  
28

# EXHIBIT A

000524

## CITY OF OAKLAND



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

Department of Housing and Community Development  
Rent Adjustment Program

TEL (510) 238-3721  
FAX (510) 238-6181  
CA Relay Service 711

### REMAND HEARING DECISION

**CASE NUMBER AND NAME:** L14-0065, Mandana Properties, LLC v. Tenants  
(formerly 525, 655 Hyde Street CNML Properties,  
LLC v. Tenants)

**PROPERTY ADDRESS:** 3921 Harrison St., Oakland, CA

**REMAND HEARING DATE:** June 29, 2022

**APPEARANCES:** Ray McFadden, Owner  
Susan Elizabeth Spott, Witness for Owner  
Angie Sandoval, Attorney for Owner  
Mari Oda, Tenant  
Julie Amberg, Tenant  
Stanley Amberg, Attorney for Tenants

**TENANTS' CLOSING BRIEF  
SUBMISSION DEADLINE:** July 22, 2022

**RESPONSE DEADLINE:** July 29, 2022

**DATE OF REMAND DECISION:** September 14, 2022

### PROCEDURAL BACKGROUND

A Hearing Decision in this case was issued on May 29, 2015, denying the owner's petition for a Certificate of Exemption based on substantial rehabilitation. The owner appealed.

An Appeal Hearing was held on December 8, 2016. The Housing, Residential, Rent and Relocation Board (the Board) affirmed the Hearing Decision, and separately affirmed the portion of the Hearing Decision that included the decks and balconies in the "building area" when performing the substantial rehabilitation calculation. The Appeal Decision in L14-0065 was issued on March 7, 2017. The owner filed a Petition for Writ

000525

of Administrative Mandamus in the Alameda County Superior Court (Case No. RG17-862841) challenging the Board's Appeal Decision.

On December 12, 2018, the Superior Court entered a Judgment Granting the Writ of Administrative Mandamus, setting aside and vacating the Appeal Decision and the Hearing Decision in L14-0065. The Superior Court ordered the City of Oakland Rent Adjustment Program to **"reconsider the Appeal Decision L14-0065 in its entirety in light of the Court's Opinions, Order and this Judgment."** (Emphasis added.)

The tenants filed a motion for reconsideration. The motion was denied. The tenants appealed the Superior Court's Judgment and, on February 26, 2021, the Court of Appeals issued an Opinion affirming the Superior Court's Judgment of December 12, 2018.

The original Hearing Officer retired and this case was re-assigned to a different Hearing Officer who issued a Hearing Decision After Court Judgment on September 30, 2021, which granted the owner's Petition. The tenants appealed.

On May 4, 2022, the Board remanded the case for a hearing for one limited issue of **whether the 1002 sq. ft. piece of property properly falls under the "elevated Decks and Balconies" description as indicated by Table A.**<sup>1</sup>

A remote Hearing on this issue was held on June 29, 2022, and, after the hearing, the tenants' attorney requested to submit the closing brief in writing. The Hearing Officer set deadlines to submit the brief no later than July 22, 2022, and any response no later than July 29, 2022. The record was closed on July 29, 2022, at 5:00 p.m., close of business hours.

This Remand Hearing Decision is limited in scope and will only address the issue of whether the 1002 sq. ft. piece of property properly falls under the "elevated Decks and Balconies" description as indicated by Table A per the Board' instruction.

### **SUMMARY OF DECISION**

The Owner Petition is granted. Pursuant to Alameda County Superior Court Order of August 23, 2018, the 1002 sq. ft. property properly falls under "Elevated Decks and Balconies" to be valued at \$41.16 per sq. ft. per Table A.

### **BACKGROUND**

On November 14, 2014, the prior owner filed a Petition for Certificate of Exemption on the ground of substantial rehabilitation. The subject property is a residential building consisting of a total of sixteen (16) residential units and the prior

---

<sup>1</sup> Appeal Decision in L14-0065, dated May 4, 2022, p. 5

owner acquired the property in November of 2013.<sup>2</sup> The rehabilitation project occurred in 2014 and the cost of the project totaled \$876,800.99.

The general contractor, Martin Gallagher, testified in the original hearing that the subject building is of wood frame construction, which corresponds to Type V-1 identified on the City of Oakland Certificate of Occupancy issued for the subject building.<sup>3</sup>

#### Square Footage of the Building and Balconies

The public property profile and the Alameda County Assessor's Office Property Characteristics for the subject property and APN 12-929-11 shows that the square footage is 13,336 square feet.<sup>4</sup>

Gallagher also testified that the total square footage of the building (13,336) does not include the 16 decks on the building, which were part of the construction project and expense. He testified that 15 of the decks are 12 x 4.5 square feet (totaling 810 square feet) and that the penthouse deck is about 16 x 12 square feet (192). The total square footage of the decks and balconies is 1,002 square feet.

### NEW EVIDENCE AT REMAND HEARING

#### Testimony of Susan Elizabeth Spott

Ms. Spott has worked as a building inspector for twenty (20) years. She testified that a balcony/deck space is not considered a habitable space. An apartment is an indoor, residential/habitable space with enclosed walls, with heat, insulation, plumbing and electrical wiring. Balcony/deck space is an outdoor space that is not fully closed and is exposed to elements; it has no heat, no insulation or plumbing, except a drain to prevent water collection. It is not considered a residential space. The building plans distinguish habitable spaces from unhabitable spaces, such as garages, including decks and balconies. The building code is different for residential spaces and non-habitable spaces.

#### Testimony of Julie Amberg

Ms. Amberg testified that her balcony space is not fully enclosed. She did point out that the balcony has walls on all 4 sides but one side, the side facing out, has only a partial waist-high wall. In her opinion, when she is standing outside on the balcony, she feels the outside elements, such as wind, to the same degree that she feels the wind inside her apartment when the window is open.

---

<sup>2</sup> Exhibits 1-3 (Grant Deed)

<sup>3</sup> Exhibit 6

<sup>4</sup> Exhibits 4 and 5

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### Substantial Rehabilitation

O.M.C. 8.22.030(A)(6) states that dwelling units located in “substantially rehabilitated buildings” are not “covered units” under the Rent Adjustment Ordinance. To obtain an exemption based on substantial rehabilitation, an owner must have spent a minimum of fifty (50) percent of the average basic cost for new construction for a rehabilitation project. The average basic cost for new construction shall be determined using tables issued by the chief building inspector applicable for the time period when the substantial rehabilitation was completed.<sup>5</sup>

As the Alameda County Superior Court already determined in its Order entered on 8/23/2018, Table A (attached), issued on August 1, 2009, by the chief building inspector, is the correct Table to use in the calculation.

### Square Footage for Building and Balconies

The Superior Court held that, as a matter of statutory construction, the City must give effect to all the “Description” categories in Table A. If a general “Description” and a specific “Description” both apply to a construction project or to a part of a construction project, then the City must give effect to the specific “Description.”<sup>6</sup>

The Court further held that the Board made a legal error when it treated both the building space (13,336) and the deck/balcony space (1,002) the same as Apartment space and applied the same cost of construction per square foot. The Court found that the original Hearing Officer and the Board both misapplied the law by focusing on potential use of the balconies rather than their cost of construction and by not giving effect to the specific description for “Elevated Decks & Balconies.” The Board or the Hearing Officer does not have the discretion to characterize a project or a part of a project based on improper criteria.

The testimony of the witnesses established that the deck/balcony space is an outdoor space and different from an apartment space. The apartment space can be entirely closed to outside elements if windows and doors are closed; it has heating, plumbing, and electricity. The deck/balcony space is open to the outside, cannot be closed, there is no heat; it is not a residential space but an outdoor space exposed to outside elements.

Although Ms. Amberg testified that there is a waist-high wall on one side of the balcony, the existence of the wall does not mean that balcony can be closed – it remains open to the outside. The fact that Ms. Amberg can feel the wind in her apartment when the windows are open does not change the nature of the apartment itself from being a residential space, capable of being entirely closed to the outside

<sup>5</sup> O.M.C. Section 8.22.030(B)(2)

<sup>6</sup> Superior Court Judgment and Order of December 12, 2018, Exhibit A, Order of 8/23/18 (Case No. RG17-862841)



elements, as opposed to the balcony being an outdoor space which cannot be entirely closed to the elements.

There is no dispute about the building space square footage (13,336) and the deck/balcony space square footage (1,002). There is no dispute that the 1,002 square feet consists of deck/balcony space. Table A has a specific category called "Elevated Decks & Balconies." The Court clearly and specifically stated that the Board or the Hearing Officer do not have discretion over how to treat each space but must apply the specific category listed on Table A, which determines the cost of new construction per square foot to the corresponding project or part of the project. Table A clearly distinguishes Apartment (habitable) space at \$127.00 per square foot and Deck/Balcony (outdoor/unhabitable) space at \$41.16 per square foot. This cost per square foot must be used in the calculation.

Therefore, pursuant to the Alameda County Superior Court Order, the 1002 sq. ft. property properly falls under "Elevated Decks and Balconies" to be valued at \$41.16 per sq. ft. as shown in Table A.

#### Calculation

The attached Table A states that, effective August 1, 2009, the cost of new construction of Apartment buildings of more than 2 units, Type V – wood frame construction, is \$127.00 per square foot. Table A also states that the cost of newly constructed "Elevated Decks and Balconies" is \$41.16 per square foot.

To determine if the owner is entitled to the exemption, the following calculation is necessary: multiply the building square footage (13,336) by \$127.00, then multiply the square footage of the decks/balconies (1,002) by \$41.16. Add these amounts together, and divide that result by two (2). The calculation is as follows:

$$\begin{array}{r} 13,336 \times \$127.00 = \$1,693,672.00 \\ 1,002 \times \$ 41.16 = \$ \quad 41,242.32 \\ \text{Total: } \$1,734,914.32 \text{ divided by } 2 = \$867,457.16 \end{array}$$

The owner spent \$876,800.99 on the rehabilitation project, which is more than \$867,457.16. Therefore, the subject property has been "substantially rehabilitated" and the rental units in the building are exempt from the Rent Adjustment Ordinance.

#### ORDER

1. Petition L14-0065 is granted.
2. The subject property is exempt from the Rent Adjustment Program as a "substantially rehabilitated" building.

3. The subject property is not exempt from the Rent Adjustment Program Service Fee because it is subject to the Just Cause for Eviction Ordinance.

4. The Certification of Exemption will be issued after expiration of the appeal period.

---

Right to Appeal: This is the final decision of the Rent Adjustment Program (RAP). Either party may appeal by filing a properly completed RAP appeal form that must be received within 20 days after service of the decision, shown on the attached Proof of Service.

Dated: September 14, 2022



---

Linda M. Moroz  
Hearing Officer  
Rent Adjustment Program

# EXHIBIT B

000531



**FILED**  
ALAMEDA COUNTY

AUG 23 2018

By

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

525 HYDE STREET, CNML PROPS, LLP,

No. RG17-862841

Petitioner,

ORDER (1) GRANTING MOTION TO  
AUGMENT THE RECORD AND (2)  
GRANTING PETITION FOR WRIT OF  
MANDATE.

v.

CITY OF OAKLAND,

Date: 8/23/18  
Time: 9:00 a.m.  
Dept.: 511

Respondents.

The motion of 525-655 Hyde St Commercial Properties (the "Developer") to augment the administrative record and the petition of the Developer for writ of mandate directing the City of Oakland Rent Board to vacate the Appeal Decision in Case No. L14-0065 for came on for hearing on 8/23/18, in Department 511 of this Court, the Honorable Kimberly Colwell presiding. Counsel appeared on behalf of Petitioner and on behalf of Respondents. After consideration of the points and authorities and the evidence, as well as the oral argument of counsel, IT IS ORDERED: The motion of 525-655 Hyde St Commercial Properties (the "Developer") to augment the administrative record is GRANTED. The Petition of the Developer for writ of

1 mandate directing the City of Oakland Rent Board to vacate the Appeal Decision in Case No.  
2 L14-0065 is GRANTED.

3  
4 OPPORTUNITY FOR POST-HEARING BRIEFING

5 The court's tentative decision issued before the 7/26/18 hearing framed the issues  
6 differently than as presented by the parties and at the hearing the parties indicated that they might  
7 want supplemental briefing depending on the outcome of the motion to augment. The court's  
8 tentative decision issued before the 8/23/18 hearing stated that the court would permit the  
9 opportunity for post-hearing supplemental briefing if any party requested supplemental briefing.  
10 (*Monarch Healthcare v. Superior Court* (2000) 78 Cal.App.4th 1282, 1286.) No party requested  
11 supplemental briefing.  
12

13  
14 EVIDENCE

15 The court GRANTS the Developer's request on 5/1/18 for judicial notice of ordinances  
16 (Exhs 1-3) and Hearing Decisions (Exhs 8-12.) The court GRANTS the Developer's request on  
17 5/1/18 for judicial notice of Tables A, B, C, and D (Exhs 4-7), but does augment the evidentiary  
18 record with those documents.  
19

20 The court GRANTS the City's request on 6/1/18 for judicial notice of Hearing Decisions.

21 The court GRANTS the City's request on 6/1/18 to supplement the record with the  
22 transcript of the Rent Board hearing. This was part of the evidence and was apparently omitted  
23 in error.  
24

25 The court DENIES the City's implicit request on 6/1/18 to supplement the record with the  
26 Declaration of David Harlan. Harlan testified before the Hearing officer. (AR 146:17-157:9.)

1 The City has not demonstrated that Harlan's declaration testimony was either improperly  
2 excluded during the administrative process or it could not, in the exercise of reasonable  
3 diligence, have been presented before the administrative decision was made. (CCP 1094.5(e);  
4 *Evans v. City of San Jose* (2005) 128 Cal.App.4th 1123, 1144.)

5 The court GRANTS the Developer's request on 6/25/18 for judicial notice of Hearing  
6 Decisions.

7  
8  
9 MOTION TO AUGMENT THE RECORD

10 The City argued that the Developer failed to exhaust administrative remedies because it  
11 failed to argue to the Board that the Hearing Officer failed to properly apply Table A when  
12 calculating the cost of new construction. (City Oppo at 9-10.) At the hearing on 7/26/18, the  
13 Developer handed the court a copy of a brief on appeal allegedly filed with the Rent Board on  
14 5/4/16 that raised the issue at page 4 (the "Appeal Brief"). The City did not concede that the  
15 Appeal Brief was in the administrative record.

16  
17 On 8/10/18, the Developer filed a post-hearing motion under CCP 1094.5(e) to augment  
18 the record with the Appeal Brief. "A court may exercise its discretion to augment an  
19 administrative record if the evidence is relevant and if it was either improperly excluded during  
20 the administrative process or it could not, in the exercise of reasonable diligence, have been  
21 presented before the administrative decision was made." (*Evans v. City of San Jose* (2005) 128  
22 Cal.App.4th 1123, 1144.) This motion to augment does not concern evidence going to the merits  
23 that was presented to the hearing officer, but rather concerns evidence going to the procedural  
24 issue of whether the Developer raised an issue with the Board.  
25  
26

1 The Developer's Notice of Appeal filed 6/18/15 raises the primary issue of whether the  
2 balcony area should be included but not the secondary issue of whether if the balcony is included  
3 it should be treated differently than apartment space. (AR 108.)

4 The Developer's Appeal Brief is file stamped "RECEIVED CITY OF OAKLAND RENT  
5 ARBITRATION PROGRAM 2016 MAY - 4 PM 2:52." The stamp is the same as other  
6 documents filed with the Rent Board. (AR 35, 46, 72, 104.) The City has presented declaration  
7 testimony from City employees Keith Mason and Kelly Rush that the City has no record of  
8 receiving the Appeal Brief. The real parties in interest also present evidence and argue that they  
9 have no record of the Appeal Brief.  
10

11 The transcript of the Board hearing on 12/8/16 indicates that the Board discussed the  
12 primary issue of whether the balcony area should be included but that the Board did not reach the  
13 secondary issue of whether if the balcony is included it should be treated differently than  
14 apartment space.  
15

16 The motion of the Developer to augment the administrative record with the Appeal Brief  
17 is GRANTED. The Appeal Brief is file stamped as received by the Board. This creates a  
18 presumption of filing. (*In re Marriage of Mosley* (2010) 190 Cal.App.4th 1096, 1103 ["a  
19 judgment or appealable order is presumptively filed, for purposes of the 180-day time limit, on  
20 the file-stamped date"].) The City has not presented evidence that on 5/4/16 the Developer used  
21 the City's self-file-stamp procedure to file-stamp the brief but then failed to leave a copy with the  
22 City or that the Developer falsified the file stamp on the Appeal Brief. The Court finds that the  
23 substantial evidence supports a finding that the Developer filed the brief and that the City  
24 inadvertently mis-filed or lost the brief. There is no indication that the City intentionally  
25 withheld the Appeal Brief from the administrative record.  
26

1  
2 FACTS AND PROCEDURE

3 The Developer or its predecessor in interest rehabilitated the property located at 3921  
4 Harrison St, Oakland, CA. The Developer spent approximately \$850,000 on the project.

5 The Developer then sought a Certificate of Exemption from the Rent Board so that it  
6 could raise rents at the property. OMC 8.22.030.B.2 states, "In order to obtain an exemption  
7 based on substantial rehabilitation, an owner must have spent a minimum of fifty (50) percent of  
8 the average basic cost for new construction for a rehabilitation project and performed substantial  
9 work on each of the units in the building.  
10

11 The City notified the parties that the hearing would be on 3/20/15 and that they would be  
12 required to submit all evidence 7 days before the hearing date and that if they did not do so it  
13 "may" be excluded. (AR 414-415, 471-473.)

14 On 4/27/15, the Hearing Officer held a hearing. (AR 141-236.) During the presentation  
15 of evidence, Ms. Mira, attorney for tenants, showed Table B, which is Quarterly Cost Indexes to  
16 City Engineering Manager of the Bureau of Building David Harlan. The Hearing officer did not  
17 admit Table B into evidence at that time. (AR 152:13-27.) The submission of evidence  
18 concluded. (AR 225:16-22.)

19 At argument following the presentation of evidence, Ms. Mira argued that Table A, the  
20 City of Oakland Building Services Construction Valuation, effective 8/1/09, should be adjusted  
21 by the Table B, the Quarterly Cost Indexes. (AR 228:8-11; 229:7-13). Ms. Mira presented  
22 Table B and asserted that the Hearing Officer should use it in making calculations. (AR 230:20-  
23 21.) Developer's counsel objected.  
24  
25  
26



1 The Hearing Officer said that he could take official notice of Table B if he was supposed  
2 to use it in his calculations. (AR 230:23-231:27.) The Hearing Officer said that he was unaware  
3 of Table B until the day of the hearing. (AR 236:14-16.)

4 On 5/29/15, the Hearing Officer issued a decision denying Developer's petition for a  
5 Certificate of Exemption from the rent control ordinance. (AR 120-131.)

6  
7 The Developer sought review by the Rent Board. On 12/8/16, the Rent Board held a  
8 hearing. (AR 777-798.) On 3/7/16, the Rent Board issued its written decision. (AR 2-4.)

9  
10 ISSUE CLARIFICATION

11 Petitioner commingles three analytically distinct issues regarding the use of Table B  
12 during the administrative process. The first issue is whether the Board violated its own  
13 procedures when it considered Table B as evidence even though it was not disclosed seven days  
14 before the hearing. The second issue is whether the Board erred as a matter of law by  
15 incorporating Table B into the OMC 8.22.030.B.2.b substantive standard. The third issue is  
16 whether the Board violated due process by failing to adequately disclose the existence of Table B  
17 to Petitioner while Petitioner was planning and executing the rehabilitation project.

18  
19  
20 PROCEDURES – ADMISSION OF TABLE B AS EVIDENCE

21 The arguments on the admission of Table B as evidence presume that it is a document  
22 that is fact evidence. As discussed below, OMC 8.22.030.B.2.b incorporates tables “issued by  
23 the chief building inspector” as the substantive standard. Therefore, if the tables are the  
24 documents described in the OMC, then they are incorporated in, and extensions of, the ordinance  
25 itself. The court must take judicial notice of the law. (Evid Code 451.) Subject to the  
26

1 significant limitation that the court must provide parties the opportunity to present argument on  
2 material issues, the court (or a hearing officer) can consider law even if it is not formally  
3 presented by a party. (*Monarch Healthcare v. Superior Court* (2000) 78 Cal.App.4th 1282,  
4 1286.)

5 The Board's letters required the parties to disclose evidence 7 days before the hearing and  
6 cautioned that evidence not disclosed "may" be excluded. As a matter of policy construction,  
7 "may" is discretionary and permitted the Hearing officer to admit evidence that was not disclosed  
8 7 days before the hearing.

9 Assuming that Table B is factual evidence, the court finds that the Board did not violate  
10 its own procedures and abuse its discretion when it considered Table B even though it was not  
11 disclosed seven days before the hearing.

12 At the hearing the Hearing Officer stated that he would not admit Table B as evidence but  
13 would take official notice of Table B. Official notice appears to be equivalent to judicial notice  
14 and judicial notice is a basis for the admission of evidence. Therefore, there is no material  
15 difference between accepting Table B into evidence as submitted by a witness and taking judicial  
16 notice of Table B.

17  
18  
19  
20 **INCORPORATION OF TABLE B INTO ORDINANCE - STATUTORY INTERPRETATION.**

21 OMC 8.22.030.B.2 states:

22  
23 **Exemptions for Substantially Rehabilitated Buildings.**

- 24  
25 a. In order to obtain an exemption based on substantial rehabilitation, an owner  
26 must have spent a minimum of fifty (50) percent of the average basic cost for

1 new construction for a rehabilitation project and performed substantial work on  
2 each of the units in the building.

3  
4 b. The average basic cost for new construction shall be determined using tables  
5 issued by the chief building inspector applicable for the time period when the  
6 substantial rehabilitation was completed.

7 The court exercises its independent judgment in considering statutory construction and other  
8 issues of law. (*Smith v. Santa Rosa Police Dept.* (2002) 97 Cal.App.4th 546, 553-554.)  
9

10 As a matter of statutory construction, the court determines that OMC 8.22.030.B.2.b  
11 requires that the tables must be both (1) issued by the chief building inspector and (2) applicable  
12 for the time period when the substantial rehabilitation was completed.

13 As a matter of determining whether there was a fair hearing the court applies its  
14 independent judgment regarding whether the City complied with the law. The court does not  
15 apply the abuse of discretion standard usually applied to evidence decisions because the statute  
16 clearly defines the substantive standard with reference to the tables. Therefore, referring to an  
17 incorrect table is in the nature of using an incorrect jury instruction rather than making a  
18 discretionary decision on the admission of evidence.  
19

20 Table A is identified as City of Oakland Building Services Construction Valuation,  
21 effective 8/1/09. Table A is issued by the chief building inspector. Table A states that it is  
22 "Effective Aug 1, 2009." This suggests that it is effective until replaced by a new table. When  
23 testifying, City Engineering Manager Harlan was asked if Table A was "the latest table put out by  
24 the City" and he answered "Yes, that's the table we currently use." (AR 146:20-23.) There is no  
25 objection to the use of Table A.  
26

1 Table B is identified as Quarterly Cost Indexes. Table B has a footer that indicates it is  
2 from Marshall Valuation Services. There is no indication that Table B was “issued by the chief  
3 building inspector.” When testifying, City Engineering Manager Harlan identified Table B and  
4 referred to it as “this source that we use.” (AR 153:27.) The court finds that the Board erred as a  
5 matter of law by incorporating Table B into the ordinance as the substantive standard when it was  
6 not “issued by the chief building inspector.”  
7

8 The Petition is GRANTED on the basis that applying its independent judgment the court  
9 finds that OMC 8.22.030.B.2.b requires that a table be “issued by the chief building inspector”  
10 and Table B was not “issued by the chief building inspector.”  
11

12 INCORPORATION OF TABLE B INTO ORDINANCE - DUE PROCESS.

13 The Developer made a discernable argument before the Hearing Officer (AR 235-236)  
14 and at the Rent Board (AR 784-785) and in this court (Reply at 5) that the Board violated due  
15 process by failing to adequately disclose the existence of Table B to Petitioner when Petitioner  
16 was planning and executing the rehabilitation project. The court exercises its independent  
17 judgment in considering issues of adequate notice or due process. (*Tafti v. County of Tulare*  
18 (2011) 198 Cal.App.4th 891, 896.)  
19

20 A statute, or ordinance, must be sufficiently clear to give a person fair warning of the  
21 conduct prohibited and they must provide a standard or guide against which conduct can be  
22 uniformly judged by courts and administrative agencies. (*Morrison v. State Board of Education*  
23 (1969) 1 Cal.3d 214, 230-231; *Zubarau v. City of Palmdale* (2011) 192 Cal.App.4th 289, 308-  
24 309.) Similarly, an ordinance must be sufficiently clear to give a person adequate notice of the  
25 requirements for obtaining a government benefit, or a Certificate of Exemption.  
26

1 A statute “will be upheld if its terms may be made reasonably certain by reference to other  
2 definable sources.” (*Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1180; *Personal*  
3 *Watercraft Coalition v. Board of Supervisors* (2002) 100 Cal.App.4th 129, 138-139.)

4 Making an “on its face” analysis, the Ordinance could reasonably refer to and incorporate “tables  
5 issued by the Chief Building Inspector.”

6 Making an “as applied” analysis, it is much less clear whether Table B is an “other  
7 definable source.” When testifying, City Engineering Manager Harlan was asked if Table A was  
8 “the latest table put out by the City” and he answered “Yes, that’s the table we currently use.”  
9 (AR 146:20-23.) City Engineering Manager Harlan also identified Table B and referred to it as  
10 “this source that we use.” (AR 153:27.) The Hearing Officer stated that he was unaware of  
11 Table B until the day of the hearing. (AR 236:14-16.)

12 The Developer did not present evidence, but argued that it was unaware of Table B until  
13 the hearing on 4/27/15. Before the Hearing Officer, the Developer’s counsel argued that the  
14 Building Department did not make Table B available to the public. (AR 235:19-236:1.) Before  
15 the Board, the Developer’s counsel argued that the Developer assumed that the relevant time  
16 period was “set forth in the most recent table that’s issued by the Building Services Department.  
17 That’s Exhibit A” and that the Developer “relied on this Table A and be believed that when his  
18 project was competed it would be exempt.” (AR 784:17-23.)

19 The City and the tenants presented no evidence that Table B was an “other definable  
20 source” that was disclosed to the public as relevant to the ordinance. The court has denied the  
21 City’s request to supplement the record with the declaration of Harlan. That noted, the  
22 declaration states that the City distributes Table B to persons “who request the table” and “that  
23 the City distributes [the Table] upon request.” (Harlan Dec., paras 6 and 7.)

1 The court finds that the Developer did not waive this argument even though it failed to  
2 clearly present this argument to the Hearing Officer and to the Board. The Tenant's  
3 Representative, Ms. Mira, did not disclose Table B as evidence seven days before the hearing or  
4 otherwise put the Developer on notice that she would rely on Table B. The Hearing officer was  
5 unaware of Table B. The record suggests that the Developer costed out the project and prepared  
6 for the Hearing Officer hearing on the reasonable assumption that Table A was the standard  
7 against which the evidence of expense would be measured.  
8

9 The Petition is GRANTED on the basis that applying its independent judgment the court  
10 finds that on the facts of this case that Table B was not an "other definable source" and that the  
11 Ordinance therefore did not give the Developer fair warning that Table A was not the standard  
12 against which the evidence of expense would be measured and that it would be modified by  
13 Table B.  
14

15  
16 \$26,000 IN INVOICES.

17 The Developer argues that the Hearing Officer and Board erred in excluding \$26,000 in  
18 invoices. The City acknowledges that the Hearing Officer and Board appear to have made a  
19 calculation error. (City Oppo at 9:8-15.) This error did not affect the Board's decision. The  
20 apparent \$26,000 calculation error does not affect the court's decision on the petition.  
21

22 INCLUSION OF DECK SPACE.

23  
24 There is substantial evidence to support the Board's fact finding that the property space  
25 included both the apartment space and the deck and balcony space.  
26

1  
2 SEPARATE TREATMENT OF APARTMENT SPACE AND DECK/BALCONY SPACE

3 County records state the property was 13,337 sqft. (AR 247.) The Developer  
4 rehabilitated the balconies, which are an additional 1,002 sqft.

5 Table A differentiates among different "Descriptions" of construction. Table A included  
6 "Apartment space" at \$127 sqft, "Elevated Decks and Balconies" space at \$41.16 sqft, and many  
7 other descriptions of space. The Hearing Officer and the Board both decided to treat both the  
8 13,337 sqft interior space and the 1,002 sqft deck/balcony space as "Apartment space." (AR 004,  
9 123.)

10  
11 Petitioner argues that the Board erred as a matter of law by treating the deck/balcony  
12 space as "Apartment space" and should have treated it as "Elevated Decks and Balconies" space.  
13 (Opening brief at 4:21-26; 6:26-27; 7:29-8:7.)

14  
15 Petitioner has not waived this argument. At the hearing before the Hearing Officer,  
16 Petitioner argued that the calculations should exclude the deck space. (AR 3.) In the briefing to  
17 the Board, Petitioner accepted that the Hearing Officer used the deck space, but argued that the  
18 Hearing Officer should have calculated "R3 Elevated Decks and Balconies" space at \$41.16 sqft.  
19 (Brief filed with Board on 5/4/16 at page 4.) At argument before the Board, petitioner raised the  
20 primary issue of whether the balcony area should be included but did not reach the secondary  
21 issue of whether if the balcony is included whether it should be treated differently than apartment  
22 space. (AR 004, 792:3-11; 795:3-11; 796:5-798:12.)

23  
24 This is an issue of statutory construction because OMC 8.22.030.B.2.b incorporates tables  
25 be "issued by the chief building inspector."  
26

1 As a matter of statutory construction, the City must apply Table A to projects or parts of  
2 projects based on whether the Description reasonably describes the physical structure to be  
3 constructed. The Descriptions in Table A are defined by the cost of construction rather than the  
4 potential use of the structure. The court takes judicial notice that the City of Oakland Planning  
5 and Building website states, "The cost of building permits is based upon the construction  
6 valuation of the project. Valuation includes all labor and structural materials, and all lighting,  
7 heating, ventilation, water supply, plumbing, electrical, fire sprinklers, elevator equipment."  
8 (<http://www2.oaklandnet.com/government/o/PBN/OurServices/permits/index.htm>) Consistent  
9 with this purpose, the Rent Board should apply schedule A to projects and parts of projects based  
10 on whether the Description reasonably describes the physical structure to be constructed.  
11

12 The Board misapplied OMC 8.22.030.B.2.b and the incorporated tables by focusing on  
13 the potential use of the balconies rather than the cost of building or rehabilitating the balconies.  
14 The Board's decision states "there was no abuse of discretion by the Hearing Officer in including  
15 the balconies' area where such space is useable space that expands the tenants' livable area."  
16 (AR 004.) (See also AR 797:10-11.)  
17

18 This was legal error because the Table A analysis concerns the cost of constructing the  
19 project or part of the project, not the potential use of the constructed property. Although the Rent  
20 Board in other contexts might be focused on whether rental space is usable, liveable, and  
21 habitable, in the context of OMC 8.22.030.B.2.b and Table A, the Rent Board must focus on the  
22 cost of construction. Even if OMC 8.22.030.B.2.b and Table A did concern usable, liveable, or  
23 habitable space, the BMC elsewhere defines "habitable space" and "habitable rooms" in a way  
24 that suggests they do not include exterior balconies and decks. (OMC 15.20.030 [Building and  
25 Construction Code]; 17.09.040 [Planning Code].)  
26



1 As a matter of statutory construction, the City must give effect to all the "Description"  
2 categories in Table A. If a general "Description" and a specific "Description" both apply to a  
3 construction project or to a part of a construction project, then the City must give effect to the  
4 specific "Description." (*Collection Bureau of San Jose v. Rumsey* (2000) 24 Cal.4th 301, 310;  
5 *Garcia v. McCutchen* (1997) 16 Cal.4th 469, 477-0478.)  
6

7 The Board misapplied OMC 8.22.030.B.2.b and the incorporated tables by treating both  
8 the 13,337 sqft and the 1,002 sqft as Apartment space. Although an apartment might have a  
9 balcony or deck, Table A has a separate specific line item for "Elevated Decks and Balconies."  
10 Where Table A sets out a specific Description that applies to a project or a part of a project, the  
11 Board must give effect to the specific Description.

12 The Board stated that the Hearing Officer did not abuse his discretion by including the  
13 balconies in the "Apartment" space. (AR 004.) (See also AR 797:1-9.) The Hearing Officer  
14 makes factual findings about whether a project or a part of a project fits within a certain  
15 Description. The Hearing Officer does not, however, have the discretion to characterize a project  
16 or a part of a project based on improper criteria. The Hearing Officer and the Board misapplied  
17 the law by focusing on the potential use of the balconies rather than their cost of construction and  
18 by not giving effect to the specific Description for "Elevated Decks and Balconies."  
19

20  
21 CONCLUSION

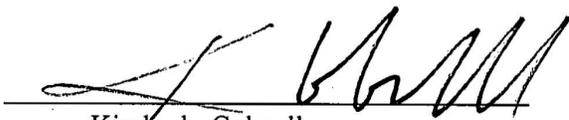
22 The Petition of 525-655 Hyde St Commercial Properties (the "Developer") for writ of  
23 mandate directing the City of Oakland Rent Board to vacate the Appeal Decision in Case No.  
24 L14-0065 is GRANTED.  
25  
26

1 Consistent with CCP 1094.5(f), the court orders the City of Oakland Rent Board to  
2 reconsider the case in light of the court's opinion and judgment. The judgment shall not limit or  
3 control in any way the discretion legally vested in the respondent Board. If permitted by its  
4 procedures, the Rent Board may direct the Hearing Officer to conduct a further hearing. If  
5 permitted by its procedures, the Rent Board may reconsider either the entire matter or only the  
6 issues implicated by this order. The court expressly does not direct the Rent Board to grant the  
7 petition for a Certificate of Exemption.  
8

9 At the hearing on 8/23/18, counsel for the Developer asked that the court order the Rent  
10 Board to expedite further proceedings given that the Developer filed the petition for certificate of  
11 exemption on 11/10/14 (AR 558-761) and the matter has been pending for almost four years.  
12 Counsel for the City did not object to that request. The court encourages the Rent Board to  
13 promptly reconsider this matter consistent with the procedures in OMC 8.22.120 and Rent  
14 Adjustment Program Regulations 8.22.110 and 8.22.120.  
15

16 The court directs the Developer to prepare and submit to the court both a proposed  
17 judgment and a proposed writ. (CRC 3.1312.)  
18

19 Dated: August 23, 2018  
20

  
21 Kimberly Colwell  
22 Judge of the Superior Court  
23  
24  
25  
26

# EXHIBIT C

000547



000548



**CITY OF OAKLAND**  
**RENT ADJUSTMENT PROGRAM**  
 250 Frank H. Ogawa Plaza, Suite 5313  
 Oakland, CA 94612-0243  
 (510) 238-3721  
 CA Relay Service 711  
[www.oaklandca.gov/RAP](http://www.oaklandca.gov/RAP)

For Rent Adjustment Program date stamp.

## PROOF OF SERVICE

**NOTE: YOU ARE REQUIRED TO SERVE A COPY OF YOUR PETITION OR RESPONSE (PLUS ANY ADDITIONAL DOCUMENTS) ON THE OPPOSING PARTIES.**

- Use this PROOF OF SERVICE form to indicate the date and manner in which service took place, as well as the person(s) served.
- Provide a copy of this PROOF OF SERVICE form to the opposing parties together with the document(s) served.
- File the completed PROOF OF SERVICE form with the Rent Adjustment Program together with the document you are filing and any attachments you are serving.
- Please number sequentially all additional documents provided to the RAP.

**PETITIONS FILED WITHOUT A PROOF OF SERVICE WILL BE CONSIDERED INCOMPLETE AND MAY BE DISMISSED.**

I served a copy of: RESPONDENT'S RESPONSE TO APPEAL  
 (insert name of document served)  
 And Additional Documents

and (write number of attached pages) 26 attached pages (not counting the Petition or Response served or the Proof of Service) to each opposing party, whose name(s) and address(es) are listed below, by one of the following means (check one):

- a. United States mail. I enclosed the document(s) in a sealed envelope or package addressed to the person(s) listed below and at the address(es) below and deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- b. 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 listed below.
- c. Personal Service. (1) By Hand Delivery: I personally delivered the document(s) to the person(s) at the address(es) listed below; or (2) I left the document(s) at the address(es) with some person not younger than 18 years of age.

**PERSON(S) SERVED:**

Name	Julie E. Amberg
Address	3921 Harrison Street, #302
City, State, Zip	Oakland, CA 94611

Name	Stanley L. Amberg
Address	4115 Kendal Way
City, State, Zip	Sleepy Hollow, NY 10591

Name	Todd McMahon
Address	3921 Harrison Street, # 304
City, State, Zip	Oakland, CA 94611

Name	Mari Oda
Address	3921 Harrison Street, # 304
City, State, Zip	Oakland, CA 94611

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

To serve more than 8 people, copy this page as many times as necessary and insert in your proof of service document. If you are only serving one person, you can use just the first and last page.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and the documents were served on 10/26/22 (insert date served).

**Fabienne Lopez**

PRINT YOUR NAME

*Fabienne Lopez*

SIGNATURE

10/26/22

DATE

**CITY OF OAKLAND**  
**Department of Housing and Community Development**

**RENT ADJUSTMENT PROGRAM**

**Mandana Properties, LLC v. Tenants<sup>1</sup>**

**Case No. L14-0065**

**TENANTS OBJECTION TO OWNER’S PICTURE EXHIBIT C  
AND ANY ARGUMENT BASED ON EXHIBIT C**

By letter dated October 26, 2022, counsel for Owner requests that “a picture” be included as an exhibit and be considered by the Appeal Board in the appeal of RAP Case No. L14-0065.

The proffered exhibit (Exhibit C) is *new evidence*.

Owner’s request must be denied because the evidence *was available* during the Hearing Officer proceedings. OMC Regulation 8.22.120.F.3. states:

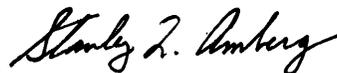
3. In order for new evidence to be considered, the party offering the new evidence *must show* that the new evidence *could not have been available at the Hearing Officer proceedings*. (Emphasis added)

Owner admits that the picture was “taken by Respondent on July 14, 2022.”<sup>2</sup> At that time, the proceedings before the Hearing Officer were ongoing. Indeed, they were ongoing at least until July 29 when the owner submitted (to the Hearing Officer) the owner’s Response To Tenants Closing Statement. The owner’s July 29 response did *not* disclose, discuss or offer as evidence the already-taken July 14<sup>th</sup> picture.

In short, the July 14 picture was actually available to Owner at the time of the Hearing Officer proceedings. OMC Regulation 8.22.120.F.3 precludes the introduction and consideration of this new evidence.

Date: October 28, 2022

Stanley L. Amberg



4115 Kendal Way, Sleepy Hollow, NY 10591  
T: 914-238-4921, M: 914-263-7341

---

<sup>1</sup> Formerly 525, 655 Hyde Street CNML, Properties, LLC v. Tenants.

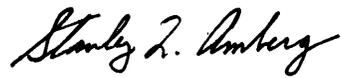
<sup>2</sup> Respondent’s Response To Appeal, page 4.



[stan.amberg@amberglaw.com](mailto:stan.amberg@amberglaw.com)  
Representative for Tenants

PROOF OF SERVICE

I declare under penalty of perjury under the laws of the State of California that on October 28, 2022 I served this document as follows: electronically on Angelica A. Sandoval, Fried Williams & Grice Connor, LLP, attorneys for Respondent/Owner Mandana Properties, LLC; and by placing a copy in the United States mail with all postage or charges fully prepaid, addressed as follows: Angelica A Sandoval, Fried Williams & Grice Connor, LLP, 1939 Harrison Street, Suite 460, Oakland, CA 94612; and Ray McFadden, Mandana Properties, LLC, 1087 Ashmount Avenue, Oakland, CA 94610.





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

Department of Housing and Community Development  
Rent Adjustment Program

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

**ORDER GRANTING REQUEST TO EXCEED PAGE LIMIT UNDER  
REGULATION 8.22.120(A)(5)**

**CASE NUMBER: L14-0065**

**CASE NAME: 525-655 Hyde Street CNML Properties, LLC v. Tenants**

**PROPERTY ADDRESS: 3921 Harrison Street, Oakland, CA**

On October 26, 2022, the Respondent Owner in the above-referenced matter submitted a response to an appeal which exceeded the maximum allowable page limit of 25 pages. The Respondent filed a request to exceed the maximum page limit, stating that the additional exhibits, which include rulings from RAP and Alameda Superior Court as well as a picture, provide clarity and transparency, and are important for the Board to consider.

**GOOD CAUSE APPEARING**, the request is granted.

Dated: October 28, 2022

*Maimoona Ahmad*  
\_\_\_\_\_  
Maimoona Sahi Ahmad  
Acting Senior Hearing Officer  
Rent Adjustment Program

**PROOF OF SERVICE**  
**Case Number L14-0065**

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

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

**Documents Included**

Order Granting Request to Exceed Page Limit Under Regulation 8.22.120(A)(5)

**Resident**

3921 Harrison St., Penthouse  
Oakland, CA 94611

**Resident**

3921 Harrison St., #102  
Oakland, CA 94611

**Resident**

3921 Harrison St., #101  
Oakland, CA 94611

**Owner**

Ray McFadden  
Mandana Properties, LLC  
1087 Ashmount Avenue  
Oakland, CA 94610

**Owner Representative**

Angie Sandoval  
Fried, Williams & Grice Conner LLP  
1939 Harrison Street, Suite 460  
Oakland, CA 94612

**Owner Representative**

Clifford E. Fried  
Fried, Williams & Grice Conner LLP  
1939 Harrison Street, Suite 460  
Oakland, CA 94612

**Tenant**

Alexander Taylor  
3921 Harrison St., #104  
Oakland, CA 94611

**Tenant**

Cooper Spinelli  
3921 Harrison St., #203  
Oakland, CA 94611

**Tenant**

Julie Amberg  
3921 Harrison St., #302  
Oakland, CA 94611

**Tenant**

Mari Oda  
3921 Harrison St., #304  
Oakland, CA 94611

**Tenant**

Resident  
3921 Harrison St., #205  
Oakland, CA 94611

**Tenant**

Resident  
3921 Harrison St., #204  
Oakland, CA 94611

**Tenant**

Resident  
3921 Harrison St., #305  
Oakland, CA 94611

**Tenant**

Resident  
3921 Harrison St., #104  
Oakland, CA 94611

**Tenant**

Resident  
3921 Harrison St., #303  
Oakland, CA 94611

**Tenant**

Resident  
3921 Harrison St., #301  
Oakland, CA 94611

**Tenant**

Resident  
3921 Harrison St., #202  
Oakland, CA 94611

**Tenant**

Resident  
3921 Harrison St., #105  
Oakland, CA 94611

**Tenant**

Resident  
3921 Harrison St., #103  
Oakland, CA 94611

**Tenant**

Suzanne Miller  
3921 Harrison St., #201  
Oakland, CA 94611

**Tenant**

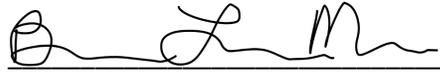
Todd McMahan  
3921 Harrison St., #304  
Oakland, CA 94611

**Tenant Representative**

Stanley Amberg  
4115 Kendal Way  
Sleepy Hollow, NY 10591

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **November 01, 2022** in Oakland, CA.

A handwritten signature in black ink, appearing to read 'Briana Lawrence-McGowan', is positioned above a solid horizontal line.

Briana Lawrence-McGowan

Oakland Rent Adjustment Program

**CITY OF OAKLAND**  
**Department of Housing and Community Development**

**RENT ADJUSTMENT PROGRAM**

**Mandana Properties, LLC v. Tenants<sup>1</sup>**

**Case No. L14-0065**

**TENANTS RENEWED OBJECTION TO OWNER’S PICTURE EXHIBIT C  
AND ANY ARGUMENT BASED ON EXHIBIT C**

By letter dated October 26, 2022, counsel for Owner requested that various documents, including Exhibit C, “a picture”, be included as exhibits and be considered by the Appeal Board in the appeal of RAP Case No. L14-0065.

On October 28, 2022, Tenants electronically filed their Objection to Owner’s Picture Exhibit C. (The Objection is at pages 552-553 of the electronic packet for this appeal.) On that same day October 28, an Acting Senior Hearing Officer issued an Order granting Owner’s request. The Order did not acknowledge Tenants October 28 Objection nor rule on the Objection. Apparently, the Hearing Officer was unaware of Tenants October 28 Objection.

The undersigned Tenants representative first learned of the October 28 Order today (November 5, 2022).

Tenants respectfully renew their Objection and request the Hearing Officer rule on it. Tenants quote, below, their October 28 Objection:

“The proffered exhibit (Exhibit C) is *new evidence*.

“Owner’s request must be denied because the evidence *was available* during the Hearing Officer proceedings. OMC Regulation 8.22.120.F.3. states:

3. In order for new evidence to be considered, the party offering the new evidence *must show* that the new evidence *could not have been available at the Hearing Officer proceedings*. (Emphasis added)

“Owner admits that the picture was “taken by Respondent on July 14, 2022.”<sup>2</sup> At that time, the proceedings before the Hearing Officer were ongoing. Indeed, they were ongoing at least until July 29 when the owner submitted (to the Hearing Officer) the owner’s Response To

---

<sup>1</sup> Formerly 525, 655 Hyde Street CNML, Properties, LLC v. Tenants.

<sup>2</sup> Respondent’s Response To Appeal, page 4.

Tenants Closing Statement. The owner's July 29 response did *not* disclose, discuss or offer as evidence the already-taken July 14<sup>th</sup> picture.

“In short, the July 14 picture was actually available to Owner at the time of the Hearing Officer proceedings. OMC Regulation 8.22.120.F.3 precludes the introduction and consideration of this new evidence.”

Date: November 5, 2022

Stanley L. Amberg

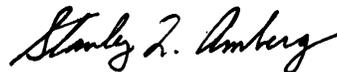


---

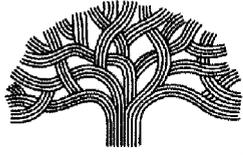
4115 Kendal Way, Sleepy Hollow, NY 10591  
T: 914-238-4921, M: 914-263-7341  
[stan.amberg@amberglaw.com](mailto:stan.amberg@amberglaw.com)  
Representative for Tenants

**PROOF OF SERVICE**

I declare under penalty of perjury under the laws of the State of California that on November 5, 2022 I served this document as follows: electronically on Angelica A. Sandoval, Fried Williams & Grice Connor, LLP, attorneys for Respondent/Owner Mandana Properties, LLC; and by placing a copy in the United States mail with all postage or charges fully prepaid, addressed as follows: Angelica A Sandoval, Fried Williams & Grice Connor, LLP, 1939 Harrison Street, Suite 460, Oakland, CA 94612; and Ray McFadden, Mandana Properties, LLC, 1087 Ashmount Avenue, Oakland, CA 94610.







CITY OF OAKLAND

**CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM**

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

For date stamp.

**APPEAL**

<b>Appellant's Name</b> Julie E. Amberg		<input type="checkbox"/> Owner <input checked="" type="checkbox"/> Tenant	
<b>Property Address (Include Unit Number)</b> 3921 Harrison Street, Unit 302, Oakland, CA 94611			
<b>Appellant's Mailing Address (For receipt of notices)</b> 3921 Harrison Street, Unit 302, Oakland, CA 94611		<b>Case Number</b> L14-0065	<b>Date of Decision appealed</b> October 28, 2022
<b>Name of Representative (if any)</b> Stanley L. Amberg		<b>Representative's Mailing Address (For notices)</b> 4115 Kendal Way, Sleepy Hollow, NY 10591	

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.)*

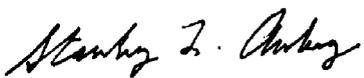
For more information phone (510) 238-3721.

- 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 must *not* exceed 25 pages from each party, and they must be received by the Rent Adjustment Program with a proof of service on opposing party within 15 days of filing the appeal. Only the first 25 pages of submissions from each party will be considered by the Board, subject to Regulations 8.22.010(A)(5). Please number attached pages consecutively. Number of pages attached: 2 .

- **You must serve a copy of your appeal on the opposing parties or your appeal may be dismissed.** • I declare under penalty of perjury under the laws of the State of California that on November 6, 2022 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:

<b>Name</b>	Angelica Sandoval, Fried Williams & Grice Connor, LLP
<b>Address</b>	1939 Harrison Street, Suite 460
<b>City, State Zip</b>	Oakland, CA 94612
<b>Name</b>	Ray McFadden, Mandana Properties, LLC
<b>Address</b>	1087 Ashmount Avenue
<b>City, State Zip</b>	Oakland, CA 94610

	<i>November 6, 2022</i>
<b>SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE</b>	<b>DATE</b>

For more information phone (510) 238-3721.

**CITY OF OAKLAND**  
**Department of Housing and Community Development**

**RENT ADJUSTMENT PROGRAM**

**Mandana Properties, LLC v. Tenants<sup>1</sup>**

**Case No. L14-0065**

**TENANTS EXPLANATION OF GROUNDS FOR APPEAL**

Introduction

This is an appeal by tenants from the Order Granting Request To Exceed Page Limit Under Regulation 8.22.120(A)(5) in Case No. L14-0065. The Order is dated October 28, 2022 and was served by United States mail on November 1, 2022 (“October 28 Order”).

Tenants appeal from so much of the October 28 Order as applies to the “picture” Exhibit C.

**This appeal should be consolidated with, and be heard with, the concurrent related appeal in Case L14-0065, which is scheduled to be heard on November 10, 2022.**

Explanation of Grounds for Appeal

The October 28 Order Violates OMC Regulation 8.22.120.F.3.

The proffered picture exhibit (Exhibit C) is *new evidence*. In order for new evidence to be considered, the party offering it (here the owner) must show that the new evidence “could not have been available at the Hearing Officer proceedings.” OMC Regulation 8.22.120.F.3.

OMC Regulation 8.22.120.F.3. states:

3. In order for new evidence to be considered, the party offering the new evidence *must show* that the new evidence *could not have been available at the Hearing Officer proceedings*. (Emphasis added)

Owner did not make that showing. To the contrary, the new evidence actually was available during the Hearing Officer proceedings.

Owner admits that the picture was “taken by Respondent on July 14, 2022.”<sup>2</sup> At that time, the proceedings before the Hearing Officer were ongoing. Indeed, they were ongoing at

---

<sup>1</sup> Formerly 525, 655 Hyde Street CNML, Properties, LLC v. Tenants.

<sup>2</sup> Respondent’s Response To Appeal, page 4.

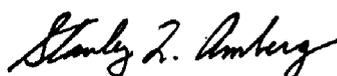
least until July 29 when the owner submitted (to the Hearing Officer) the owner's Response To Tenants Closing Statement. The owner's July 29 response did *not* disclose, discuss or offer as evidence the *already-taken* July 14<sup>th</sup> picture.

In short, the July 14 picture was actually available to Owner at the time of the Hearing Officer proceedings. OMC Regulation 8.22.120.F.3 precludes the introduction and consideration of this new evidence.

Respectfully, the October 28 Order should be reversed to the extent it admits picture Exhibit C into evidence.

Date: November 6, 2022

Stanley L. Amberg

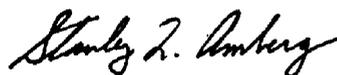


---

4115 Kendal Way, Sleepy Hollow, NY 10591  
T: 914-238-4921, M: 914-263-7341  
[stan.amberg@amberglaw.com](mailto:stan.amberg@amberglaw.com)  
Representative for Tenants

#### PROOF OF SERVICE

I declare under penalty of perjury under the laws of the State of California that on November 6, 2022 I served this document as follows: electronically on Angelica A. Sandoval, Fried Williams & Grice Connor, LLP, attorneys for Respondent/Owner Mandana Properties, LLC; and by placing a copy in the United States mail with all postage or charges fully prepaid, addressed as follows: Angelica A Sandoval, Fried Williams & Grice Connor, LLP, 1939 Harrison Street, Suite 460, Oakland, CA 94612; and Ray McFadden, Mandana Properties, LLC, 1087 Ashmount Avenue, Oakland, CA 94610; and City of Oakland, Rent Adjustment Program, 250 Frank Ogawa Plaza, Suite 5313, Oakland, CA 94612.



**CITY OF OAKLAND**  
**Department of Housing and Community Development**

**RENT ADJUSTMENT PROGRAM**

**Mandana Properties, LLC v. Tenants<sup>1</sup>**

**Case No. L14-0065**

**ADDENDUM TO TENANTS EXPLANATION OF GROUNDS FOR APPEAL**

Introduction

This is an Addendum to Tenants Explanation of Grounds for Appeal filed in support of tenants appeal from the Order Granting Request To Exceed Page Limit Under Regulation 8.22.120(A)(5) in Case No. L14-0065. Tenants Appeal and Explanation are at pages 561-564 of the Revised HRRRB Agenda Packet for the November 10, 2022 meeting of the HRRRB.

**This Addendum should be consolidated with, and be heard with, the concurrent related appeal in Case L14-0065, which is scheduled to be heard on November 10, 2022.**

Addendum

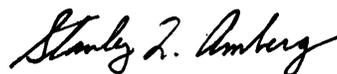
If the HRRRB allows owner's proffered picture exhibit (Exhibit C) to be received as evidence, considerations of fairness and due process allow the HRRRB to allow tenants to introduce as evidence the attached picture.

Owner's picture purports to show an exterior view of balconies at the property, 3921 Harrison Street.

The picture attached to this Addendum is an interior view of a balcony at the property at 3921 Harrison Street. The picture attached to this Addendum provides clarity and transparency, and is important for the HRRRB to consider. Tenants respectfully request the HRRRB to admit the attached picture in evidence.

Date: November 9, 2022

Stanley L. Amberg



4115 Kendal Way, Sleepy Hollow, NY 10591

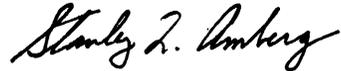
---

<sup>1</sup> Formerly 525, 655 Hyde Street CNML, Properties, LLC v. Tenants.

T: 914-238-4921, M: 914-263-7341  
[stan.amberg@amberglaw.com](mailto:stan.amberg@amberglaw.com)  
Representative for Tenants

**PROOF OF SERVICE**

I declare under penalty of perjury under the laws of the State of California that on November 9, 2022 I served this document electronically on Angelica A. Sandoval, Fried Williams & Grice Connor, LLP, attorneys for Respondent/Owner Mandana Properties, LLC.

A handwritten signature in black ink that reads "Stanley Z. Amberg". The signature is written in a cursive style with a large initial 'S' and 'A'.

3921 Harrison Street. Balcony of apartment. Photo by The Lapham Company, 4844 Telegraph Avenue, Oakland, CA, for open house Sept. 19, 2016.



C:\Users\StanAdmin\Documents\L14-0065 Oct 2022 Appeal to Rent Board\Balcony photos  
3921\2016-09-19 3921 Harrison St., Balcony of Apt. 203.docx

**000567**

**CITY OF OAKLAND**  
**Department of Housing and Community Development**

**RENT ADJUSTMENT PROGRAM**  
**HOUSING, RENT RESIDENTIAL & RELOCATION BOARD (HRRRB)**

**Mandana Properties, LLC v. Tenants<sup>1</sup>**

**Case No. L14-0065**

**REQUEST FOR JUDICIAL NOTICE**

Tenants request that the HRRRB take judicial notice of the following matters, pursuant to Rent Adjustment Program Regulation 8.22.110 E.4., California Government Code section 11513, and Evidence Code sections 451(e), 452(h), as it may, and pursuant to Evidence Code section 453, as it must, in considering Tenants Appeal in Case No. L14-0065.

1. Merriam-Webster's Unabridged Dictionary, definition of "unenclosed".

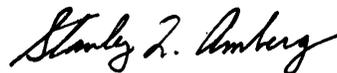
To enable the HRRRB to take judicial notice thereof, there are attached to this Request (1) a copy of the definition in the print version of the Unabridged Dictionary, and (2) a copy of the definition in the Internet version of the Unabridged Dictionary.

The definition is:

un-enclosed  
: not enclosed:  
**a** : not fenced in : COMMON <unenclosed land>  
**b** : not kept within convent walls <unenclosed nuns>

Date: November 28, 2022

Stanley L. Amberg



4115 Kendal Way, Sleepy Hollow, NY 10591  
T: 914-238-4921, M: 914-263-7341  
[stan.amberg@amberglaw.com](mailto:stan.amberg@amberglaw.com)  
Representative for Tenants

---

<sup>1</sup> Formerly 525, 655 Hyde Street CNML, Properties, LLC v. Tenants.



PROOF OF SERVICE

I declare under penalty of perjury under the laws of the State of California that on November 28, 2022 I served this document electronically on Angelica A. Sandoval, Fried Williams & Grice Connor, LLP, attorneys for Respondent/Owner Mandana Properties, LLC.

*Stanley Z. Amberg*

Webster's  
Third  
New International  
Dictionary

OF THE ENGLISH LANGUAGE  
UNABRIDGED

*© Merriam-Webster*

REG. U. S. PAT. OFF.

*Utilizing all the experience and resources of more than  
one hundred years of Merriam-Webster® dictionaries*

EDITOR IN CHIEF

PHILIP BABCOCK GOVE, Ph.D.

AND

THE MERRIAM-WEBSTER

EDITORIAL STAFF



MERRIAM-WEBSTER INC., *Publishers*

SPRINGFIELD, MASSACHUSETTS, U.S.A.

000570



**A GENUINE MERRIAM-WEBSTER**

The name *Webster* alone is no guarantee of excellence. It is used by a number of publishers and may serve mainly to mislead an unwary buyer.

*Merriam-Webster*™ is the name you should look for when you consider the purchase of dictionaries or other fine reference books. It carries the reputation of a company that has been publishing since 1831 and is your assurance of quality and authority.

**COPYRIGHT © 1993 BY MERRIAM-WEBSTER, INCORPORATED**

**PHILIPPINES COPYRIGHT 1993 BY MERRIAM-WEBSTER, INCORPORATED**

**WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY  
PRINCIPAL COPYRIGHT 1961**

Library of Congress Cataloging in Publication Data  
Main entry under title:

Webster's third new international dictionary of the English language, unabridged: a Merriam-Webster/editor in chief, Philip Babcock Gove and the Merriam-Webster editorial staff.

p. cm.  
ISBN 0-87779-201-1 (blue sturdite).—ISBN 0-87779-202-X (carrying case). — ISBN 0-87779-206-2 (imperial buckram).

1. English language—Dictionaries. I. Gove, Philip Babcock, 1902-1972. II. Merriam-Webster, Inc.  
PE1625.W36 1993  
423-dc20

93-10630  
CIP

*All rights reserved. No part of this book covered by the copyrights hereon may be reproduced or copied in any form or by any means—graphic, electronic, or mechanical, including photocopying, taping, or information storage and retrieval systems—without written permission of the publisher.*

**MADE IN THE UNITED STATES OF AMERICA**

47484950QPH979695

**000571**

employable  
**un-employable** \ " + \ *adj* : not acceptable for employment as a worker  
**unemployable** \ " \ *n* -s : an unemployable person  
**un-employed** \ 'un- + \ *adj* [ 'un- + *employed*, past part. of *employ* ] : not employed: **a** : not being used ( ~ time ) ( ~ tools ) ( a method as yet ~ ) **b** : not engaged in a gainful occupation : out of work ( ~ workers ) **c** : not invested ( ~ capital ) **d** : FREE 5g  
**un-employment** \ " + \ *n* : lack of employment : IDLENESS; *specif* : involuntary idleness of a worker seeking work at prevailing wages  
**unemployment benefit** *n* : payment (as by a union or an employer or according to the provisions of a governmental social security program) to an unemployed worker of a sum of money per week — compare DOLE  
**unemployment compensation** *n* : the system of unemployment benefits provided in the U.S. by state laws adopted pursuant to the Federal Social Security Act  
**unemployment insurance** *n* : insurance (as provided by state laws adopted pursuant to the Federal Social Security Act) against loss of earnings by payments for a limited period during which a worker is involuntarily unemployed  
**un-encapsulated** \ 'un- + \ *adj* : not encapsulated ( an ~ tumor )  
**un-enciphered** \ " + \ *adj* [ 'un- + *enciphered*, past part. of *encipher* ] : not converted to cipher ( ~ messages )  
**un-enclosed** \ " + \ *adj* [ 'un- + *enclosed*, past part. of *enclose* ] : not enclosed: **a** : not fenced in : COMMON ( ~ land ) **b** : not kept within convent walls ( ~ nuns )  
**un-encrypted** \ " + \ *adj* [ 'un- + *encrypted*, past part. of *encrypt* ] : not encoded : not cryptic : CLEAR ( ~ language )  
**un-encumbered** \ " + \ *adj* [ 'un- + *encumbered*, past part. of *encumber* ] **1** : free of encumbrance : UNBURDENED, UNHAMPERED ( a lucid, ~ book, sparing of footnotes ) ( planning to live an ~ life ); *specif* : free from a temporary estate or interest ( as a mortgage, lien, or dower right ) ( pass it on to their heirs ... intact and ~ — H.P.Becker ) **2** : having no dependents ( as spouse or children ) ( reliable, ~ woman ... would like position as housekeeper — *Vancouver (Canada) Sun* )  
**un-encysted** \ " + \ *adj* [ 'un- + *encysted*, past part. of *encyst* ] : not encysted  
**un-ended** \ " + \ *adj* [ ME, fr. 'un- + *ended*, past part. of *enden* to end ] : not ended : UNFINISHED ( that contest was still ~ — C.L.Jones )  
**un-ending** \ " + \ *adj* [ 'un- + *ending*, pres. part. of *end* ] : never ending : ENDLESS: **a** : not coming to an end : continuing indefinitely into the future : CONTINUOUS, EVERLASTING ( the ... dream of ~ progress — W.R.Inge ) **b** : going on from time immemorial : TIMELESS, AGE LONG ( the reef's ~ creation — P.A. Zahl ) **c** : UNDYING, ETERNAL ( ~ love ) **d** : going on continually : INCESSANT, PERPETUAL ( an ~ struggle carried on at every club meeting ) **e** : extending with no apparent end : INTERMINABLE ( the ~ levee, covered with scraggly grass — *Amer. Guide Series: La.* ) **f** : passing all limits : EXTRAORDINARY ( the most ~ ass in Christendom — Thoma

unenclosed



Reference Unabridged Dictionary ▾

Content Type Main Entry ▾

[Advanced Search \(/advanced-search.php\)](/advanced-search.php) »

1 entry found for "unenclosed" in the Unabridged Dictionary

## Exact matches:

1. **unenclosed** (adjective) (unenclosed)

[Unabridged Dictionary \(/unabridged/unenclosed\)](/unabridged/unenclosed) [Collegiate Dictionary \(/collegiate/unenclosed\)](/collegiate/unenclosed)

adjective

# un·enclosed

: not enclosed:  
a : not fenced in : COMMON (</unabridged/common>) <unenclosed land>  
b : not kept within convent walls <unenclosed nuns>

Origin of UNENCLOSED

<sup>1</sup>un- ([/unabridged/un-\[1\]](/unabridged/un-[1])) + *enclosed*, past participle of *enclose*

[Pronunciation Symbols \(/info/pronsymbols.html\)](/info/pronsymbols.html)

[Cite this Entry](#)

"Unenclosed." *Merriam-Webster's Unabridged Dictionary*, Merriam-Webster, <https://unabridged.merriam-webster.com/unabridged/unenclosed>. Accessed 27 Nov. 2022.

**Style:** MLA ▾

### About Merriam-Webster

- [Home \(/\)](#)
- [About the Unabridged \(/info/about-the-unabridged.html\)](/info/about-the-unabridged.html)
- [Help \(/info/site-help.html\)](/info/site-help.html)
- [About Us \(/info/about.html\)](/info/about.html)
- [Contact Us \(/subscriber/contact-ind\)](/subscriber/contact-ind)
- [Privacy Policy \(/info/privacy-policy.html\)](/info/privacy-policy.html)

**CITY OF OAKLAND**  
**Department of Housing and Community Development**

**RENT ADJUSTMENT PROGRAM**  
**HOUSING, RENT RESIDENTIAL & RELOCATION BOARD (HRRRB)**

**Mandana Properties, LLC v. Tenants<sup>1</sup>**

**Case No. L14-0065**

**TENANTS REQUEST TO INCLUDE A PREVIOUSLY-FILED DOCUMENT  
IN THE AGENDA AND PACKET FOR THE  
JANUARY 12, 2023 MEETING OF THE HRRRB**

Tenants respectfully request that a previously-filed document titled “REQUEST FOR JUDICIAL NOTICE” be included in the agenda and packet for the January 12, 2023 meeting of the HRRRB.

The “REQUEST FOR JUDICIAL NOTICE” was electronically filed on November 28, 2022 and receipt thereof was acknowledged by the Rent Adjustment Program on that same date.

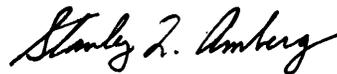
The “REQUEST FOR JUDICIAL NOTICE” was inadvertently not included in the agenda and packet for the January 12, 2023 meeting of the HRRRB.

Tenants respectfully request that the “REQUEST FOR JUDICIAL NOTICE” be included in the agenda and packet for the January 12, 2023 meeting of the HRRRB, or otherwise be timely provided to the HRRRB.

For the convenience of the HRRRB, a pdf of the “REQUEST FOR JUDICIAL NOTICE”, as filed on November 28, 2022, is enclosed.

Date: January 8, 2023

Stanley L. Amberg



---

4115 Kendal Way, Sleepy Hollow, NY 10591  
T: 914-238-4921, M: 914-263-7341  
[stan.amberg@amberglaw.com](mailto:stan.amberg@amberglaw.com)  
Representative for Tenants

---

<sup>1</sup> Formerly 525, 655 Hyde Street CNML, Properties, LLC v. Tenants.

PROOF OF SERVICE

I declare under penalty of perjury under the laws of the State of California that on January 8, 2023 I served this document electronically on Angelica A. Sandoval, Fried Williams & Grice Connor, LLP, attorneys for Respondent/Owner Mandana Properties, LLC.

*Stanley Z. Amberg*

**CITY OF OAKLAND**  
**Department of Housing and Community Development**

**RENT ADJUSTMENT PROGRAM**  
**HOUSING, RENT RESIDENTIAL & RELOCATION BOARD (HRRRB)**

**Mandana Properties, LLC v. Tenants<sup>1</sup>**

**Case No. L14-0065**

**REQUEST FOR JUDICIAL NOTICE**

Tenants request that the HRRRB take judicial notice of the following matters, pursuant to Rent Adjustment Program Regulation 8.22.110 E.4., California Government Code section 11513, and Evidence Code sections 451(e), 452(h), as it may, and pursuant to Evidence Code section 453, as it must, in considering Tenants Appeal in Case No. L14-0065.

1. Merriam-Webster's Unabridged Dictionary, definition of "unenclosed".

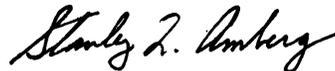
To enable the HRRRB to take judicial notice thereof, there are attached to this Request (1) a copy of the definition in the print version of the Unabridged Dictionary, and (2) a copy of the definition in the Internet version of the Unabridged Dictionary.

The definition is:

un-enclosed  
: not enclosed:  
**a** : not fenced in : COMMON <unenclosed land>  
**b** : not kept within convent walls <unenclosed nuns>

Date: November 28, 2022

Stanley L. Amberg



4115 Kendal Way, Sleepy Hollow, NY 10591  
T: 914-238-4921, M: 914-263-7341  
[stan.amberg@amberglaw.com](mailto:stan.amberg@amberglaw.com)  
Representative for Tenants

---

<sup>1</sup> Formerly 525, 655 Hyde Street CNML, Properties, LLC v. Tenants.



PROOF OF SERVICE

I declare under penalty of perjury under the laws of the State of California that on November 28, 2022 I served this document electronically on Angelica A. Sandoval, Fried Williams & Grice Connor, LLP, attorneys for Respondent/Owner Mandana Properties, LLC.

*Stanley Z. Amberg*

Webster's  
Third  
New International  
Dictionary

OF THE ENGLISH LANGUAGE  
UNABRIDGED

*© Merriam-Webster*

REG. U. S. PAT. OFF.

*Utilizing all the experience and resources of more than  
one hundred years of Merriam-Webster® dictionaries*

EDITOR IN CHIEF

PHILIP BABCOCK GOVE, Ph.D.

AND

THE MERRIAM-WEBSTER

EDITORIAL STAFF



MERRIAM-WEBSTER INC., *Publishers*

SPRINGFIELD, MASSACHUSETTS, U.S.A.

000578



**A GENUINE MERRIAM-WEBSTER**

The name *Webster* alone is no guarantee of excellence. It is used by a number of publishers and may serve mainly to mislead an unwary buyer.

*Merriam-Webster*™ is the name you should look for when you consider the purchase of dictionaries or other fine reference books. It carries the reputation of a company that has been publishing since 1831 and is your assurance of quality and authority.

**COPYRIGHT © 1993 BY MERRIAM-WEBSTER, INCORPORATED**

**PHILIPPINES COPYRIGHT 1993 BY MERRIAM-WEBSTER, INCORPORATED**

**WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY  
PRINCIPAL COPYRIGHT 1961**

Library of Congress Cataloging in Publication Data  
Main entry under title:

Webster's third new international dictionary of the English language, unabridged: a Merriam-Webster/editor in chief, Philip Babcock Gove and the Merriam-Webster editorial staff.

p. cm.  
ISBN 0-87779-201-1 (blue sturdite).—ISBN 0-87779-202-X (carrying case). — ISBN 0-87779-206-2 (imperial buckram).

1. English language—Dictionaries. I. Gove, Philip Babcock, 1902-1972. II. Merriam-Webster, Inc.  
PE1625.W36 1993  
423-dc20

93-10630  
CIP

*All rights reserved. No part of this book covered by the copyrights hereon may be reproduced or copied in any form or by any means—graphic, electronic, or mechanical, including photocopying, taping, or information storage and retrieval systems—without written permission of the publisher.*

**MADE IN THE UNITED STATES OF AMERICA**

47484950QPH979695

**000579**

employable  
**un-employable** \ " + \ *adj* : not acceptable for employment as a worker  
**unemployable** \ " \ *n* -s : an unemployable person  
**un-employed** \ 'un- + \ *adj* [ 'un- + *employed*, past part. of *employ* ] : not employed: **a** : not being used ( ~ time ) ( ~ tools ) ( a method as yet ~ ) **b** : not engaged in a gainful occupation : out of work ( ~ workers ) **c** : not invested ( ~ capital ) **d** : FREE 5g  
**un-employment** \ " + \ *n* : lack of employment : IDLENESS; *specif* : involuntary idleness of a worker seeking work at prevailing wages  
**unemployment benefit** *n* : payment (as by a union or an employer or according to the provisions of a governmental social security program) to an unemployed worker of a sum of money per week — compare DOLE  
**unemployment compensation** *n* : the system of unemployment benefits provided in the U.S. by state laws adopted pursuant to the Federal Social Security Act  
**unemployment insurance** *n* : insurance (as provided by state laws adopted pursuant to the Federal Social Security Act) against loss of earnings by payments for a limited period during which a worker is involuntarily unemployed  
**un-encapsulated** \ 'un- + \ *adj* : not encapsulated ( an ~ tumor )  
**un-enciphered** \ " + \ *adj* [ 'un- + *enciphered*, past part. of *encipher* ] : not converted to cipher ( ~ messages )  
**un-enclosed** \ " + \ *adj* [ 'un- + *enclosed*, past part. of *enclose* ] : not enclosed: **a** : not fenced in : COMMON ( ~ land ) **b** : not kept within convent walls ( ~ nuns )  
**un-encrypted** \ " + \ *adj* [ 'un- + *encrypted*, past part. of *encrypt* ] : not encoded : not cryptic : CLEAR ( ~ language )  
**un-encumbered** \ " + \ *adj* [ 'un- + *encumbered*, past part. of *encumber* ] **1** : free of encumbrance : UNBURDENED, UNHAMPERED ( a lucid, ~ book, sparing of footnotes ) ( planning to live an ~ life ); *specif* : free from a temporary estate or interest ( as a mortgage, lien, or dower right ) ( pass it on to their heirs ... intact and ~ — H.P.Becker ) **2** : having no dependents ( as spouse or children ) ( reliable, ~ woman ... would like position as housekeeper — *Vancouver (Canada) Sun* )  
**un-encysted** \ " + \ *adj* [ 'un- + *encysted*, past part. of *encyst* ] : not encysted  
**un-ended** \ " + \ *adj* [ ME, fr. 'un- + *ended*, past part. of *enden* to end ] : not ended : UNFINISHED ( that contest was still ~ — C.L.Jones )  
**un-ending** \ " + \ *adj* [ 'un- + *ending*, pres. part. of *end* ] : never ending : ENDLESS: **a** : not coming to an end : continuing indefinitely into the future : CONTINUOUS, EVERLASTING ( the ... dream of ~ progress — W.R.Inge ) **b** : going on from time immemorial : TIMELESS, AGE LONG ( the reef's ~ creation — P.A. Zahl ) **c** : UNDYING, ETERNAL ( ~ love ) **d** : going on continually : INCESSANT, PERPETUAL ( an ~ struggle carried on at every club meeting ) **e** : extending with no apparent end : INTERMINABLE ( the ~ levee, covered with scraggly grass — *Amer. Guide Series: La.* ) **f** : passing all limits : EXTRAORDINARY ( the most ~ ass in Christendom — Thoma

unenclosed



Reference Unabridged Dictionary ▾

Content Type Main Entry ▾

[Advanced Search \(/advanced-search.php\)](/advanced-search.php) »

1 entry found for "unenclosed" in the Unabridged Dictionary

## Exact matches:

1. **unenclosed** (adjective) (unenclosed)

[Unabridged Dictionary \(/unabridged/unenclosed\)](/unabridged/unenclosed) [Collegiate Dictionary \(/collegiate/unenclosed\)](/collegiate/unenclosed)

# un·enclosed adjective

: not enclosed:

a : not fenced in : COMMON (/unabridged/common) <unenclosed land>

b : not kept within convent walls <unenclosed nuns>

Origin of UNENCLOSED

<sup>1</sup>un- (/unabridged/un-[1]) + *enclosed*, past participle of *enclose*

[Pronunciation Symbols \(/info/pronsymbols.html\)](/info/pronsymbols.html)

[Cite this Entry](#)

"Unenclosed." *Merriam-Webster's Unabridged Dictionary*, Merriam-Webster, <https://unabridged.merriam-webster.com/unabridged/unenclosed>. Accessed 27 Nov. 2022.

Style: MLA ▾

### About Merriam-Webster

[Home \(/\)](#)

[About the Unabridged \(/info/about-the-unabridged.html\)](/info/about-the-unabridged.html)

[Help \(/info/site-help.html\)](/info/site-help.html)

[About Us \(/info/about.html\)](/info/about.html)

[Contact Us \(/subscriber/contact-ind\)](/subscriber/contact-ind)

[Privacy Policy \(/info/privacy-policy.html\)](/info/privacy-policy.html)

## CHRONOLOGICAL CASE REPORT

Case No.: T22-0078

Case Name: Bolanos v. Wu

Property Address: 114 E 15<sup>th</sup> Street, Oakland, CA 94606

Parties: Allen Wu (Owner)  
Gigi Bolanos (Tenant)

### OWNER APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	May 2, 2022
Owner Response filed	June 4, 2022
Hearing Date	September 20, 2022
Hearing Decision mailed	October 19, 2022
Owner Appeal filed	November 14, 2022



City of Oakland Rent Adjustment Program  
 250 Frank H. Ogawa Plaza, Suite 5313  
 Oakland, CA 94612  
 (510) 238-3721

T22-0078 EL/BL

**TENANT PETITION**

**RECEIVED**

MAY -2 2022

7/20

**Property Address:** 114 E 15TH ST  
**Case:** Petition: 15088  
**Date Filed:** 05-02-2022

RENT ADJUSTMENT PROGRAM  
 OAKLAND

**Parties**

Party	Name	Address	Mailing Address	
Owner	Allen Wu	P.O Box 12081 San Francisco , CA 94112	P.O Box 12081 San Francisco , 94112	
Manager	Allen Wu	P.O Box 12081 San Francisco, 94112	P.O Box 12081 San Francisco, 94112	allenwu1102@gmail.com
Tenant	Gigi Saray Bolanos	114 East 15th Street Oakland, CA 94606		(510) 260-3349 gbolanos730@gmail.com

**Number of units on the property** 2

**Type of unit you rent** Apartment, Room or Live-work

**Are you current on your rent?** Yes

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

**Grounds for Petition**

**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:**

I received a rent increase above the allowable amount.

The property owner is providing me with fewer housing services than I previously received and/or I am being charged for services originally paid for by the owner. (Check this box for petitions based on bad conditions/failure to repair.)

**Rental History**

<b>Date you moved into the Unit</b>	5/16/2019
<b>Initial Rent</b>	\$ 1,800.00 /month
<b>Current Rent</b>	\$ 1,800.00 /month
<b>Is your rent subsidized or controlled by any government agency, including HUD (Section 8)?</b>	No
<b>When, if ever, did the property owner first provide you the City form, NOTICE TO TENANTS OF THE RESIDENTIAL RENT ADJUSTMENT PROGRAM ('RAP Notice')?</b>	I first received the RAP Notice on 5/16/2019

**List the case numbers of any relevant prior Rent Adjustment case(s):**  
 Case M22-0001

**List all rent increases that you want to challenge.**

<b>Date you received the notice</b>	<b>Date increase goes into effect</b>	<b>Monthly rent increase From</b>	<b>Monthly rent increase To</b>	<b>Are you Contesting this Increase in this Petition? *</b>	<b>Did You Receive a Rent Program Notice With the Notice Of Increase?</b>
02-11-2022	05-02-2022	\$ 1,800.00	\$ 2,100.00	No	Yes
02-11-2022	01-01-1900	\$ 1,800.00	\$ 2,100.00	No	Yes

*\* You have 90 days from the date of notice of increase or from the first date you received written notice of the existence of the Rent Adjustment program (whichever is later) to contest a rent increase. (O.M.C. 8.22.090 A 2) If you did not receive a RAP Notice with the rent increase you are contesting but have received it in the past, you have 120 days to file a petition. (O.M.C. 8.22.090 A 3)*

List case number(s) of all Petition(s) you have ever filed for this rental unit and all other relevant Petitions:  
 Case M22-0001



**Description of Decreased or Inadequate Housing Services**

---

Decreased or inadequate housing services are considered an increase in rent. If you claim an unlawful rent increase for problems in your unit, or because the owner has taken away a housing service, you must complete this section.

**Loss of Service**

---

<b>Date Loss Began</b>	02-05-2022
<b>Date Owner Was Notified of Loss</b>	02-05-2022
<b>Estimated Loss</b>	3600
<b>Reduced Service Description</b>	Refuses to process qualified and potential roommate candidates

---

**Mediation**

Mediation is an optional process offered by the Rent Adjustment Program to assist parties in settling the issues related to their Rent Adjustment case as an alternative to the formal hearing process. The purpose of mediation is to find a mutual agreement that satisfies both parties. A trained third party will discuss the issues with both sides, look at relative strengths and weaknesses of each position, and consider both parties' needs in the situation. If a settlement is reached, the parties will sign a binding agreement and there will not be a formal hearing process. If no settlement is reached, the case will go to a formal hearing with a Rent Adjustment Hearing Officer, who will then issue a hearing decision.

Mediation will only be scheduled if both parties agree to mediate. Sign below if you want to request mediation for your case.

**I/We agree to have my/our case mediated by a Rent Adjustment Program staff mediator.** No

**Consent to Electronic Service**

Check the box below if you agree to have RAP staff send you documents related to your case electronically. If all parties agree to electronic service, the RAP will only send documents electronically and not by first class mail.

**I/We consent to receiving notices and documents in this matter electronically at the email address(es) provided in this petition.** Yes

**Interpretation Services**

If English is not your primary language, you have the right to an interpreter in your primary language at the Rent Adjustment hearing and mediation session. You can request an interpreter by completing this section.

**I request an interpreter fluent in the following language at my Rent Adjustment proceeding:** No

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

**Gigi Bolanos**

**5/2/2022**

**Signature**

**Date**

 <p>CITY OF OAKLAND</p>	<p>City of Oakland Rent Adjustment Program          250 Frank H. Ogawa Plaza, Suite 5313          Oakland, CA 94612          (510) 238-3721</p>
--	---

# PROOF OF SERVICE

## TENANT PETITION

**\* And additional documents uploaded with the Petition**

**Electronic Petition number: 15088**

I declare under penalty of perjury under the laws of the State of California that on **05-03-2022** I, **Gigi Bolanos**, served a copy of the following document(s), Tenant Petition, the Notice to Property Owner of Tenant Petition and all attached 0 pages, to each opposing party, whose names and addresses are listed below, by **United States mail**.

<b>Names of Served Document(s)</b>	-Communications with Landlord
-Mediation M22-0001 (including 05/2019 lease)	

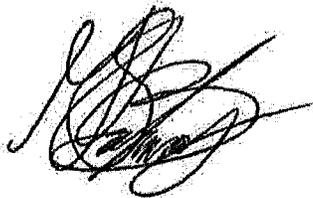
### Addressee(s) Information

**Addressee:** Allen Wu  
 P.O Box 12081  
 San Francisco CA 94112

<b>Gigi Bolanos</b>	<b>05-02-2022</b>
---------------------	-------------------

SIGNATURE OF PETITIONER OR DESIGNATED REPRESENTATIVE

DATE:



05/03/2022

**City of Oakland Rent Adjust Program**  
**Date Printed: 05-03-2022**

**000587**

# City of Oakland Rent Adjustment Program

## Owner Response

Case **T22-0078**  
Property Address **114 E 15TH ST**

### Parties

Party	Name	Address	Mailing Address
Tenant	Gigi Saray Bolanos (510) 260-3349 gbolanos730@gmail.com	114 East 15th Street Oakland, CA 94606	
Owner	Allen Wu	P.O Box 12081 San Francisco , CA 94112	

### Business Information

Date of which you aquired the building **3-22-2001**

Total Number of Units **2**

Is there more than one street address on the parcel? **Yes**

Type of Unit **Apartment,  
Room or  
Live-work**

Is the contested increase a capital improvements increase? **No**

Business License **00029577**

Have you paid your business license? **Yes**

Have you paid the Rent Adjustment Program Service Fee (\$101 per unit)? **Yes**

### Rent History

The tenant moved into the rental unit on **5-16-2019**

Initial monthly rent **1800**

# City of Oakland Rent Adjustment Program

## Owner Response

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
On what date was the notice first given?	5-16-2019
Is the tenant current on the rent?	Yes

# City of Oakland Rent Adjustment Program

## Owner Response

Are you claiming an Exemption? No

---

### Owner Responses on Petition Grounds

---

#### Questions

#### Owner Response

---

Tenant did not receive proper notice, was not properly served, and/or was not provided with the required RAP form with rent increase(s)

\*\*\*Note: Section A1 (above) does not have the option to select Other Reasons for Increase on the RAP website portal

The tenant, Gigi Bolanos, was provided the RAP form which she signed at her move-in date of 5/16/2019. The tenant, Gigi Bolanos, was provided and properly served via USPS certified mail on 2/12/2022; a Notice of Costa-Hawkins Rent Increase (California Civil Code Section 1954.53 et. seq,) along with the RAP forms. All of which were also emailed to City of Oakland Rent Adjustment Program Hearings Unit on 3/20/2022 for the mediation held on 3/30/2022.

Page 3/6 of the tenant's petition #15088; shows that the tenant replied she did receive a Rent Program Notice with the Notice of Increase.

A government agency has cited the unit for serious health, safety, fire, or building code violations.

No government agencies has every cited the unit for any serious health, safety, fire or building code violations.

The owner is providing tenant(s) with fewer housing services and/or charging for services originally paid for by the owner.

The tenant, Gigi Bolanos, never sent proper written notice via USPS certified mail indicating a request for adding roommates. The potential roommate candidates never submitted rental

# City of Oakland Rent Adjustment Program

## Owner Response

applications or proof of employment/income verification.

---

Tenant(s) is/are being unlawfully charged for utilities.

Per line item 4 of the lease agreement; Tenants shall be responsible for the payment of all utilities and services, except: Garbage, which shall be paid by Owner.

---

Rent was not reduced after a prior rent increase period for capital improvements.

N/A

---

Tenant is contesting exemption based on fraud or mistake.

N/A

---

Tenant's initial rent amount was unlawful because owner was not permitted to set initial rent without limitation (O.M.C. § 8.22.080C).

None of the original occupants permanently reside in the covered unit. (California Civil Code § 1954.53(d)). Both of the original occupants on the original lease agreement signed 8/6/2017 moved out of the covered unit on their own accord. Mary Balingit moved out 4/7/2019; Maria Lilygrace Abad moved out 11/14/2021.

The owner is allowed to set an initial rent without restriction pursuant to Costa-Hawkins and O.M.C. 8.22.080 (C). I notified Gigi Bolanos this via text on 10/12/2021. Then again, via USPS certified mail along with the RAP forms, on 2/12/2022.

# City of Oakland Rent Adjustment Program

## Owner Response

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

***Allen Wu***

**6/4/2022**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

-----END OF RESPONSE-----





**CITY OF OAKLAND**

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

Department of Housing and Community Development  
Rent Adjustment Program

TEL (510) 238-3721  
FAX (510) 238-6181  
CA Relay Service 711

**HEARING DECISION**

**CASE NUMBER:** T22-0078  
**PROPERTY ADDRESS:** 114 East 15th Street  
Oakland, California  
**DATE OF HEARING:** September 20, 2022  
**DATE OF DECISION:** October 18, 2022  
**APPEARANCES:** Gigi Saray Bolanos, Tenant Petitioner  
Allen Wu, Owner Respondent

**SUMMARY OF DECISION**

The Petition is granted.

**CONTENTIONS OF PARTIES**

On May 2, 2022, Gigi Saray Bolanos (“the Petitioner”) filed a Petition contesting a rent increase from \$1,800.00 to \$2,100.00, effective May 1, 2022. The Petitioner also alleged that the owner had decreased housing services by denying her the right to one-for-one replacement of roommates.

The owner, Allen Wu (“the Owner”) filed a Response contending that the rent increase was justified under California Civil Code section 1954.53(d) because “none of the original occupants permanently reside in the covered unit.” The Owner also contended that the Petitioner’s request to add a roommate was properly denied because the Petitioner did not send her request via USPS certified mail and because no potential roommate candidates submitted rental applications or proof of employment/income verification.

**ISSUES**

1. May the Owner raise the rent beyond the allowable CPI Rent Adjustment pursuant to California Civil Code sections 1954.50, *et seq.*?
2. Has the Petitioner suffered a decrease in housing services?
3. If the Petitioner has suffered a decrease in housing services, what restitution is owed to the Petitioner and how does that impact the rent?

## EVIDENCE

The Petitioner and the Owner testified and submitted evidence showing that the Petitioner moved into 114 East 15th Street ("Unit 114") on May 16, 2019.<sup>1</sup> The Petitioner and the Owner testified that the Petitioner replaced Mary Balingit ("Ms. Balingit"), one of two original occupants who moved into Unit 114 in in 2015. The Owner testified that, in 2017, Ms. Balingit replaced a departing roommate with Maria "Marily" Abad ("Ms. Abad").

The Owner submitted a lease ("the August 6, 2017 Lease Agreement") that was signed by Ms. Balingit, Ms. Abad, and the Owner on August 6, 2017. (Exhibit 2).<sup>2</sup> The Petitioner and the Owner both testified that the Petitioner moved into Unit 114 pursuant to a Tenant Addition Addendum and Amendment ("the May 16, 2019 Addendum and Amendment") signed by the Petitioner, Ms. Abad, and the Owner. (Exhibit 3).<sup>3</sup>

The May 16, 2019 Addendum and Amendment states that "Gigi Bolanos (NEW TENANT)" shall become a "NEW TENANT" under the terms and conditions set forth in the August 6, 2017 Lease Agreement. The Petitioner testified that at the time she signed the addendum, she asked the Owner whether she was subletting and he responded, "No."

Under the terms of the May 16, 2019 Addendum and Amendment, Ms. Abad and the Petitioner agreed to be jointly and severally liable for all amounts that were and would become due and owing under the August 6, 2017 Lease Agreement. The parties also agreed that all refunds of monies paid in advance under the August 6, 2017 Lease Agreement, including the security deposit and advanced rent, would be paid jointly to Ms. Abad and the Petitioner. The Owner testified that, in May 2019, the Petitioner was given the August 6, 2017 Lease Agreement and "was added" to the August 6, 2017 Lease Agreement.

The Petitioner testified that when she moved in with Ms. Abad, the total rent was \$1,800.00. The Petitioner testified that she and Ms. Abad each paid \$900.00 in rent, in payments made directly to the Owner. The Petitioner testified that the rent was due on the fifteenth of each month. The Owner did not contest any of those assertions. The Owner testified that he charged the Petitioner a late rent fee in August 2019, which she paid.

The Owner's Response contended that Ms. Abad moved out of Unit 114 on November 14, 2021. The Petitioner did not contest that assertion. It was undisputed that the Petitioner paid the Owner the full \$1,800 in rent every month since Ms. Abad moved out.

Documents submitted by the Owner show that, on October 12, 2021, the Petitioner sent a text message to the Owner stating that she would like to find a new roommate as soon as

---

<sup>1</sup> It was undisputed that the Owner provided the RAP Notice to the Petitioner prior to the Petitioner moving into Unit 114, that the Owner has an active business license, and that the Owner has paid the RAP service fee.

<sup>2</sup> Residential Lease-Rental Agreement and Deposit Receipt signed August 6, 2017.

<sup>3</sup> Tenant Addition Addendum and Amendment, Dated May 16, 2019

possible. (Exhibit 4).<sup>4</sup> The Petitioner asked the Owner what information she needed to include when posting an advertisement for a roommate.

Later that day, the Owner responded in a text message that:

- because Ms. Abad was the last original occupant, the new rent would be \$2,100;
- the application fee for a potential roommate would be \$40;
- the Petitioner and the new roommate would both need to have a combined monthly income of at least three times \$2,100.00;
- the new roommate would need to have a clean rental and credit history;
- the Petitioner and her new roommate would need to sign a new, one-year lease agreement at the \$2,100.00 rate; and
- the Petitioner should forward the Owner's number to the potential roommate to initiate the screening process.

On October 14, 2021, the Petitioner sent a text message to the Owner stating that she would reach out to Bay Area Legal Aid to ensure that the information that the Owner provided regarding adding a roommate and increasing the rent was correct. The Petitioner testified that because she expected to be busy during the upcoming holidays, she put off trying to find a new roommate.

On February 4, 2022, the Petitioner sent a text message to the Owner stating that she had found a potential roommate ("the first potential roommate") and asking what the next steps were. (Exhibit 5).<sup>5</sup> On February 5, 2022, the Petitioner sent another text message informing the Owner that she wanted the first potential roommate to be approved by the time the rent next became due (February 15, 2022).

On February 5, 2022, the Owner responded via text stating the process for adding a roommate would be the same as they discussed in October 2021. The Owner asked the Petitioner to forward the Owner's phone number to the first potential roommate to initiate the screening process.

On February 6, 2022, the Petitioner responded in a text stating that she would pass along the Owner's contact information to the first potential roommate. The Petitioner testified that she gave the Owner's phone number to the first potential roommate at that time. The text message also stated that the Petitioner never received a written rent increase notice, that Bay Area Legal Aid informed the Petitioner that the rent increase is "a complete separate issue from replacing a roommate", and that the first potential roommate should be processed under the rental rate in effect at that time (\$1,800.00).

The Owner testified that he received a text message from the first potential roommate (a woman named Jazmin) in which she asked the Owner to call her. The Owner testified

---

<sup>4</sup> Text messages sent between the Owner and the Petitioner October 12 and 14, 2021, November 13 and 14, 2021, and February 17 and 18, 2022.

<sup>5</sup> The last listed date on these text messages is Monday, April 25, 2022. Three subsequent messages are listed only as Tuesday, Wednesday, and Friday. Per the Petitioner's testimony, these text messages are accepted as being sent on Tuesday, April 26, Wednesday April 27, and Friday, April 29, 2022.

that he did not call the first potential roommate because he did not have time.

On February 8, 2022, the Petitioner sent a text message to the Owner stating that the Rent Adjustment Program informed her that replacing a roommate is a separate transaction from raising the rent, that Unit 114 is a rent-controlled unit, and that the rent could only be raised 1.9 percent. The Petitioner again stated in the text message that the first potential roommate should be processed under the rental rate in effect at that time (\$1,800.00).

On February 9, 2022, having not received a response from the Owner since February 5, 2022, the Petitioner sent a text message to the Owner asking if he had had time to connect with the first potential roommate. The Petitioner stated in the text message that it was imperative that an application be processed as soon as possible because the first potential roommate had to give notice to her landlord and because the Petitioner did not want to pay the full rent amount for the upcoming due date. The Petitioner testified that she wanted the first potential roommate to be moved in by February 20, 2022.

On February 10, 2022, the Petitioner texted the Owner stating that neither she nor the first potential roommate had heard from the Owner all week. The Petitioner stated in the text message that she wanted to get the issue resolved as soon as possible, that the first potential roommate was a good fit, and that the first potential roommate should have the opportunity to be processed. On February 11, 2022, still having not received a response from the Owner, the Petitioner sent a text to the Owner asking if he had had the opportunity to respond to or process the potential roommate.

The Petitioner testified that at some point between February 11, 2022 and February 16, 2022, she spoke to the Owner on the phone. The Petitioner testified that the Owner told her during that call that in order for the first potential roommate to be processed, the Petitioner would need to sign a new lease at the rate of \$2,100 per month. The Owner testified that the total amount of rent would be split "fifty-fifty" between the Petitioner and the first potential roommate. The Owner testified that the Petitioner refused to sign such a lease.

The Petitioner submitted a letter from the owner dated February 11, 2022, which the Petitioner said she received on February 18, 2022. The letter quotes California Civil Code section 1954.53(d)(2) in full. The letter states that Ms. Balingit and Ms. Abad were the original tenants who signed a one-year lease agreement on August 15 [sic], 2017. The letter also states that the Petitioner is not an original tenant as defined by California Civil Code section 1954.53. The letter further states the Owner's contention that acceptance of rent directly from the Petitioner does not constitute a waiver to increase the rent or enter into a lease agreement with different terms.<sup>6</sup> Finally, the letter purports to be an official

---

<sup>6</sup> At the hearing, The Owner requested that the Hearing Officer take judicial notice of an unsigned document titled "LEASE ADDENDUM FOR PURPOSE OF FUTURE COSTA-HAWKINS RENT INCREASE" that he said he downloaded from the Rent Adjustment Program website. The Petitioner objected to the document's admission into evidence because she never received the document from the Owner and because the Owner did not submit the document to the Rent Adjustment Program prior to the hearing. Judicial notice is not taken of the document because the

notice that the Petitioner will need to sign a new one-year lease agreement at a new monthly rental rate of \$2,100.00 after both the Petitioner and the first potential roommate pass the screening process.

The Owner testified that he refused to process the first potential roommate's application because the Petitioner would not agree to sign a new lease at the rate of \$2,100.00 per month. The Petitioner testified that by February 18, 2022, the first potential roommate backed out because of the Owner's refusal to process an application.

On April 25, 2022, the Petitioner sent a text message to the Owner stating that she had found a second potential roommate and indicated that she would pay the demanded \$2,100.00 per month. On April 26, 2022, the Petitioner sent a text message to the Owner asking if the Owner had had an opportunity to connect with the second potential roommate and telling the Owner that the Petitioner would sign a new lease under the Owner's demanded terms. That text also stated that she wanted the second potential roommate to be processed before the next month's rent became due (on May 15, 2022).

On April 27, 2022, the Petitioner sent another text message to the Owner asking if he had had a chance to start processing the second potential roommate. On April 29, 2022, the Petitioner again texted the Owner asking if he had had a chance to process the second potential roommate.

The Owner testified that he did not respond to any of those text messages because there was "not enough time" for the Owner to process the second potential roommate's application to allow for a move-in date of May 15, 2022. The Owner also testified that he wanted to receive the request to process the second potential roommate via certified mail. The Owner and the Petitioner both testified that the Owner never told the Petitioner that she needed to submit her request by certified mail. The August 6, 2017 Lease Agreement only states that any notice that the tenant gives "may be given" to the Owner via mail.

The Petitioner testified that the second potential roommate fell through because of the Owner's lack of response to her request. The Petitioner testified that as of the hearing date, she had a third potential roommate lined up.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

#### **The Owner Cannot Increase the Rent Beyond the CPI Rent Adjustment Amount Because the Tenant Was Not a Subtenant or Assignee, but Rather a Tenant Under the Original Lease Agreement.**

The owner's reliance on the Costa-Hawkins Rental Housing Act, Civil Code sections 1954.50, *et seq.* ("the Costa-Hawkins Act") to justify the rent increase is misguided.

---

Petitioner was never served a copy of the document prior to the hearing and because it is irrelevant, since neither party signed, served, or was served such a document.

While section 1954.53(d) of the Costa-Hawkins Act allows an owner to increase the rent beyond local rent control limitations when no original occupant permanently resides there, such increases are allowed *only* when the remaining occupant is a sublessee or assignee.<sup>7</sup>

The Petitioner's initial occupancy commenced on May 16, 2019, when she and the Owner signed the tenant addendum. The May 16, 2019 Addendum and Amendment specifically lists the Petitioner as a "new tenant" under the terms and conditions of the prior lease (the August 6, 2017 Lease Agreement). The May 16, 2019 Addendum and Amendment made the Petitioner personally liable for the entire \$1,800.00 rent and made her personally responsible for abiding by the terms of the August 6, 2017 Lease Agreement.

By residing in Unit 114 with the Owner's express consent and under the explicit authority of the underlying lease, the Petitioner's occupancy was treated as a continuation of the original occupancy even after Ms. Abad vacated.<sup>8</sup> The Petitioner became the Owner's *tenant* (rather than a subtenant or assignee) in May 2019 when she entered into an agreement with the Owner and then paid rent directly to the Owner.<sup>9</sup> Because the Petitioner has been a tenant since May 2019, the landlord cannot increase the rent beyond local rent control limitations. The proposed rent increase of \$300.00 is above the allowable CPI amount and is therefore unlawful.

**The Petitioner is Entitled to Compensation for a Decrease in Housing Services because the Owner Interfered with the Petitioner's Right to a One-for-One Roommate Replacement**

The right to one-for-one replacement of roommates is a housing service under the Rent Adjustment Ordinance.<sup>10</sup> A decrease in housing services is considered an increase in rent.<sup>11</sup> Where a tenant has been served a RAP Notice, that tenant must file a petition for a decrease in services within ninety days of the date the tenant is noticed or first becomes aware of the decreased housing service.

The Petitioner suffered a decrease in housing services because the Owner refused to process applications for potential one-for-one replacement roommates. This decrease in housing services began on February 20, 2022, the date that the Petitioner expected the first potential replacement roommate to move into Unit 114. The Petitioner filed the instant petition on May 2, 2022, seventy-one days after the decrease in services began, so the petition was filed timely.

Based on evidence presented by both the Owner and the Petitioner, the Owner only

---

<sup>7</sup> CAL. CIV. CODE § 1954.53(d)(2), *Cobb*, 98 Cal. App. 4th at 351-352

<sup>8</sup> CAL. CIV. CODE § 1954.53(d)(2); *Cobb*, 98 Cal. App. 4th at 351-352; *DeZerega v. Meggs*, 83 Cal. App. 4th 28, 41, (2000)

<sup>9</sup> *Cobb*, 98 Cal. App. 4th at 352-353

<sup>10</sup> OAKLAND MUN. CODE § 8.22.020

<sup>11</sup> OAKLAND MUN. CODE § 8.22.070(F)

requested that the Petitioner ask the potential roommates to call him to initiate the application process. The Petitioner complied with that request. As shown through the testimony and by the text messages submitted into evidence, both potential roommates called and left voicemails for the Owner. The Owner never responded to either of those potential roommates.

The Owner gave three explanations at the hearing for his refusal/failure to initiate the application process with potential roommates: 1) that the Petitioner refused to sign a lease that included a rental rate of \$2,100.00; 2) that the Petitioner was required to submit her request to replace a roommate by certified mail; and 3) that there was "not enough time" for the Owner to process the second potential roommate's application prior to the next rental payment due date.

As discussed above, the Owner's first explanation fails because the Petitioner was under no obligation to sign a rental agreement that included a \$300.00 rent increase. The explanation also fails because the Petitioner communicated to the Owner (in her April 25 and April 26, 2022 text messages) that she would sign a rental agreement that included the \$300.00 rent increase, even though she was under no obligation to do so.

The Owner's second explanation, that the Petitioner was required to submit her request to replace a roommate via certified mail has no basis in law or fact. There is no requirement by law, or under the terms of the August 6, 2017 Lease Agreement, or under the terms of the May 16, 2019 Addendum and Amendment that a tenant submit a request to replace a departing roommate by certified mail. The August 6, 2017 Lease Agreement says that a tenant "may" provide notices to the Owner via mail, but it does not require that a tenant provide any notices via mail. Finally, the Owner admitted at the hearing that he never told the Petitioner that she needed to send her request by certified mail.

The Owner's third explanation, that there was not enough time to process the second potential roommate's application, is not credible. The Petitioner requested that the second potential roommate be processed on April 25, 2022 (twenty days before the next rental payment due date of May 15, 2022). The Owner had sufficient time to speak with the second potential roommate, review an application, and run credit and background checks in order to approve or deny the application. But again, the Owner did not respond to the Petitioner's text messages and did not return a call from the second potential roommate.

Although the Owner did not raise this argument during the hearing, his Response to the Petition states that "no potential roommate candidates submitted rental applications or proof of employment/income verification." This argument fails because the Owner did not respond to the potential roommates when they contacted him, as the Owner requested, to begin the application process. The Owner did not give the potential roommates the opportunity to submit rental applications and related documents.

**The Petitioner is Entitled to Fifty Percent of the Rent in Restitution for the**

**Decrease in Housing Services and a Fifty Percent Decrease of the Rent Until the Housing Service is Restored**

The rent has historically been split in equal amounts by the tenants, with each tenant paying \$900.00 of the \$1,800.00 rent. It was undisputed that if a new roommate moved in, the rent would continue to be split in equal amounts by each of the two occupants. Therefore, the decrease in services is valued at fifty percent of the rent.

The Petitioner's base rent is \$1,800.00. The tenant was current on rent as of the date of the hearing. The decrease in housing services began on February 20, 2022. From the date the decrease in housing services began through the date of the hearing, the Petitioner is awarded \$6,272.88 in restitution for the value of the lost service.

**VALUE OF LOST SERVICES**

Service Lost	From	To	Rent	% Rent Decrease	Decrease /month	No. of Months	Amount Overpaid
Right to One-to-One Roommate Replacement	20-Feb-22	20-Sep-22	\$1,800.00	50%	\$900.00	6.97	\$6,272.88
<b>TOTAL LOST SERVICES</b>							<b>\$6,272.88</b>

Because the total overpayment is greater than one hundred percent of the monthly rent, the restitution period will be twelve months.<sup>12</sup> The tenant's rent is reduced by \$522.74 per month for twelve months.

**RESTITUTION**

	MONTHLY RENT	\$1,800.00
	TOTAL TO BE REPAYED TO TENANT	\$6,272.88
	TOTAL AS PERCENT OF MONTHLY RENT	348.49%
	MO. BY REG.	
AMORTIZED OVER	12	IS
		<b>\$522.74</b>

If the owner does not restore the right to one-to-one roommate replacement, the Petitioner is also entitled to an ongoing rent decrease of fifty percent, beginning from September 20, 2022, the date of the hearing. If the right to one-to-one roommate replacement is not restored, the Petitioner's legal rent is \$900.00 before consideration of restitution. The Petitioner's restitution decreases that amount, meaning the Petitioner shall pay the Owner \$377.26 per month in rent for each month until the service is restored and a valid change of terms of tenancy notice is served on the tenant.

<sup>12</sup> RENT ADJUSTMENT PROGRAM REGUL. § 8.22.110(F)(4)(d)



A rent increase based on the restoration of the right to one-to-one roommate replacement may only be taken following a valid change of terms of tenancy notice pursuant to California Civil Code section 827.<sup>13</sup> Once the service is restored and the rent increase becomes effective, the Petitioner may then continue to deduct \$522.74 from the increased rental amount until the end of the twelve-month amortization.

### Order

1. Petition T22-0078 is granted.
2. Effective August 1, 2015, the base rent for the unit is \$1,800.00 before consideration of restitution or any current decreased housing services.
3. The Petitioner is owed restitution in the amount of \$6,272.88 due to the decreased housing services. This overpayment is adjusted by a rent decrease for the next twelve months in the amount of \$522.74 per month.
4. If the service (the right to one-to-one roommate replacement) has not been restored, the Petitioner is additionally entitled to an ongoing rent decrease of fifty percent. The Petitioner's legal rent is therefore \$900.00 until the right to one-to-one roommate replacement is restored.
5. While the right to one-to-one roommate replacement remains denied, the Petitioner must pay rent in the amount of \$377.26 per month for the months of November 2022 through October 2023.
6. Once the right to one-to-one roommate replacement is restored and proper notices sent, the Petitioner's total rent reverts to \$1,800.00. At that point, the Petitioner may continue to deduct \$522.74 from her portion of the total rent through October 2023.
7. The owner must provide the necessary notice pursuant to California Civil Code section 827.
8. Nothing in this Order prevents the owner from increasing the Petitioner's rent according to the laws of the Rent Adjustment Ordinance and the State of California at any time.
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

---

<sup>13</sup> RENT ADJUSTMENT PROGRAM REGUL. § 8.22.110(F)

Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.

Dated: October 18, 2022



Brian Brophy  
Hearing Officer  
Rent Adjustment Program

**PROOF OF SERVICE**

**Case Number: T22-0078**

**Case Name: Bolanos v. Wu**

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

**Today, I served the attached documents listed below by placing a true copy in a City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Oakland, California, addressed to:**

**Documents Included**

Hearing Decision

**Owner**

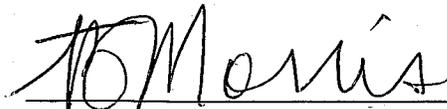
Allen Wu  
P.O Box 12081  
San Francisco, CA 94112

**Tenant**

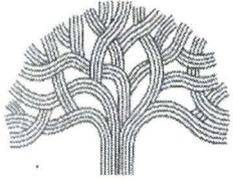
Gigi Saray Bolanos  
114 East 15th Street  
Oakland, CA 94606

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **October 19, 2022** in Oakland, California.



Teresa Brown-Morris  
Oakland Rent Adjustment Program



CITY OF OAKLAND

**CITY OF OAKLAND**  
**RENT ADJUSTMENT PROGRAM**  
250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612-0243  
(510) 238-3721  
CA Relay Service 711  
[www.oaklandca.gov/RAP](http://www.oaklandca.gov/RAP)

For Rent Adjustment Program date stamp.

## APPEAL

Appellant's Name <i>Allen WH</i>		<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant	
Property Address (Include Unit Number) <i>114 E 15th St</i>			
Appellant's Mailing Address (For receipt of notices) <i>PO Box 12001 San Francisco, CA 94112</i>		Case Number <i>122-0078</i>	Date of Decision appealed <i>10/18/2022</i>
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.)*

**000604**

- 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 the Owner's 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.)

Supporting documents (in addition to this form) must **not** exceed 25 pages, and must be received by the Rent Adjustment Program, along with a proof of service on the opposing party, within 15 days of the filing of this document. Only the first 25 pages of submissions from each party will be considered by the Board, subject to Regulations 8.22.010(A)(4). Please number attached pages consecutively. Number of pages attached: 25.

• You must serve a copy of your appeal on the opposing parties, or your appeal may be dismissed. •  
 I declare under penalty of perjury under the laws of the State of California that on 11/14, 2022, 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:

<b>Name</b>	Gigi Savay Bdanos
<b>Address</b>	114 E 15th St
<b>City, State Zip</b>	Oakland, CA 94606
<b>Name</b>	
<b>Address</b>	
<b>City, State Zip</b>	

	11/17/2022
---	------------

SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE

DATE

000605

## IMPORTANT INFORMATION:

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

- Appeals filed late without good cause will be dismissed.
- You must provide all the information required, or your appeal cannot be processed and may be dismissed.
- **Any response to the appeal by the responding party must be received by the Rent Adjustment Program, along with a proof of service on appealing party, within 15 days of service of the service of the appeal if the party was personally served. If the responding party was served the appeal by mail, the party must file the response within 20 days of the date the appeal was mailed to them.**
- There is no form for the response, but the entire response is limited to 25 pages or less.
- The Board will not consider new claims. All claims, except jurisdictional issues, must have been made in the petition, response, or at the hearing.
- The Board will not consider new evidence at the appeal hearing without specific approval.
- You must sign and date this form or your appeal will not be processed.
- The entire case record is available to the Board, but sections of audio recordings that you want the Board to review must be pre-designated to Rent Adjustment Staff.

000606



CITY OF OAKLAND

**CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM**

250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612-0243  
(510) 238-3721  
CA Relay Service 711  
www.oaklandca.gov/RAP

For Rent Adjustment Program date stamp.

**PROOF OF SERVICE**

**NOTE: YOU ARE REQUIRED TO SERVE A COPY OF YOUR PETITION OR RESPONSE (PLUS ANY ADDITIONAL DOCUMENTS) ON THE OPPOSING PARTIES.**

- Use this *PROOF OF SERVICE* form to indicate the date and manner in which service took place, as well as the person(s) served.
- Provide a copy of this *PROOF OF SERVICE* form to the opposing parties together with the document(s) served.
- File the completed *PROOF OF SERVICE* form with the Rent Adjustment Program together with the document you are filing and any attachments you are serving.
- Please number sequentially all additional documents provided to the RAP.

**PETITIONS FILED WITHOUT A PROOF OF SERVICE WILL BE CONSIDERED INCOMPLETE AND MAY BE DISMISSED.**

I served a copy of:

Appenl  
(insert name of document served)  
 And Additional Documents

and (write number of attached pages) 25 attached pages (not counting the Petition or Response served or the Proof of Service) to each opposing party, whose name(s) and address(es) are listed below, by one of the following means (check one):

- a. United States mail. I enclosed the document(s) in a sealed envelope or package addressed to the person(s) listed below and at the address(es) below and deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- b. 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 listed below.
- c. Personal Service. (1) By Hand Delivery: I personally delivered the document(s) to the person(s) at the address(es) listed below; or (2) I left the document(s) at the address(es) with some person not younger than 18 years of age.

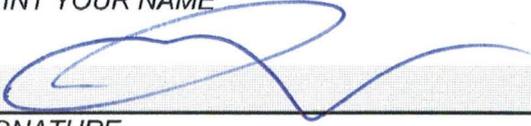
**PERSON(S) SERVED:**

Name	Gigi Savvy Bolanos
Address	118 Elm St
City, State, Zip	Oakland, CA 94606

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and the documents were served on 11/14/2022 (insert date served).

Allen Wn

PRINT YOUR NAME



SIGNATURE

11/17/2022

DATE



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

OMC 8.22.110((A) HEARING PROCEDURE/ Postponements

<https://cao-94612.s3.amazonaws.com/documents/Oakland-Rent-Adjustments-Regulations-w-0521-amends-w-Appendix-A-clean-copy.PDF>

The original Rent Adjustment Hearing/Settlement Conference was scheduled for 7/20/2022 at 10AM. (See Notice; Photo of Zoom Meeting login and email)

- The Rent Adjustment Hearing was postponed without reason or my approval to the new Hearing date of 9/20/2022 at 10AM. (See OMC 8.22.110(A))
- An official notice which included a copy of the "Amended Notice of Remote Settlement Conference and Hearing" along with a copy of the "Zoom Invitation for RAP Hearing" was served with a Proof of Service dated 7/13/2022 by Brittini Lothlen. The envelope was meter stamped on 7/13/2022. I did not receive the letter until the day of the original hearing date of 7/20/2022; and was unaware of the change in date until after I logged in for the 10AM hearing on 9/20/2022; nor did I have the option to protest this change.
- Had the RAP Hearing occurred on the original date of 7/20/2022; Ms. Gigi Bolanos (the Petitioner) would not have "overpaid" (and I would not have been fined) the additional 2 month's worth of rent for the months of August and September of 2022. The Hearing Decision dated 9/18/2022; has calculated a Decrease of \$900.00 per month from 2/20/22 to 9/20/22 for 6.97 months for a total of \$6,272.88. This total amount of Lost Services is incorrect and should be deducted by two month's rent or \$1,800.00 for half of the rent for August and September of 2022, as the postponement was neither approved nor caused by me.
- **The correct total amount of Lost Services (from 2/20/22 to 7/20/22) to be repaid to the tenant should be \$4,472.88; which amortized over 12 months is \$372.74; and not \$6,272.88 amortized over 12 months as \$522.74.**

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.
- c) The decision raises a new policy issue that has not been decided by the Board.
- d) The decision violates federal, state, or local law.
- e) The decision is not supported by substantial evidence.
- f) I was denied a sufficient opportunity to present my claim or response to the petitioner's claim.
- h) Other.

(California Civil Code § 1954.53(d)) Sublets and Assignments. Under specified conditions, Costa-Hawkins permits an owner to set initial rents without restriction when a covered unit is sublet or assigned and none of the original occupants permanently reside in the covered unit.

(California Civil Code § 1954.53(a)) Permits landlords to impose whatever rent they choose at the commencement of a tenancy.

"The Costa-Hawkins Act establishes vacancy decontrol for residential dwelling units where the former tenant has voluntarily vacated, abandoned or been legally evicted. (Legis. Analyst, analysis of Assem. Bill No. 1164 (1995-1996 Reg. Sess.) p. 2.) CVC§ 1954.53(d)); Cobb, 98 Cal. App. 4<sup>th</sup>

- **Original occupants** are those that took possession of a unit with the express consent of the landlord at the time that the base rent for the unit was first established with respect to the vacant unit. The original occupant doesn't have to be named on the lease but must be able to show they moved in at the same time as the named person on the lease.
- A "**Subsequent occupant**" means an individual who became an occupant of a rental unit while the rental unit was occupied by at least one original occupant.

Mary Balingit was the Original Occupant; she first moved into the unit at 114 E15th St, Oakland, CA 94606; and took possession of the unit with the express consent of the landlord at the time the initial base rent for the unit was first established without limitation on 3/22/2015. Ms. Balingit's Move-in date is also documented in the Security Deposit Refund Form dated 4/28/2019.

Both Mary Lilygrace Abad and Gigi Bolanos were a one-for-one replacement of a vacating occupant after the initial move in date of 3/22/2015; and cannot prove that they moved into or took possession of the unit at the same time Ms. Balingit is the Original Occupant on 3/22/2015. Therefore by definition, Ms. Abad and Ms. Bolanos are both "Subsequent occupants" and not "Original occupants".

Ms. Abad initial occupancy commenced on 8/6/2017 when she entered a Lease Agreement (over two years after Ms. Balingit's occupancy date of 3/22/2015). Ms. Bolanoes, The Petitioner signed the Tenant Addition Addendum on 5/16/2019, and began her initial occupancy thereafter; which is one year and nine months after Ms. Abad's initial occupancy under the 8/6/2017 Lease. This fact proves that the Petitioner is **not** an "Original occupant" as she did not move in at the same date the 8/6/2017 lease was signed; but in fact a "Subsequent occupant."

*Glossary; CALIFORNIA TENANTS A GUIDE TO RESIDENTIAL TENANTS' AND LANDLORDS' RIGHTS AND RESPONSIBILITIES (<https://www.courts.ca.gov/documents/California-Tenants-Guide.pdf>)*

- **Assign/assignment**—an agreement between the original tenant and a new tenant by which the new tenant takes over the rental agreement pertaining to the unit and becomes responsible to the landlord for everything that the original tenant was responsible for. The original tenant is still responsible to the landlord if the new tenant does not live up to the obligations of the rental agreement (see novation; compare to sublease). **\*\*Page 108 of Glossary; (<https://www.courts.ca.gov/documents/California-Tenants-Guide.pdf>)**
- **Novation**—in an assignment situation, a novation is an agreement by the landlord, the original tenant, and the new tenant that makes the new tenant (rather than the original tenant) solely responsible to the landlord. **\*\*Page 112 of Glossary; (<https://www.courts.ca.gov/documents/California-Tenants-Guide.pdf>)**
- **Sublease**—a separate rental agreement between the original tenant and a new tenant to whom the original tenant rents all or part of the rental unit. The new tenant is called a "subtenant." The agreement between the original tenant and the landlord remains in force,

and the original tenant continues to be responsible for paying the rent to the landlord and for other tenant obligations. (Compare to assignment.) **\*\*Page 114 of Glossary;**  
(<https://www.courts.ca.gov/documents/California-Tenants-Guide.pdf>)

The Hearing Decision omitted my evidence (The first amendment to the 8/6/2017 lease; titled "Tenant Vacate Addendum") that was submitted along with my response to the petition on 6/4/2022. It clearly documented Ms. Balingit (the original occupant) vacating and returning the premises to me on 4/7/2019. Ms. Balingit paid her portion for the damages deducted from the prepaid security deposit; and released all obligations of the rental agreement to Ms. Abad when she and Ms. Abad signed the 5/15/2019 "Tenant Vacate Addendum", the first amendment to the 8/6/2017 Lease Agreement. The 5/15/2019 Tenant Vacate Addendum by definition in accordance to Page 108 of Glossary; CALIFORNIA TENANTS A GUIDE TO RESIDENTIAL TENANTS' AND LANDLORDS' RIGHTS AND RESPONSIBILITIES (<https://www.courts.ca.gov/documents/California-Tenants-Guide.pdf>) serves as an "Assignment" transferring the entire property and all of the rights and obligations under the terms of the 8/6/2017 lease from Ms. Balingit to Ms. Abad; making Ms. Abad an "Assignee" and not an "Original Occupant" from 5/15/2019 onward.

The 5/15/2019 "Tenant Vacate Addendum", became my written consent to the assignment of the 8/6/2017 lease agreement from Ms. Balingit to Ms. Abad. This further supports my initial claim to (California Civil Code § 1954.53(d)) Costa-Hawkins permits an owner to set initial rents without restriction when a covered unit is sublet or assigned and none of the original occupants permanently reside in the covered unit.

On 5/16/2019, Ms. Bolanos "the Petitioner"; Ms. Abad "Assignee" and I signed the "Tenant Addition Addendum" (the second amendment to the 8/6/2017 Lease) which begun Ms. Bolanos' initial occupancy. The 5/16/2019 "Tenant Addition Addendum", is a separate rental agreement from the 8/6/2017 Lease; between Ms. Abad; Ms. Bolanos and myself. This agreement made Ms. Bolanos a "Co-Assignee" and the one-for-one replacement of Ms. Balingit and not a continuation of the original occupancy.

Ms. Balingit had already released and relinquished all of her obligations and rights to the premise and lease agreement when she signed the 5/15/2019 "Tenant Vacate Addendum".

The Hearing Decision is incorrect and misinterpreted Ms. Bolanos' occupancy as a continuation of the Original Occupancy even after Ms. Abad vacated by comparing it to Cobb, 98 Cal. App. 4<sup>th</sup> at 351-352. The Hearing Decision omitted the fact that Ms. Balingit (the original occupant) vacated and returned the premises to me on 4/7/2019; and signed a "Tenant Vacate Addendum" on 5/15/2019 with Ms. Abad, the first amendment to the 8/6/2017 Lease Agreement. This served as an "Assignment" transferring the entire property and all of the rights and obligations under the terms of the 8/6/2017 lease from Ms. Balingit to Ms. Abad with my express written consent.

These two circumstances were present and fulfill the requirements listed under Cobb, 98 Cal. App. 4<sup>th</sup> at 352-353.

- Ms. Abad and Ms. Bolanos' became sublessee or assignee of Ms. Balingit as of 5/15/2019.
- Ms. Bolanos' initial occupancy as a new tenant commenced after 5/16/2019 (California Civil Code § 1954.53(a)).

"As previously noted, the Costa-Hawkins Act also provides that the landlord may increase the rent by any amount to the lawful sublessee or assignee of the original occupant when the original occupant no longer resides in the unit permanently and the sublessee or assignee did not reside in the unit prior to 1/1/1996. "(CVC 1954.53(d); Cobb, 98 Cal. App. 4th at 352-353."

The Hearing decision is correct in stating that " the 5/16/2019 Addendum made the Petitioner personally liable for the entire \$1,800.00 rent made her personally responsible for abiding by the terms of the 8/6/2017 Lease Agreement." This is the very definition of what an Assignee/assignment is:

- **"Assign/assignment**—an agreement between the original tenant and a new tenant by which the new tenant takes over the rental agreement pertaining to the unit and becomes responsible to the landlord for everything that the original tenant was responsible for. The original tenant is still responsible to the landlord if the new tenant does not live up to the obligations of the rental agreement (see novation; compare to sublease)." *\*\*Page 108 of Glossary; (<https://www.courts.ca.gov/documents/California-Tenants-Guide.pdf>)*

The exact conditions of the 5/16/2019 Addendum states:

**"The NEW TENANT acknowledges receipt of the Lease Agreement and all addendums thereto. All parties to this Tenant Addition Addendum agree to be jointly and severally liable under the Lease Agreement for all amounts due and owing, whether past due, currently due or to be owed in the future, and all parties agree to abide by all terms of the Lease Agreement, including but not limited to any addendums. All parties below hereby acknowledge and agree that upon vacating the Property any and all refunds of monies paid in advance under the terms of the Lease Agreement, to include, but not limited to, security deposits and advance rent, shall be jointly paid to all of the TENANTS, which shall include all NEW TENANTS added to the Lease Agreement. "**

This clearly includes the 5/15/2019 "Tenant Vacate Addendum" in which establishes the Assignment between the vacating Original tenant and the new tenant as the one-for-one replacement. An assignment occurs when a tenant transfers all of its rights and obligations under the term of the lease to another individual or entity for the entire remaining term of the lease. Essentially, the new tenant takes the place of the old tenant and releases the old tenant of its obligations to the landlord. The extent of the obligations released depends on the terms of the assignment clause. Let's not forget Line numbers 3; 9 and 20 of the 8/6/2017 Lease Agreement signed between me, Mary Balingit and Maria Lilygrace Abad, states the following:

- **Line number 3: "Multiple Occupancy: It is expressly understood that this agreement is between the Owner and each signatory jointly and severally. In the event of default by any signatory each and every remaining signatory shall be responsible for timely payment of rent and all other provisions of this agreement."**
- **Line number 9: "Assignment and Subletting: Tenant shall not assign this agreement or sublet any portion of the premises without written consent of the Owner."**

- **Line number 20: "Waiver: No failure of Owner to enforce any term hereof shall be deemed a waiver. The acceptance of rent by Owner shall not waive his right to enforce any term hereof."**

In contract, **joint and several liability** arises when two or more persons jointly promise in the same contract to do the same thing, but also separately promise to do the same thing. This means that as part of their obligations as Assignees, Ms. Abad and Ms. Bolanos, both jointly promise to pay their portion of their of \$1,800.00 rent by the 15<sup>th</sup> of each month directly to me the Landlord.

To further define Ms. Bolanos as an Assignee and/or Sub-tenant under a Sublease; *Page 114 of Glossary; CALIFORNIA TENANTS A GUIDE TO RESIDENTIAL TENANTS' AND LANDLORDS' RIGHTS AND RESPONSIBILITIES defines a Sublease as follows:*

- **Sublease**—a separate rental agreement between the original tenant and a new tenant to whom the original tenant rents all or part of the rental unit. The new tenant is called a "subtenant." The agreement between the original tenant and the landlord remains in force, and the original tenant continues to be responsible for paying the rent to the landlord and for other tenant obligations. (Compare to assignment.) *\*\*Page 114 of Glossary; (<https://www.courts.ca.gov/documents/California-Tenants-Guide.pdf>)*

Sublease and assignment clauses accomplish similar results. They allow tenants to transfer their lease obligations to another individual or entity. However, each clause operates in a different way.

- With a sublease, a tenant transfers part of the leased property to another tenant while remaining on the premises, or transfers the entire property to another tenant for a period of time during the term of the lease. A sub-lease agreement is usually an assignment, not a novation. The primary leaseholder remains responsible for non-payment or damage.
- An assignment occurs when a tenant transfers all of its rights and obligations under the term of the lease to another individual or entity for the entire remaining term of the lease. Essentially, the new tenant takes the place of the old tenant and releases the old tenant of its obligations to the landlord. The extent of the obligations released depends on the terms of the assignment clause.

The Hearing decision's use of the word "Tenant" is convoluted. According to **(OMC 8.22.340 – Definitions.)** "Tenant" means any renter, tenant, subtenant, lessee, or sublessee of a rental unit, or any group of renters, tenants, subtenants, lessees, sublessees of a rental unit, or any other person entitled to the use or occupancy of such rental unit, or any successor of any of the foregoing.

[https://library.municode.com/ca/oakland/codes/code\\_of\\_ordinances?nodeId=TIT8HESA\\_CH8.22REREA\\_DEV\\_ARTIIJUCAEVORMEEE\\_8.22.340DE](https://library.municode.com/ca/oakland/codes/code_of_ordinances?nodeId=TIT8HESA_CH8.22REREA_DEV_ARTIIJUCAEVORMEEE_8.22.340DE))

Ms. Balonos is neither an "Original Occupant" as she was not present during the signing and negotiation process of the original lease agreement nor did she begin her tenancy fewer than thirty days thereafter. This is the definition of an Original tenant as described in **the City of Oakland Rent Adjustment Program's "Lease Addendum for Purpose of Future Costa-Hawkins Rent Increase" form.** <https://cao-94612.s3.amazonaws.com/documents/TENANCY-TURNOVER-SUBLEASE-ADDENDUM-10-9-2020.pdf>

This reiterates my petition response that "None of the original occupants permanently reside in the covered unit. (California Civil Code §1954.53(d)). Both of the original occupants on the original lease agreement signed 8/6/2017; moved out of the covered unit on their own accord. Mary Balingit moved out 4/7/2019; Maria Lilygrace Abad moved out 11/14/2021.

The owner is allowed to set an initial rent without restriction pursuant to Costa-Hawkins and O.M.C. 8.22.080 (C). I notified Gigi Bolanos this via text on 10/12/2021. Then again, via USPS certified mail along with the RAP forms, on 2/12/2022."

I stated during the Hearing that I did not respond to any of the potential roommates, because the Petitioner refused to sign a new lease to set an initial rent without restriction pursuant to Costa-Hawkins vacancy decontrol. What was omitted from my hearing statement is the following:

- "Ever since the original occupant, Mary Balingit, moved in back in 2015; she had a constant revolving door of replacement roommates. Each of whom, was grandfathered in under Mary's protected base rent as the Original occupant. When, Gigi (the Petitioner) moved in as a one-for-one replacement of Mary; I was still unable to reset the initial base rent back to the current Market rate because of Maria Lilygrace Abad's continued occupancy.
- The Petitioner stated that a one-for-one roommate replacement is a separate issue from my claim to reestablish the initial base rent without restriction in pursuant to Costa-Hawkins vacancy decontrol. I argued that this is not true; due to the fact that if I was proceeded to sign another lease agreement with any of the potential roommates; I would be forced to continue the base rent of \$1800.00 per month with the new replacement roommate, thus prohibiting me the ability to reset an initial "Market Rate" rent until the last set of new group of tenants vacates the unit. I have also stated that I have not raised the monthly rent since Maria Lilygrace Abad had moved in with Mary Balingit back in 8/6/2017, due to this very same reason.

**In order to exercise my right to reestablish the initial base rent without restriction in pursuant to Costa-Hawkins vacancy decontrol. I would like to set the new base rent to \$2,400.00 to match the current Market Rate.**

- I also stated at the Hearing, when I first texted the Petitioner in 10/12/2021; the rent increase to \$2,100.00 was also below Market Rate. Now that the Hearing took place a full year after that text message was sent, the Market Rate rent is no longer that same rate. Comparable rent for similar apartments in the nearby vicinity was and still is \$2,400.00 per month. (See attached Craigslist postings of (3)comparable apartment units).

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

**h) Other.**

- The Hearing Decision directly contradicts the four main points of the "Lease Addendum for Purpose of Future Costa-Hawkins Rent Increase" form found on the City of Oakland Rent Adjustment Program's website under the "**Rent Adjustment Program Forms & Notices for Property Owners**" tab. The **Sublease Addendum (PDF)** can be found at this link: <https://cao-94612.s3.amazonaws.com/documents/TENANCY-TURNOVER-SUBLEASE-ADDENDUM-10-9-2020.pdf>
- The link to the form comes with the following description: "The Lease Addendum, prepared by the City of Oakland Rent Adjustment Program, is for use when there is partial tenancy

turnover. It clarifies that tenants who move into rental units during an existing tenancy are not original tenants and only have the right to the current controlled rent until the last original tenant permanently vacates the unit. The Lease Addendum clarifies that the landlord may raise the rent without limitation on all remaining tenants." Cited from <https://www.oaklandca.gov/documents/rent-adjustment-program-forms-notices-for-property-owners>

- The "Lease Addendum for Purpose of Future Costa-Hawkins Rent Increase" form found on the City of Oakland Rent Adjustment Program's website specifically states the following four key points:
  - o 1) "I acknowledge that I am not an original tenant as defined by California Civil Code Section 1954.53 because I am replacing a vacating tenant and/or I was not a party to the original rental agreement and did not begin my tenancy fewer than thirty days thereafter."
  - o 2) "... the landlord may increase the rent and create a new rental agreement/lease with new and different terms when the last original tenant permanently vacates the unit."
  - o 3) "...the landlord may accept rent payments directly from me as part of my tenancy and that this acceptance alone does not constitute a waiver of the landlord's right to increase the rent pursuant to California Civil Code Section 1954.53 when the last original tenant permanently vacates."
  - o 4) It further continues, "... the landlord does not waive his/her right to establish a new rent and lease/rental agreement unless s/he received written notice of tenancy termination from the last original tenant and thereafter accepts rent before serving notice of a new rent."
- At the Hearing, I requested the Hearing Officer to take judicial notice of the "Lease Addendum for Purpose of Future Costa-Hawkins Rent Increase" form found on the City of Oakland Rent Adjustment Program's website. In footnote #6 on pages 4 and 5 of the Hearing Decision; it states that "Judicial notice is not taken of the document because the Petitioner was never served a copy of the document prior to the hearing and because it is irrelevant, since neither party signed, served, or was severed such a document."
- This is not true; as I have responded to the Hearing Officer that my Certified Mail Notice which was severed on 2/11/2022 to the Petitioner was written practically verbatim and heavily based on this document. I also stated at the Hearing, that this document was prepared by City of Oakland Rent Adjustment Program and placed on their public website for landlords to download and use as guidelines to reserve their right to claim Costa-Hawkins rent increases.
- The main reason why I had the Petitioner sign a "Tenant Addition Addendum" instead of a regular Lease Agreement, was to protect my future right to establish the initial rent back to Market Rate, once the last remaining original occupant had voluntarily vacated the rental unit in a partial tenancy takeover.

- I emphasized (to the Hearing Officer); that **If the City of Oakland Rent Adjustment Program took the time to prepare this document and made it readily available for the public to download and use; This document should not be ignored or omitted as common practice from a Rent Adjustment Hearing and decision.**
- The underlying premise of signing the May 16, 2019 tenant addendum is the same as the "Lease Addendum for Purpose of Future Costa-Hawkins Rent Increase". Both state the fact that the "New" tenant is a replacement of a vacating tenant, with the Owner's express consent. Under both addendum, the "new tenant" has entered an agreement with and pays rent directly to the Owner. Without the explicit authority of an underlying original lease agreement, what is the "Lease Addendum for Purpose of Future Costa-Hawkins Rent Increase" being amended to? A sub-lease is written and based on an original lease agreement which initially used to establish a rental/contractual agreement between the landlord and occupants.
- How does the Petitioner become a continuation of the original occupancy; and a tenant when she directly pays me after she signs the May 16, 2019 tenant addendum? But, not the same when if she signs to the City of Oakland Rent Adjustment Program's "Lease Addendum for Purpose of Future Costa-Hawkins Rent Increase" form? In other words, how does the "Lease Addendum for Purpose of Future Costa-Hawkins Rent Increase" form differentiate the Petitioner as a "New Tenant" and not an "Original Tenant" who can be subjected to a Costa-Hawkins rent increase?

### **Decrease in Housing Service**

I rented out 114 E15th St as a whole unit for the base rent of \$1,800.00. I did not rent the unit out as separate rooms. In exchange for paying the full months' rent of \$1800.00, after Mary Lilygrace Abad (the other roommate) had vacated the premise on 11/14/2021; Gigi the Petitioner got full use of the entire unit; this includes the full use and access of the second bedroom. The argument of a decrease in housing service because the landlord refused to process qualified and potential roommate candidates **did not address the fact that the Petitioner also received an increase in Service (the additional bedroom) in exchange for the full month's rent.**

- A lease addendum is a legally binding document that both landlords and tenants agree to and sign (i.e., you can't add it to the lease without the tenant's knowledge). Addendums modify the original lease agreement and/or provide additional information related to specific rental policies.
- My closing statement was also omitted. There is no chance for the small time landlords to make a fair return under the current changes that continues to penalize rental property owners with mandated rent caps that cuts the CPI formula for Allowable Rent Increases by 50% (last year's CPI was 1.9%. This year, the approved 6.7% CPI was reversed to 3%); National inflation rate over 8%; increased operating costs; newly revised laws that prohibits evictions during the pandemic.





City of Oakland Rent Adjustment Program  
250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721

### PROOF OF SERVICE

#### OWNER RESPONSE

\* And additional documents uploaded with the Petition

Case number: T22-0078  
Electronic Petition number: 15088  
Electronic Response number: 1211

I declare under penalty of perjury under the laws of the State of California that on **06-04-2022**, **Allen Wu**, served a copy of the following document(s), Owner Response, and, and all attached 33 pages, to each opposing party, whose names and addresses are listed below, by **United States mail**.

**Title of Served Document(s):** Signed and Dated Proof of Service for Tenant Petition 15088 and Case T22-0078

- 114 E15th - Gigi SMS 10-12-2021 to 11-13-2021; 2-18-2022
- 114 E15th St - Aug 6, 2017 Lease - Mary Balingit, Maria Lilygrace Abad
- 114 E15th St - May 15, 2019 1st and 2nd Amendment to Aug 6, 2017 Lease
- Copy of 2-12-2022 Notice of Costa-Hawkins Rent Increase to 114 Gigi Bolanos
- Copy of 2-12-2022 USPS Certified Mail Receipt to 114 E15th St Gigi Bolanos
- Maria Lilygrace Abad Moveout- SECURITY DEPOSIT REFUND FORM
- Mary Balingit Moveout- SECURITY DEPOSIT REFUND FORM

#### Addressee(s) Information

**Addressee:** Gigi Bolanos  
114 East 15th St  
Oakland CA 94606

Allen Wu

06-04-2022

SIGNATURE

DATE:

6/4/2022

City of Oakland Rent Adjust Program  
Date Printed: 06-04-2022

## SECURITY DEPOSIT REFUND FORM

Resident's Name: Maryrose Canono Balingit

Address: 114 E 15<sup>th</sup> St Apt. No. \_\_\_\_\_

City: Oakland State: CA Zip: 94606-1717

FORWARDING Address: \_\_\_\_\_ Apt. No. \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

The following is an itemized statement of your deposit account:

1. Date tenancy began: 3/22/15 Date keys turned in: Still has the keys.

2. Total of all deposits paid: \$ 900.00

3. Deductions:

TYPE	DESCRIPTION	COST
Repairs	Bathroom wall and tile due to water damage from not closing shower curtains and wiping water from the bathroom floors after showers. Replaced damaged sheetrock, tile and paint newly patched wall.	<b>\$250.00</b>
	Patch & sand nail holes in bedroom walls.	\$150 (Waived – Wear & Tear)
	Missing deadbolt chain & damaged door trim in kitchen.	<b>\$50</b>
Painting:	Prime and Paint bedroom & closet walls, ceiling, trim & doors.	\$800 (Waived – Wear & Tear)
Cleaning:		
Carpet Cleaning:	Bedroom and Front Entrance.	<b>\$200.00</b>
Drape Cleaning:	Bedroom, Bathroom and Kitchen	\$120.00 (Waived – Wear & Tear)
Miscellaneous:		
Unpaid Rent:	3/15/19-3/31/19. Received room on 4/7/19.	<b>\$493.55</b>
Court Judgment:		
	<b>Total Deductions</b>	<b>\$993.55</b>

Your check is enclosed in the amount of \$ \_\_\_\_\_.

Please make your check in the amount of \$ 93.55 payable to Allen Wu  
\_\_\_\_\_ within 21 days of receipt of this statement.

"AS REQUIRED BY LAW, YOU ARE HEREBY NOTIFIED THAT A NEGATIVE CREDIT REPORT REFLECTING ON YOUR CREDIT HISTORY MAY BE SUBMITTED TO A CREDIT REPORTING AGENCY

IF YOU FAIL TO FULFILL THE TERMS OF YOUR CREDIT OBLIGATIONS," CC1785.26(c) (2)

4/28/19

Date



Owner/Manager

000618

## SECURITY DEPOSIT REFUND FORM

Resident's Name: Maria Lilygrace Abad  
 Address: 114 E 15<sup>th</sup> St Apt. No. \_\_\_\_\_  
 City: Oakland State: CA Zip: 94606-1717

FORWARDING Address: \_\_\_\_\_ Apt. No. \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

The following is an itemized statement of your deposit account:

1. Date tenancy began: 8/15/17 Date keys turned in: 11/14/2021
2. Total of all deposits paid: \$ 900.00
3. Deductions:

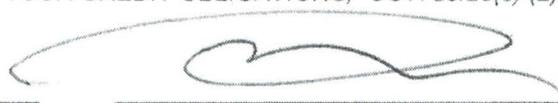
TYPE	DESCRIPTION	COST
Repairs	Bathroom wall due to water damage from not closing shower curtains and wiping water from the bathroom floors after showers. Patch damaged sheetrock, Sand and paint newly patched wall.	<b>\$200.00</b>
	Patch & sand nail holes in bedroom walls.	\$150 (Waived – Wear & Tear)
Painting:	Prime and Paint bedroom & closet walls, ceiling, trim & doors.	\$800 (Waived – Wear & Tear)
Cleaning:		
Carpet Cleaning:	Bedroom and Front Entrance.	<b>\$200.00</b>
Drape Cleaning:	Bedroom, Bathroom and Kitchen	\$120.00 (Waived – Wear & Tear)
Miscellaneous:		
Unpaid Rent:		
Court Judgment:		
	<b>Total Deductions</b>	<b>\$400.00</b>

- Your check is enclosed in the amount of \$ 500.00
- Please make your check in the amount of \$ \_\_\_\_\_ payable to Allen Wu  
 \_\_\_\_\_ within 21 days of receipt of this statement.

"AS REQUIRED BY LAW, YOU ARE HEREBY NOTIFIED THAT A NEGATIVE CREDIT REPORT REFLECTING ON YOUR CREDIT HISTORY MAY BE SUBMITTED TO A CREDIT REPORTING AGENCY

IF YOU FAIL TO FULFILL THE TERMS OF YOUR CREDIT OBLIGATIONS," CC1785.26(c) (2)

  
 \_\_\_\_\_  
 Date

  
 \_\_\_\_\_  
 Owner/Manager

**PROOF OF SERVICE**

**Case Number: T22-0078**

**Case Name: Bolanos v. Wu**

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

**Today, I served the attached documents listed below by placing a true copy in a City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Oakland, California, addressed to:**

**Documents Included**

**Zoom Invitation for RAP Remote Hearing**

**Owner**

Allen Wu  
P.O Box 12081  
San Francisco, CA 94112

**Tenant**

Gigi Saray Bolanos  
114 East 15th Street  
Oakland, CA 94606

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **June 28, 2022** in Oakland, California.

*Brittni Lothlen*

\_\_\_\_\_  
Brittni Lothlen  
Oakland Rent Adjustment Program

**000620**



Housing and Community Development Department  
Rent Adjustment Program  
250 Frank Ogawa Plaza, Suite 5313  
Oakland, CA 94612-2034

TEL (510) 238-3721  
FAX (510) 238-6181  
CA RELAY 711

**ZOOM INVITATION FOR RAP REMOTE HEARING  
T22-0078 Bolanos v. Wu**

To the Parties:

Your hearing scheduled will take place on **July 20, 2022 at 10:00 am** and will be held remotely through Zoom.

You can connect to the Hearing without charge by downloading Zoom. You can also connect by using only a telephone. To dial in to a call, enter your dial-in number, followed by the meeting ID and pound key, then enter the password and pound key.

**Topic: 2022.7.20\_Rent Adjustment Hearing Audio-Video\_T22-0078\_Bolanos v. Wu**  
**Time: Jul 20, 2022 10:00 AM Pacific Time (US and Canada)**

Join Zoom Meeting

[https://us02web.zoom.us/j/83923649098?pwd=AlkT-OD\\_YqtfvyVdoQkggzKiUHiYYo.1](https://us02web.zoom.us/j/83923649098?pwd=AlkT-OD_YqtfvyVdoQkggzKiUHiYYo.1)

Meeting ID: 839 2364 9098

Passcode: 087032

One tap mobile

+16699009128,,83923649098#,,,,\*087032# US (San Jose)

+12532158782,,83923649098#,,,,\*087032# US (Tacoma)

Dial by your location

+1 669 900 9128 US (San Jose)

+1 253 215 8782 US (Tacoma)

+1 346 248 7799 US (Houston)

+1 646 558 8656 US (New York)

+1 301 715 8592 US (Washington DC)

+1 312 626 6799 US (Chicago)

Meeting ID: 839 2364 9098

Passcode: 087032

Find your local number: [https://us02web.zoom.us/j/83923649098?pwd=AlkT-OD\\_YqtfvyVdoQkggzKiUHiYYo.1](https://us02web.zoom.us/j/83923649098?pwd=AlkT-OD_YqtfvyVdoQkggzKiUHiYYo.1)

**000621**

favorite hide flag share

Posted a day ago on: 2022-02-15 16:25

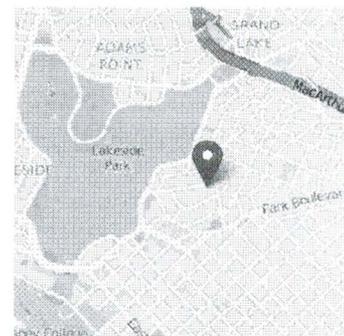
Contact information:

### \$2,650 / 2br - Dream big! Living where you love means loving your life. (Oakland Hills/ Mills)

image 6 of 6



Plan 2  
2 Bed | 1 Bath | 947 sq ft



350 Newton near Stow Avenue

2BR / 1Ba available now

application fee details: 42.00

cats are OK - purr

dogs are OK - woof

apartment

laundry on site

street parking

#### 350 Newton # 02

- \*Showings By Appointment Only
- \*Price and Availability Subject to Change, please confirm details at the time of showing
- \*Photos and images may vary from actual apartments

#### THE CONTACT

Bless McCrary  
[show contact info](#)  
 Mosser Companies  
[www.mosserliving.com](http://www.mosserliving.com)

Spanning the shores of Lake Merritt from downtown to Grand Lake, Cleveland Heights is home to quiet residential streets, sunny greenbelts, and The Town's finest attractions, including Children's Fairyland, Oakland Museum of Arts, and the Grand Lake Theater. Great eateries, taverns, and small local gyms pepper the district, from Lake Chalet to the hip outdoor bar, Mad Oak, Grand Tavern, The Working Body, and Oakland Fight Club.

There are several options for grocery shopping from Whole Foods, to Piedmont Grocery, Sprouts, and Trader Joe's. MacArthur BART is near and easy access to Highways 580 and 880 make Cleveland Heights a commuter's dream.

#### THE APARTMENT

- Newer Appliances
- Hardwood Flooring
- Laundry on-site
- Pet Friendly
- Rent Controlled

#### LEASE TERMS

- Lease: 1 Year
- Income Requirement: 2.5x Rent
- Deposit: 1-2x Rent (Depends on Credit)
- Renters Insurance Required
- Prior Landlord Positive Referral
- Utilities Paid by Resident
- Utilities Paid by Tenant
- Pets: \$500 Pet Deposit, \$75/m Dog, \$50/m Cat
- Proof of Income: Pay Stubs; Offer Letter; Bank Statements

\*\*APPLICATION LINK (\$42) : [www.350newtonave.com](http://www.350newtonave.com)

\*We do business in accordance with the Federal Fair Housing Law\*  
CaBRE #01341448

QR Code Link to This Post



000622

favorite

hide

flag

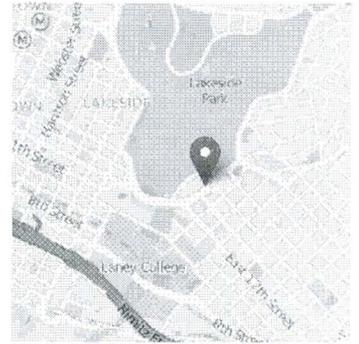
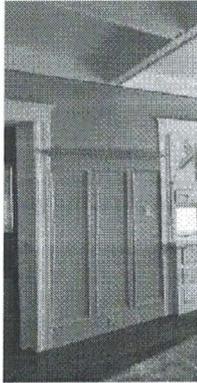
share

Posted 2 days ago on: 2022-02-14 19:38

Contact information:

### \$2,400 / 2br - 2 bdrm apt available 1/2 block from Lake Merritt (oakland lake merritt / grand)

image 7 of 7



1435 1st Ave

apartment 2BR / 1Ba

no laundry on site

no smoking

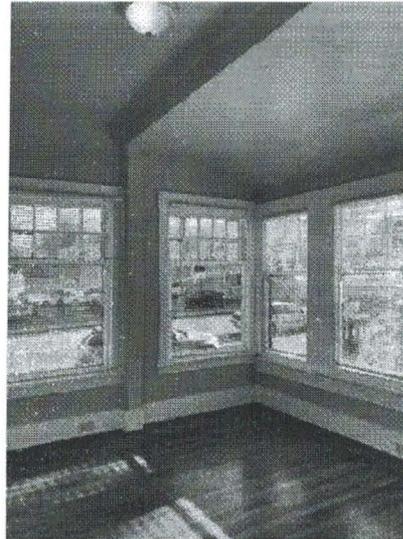
street parking

2 bdrm apt available half block from Lake Merritt.

- Close to Lake Merritt BART station, Lucky grocery store, Walgreens, shops and restaurants.
- Easy access to highways 880/580
- AC transit bus stop on the block
- Rent includes water, garbage and gas
- Street parking
- No on-site laundry facilities; laundromat is one block from building

Rent: \$2400  
 Security Deposit: \$3000  
 1 yr lease  
 No pets, no smoking  
 Credit/background check and proof of income required.

QR Code Link to This Post



000623

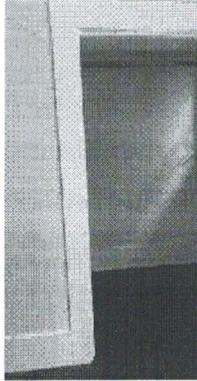
favorite hide flag share

Posted about 10 hours ago on: 2022-02-16 10:57

Contact Information: (415) 931-8259

\$2,895 / 2br - THIS IS IT! SUN FILLED, TOP FLOOR 2 BED!! VIEWS of LAKE MERRITT. (oakland lake merritt / grand)

image 12 of 15



231 Foothill near 2nd Street

2BR / 1Ba

application fee details: \$40 application fee

cats are OK - purr

apartment

no laundry on site

no smoking

no parking

rent period: monthly

Please watch property video here: <https://vimeo.com/620104981>

Contact info:

Salma & Company | CA DRE# 01522764 | [show contact info](#)

Top floor 2 BR / 1 BA (possibly can be used as a 3 bedroom) Unit with tons of natural light and 1.5 blocks to Lake Merritt

231 Foothill Blvd, #C, Oakland, CA 94606

\$2,895/mo

KEY FEATURES

- Year Built: 1921
- Bedrooms: 2
- Bathrooms: 1 Full with shower over tub
- Parking: None
- Lease Duration: 1 Year (See Details Below)
- Deposit: \$2895
- Pets Policy: (1) Cat Allowed with \$500 pet deposit
- Laundry: None
- Floor: Top Floor
- Property Type: Apartment

DESCRIPTION

SUN FILLED unit with views of Lake Merritt

Ready for occupancy 3/2/22.

Top floor unit. Gorgeous Period Detail Throughout. Property consists of 2 spacious bedrooms, 1 bathroom, large, eat in kitchen and well-appointed living room with decorative fireplace. (could be used as 3rd bedroom.)

Prime Lake Merritt location, just steps from the lake, Portal, Lucky's, Walgreens, as well as, other numerous shops, restaurants. 15 minute walk to Lake Merritt BART Station, and a short walk to Downtown Oakland.

Each bedroom has a large closet and numerous windows for a bright and open feel.

Laundromat located on the same block as the building.

QR Code Link to This Post



000624



<  114 Gigi Bolanos ▾



I can put up the sheet.

Nov 28, 2021

7:20 PM

For the future, can you please leave me a copy of the key? Until I get a new roommate, I am paying full rent, and should have full access to all of the apartment. Your tools should be safe in there regardless

7:23 PM

I'll leave it open. I didn't want anyone getting in there with wet paint on the walls

7:34 PM

Monday, November 29, 2021



000625

**Sublease Addendum (PDF)**

The Lease Addendum, prepared by the City of Oakland Rent Adjustment Program, is for use when there is partial tenancy turnover. It clarifies that tenants who move into rental units during an existing tenancy are not original tenants and only have the right to the current controlled rent until the last original tenant permanently vacates the unit. The Lease Addendum clarifies that the landlord may raise the rent without limitation on all remaining tenants.

**Proof of Service (PDF)**

This document is a stand-alone Proof of Service that can be used to serve any other RAP document that does not already include a Proof of Service.

**Request to Change Hearing Date for the Rent Adjustment Program Petition (PDF)**

A request for a change of the date of hearing or mediation must be submitted on this form as early as possible. You must sign this request. Documentation verifying the reason for the request must be attached to this form.

**Request to Dismiss Rent Adjustment Program Petition (PDF)**

**LEASE ADDENDUM FOR PURPOSE OF FUTURE  
COSTA-HAWKINS RENT INCREASE**  
(California Civil Code Section 1954.53 et. seq.)

I, \_\_\_\_\_ (tenant) hereby acknowledge that I am moving into  
\_\_\_\_\_ (property), effective \_\_\_\_\_ (date).

I acknowledge that I am not an original tenant as defined by California Civil Code Section 1954.53 because I am replacing a vacating tenant and/or I was not a party to the original rental agreement and did not begin my tenancy fewer than thirty days thereafter.

I understand that the landlord may increase the rent and create a new rental agreement/lease with new and different terms when the last original tenant permanently vacates the unit.

I also understand that the landlord may accept rent payments directly from me as part of my tenancy and that this acceptance alone does not constitute a waiver of the landlord's right to increase the rent pursuant to California Civil Code Section 1954.53 when the last original tenant permanently vacates.

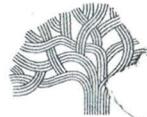
I further understand that the landlord does not waive his/her right to establish a new rent and lease/rental agreement unless s/he has received written notice of tenancy termination from the last original tenant and thereafter accepts rent before serving notice of a new rent.

Dated: \_\_\_\_\_ Landlord/Agent: \_\_\_\_\_

Dated: \_\_\_\_\_ Tenant: \_\_\_\_\_

**For questions about this form, please contact the City of Oakland Rent Adjustment  
Program by phone at (510) 238-3721 or email at [rap@oaklandca.gov](mailto:rap@oaklandca.gov).  
or visit [www.oaklandca.gov/rap](http://www.oaklandca.gov/rap)**

CITY OF OAKLAND



HOUSING AND COMMUNITY DEVELOPMENT  
DEPARTMENT  
RENT ADJUSTMENT PROGRAM  
250 FRANK H. OGAWA PLAZA, SUITE 5313  
OAKLAND, CA 94612-0234

OAKLAND CA 945

13 JUL 2022 PM 6



US POSTAGE SM PITNEY BOWES

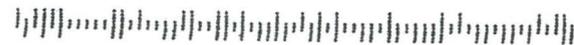


ZIP 94612 \$ 000.57<sup>0</sup>  
02 4W  
0000383807 JUL 13 2022



Allen Wu  
P.O Box 12081  
San Francisco, CA 94112

94112-008181



000628



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

TEL (510) 238-3721  
FAX (510) 238-6181  
CA RELAY 711

## AMENDED NOTICE OF REMOTE SETTLEMENT CONFERENCE AND HEARING

File Name: Bolanos v. Wu  
Property Address: 114 East 15th Street, Oakland, CA  
Case Number: T22-0078

**Due to the continued Covid 19 pandemic in our city, and in an effort to protect the health and safety of the parties and City of Oakland employees, the Settlement Conference and Hearing in your case will not be an in-person hearing and will be held remotely.**

The Hearing Officer will conduct a Settlement Conference to attempt to resolve this matter. The Settlement Conference in your case will begin on:

Date: September 20, 2022  
Time: 10:00 am.  
Place: REMOTELY

If the Settlement Conference is not successful, the Hearing will begin immediately after the Settlement Conference.

### **Remote Hearings**

If you do not have access to these services or if any party does not have access, the Hearing will be conducted by Zoom but on "audio only" which allows parties to use a toll-free call in number on a telephone to participate. There is no charge to use Zoom.

### **Submission of Documents Electronically**

In order to allow the Hearing to run as smoothly as possible, please send all Response documents to the opposite party with a Proof of Service and email a copy directly to the analyst in your case. This case is assigned to **Brittini Lothlen** and her contact information is [blothlen@oaklandca.gov](mailto:blothlen@oaklandca.gov), 510-238-6415.

### **Deadline and Time Limit Extension**

In order to minimize delays, we ask that you submit all required responses and exhibits that you wish to produce for your Hearing prior to the date of the Hearing and at least seven days prior to the Hearing. Please submit these documents by email to **Brittini Lothlen** (noted above) and, if you have access to the opposing party's email address, send a copy of everything you send to the analyst to the opposing party as well. If you do not have access to scan and email your documents, you may submit them by mail with a proof of service to opposing side. (If you are mailing, always send copies and keep the originals for

**000629**

yourself.)

Please notify Brittini Lothlen if you have submitted your documents by mail.

**Note that any documents not submitted at least seven days prior to the Hearing may cause delays in the completion of your case.**

**Please note that if you do not have access to any of the necessary technology to be a participant in a remote Hearing, please email the address noted above.**

All other orders set forth in the original Notice of Remote Settlement Conference and Hearing remain in effect.

Please note that if you wish to have an interpreter present at the Hearing you should contact email **Brittini Lothlen** as soon as possible.



Housing and Community Development Department  
Rent Adjustment Program  
250 Frank Ogawa Plaza, Suite 5313  
Oakland, CA 94612-2034

TEL (510) 238-3721  
FAX (510) 238-6181  
CA RELAY 711

**ZOOM INVITATION FOR RAP HEARING**  
**T22-0078 Bolanos v. Wu**

To the Parties:

Your hearing scheduled will take place on **September 20, 2022 at 10:00 am** and will be held remotely through Zoom.

You can connect to the Hearing without charge by downloading Zoom. You can also connect by using only a telephone. To dial in to a call, enter your dial-in number, followed by the meeting ID and pound key, then enter the password and pound key.

**Topic: 2022.9.20\_Rent Adjustment Hearing Audio-Video\_T22-0078\_Bolanos v. Wu**  
**Time: Sep 20, 2022 10:00 AM Pacific Time (US and Canada)**

Join Zoom Meeting

[https://us02web.zoom.us/j/83923649098?pwd=AlkT-OD\\_YqtfvyVdoQkggzKiUHiYYo.1](https://us02web.zoom.us/j/83923649098?pwd=AlkT-OD_YqtfvyVdoQkggzKiUHiYYo.1)

Meeting ID: 839 2364 9098

Passcode: 087032

One tap mobile

+16694449171,,83923649098#,,,\*087032# US

+16699009128,,83923649098#,,,\*087032# US (San Jose)

Dial by your location

+1 669 444 9171 US

+1 669 900 9128 US (San Jose)

+1 253 215 8782 US (Tacoma)

+1 346 248 7799 US (Houston)

+1 646 558 8656 US (New York)

+1 646 931 3860 US

+1 301 715 8592 US (Washington DC)

+1 312 626 6799 US (Chicago)

Meeting ID: 839 2364 9098

Passcode: 087032

Find your local number: [https://us02web.zoom.us/j/83923649098?pwd=AlkT-OD\\_YqtfvyVdoQkggzKiUHiYYo.1](https://us02web.zoom.us/j/83923649098?pwd=AlkT-OD_YqtfvyVdoQkggzKiUHiYYo.1)

**000631**

**To download Zoom:**

**On a smartphone:**

1. Go to the "App store," "Google play," "Android Apps," or the "Play Store"
2. Search for Zoom
3. Download "Zoom" or "Zoom Cloud Meetings."

**On a computer:**

1. Open a browser (Firefox, Internet Explorer, Google Chrome, or any other web browser)
2. Search for "Zoom" in the search box; or type in "zoom.us" in the address bar

\*In either case, you will be directed to the Zoom website.

Create a Zoom account.

If you have technical questions, I find the following link helpful in navigating Zoom:

<https://support.zoom.us/hc/en-us/articles/115004954946-Joining-and-participating-in-a-webinar-attendee->

Please test the link and download the Zoom application at least a day before the hearing. If you experience any technical difficulties connecting to the meeting or to discuss your technology access, please contact me immediately.

Cordially,

**Brittni Lothlen**

City of Oakland

Housing and Community Development Department

Rent Adjustment Program

250 Frank H. Ogawa Plaza, 5th Floor

Oakland, CA 94612

Main: (510) 238 - 3721

Telephone: (510) 238 - 6415

Fax: (510) 238 - 6181



**PROOF OF SERVICE**  
**Case Number: T22-0078**  
**Case Name: Bolanos v. Wu**

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

**Today, I served the attached documents listed below by placing a true copy in a City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Oakland, California, addressed to:**

**Documents Included**

Amended Notice of Remote Settlement Conference and Hearing  
Zoom Invitation for RAP Hearing

**Owner**

Allen Wu  
P.O Box 12081  
San Francisco, CA 94112

**Tenant**

Gigi Saray Bolanos  
114 East 15th Street  
Oakland, CA 94606

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **July 13, 2022** in Oakland, California.

*Brittini Lothlen*

\_\_\_\_\_  
Brittini Lothlen  
Oakland Rent Adjustment Program

**000633**



## MEMORANDUM

**Date:** January 7, 2023  
**To:** Members of the Housing, Rent Residential & Relocation Board (HRRRB)  
**From:** Braz Shabrell, Deputy City Attorney  
**Re:** Appeal Summary in T22-0111, Williams v. Dawson  
**Appeal Hearing Date:** January 12, 2023

---

**Property Address:** 548 37th Street, Oakland, CA  
**Appellant/Owner:** Kevin Dawson  
**Respondent/Tenant:** Robert Williams

### **BACKGROUND**

On June 29, 2022, tenant Robert Williams filed a petition with the Rent Adjustment Program contesting three rent increases: one noticed in September 2020 (from \$700 to \$770), one noticed in December 2020 (from \$770 to \$866), and one noticed in May 2022 (from \$847 to \$943). The tenant submitted evidence of the rent increase notices together with the petition. The owner did not file a response.<sup>1</sup>

### **RULING ON THE CASE**

The Hearing Officer issued an Administrative Decision on September 12, 2022, granting the tenant's petition. All three rent increases were found to be invalid on multiple grounds. First, all three notices failed to comply with the noticing requirements imposed by the City of Oakland's rent increase moratorium. The first increase from \$700 to \$770 was also invalid because it exceeded the allowable CPI, and because the rent increase notice indicated that the increase was based on "capital improvements" despite the owner not having filed a petition with RAP. The second increase from \$770

---

<sup>1</sup> The tenant petition indicated that the owner was served with the petition on June 28, 2022. On August 17, 2022, the Rent Adjustment Program mailed the owner a Notice of Hearing, copy of the petition, and owner response form.

to \$866 was also invalid because it was an unlawful attempt to pass on utilities fees, the notice was served without the required RAP notice, the increase exceeded CPI and violated the moratorium, and the increase was the second rent increase imposed within a 12-month period. The third increase from \$847 to \$943 was also invalid because it exceeded CPI and violated the moratorium. Therefore, the tenant petition was granted.

### **GROUND FOR APPEAL**

The owner filed an appeal of the Administrative Decision on October 1, 2022, alleging that the decision is inconsistent with prior decisions and the law, the owner was denied a sufficient opportunity to respond to petitioner's claims, and "other." Specifically, the owner alleges that the decision is inconsistent with a prior decision issued by RAP on June 24, 2021, which set the base rent at \$770 and validated the utility increase of \$96 (which was the basis for the second increase to \$866). The owner also alleges that the decision violates a settlement agreement executed on March 7, 2022, wherein the tenant agreed to release all claims arising from the tenancy. Finally, the owner claims that the third increase from 2022 is valid on the basis of banking.

The owner alleges that the owner did not file a response to the tenant petition because the owner was recovering from COVID and housebound for over 30 days, and did not receive the mail until after the response period had passed.

### **ISSUES**

1. Has the owner established good cause for the owner's failure to file a response?

### **APPLICABLE LAW AND PAST BOARD DECISIONS**

#### **I. Administrative Decisions**

A Hearing Officer may issue a decision without a hearing when the petition and response forms raise no genuine dispute as to any material fact, and the petition may be decided as a matter of law. O.M.C. 8.22.110(F)(1)(e). An owner's failure to file a response to a tenant petition may result in an Administrative Decision, e.g., when a tenant certifies under penalty of perjury that no RAP Notice was provided in a petition contesting a rent increase. See, e.g., T03-0376, *Toscano v. Busk*; T01-0099, *Hill v. Brown*; T00-0313, *Burrell v. Lane*.

#### **II. Failure to File Response**

An owner must file a response to a tenant's petition within thirty (30) days of service of the petition. O.M.C. 8.22.090(B)(2). Failure to file a response limits the

owner's ability to participate in the hearing. Several Rent Board cases have held that failure to timely file a response, absent good cause, precludes a party from introducing evidence and limits the party to cross-examination at a hearing.

III. Evidence on Appeal

Absent good cause, appellants are not permitted to present evidence for the first time on appeal when the appellant did not file a response to the petition or appear at the hearing. When a party does have good cause for failure to file a response, the Board may remand to allow the party to file a response.



**MEMORANDUM**

**Date:** January 7, 2023  
**To:** Members of the Housing, Rent Residential & Relocation Board (HRRRB)  
**From:** Braz Shabrell, Deputy City Attorney  
**Re:** Appeal Summary in L14-0065, Mandana Properties, LLC v. Tenants (formerly 525, 655 Hyde Street CNML Properties, LLC v. Tenants)  
**Appeal Hearing Date:** January 12, 2023

---

Property Address: 3921 Harrison St., Oakland, CA  
Appellant/Tenants: Todd McMahon and Mari Oda  
Julie Amberg  
Respondent/Owner: Mandana Properties LLC (current)

**BACKGROUND**

On November 14, 2014, the property owner filed a Petition for Certificate of Exemption based on substantial rehabilitation. The subject property is a building containing sixteen units. The owner acquired the property in November of 2013 and undertook a rehabilitation project in 2014.

**ORIGINAL HEARING (2015)**

On May 29, 2015, the Hearing Officer issued a Hearing Decision denying the owner's Petition. In order to qualify for exemption based on substantial rehabilitation, an owner must demonstrate that a certain threshold of money was spent "rehabilitating" the building. The amount must be more than 50% of what it would have cost to build new construction of an equal square footage. The cost of new construction is determined

“using tables issued by the chief building inspector applicable for the time period when the substantial rehabilitation was completed.”<sup>1</sup>

In this case, the Hearing Officer found that the dollar amount of the qualifying repairs and improvements did not meet the minimum threshold for the exemption. To determine the average cost of new construction, the Hearing Officer considered three tables: Table A, Table B, and Table C. Table A was a City-issued schedule published in 2009. Table A listed the average cost of new construction for an apartment building in 2009 as \$127 per square foot. Since this schedule was published in 2009 and the project took place in 2014, the Hearing Officer took judicial notice of a Table B (“Quarterly Cost Indexes (1926=100)”), which was used to adjust the amounts in Table A for inflation. The \$127 listed in Table A was adjusted by 1.18%, to arrive at an average cost of \$149.86 per square foot.

The total square footage of the apartment building was determined to be 14,338, which included deck/balcony areas. This number was then multiplied by the average cost of new construction per square foot, to arrive at a total of \$2,148,694 for new construction of a similarly-sized building. Since the threshold amount for the substantial rehabilitation exemption is 50% of the cost of new construction, the owner would have had to spend at least \$1,074,347 to qualify for the exemption.

The Hearing Decision found that the owner had spent \$850,441 in qualifying costs. Since this was less than the required amount, the petition was denied. The Hearing Decision stated that even if the amount in Table A was used (\$127) without using Table B to adjust for inflation, the amount still would not meet the required expense threshold.

### **BOARD APPEAL (2016)**

The owner appealed the Hearing Decision on several grounds. First, the owner claimed that it was improper for the Hearing Officer to consider Table B in determining the average cost of new construction, since Table B had not been properly entered into evidence and was not issued by the chief building inspector. Therefore, the cost for new construction had been calculated incorrectly. Second, the owner argued that the balcony areas should not have been included in the overall square footage, and the cost per square foot of balcony area should have been calculated at a different rate than the interior work.

---

<sup>1</sup> Formerly O.M.C. 8.22.030(B)(2)(b). The exemption for substantial rehabilitation has since been removed from the Rent Adjustment Ordinance.

An Appeal Hearing was held on December 8, 2016. The Board issued an Appeal Decision on March 7, 2017, affirming the Hearing Decision. Regarding the balconies, the Board voted to affirm their inclusion in the total square footage calculation on the basis that there was no abuse of discretion by the Hearing Officer and the balcony area was useable space that extended the tenants' living area, and this interpretation was consistent with past practices and policy of the Board.

Regarding the use of Table B and whether the amount in Table A should have been adjusted for inflation, the Board discussed the issue, and although motions were made, the motions either did not pass or were inadvertently not voted on. Therefore, the portion of the Hearing Decision relating to the use of Table B was affirmed by default.

### **JUDICIAL REVIEW**

The owner filed a Petition for Writ of Administrative Mandamus in the Alameda County Superior Court (Case No. RG17-862841), contesting the Appeal Decision. On December 12, 2018, the Superior Court entered a Judgment Granting the Writ of Administrative Mandamus, setting aside and vacating the Appeal Decision. The Superior Court ordered the Rent Adjustment Program to "**[r]econsider the Appeal Decision in its entirety in Case No. L14-0065 in light of the Court's opinions, Order and Judgment.**"<sup>2</sup>

Among other things, the Court found that the Hearing Officer, and in turn the Board, erred in using a single construction cost number for the entirety of the square footage (i.e., by not treating the balcony area as separate from the indoor apartment area). The Court found that the Board misapplied O.M.C. 8.22.030(B)(2)(b) by "focusing on the *potential* use of the balconies rather than the cost of building or rehabilitating the balconies" [emphasis added].<sup>3</sup> The Court reasoned that Table A differentiates among different "Descriptions" of construction, and included different categories for "Apartment space" and "Elevated Decks and Balconies." Therefore, the Board should apply Table A "based on whether the Description reasonably describes the physical structure to be constructed."<sup>4</sup> The Court stated that the focus should be on the cost of construction, rather than the potential use of the space.<sup>5</sup>

The Court also found that it was improper to incorporate Table B because there is no indication that it was "issued by the chief building inspector" as required by the

---

<sup>2</sup> Judgment Granting Writ of Administrative Mandamus (December 12, 2018).

<sup>3</sup> Order Granting Motion to Augment the Record and Granting Petition for Writ of Mandate (August 23, 2018), 13:12-13.

<sup>4</sup> *Id.* at 13:10.

<sup>5</sup> *Id.* at 13:18-25.

Ordinance.<sup>6</sup> As a matter of due process, Table B was not a document that was readily accessible to the public and therefore the developer was not given fair warning that Table A was not the standard against which the evidence of expense would be measured.<sup>7</sup>

In ordering the Board to reconsider the case in light of the Court's opinion, the Court noted that the judgment "**shall not limit or control in any way the discretion legally vested**" in the Board, and that if permitted, the Board "**may direct the Hearing Officer to conduct a further hearing**" [emphasis added].<sup>8</sup> The Order further provides that the Board "**may reconsider either the entire matter or only the issues implicated by this order**" [emphasis added].<sup>9</sup> The Court stated that it "expressly does not direct the Rent Board to grant the petition for a Certificate of Exemption."<sup>10</sup>

The tenants filed a motion for reconsideration. The motion was denied. The tenants then filed an appeal. On February 26, 2021, the Court of Appeals issued an opinion affirming the Superior Court's Judgment. The Court of Appeals also agreed with the owner that the Hearing Officer had made a computational error in adding up the total costs submitted by the owner, and found that that number should have been \$857,597, rather than the amount stated in the Hearing Decision.

Pursuant to the Court's order, the case was then remanded back to the Hearing Officer<sup>11</sup> for reconsideration in light of the Court's judgment.

### **RECONSIDERATION DECISION (2021)**

On September 30, 2021, a new Hearing Decision was issued ("Reconsideration of Board Appeal Decision After Court Judgment"), granting the owner's Petition. The Decision was issued without a hearing. The new Decision found that the owner had made qualifying expenditures in an amount totaling \$876,800.99 (as opposed to \$850,441 as was stated in the 2015 Decision).

In determining the average cost of new construction, the Hearing Officer declined to consider Table B, which was previously used to account for inflation, and relied solely on Table A. The Decision found that the square footage of the deck/balcony areas

---

<sup>6</sup> *Id* at 9:4-10.

<sup>7</sup> *Id.* at 11:4-13.

<sup>8</sup> *Id.* at 15:3-4.

<sup>9</sup> *Id.* at 15:4-7.

<sup>10</sup> *Id.* at 15:6-8.

<sup>11</sup> The original Hearing Officer who heard the case in 2015 retired, so the case was re-assigned to a different Hearing Officer.



should be calculated separately, as noted by the Court. Table A lists \$41.16 as the cost per square foot for “Elevated Decks and Balconies.” The Decision therefore made the following calculation:

Cost of New Construction

Building area: 13,336 sq. ft. x \$127=	\$1,693,672
Balcony area: 1,002 sq. ft. x \$41.16=	<u>\$41, 242.32</u>

Total: \$1,734,914.32

Since the substantial rehabilitation exemption requires expenditure of at least 50% of this cost ( $\$1,734,914.32 \div 2 = \$867,457.16$ ), and the owner’s expenditures were found to total \$876,800.99, the owner qualified for the exemption and the Petition was granted.

**BOARD APPEAL (2022)**

The tenants appealed the Reconsideration Decision, requesting that the matter be scheduled for a hearing to allow the tenants to introduce evidence regarding whether \$127 or \$41.16 is the “factually and legally correct multiplier” for determining the average basic cost for new construction for the balconies, which are “structurally integral” to the apartments, as opposed to falling under the category of new elevated decks and balconies set forth in Table A. On March 10, 2022, the Board unanimously voted to remand the case for a hearing to allow for the introduction of evidence on the limited issue of whether the 1002 sq. ft. piece of property properly falls under the “Elevated Decks and Balconies” description as indicated in Table A.

**REMAND DECISION (2022)**

A remand hearing was held on June 29, 2022, on the limited issue of the balconies. The Hearing Officer found that the 1002 sq. ft. property properly falls under “Elevated Decks and Balconies” to be valued at \$41.16 per sq. ft. per Table A, and therefore granted the owner petition. The Hearing Officer found that Table A “clearly distinguishes Apartment (habitable) space at \$127.00 per square foot and Deck/Balcony (outdoor/uninhabitable) space at \$41.16 per square foot.” The Hearing Officer found that witness testimony established that the deck/balcony area is outdoor space and different from apartment space since it is open to the outside, cannot be entirely closed, there is no heat, and it is exposed to the elements.

**CURRENT APPEAL**

In this appeal, tenants argue that the Remand Decision errs as a matter of law in its interpretation of what constitutes “apartment” versus “balcony” space. They argue that balconies are not “unenclosed,” because they have walls and a ceiling. Therefore, the balconies fall under the Planning Code definition of “floor area” (O.M.C. Sec. 17.09.040), and therefore fall under the “Apartment” category for purposes of Table A. Appellants also contend that the owner did not meet their burden at the remand hearing of establishing that the balconies fall under the “Elevated Decks and Balconies” category. The Hearing Officer erred in stating that space must be “entirely closed” to the elements in order to be designated as apartment space. Since the balconies are at least partially enclosed, they fall within the definition of “floor space” in the planning code and therefore should be costed as “apartment” space as opposed to “Elevated Decks and Balconies.” The actual cost of renovating the balconies was \$222.22 per square foot, which is relevant and weighs in favor of using \$127 versus \$41.

### **ISSUES**

1. Is the Hearing Officer’s finding that the balcony area falls under “Elevated Decks and Balconies” rather than “Apartment” supported by substantial evidence?

### **APPLICABLE LAW AND PAST BOARD DECISIONS**

#### **I. Substantial Rehabilitation**

O.M.C. 8.22.030(B)(2)<sup>12</sup>:

“Exemptions for Substantially Rehabilitated Buildings.

- a. In order to obtain an exemption based on substantial rehabilitation, an owner must have spent a minimum of fifty (50) percent of the average basic cost for new construction for a rehabilitation project.
- b. The average basic cost for new construction shall be determined using tables issued by the chief building inspector applicable for the time period when the substantial rehabilitation was completed.”

O.M.C. 8.22.030(B)(3) Regulations<sup>13</sup>:

---

<sup>12</sup> As of the date the original Petition was filed (2014). This section/exemption has since been removed from the Rent Adjustment Ordinance.

<sup>13</sup> As of the date the original Petition was filed (2014). This section/exemption has since been removed from the Regulations.

“Substantially rehabilitated buildings. a. In order to qualify for the substantial rehabilitation exemption, the rehabilitation work must be completed within a two (2) year period after the issuance of the building permit for the work unless the Owner demonstrates good cause for the work exceeding two (2) years. b. For the substantial rehabilitation exemption, the entire building must qualify for the exemption and not just individual units.”



**MEMORANDUM**

**Date:** January 7, 2023  
**To:** Members of the Housing, Rent Residential & Relocation Board (HRRRB)  
**From:** Braz Shabrell, Deputy City Attorney  
**Re:** Appeal Summary in T22-0078, Bolanos v. Wu  
**Appeal Hearing Date:** January 12, 2023

---

Property Address: 114 E. 15<sup>th</sup> Street Oakland, CA  
Appellant/Owner: Allen Wu  
Respondent/Tenant: Gigi Saray Bolanos

**BACKGROUND**

On May 2, 2022, Gigi Saray Bolanos ("the Petitioner") filed a Petition contesting a rent increase from \$1,800.00 to \$2,100.00, effective May 1, 2022. The Petitioner also alleged that the owner had decreased housing services by denying her the right to one-for-one replacement of roommates.

The owner, Allen Wu ("the Owner") filed a Response contending that the rent increase was justified under California Civil Code section 1954.53(d) because "none of the original occupants permanently reside in the covered unit." The Owner also contended that the Petitioner's request to add a roommate was properly denied because the Petitioner did not send her request via USPS certified mail and because no potential roommate candidates submitted rental applications or proof of employment/income verification.

**RULING ON THE CASE**

A hearing took place on September 20, 2022, and a decision was issued on October 18, 2022, granting the Petition. The Hearing Officer found that the Owner was not entitled to a Costa-Hawkins rent increase (under Civil Code 1954.53(d)) because the Petitioner was considered a tenant rather than a subtenant or assignee, and

increases under Civil Code 1954.53(d) are only allowed when the remaining occupant is a sublessee or assignee. The Petitioner paid rent directly to the Owner, was jointly and severally liable for the full rent amount under the original lease, signed documents listing her as a tenant, and resided in the unit with the Owner's express consent and pursuant to the terms of the underlying lease. Therefore, the Petitioner was a tenant in her own right and not a subtenant or assignee of the tenants listed in the 2017 lease. The proposed rent increase from \$1,800 to \$2,100 was above CPI and therefore invalid.

The Hearing Officer also found that there was a decrease in housing services due to the Owner's interference with the Petitioner's right to a one-for-one roommate replacement. Since February 2022, the Petitioner directed two different potential roommates to the Owner for approval, but the Owner did not process or respond to either. Therefore, the Petitioner was entitled to a 50% rent decrease starting in February when the Petitioner first requested approval for a replacement roommate.

### **GROUND FOR APPEAL**

The Owner appealed, alleging that the decision is inconsistent with the Rent Ordinance, Rent Regulations, and/or prior decisions of the Board; the decision raises a new policy issue that has not been decided; the decision violates federal, state, or local law; the owner was denied a sufficient opportunity to respond to the petitioner's claims; and "other."

First, the Owner alleges that the restitution amount granted to the Petitioner should be reduced by two months because the hearing on the Petition was initially scheduled for July, but was postponed without the Owner's consent until September. Had the hearing proceeded as originally scheduled, the tenant would not have "overpaid" for the months of August and September.

Second, the Owner alleges that a Costa-Hawkins rent increase is justified because the Petitioner is not an "original occupant," but rather a "subsequent occupant" since she did not move in until 2019 and the original occupant moved into the unit in 2015. The Owner claims that the Petitioner is a sublessee or assignee of the original tenant, who vacated in April 2019.

The owner also contends that the decrease in services award fails to account for the fact that the Petitioner also received an increase in services by having an additional bedroom.

### **ISSUES**

1. When the Petitioner moved in to the unit in May of 2019, was she an assignee or subtenant of Mary Balingit, or did the Hearing Officer correctly find that Petitioner was a tenant in her own right?

- *If Petitioner has her own tenancy, the Costa-Hawkins rent increase was correctly denied. If Petitioner was a subtenant or assignee of the previous tenant, rather than having her own tenancy with the Owner, the case should be remanded.*
2. For a decrease in housing services based on a landlord's failure to allow one-for-one roommate replacement, should the award for decreased services be offset by the tenant having access to the full unit (i.e., does not having a roommate count as an "increase" in services)?
  3. What effect, if any, does delay of a hearing date have on calculation of restitution for decreased services?

### **APPLICABLE LAW AND PAST BOARD DECISIONS**

#### I. Costa-Hawkins Rent Increase

- Cal. Civil Code 1954.53(d)(2):

"If the original occupant or occupants who took possession of the dwelling or unit pursuant to the rental agreement with the owner no longer permanently reside there, an owner may increase the rent by any amount allowed by this section to a lawful sublessee or assignee who did not reside at the dwelling or unit prior to January 1, 1996."

- Costa-Hawkins allows landlords to set the initial rental rate at the commencement of a new tenancy. If a new tenant moves into a unit as a sublessor or assignee of a former or existing tenant, the new tenant is not considered an "original occupant" for purposes of a Costa-Hawkins rent increase. If the new tenant is a tenant in their own right, the landlord is not entitled to a 1954.53(d) increase while the tenant remains in possession.

#### II. Tenant v. Assignee or Subtenant

- A subtenant has only a portion of an interest in a lease; the original lessee retains a right of reentry at some time during the unexpired term of the lease. *Cobb v. San Francisco Residential Rent Stabilization & Arb. Bd.* (2002) 98 Cal. App. 4th 345, 352.
- With assignment, there must be evidence of intent to transfer one's own interest to the assignee. It is an agreement between the assignor (original tenant) and the assignee (new tenant).

#### III. Decreased Housing Services

- A decrease in housing services is considered an increase in rent. Under the Rent Ordinance, “housing services” includes the right to one-for-one roommate replacement. OMC 8.22.020:

"Housing services" means all services provided by the owner related to the use or occupancy of a covered unit, including, but not limited to, insurance, repairs, maintenance, painting, utilities, heat, water, elevator service, laundry facilities, janitorial service, refuse removal, furnishings, parking, security service, employee services, and any other benefits or privileges permitted the tenant by agreement, whether express or implied, including the right to have a specific number of occupants and the right to one-for-one replacement of roommates, regardless of any prohibition against subletting and/or assignment.